S. HRG. 108–497

ENVIRONMENTAL PROTECTION AGENCY: FISCAL YEAR 2005 BUDGET

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF THE PROGRAMS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY FOR FISCAL YEAR 2005

MARCH 10, 2004

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED EIGHTH CONGRESS
SECOND SESSION

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C O N T E N T S

ENVIRONMENTAL PROTECTION AGENCY: FISCAL YEAR 2005 BUDGET

WEDNESDAY, MARCH 10, 2004

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

The committee met, pursuant to notice, at 9:27 a.m. in room 406, Dirksen Senate Building, Hon. James M. Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Allard, Baucus, Bond, Boxer, Carper, Chafee, Clinton, Graham, Jeffords, Thomas, Voinovich and Wyden.

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

Senator INHOFE. Our meeting will come to order.

Governor Leavitt, I am very pleased to have you here testifying at our 2005 budget hearing. It is an honor to have you here. I expect that each Senator on the committee will wish to make an opening statement. Since we are expecting all of our members here, we will try to keep our opening statements under 5 minutes.

I would like to touch on a few issues of importance to me, and then we will get into more detail during the questioning period. First of all, this is the first hearing that this committee has seen Governor Leavitt since his confirmation. I want to publicly thank him for making Tar Creek a top priority. I had invited him back at the very first of the confirmation, not that confirmation was contingent upon this, but would he come out and personally see the most devastating Superfund site in America, Tar Creek in Oklahoma. He did that. I want to compliment you publicly, along with Richard Green. He has been really a great help. In fact, I think he is out there today or sometime this week. He has done a great job.

So we are making headway now. We actually have, of the five legal obstacles, all five are now behind us and we are getting ready to clean this thing up. I found this analogous, Governor Leavitt, to when I became Mayor of Tulsa. We had a flooding problem in North Tulsa called Mingo Creek. For 25 years, they talked about it and nobody did anything. We finally locked everybody up in one room and said we are going to adopt the Corps of Engineers alternate 8(A). We are going to stop the flooding. Everyone screamed and carried signs around about how bad I was, but we haven't had a flood since then. That is what we are going to do with Tar Creek. I appreciate your recognizing that as significant, as it is.

As members of this committee know, I am an advocate of sound science. As a result, I am concerned that the President's budget

contains a significant cut in the overall science budget for EPA. Overall, the budget cuts nearly $100 million from the EPA science programs. I am concerned and I am hoping that this will not hamper our effort to induce sound science into our decisions.

On the whole, this year's budget shows a continued commitment to the environment and environmental results, and not just more paperwork and complex regulations. The budget contains some new competitive grant programs for State projects that develop performance measures for environment and health effects.

Governor Leavitt and members of your staff were in Oklahoma just last week looking at our clean water revolving loan program, which is far ahead of most States in establishing performance measurements. I am pleased to see the EPA encouraging better accountability in environmental programs at every level of government.

Speaking of accountability, this committee had a grant hearing just last week. We were just shocked to find out a lot of things, a lack of oversight, a lack of follow-through. Each year, the EPA awards half of its budget to grants programs. Grants programs, most of that, of course, goes to cities and States and municipalities. Having been a mayor myself, and your having been a Governor, you realize how important it is. Unfunded mandates are bad. We need to get these programs working, and by and large, they work very well.

However, we found out that in the discretionary grants in the last several years, they have been doing this without competition, without oversight, without any measurable environmental outcomes. One example of the lack of oversight includes the Consumer Federation of America, a group that lobbies the EPA, a lobbying group. We are talking about a 501(c)(4). It received $5 million in grants over the last 5 years. I think this is something that we are not going to just talk about and not do anything about. We are going to correct these situations.

An additional area I find troubling is in the President's SmartWay transportation partnership program. I am supportive of voluntary programs to achieve emission reduction goals, but that raises the question of when does a voluntary program cross the line and become a coercive program. This has been of great concern to me.

Finally, I would like to say something on the MTBE liability relief in the energy bill. It is no wonder that the trial lawyers have been desperately trying to kill the bill. We are talking about now the energy bill, the House bill which has some MTBE liability relief or reforms. Just last month, Richard Blumenthal, the Attorney General of the State of Connecticut, advertised a sweetheart deal for trial lawyers. He is taking bids for law firms to sue MTBE producers on behalf of the State on a contingent fee basis. It is no wonder that the trial lawyers have been out in force trying to defeat the energy bill. So Governor Leavitt, we appreciate again your being here, and I now turn to Senator Jeffords.

OPENING STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

Senator JEFFORDS. Thank you. It is a pleasure to be with you again.

We have known each other for a long time. I have great respect for your abilities and believe that working together we can make some great strides. I know we can.

When I chaired the committee 2 years ago, the President proposed a 3 percent cut in spending at EPA. Last year, the President proposed a 6 percent cut. And this year, the President is proposing a 7.2 percent cut from enacted levels. This is a most disturbing trend and one that I am committed to working against.

This year even the chairman of the Budget Committee could not abide by the President's proposed EPA budget cuts. Today, the Senate is voting on a Republican budget that would increase, not decrease spending for EPA over last year's levels. Of course, it remains to be seen whether the appropriators will feel as generous.

This budget is essentially flat and lifeless. It fails to recognize the tremendous public health and environmental challenges that we face now and that we will leave for our children. It is true that we have made great strides in reducing emissions of harmful pollutants, but we have a long way to go to protect the public's health and to clean up the environment.

According to EPA, more than 20,000 people are dying prematurely from fine particulate matter coming out of powerplant stacks. That is happening right now, not 20 years from now; 4.5 million pounds of toxic air pollutants that cause birth defects, cancer, mutations and developmental effects are being spewed into the air every year. Acid rain continues to devastate ecosystems in the Northeast and now in the Southeast. Respected scientific bodies say that global warming is occurring, at least in part because of manmade emissions. Next year, according to the President's budget, approximately 175 million people will live in areas with unhealthy air. This is simply unacceptable in an advanced country like ours.

In the clean water area, the Administration's budget completely fails to recognize the staggering water resources needs of this Nation. A recent poll by Republican pollster Frank Luntz that I am holding in my hand, or was going to hold in my hand, shows that 91 percent of Americans are concerned that our waterways will not be clean for our children and grandchildren. Time after time, Americans express their outrage at the weakening of clean and safe water protections, and express their willingness to pay to maintain water quality standards.

In the 2005 budget, the Administration is proposing to cut nearly in half the funds available for clean water infrastructure investments, from $1.35 billion to $850 million. This is truly astonishing. In the last 5 years, an extremely broad consensus has emerged that more money is needed for water infrastructure. I will not accept promises of funding in out-years. The District of Columbia cannot get lead-free pipes today without this assumption.

Soon I hope to get you to visit Vermont and see the body of water that holds a special place in my heart, Lake Champlain. I understand that the proposed budget increases funding for the Great

Lakes, which I applaud, and was authorized by this committee. However, the same bill restoring Great Lakes that the President signed into law 2 years ago also provided an increase in funding to protect Lake Champlain. The trouble is, the EPA's budget for Lake Champlain has not changed. It is as if the Lake Champlain part of the bill is only in the twilight zone.

I am also concerned about one in four people, including 10 million children, who live within four miles of a toxic waste dump. The Federal Government's cleanup of abandoned Superfund sites has fallen over 50 percent in the last 3 years. This means that sites like Elizabeth Mine in Stratford, Vermont and the recently listed Pike Hill Copper Mine in Corinth, Vermont languish without cleanup funding this year.

While acid mine drainage continues to contaminate the Connecticut River, I am deeply disappointed that the President has again refused to seek reauthorization of the polluter pays fees to fully fund that program.

I have many other concerns with the direction of the environmental policy in this country, ranging from cuts in the funding of science research and non-point source solution cleanup, to backsliding on new source review and environmental justice. The Bush Administration has had more than 3 years to work with Congress to get multi-pollutant legislation finished.

Not once, despite my and other repeated entreaties, has the Administration tried to work on a tripartisan compromise that would pass. Not once. I am worried that time is not on our side. We owe it to our grandchildren that the air they breathe is clean, the water they drink is pure, and the food they eat is healthy.

Again, thank you for being here today, Mr. Administrator. I look forward to hearing your testimony.

[The prepared statement of Senator Jeffords follows:]

STATEMENT OF HON. JAMES J. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

Administrator Leavitt, it is a pleasure to welcome you here today. We have known each other for many years, and I have great respect for your abilities and believe that working together we can make great strides in environmental protection.

When I chaired this committee 2 years ago the President proposed a 3 percent cut in spending at the EPA. Last year, the President proposed a 6 percent cut, and this year the President is proposing a 7.2 percent cut from enacted levels. This is a most disturbing trend, and one that I am committed to working against.

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This budget is essentially flat and lifeless. It fails to recognize the tremendous public health and environmental challenges that we face now, and that we will leave for our children.

It is true that we have made great strides in reducing emissions of harmful pollutants. But, we have a long way to go to protect the public's health and cleanup the environment. According to the EPA, more than 20,000 people are dying prematurely from fine particulate matter coming out of power plant stacks. That's happening right now, not 20 years from now.

Four-and-one-half million pounds of toxic air pollutants that cause birth defects, cancer, mutation and developmental effects are being spewed into the air every year. Acid rain continues to devastate ecosystems in the Northeast and now the Southeast. Respected scientific bodies say that global warming is occurring, at least in part because of manmade emissions.

And next year, according to the President's budget, approximately 175 million people will live in areas with unhealthy air. This is simply unacceptable in an advanced country like ours.

In the clean water arena, the Administration's Budget completely fails to recognize the staggering water resource needs of this Nation. The recent poll by Republican pollster Frank Luntz that I am holding in my hand shows that 91 percent of Americans are concerned that our waterways will not be clean for our children and grandchildren. Time after time Americans express their outrage at the weakening of clean and safe water protections and express their willingness to pay to maintain water quality standards.

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Soon I hope to get you to visit Vermont and see a body of water that holds a special place in my heart—Lake Champlain. I understand that the proposed budget increases funding for the Great Lakes, which I applaud and was authorized by this committee. However, the same bill restoring the Great Lakes that the President signed into law 2 years ago also provided an increase in funding to protect Lake Champlain. The trouble is, the EPA's budget for Lake Champlain hasn't changed. It is as if the Lake Champlain part of the bill is law only in the Twilight Zone.

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I have many other concerns with the direction of environmental policy in this country ranging from cuts in the funding of science research and non-point source pollution cleanup to backsliding on New Source Review and environmental justice.

The Bush Administration has had more than 3 years to work with Congress to get multi-pollutant legislation finished.

Not once, despite my and others repeated entreaties, has the Administration tried to work out a tri-partisan compromise that could pass. Not once.

I am worried that time is not on our side. We owe it to our grandchildren that the air they breathe is clean, the water they drink is pure, and the food they eat is healthy. Again thank you for being here today Administrator Leavitt. I look forward to hearing your testimony.

[The referenced document follows:]

THE
LUNTZ RESEARCH COMPANIES
Luntz Research & Strategic Services ■ The Public Opinion Company ■ Luntz Corporate ■ Luntz Worldwide

MEMORANDUM

To: Interested Parties
From: The Luntz Research Companies /Association of Metropolitan Sewerage Agencies
Re: Clean Water Trust Fund
Date: February 2004

The American people have spoken with one loud voice … ***clean water has no local boundaries.*** Despite the much publicized expanding federal deficit, an overwhelming majority of Americans (83%) would support legislation in the U.S. Congress that would create a long-term, sustainable and reliable TRUST FUND for clean water infrastructure.

We interviewed 800 registered voters (± 3.5% margin of error) from Connecticut to California. We also conducted a focus group in Baltimore, MD with roughly 15 registered voters, an Instant Response dial session in Los Angeles, CA with roughly 30 daily news consumers and a focus group in Nashville, TN with roughly 20 state and local government officials from across the country.

Young and old, Democrat AND Republican, the demand for clean water is universal. More importantly, ***the public is willing to pay for it.*** An overwhelming majority of Americans – 91% – agree that ***'if, as a country, we are willing to invest BILLIONS of dollars annually in highways and airways, we certainly should be willing to make the necessary investments in our nation's waterways.'***

KEY STATISTIC

Generally speaking, which of the following programs do you think is in the greatest need of a dedicated TRUST FUND that would guarantee federal money to help state and local governments pay for maintenance and improvements…?

CLEAN WATER	**62%**
ROADS AND HIGHWAYS	**25%**
AIRPORTS AND AVIATION	**5%**

Having said that, this money – this dedicated national funding – cannot simply get lost in the bureaucratic pipeline that connects Main Street to Washington, D.C. ***A tax for water must be spent on water.*** No bureaucrats. No blank checks. It starts and ends with *accountability.* If a trust fund is perceived as just another bureaucratic boondoggle – support *vanishes*.

Simply put, clean water is an issue for ALL Americans. What happens in one state happens in all states. And at the end of the day, there is only *one* national body that can ensure that all states enjoy the clean water they deserve.

In short, Americans believe this is a *national* problem that requires a *national* solution.

1000 Wilson Boulevard ■ Suite 950 ■ Arlington, Virginia 22209 ■ Phone (703) 358-0080 ■ Fax (703) 358-0089

KEY FINDINGS

*In addition to the survey results, you will find boxes entitled 'WORDS THAT WORK.' These are the statements that scored particularly well in the Los Angeles dial session.

1) ***Americans believe they have a right to clean water.*** A majority of Americans – 54% – believe that clean water is a **RIGHT**, not a privilege. Combine this with the fact that 91% of Americans say they are 'concerned' that America's waterways will NOT be clean for their children and for their grandchildren and you will understand both the intensity of feeling and the desire for action.

WORDS THAT WORK

Of all the responsibilities of the federal government, a clean environment nationwide should certainly be among the most important. Thirty years ago the federal government funded 75% of the costs of maintaining a clean water infrastructure in America. Today they fund a mere 5%. A clean environment isn't a privilege. It is a right. And when it comes to clean water, the federal government has an obligation to do more.

KEY FINDING

'It is unfair and unjust for the federal government to pay just 5% of the costs to maintain a clean water infrastructure in America.'

AGREE 66%

DISAGREE 30%

2) ***Americans believe clean water has no local boundaries.*** Of all the arguments we tested in Baltimore, Los Angeles and Nashville, this emerged as the strongest. Simply put, fifty individual states will not get it right. *They just don't have the finances or organization necessary to get it right.* This is a national issue that requires dedicated national funding.

WORDS THAT WORK

Clean water has no local boundaries. America's rivers, lakes, streams, beaches and bays are all interconnected and, therefore, extend beyond municipal and state boundaries. Given the interstate nature of clean water issues, it is critical to have the federal government involved to ensure consistent funding … just as it does with highways and airports.

KEY FINDING

'Clean water has no local boundaries. Given the interstate nature of clean water issues, it is important to have the federal government involved to ensure consistent funding ... just as it does with highways and airports. The standards and funding should be national, but ultimate control MUST be local.'

AGREE 86%

'Local problems require local solutions. Yes, clean water is important, but enough is being done right now. There is no need to spend more money on this issue.'

AGREE 21%

3) ***Americans believe that the economy is inextricably linked to the nation's waterways.*** As one voter questioned ... where would the national economy be today without the Highway Trust Fund? Too many sectors of the American economy rely on clean waterways. As such, the problem must be addressed by *America*. They view this as an ***investment in American vitality***, not a simple spending program.

WORDS THAT WORK

Critical sectors of our economy rely on clean water. They need it to survive. Just consider some of the nationwide business sectors that rely on clean water — the $45 billion commercial fishing industry relies on clean water; soft drink manufacturers rely on clean water, using 12 billion gallons of it each year to generate $54 billion in sales; the multi-billion dollar farming economy is directly linked to available clean water, general manufacturing uses 13 trillion gallons of clean water a year; clean water increases the value of shorefront properties; a multi-billion dollar water-sport industry relies on clean water. The list goes on. And all of these industries employ millions of Americans. With our nation's economic vitality at stake, dedicated funding must be a national priority.

4) ***Americans will NOT tolerate waste, fraud or abuse.*** There MUST be an effective firewall for this trust fund. They will support it only if it is committed to being distributed, NOT robbed.

WORDS THAT WORK

Trust funds are often raided and spent on other programs. Maybe you have heard with great trepidation, as I have, that the Social Security Trust Fund has been raided to pay for other pet projects in Washington. If a program as vital as social security can be cannibalized, couldn't this water trust fund be even more vulnerable?

A clean water trust fund must adhere to two fundamental principles … ***accountability*** and ***efficiency.*** This cannot be *just another* trust fund. It cannot be used to fund unrelated congressional pet projects. Americans will demand a proven return on their investment.

Again, Americans recognize the problem. They support a national solution. But they are *skeptical* about a national solution. There must be a *firewall* and and an *equitable distribution* of funds.

5) ***Americans believe clean water is a national priority and NOT just a local responsibility.*** For the most part, environmental issues are seen as local or state challenges. Not here. Americans believe the standards and funding should be national, but ultimate control MUST be local. On rare occasions, the public turns to Washington for help and solutions. This is one of them.

We asked Americans who they believe should be responsible for funding the necessary improvements to the nation's water and wastewater infrastructure. A majority – 54% – believe the *federal government* should be responsible verses *local ratepayers* (21%) or *both* (20%).

An overwhelming majority of Americans – 90% – believe that *'a federal investment to guarantee clean water is a critical component of our nation's environmental well-being.'*

We asked Americans which statement they agreed with more …

KEY FINDING

69% **'Clean water is a national issue that requires dedicated national funding. As a matter of principle, the government should help states and localities pay for the necessary sewerage and wastewater treatment systems that will guarantee clean water for future generations of Americans.'**

25% **'Clean water is a local problem that requires a local solution. The federal government is already running a $500 billion deficit. Clean water is important, but the federal government just can't afford to s pend any more money. Local communities need to step up and pay.'**

POST-BALLOT

And given all that you have now heard about this issue, if there was a bill introduced in the U.S. Congress that would create a long-term, sustainable and reliable TRUST FUND for clean water infrastructure – would you … the legislation?

SUPPORT 83%

OPPOSE 12%

KEY STATISTIC

If you learned that your Congressman voted FOR the creation of a federal trust fund that would guarantee annual funding for clean water, would this make you ... to vote for your Congressman in the next election?

MORE LIKELY 75%

LESS LIKELY 12%

If you learned that your Congressman voted AGAINST the creation of a federal trust fund that would guarantee annual funding for clean water, would this make you ... to vote for your Congressman in the next election?

MORE LIKELY 20%

LESS LIKELY 63%

I'll be blunt ... this issue is NOT going to go away. The environment is an area in which Americans *expect* progress to be made, and when they do not see progress being made, they get frustrated. As they see it, a 21st Century nation should NOT have a 19th Century system to keep their water clean.

Taxes – of any kind – are never an easy sell. This, however, is one government program that has real support.

THE DETAILS

FUNDING SOURCES

Knowing that funding a clean water trust fund may result in increased taxes and costs to you, which of the following sources would you most strongly support...?

65%	**A TAX ON CORPORATIONS THAT POLLUTE THE NATION'S WATERS (CHEMICAL MANUFACTURERS, HYGIENE PRODUCT MANUFACTURERS, AGRICULTURE, ETC.)**
14%	**A TAX ON COMPANIES THAT PROVIDE WATER RECREATION ACTIVITIES (RIVERBOAT GAMBLING, CHARTERED BOATS, CRUISELINES, ETC.)**
13%	**A NICKEL TAX ON EVERY BOTTLED OR CANNED BEVERAGE (SODA, WATER, BEER).**

TRUST FUND NAMES

29%	**THE NATIONAL WATER QUALITY INITIATIVE**
19%	**THE NATIONAL CLEAN WATER TRUST**
19%	**THE CLEAN WATER PRESERVATION TRUST**

Senator INHOFE. Thank you, Senator Jeffords.

I would comment that every year since the passage of the Clean Air Act in 1977, we have fewer pollutants than the year before.

We now have ten Senators here, so I am going to interrupt this hearing.

[Recess to consider committee business.]

Senator INHOFE. [resuming the hearing] Now, we are going to follow the early bird rule and recognize, and for other members we are going to try to confine our remarks to 5 minutes, if at all possible, and we also are going to be out of this meeting at the very latest at 11:25, I think it will probably earlier than that.

Senator Thomas?

Senator THOMAS. Thank you, Mr. Chairman.

Senator BAUCUS. Mr. Chairman, could you read the early bird list please?

Senator INHOFE. I would be glad to. It will be Thomas, Wyden, Voinovich, Baucus, Bond and Chafee.

Senator BAUCUS. Thank you.

Senator INHOFE. Do you want to be moved up?

Senator BAUCUS. No.

Senator INHOFE. OK.

Senator Thomas?

OPENING STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM THE STATE OF WYOMING

Senator THOMAS. Thank you. I am pleased to be the early bird here today. That is good.

Welcome, Governor Leavitt. Just very briefly, but some of my concerns are more broad than they are specific and on the budget, but we are concerned about the process for permitting in energy, for example; having one agency finish something and then have EPA come in later and have to start all over again. I think that can be changed.

The clean air activity certainly has a lot to do with energy and the use of coal and these kinds of things, which are very important to us. Specifically, I am interested in the 319 program in the difference in States. For instance, in Wyoming the monitoring we are doing, but we need the flexibility in 319, and there is some reduction in there. So I hope we can talk about some of those things.

I also, just in closing, want to say that I do not agree with all of my friends here. Some of this is efficiency, not necessarily because we reduce the budget a little are we going to get less done. There are better ways to do things, and I respect the idea that we can hold down budgets and continue to do something by being able to operate more efficiently. I hope that that is partly what you intend to do.

So, thank you.

[The prepared statement of Senator Thomas follows:]

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM THE STATE OF WYOMING

I am concerned about the decrease in 319 program funding. I see that there is an increase to States for monitoring programs of $20 million yet a decrease in 319 funding by $29 million. This is a concern. The primary source of funding for addressing impaired/threatened (section 303(d) listed waters) is the 319 program.

A percentage of 319 funds can be used for monitoring—the remainder for planning and implementation. Given that in Wyoming, not only does the State have a monitoring network, the local Districts are the primary entities addressing impaired/threatened waters. These funds are integral to these efforts.

To decrease the funding for implementation to address the impaired waters and for which a portion can be used for monitoring activities and target an additional $20 million to State monitoring—does not make sense.

Different States, as is the case with different local Districts, are in different phases. I agree that increased and better scientific data is an issue, certainly it was in Wyoming. However, there is more flexibility in the 319 program to allow States/local governments to focus on their priorities. Once the data is collected and a waterbody has been determined to be "impaired" then the focus should be on addressing the impairment and conducting followup monitoring to determine if improvements are being made. Decreasing the 319 funds will stifle this approach.

Could you comment on this?

Senator INHOFE. Thank you, Senator Thomas.

Senator Wyden?

OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM THE STATE OF OREGON

Senator WYDEN. Thank you, Mr. Chairman.

I voted for Mr. Leavitt's appointment. I want to say that I am really disappointed up to this point. It seems to me that the Administration is writing a new text book on how to promote footdragging on the most important environmental issues. Let me outline my biggest concerns.

I am very troubled by the fact that the Freedom of Information Act is now being used to deny Congress and the country access to information about these critical environmental questions. I am very concerned about how science is being politicized. Certainly, you see that in the OMB proposals to change how science is being reviewed.

Finally, it seems to me what is going on with the budget is that essentially it is being used to hide the extent of the problems to such a degree that even State environmental officials from some of the most conservative parts of the country are saying in the area, for example, of the Superfund program, that Congress will not fund these critical kinds of programs because we do not even know the extent of the problem. That is what the Colorado assistant attorney general told the New York Times just a few days ago.

So I hope we can get some answers to it. The foot-dragging with respect to access to information, Mr. Leavitt, I told you months and months ago about the concern my constituents have at home in Portland. Absolutely nothing has been done. So I want to say today, I am going to put a hold on your upcoming appointees until the agency is responsive on that question.

I have bent over backwards to try to be helpful. I supported your appointment because I was excited about the kind of work that you did with our former Governor. It was bipartisan and innovative. I have seen none of that during your early service at EPA. Sometimes, you wonder around here whether you ought to be able to take a vote back, because I am very disappointed in what we have seen to date.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Wyden.

After Senator Voinovich, we will have Baucus, Bond, Boxer, Chafee, Carper and Graham.

Senator Voinovich?

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

Senator VOINOVICH. Thank you, Mr. Chairman. Thank you for calling this hearing on the budget of the Environmental Protection Agency. I am pleased that you are holding this hearing, and I take our oversight responsibilities very seriously.

I want to thank Administrator Leavitt for being here today to discuss the President's proposed budget. As a former Governor and mayor, I respect and know first-hand the enormous challenges that you have to address when working out a budget proposal. Putting together a budget is a process that requires responsible prioritizing and fiscal discipline in order to avoid breaking the bank, and to respond to the orders that you get from OMB.

Unfortunately, as is often the case around here, responsibility often gives way to rhetoric, and the knee-jerk response to offer pie-in-the-sky budget numbers that are not feasible in light of the war, the need for continuing stimulation of the economy, the growing deficit and other priorities.

Administrator Leavitt, in the face of all these budget difficulties, there is some good news in your budget. Revitalizing our urban areas has been an issue that I have been passionate about for

many years. As a former mayor, I have experienced first-hand the difficulties that cities face in redeveloping sites for re-use. I have worked hard with my colleagues on this committee to pass brownfields legislation on a bipartisan basis, and I am pleased that the EPA is committing more funding in their budget to address the cleanup of brownfields.

I am also pleased that the agency budget builds on the Cleveland air toxics pilot project and proposed to expand the program. As a former mayor, I strongly believe that we need to work more closely with our communities and approach the environment more holistically. In that regard, I support the agency's proposal to provide another $65 million to retrofit and replace school buses across this nation to reduce particulate matter emissions and help communities achieve new ambient air quality standards.

In the last Congress, I worked with my colleagues to pass the Great Lakes Legacy Act to clean up contaminated sediments. I am pleased the President has provided nearly five times more money in this budget for this program. I plan to work very hard to keep that money in the budget.

However, there are a few issues in the budget that I would like to address. The lack of funding for water and wastewater infrastructure is one of these issues. I know we have talked about this informally, but the fact of the matter is that that budget has been inadequate since I have come to the U.S. Senate. Every year, there is never enough money in their. We need more money in the clean water State revolving loan fund. I have introduced legislation every year to increase that to $15 billion over 5 years, and to give the States more flexibility. It just seems like it just goes over everyone's head over there.

As this committee knows, billions of dollars have already been spent and billions more are needed to upgrade the Nation's aging wastewater infrastructure. Again, the city of Akron, Ohio is going to have to spend $377 million in order to take care of the mandates that are coming out of the Environmental Protection Agency. The State of Ohio has agreed to give them 30 years, and your agency says you only can have 15 years.

Now, if you are not going to be able to provide the money to the communities that are a result of mandates coming out of the Environmental Protection Agency, it seems to me that some consideration ought to be made to cities like Akron and others throughout this country that just do not have the capacity right now to get the job done. When you cannot offer them the money that you should be providing to them, something has to give here. Some kind of consideration should be given to these communities.

In addition, the whole issue of science, I agree with the chairman of the committee. It was $100 million less for science in the budget. The GAO said that the agency needs better science. It seems to me the least that can be done is to maintain that $100 million for that. As you know, Senator Carper and I have talked about getting legislation in that will require the agency to have a person that is going to deal with science as recommended by that report.

Last but not least, Senator Inhofe and I sent you a letter yesterday on the agency supplemental to the proposed utility mercury reductions rule. I ask that that letter be inserted in the record.

Senator INHOFE. Without objection.

[The prepared statement of Senator Voinovich and the referenced document follows:]

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

Mr. Chairman, thank you for calling this hearing on the budget of the Environmental Protection Agency. I am pleased that you are holding this hearing, as I take our oversight responsibilities very seriously.

In addition, I would like to thank Administrator Leavitt for being here today to discuss the President's proposed budget for the EPA. It was not too long ago that we were here at your confirmation hearing and you were sitting in that very seat. I am glad that you are back today, and I look forward to spending some time with you to discuss your presentation, understanding that you have not been in the saddle a long time.

As a former Governor and Mayor, I respect and know firsthand the enormous challenges that you have to address when working out a budget proposal. Putting together a budget is a process that requires responsible prioritizing and fiscal discipline in order to avoid breaking the bank and to respond to the orders you get from OMB. Unfortunately, as is often the case around here, responsibility often gives way to rhetoric and the knee-jerk response to offer pie-in-the-sky budget numbers that are not feasible in light of the war, the need for continuing stimulation of the economy, and other priorities.

In 2003, this past fiscal year, we suffered a budget deficit of $375 billion. In other words, we spent the entire $161 billion Social Security surplus and then had to go out into the private markets and borrow an additional $375 billion.

And according to CBO's numbers, even though we kept discretionary spending down in FY2004 and the President's FY2005 budget keeps discretionary spending to an increase of 4 percent, we will still suffer budget deficits of $477 billion in FY2004 and $363 billion in FY2005.

The 4 percent increase in spending is a good start down a fiscally responsible path. I am pleased that President Bush forced some hard decisions to be made but still developed a budget for EPA that will allow the Agency to continue to focus on cleaning up and protecting our environment.

Administrator Leavitt, in the face of all of these budget difficulties, there is some good news in your budget.

Revitalizing our urban areas has been an issue that I have been passionate about for many years. As a former Mayor, I have experienced firsthand the difficulties that cities face in redeveloping these sites for reuse. I worked hard with my colleagues on this committee to pass brownfields legislation on a bipartisan basis, and I am pleased that EPA is committing more funding in their budget to address the cleanup of brownfields. These actions put abandoned sites back into productive use, creating jobs and healthier downtowns while addressing urban sprawl and preserving farmland and green spaces.

I am also pleased that the Agency's budget builds on the Cleveland Air Toxics Pilot Project and proposes to expand the program. As a former Mayor, I strongly believe that we need to work more closely with our communities and approach the environment more holistically. In that regard, I also support the Agency's proposal to provide $65 million to retrofit and replace school buses across the Nation to reduce particulate matter emissions and help communities achieve new ambient air quality standards.

Last Congress, I worked with my colleagues in this committee to pass the Great Lakes Legacy Act to clean up contaminated sediments. I am pleased that the President has provided nearly five times more than previous levels ($45 million) for this Program. I plan to work hard to keep this funding through the appropriations process, especially since it was decreased from the $15 million in the 2004 budget request to $10 million.

However, there are a few issues in this budget proposal that I would like to address today.

The lack of funding for water and wastewater infrastructure is one of those issues. I have participated in several of these hearings on the EPA's budget since 1999, and I feel like a broken record. This year is no exception—the EPA's budget is woefully inadequate to take care of the nation's pressing water and wastewater infrastructure needs. What we have is a ticking time bomb, ready to blow up if we continue to ignore these nationwide needs.

As a member of this committee, I have worked hard to bring attention to the nation's wastewater infrastructure needs. That is why I have introduced legislation (S. 170) that would reauthorize Clean Water State Revolving Loan Fund (SRF) program, providing a total of $15 billion over 5 years and improving State flexibility. Investment in water and wastewater infrastructure is one way to show we care about the people who are not working and respond to the challenges of our nation's infrastructure issues. The Water Infrastructure Network estimates that $1 billion in water and sewer infrastructure creates over 40,000 jobs.

As we on this committee know, billions of dollars have already been spent and billions more are needed to upgrade the nation's aging wastewater infrastructure. I firmly believe the Federal Government is responsible for paying its fair share. The city of Akron, for example, has proposed to spend $377 million over 30 years to fix the City's combined sewer overflow problems. Yet, City and State officials are concerned that the Federal Government is pressuring them to do the work in half the time and suggesting enforcement action.

In addition, EPA's 2005 budget proposes spending cuts for this important program. What I would like to know from you, Administrator Leavitt, is how you expect cities like Akron to spend millions of dollars for water infrastructure upgrades when the Administration plans to cut funding for the Clean Water SRF program. I would like to know what kind of assistance EPA can give local communities—in the absence of sufficient Federal funding—who are trying to improve water quality by investing in infrastructure upgrades.

Clean water has been a priority of mine ever since I was elected to the Ohio General Assembly in 1967 and made a commitment to stop the deterioration of Lake Erie and to wage what I call the "Second Battle of Lake Erie." I have continued that fight throughout my career. Last year, I held 2 hearings on a GAO report, which stated that restoration of the Great Lakes is being hindered because there is little coordination and no unified strategy for the region's environmental activities. I hope to hear from you today on what the Agency is doing to help restore the Great Lakes.

To strengthen science at the EPA, Senator Carper and I introduced legislation in the last Congress to create a Deputy Science Administrator at the Agency and we will be reintroducing this bill in the coming weeks. This legislation was based on a 2000 National Research Council study (entitled Strengthening Science and the U.S. EPA). That report included several recommendations on how to improve the research, management, and peer review practices at the Agency. While I commend the Administration for the great strides they have made to improve the science that EPA relies on to make decisions, I believe our legislation will build on these improvements.

Lastly, Chairman Inhofe and I sent a letter to you yesterday on the Agency's supplemental to the proposed Utility Mercury Reductions Rule. I ask that it be inserted into the record. I am greatly concerned about this proposal as it will disproportionately impact bituminous coal, the Midwest, and my State of Ohio. I hope to work with you in the upcoming weeks to make sure that the mercury rule does not disproportionately affect one region of the country over another and further exacerbate the natural gas crisis our nation is facing. This crisis would not be occurring if this country's environmental policies had been harmonized with our energy needs and paid more attention to the impact on the U.S. economy and the needs of millions of Americans to have affordable heating in their homes.

Again, I would like to thank you for your attendance today, and I look forward to hearing your thoughts on these issues. Thank you, Mr. Chairman.

UNITED STATES SENATE,
March 9, 2004.

The Honorable MICHAEL O. LEAVITT, *Administrator,*
Environmental Protection Agency,
Ariel Rios Building,
1200 Pennsylvania Avenue, NW,
Washington, DC 20460.

DEAR ADMINISTRATOR LEAVITT: We are writing to express our concern with the Environmental Protection Agency's February 24, 2004 supplemental to the proposed Utility Mercury Reductions rule.

As you know, the Agency proposed on December 15, 2003 to allocate mercury allowances based on a unit's baseline heat input and the adjustment factors in the President's Clear Skies Act (1 for bituminous, 1.25 for subbituminous, and 3 for lignite coals). As the sponsors of this legislation in the Senate, we know that these

factors represent a carefully crafted compromise designed to distribute mercury allowances equitably throughout the Nation. Although this is a contentious regional issue, Members of Congress and the industry have generally accepted the factors in the proposed legislation.

Unfortunately, the supplemental to this proposed rule offers another option that undermines the consensus that has been so painstakingly built. The supplemental seeks comment on using the maximum achievable control technology (MACT) emission rate (2 pounds of mercury per trillion British thermal unit for bituminous, 5.8 for subbituminous, and 9.2 for lignite coals) in the proposed rule to allocate allowances. While the coal and utility industries have united around the President's Clear Skies initiative, EPA's alternative mercury proposal has begun to disrupt that unity. Moreover, there appears to be little rationale for the new option because these alternative allocation rates were designed specifically to statistically account for MACT's source-by-source requirement, which is inapplicable to a cap and trade approach.

While its impact on passing multi-emissions legislation is important, the most troubling aspect of the proposed supplemental is its projected effect on the Midwest. The alternative mercury allowance allocation could significantly and disproportionately increase the cost of compliance for bituminous coal users, and we are concerned that this may ultimately lead to an increased reliance on natural gas, both eliminating coal-related jobs and further stressing the supply demand ratio of natural gas.

Our country is in the midst of a natural gas crisis that is destroying the backbone of our economy—manufacturing. We simply cannot afford to encourage increased reliance on natural gas for electricity generation. The proposed rule must be crafted in a way that does not exacerbate the natural gas problem.

We applaud the President's efforts in bolstering coal as a low cost source of energy for the Nation. His commitment to clean coal technologies and rejection of command and control mandates has kept coal as an important fuel source. We urge you to carefully consider the Agency's proposals to reduce mercury emissions from power plants and ask that you seek an equitable allocation system that does not disproportionately affect one region of the country over another. We look forward to working with you as this proposed rule moves forward to ensure the President's and our own goal of a continued robust coal industry.

If you or your staff have any questions, please contact John Shanahan at (202) 224–8072 and Brian Mormino at (202) 224–8098.

Sincerely,

GEORGE V. VOINOVICH, *Chairman,*
Subcommittee on Clean Air, Climate Change, and Nuclear Safety.

JAMES M. INHOFE, *Chairman,*
Committee on Environment and Public Works.

Senator VOINOVICH. I am greatly concerned about this proposal, as it will disproportionately impact bituminous coal, the Midwest and my State. I hope to work with you in the upcoming weeks to make sure that the mercury rule does not disproportionately affect one region of the country over another, and further exacerbate the natural gas crisis our Nation is facing. It is horrible right now. This crisis, and I am sharing this with the members of this committee, would not have occurred in this country if the environmental policies of this Nation had been harmonized with the economic needs that we have.

It is having a terrible effect on the U.S. economy and the needs of millions of Americans to have affordable heating in their homes. We do not want just another thing happening that is just going to make the situation worse than it is today.

So I look forward to your testimony.

Senator INHOFE. Thank you, Senator Voinovich.

Senator Baucus?

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

Senator BAUCUS. I thank the chairman.

First, Mr. Chairman, I want to congratulate you for giving us these very explicit seating charts, giving not only those in the front row, but those in the second row and the names of those in the third row. I now better understand the power that one of my law professors had when he was calling on people out in the audience, a practice I will refrain from, although I am sorely tempted to do so, because there is one person out in the audience who testified as to a subject I am going to talk about. I think that testimony would be very interesting.

Senator INHOFE. If you are giving credit, give it to Duane.

Senator BAUCUS. Duane, good job.

Mr. Chairman, I have a few points. First, Mr. Administrator, I want to thank you very much for coming to Montana. You have not come yet, but you have agreed to come to Montana and I think we are working out the date this spring. It is extremely important that you do so for a lot of reasons, but one, so that you visit Libby, Montana.

I have talked to you about Libby many times. This committee has heard me talk about Libby many times. I know that you will visit Libby and when you do, you are going to come away with the same impression that something has to be done, as your predecessor Christie Todd Whitman came away with when she left Libby.

Why is that impression so strong? Very clearly because there are dead people on account of asbestos at Libby. There are dying people. There are people who have mesothelioma; people who have all kinds of asbestos-related diseases caused by W.R. Grace, and W.R. Grace's predecessor. They knew that they were poisoning the people. They did nothing about it. As a consequence, people are not only dying, but to add insult to injury, the company transferred about 80 percent to 90 percent of its assets so they cannot be reached by those who are ill. The company is in bankruptcy. It is an outrage. It is an absolute outrage.

In the meantime, there is something EPA can do, and that is cleanup the mess. Marianne Horinko, who was here 2 years ago, when I asked her when Libby could be cleaned up, she said it would be cleaned up in 2 years. That is this year, 2004. Only 10 percent has been cleaned up; only 10 percent. Many sites there have not even been touched for all intents and purposes. The W.R. Grace site, for one; the town of Troy for another.

I am telling you, Mr. Administrator, that I personally, and for the sake of the people in Libby, Montana, ask you to make this your priority, certainly in region eight, and provide the resources. The resources are slipping. They are not what they were promised to be. You have to remedy this. If you do anything, it will make you feel good when you finally leave as Administrator to know that you have done something, at least for the people of Libby, Montana.

The second point is Superfund itself. I for the life of me cannot understand why this Administration does not want to extend Superfund, that is, the fees for Superfund. Companies are going bankrupt. Where there is no principal party found, sites are being left not cleaned up. I would think that this Administration's legacy would be more cleanups, not fewer, and have a strong environ-

mental record, not a bad one. I ask you to, within the confines of the Administration, to advocate for much stronger environmental protection, a stronger Superfund program than I think you have. I do not know whether you have or have not because, of course, I am not privy to those conversations.

When you appeared before this committee, I asked you why you wanted the job. I asked you why you wanted the job very simply because I feel that you are not going to be calling the shots. They are not going to be your decisions. They are going to be decisions made by OMB; decisions made at the political level in the White House; decisions made by other people. And you just have to do what they tell you what to do.

I think that is probably still the case. I think that is the case. OMB is not here. The White House is not here. You are. So I am asking you to go back and to argue more strenuously, more persuasively, more strongly why this country should not neglect the environment, as this Administration is, and why it should go back and do something about Libby, Montana, devote more resources to Libby, clean it up, turn around that record of only 10 percent clean-up, and you will have done a great service if you can persuade those above you to do the things that need to be done.

It is your responsibility. You hired out for this job. You are just going to have to do that.

[The prepared statement of Senator Baucus follows:]

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

Thank you Mr. Chairman and Senator Jeffords for calling this hearing today to discuss the Environmental Protection Agency's Budget for Fiscal Year 2005.

First, I'd like to thank Administrator Leavitt for appearing here today to answer our questions about his agency's priorities for the next fiscal year. I would also like to thank Administrator Leavitt personally for the good faith of his staff who worked closely with my office to schedule his visit to Montana. I believe we're looking at setting a date in late spring, and I'm very pleased we're close to finalizing his important visit.

Sometimes I think people get tired of hearing me talk about Libby, Montana. But you just can't appreciate the size and scope of that tragedy unless you see it for yourself, and talk to the local people who are directly affected. I believe that after your visit, you will leave with the same personal commitment to the town of Libby that your predecessor, Christie Todd Whitman, did.

A visit to Libby will also help you put in context my continuing concern about making sure EPA has enough resources to finish the job in Libby. I understand that allocating resources among all of the competing demands at EPA is an enormous challenge. But, Libby, Montana should remain one of EPA's top priorities.

Why? Because people are dead and dying in Libby, Montana from decades of exposure to asbestos. I know that I've said it over and over and over again. But it always bears repeating. We cannot forget the human scale of the Libby tragedy, and that's what must drive the EPA's commitment to finish the fine response and clean-up work that it started back in 1999. The people in Libby are working hard to revitalize their economy and their community, and are rightly proud of their resilience and their ability to land on their feet.

They deserve all the help we can give them to make their town whole again. I have fought for years to make sure Libby has the resources it needs.

But, even though we are more than 3 years into EPA's clean-up of Libby, only 10 percent of the total amount of clean-up work has been completed.

Two years ago, Marianne Horinko testified before this committee and promised me EPA would clean-up the town of Libby in 2 years, in 2004. Now, EPA tells me it will be closer to 5 years, maybe by 2008 or later.

Region VIII has requested $20 million per year to clean-up Libby, starting in Fiscal Year 2003. They received approximately $17 million of that in Fiscal Years 2003. Because they ran out of money at the end of 2003, they were forced to take a $2 million "advance" on their Fiscal Year 2004 allocation. This will leave Region VII

with only $15 million for the remainder of fiscal year 2004. While I understand that this is not technically a budget cut, the reduced allocation will clearly affect the pace of clean-up in Libby. How soon will the EPA run out of money in 2004? Will they get another advance, and how will that impact clean-up in 2005? 2006? I understand that no money has been allocated to clean-up the W.R. Grace mine site, or the near-by town of Troy, which also has asbestos contamination.

A clean-up as important as Libby, that is as well-managed as I'm told it is, deserves the full support of EPA headquarters, in order to keep the clean-up on track and to protect the lives and health of the citizens of Libby. This clean-up does not deserve to be nickel and dimed to death. If you fund the clean-up at the level it requires, the sooner it will be done, the sooner the people of Libby can return to normal lives, and the sooner the EPA will be able to hold Libby up as a Superfund success story and move on to clean-up other sites around the country.

Superfund is a powerful force for environmental and public health protection. It provides the enormous leverage and financial resources of the Federal Government to help clean-up sites that States and localities could never handle on their own. It also provides a strong deterrent against the creation of future messes. But, starving the program of resources only hurts its effectiveness. And, it certainly doesn't alter risks to public health and the environment from sites that have not been identified or cleaned-up.

I wholeheartedly agree that the first resort under a program like Superfund is to ensure that those responsible for contamination at a particular site pay to clean it up. This is the basis of the polluter-pays philosophy that underpins the entire Superfund program. However, we're seeing more and more bankruptcies, and more and more large and complex sites where no responsible party can be found.

Without a dedicated trust fund for the Superfund program, clean-up of toxic sites around the country where there is no "polluter" to pay has to depend in large part on the good-will of Congress and the generosity of the American taxpayer. In these tight budget years, that means funding has fallen or remained flat.

This stretches dollars more thinly over a growing backlog of work. We're not making this up—both the General Accounting Office and the EPA's own Inspector General have recently documented the budgetary problems within the EPA's Superfund program and the impact this has on both the pace and scope of clean-up work.

Superfund is just too important to let this happen. It's not glamorous, it's not exciting, it moves slowly and methodically, but that doesn't mean the work performed under the Superfund program is not incredibly important to impacted communities and to the health of the Nation as a whole. You can't snap your fingers and hope that the legacy of sometimes more than a century of pollution will suddenly disappear. It takes time, focus, dedication and an enormous amount of resources.

We owe it to our children and grandchildren to maintain the integrity of the Superfund program. I would like to see the Administration and the EPA share that point of view. It's time to reinstate the Superfund fees in order to replenish the Superfund Trust Fund. The resources and leverage provided by this fund are crucial to the long-term health and effectiveness of this program. It's crucial to the citizens of my State, in Libby, and at other important sites around Montana, including Ten Mile, Basin Creek and the Milltown Dam site.

Superfund can showcase the Federal Government at its best—protecting the lives, health and welfare of its citizens. I will ask that Administrator Leavitt take the lead in this Administration in advocating for the renewal of the Superfund fees and the revival of the Superfund trust fund. Although the EPA has proposed increasing the budget for Superfund slightly in 2005 from what the President requested in 2004, it has done so at the expense of other important programs, like clean water. I don't think that these unacceptable tradeoff's are necessary, if we do the right thing and revive the Superfund trust fund.

Thank you, Mr. Chairman.

Senator INHOFE. Senator Bond?

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

Senator BOND. Thank you very much, Mr. Chairman.

I am delighted to hear that you have Tar Creek taken care of, and get you off my back for funding it. That will be a pleasant switch. And Mr. Administrator, this will be a practice session before you come before our VA-HUD Appropriations Subcommittee. I

will give you the really bad news then and ask you the tough questions.

I want to begin by congratulating you on some of the good things that EPA is doing. We have not heard a lot of it, but last week we got news that the engine manufacturers are on target to meet more stringent 2007 clean diesel regulations. Once the program is fully implemented, families will be breathing 2.6 million fewer tons of smog-causing nitrogen oxide. Communities will have 110,000 tons less soot and particulate matter. If we can ever get an energy bill passed and start using bio-diesel, we will do an even better job.

The Bush Administration has also moved on mercury emissions, and I congratulate you on doing that. The plan is to cut 70 percent of the mercury emissions. Some say that is not enough. Well, the law says the maximum achievable control technology. It says "achievable," not "maximum"; never been commercially proven; do not know if it will work full-scale over time on all types of fuels rule. It has to be reasonable.

I am glad the Administration is pursuing a cap-and-trade strategy. Cap-and-trade was a success in the Bond-Byrd amendment on acid rain. I applaud the application of that to mercury pollution as well.

But recent four-pollutant and climate change proposals would have some very serious affects on our economy. It will continue to raise electricity bills, perhaps by another 50 percent. Right now, we are seeing, as my colleague from Ohio pointed out, the disastrous impact the forced switching from coal to natural gas has had on our communities, on our economy. People on low and modest incomes are finding their natural gas heating bills going out the roof. Family budgets are being destroyed.

More importantly, when we are talking about outsourcing, this natural gas, the mandated use of natural gas in electric generation and the limitation on the exploration and production of natural gas has shortened supply, driven the price up, so those mandates are driving jobs offshore. Companies employing good workers in the United States, natural gas is a basic part of their operation, they are moving those jobs overseas to countries where they have not artificially increased demand for natural gas and limited its supply.

We have a real problem with outsourcing, of outsourcing jobs that depend upon natural gas. I do not want to see us continue to do so without taking into account the impact it has.

We have some problems that have already been mentioned with the budget. The Federal Government has imposed national water quality requirements and we are about $500 billion short in funding the needs. So once again, OMB and the green eyeshade guys have cut the clean water State revolving fund by $500 million. This happens every year. It happens in Democratic administrations and Republican administrations. I can assure you that my colleague, Senator Mikulski, and I are going to do everything we can to restore it.

As usual, we will look at the priorities that OMB has put in to the budget and have to use those to make up for the shortfalls in the SRFs, because if there is one thing that we ought to be doing, it is achieving the clean water and safe drinking water goals that have been outlined.

I am also disappointed with cuts in the 319 non-point source water pollution program. The USDA money, the farmers are not the only contributors to non-point source pollution, so we have to combat this through the EPA budget. I agree that more funds are needed for the Superfund program, but we need to apply that money wisely. Many sites ready for cleanup are protected and stable. They pose no health threats. We need to focus on the higher environmental problems.

National threats of terrorism include environmental threats. I would like to see EPA receive funding out of the homeland security function. That is about the only one that is going to get any increases. I think EPA should get work with FBI and counterterrorism and terrorism response activities. It should be funded out of homeland security.

I will address some parochial issues. One is a little county way south of Missouri called St. Genevieve County, being included in the St. Louis region. I do not know why anybody thinks that the air way south of St. Louis on the Mississippi River has anything to do with St. Louis.

Finally, I would only say that EPA has imposed heavy fines on farmers who have had anhydrous ammonia stolen to make methamphetamines. They find that there are reporting requirements they do not know about and they get hit with fines. The farmer gets his anhydrous ammonia stolen, and then EPA slaps him with a fine. We have to figure out a better way to handle that.

Thank you, Mr. Chairman.

[The statement of Senator Bond follows:]

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

Thank you, Mr. Chairman, for hosting this hearing to review the fiscal year 2005 President's Budget for the Environmental Protection Agency. Thank you, Governor Leavitt, for attending.

EPA is doing great things to improve the environment. Last week, we received news that engine manufacturers are on target to meet more stringent 2007 clean-diesel regulations. Our friends at the Natural Resources Defense Council called this Bush rule "the most significant public health proposal in decades."

Once the 2007 program is fully implemented, our families will breathe 2.6 million fewer tons of smog-causing nitrogen oxide (NOx) emissions each year. Our communities will receive 110,000 tons less soot or particulate matter. EPA's actions will save an estimated 8,300 premature deaths, avoid 5,500 cases of chronic bronchitis and prevent 17,600 cases of acute bronchitis in children each year.

The record of EPA improving the environment and public health under President Bush does not stop there. President Bush is mandating a cut in mercury emissions from electric utilities for the first time ever.

Not President Clinton, not President Carter, but President Bush is the first President ever to require utilities to cut their mercury emissions. In 1994, the Clinton Administration was sued for failing to control power plant emissions of mercury. The Clinton Administration took 6 years to resolve the suit.

The Bush Administration now fulfills that promise with its plan to cut mercury emissions by nearly 70 percent. Some critics argue 70 percent is not enough. They argue for a so-called Maximum Achievable Control Technology rule with deeper cuts. Well the law says maximum ACHIEVABLE—not maximum never been commercially proven, don't know it will work full scale, over time, on all types of fuels rule.

The Clean Air Act also says that utilities be regulated under the MACT section 112 only if other authorities of the Act, once implemented, do not adequately address hazardous emissions. So I am glad the administration is wisely pursuing a cap-and-trade strategy under section 111. Cap-and-trade was a phenomenal success

at cutting acid rain pollution. I applaud the President for applying it to cut mercury pollution as well.

In this time of gradual economic recovery, we must pursue strategies that both protect the environment and protect the family budget. Mercury strategies that force a switch from coal to natural gas cause exorbitant natural gas and electricity price increases.

Recent four-pollutant and climate change proposals would raise family electricity bills by nearly 50 percent. Our fixed income seniors and economically disadvantaged struggle to put food on the table and keep their kids in school clothes. They cannot afford massive heating and electric bill increases. I cannot impose such hardships on our families.

At the same time we protect the environment and the family budget, we must be mindful of the Federal budget. We on the appropriations subcommittee funding EPA will get into the specifics of EPA's budget later this month. But the outlook for VA/HUD looks particularly bleak.

We must remember that EPA competes for dollars within the same appropriations subcommittee as NASA, the VA, and HUD. Every new dollar spent on the environment is one dollar we cannot spend to provide healthcare to our veterans or shelter for our homeless. Every time one of our colleagues suggest spending more money for an EPA program, each of us should think to ourselves whether that is more important than VA medical care or homeless housing assistance grants.

Make no mistake, I believe there are vital programs at EPA we must fund to improve the environment. I have been a long-standing supporter of helping local communities provide safe drinking water and clean their wastewater. The Federal Government has imposed national water requirements with an estimated $500 billion funding shortfall. We cannot abdicate our responsibility to help close this gap.

So I am disappointed yet again to see the green eyeshades at OMB cutting the Clean Water SRF. I am also disappointed with cuts to the Section 319 nonpoint source water program. Farms helped with USDA money are not the only contributors to nonpoint source pollution, so we must also combat this environmental problem through the EPA budget.

I agree that we need more funds for the Superfund program. However, we must end this notion that we should cleanup every site immediately. Many of the sites ready for cleanup are protected and stable. They pose no health threat to their surrounding area. We have higher risk environmental problems we must solve first.

One national high risk problem is terrorism. EPA plays a role in critical infrastructure protection as lead agency for drinking water protection.

EPA also supports the FBI in counter-terrorism and terrorism response activities. It would be nice if EPA could receive funding out of the homeland security function, but I do not know if that is possible.

I am concerned that some programs, like the Criminal Enforcement program, are straining under the dual weights of enforcing environmental crimes and supporting homeland security duties. Also, local drinking water agencies have received Federal funds to assess their vulnerabilities to terrorist attack, but a great need remains to implement physical protection measures. We need to address these issues.

Finally, on some parochial issues, you and I, Governor, will be having more conversations about whether it is fair to include far-flung counties such as Ste. Genevieve with their distant urban nonattainment center, in this case St. Louis, when the county does not contribute to the region's nonattainment.

We also need to find ways to get farm coops and dealers better briefed on EPA reporting requirements for their anhydrous ammonia stocks. Methamphetamine makers are stealing anhydrous ammonia meant for fertilizer, leaving tanks open, and then EPA is slapping farm coops with enforcement orders and bullying them with maximum penalties. There must be a better way to handle this situation. I look forward to discussing these problems with you further. Thank you.

Senator INHOFE. Thank you, Senator Bond.

Senator Boxer?

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

Senator BOXER. Thank you very much, Mr. Chairman, and welcome. I know this is not going to be easy for you, but I do not think it should be when you look at the budget.

EPA's mission is to protect human health and the environment. It is critically important, but you would not know that from this budget. You really would not know that. I am going to be specific.

We are protecting the people of Iraq, Afghanistan, Haiti, and I wish every one of those people well. I want them to be safe and I want them to be protected, but I want the people of America and my families and my children, and I want the children who are growing up in Libby, Montana and everywhere to be safe. This budget is wanting.

Let me be specific. If you put this budget into context and the cuts we are facing here, it is the biggest cut across the whole of government. That is a message to our families. If you take that number and you put it together with the 300-plus environmental rollbacks that we have seen by executive action, it is a stunning defeat for the health and safety of the people of this country.

So here we see a 7.2 percent cut and the largest hit right here.

I do not see how, Mr. Leavitt, in times of rising rates of childhood cancer, asthma and neurological and developmental disorders, decreasing funding to public health and environment programs could be justified. I urge you, go to any school, as I do all the time, and ask the children, how many of you have asthma? One-third of the kids will raise their hand. How many of you know someone with asthma? Well over half the kids will raise their hand.

Now, one way to protect environmental health and safety is to fully fund Superfund. We know this has been a very successful program. But EPA proposes to keep cleanups at 40 per year, less than half the average annual cleanups that we saw at the end of the previous Administration, cutting them in half. According to a 1999 report to Congress, the needs of the Superfund program from 2002 through 2005 are $1.9 billion to $2.6 billion more than what this Administration is requesting.

A January EPA inspector general report also documented a funding shortfall for 2003, noting that according to EPA regional officials, the lack of adequate funding has increased risks to public health and the environment. I would ask unanimous consent to place into the record quotes from these regional officials, Mr. Chairman.

Senator INHOFE. Without objection.

[The prepared statement of Senator Boxer and the referenced document follow:]

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

Thank you, Mr. Chairman. EPA's mission, to protect human health and the environment, is critically important. Unfortunately, EPA's proposed fiscal year 2005 budget—along with the Bush Administration's never-ending attempts to roll back decades of environmental and public health protections—demonstrates yet again that this Administration is not committed to public health and the environment.

The President's 2005 budget request would decrease EPA's funding $606 million, 7.2 percent, from fiscal year 2004 amounts. EPA's budget takes the largest single hit of any particular agency. This would actually be less funding than when Bush came into office.

EPA's overall 2005 budget does not commit the resources necessary to assure the quality of life and clean environment that Americans expect and deserve. I do not see how, in times of rising rates of childhood cancer, asthma, and neurological and developmental disorders, decreasing funding to public health and environment programs can be justified.

One way to protect environmental health and safety is to fully fund Superfund, an extremely successful hazardous waste site cleanup program that has direct human health benefits. Nonetheless, EPA proposes to keep cleanups at 40 per year, less than half the average annual clean-ups that we saw at the end of the previous Administration.

Although the budget requests a slight increase in funding, $124 million above the fiscal year 2004 level, this amount falls far short of all estimates of what is needed to clean up the nation's Superfund sites. When adjusted for inflation, Superfund funding has decreased more that $600 million in the last 10 years. Approximately 70 percent of this decrease has occurred since 2001. According to a 1999 Report to Congress, the needs of the Superfund program from 2002 through 2005 are $1.9 billion to $2.6 billion more than what this Administration has and is requesting. A January EPA Inspector General report also documented a funding shortfall for fiscal year 2003, noting that, according to EPA Regional officials, the lack of adequate funding has increased risks to public health and the environment.

This budget also shifts the costs of cleaning up abandoned sites to the taxpayers by refusing yet again to reinstate the fees on polluters. In 1995, 18 percent of clean-up costs were borne by taxpayers, 82 percent by polluters. In EPA's 2005 budget, taxpayers bear nearly 100 percent of these costs, while polluters pay nothing.

Superfund is not the only EPA program to be cut. Overall clean water programs are slashed a drastic $827 million. For California alone, this means that $56.9 million dollars, or 48 percent of funds, to clean up our water is gone with no alternative source for funding in sight. This means no funding for critical projects, such as water, wastewater and stormwater infrastructure improvements; watershed management plans; and combined sewer systems.

Funding for Leaking Underground Storage Tanks, which can hold extremely toxic chemicals that can contaminate the ground, aquifers, streams and other water bodies, is also decreased. MTBE, which has wrecked havoc with water supplies across the country, has come from leaking underground storage tanks. There are approximately 700,000 tanks across the United States, and more than 430,000 confirmed releases from these tanks as of mid-July.

I see a pattern here—of decreasing funding to critical water quality and infrastructure programs, as well as decreasing funding to programs that can help prevent the contamination in the first place. This calls into question this Administration's commitment to clean and healthy water for all Americans.

Likewise, EPA's science budget is cut more than $90 million dollars, slashing funding to research endocrine-disrupters, ecosystem health, and pesticides and toxins. Shockingly, this Administration is slashing EPA's Homeland Security's Building Decontamination Program while acknowledging that it cannot meet its goals in this arena. For those of us who have lived through anthrax and ricin scares, this is astonishing.

A budget that decreases funding for public health and the environment, stops funding local water quality projects, drastically slows Superfund clean-ups, and transfers the burden of cleanups to taxpayers forces me to continue to question this Administration's commitment to public health and the environment.

These documents were received from the Inspector General on Jan. 7, 2004 in response to a request from Senators Boxer and Jeffords and Reps. Dingell and Sdrs.

FOLLOWING THE MONEY

The Internal Debate at EPA

Note: Memos employ the EPA budgeting term "Advice of Allowance" (AOA), the term for the separate accounts under Superfund.

ROUND 1

August 12, 2002
Memorandum on Options for Increasing FY 2003 Resources for Construction

From Michael B. Cook, Director, Office of Emergency and Remedial Response

As we are all aware, this level of resources has strained our ability to manage the Superfund program effectively in FY2002. Resources are unavailable for several projects that are ready to start construction, and we have not been able to fully fund some ongoing projects at their optimal pace. …as the Regions continue to complete preconstruction work at additional sites, under a flat budget, the backlog of projects needing construction resources will continue to grow.…
[O]ne option may be for Headquarters to direct the Regions to limit new remedial investigation work and/or remedial design…
[S]ince we currently assume that the Superfund program will have a level budget in future years, I realize that any redistribution of resources will necessarily affect other parts of the program and will potentially have long-term consequences on workflow.

ROUND 1: EPA STAFF RESPONDS

August 16, 2002
Memorandum replying to Cook, August 12 memo re: Options for Increasing FY 2003 Resources for Construction

From Rich Cavagnero, Region 1

We believe that the pipeline AOA is already severely stressed and is critical for keeping existing sites moving through the process, beginning a limited number of new ones, providing much needed technical support to the removal/response program, and supporting the sites. Further reductions to the pipeline AOA will jeopardize the stability of the program, which is already under pressure from the major decrease in the enforcement budget.

The current policy of limiting the Removal AOA to the $115 M base is already a major reduction from the historical spending norm of some $200 M, and further cuts will hamper our ability to respond to states and communities looking for our help in addressing short term threats.
We believe there is a continuing need to list some number of new sites on the NPL, and that a fair number of them will ultimately be Fund lead…
While the current Congressional focus is on remedial action funding for construction completions, the communities care only about cleanup progress and don't differentiate between remedial actions and [Removal actions]…it's all construction to them.

August 19, 2002
Memorandum replying to Cook, August 12 memo re: Options for Increasing FY 2003 Resources for Construction

From George Pavlou, Director, Emergency and Remedial Response Division, Region 2

Region 2 feels that significantly limiting resources for new remedial designs and remedial investigations would hamper our ability to achieve the state goal of "maintaining a successful long-term cleanup program."
…we do consider planned new [investigations and feasibility studies] and [remedial design] starts to be a high priority compared with other Pipeline funding areas and, in our opinion, limiting them will: not free up a significant amount of funds in FY 03; ultimately lead to higher costs to complete work in subsequent fiscal years; and, reduce our credibility and hinder our relationships with States, local governments and the public. …beginning investigations into the nature and extent of contamination are required to ensure that any unacceptable and possibly more immediate risks that may be only identified during an RI can be eliminated as soon as possible. There are a number of sites in Region 2 where removal actions have been undertaken as a direct result of information gathered during remedial investigations.

August 21, 2002
Memorandum replying to Cook, August 12 memo re: Options for Increasing FY 2003 Resources for Construction

From Dick Green, Region 10

This obvious slow-down in the program will significantly discourage [responsible polluter] participation in Superfund work as well as participation in voluntary State programs.
I am very concerned about mortgaging the program's future in favor of relatively small gains today.

August 19, 2002
Memorandum replying to Cook, August 12 memo re: Options for Increasing FY 2003 Resources for Construction

From William Muno, Region 5

If you reduce our Pipeline AOA … I believe you will generate many unintended consequences.

August 19, 2002
Memorandum replying to Cook, August 12 memo re: Options for Increasing FY 2003 Resources for Construction

From Myron Knudson, Region 6

We recommend that any shift of resources from Pipeline Operations to Remedial Action not exceed 10% of the Pipeline Operations AOA. A larger shift of resources could seriously impact our ability to address high-risk sites which are still in the remedy development stage. A large decrease in the Pipeline Operations AOA would also severely limit our ability to implement many of the Superfund Administrative Reforms which have been viewed so positively as enhancements to the program.

August 20, 200
Memorandum replying to Cook, August 12 memo re: Options for Increasing FY 2003 Resources for Construction

From Jane Diamond, Region 9

…we believe it is important to continue investing in the front end of the pipeline…If we reduce the pipeline budget too much, we will also lose our ability to take over [investigations and feasibility studies] from non-performing [responsible polluters] as was recently warranted at the San Gabriel Puente Valley site in Region 9.
…reducing the availability of pipeline funds will necessitate cutting site assessment and program development budgets for states and tribes... EPA heard a resounding cry from the states and tribes for continued funding (more, not less) at the [Association of State and Territorial Solid Waste Management Officials] meeting last week.

ROUND 2

September 11, 2002
Memorandum on Proposal to Allocate Pipeline Operations Advice of Allowance and Deobligation Resources to FY 2003 Construction

From Michael B. Cook, Director, Office of Emergency and Remedial Response

As you are aware, the level of resources currently budgeted for construction in FY 2003 is insufficient in comparison with the Region's requests for resources for construction.

ROUND 2: EPA STAFF RESPONDS

September 16, 2002
Memorandum on Proposal to Allocate Pipeline Operations Advice of Allowance and Deobligation Resources to FY 2003 Construction

From George Pavlou, Director, Emergency and Remedial Response Division, Region 2

Over the longer term, Region 2 has concerns that implementing this policy for a number of years will reduce the number of candidate sites that will be ready for construction in the future.

September 17, 2002
Memorandum on Proposed FY 2003 Pipeline AOA

From Larry Zaragoza, EPA Headquarters

While this proposal does redistribute money to get more to RA needs, we appear to be discouraging alternative sites, will reduce money to states, we appear to be penalizing those regions that have been getting the work done. These decisions will have lasting impact on the Superfund Program.

September 16, 2002
Memorandum on Proposed FY 2003 Pipeline AOA

From William Muno, Region 5

Our focus is on new sites were [sic] we have viable, liable [responsible polluters]. However, we expect a small percentage of these [responsible polluters] will be recalcitrate [sic]. In those case [sic] it will be necessary to fund a [investigations and feasibility studies] to maintain the integrity of the overall initiative.

September 20, 2002
Memorandum on Response to OSWER Proposal for Distributing FY03 AOAs

From Michael Sanderson, Director, Superfund Division, Region VII

The proposed distribution for the FY03 Pipeline Advice of Allowance (AOA) allocates insufficient funds to Region VII for us to carry out basic program needs and site work. If we do not receive at least $11M [for the Pipeline AOA] we will have to further reduce state funding and delay or forgo important site work. Our infrastructure will begin to crumble. We will not be able to adequately address risks or respond to environmental hazards. We would also like to point out that the shortfall in Remedial Action funds s not the only shortfall in the program. Over the past several years the regions have frequently expressed concern over the funding level of the Pipeline AOA which funds all of the activities in a site's life cycle leading up to remedial action. The proposed reduction in the Pipeline AOA will enable a small number of additional fund financed remedial actions and removals, but it will come at the expense of other activities at sites which are important to impacted communities, state agencies, and governors.

ROUND 3

October 30, 2002
Memorandum on FY 2003 Superfund National Resource Distribution Decisions

From Michael B. Cook, Director, Office of Emergency and Remedial Response

...the level of resources currently budgeted for construction in FY 2003 is insufficient in comparison with the regions' requests for resources for construction. The Pipeline Operations AOA will be reduced to $190 million in order to shift additional resources to remedial and removal construction. ...regions have the discretion to minimize new Fund-financed remedial investigation/feasibility study (RI/FS) and remedial design (RD) work. ...new start RAs... will be funded mostly out of the national deobligation pool.

Senator BOXER. This is stunning. Your own people in the field are telling you beware. One said, further cuts will hamper our ability to respond to States and communities looking for help. Another one said, the obvious slow-down of the program will significantly discourage responsible polluter participation in Superfund work. And it goes on. And the IG got these quotes because Senator Jeffords and Congressman Dingell and I sent a letter. Another one said, the level of resources currently budgeted for construction is insufficient in comparison with the region's request for resources for construction.

So we know that we are not meeting the needs of the people that we are supposed to represent.

Superfund is not the only EPA program to be cut. Overall clean-up programs have been slashed. Senator Bond pointed to some of these. For California, $56.9 million cut or 48 percent of funds to clean up our water is gone, is gone. And the President keeps coming out there and he says he wants to fight for our State. Good. Then he should do something here. This is very dangerous for our people. This means we are not going to have funding for critical projects such as water, wastewater and storm water infrastructure improvements. And Mr. Administrator, and I want to make you Mr. Secretary, but that is another debate, we have 35 million people and we are going to 50 million people by the year 2020. This is not the time to cut these programs.

Funding for leaking underground storage tanks, which can hold extremely toxic chemicals that can contaminate the ground, the aquifers, the streams and other water bodies, is decreased. I would ask you, how could you do that when we all now know about MTBE and how pervasive it is? I think almost the whole population is affected with MTBE.

So we have huge problems here. Your science budget is even cut, more than $90 million, slashing funding to research ecosystem health, pesticides and toxins. Shockingly, and this is another one, a sort of can-you-believe-this. This Administration is slashing EPA's homeland securities building decontamination program, while acknowledging that it cannot meet its goals in this arena. It is around $8 billion or so, is that correct, sir?

Senator INHOFE. Senator Boxer, you will have ample opportunity to ask questions and you have gone beyond your 5 minutes and we must get to the other members.

Senator BOXER. I have 20 seconds left.

So with a budget that is about $8 billion, this cannot stand; $87 billion for Iraq just like that, no problem; $8 billion and we are hurting our people. We need to turn around here and this is not the budget to do it.

I look forward to working with colleagues to do what we have to do to protect America's families.

Senator INHOFE. Thank you, Senator Boxer.

Senator Chafee?

OPENING STATEMENT OF HON. LINCOLN CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you, Mr. Chairman. Welcome, Governor.

I will just echo what others have said. I look forward to your testimony. I know there is a great deal of pressure on the budget, especially this year, and I will echo the other comments: Superfund, as Senator Bond said; phase II storm water money; the Clean Water Act 319 money; and of course municipal infrastructure, which now has added new costs of security needs. I know you are under a lot of pressure to try and provide all this, but those are some areas of my concern.

Thank you.

Senator INHOFE. Thank you, Senator Chafee.

Senator Carper?

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

Senator CARPER. Thank very much. Governor, good morning. It is good to see you.

The Environmental Protection Agency's budget is arguably the most important tool that we have today for ensuring that our environment, the air that we breathe and the water that we drink, are safe for us and for our families. I appreciate, and I know my colleagues do too, that you would take the time to be with us today and help us understand what the EPA proposes to do with its budget in the coming year.

We spend, I believe in this country today, about $26 for every American to fund the EPA's budget. Senator Boxer is right. It is

$8 billion. Today, we are focused on whether or not we should spend a little bit more or a little bit less. I vote for more.

I recognize that over the 34 years since the EPA was established that this annual investment has been one of our Nation's real success stories in the gains that we have made in cleaning up our environment, and more importantly in preventing our environment from becoming more polluted in the first place. It really would have probably been hard to imagine 34 years ago, when I was just going into the United States Navy. However, with something as important as people's health and the quality of our environment, we cannot afford to rest on our past successes.

I think an important question for us today is, do you have the resources that you need at EPA to carry out the agency's mission? And have those resources been allocated in ways that allow you to achieve the goals that we all share for our environment?

I would be supportive of a budget request that increases spending on clean water and on clean air, but that does so in a responsible way. However, as a former Governor like you and Governor Voinovich, I would no be supportive of a budget that shifts the costs of maintaining our environment to our States. I would not be supportive of a budget that seeks to implement the provisions of the President's Clear Skies proposal through rulemaking, something that we have discussed, while that same proposal has failed to gain support as legislation here in the Congress.

On December 15 of last year, the EPA proposed new regulations for the control of mercury emissions from electric powerplants. Four days later on December 19, I wrote to the President asking that he withdraw those rules and instead work with the Congress on a legislative solution for mercury emissions as part of a comprehensive four-pollutant bill.

Unfortunately, those rules have not been withdrawn. Late last year, EPA also proposed rules to implement the Clear Skies, SOx and NOx provisions. I do not believe that the EPA's budget should include funds to implement the Clear Skies rules in fiscal year 2005, and I will explore that with you later during our question period.

I would also like to take a moment to remind you of two other major environmental issues in Delaware that are of concern to our Nation, one which has been mentioned by several of my colleagues already, and another which has not. The first is clean water. The EPA's budget is inadequate for fixing our Nation's outdated sewer systems in older cities such as Wilmington, Delaware; Cleveland, Ohio; Providence, Rhode Island; and a host of others. As a Nation, our investments in clean water is only a fraction of what is necessary to meet our clean water goals. I hope you will fight for increased funds for clean water programs at the agency, so that cities such as ours, and this city, Washington, DC, can stop polluting rivers and streams. As Governor of Utah, I know that you faced this issue and perhaps we can work together with other Governors and former mayors to develop a sensible path forward that will provide substantially cleaner waters for our Nation.

The second is the clean air matters that are associated with refineries, such as the Motiva oil refinery in Delaware City right on the Delaware River just up from the Delaware Bay. I appreciate

your confirmation in a letter that I think we received last month that EPA will hold the new owner of the refinery to the same requirements as Motiva was to meet. It is important that everything be done to reduce emissions from refineries and other heavy industries. I hope that this budget request includes sufficient funds to continue oversight of the Motiva refinery and other chronic polluters.

Governor, if you were before this committee to tell us that all of the environmental challenges that face our country were resolved and that the agency has basically fulfilled its promise of 30-some years ago, I would better understand the budget that has been presented to us by the Administration. In fact, I might even say that it is too large.

However, I do not think that you could convince me, and frankly from what I hear from some of my other colleagues, that the problems are solved, or that those that remain are cheap ones to fix. I believe we have already done that and what remains are really the tough jobs, issues that are costly such as non-point source pollution reduction.

In closing, I would just ask that you work with us here on the committee and in Congress to make certain that you have what you really need at the agency. I would ask you to be straightforward in telling us what the real demands are so that we can plan for them.

Today, we must look closely at each Federal dollar spent, but I will do whatever I can to help you get what you and your team need. I just ask that you tell us what that is.

Thanks very much.

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

Governor Leavitt, it is good to see you again.

The Environmental Protection Agency's budget is arguably the most important tool we have today for ensuring that the environment, the air we breathe, and the water we drink, are safe for us and for our children. I appreciate you taking time today to help this committee understand what the EPA proposes to do with its budget in the coming year.

We spend about $26 per American per year to fund the EPA's budget of almost $8 billion. Today we are focused on whether we should spend a bit more or less. I recognize that over the 34 years since the EPA was established, this annual investment has been one of our national success stories. The gains we have made in cleaning up the environment and, equally important, in preventing it from becoming polluted in the first place would have been hard to imagine 34 years ago.

However, with something as important as people's health and the quality of the environment, we cannot rest on past success. An important question for us today is do you have the resources you need at the EPA to carry out the agency's mission, and have those resources been allocated in ways that will allow you to achieve the goals that we all share for our environment?

I would be supportive of a budget request that increases spending on clean water, and on clean air, but that does so in a responsible manner. However as a former Governor like you, I would not be supportive of a budget that shifts the costs of maintaining our environment to the States. I would not be supportive of a budget that seeks to implement the provisions of the President's Clear Skies proposal thru rulemakings while that same proposal has failed to gain support as legislation in Congress.

On December 15th of last year, the EPA proposed new regulations for the control of mercury emissions from electric power plants. On December 19th, I wrote to the President asking that he withdraw those rules and instead work with Congress on a legislative solution for mercury emissions as part of comprehensive 4-pollutant legislation. Unfortunately, those rules have not been withdrawn. I do not think that

the EPA's budget should include funds to implement that rule in FY05, and I will explore that with you during the question period.

I would also like to take a minute to remind you of two other major environmental issues in Delaware that are also of concern to the Nation. First is clean water. The EPA's budget is inadequate for fixing our nation's outdated sewer systems in older cities such as Wilmington, Delaware. As a Nation, our investment in clean water is only a fraction of what is necessary to meet the clean water goals. I hope you will fight for increased funds for the clean water programs of the agency so that cities such as Wilmington, DE and Washington DC can stop polluting rivers and streams.

Second, is the clean air matters associated with refineries such as the Motiva oil refinery in Delaware City. I appreciate your confirmation last month that the EPA will hold the new owners of the refinery to the same requirements as Motiva was to meet. It is important that everything is done to reduce emissions from refineries and other heavy industries.

Governor Leavitt, if you were before this committee today to tell us that all of the environmental challenges were resolved, and that the agency has fulfilled its promise of 30 years ago, I would understand this budget—in fact I might even say it is too large. However—I don't think you can convince me that the problems are solved, or that those that remain are the cheap ones to fix. I think we have already done that and what remains are the difficult, costly issues such as non-point source pollution reductions.

In closing, I ask that you work with us here on the committee, and in Congress to make certain that you have what you really need at the agency. Be straightforward in telling us what the real demands are so that we can plan for them. Today we must look closely at each Federal dollar spent, but I will do whatever I can to help you get what you need. I ask that you tell me what that is.

Thanks again for being here today.

Senator INHOFE. Thank you, Senator Carper.

Senator Allard?

OPENING STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM THE STATE OF COLORADO

Senator ALLARD. Thank you, Mr. Chairman.

I would like to make my full statement a part of the record.

Senator INHOFE. Without objection.

[The prepared statement of Senator Allard follows:]

STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM THE STATE OF COLORADO

I'd like to welcome Administrator Leavitt. This is the first time he has been before the committee since he was confirmed, and I want him to know that it's good to have him back. Mr. Chairman, I'd also like to thank you for holding this important hearing. I think that it is extremely important that each agency's budget not only be studied by the Appropriations Committee. As a Member of the Budget Committee and a Member of this committee, which authorizes many, if not all, of the programs at EPA, I think that it is important that we keep an eye on the President's requests each year as well.

I am sure that much will be made of the cuts in this year's EPA budget proposal. But, as I am sure that you will agree, Mr. Chairman, these are tough times. It is a simple fact that we have to scale back our spending, even where it hurts. Many people will point to programs that need more funding, but the truth is that there will never be a point when everyone thinks that the funding is high enough. If we spend more this year, we'll have to spend more than that next year. It seems that every time we get through the appropriations process, last year's ceiling becomes this year's floor. And that is just not acceptable.

We are trusted by the public to be good stewards of their money. How can we be that if we are determined to spend more and more every year? We should also focus on the fact that, while the overall funding level is below last year's and some programs are cut, other important EPA programs received increases in funding.

As a Member of the Armed Services clean-up I oversee nuclear clean-ups. Several years ago a lot of money was being spent, but not a lot of cleaning-up was actually getting done. So we looked at ways to provide incentives for quicker clean-ups. In Colorado, a site called Rocky Flats is being cleaned-up by DOE. It will save taxpayers millions of dollars because they are on schedule and under budget. So often we get caught up in the rhetoric of the decisions, we do lots of studies, we spend

lots of money, and still nothing gets cleaned-up. I would encourage you to look to this model as you begin clean-ups at Superfund sites throughout the Nation.

I's also like to recognize another clean-up site in Colorado. This one is being done by EPA. The Shattuck Chemical site in one of Denver's neighborhood should be looked upon as a real success story. There have been quite a number of hang-ups and slow-downs as they have moved through the process, but the EPA has stuck to its promises to this neighborhood and I understand that the clean-up is under way and going well. So, I was very pleased to see that the President increased his funding request for the Superfund program by $124 million.

I was also pleased to see that the State Pollution Control Grants program was increased by $20 million. As someone who believes that the Federal Government should not place unfunded mandates on States, I believe that the funding assistance offered by a program such as this one is important. The work that States and tribes are able to perform with this funding is important work and I am pleased to see that it will go forward.

Again, Mr. Chairman, thank you for holding this hearing, I look forward to the opportunity to discuss the EPA fiscal year 2005 spending proposals with the Administrator.

Senator ALLARD. I just want to make a few brief comments.

I have under my jurisdiction nuclear cleanup sites in Armed Services. We were faced with the issue. We saw a lot of money spent on cleanup, but nothing ever really happened on the ground. We re-looked at what it is that we could put that would incentivize these sites to be cleaned up. Some of it is just bureaucratic; some of it has to do with liability issues; some of it had to do with just getting everybody to understand how focused a site might particularly be, and to set priorities and go with those that are the greatest for various reasons. Maybe those of greatest risk; maybe they are the greatest risk; maybe there are the most ones to accomplish.

There is a site in Colorado called Rocky Flats. Right now, we are going to save the taxpayers billions of dollars because we enhanced the cleanup time and right now it is under budget, ahead of schedule and going very well. I would encourage you to talk to that model that has been discussed at the Department of Energy, is the one that is cleaning it, discuss with them about the incentives that they have put in on Superfund sites, because on those kind of sites, I think they can be applied to Superfund sites. I would encourage you to look at ways in which you can do that.

I think that so many times we get caught up in a lot of rhetoric, and this ought to happen, that ought to happen, we do this study and that study, but nothing ever happens in actual cleanup. I think that that is where we need to focus our efforts. We all have our favorite sites that we would like to see in our States.

I would like to compliment you on another site in Colorado that is moving along very well. It is one that the Environmental Protection Agency has been involved in, and that is the Shattuck site. We have had ups and downs. Again, it is another site that has had some concerns expressed to me, and we contacted the Environmental Protection Agency. Now, they are moving forward and I am pleased to hear that. From what I understand, the cleanup is underway and going well, but it has not been without some trials and tribulations, and taking everyone and getting them focused on what it really takes to get a site cleaned up.

So I am pleased with that and I am pleased to see that the President increased his funding request for the Superfund program of $124 million.

I was also pleased to see that the State pollution control grants program is increased by $20 million. As someone who believes that

the Federal Government should not place unfunded mandates on States, I believe that the funding assistance offered by a program such as this one is important. The work that States and tribes are able to perform with this funding is important and I am pleased to see that this will go forward also. So I compliment you on those.

I know you have just been confirmed last fall. You are just now, you have your toe in the water and you are just getting started. I look forward to working with you in the future. I see hope out there. These are all very difficult issues, very difficult problems, but I do think that it would be worthwhile to spend time getting more focused.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Allard.

Senator Clinton?

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

Senator CLINTON. Thank you, Mr. Chairman. I join in welcoming Administrator Leavitt here.

Before I get into budget and policy issues, I want to thank the Administrator for his role in getting the World Trade Center expert technical review panel started. We had a launch of that last week in New York. I am very hopeful about what that panel will teach us concerning the air pollution problems, post 9–11. The panel will re-test some buildings in New York that were contaminated with toxic dust, and also examine concerns raised by the inspector general last summer with regard to indoor air quality. I just want to publicly thank the Administrator because I know that he is concerned about this issue and he has really been committed to it. I know that he will work to make sure the panel runs smoothly and helps to get some answers for the people of New York about the quality of their air in their homes and their workplaces. So I thank you again.

I would like to raise just a few budget and policy issues. With regard to the budget, there are a few bright spots. I am extremely pleased that the clean school bus program is proposed for funding at $65 million, a substantial increase over the $5 million appropriated last year. It is a program that I have worked on with Congressmen Houghton and Walsh. It will definitely improve the quality of the air that children breathe while they are on these buses by retrofitting old school buses with modern pollution control equipment. I think that is a tremendous step forward.

But I do join my colleagues in expressing disappointment about the overall budget because the amount requested and the way that it is allocated I think is a step backwards in our commitment to strong environmental protection. I just want to make a few specific points.

According to the EPA's own estimates, as you have already heard, we are facing a clean water infrastructure funding shortfall of $500 billion over the next 20 years. Those of us in the District of Columbia, at least part time, know what a challenge we face, the discovery of lead in the water. The implications that has particularly for pregnant women and children, is something that has to be

taken seriously. So I think this clean water infrastructure issue will be at the top of the congressional agenda.

I am also dismayed by cuts in research funding. One that I join with my colleague from California in pointing out is that the budget zeroes out the EPA's building decontamination research program. It is a small amount of money, less than $10 million, but I think our experience in New York post-9–11 shows how important it is that we continue to look at this issue.

Also our experience here with anthrax and ricin. We have to be better prepared and we have to have the technical and engineering expertise. When anthrax hit, everybody turned to EPA. When we had problems figuring out who was going to be responsible for indoor air contamination in the buildings that were contaminated in New York, everybody turned to EPA. I think EPA responded the best they could, but without this continuing research, we are not going to know exactly what we should do. So I am going to work hard to restore that cut.

I am also concerned about some of the policy choices. I think that the mercury pollution issue is a perfect example. I do not think that we are requiring cuts that are deep enough or fast enough. I am opposed to allowing trading of mercury emissions because that will lead to dangerous hot spots where emissions and exposures remain unacceptably high. This is a real urgent public health issue.

In New York, the Department of Health has issued 38 fish consumption advisories that warn children and pregnant and potentially young women who could become pregnant to limit the amount of fish they eat. We know that mercury is a potent neurotoxin. We know that prenatal mercury exposure can lead to poor performances on tests of attention and language.

I think we have to start looking at this not only as an environmental issue and as a health issue, but as an education issue. According to recent EPA analysis, 630,000 of the 4 million babies born in this country could have mercury blood levels at or above the agency's safety limit. So I just cannot stress too much how we have to look at this from a multi-issue perspective. The EPA has to be in the vanguard of dealing with these issues that have so many grave implications.

I have other concerns that my colleagues have touched on, like Superfund and new source review, as well as several New York issues, but I wanted to raise those specifically for the Administrator's attention.

[The prepared statement of Senator Clinton and the referenced article follow:]

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

Thank you, Mr. Chairman. I want to join my colleagues in welcoming Administrator Leavitt back to the EPW committee.

Before I get into budget and policy issues, I want to thank Administrator Leavitt for his role in getting the World Trade Center Expert Technical Review Panel started. As Administrator Leavitt knows, EPA launched the panel last week in New York, and I attended the event.

For the benefit of my colleagues, this is a panel that Senator Lieberman and I worked to bring about, and it will do some retesting of buildings in New York that were contaminated with toxic dust from the World Trade Center. The panel will also

examine concerns that the EPA Inspector General raised last summer with regard related indoor air quality issues.

Administrator Leavitt, I know from our previous conversations that your are concerned about this issue, and I look forward to continuing to work with you to ensure that the panel runs smoothly and helps to address continuing concerns that New Yorkers have about the air inside their homes and workplaces.

I'd like to then turn to the budget, and several policy issues. Like many of my colleagues, I have concerns about the budget, and more importantly, about the policy direction of the EPA.

With regard to the budget, there are a few bright spots. I am extremely pleased that the Clean School Bus program is proposed for funding at $65 million, a very substantial increase over the $5 million appropriated last year. This is a program that I worked with Congressmen Houghton and Walsh to get started 2 years ago. Its goal is to improve the air that kids breathe on their way to school by providing funding to retrofit old school buses with modern pollution control equipment. I know it's been a big success—including in the town of Corning in New York, which got funding last year through the program—and I'm pleased that it is being expanded.

But as much as I applaud that increase, the overall budget is extremely disappointing. A budget is a statement of priorities, and this budget clearly states that environmental protection is not a priority for this Administration. The total EPA request of $7.76 billion is down 7.2 percent from fiscal year 2004 enacted levels ($8.37 billion) for the Agency. On a percentage basis, that is one of the most severe cuts in the entire budget, and I think it speaks volumes about this Administration's lack of commitment to strong environmental protection.

I just want to touch on a couple specific cuts. According to EPA's own estimates, we are facing a clean water infrastructure funding shortfall of $500 billion over the next 20 years. Yet the budget includes a cut in clean water infrastructure funding of almost $500 million. To me, that is indefensible—we need to be increasing this kind of funding, not cutting it, and I will be working with my colleagues to that in the budget and appropriations process.

I am also dismayed by the cuts in research funding contained in the budget. One item that stands out to me—and one that I have written to the President about—is the fact that this budget zeroes out the EPA's building decontamination research program. This is a relatively small budget item—less than $10 million—and the fact that it was zeroed out in the budget is simply astounding.

In describing this cut, the EPA budget documents explain—quite frankly—that this cut, quote:

"represents complete elimination of homeland security building decontamination research," and that the cut will "force it to disband the technical and engineering expertise that will be needed to address known and emerging biological and chemical threats in the future."

Given our experience here in the Senate with anthrax and ricin, and the ongoing work in New York to clean buildings contaminated by the World Trade Center collapse, I just can't understand this cut. And I'm going to be working here in the Senate to restore it.

But even more important than the budget are the EPA's policy choices. EPA's mission is to protect public health and the environment by setting and enforcing rules that regulate air and water pollution and the cleanup of toxic substances, and I continue to have deep concerns about EPA's direction under this Administration.

One of the most important issues under discussion now is controlling mercury pollution from power plants. In my view, the EPA proposal does not require cuts that are deep enough or fast enough. In addition, I am opposed to the proposal to allow trading of mercury emissions because I believe it will lead to dangerous hotspots where emissions and exposure remain unacceptably high.

Mr. Chairman, this is an extremely urgent public health issue. It certainly is in New York, where the Department of Health has issued 38 fish consumption advisories that warn children and women who may become pregnant to limit the locally caught fish they eat.

We know that mercury is a potent neurotoxin, and that it is a particular threat to children and pregnant women. Prenatal mercury exposure can lead to problems such as poor performance on tests of attention and language, impaired memory, inability to process and recall information, and impaired visual and motor function.

We also know that there are literally hundreds of thousands of American children being born each year with unacceptably high levels of mercury in their blood. According to a recent EPA analysis, 630,000 of the 4 million babies expected to be born in the United States this year could have mercury blood levels at or above the agency's safety limit. But at the same time, the EPA is proposing an unacceptably weak mercury standard.

The Administration talks about leaving no child behind, but the sad truth is that this mercury proposal will leave hundreds of thousands of children behind at birth. For their sake, I believe the EPA must revise its mercury proposal to address this problem more swiftly.

Mr. Chairman, I have many other policy concerns—including Superfund and the New Source Review—as well as several New York-specific issues that I will be discussing with the Administrator after his testimony. Thank you.

Senator INHOFE. Thank you, Senator Clinton.

With that, Mr. Administrator, we will recognize you for your remarks and your entire statement, of course, will be made a part of the record.

STATEMENT OF HON. MICHAEL O. LEAVITT, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Administrator LEAVITT. Thank you, Mr. Chairman and members of the committee. I am pleased to be here today to represent the President and the presentation of his 2005 budget request.

I have submitted, as you request, formal remarks and ask that they be submitted for the record. In addition, I would like to make just a couple of quick comments.

Today throughout the course of my remarks, you will see two emergent themes. The first is increasing the velocity of environmental progress in this country; and second is doing it in a way I like to refer to as a better way. The pioneers of environmental progress in America used a command-and-control strategy. It created a harvest of the low-hanging fruit. Each increment of progress from this point forward now gets harder and it gets more expensive.

The United States has shown steady improvement over the course of the last 30 years, and I feel great appreciation for those early pioneers who planted the seeds of this environmental progress. While historically crucial, the approach of the last 30 years has been too slow and it has been too expensive, and frankly it has been conflict-ridden.

The challenge of the next decade is to take the next great leap forward in environmental progress, to increase the velocity of our progress. We can do this by what I referred to earlier as a better way. You will hear that referred to throughout my testimony and throughout the testimony of my colleagues. A better way is found when new technology changes the equation, changes it from what before was improbable, to something that is quite possible. A better way is found when we use market incentives to speed the acceptance of new and higher standards. It is a better way when we find a collaborative network approach to solve problems that were once stuck in an all too familiar gridlock of polarization. It is a better way when we approach our environmental improvement by measuring and rewarding results, and not just programs.

These elements, technology, markets, and collaborative networks focusing on results, form the cornerstone of what we are now focused on in the Environmental Protection Agency, and that is finding a better way.

Let me illustrate briefly an example of this better way in action. Shortly after becoming Administrator, I proposed a series of air quality rules that will lead us into the most important and I would say most productive period of air quality improvement in our Na-

tion's history. The keystone of the initiative is the interstate air quality rule that establishes a cap and trade system, the same system that was used to make substantial progress on acid rain to reduce emissions of NOx and SOx of coal-fired powerplants by some 30 percent. It is a better way. It is a better way because it moves us away from the command and control style regulation, regulation that creates incentives, incentives to avoid or evade, rather than to comply and to exceed the standards that we have established.

It is a better way because people move more and they move faster to do what is in the public interest when it is in their interest as well. It is a better way because it will clean the air. During the period of time that it is cleaning the air, it will put downward pressure on natural gas prices, not upward pressure.

The President's 2005 budget request of $7.8 billion provides what we believe to be the necessary funding for this agency to carry out its mission to protect human health and to safeguard the natural environment. We intend to do that by accelerating progress, accelerating progress using the principles of a better way and we believe future generations will benefit, and I am very pleased now, Mr. Chairman and members, to respond to your questions.

Senator INHOFE. Governor Leavitt, thank you very much for an excellent opening statement. Let me first say, several comments were made by some of my colleagues that I thought it would be a good opportunity to clarify it. Insofar as the Superfund is concerned, can you identify any Superfund site, past, present or those that are in the pipeline right now, where an identifiable and viable polluter has not been held liable, consistent with the law, for their share of the contamination?

Administrator LEAVITT. Mr. Chairman, the first principle of Superfund is that the polluter pays. It is now the first principle and will remain. Some 70 percent of the Superfund progress that we have made in this Nation has come with the reimbursement of responsible parties, and we will continue to pursue those responsible parties. The taxpayers of our Nation should have the burden of that as light as possible. The polluter should have it as heavy as possible. We will continue to follow that principle.

Senator INHOFE. I appreciate that. Wouldn't you say it is also false to say that the Superfund tax is a tax on polluters, when in fact there are many people who are subjected to this tax who had no capability of polluting, let alone any history of polluting?

Administrator LEAVITT. Polluters are the responsible parties. We are going after them. They are paying 70 percent of the cleanup. We would like it to be higher. We will continue to press on that point. I am pleased that the President has proposed $150 million as he did last year, regrettably that was not funded. We hope it will be this year. We could use those resources in being able to clean up Superfund sites. Many of you have indicated that there are sites specifically in your States.

We are making good progress. Last year we completed cleanup on 40 sites. There were 20 sites that were proposed. We were able to authorize 12 of those sites. We continue to make good progress in this country. We have an objective to clean up and recycle land, get it back into productivity. It is a bigger part of what I referred

to earlier as the better way. We want to use the principles of collaboration, but first and foremost, polluters ought to pay.

Senator INHOFE. Thank you very much.

In my opening statement, I spent a little bit of time talking about our grants hearing that we had last week. Senator Jeffords and I requested a listing of discretionary grants awarded for fiscal year 2003. We would look forward to getting that information as soon as possible. If you would help us do that, we would appreciate it.

Administrator LEAVITT. Senator, could I mention that shortly after becoming Administrator, my instinct led me to the same place yours has. I have asked and did receive a list of those receiving grants. Frankly, it is worthy of inspection and it is and will receive my direct and personal attention. I will provide the information you have requested.

Senator INHOFE. I appreciate that very much. We are concerned about the discretionary grants. I know that is a small part of the total amount. We know that the program works very well, having Senator Voinovich and others up here who have talked about their service, as you have had service at the State level, and I have also. It is imperative that these mandates that we make are funded and we are responsible for doing that.

I am concerned about the discretionary grants. The fact that the EPA IG audit reported that a lobbying group, that is a 501(c)(4) operation, that is what they do for a living, they lobby, was paid $5 million in a 5-year period to lobby the EPA. Now, let's be sure we understand this. We are paying taxpayers money to get people to lobby us, and this is a concept that I find just totally outrageous.

The question I have is, what would the agency do to recover these funds and to safeguard against continuing having this occurring in the future?

Administrator LEAVITT. Senator, we will continue to work directly with this committee to provide information. We are going to be doing, the Acting Deputy Administrator and I have had a direct conversation about this. It will be receiving our direct attention.

Senator INHOFE. OK. I would like to make a request, and you may have to answer it for the record, but I think there are two areas that are important. First of all, we need to post clear and complete descriptions of the types of available grants to encourage a greater involvement; and second, to know as we have been requesting publicly, exactly who the grant recipients are, and a description of those. I would like to have you give serious consideration to actually posting a Web site so these two bits of information can be available to all of America. Do you see a serious problem with that?

Administrator LEAVITT. Actually, having reviewed other Web sites from other agencies, I think much of that information is available. I do not know precisely how much of it is available on the EPA Web site, but I see no reason we should not do an analysis.

In response to your request, we reviewed the grant information contained on EPA's web sites. I am pleased to inform you that EPA does provide descriptions of the types of available grants in the Catalog of Federal Domestic Assistance. The public can access these descriptions through the Office of Grants and Debarment

(OGD) internet site. In addition, EPA posts all of its competitive grant solicitations on fedgrants.gov. EPA also provides information to the public on awarded grants in two ways. First, OGD has a grant competition web site which contains information on closed competitive announcements and awards made under those announcements. Second, EPA includes information on all of its active awards in the Envirofacts data base which can be accessed through the Agency's home page. As a supplement to Envirofacts, OGD, beginning in April 2004, will be posted on its internet page information on new discretionary grant awards.

Senator Inhofe. I appreciate it. Thank you very much.

I would admonish our members to stay within our time limit and would recognize Senator Jeffords for his questions.

Senator JEFFORDS. Thank you, Mr. Chairman.

The Administration's budget proposes to cut clean water infrastructure spending nearly in half of fiscal year 2004 enacted levels. In 2002, the EPA's own analysis estimated a spending gap of $270 billion over 20 years for clean water needs and drinking water gap of $265 billion over that same period. The Frank Luntz poll, that I believe you have probably seen, I mentioned it in my opening statement, shows that 90 percent of Americans believe that Federal investment to guarantee clean water is a critical component of our Nation's environmental well being.

Can you explain how the proposal to cut water infrastructure spending reflects EPA's own findings and the views of 90 percent of Americans?

Administrator LEAVITT. Senator, as you know, in my previous service as Governor, this was something I dealt with in a very direct and intimate way. I know the importance of the State revolving loan funds to States and local communities, particularly small communities who struggle to meet the needs and the demands that the Clean Water Act has placed upon them. I make no commentary other than to accept it as true and that the infrastructure gap that you have spoken of exists.

It also has become clear to me that meeting that gap will have to be a partnership between the national government, the one that has established the standards, and the States, who have a compelling statewide interest, and local governments. Over time, we have allowed the management and the development of infrastructure to be a matter that is managed at the local level, and it needs to stay there.

One of the compelling large-scale policy issues that we as a Nation will have to visit is how do we pay for this. Do I believe that it should fall upon the national government to be the funding agency for all of the $400 billion of needs? I do not think the national government can. Should we play a role? Absolutely. How much should it be? This is the policy question.

In the large-scale, most of those costs will need to, in my judgment should be, borne by ratepayers, not directly by taxpayers. This is the question that this budget matter ultimately drives. I also suggest that simply building new infrastructure is not the only solution. One, we need to reduce demand. We have become accustomed as a Nation to using water in a way that we oftentimes do not acknowledge the impact that it has or its public cost. Reducing

demand on infrastructure is one thing we can do. Implementing better management, conserving, and finding intergovernmental cooperation, are ways in which I believe that we as an agency can help local government and States. We have a financial contribution to make. The size of contribution is the matter of this debate. I believe ultimately most of the cost will need to be borne by ratepayers, not taxpayers. My guess is that most on this committee would agree.

Senator JEFFORDS. Thank you.

New source review, about 2 months ago I wrote to you asking for a report on the agency's NSR enforcement strategy in light of the recent court stay on the routine equipment replacement rule. I asked for a description of what the agency and the Administration planned to do with spending, with the pending cases that EPA has already referred to the Department of Justice, the cases which are awaiting referral and the cases under active investigation by EPA.

It has also come to my attention that there are piles of unopened boxes full of documents that could be used by EPA to refer even more powerplant violations to Justice. What is the plan of action on NSR enforcement for powerplant violators, and what does the agency plan to do with these unopened boxes?

Administrator LEAVITT. Senator, we as an agency are committed to making new source review work. We believe it is an important tool of enforcement. May I also answer directly. We intend to move forward on the cases that have been filed already. There will be new cases, and we will select the new cases based on a myriad of factors, including available resources and our desired environmental benefits.

As you may know, since that stay was placed, we have filed additional cases, and I think that is a direct answer to your request.

Senator JEFFORDS. This is a most serious problem, as far as I am concerned. Approximately 20,000 lives are prematurely ended each year because of old dirty powerplants not required to apply best available control technologies. As you know, these plants have been escaping new source review rules to date, many of them illegally. These same plants would be permanently exempt under the Administration's routine equipment replacement rule if it survives in court.

What is the public health rationale for not requiring these powerplants to modernize their controls right now, not in 10 or 20 years or the far future, as the Administration has proposed?

Administrator LEAVITT. Senator, I spoke with the utility industry at a meeting in Phoenix recently and told them precisely that. It is time to clean up old powerplants now, not 10 years from now. I put forward a rule called the Interstate Air Quality Act. I know our time is limited right now, but I hope at a future round I can tell you about the requirements that will ultimately result, in $50 billion of new equipment being placed on old powerplants, the most sweeping change we have made in this area, leading to the most productive period of air quality improvement in our Nation's history.

The red light is on. I will wait for later.

Senator INHOFE. Thank you, Governor.

Senator Voinovich?

Senator VOINOVICH. I would like to comment on just what Senator Jeffords said. It seems to me that with the continued uncertainty of the 126 petitions and where we are going in terms of the four pollutant bill or Clear Skies, that the territory out there is very uncertain for our utilities. I think as a government, we owe them some clarity on just what is going to be expected from them, so that they can move forward and make the improvements that Senator Jeffords would like to see them make.

I think you are aware of the fact that I have been very interested in the Great Lakes, as well as some of my colleagues. As you know, the GAO released a report that stated that restoration of the Great Lakes is being hindered because of little coordination and no unified strategy for Great Lakes environmental activities. In addition to two hearings that I held on this report and Great Lakes restoration, the Governors, mayors and a wide variety of groups in both the U.S. and Canada have come together to push for action to create a coordinated full-court press to restore the Great Lakes.

I would like to know since that report and since the hearings, what progress is being made to deal with this lack of coordination?

Administrator LEAVITT. Senator, I would like to respond to that and also make comment on the point on powerplants. Since my confirmation, I have taken your advocacy and others' very seriously. There is a great opportunity for us here. As you know, the President's budget proposes a $45 million appropriation, nearly three times what was there before, to be able to focus on those problems, some of them dealing with very specific scientific issues. I have great optimism for it and have spent substantial personal time and will continue to. Much more will be said in coming weeks on that matter.

With respect to the powerplant issue, could I make clear that I do intend to finalize this year a rule we have referred to as the interstate air quality rule which will result in a $50 billion investment by the people of this country, the largest single investment we have ever made as a Nation in clean air. It will require a 70 percent reduction in NOx and SOx by coal-fired powerplants and solve a very serious problem that many of our cities have with ozone.

Many of the cities in this country, some represented by the senators on this committee, believe and feel that if they could put all the cars off their roads and close all the factories and cleanup their own powerplants, they still would not have clean air because of transport. The Interstate Air Quality Rule is a national solution, being able to focus on powerplants, one that I believe will result in the greatest period of air quality improvement in our Nation's history.

Senator VOINOVICH. I would like to comment that there is a great deal of concern about the rules in terms of their permanency. Clear Skies I think would be a much better solution to the problem. As the States realize, the major impact that the new ambient air standards on particulate ozone are going to have on them, and coming up with State implementation plans to carry those forward, I think they are going to understand more and more that it would be far better if we had something, a compromise between what Senator Jeffords wanted and what I would like to see happen in

Clear Skies and the Administration, and would be a much better way of achieving that goal.

Administrator LEAVITT. Senator, we could not agree more. We would very much like to see the multi-pollutant legislation known as Clear Skies move forward. We see it as a superior way to solve this problem.

Shortly after I became Administrator, it was my duty to send to States, 31 of them, letter indicating that 506 of the counties in our country have not achieved attainment on ozone standards. That is a very serious letter. I know, having been a Governor myself and so do you, that is a very serious letter for a Governor to receive because it means that it has serious consequences. Someone mentioned earlier, I think Senator Boxer, about the asthma problem. It means that the citizens of their communities are not breathing clean air. It also means that those who are trying to develop jobs for those who live in those areas may be restricted in important ways.

So we need to find a way to help those communities suffering from air transport find a solution. Therefore, I moved forward on the rule, anticipating that the Congress ultimately will come back and act legislative. That is clearly our preference.

Senator VOINOVICH. I understand achieving ambient air standards because one of the first things I did as Governor was to move to get all of Ohio's counties to conform with the ambient air standards, because it had a large impact on our quality of life environment, but also on our economic vitality. Now, those same letters are going out to Governor Taft in Ohio and all over the country, and again they are going to have to contend with it. It seems to me that it ought to be done in a very common sense, logical way, rather than not really having an idea of what is coming in the future.

Senator INHOFE. Thank you, Senator Voinovich.

Senator Wyden?

Senator WYDEN. Thank you.

Mr. Administrator, let me begin by getting your reaction to my concern that it looks to me like powerful industries can essentially hotwire the regulatory process that weaken environmental rules and essentially enact their wish lists into law. The New York Times on Saturday ran a front page story with the title, How Industry Won the Battle of Pollution Control at EPA. Mr. Chairman, I would ask to have that made a part of the record.

Senator INHOFE. Without objection.

[The referenced document follows:]

[From the New York Times, March 6, 2004]

HOW INDUSTRY WON THE BATTLE OF POLLUTION CONTROL AT EPA

(By Christopher Drew and Richard A. Oppel, Jr.)

Just 6 weeks into the Bush Administration, Haley Barbour, a former Republican party chairman who was a lobbyist for electric power companies, sent a memorandum to Vice President Dick Cheney laying down a challenge.

"The question is whether environmental policy still prevails over energy policy with Bush-Cheney, as it did with Clinton-Gore," Mr. Barbour wrote, and called for measures to show that environmental concerns would no longer "trump good energy policy."

Mr. Barbour's memo was an opening shot in a 2-year fight inside the Bush Administration for dominance between environmental protection and energy production on clean air policy. One camp included officials, like Mr. Cheney, who came from the energy industry. In another were enforcers of environmental policy, led by Christie Whitman, a former Republican Governor of New Jersey.

The battle engaged some of the nation's largest power companies, which were also among the largest donors to President Bush and other Republicans. They were represented by Mr. Barbour and another influential lobbyist, Marc Racicot, who also would later become chairman of the Republican National Committee.

In an Administration that puts a premium on keeping its internal disputes private, this struggle went on well out of the public's view. But interviews and documents trace the decisions in which the Bush Administration changed the nation's approach to environmental controls, ultimately shifting the balance to the side of energy policy. Senior officials at the Environmental Protection Agency, including Mrs. Whitman, became isolated, former aides said, and several resigned.

Thirty years after the first Earth Day, the incoming Administration was still confronting power-plant smokestacks spewing fumes. The policy questions were arcane, involving strategies to control polluting particles. At stake, though, were environmental risks to human health and the nation's ability to produce cheap energy, as well as decisions about how the most polluting industries would be monitored for decades to come.

For operators of some coal-fired plants, the stakes were more tangible. Dozens of plants were facing lawsuits over air pollution brought by the Clinton Administration and several northeastern States—including New Jersey under Mrs. Whitman before she became head of the EPA. The industry, fearing billions of dollars in new costs, set about to undo the suits.

One of the most important decisions was Mr. Bush's reversal of a campaign promise to regulate emissions of carbon dioxide, a gas that many scientists say contributes to global warming. The Administration also has proposed looser standards for emissions of mercury—a highly toxic pollutant—than President Bill Clinton had sought. The most protracted fight concerned the Administration's decision to issue new rules that substantially reduced the requirements for utilities to build pollution controls when modernizing their plants. The final policy shift may ultimately help the coal-plant operators shed the lawsuits.

The struggle within the Administration, in skirmishes between Cabinet officers and volleys of memorandums, showed how the White House has transformed domestic policy through regulatory revision, rather than more contentious congressional debate.

Administration officials say the changes were needed to raise energy production and lift the burden of cumbersome and costly regulations on industry. They said that the approach will continue the trend of declining emissions and reduce some of the most harmful pollutants by about half in the next decade—cuts as deep if not deeper than the old measures would bring.

"It's not about whether air quality will get better," said James L. Connaughton, chairman of the White House Council on Environmental Quality. "It will, and it must. The question is what path you take to get there."

Critics on Capitol Hill and environmental groups say the policies will slow the cleaning of the air and undercut Congress's authority, while catering to companies that are big contributors to Mr. Bush's campaigns.

"Rather than work with Congress to move us forward on environmental issues, the Bush Administration is working with the special interests to undermine them," said Senator James M. Jeffords, the Vermont independent who is the ranking minority member of the Senate environment committee.

But both sides agree on one outcome of the struggle: The nation's approach to air pollution control shifted drastically.

An Early Challenge

As President Bush took office, he said he wanted to swiftly address energy shortages that had caused blackouts in California. Coming from the Texas energy industry, he was convinced that Clinton Administration environmental policies were restraining energy production. And utilities geared up to press the new Administration for big changes on a handful of issues that were crucial to them.

Their biggest worry was Mr. Bush's campaign pledge to carry through on a Clinton Administration effort to impose controls on power plant emissions of carbon dioxide.

The coal-fired power companies, which are among the nation's largest sources of carbon dioxide, were alarmed when Mrs. Whitman in her first days at the agency said Mr. Bush would carry out his promise. Not long after, Mr. Barbour sent his

memorandum to Vice President Cheney, who was heading a task force Mr. Bush had ordered to conduct a broad review of energy policy.

Mr. Cheney had been chief executive at Halliburton, an oil-and-gas-services company. Energy corporations had been among the strongest supporters of Mr. Bush's Presidential campaign: There were more executives from energy than from any other industry group among Mr. Bush's most elite fund-raisers, called "Pioneers," who each generated more than $100,000 in donations.

The industry's outcry over carbon dioxide reached Mr. Bush. In March 2001, he reversed himself, saying there would be no carbon dioxide controls. "I was responding t realities," Mr. Bush said at the time, "and the reality is our nation has a real problem when it comes to energy."

After that victory, the utilities moved to press their advantage, turning to Mr. Cheney for help on another issue: a set of rules requiring them to add new pollution controls when they upgraded or expanded their plants. The power companies strongly objected to the rules, which were known as "new source review," calling them arbitrary, expensive and outmoded.

A small group of coal-fired utilities was especially unhappy. In 1999, the Clinton Administration had sued nine companies, saying they had expanded 51 older plants without adding the required controls. Among those facing suits were the Southern Company, based in Atlanta; the Duke Energy Corporation, based in Charlotte, N.C.; and the FirstEnergy Corporation, based in Akron, Ohio. Southern, one of Mr. Barbour's biggest clients, was facing potential liabilities of hundreds of millions of dollars.

The rules had not previously been vigorously enforced, and the companies contested the suits, saying the Clinton Administration had focused on them unfairly and made it too costly to improve their plants.

Mrs. Whitman made it clear she was willing to revise the rules and settle the lawsuits. But, former aides at the EPA said, she favored old-fashioned political horsetrading: She would ease up on the old rules, but only after going to Congress with broad legislation to establish tough new controls on three important pollutants—sulfur dioxide, nitrogen oxide and mercury.

Mrs. Whitman's orders were to "find ways to deal with" the rules "without giving away the farm to industry unilaterally," said Jeremy Symons, a former agency official who works with the National Wildlife Federation, an advocacy group.

Industry lobbyists had a different strategy. C. Boyden Gray, who was White House counsel during the first Bush Administration and represented some utilities, said the companies viewed the pollution lawsuits as "a gun to the head." They feared, he said, that if their bid to change the rules got caught up in a bigger battle in Congress, "they might not get anything."

The industry's main lobbying group, the Edison Electric Institute, already had meetings with White House and Energy Department officials about relaxing the pollution rules. The group's president, Thomas R. Kuhn, had been a Yale classmate of President Bush, and was also a Pioneer.

Yet for some companies named in the lawsuits, the institute was not forceful enough. "We needed a strategy and an organization to take a more aggressive approach," said Todd Terrell, a spokesman for Southern. So, at Mr. Barbour's urging, a handful of coal-burning utilities formed their own lobbying group.

At the time, Mr. Barbour was probably Washington's most successful lobbyist. As Republican National Committee chairman from 1993 to 1997, he had helped the party gain control of Congress and had long been one of its most prodigious fundraisers. His corporate clients included many of the party's largest donors. That added to his entree with Republican officials.

The splinter group, organized by Mr. Barbour in the spring of 2001, was called the Electric Reliability Coordinating Council. Scott Segal, its executive director, said it sought a "more consistent" effort to rewrite the pollution rules. Several government officials and lobbyists said the group's underlying goal was bolder: to persuade the Administration to repudiate the old rules and thus torpedo the lawsuits based on them. According to the Center for Responsive Politics, the six utility companies now in the council and their employees made more than $10 million in political donations over the last 5 years, nearly three-fourths of that going to Republicans. Southern and its employees account for nearly $4 million of the total, with 72 percent of their donations going to Republicans.

Mr. Barbour had a meeting with Mr. Cheney on May 3, 2001, just 2 weeks before the task force was set to unveil its energy plan, Mr. Segal said. Mr. Barbour was accompanied by Mr. Racicot, a friend of President Bush who would become the Republican chairman in January 2002 and is now chairman of Mr. Bush's campaign.

Mr. Segal said that Mr. Barbour and Mr. Racicot "did not dwell" on the lawsuits, but suggested that the Administration should abandon the standards that the Clinton Administration had applied in bringing them.

Mrs. Whitman's aides said Mr. Cheney's office did not inform her of that meeting. But the next day Mrs. Whitman, knowing the debate was reaching a climax, sent a blunt memorandum to Mr. Cheney.

"We will pay a terrible political price if we undercut or walk away from" the lawsuits, she wrote. She said it would be "hard to refute the charge that we are deciding not to enforce the Clean Air Act."

She warned Mr. Cheney that a "broad attack" in his final report on the pollution rules would wipe out her leverage over the industry and "permanently destroy our chance to achieve any needed legislative reforms we may seek in the future."

As the task force neared its end, Southern and other utilities in Mr. Barbour's group were busy on another front. On May 15, 2001, they gave $100,000 to the Republican party.

A Shift in Lobbying Efforts

Mrs. Whitman's arguments succeeded in forestalling any recommendation in the Cheney task force report, issued on May 17, to rewrite the rules or cripple the lawsuits. Instead, the task force called only for the EPA to review the rules with the Energy Department, whose focus is to promote energy supply, and for the Justice Department to review whether the suits were valid.

In January 2002, though, Mr. Barbour and his group learned that they would get no help from the Justice Department. Its lawyers found nothing amiss with the pollution lawsuits, concluding that they were supported by "a reasonable basis in law and fact."

That setback did not slow the lobbying. Soon its locus shifted, as the Energy Department, led by Spencer Abraham, became increasingly involved, setting off a fight that reverberated inside the EPA as officials there said they felt outmaneuvered.

Mr. Barbour and Mr. Racicot joined a parade of industry lobbyists seeking out Energy officials.

Between July 2001 and November 2001, Francis S. Blake, then the deputy energy secretary, held seven meetings with industry groups about the pollution rules, attended by more than 60 executives and lobbyists, records show. During that time he met with only one lobbyist from an environmental group.

In early 2002, Energy and EPA officials got down to considering new rules. Environmental officials in charge of enforcement grew alarmed at the proposals emanating from Mr. Abraham's department, which often echoed the industry's demands.

In one memorandum, EPA officials attacked an Energy Department draft as "highly biased and loaded with emotionally charged code words" that would ultimately "vitiate" the pollution-control program.

At one point, her aides said, Mrs. Whitman set up what she thought would be a private meeting with Mr. Cheney to discuss EPA concerns. When she arrived at his office, though, she was disappointed to find that Mr. Abraham was already there to present counter arguments.

Soon an exodus began from the EPA's enforcement branch. Eric V. Schaeffer, who joined the agency during the first Bush Administration and was head of the Office of Regulatory Enforcement, sent a resignation letter to Mrs. Whitman that February. "We seem about to snatch defeat from the jaws of victory," he wrote, adding that the White House "seems determined to weaken the rules we are trying to enforce."

Mr. Schaeffer and his boss, Sylvia K. Lowrance, then the agency's top career enforcement official, both said in interviews they repeatedly warned Mrs. Whitman that the rule changes would jeopardize the enforcement lawsuits. Their view, shared by many industry lawyers, was that judges were often reluctant to penalize companies for failing to comply with rules that had been subsequently relaxed. Mrs. Lowrance later took early retirement.

A different view was held by some EPA policy officials, including Jeffrey R. Holmstead, a former aide to Mr. Gray in the first Bush White House, who was now in charge of writing air-pollution regulations. Mr. Holmstead had long criticized the old rules as unmanageable and counter-productive, and he believed revising them would have no impact on the lawsuits in court.

But Mr. Holmstead was uneasy with the lobbyists' participation. "This would have been so much simpler if they hadn't gotten Barbour involved, because that just created this new political intrigue," he said.

In June 2002, Mr. Holmstead had a chance to see how closely the White House was watching. At a party for the 50th birthday of Mr. Abraham, Mr. Holmstead ran into Andrew Card, the White House chief of staff.

Mr. Card "wanted to know how come we were having so much trouble" finishing up the rule revisions, Mr. Holmstead recalled.

Shortly after, on June 13, Mrs. Whitman sent a proposal to the White House. It contained many of the changes that the Energy Department had championed, and was the foundation of the final rule revisions published in October 2003.

Mrs. Whitman has never discussed the decisionmaking process or broken ranks in public with President Bush. But the new rules showed that the White House had thrown its weight behind energy priorities, both environment and energy officials said.

The rules said utilities would not have to add new pollution-control devices if upgrades and construction projects did not cost more than 20 percent of the plant's value—a loophole all sides said was huge.

Departures From EPA Mrs. Whitman resigned last May, saying she hoped to spend more time with her family. Several former aides said she was frustrated that she did not have more support within the Administration. She declined through a spokesman to be interviewed.

In a statement, Mrs. Whitman said she had supported streamlining the pollution rules because many groups agreed that they "had grown cumbersome, unreliable and unpredictable." She said that Mr. Bush "expects the members of his cabinet to advocate forcefully on behalf of his or her agency" before making major decisions.

Mr. Cheney, Mr. Abraham, Mr. Racicot and Mr. Barbour—now the Governor of Mississippi—declined to comment.

Late last year, top EPA officials announced a new pollution enforcement policy that seemed likely to critically weaken the pending lawsuits. By year's end three more of the agency's top enforcement officials resigned. "The rug was pulled out from under us," one of them, Rich Biondi, said.

The new rules evoked fierce opposition, though, as 14 States sued to block the change. In December, a Federal appeals court stayed their use, pending further arguments. EPA officials said they put the new enforcement policy on hold until the court challenge is resolved.

The Administration's goal now is to expand the use of a more flexible "cap and trade" regulatory system created in the early 1990's that worked with notable success to combat acid rain. It lets utilities buy and sell credits that give them a pollution allowance. The number of credits available nationwide shrinks over time, creating a cap to ensure that pollution levels decline. Late last year, Administration officials announced plans to move to the new cap-and-trade system by revising regulations, rather than pressing for a new pollution bill, as Mrs. Whitman had envisioned.

Under the Administration's plan, nationwide sulfur dioxide emissions from power plants would fall to 5.3 million tons by 2015, and nitrogen oxide emissions to 2.2 million tons, according to EPA estimates. Those would be reductions of 51 and 55 percent, respectively, over levels in 2001.

A recent Administration move to control diesel emissions has drawn praise from environmentalists. But in December, officials set off a new controversy by proposing a cap-and-trade approach for another pollutant: emissions from coal-fired power plants of mercury, which can cause neurological damage to humans. Instead of starting to curtail the emissions by 2007, as was widely expected, the proposal would give utilities until 2018 to make significant cuts.

Many environmentalists and some former EPA officials said that while the proposed pollution cuts are substantial, they give industry more time to make reductions than existing law. The critics contend that it was foolish to weaken the pollution lawsuits without extracting anything in return.

"They are packaging this as a pollution cut, but in fact it is a pollution delay imposed on a program that the Clean Air Act requires to go faster," said Dave Hawkins, a lawyer for the Natural Resources Defense Council in Washington.

What is clear is that the energy industry is satisfied with the way the Bush Administration has gone. "Cost-effective, and effective, are reasonable ways to describe the Bush Administration's clean-air policy," said Mr. Segal of the electricity lobbying group. "The Administration has a lot to be proud of on its air policy."

Senator WYDEN. That, of course Mr. Chairman, was before your watch, and I understand it and I am not going to get into that. But the mercury rules do go into effect in your watch. I have to tell you, I am very troubled by what has come out that indicates that essentially something like 12 paragraphs of what industry has proposed were essentially enacted verbatim. Now, I do not think this happens by osmosis. How does this take place? Do folks at the agency

essentially invite these kind of powerful lobbies to basically kind of cut and paste an operation that the agency will enact? That was on your watch, the mercury rules. When the industry proposal is included almost verbatim in what the agency finally comes out with, that is pretty troubling. So I would like your reaction to that.

Administrator LEAVITT. Senator, I do not know how that happened, but I will tell you this. Ultimately what is important when we finalize the rule will be the policy. I am very proud of the fact that for the first time in American history we are going to be regulating mercury from powerplants. I want to tell you, when the rule is finalized, we will do it in a way that will reduce mercury by the maximum level we can, and do it as fast as we can. Because Senator Clinton is absolutely correct, it is a dangerous neurotoxin. It needs to be reduced. It needs to be responded to and we will respond to it in the way that is the most aggressive possible. I am proud to say under my signature it will be done for the first time in the history of this country.

Senator WYDEN. It is a dangerous problem, but it is also dangerous practice to enact an industry wish list into law. I hope you will try to find out how this happened because again, what I am concerned about is a double standard in terms of environmental protection. Public interest groups do not get access to that. Members of this committee get treated like second-class citizens with respect to access to information. We basically have to go out and file Freedom of Information Act requests to find out what is going on on key environmental and science issues, but it sure looks like these powerful lobbies have a glide path to the industry's front door.

I hope you will find out what is going on and we will get a final proposal that is in the public interest, rather than something that basically takes what industry has said verbatim and enact it into law. I am a little surprised that you do not know how that happened, because that is something on your watch. It is one thing about a New York Times story that happened before you came, but this is on your watch. I will tell you, I find it very troubling and it is why I think that the agency seems to be writing a textbook case for how you weaken some of these environmental laws.

Let me use the Portland situation to address my next concern about this Freedom of Information Act approach that the agency is taking. As you know, we have been trying for months and months to find out how the agency will deal with problems in Portland relating to sewer overflow. This situation in Portland illustrates exactly what you tried to do for years with Governor Kitzhaber, to try a collaborative kind of approach, to reward good corporate citizens.

We can't get even information with respect to what is going on out there because of the position the agency is taking with respect to the Freedom of Information Act. I think what the agency is doing on the Freedom of Information Act is contrary to the law. The Freedom of Information Act was never intended to justify withholding information from the Congress. That is what the agency is doing now. So what is going on in Portland is important not just to my constituents, but I think it also sets a very dangerous

precedent for how we are going to address these issues on a national basis.

So why don't you tackle this issue on both particulars. First, how is it that the agency arrives at this bizarre position with respect to the Freedom of Information Act that I think is going to stultify debate; and second, how you are going to respond to this Portland situation. We talked about it months and months ago. You have a good man sitting next to you who has been a career person. I regret to say I am going to hold up his appointment until we get access to this information and get to the bottom of the situation with respect to the Freedom of Information Act.

Administrator LEAVITT. Senator, you deserve to have the information. I have here a box that is a down payment on 16 linear feet of information that is being delivered to your office. We intend to go through with your staff what it is that you need and deserve to have. Our purpose is to give you the information that you deserve and that you need to have.

Second, may I just say that Portland is among a number of communities, many, some of our largest communities in the country who are struggling to work through this very difficult problem. It is the same problem that has been spoken of in Ohio, in Kentucky, in Pennsylvania and many others where we are working on this combined sewer overflow and infrastructure problems.

We will enforce the law, but we will work for compliance. The better way principle is to achieve compliance, and enforce the law. We will do both. I do not think you would expect any less of us.

Senator WYDEN. Well, it looks like I will not have to go to the gym today because I will get to do some weightlifting.

Administrator LEAVITT. Heavy lifting for you.

Senator WYDEN. That is certainly constructive and welcome and I appreciate it.

Take the second part of that question with respect to the Freedom of Information Act.

Senator INHOFE. Would you mind waiting until the next round for that question, because you have gone over about a minute and a half now. We have other members.

Senator WYDEN. I just wanted to give the Administrator a chance. It looks to me like he is saying that the agency will not use the Freedom of Information Act in the future to deny Members of Congress access to information. I want to give him a chance to say something.

Administrator LEAVITT. Our purpose is to do all we can to supply Members of Congress with the information they need and deserve.

Senator WYDEN. Thank you, Mr. Chairman.

Senator INHOFE. Thank you.

Senator Allard?

Senator ALLARD. Thank you, Mr. Chairman.

First of all, I do not understand the accusation that is being made by the Senator from Oregon that it is an industry-driven process, because as I understand it, the industry is divided. You have soft coal and you have hard coal, and those areas that produce soft coal are having problems with those that have hard coal. Mercury is a serious problem. We need to treat it seriously.

But I do not see any consolidation of the industry on this, and there is a lot of science yet that has to be worked out.

Some types of mercury are metabolized within the environment differently than other types of mercury. Depending on the type and how it gets metabolized within the environment also depends on the risks that it might be to human health. I think maybe that needs to be made a part of the record. I can understand where maybe certain parts of the industry would want to have a say in the regulatory process, but you have the other part over here that has probably taken a completely different position. We know that soft coal does more to pollute the air. We know the hard coal does less. We know that mercury is a great problem in hard coal than it was in soft coal as it gets metabolized in the environment. So there are a lot of tradeoffs that have to be done there.

I think this is a very difficult issue. I do not think it is a simple issue. There has to be a lot more research and science on it, and maybe we need to focus on that before we come up with any decision. I just want to make that a part of the record.

I would also like to give you an opportunity to tell us what your top priorities will be this year and what you would like to see happen the first year.

Administrator LEAVITT. Senator, I am pleased to do that. I have now been in service 125 days. During that period of time, we have accomplished some important things. I think we have initiated as an agency and as a country the most productive period of air quality improvement in the history of our Nation. That comes in putting forward a suite, an entire suite of air quality improvements. Already mentioned today has been our effort to clean up 450,000 of the Nation's school buses through the President's initiative on diesel.

Second is that we will be finalizing in April the most stringent rules on diesel on the planet. That black puff of smoke that we have become accustomed to seeing both on off-road and on-road will disappear over the next 10 years because we as a Nation will finalize not just changes in the way engines are built, but also in the way our fuels are refined.

We have also been busy about implementing the ozone standards. Again, the highest standards in our Nation's history focused on those who have breathing disorders, such as asthma that has been mentioned by Senator Boxer. Our intention is to enforce those standards that we are now moving through high national standards, while providing for neighborhood strategies in doing so.

We are also regulating, as you have already indicated, mercury from powerplants for the first time in our Nation's history. Our goal is to reduce that neurotoxin in a way that it will not in fact find its way into the waters of the United States and into fish and into pregnant mothers and fetuses. Mercury is a serious toxin, one that we are working at.

Finally, the centerpiece, the Interstate Air Quality Rule, while recognizing still that Clear Skies is the preferred way to do it. Knowing that our communities are going to be struggling to meet these ozone standards, I have proposed the implementation of the interstate air quality rule, which will reduce by 70 percent NOx and SOx over the next 15 years, more tons in a faster time than

at any period in our history. The Rule what I believe to be and referred to earlier, as the better way, using cap and trade strategies, using the power of the marketplace to motivate people not to evade the standards, but to go beyond the standards in cleaning up the air.

It is an exciting opportunity for us as a Nation and one that I am grateful to have. I have appreciated the support of this committee in being able to have the opportunity to do that.

Senator ALLARD. I think that many of us that want to see the environment cleaned up recognize that there is a cost, there is a built-in cost in what you are proposing and it is not easy to make those kind of proposals to clean up the environment. You have to balance. For example in energy, we are looking at extremely high costs in energy. And we are facing, particularly as far as natural gas is concerned, because there have been so many powerplants convert to natural gas. Now, the cost of natural gas has gone high because of the limited supplies that we have domestically.

So I know that these are not easy tradeoffs that you have to make, and I compliment you for showing some leadership on that.

The one thing that sort of fascinated me on your confirmation is you talked about this concept or principle of en libra. You sort of dwelled on that during your confirmation and talked about it to a certain degree. How are you applying this now to the Environmental Protection Agency?

Administrator LEAVITT. Some of the principles of en libra, which means to move toward balance, national standards with neighborhood solutions. In implementing the ozone standard, that is precisely what we are using: stringent national standards, with neighborhood solutions rather than polarization. We are looking to work with communities in collaboration.

I met yesterday with the State environmental director leadership. I am happy to report to you that those partnerships have never been stronger. There are many different ways. I know the time is up, but I will just finish with this. The President of the United States gave me this charge in my first Cabinet meeting. He said, Mr. Administrator, every time you come here I am going to ask you four questions: Is the air cleaner?; is the water more pure?; is the land better cared for?; and are you doing it in a way that will keep us competitive as a Nation? That is the charge to find that balance and that is the productive center we are working to find at the Environmental Protection Agency.

Senator ALLARD. I appreciate your short response. We certainly do not want to irritate the chairman here, so thank you.

Senator INHOFE. Thank you, Senator Allard.

Senator Boxer?

Senator BOXER. Mr. Administrator, seeing that box you are giving to Senator Wyden, if it has everything in there that he wants, that is a good change from the past, because it has been tough to get information.

I want to ask you about children again. I am going to ask you about things that happened under your watch, because I do not hold you responsible for anything before that. We have many scientific reports from universities. We have had statements from EPA itself in the past that children are in fact more vulnerable to

the effects of environmental contaminants than adults. In your report, EPA's 2003 report, America's Children and the Environment, you State that children, quote, "may be more vulnerable to the effects of contaminants."

I am concerned about this. Have you changed EPA's position on whether children are more vulnerable? Do you think they are more vulnerable or they may be more vulnerable?

Administrator LEAVITT. Senator, it is very clear to me that a smaller person is affected differently than a large person in many cases, and that there are differences.

Senator BOXER. As a small person, I do not think it is in stature so much as that they are developing and also they tend to play around on the ground and they put things in their mouth from the ground, et cetera. So you say there is no change in position on EPA.

Administrator LEAVITT. The 2003 report, I am not familiar with that direct language. I want to just use an example. I did visit Tar Creek with Senator Inhofe. I saw there huge piles of chaff that were piled from lead mines. I went to a home near one of those piles. We climbed all the way to the top of it, Senator. I asked standing on the hill, how did this get ingested into the bloodstreams of children. He said, the children used to play on these piles.

Senator BOXER. Right. Exactly.

Administrator LEAVITT. And they would play on them and they would get the dust, and then they would put it on their face and put their hands in their mouth. It began to ingest and it had a disproportionate impact.

Senator BOXER. I hate to cut you off, but my chairman is very tough. So I am glad we seem to agree that children are more vulnerable and in your opinion, there is no change in EPA's position about children being more vulnerable.

Administrator LEAVITT. There has been no change in my position on that point. I do not want to respond to EPA's because I am not specifically knowledgeable about what you are referring to.

Senator BOXER. Alright, then we are going to need to continue to talk. I am very happy we agree personally, but I want to know about the Administration's position.

Administrator LEAVITT. I am happy to submit for the record whatever would be helpful to you to understand.

EPA has not changed its position. The Agency position has been that, while we believe that for the most part children are more vulnerable to contaminants, there may be cases where this is not the case. Therefore, we generally say the children may be more vulnerable. This is consistent with the first children's indicator report "America's Children and the Environment: A First View of Available Measures" (December 2000) states "Children may be affected by environmental contaminants quite differently than adults, both because children may be more highly exposed to contaminants and because they may be more vulnerable to the toxic effects of contaminants".

Senator BOXER. That would be excellent.

On the mercury issue, I want to ask you about this. In December 2003, EPA's final rule setting standards for mercury emissions

from chloroalkalide plants was published in the Federal Register. To cut to the chase, we know there is no safe level of mercury in the blood. We know that 50 percent of women of childbearing age in the U.S. have at least one part per billion of mercury in their blood and we know the ramifications of that on fetuses on children.

Now, in the rule in the Register, in talking about the rule, rather than outline steps the EPA will take to regulate these emissions, because apparently there are missing emissions. There are more than 65 tons of mercury a year that is lost, deemed unaccounted for. The statement in the Federal Register is, EPA said the situation is, quote, "somewhat of an enigma," and in the end, did not really in this rule set standards of how people should achieve the maximum reduction. Basically, it was a good housekeeping rule. You have to look; you have to see.

And you are being sued, not you personally, the EPA, for this. I understand the first papers were filed, because there is really no regulation. So how do you justify saying EPA says about this lost mercury, it is somewhat of an enigma. This seems to be a cavalier attitude taken by EPA regarding its inability to determine where this 65 tons of mercury goes each year.

So don't you have a responsibility to know where that mercury is going and to outline how you are going to figure it out, rather than say it is an enigma?

Administrator LEAVITT. Senator, what isn't unclear at all is our focus on reducing it. We have reduced it as a Nation among our municipal waste burning facilities by some 90 percent. We have done the same thing with our medical waste. We are now focused for the first time as a country on the largest emitter, which would be coal-fired powerplants. We intend to reduce it by some 70 percent over the course of the next 15 years.

Senator BOXER. I know. I know, my friend. I know. That was not my question, but we will just let it pass.

If I could just ask one quick question here on polluter pay. I am very happy to hear you say polluter pay is the way to go. Well, guess what? The polluter tax is no longer. When Marianne Horinko was the acting head, I asked her. She said at that time, well, we do not need the tax; we still have enough money; we are robust. Her exact quote was when I pressed her on it, "I am certainly not ruling out the tax. The Administration this fiscal year felt that in the 2003 budget, we still had a relatively robust funding source that we did not need to propose it, but we will look at that again in 2004 and see if we need to revisit."

We are out of Superfund. The polluters are not paying, Mr. Administrator. One-third of the sites, they are off the sites. There is nobody to go after. Will you support Senator Chafee and I and try to get this polluter fee back on the books?

Senator INHOFE. Please respond for the record.

Senator Carper?

Senator BOXER. Yes or no? It doesn't take long. Is it a yes or a no?

Administrator LEAVITT. Senator, what could be most helpful to us would be the $150 million additional dollars that the President has proposed.

Senator BOXER. Sure, get it from the taxpayers, not the polluters, sir. That is not right.

Administrator LEAVITT. That will likely be decided above my pay grade. It will be here with the Members of Congress.

Senator BOXER. I take it as a no.

Senator INHOFE. Senator Carper?

Senator CARPER. Governor Leavitt, earlier in the question and answer period, I think I heard Senator Voinovich say something to the effect that maybe there could be a compromise, something in between where Clear Skies is with respect to reducing air emissions, and where Senator Jeffords' proposal was. I would just remind my colleagues that there is an alternative. I would remind my friend, Senator Voinovich, that the alternative is one that Senators Alexander and Chafee and Gregg and I introduced about a year ago. It is a four-pollutant bill. It is one that happens to embrace cap and trade. It is one that happens to embrace harnessing the power of the marketplace to reduce emissions of all four pollutants. I would again bring it to the attention of my colleagues and invite their support, and certainly that of my friend, the Administrator.

Governor, last summer your staff provided me with the results of their analysis of the multi-pollutant control bill, the bill I just discussed. We call it the Clean Air Planning Act. Recently, the data in support of that analysis was also provided. I appreciate the hard work of your staff. Anybody who happens to be here who was involved in that, I express my thanks to you as well. I appreciate the work of your staff and the timely response in providing that data.

What it shows is that EPA's modeling suggests that our Clean Air Planning Act is better for public health and the environment than either Clear Skies or the recently proposed rule that you have mentioned, the interstate air quality rule. Our Clean Air Planning Act reduces sulfur and nitrogen oxide pollution further and faster throughout most regions of our country. It provides some $50 billion per year more in public health benefits by the year 2020. Yet EPA's own analysis shows that the Clean Air Planning Act costs only about 2 percent more than Clear Skies to implement over a 20-year period.

I was just wondering, can you help me? Really, can you help us to understand why EPA is proposing to reduce pollution through what I believe is a costly and burdensome regulatory path, when we do have a solution, a compromise solution, that a number of us believe is much better for our country, but costs only slightly more to implement.

I would remind you that in your opening statement I think you said, I know this, you said that you are interested in promoting policies that are faster and better. We believe that our approach is just that.

Administrator LEAVITT. Senator, as I have indicated, we clearly believe a legislative approach to this is superior to a regulatory approach and we welcome that discussion as to how we can move the discussion forward legislatively. In the meantime, I have filed a proposed rule that will result in the most productive period of air quality improvement in our Nation's history, that will put some $50 billion of improvement of new equipment on old powerplants,

that will allow communities throughout the country which have been unable to meet our ozone standards, the highest, most stringent standards we have ever had as a country, to be met. That is my objective, clean the air and to do it in a way that will allow us to remain competitive as a Nation.

Senator CARPER. I want to talk just a moment about mercury. We have had sitting at this table where each of you are gathered today, witnesses, one of whom is from a company called WL Gore their ability to reduce mercury emissions developed in their own laboratories, from powerplants, by as much as, they believe, 90 percent. That technology was taken to EPA's facilities in North Carolina.

This is not something we are talking about developing in 5 years or 10 years or 15 years. This is technology that they believe is ready to be implemented today. You had the opportunity to test it in a more real-world setting. I was wondering if you could just share with us what you understand to have been the results of that test.

Administrator LEAVITT. The technology you refer to is referred to as ACI, or activated carbon injection. It is precisely the technology that we utilize for reducing mercury emissions from municipal waste facilities and medical waste by some 90 percent. There is great optimism on our part that it can be applied to large-scale coal-fired powerplants in the future and that it will allow us, in fact we are depending on it, based on our proposal, to reduce it substantially in the future.

The issue is, when will it be ready? I brought to the EPA the best engineers, the best scientists I could find within EPA and said to them, tell me how soon it can be available. They informed me, and you made allusion to this, that it has not yet been used on a full-scale coal-fired powerplant. It has been tested for short periods of time and it has shown promising results. This is a technology that cannot be simply purchased and put on every powerplant. It is going to take some time to implement it.

The rule that I will be finalizing this year, I can assure you will accelerate the implementation of that technology as rapidly as we can, because our interest is in reducing mercury. My job is to find out what is real and to put it into rule, not to simply take what someone says they think they might do and ask the American people to invest tens of billions of dollars. We will implement it. We will do it as rapidly as it can be done, because one thing there is no disagreement on, that is that mercury is a dangerous neurotoxin, it needs to be reduced, and we need to do it as rapidly as we can, and that coal-fired powerplants are the largest emitter of it. For the first time in our Nation's history, we are going to do just that.

Senator CARPER. Thank you.

Senator INHOFE. The time has expired.

Senator Clinton?

Senator CLINTON. Thank you, Mr. Chairman. I apologize for my voice.

Administrator Leavitt, I think that the problem is that there is so much information available about mercury that is in the public

record. I would ask consent to include an article from the National Journal dated February 14 entitled, "The Next Arsenic."

Senator INHOFE. Without objection.

[The referenced document follows:]

[From the National Journal, February 14, 2004]

THE NEXT ARSENIC

(By Margaret Kriz)

In December, Mike Leavitt, the newly sworn-in Administrator of the Environmental Protection Agency, signed a controversial proposal to begin controlling the mercury that goes up the smokestacks of the nation's more than 1,100 coal-fired power plants. To delay the economic impact of the proposed restrictions, Leavitt suggested scrapping a Clinton Administration effort that was on track to cut emissions beginning in 2007. Instead, Leavitt's plan would give industry until 2010 to begin complying and until 2018 to make major reductions.

The mercury proposal is being compared to the Bush Administration's failed 2001 attempt to relax the arsenic-in-drinking-water standards that had been proposed at the end of the Clinton era. That Bush Administration effort was shouted down by furious environmentalists. Now, with the public given 1 year to comment on the proposed mercury rules, Leavitt's plan to postpone actually restricting smokestack emissions of mercury has sparked a similar outcry.

Mercury, which can cause severe neurological damage, poses its biggest threat to fetuses and young children. Airborne mercury from coal-fired power plants poses a danger to human health chiefly when it falls into waterways. Once in the water, mercury reacts with bacteria to form methyl mercury, which contaminates fish. People ingest the mercury by eating the poisoned fish. EPA data released this month indicate that 16 percent of U.S. women of childbearing age (16 to 49) have enough mercury in their bloodstream to endanger a fetus. That percentage is double the government's previous estimate.

Hoping to turn the proposed lag time for the mercury rules into such a political liability that the Bush Administration will back down—as it did on arsenic—the Sierra Club timed a blitz of newspaper and television attack ads in 11 major media markets to coincide with President Bush's State of the Union address on January 20. The president made no mention of his environmental policies in his speech.

The Democratic presidential candidates are also taking aim at the Bush Administration's approach to mercury regulation, accusing the EPA of siding with the coal and electricity industries at the expense of human health. Front-running Sen. John Kerry of Massachusetts points out that mercury contamination has become so widespread that 45 States advise pregnant women and small children not to eat fish from rivers or lakes.

Meanwhile, frustrated by years of Federal inaction, Connecticut, Massachusetts, and New Hampshire have adopted tough limits on mercury emissions from power plants within their borders, And New Jersey is expected to put the final touches on rules requiring its 10 coal-fired plants to cut mercury emissions by 90 percent by 2007. Pennsylvania Gov. Ed Rendell recently called for a State fee on industry emissions of mercury. And on February 4, a group of Midwestern State legislators announced a new regional effort to reduce mercury pollution front power plants in Illinois, Iowa, Michigan, Minnesota, Ohio, and Wisconsin. The lawmakers, members of the National Caucus of Environmental Legislators, said they were launching the initiative "because of the failure of the Federal Government to take effective action against the toxin."

Moderate Republicans in Congress are also sounding the alarm. In January, 10 GOP lawmakers wrote Bush, charging that the EPA proposal fails to protect communities front the mercury emitted by nearby power plants. And 11 New England Senators, including Republicans, Democrats, and Independent James Jeffords of Vermont, have written the EPA to demand stricter, more-immediate controls.

In recent months, the White House has worked to improve its environmental image. Bush's appointment of Leavitt, a popular Utah Governor, to head the embattled EPA was part of that effort. But the mercury proposal is growing into a public-relations problem for Bush.

"There is a case to be made that mercury is the new arsenic," said David Mcintosh, a lawyer with the Natural Resources Defense Council. In 2001, public outrage—fanned by environmental groups—over the EPA's effort to scale back pro-

posed controls on arsenic severely damaged Bush's public standing on environmental issues.

The arsenic saga began in March 2001, when then-EPA Administrator Christie Whitman shelved a Clinton Administration proposal to impose strict new limits on arsenic in drinking water. She recommended controls that were more stringent than the existing arsenic standards but not as tough as the Clinton plan. The backlash among environmentalists was immediate and furious. By October, the EPA had retreated and accepted the Clinton-era controls.

Now, some political and environmental analysts are predicting that the mercury dispute could play a role in this fall's Presidential contest, particularly in battleground States with serious contamination problems. The voters most directly affected by mercury regulation are women of childbearing age, noted John Stanton, who was the EPA's legislative counsel under President Clinton and now is vice president of the National Environmental Trust. "That's not a small demographic during the election, particularly if you're White House senior advisor Karl Rove and you're looking for a way to close the gender gap."

HUMAN COSTS

The grave human consequences of mercury poisoning first came to light in the 1950's, when fishing families in Minamata, Japan, began suffering a debilitating nervous condition from eating fish contaminated by mercury that a chemical factory had dumped into Minamata Bay. Thousands of people were sickened; hundreds died.

Best known as the silvery liquid in old-fashioned glass thermometers, mercury is widely used in the production of medicines and chemicals, such as chlorine and caustic soda. Before its environmental hazards were well understood and government restrictions were imposed, the metal was also used in making paint and batteries.

Concerns about mercury date from the 19th century, when many hat makers became crazed, much like the Mad Hatter in Alice's Adventures in Wonderland, after long using a mercuric compound to shape wool felt hats.

The Food and Drug Administration warns pregnant women, women of childbearing age, and children to limit their Consumption of fish to 12 ounces per week and to avoid eating any shark, swordfish, king mackerel, or tilefish. (According to a recent EPA analysis, 630,000 of the 4 million babies expected to be born in the United States this year could have mercury blood levels at or above the agency's safety limit.)

Fetuses and small children may not be the only ones in this country suffering harm to their health from mercury-contaminated fish. In a 2001 study published by the National Institutes of Health, San Francisco physician Jane M. Hightower found that 82 of 89 patients who ate a lot of fish had high levels of mercury in their blood. Some had symptoms of mercury poisoning, such as hair loss and memory problems. Hightower's study found that patients who reduced the fish in their diet lowered their mercury levels.

The FDA is revising its mercury advisory to warn that some types of fish, particularly canned albacore tuna, tend to be dangerously contaminated with mercury. The agency's Food Advisory Committee argues that even the proposed new advisory would not provide consumers enough information about mercury contamination in raw tuna and in other types of canned tuna.

Over the years, concern about mercury's effects on human health caused Federal regulators to restrict all major industrial sources of mercury pollution—except far coal-fired power plants. That exception is huge; the power plants emit 48 tons of mercury a year, making them the chief artificial source of mercury pollution.

Environmental advocates and health care groups charge that the Federal Government has avoided clamping down on mercury emissions from plants because of the political clout of the $250 billion electric industry. During the 2000 campaign cycle, the electric power industry donated $19 million to congressional and Presidential campaigns, according to the Center for Responsive Politics. Two-thirds of that amount went to Republicans.

The proposal that EPA Administrator Leavitt unveiled in December represents the first Federal effort to limit mercury emissions from coal-fired power plants, which produce half of the nation's electricity. The proposal calls for creation of a mercury "cap-and-trade" program, which would allow electric companies to buy and sell pollution "credits." Rather than mandate that every power plant cut mercury emissions to a certain level, the swapping program would give credits to plants that cut mercury emissions to less than a prescribed level; those plants could then sell the credits to companies willing to pay to avoid making reductions of their own.

The EPA regulations would give the electric-power industry until 2018 to cut its total annual mercury emissions to 15 tons—a 69 percent reduction. Time industry would have to meet an interim limit of 34 tons—a 29 percent reduction—by 2010. Agency officials say that the industry would automatically meet the 34-ton target if power companies installed pollution-control equipment that would be needed to comply with the Bush Administration's proposed limits on emissions of sulfur dioxide and nitrogen oxides.

The EPA's critics point out that the emissions-trading plan would allow the worst polluters to buy credits rather than reduce their mercury discharges. And the rule potentially could worsen "hot spots," geographical areas with dangerously high concentrations of mercury in their waterways. Opponents call the Administration's approach inadequate and note that the EPA's previous analyses had indicated that the power industry could meet. much stricter standards with technology that is already available. And both environmentalists and industry lobbyists agree that the agency's plans to apply a never-before-used part of the Clean Air Act to establish the emissions-trading program is likely to trigger years of legal challenges.

SAFEGUARDING THE FOOD CHAIN

The battle over the Environmental Protection Agency's approach to regulating the mercury emitted by coal-fired power plants is awash in competing scientific claims over just how much the Federal Government should do to safeguard the nation's food chain from mercury pollution.

Critics of the EPA's proposal cite a recent Florida study indicating that substantial reductions in the amount of mercury pumped into the State's air resulted in dramatic improvements in the environment. That study began in 1989, when Florida State scientists discovered alarmingly high levels of mercury in wide-mouth bass in the Everglades. Further studies proved that the fish were being contaminated by mercury falling into the waterways from nearby incinerators. Worried State officials cracked down on the incinerators. By late 2003, the State reported that mercury levels in its fish had plunged by as much as 75 percent.

"It's remarkable, It's much faster than we would have thought," said Tom Atkeson, coordinator of Florida's mercury-control program.

The Florida study is widely touted as proof that curbing local sources of air pollution can lower the concentrations of mercury in flab caught nearby. Opponents of the EPA's proposal say the lesson to be learned from Florida is that Federal regulators should impose strict mercury controls on every coal-fired power plant—the nation's leading source of mercury pollution—and should abandon their proposal to allow power companies to trade mercury-emission credits on a nationwide basis.

But Atkeson cautions against reading too much into the Florida results. He said that even if power-plant emissions are lowered, not all regions of the country would see benefits as quickly as Florida did from reducing the pollution from medical and trash incinerators. The incinerators emit a type of mercury that is likely to fall nearby. By contrast, the mercury emitted by electric power plants varies, depending on the type of coal a plant burns and the plant's design.

According to the EPA, of the 48 tons of mercury belched into the air by power plants each year, only 20 tons falls nearby.

Industry officials who support the EPA proposal cite a recent report indicating that most of the mercury that falls to the ground in the United States comes from abroad. According to the Electric Power Research Institute, an industry-funded research center, the vast majority of the mercury that drops west of the Mississippi River comes from foreign sources, such as pollution in Asia, or from natural causes, such as volcanic eruptions. All sides agree, however, that Eastern States get most of their airborne mercury pollution from U.S. sources.

Another EPRI report suggests that slashing mercury emissions from U.S. power plants would do little to benefit Americans' health. Leonard Levin, an air-pollution specialist at the institute, stressed that locally caught freshwater fish make up only a small part of the average American's diet. And, he said, the vast majority of the fish eaten by Americans comes from oceans or foreign waters.

"Even if freshwater fish responded to domestic changes in mercury emissions, fish in the oceans would respond in a much less detectable way," he said. "They would respond only because a change in a U.S. source—like utilities—represented a change in the global pool of mercury," he said. "But it's a much smaller fraction."

Therefore, Levin argues, it would be unwise to impose strict and immediate mercury controls on U.S. power plants: "if you take a big [regulatory] step and there's no significant protection of public health that results from it, then it probably wasn't the right step."

However, foes of the EPA proposal say industry officials and the Bush Administration are basing their arguments on cost-benefit analyses that minimize the value of improving the health of the nation's environment and populace. They argue that lowering power-plant emissions would significantly benefit not only fetuses and children but also American waterways. "Fish are the ultimate indicator of the health of the land," argued Chris Wood of Trout Unlimited. "Everything eventually finds its way into the river. And when you have warnings that say you can't eat fish because of the high levels of toxins, that's a problem we should do something about."

David Evers, executive director of the Biodiversity Research Institute in Maine, noted that some preliminary studies have linked mercury poisoning to declining populations of loons and other seabirds. He sees mercury contamination as a State, national, arid international problem.

"We need to deal with the global problem," he said, "But before we do that, we need to clean up our own backyard. We can't just point fingers abroad."—M.K.

Bush Administration officials are fighting back. They insist that their 2018 goal for cutting mercury emissions by 69 percent is appropriate because, they say, the most advanced means of controlling the pollutant won't be available till then. Leavitt argues that the Bush Administration deserves credit for proposing the first-ever controls on mercury emissions from power plants. The Clinton Administration was sued twice by environmental activists before moving forward with mercury controls to comply with a consent decree. Even then, President Clinton didn't formally order the EPA to regulate mercury until days before he left the White House.

"Frankly, previous Administrations have put this decision off for a long time," Leavitt told National Journal. "We made the decision that we were not going to walk away from it."

RADICAL DETOUR

The EPA's approach to regulating mercury is based on Bush's 2002 legislative initiative to rewrite the Clean Air Act. Dubbed "Clear Skies" by the White House, that revision would set up cap-and-trade programs for emissions of mercury and nitrogen oxides, and lower the caps on the existing trading program for sulfur dioxide. The Clean Air Act's 1990 amendments, pushed through Congress by President George H.W. Bush, created an emissions-trading program that has curbed acid rain by targeting sulfur dioxide emissions. But the current White House would use the expansion of emissions-trading as justification for eliminating several parts of the Clean Air Act that many environmentalists see as essential.

This Administration's effort to rewrite the landmark act hasn't gotten far. Congressional Democrats and GOP moderates want the emissions trading plan to include carbon dioxide, which is widely linked to global warming. But Bush has steadfastly refused to regulate carbon dioxide emissions. The only progress made on the bill so far came in June 2002, when the Senate Environment and Public Works Committee approved a version more palatable to environmentalists. Republicans killed that measure on the Senate floor. Now GOP leaders concede that they don't have the votes to get Bush's original package through the Republican-controlled Senate.

While the White House air-pollution bill languished, the EPA was under two rigid legal mandates to regulate airborne mercury emissions. First, Clinton's December 2000 order directed the agency to develop mercury controls in keeping with Clean Air Act provisions governing hazardous pollutants. That part of the law requires emission limits to be based on the most advanced means available, otherwise known as "maximum achievable control technology," or MACT.

Second, the EPA was under pressure from a 1994 legal settlement with the Natural Resources Defense Council, an environmental group that sued the agency for failing to regulate mercury despite its proven dangers. That accord required the EPA to propose a MACT standard for mercury by December 2003 and to take legal action on the rule a year later. Because the Clean Air Act gives companies 3 years to comply with any new pollution standard, the consent agreement appeared to mean that power plants would have to begin reducing mercury emissions by December 2007. That's 3 years earlier than the Bush Administration proposal's deadline.

As their regulators moved toward crafting the first mercury-emissions limits, Administration officials hinted that they were considering tough controls. In December 2001, Jeffrey Holmstead, who heads the EPA's air-pollution office, reported that agency research indicated the technology was available to enable coal-fired plants to cut mercury emissions by an average of 90 percent by 2007. He released the findings at a meeting with electric-company CEOs sponsored by the Edison Electric Institute, an industry trade group. Holmstead noted that some facilities would have difficulty achieving such dramatic reductions, because of their design and the type

of coal burned. Details of Holmstead's presentation were obtained by The National Environmental Trust under a Freedom of Information Act request. (In a recent interview, Holmstead said his 2001 conclusions were based on numbers "that we sort of pulled out of thin air," adding that the presentation was designed to persuade industry officials to back the president's proposed overhaul of the Clean Air Act.)

Others in the Bush Administration had also signaled that the EPA was on the verge of adopting a stringent mercury standard. Energy Secretary Spencer Abraham, in an August 2003 speech at a department lab, said the EPA would require "as much as 90 percent mercury control" by December 2007.

In the end, however, the EPA took a radical detour. The proposal Leavitt unveiled would rescind Clinton's 2000 order requiring the agency to regulate mercury under strict MACT provisions. The EPA proposes instead to create a cap-and-trade program under a totally different, untested part of the Clean Air Act.

The EPA's plan would allow power plants not only to buy and sell mercury credits but also to "bank" emission-control credits earned under the first phase of the program for use in phase two, which would begin in 2018. As a result, according to one EPA analysis, the industry would probably not meet the agency's 15-ton goal for 2018.

In asking for public comment, the EPA sought reaction to two alternatives. One would require every power plant to cut its mercury emissions by 29 percent by the end of 2007, and the other would set up a mercury emissions-trading program based on MACT standards. The EPA made clear that it doesn't like either alternative.

Because the Clean Air Act does not explicitly authorize the EPA to set up a trading program for mercury, regulators have had to do some fancy legal footwork to justify their proposal. Agency officials have asserted that they have broad authority to create an emissions-trading scheme under a flexible provision normally used to control new sources of air pollutants that are not extremely dangerous.

The Bush Administration's unique interpretation of the law immediately came under attack. "EPA developed a proposal to complement its legislative agenda, not to meet its legal mandate," argued Felice Stadler of the National Wildlife Federation. Rep. John Dingell, D-Mich., a sponsor of the 1990 Clean Air Act amendments, warned the EPA not to stray far from traditional interpretations of those amendments. "Abrupt policy shifts that appear after more than 13 years of agency effort," Dingell wrote to Leavitt, "do little to improve the public's confidence in EPA's ultimate decisionmaking apparatus."

The Edison Electric Institute and other traditional industry groups have cautiously praised the Bush Administration's mercury proposal. But some of the most-scathing criticism has come from within the industry. Clean Energy Group, a coalition of electric companies dedicated to reducing their industry's pollution, predicted that the EPA's proposal is destined to become entangled in protracted legal battles: "The number of legal questions the proposals raise makes them look more like a law school exam question (with a premium on the number of legal booby traps that the student can identify) than proposed regulations."

TRUSTING MARKET FORCES

Agency officials say that the EPA's mercury cap-and-trade program was conceived late last summer, when Holmstead and his chief counsel, Bill Wehrum, were debating how to regulate mercury in a way consistent with Bush's effort to rewrite the Clean Air Act to rely more on market forces to reduce pollution. "I had my statute book out, and Bill had his statute book out, and we started talking about other parts of the Clean Air Act that could allow us to create this sort of cap-and-trade system," Holmstead recalled in an interview, "Bill remembered that there was another part of the law that gives ins authority to regulate emissions from existing sources." And that comment, Holmstead says, resulted in the agency's radical new approach to regulating mercury.

Critics have drawn attention to the fact, first reported in the Washington Post, that parts of the EPA's mercury proposal read word-for-word like the recommendations sent to the agency by the Washington law firm of Latham & Watkins, which represents several energy companies. Holmstead and Wehrum worked for the firm before joining the EPA. Holmstead dismisses the lifted language as merely an "interagency mix-up" that happened as the regulatory language bounced around inside the Administration.

EPA critics also have serious substantive problems with the proposal—particularly with the cap-and-trade program, which they worry would create mercury hot spots around plants that buy credits to avoid installing new pollution control equipment. "There is no guarantee that the coal-fired power plant in your backyard is

ever going to put controls on, if it's more cost-effective for them to keep buying those pollution credits from a different company," noted Michael Bender, executive director of the Mercury Policy Project, a Vermont-based public-interest group. But Holmstead responds that no regional hotspots developed under the cap-and-trade program created by Congress in 1990 to control acid rain. "Based on our experience and our analyses," he said, "we think you will get the greatest emission reductions where you have now the highest levels of mercury."

Despite those assurances, a recent report by the National Academies of Science warned that "ecological hot spots" can "increase the number of persons exposed to pollution." The report, which praised the use of emissions-trading to make pollution control more affordable, suggested that cap-and-trade programs should allow trading only within geographical zones, to ensure that polluters in each region achieve a collective reduction and that a given pollutant doesn't become concentrated in any part of the country.

Other criticism has come from within the EPA. Its advisory panel on protecting children's health criticized the agency's mercury cap-and-trade proposal, arguing that the plan "does not sufficiently protect our nation's children" from neurological problems and learning disabilities caused by mercury poisoning. The panel, which consists of 27 experts from State health agencies, industry, health advocacy groups, and universities, specifically charged that the proposed emissions-trading plan might create mercury hot spots.

Agency officials say they chose the cap-and-trade approach because they wanted to avoid requiring all power plants to control their mercury emissions by the 2007 deadline that would have kicked in under the MACT provisions. Leavitt argues that the 2007 deadline would have been impossible to meet: "On a best-case scenario, it became evident to me that you can't deploy this technology on a 2007 or 2008 timeline and expect to get large-scale reductions immediately."

If the EPA had proceeded with the 2007 deadline, Leavitt said, some power plants would have met the new pollution standards by switching from coal to natural gas. According to Leavitt, that would have caused natural gas prices to skyrocket. "You can adopt any standard you will, but if the technology is not yet deployable, you're dealing with a very practical limit" on what can be achieved, he said. "And what will occur at that point is that people will begin to do fuel-switching."

EPA critics counter that the Bush Administration is ignoring the advances in mercury-control technologies. Jeffords's office found that at least five U.S. companies are developing technologies that can reduce mercury emissions by 60 to 90 percent: Those technologies are ready or will be within 2 years, according to that survey. Leavitt said that EPA engineers disagree with that assessment,

Many East Coast States and some Midwestern ones are considering mercury-emissions standards far tougher than those proposed by the EPA. "No Governor in Connecticut, New Hampshire, Maine, New Jersey, or Massachusetts—which are all adopting stricter controls—is saying that they care so deeply about mercury and public health that they're going to kill off their economies," said Ken Colburn, executive director of Northeast States for Coordinated Air Use Management, an association of State air-quality agencies. "What the Governors are saying is, "We've seen that the technologies can be developed."

Jon Heinrich, a policy analyst with Wisconsin's air-quality program, said, "We're pretty concerned that what EPA has come forward with is not a national rule that's going to help Wisconsin's mercury-contamination problem in the near future."

But Quin Shea at the Edison Electric Institute said that many other States oppose tough mew mercury controls. "I think that for every State like a Connecticut or a New Jersey, I could find two or three States that would disagree," he said.

Nonetheless, S. William Becker, executive director of both the State and Territorial Air-Pollution Program Administrators and the Association of Local Air Pollution Control Officials, said the EPA's proposal will spur States and cities to get more aggressive: "What I can predict with almost absolute certainty is that, if this EPA proposal is promulgated close to its original language, you will see an onslaught of actions at the State and local levels to replace or strengthen EPA's program. These programs will vary widely in scope and magnitude, and it will drive the industry limits."

Leavitt asserts that his agency's mercury proposal is taking a beating because of election-year politics. "Others have the luxury of dealing with mercury in a political way," he said. "I have an obligation to deal with it in a factual way."

But EPA critics argue that the controversy has political legs because mercury threatens the health of fetuses and small children in several States that will be key in November's election. According to the advocacy group Environmental Defense, the States with the most-dangerous mercury hot spots are (in descending order of sever-

ity): Michigan, Maryland, Florida, Illinois, South Carolina, North Carolina, Pennsylvania, Texas, and Tennessee.

Colburn of the Northeastern States' air-quality association argues that the mercury debate is catching public attention because it focuses on the age-old conflict between short-term economic gain and long-term public health, "Every year those plants run without controls is another year of better cash-flow for the utilities," he said. "And it's another year of mercury pollution accumulating in our waterways and poisoning our children."

Senator CLINTON. There is also a lot of information about the rather tortuous path that EPA has trod in trying to get to the point where you are on the verge of this rule. It is very difficult in this kind of setting get questions answered, because they are complex questions and we do not have a lot of time. So on this particular issue, I would like to submit questions that go through in detail, because I think we need to clarify this. There is just such confusion. If we are going to start down a path that would do less than many of us think is possible, that even some of the EPA's own officials at one time thought was possible.

I think we need to be very clear about what we are trying to achieve. I am still of the opinion that we not only could do much more for the environment by providing incentives of whatever kind to these very recalcitrant utilities, because there is a group of utilities that have already done the work; that have already put in the equipment. We are in a sense penalizing them because they went ahead and made the investments that were called on. The clean energy group within the utility industry is equally distressed because this looks like we are kind of changing the rules on them.

So I still think we should look for some kind of incentives to get this over with and to employ people and to put together the technology. Just very honestly, I do not see that coming from your well-meaning effort that I think is designed to fit it into the Clean Air Act and do what is necessary to try to get something on the table. But it is putting off the problem way too long and has the potential for enormous legal challenges from those recalcitrant stubborn utilities that refuse to join the rest of the world in dealing with this problem. So this could be tied up in courts forever. It will employ a lot of lawyers. It is not going to make the air any cleaner.

So I will submit some very specific questions, but I wanted to get a little parochial for a minute. Because New York has been an industrial State forever and been around forever, we have a lot of problems that we have inherited that are now coming to the forefront. In just one county that I would like to focus on for a minute, Dutchess County, New York, the home county of Franklin and Eleanor Roosevelt. We have as many at 10 sites that have been contaminated by PCEs from manufacturing processes, mostly from the old IBM plants. We have also sites that are contaminated by TCE. We have well water that is polluted. The limited testing that has been done so far shows widespread contamination of this well water.

We also know that where there is PCE contamination there is likely indoor air contamination. We learned that at the Endicott site outside of Binghamton, another IBM site. So I am going to be submitting some very specific questions about PCE and TCE sites.

But today, there is a site called Hopewell Precision in East Fishkill, New York. There have been a number of calls, my Republican colleague Sue Kelly who represents that area, Senator Schu-

mer, others have called for it to be included on the Superfund site. When the list of national priorities came out, it was not on the site, but I would like to ask you to evaluate that again. I would also like you to take a look at the Shenandoah Superfund site and several of the other PCE-contaminated sites. We need some help. What happens is, we ask for help from the EPA; the EPA understandably says, well, go to the State. The State is overwhelmed. They come back and say, we need EPA help, and then we get kind of caught in the middle and we have these very serious hot spots of contamination.

I think is also raises issues about whether the Superfund site list is adequate and whether we cannot afford to put more on, getting back to Senator Boxer's position. So I will also be submitting some very specific issues about these Dutchess County sites, but I would appreciate your taking a look at that and seeing whether there is something more we could do to help these communities.

Finally, in your response on clean water, you made the reference that we wanted to be reducing demand for water use and that payments for clean water should fall on ratepayers, not taxpayers. What exactly did you mean by that?

Administrator LEAVITT. Senator, the gap on infrastructure is so significant that we as a Nation, in my judgment, will have to wrestle with what the components of a partnership will be. The national government clearly has a role. Taxpayers clearly have a role. The question is, how large is the role, and that is what this committee wrestles with now and wrestles with every year as we go about the task of determining what contribution we will make to the water loan funds.

As a Governor, I wrestled with this issue because they are State revolving loan funds and the States make contributions. So the question is, does the water company who has the control of the system, and the local community can define how they want to do it, or do we make the decision at the national level and fund it through a national mechanism. That is the policy question I am raising, and I think it is not a new one.

Senator INHOFE. Thank you, Senator Clinton.

We are going to have a last round, since there are only four of us here, but we will confine it to the four of us, and that is for five more minutes.

First of all, I know there is a difference of philosophy and of opinion, but we keep hearing polluter pays and polluter is not paying, and we need to have a polluters tax. I just want to restate it again, and I am sure I will again and again and again, this is not a polluters tax. This is a tax on business. Since we have had Superfund, of the potentially responsible parties, the PRPs, 70 percent of the cleanups have been paid by the responsible parties. In 2003, it was 87 percent.

I just would admonish you every chance you get, Mr. Administrator, to make it very clear that this is not a tax on polluters. It is a tax on businesses who are already having very serious problems.

In reviewing the portions of the spill prevention and control and countermeasures rule that is being promulgated, there are three specific constituencies that I am concerned about in Oklahoma.

One is the air transport; one is the nation's farmers; and then last, the small oil producers. When I say "small oil producers," I am talking about the marginal operators. I know that there has been an arrangement reached with the API and some settlement talks, but I would like for all of us to keep in mind some of the problems of smaller producers are not the same problems that you have with the very large producers.

Now, I have often said, and the other two categories, the air transport and the farmers, they should not be a part of this anyway. In fact, I have a letter here that I sent to Administrator Whitman 2 years ago last month, where I talked about the air transport. It is transport, not storage, and that there is a serious problem treating it as storage. Should a spill occur, trucks would necessarily have to be close together and it could have devastating results.

Having said that, what can you tell us about the relief the EPA would be providing for these two constituencies, the air transport and the farmers?

Administrator LEAVITT. Senator, I want to understand more clearly your question, but let me respond and see if I can get close to it, and you can redirect me.

The interstate air quality rule is designed as a cap and trade system which essentially set a standard of where we are today and where we want to get.

Senator INHOFE. OK. I am talking about the spill prevention and control and countermeasures proposed rule.

Administrator LEAVITT. OK. I thought when you said interstate, I misread you.

Senator INHOFE. No, no.

Administrator LEAVITT. Why don't we ask Marianne Horinko, who I think might be able to respond specifically to your inquiry.

Senator INHOFE. Let me just go ahead and take that for the record. That would be fine. I am concerned about it because I have written letters for over a 2-year period, believing that these should not be a part of that rule anyway, and before the train gets too far down the road I want to address that.

The Spill Prevention, Control and Countermeasure (SPCC) regulation has been in effect since 1974, and was amended in 2002. EPA extended the compliance dates in the 2002 rule by 18 months, during which time the Agency has been engaged in settlement discussions to resolve litigation over the rule, and to analyze a number of issues raised by other members of the regulating community.

EPA has an active dialog and exchange of information with representatives of the air transport and agricultural sectors, including a meeting with aviation sector representatives on March 23, 2004. Similarly we have received and are considering correspondence within the past week from representatives of agricultural sector.

We are accessing specific means to address the issues raised by these groups. EPA has organized a major SPCC stakeholder meeting for March 31, 2004 to discuss its strategy and plans for implementation of the revised SPCC rule. A significant aspect of the meeting will be communication of the terms of settlement for the issues involved in the litigation, and EPA will also communicate

clearly on the many other national issues of concern with the SPCC rule.

Final decisions are being made now in preparation for the announcements EPA will make at this meeting; the complexity of the issues has required much coordination and we are not yet ready to announce decisions relative to the air transport and agricultural sectors. EPA is evaluating options to address the concerns these groups have raised, and will communicate its decisions during the March 31 meeting.

The EPA is deliberating on another issue of great importance to the small oil producers, their inclusion in the stormwater phase two regulation. In December 2002, the EPA proposed to extend the deadline for small oil and gas construction activity to comply with stormwater phase two by 2 years, to review the effect of the rule and what it would have on these sites. What progress has been made in reviewing the rule and the effect it might have on small producers?

Of course, we have taken the position that they should not be covered under this in the first place because it specifically talks about construction, and they are not in the construction business, unless you say the construction of a well when it starts. Any thoughts about this or if it is something that you would like to respond to in the record. That would be fine.

Administrator LEAVITT. We would be happy to respond to the record, or I could have Ben Grumbles, who is the Acting Assistant Administrator for the Office of Water.

An extension was proposed on December 2, 2002 and became effective on March 10, 2003. The extension runs for 2 years (March 2005). EPA is undertaking an economic analysis, to be completed in Fall 2004, to help determine the effects of the existing storm water regulations for small oil and gas construction activities. The analysis will help determine how best to proceed.

Senator INHOFE. The reason I keep talking about the small producers is not just that we have so many in my State of Oklahoma, but when you look at the energy shortage and the problems we are having in America today, the small marginal producers, one statement that has never been challenged is that if we had all of the marginal wells flowing today that we have plugged in the last 10 years, that it would equal more than we are currently importing from Saudi Arabia. So it is a very important thing to me and very important to our State.

Senator Jeffords?

Senator JEFFORDS. Thank you, Mr. Chairman.

I would just like to go to repeating a request here. As you know, Senator Inhofe and I sent a letter to you last week regarding my information requests that are still outstanding. I have shared with you, as well as Senator Inhofe and our staffs, a compilation of the requests outstanding. I ask unanimous consent that I have that delivered to you and make it a part of the record.

Administrator Leavitt, you indicated to me earlier this week that your staff was reviewing our letter and that they would advise you on the appropriate responses. I would like a commitment from you, give me kind of a date when I could get some response for this long-outstanding request.

Administrator LEAVITT. That is a response I am happy to give you when I have it. I will provide it as soon as we have concluded it. We are in consultation with the chairman and the chairman's staff. We recognize the prerogative of a chair to ask for those documents. We want to do all we can to be cooperative, as I indicated earlier to Senator Wyden. Our purpose is to share information when it is needed and when it is appropriate.

Senator JEFFORDS. I appreciate that.

DC lead, as I begin my next question related to lead contamination in Washington, DC's water supply, I would offer my colleagues and the Administrator a drink. Here, take some of this water. Here.

[Laughter.]

Senator INHOFE. It is actually recycled urine.

[Laughter.]

Senator JEFFORDS. And I wish you your fill from our taps here in the Dirksen Building, supplied by the Washington aqueduct, the water source for the District.

Administrator LEAVITT. I hope you let it run for 5 minutes.

[Laughter.]

Senator JEFFORDS. We did.

Then I would remind each of my colleagues that we have a choice to drink or not to drink this single glass of water before us today. This is not a situation which the people of the District of Columbia find themselves in. They do not have that option. I happen to one of them, too, so that applies to me as well.

Many people who live here just do not have a practical or economically feasible alternative to tap water for cooking, bathing their children, mixing baby formula or drinking. For these people and for many others around the Nation, the decisions that are made on all levels of government regarding water supply protections present immediate health issues. I urge my colleagues, the Administrator and everyone involved in this issue to keep this in mind as we move forward.

Administrator Leavitt, here in Washington the EPA is particularly responsible for the safety of the city's drinking water because the District does not have primacy under the Safe Drinking Water Act. I am extremely concerned with some of the reported actions taken by WASA. However, I am equally concerned whether EPA has acted appropriately in executing its responsibilities under the Safe Drinking Water Act.

This committee will be holding a hearing on the Washington, DC water lead contamination issue on April 7. I have a long list of questions for the record that I would like the agency to answer before that hearing. However, there is one question that needs to be addressed today.

Administrator Leavitt, can you describe what you see as the major failure of EPA in dealing with these lead contamination in the District of Columbia metropolitan area, and are you concerned about similar lead problems in other regions of the country?

Administrator LEAVITT. Senator, much will be learned, I believe, in subsequent months as we look back on this period. It is clear that the Environmental Protection Agency does have a heightened responsibility in this case. We have made clear to WASA, the agen-

cy that manages this on behalf of Washington, DC and to Washington DC that there are certain things that we expect of them. We intend that they are done and done in a timely way. If they are not, we will be stepping up the involvement of the national government, but we have every assurance they have been operating cooperatively. Our intention is to assure that when you and I and every other member of the Washington, DC public drink water, that it is safe.

Senator JEFFORDS. To get on to global warming at this point, the world scientific consensus, including the American Geophysical Union and the National Academy of Sciences, could not be much clearer. Manmade emissions are contributing to global warming and climate change. This, in turn, is likely to have a serious negative environmental, economic and national security impact upon the United States.

Why shouldn't greenhouse gases be regulated under the Clean Air Act because of the harm they already appear to be causing and will cause in the future?

Administrator LEAVITT. I see the red light is on. I will simply say, Mr. Chairman, that if the EPA is called upon by Congress to regulate them, we would do our best, but at this point they are not regulated pollutants and therefore we are concentrating on other things.

Senator JEFFORDS. So it is up to us.

Senator INHOFE. I would like to respond, but if I do that, then I know there will be other responses. The science is certainly not settled.

There is some confusion. As I said air transport, understandably you might think we are talking about air that does not recognize State lines. I was talking about the air transport or the airline transport industry being under this particular rule, and the problem, the danger that comes from that.

Administrator LEAVITT. We will do our best to respond in that light.

Senator INHOFE. That would be fine. We will get to that, then.

Senator Voinovich?

Senator VOINOVICH. I wish that Senator Carper was still here. The reason why some of us have not been able to support his legislation is according to EIA, the Energy Information Agency, that legislation that deals with the question that Senator Jeffords raised, would cost six times more than Clear Skies or $150 billion because it basically caps carbon. The problem we have here, and it is something that you are going to have to reconcile, is that we have been through environmental policies limiting the supply of natural gas and exacerbating the demand for it, so that all of the new energy facilities in my State are natural gas. By the way, they are not going to produce any energy this year because natural gas is out of sight. We are losing jobs overseas because of high natural gas costs.

A part of it is because we have had an unrealistic environmental policy. I think it is up to you to stand up and point these things out. I certainly am going to point them out to the people in the city of Cleveland and in Akron and Columbus and Cincinnati, the urban areas, that the LIEHEE program is just being inundated be-

cause of the fact of these high natural gas costs. Somewhere along the line, we have to balance this up with our economy and the impact it is having on the least of our brothers and sisters. For some reason, we can't get it done here. Maybe you can provide some leadership in this area.

The other thing is, we talk about the locals and paying for it. We have 264-some townships that have been asked to comply with the stormwater management regulations, phase two. They cannot comply with them. Akron cannot comply with them in 15 years. Now, we went back, and I think Senator Inhofe was here and Senator Jeffords was here, we amended the Safe Drinking Water Act several years ago. In fact, I was over at the White House when President Clinton signed that legislation. We eliminated the requirement that every 3 years you had to take on 25 new contaminants when they didn't exist. We said that if the old-fashioned technology gets the job done, that you can go with that, and not have to go to the maximum available technology because these communities of less than 10,000 could not afford them.

I think it is about time that you started looking at some of this stuff. What are you requiring these communities to do? What is the cost-benefit? And for goodness sakes, if you cannot come up with the money, and I know what they are telling you. Let them take care of, the rates. Well, these people cannot take care of it; 100 percent increase in rates. These communities are in bad shape today. And I think it is about time that the agency looked at this thing realistically and made some recommendations, and said, you know, we can't come up with the dough because we have a financial problem. These folks at the local level cannot come up with the money.

The fact of the matter is that in this country when we really did something about clean water, it was back in 1971 when we went forward with the 75/25 program, where the feds came up with 75 percent of the money and the locals came up with 25 percent. That went off in the middle of the 1980's.

There are just a lot of things that need to be reconciled around here. We are in a global marketplace today. I have jobs moving overseas. I have companies closing down because of the fact that we just have not figured out harmonizing our environmental and our energy and economic needs in this country. Somebody has to stand up and start talking about it, because I am telling you it is killing my State today.

If you want to respond, you can.

[Laughter.]

Administrator LEAVITT. Amen.

[Laughter.]

Administrator LEAVITT. Senator, 126 days ago I was the Governor of a State that had similar number of small communities struggling to meet these standards. I find myself now in a new role. I am the Administrator of the Environmental Protection Agency. I have a body of law called the Clean Water Act passed by the Congress, given to the Administrator of the Environmental Protection Agency to administer. I have an obligation to achieve compliance. That is my goal. I have an obligation to enforce the law. That is my responsibility.

I will tell you that the President of the United States gave me a very clear charge: purify the water, but do it in a way that will allow us to remain competitive as a Nation. I share your concern. I share that goal. There is no question that we have a national standard. We have to have neighborhood solutions. That is the tenet of my personal philosophy.

Somewhere in between all of the hard edges of the Clean Water Act, the hard responsibility of enforcing the law, the economic needs of small communities and the need for economic competitiveness, there is a productive center. Our objective is to find it.

Senator VOINOVICH. I think that because of the position you are in, you should be able to provide us some leadership in this area, even if it is controversial. You should be able to say the emperor has no clothes. OK?

Administrator LEAVITT. I have seen the emperor, he has no clothes.

Senator INHOFE. Thank you, Senator Voinovich.

Senator Clinton?

Senator CLINTON. Mr. Chairman, this has turned into quite an ending here. I have the deepest respect for my chairman and for the very able Senator from Ohio. We are in a box. We are in a box of our own making. We are in a box that we don't need to be in, but apparently we would rather stay in the box than get out of it.

I think there is a way to both grow the economy and protect the environment, but it is not going to happen because of the positions that people have found themselves in, and some of the assertions that are made about what our state of knowledge is, what the clear overwhelming evidence of science is, how we could create literally millions of jobs with respect to the environment in places like Ohio and upstate New York that are having lots of economic challenges.

It is discouraging because every year that goes by, we hollow out the commitments of previous generations. You know, back in 1971 it was a Republican president at a time when our tax rates were much higher on both individuals and corporations; when we set down a consensus about how we were going to begin dealing with the environmental problems that are the natural consequence of the way we have built America over the last 200 years.

Now we are in the 21st century. We have slashed tax rates and we have more competition that we have to figure out what to do with, and we are I think turning our back on our responsibility to the future and to those who came before who figured out a way to deal with clean air and clean water, and most of the progress was made under Republican presidents.

So it is very concerning to me. I wanted to just ask a few questions about science because this is where I have a deep disagreement with my friend and chairman. Let me start with a specific question, then maybe get a little more general. In the 2005 budget, EPA acknowledges the importance of the research you are doing on building contamination. This is just one example. And yet we know it zeroes out the relatively small amount of money spent on building contamination. In describing this cut, the EPA budget frankly explains, and I quote, "this cut represents complete elimination of homeland security building decontamination research and the cut will force it to disband the technical and engineering expertise that

will be needed to address known and emerging biological and chemical threats in the future," end quote.

This is just an example of being extraordinarily short-sighted. It also, of course, is of great concern to me because of all of our problems in New York. I think that the research in this area is critical to go on. We have lived through anthrax. We have lived through ricin. We have lived through the contamination of the collapse of the towers.

So I just do not understand how with a relatively small amount of money, the EPA made this decision. Could you explain to me how this was arrived at?

Administrator LEAVITT. Senator, I want to express appreciation for the generosity that the Congress has shown over the last 2 years in funding decontamination research. We have done our best to use those funds wisely. The research continues. Frankly, we have not yet used all of the funds that Congress appropriated. This recommendation was based on that fact. We are going to continue to assess it. If in fact there is a need for more money, the generosity that the Congress has shown in funding we hope will continue and we would come back to ask for additional funds. But it was our belief that we could complete what was necessary based on the existing appropriations or previous appropriations.

Senator CLINTON. Well, we will take a hard look at that.

Finally, I am concerned about the use and misuse of science. In February when the Union of Concerned Scientists issued a report detailing a series of suppression and manipulation of scientific information, that report was accompanied by a statement signed by 60 prominent scientists. They did not work for the energy industry. They were not in the environmental movement. They were scientists. They expressed deep concern about what the Administration was doing. Of course, they highlighted some of the decisions being made in the EPA, particularly about the proposed Clear Skies Act, which they believe, and I agree with them, would be actually a step backward from the Clean Air Act, the mercury rule and some other related issues.

I was struck by a comment from Russell Train, who was the EPA Administrator under Presidents Nixon and Ford, who said, how radically we have moved away from regulation based on independent findings and professional analysis of scientific health and economic data by the responsible agency who regulates these matters. It is driven by the White House and political considerations.

These are really serious allegations and they go hand-in-hand with Senator Wyden's concern about how 12 paragraphs from a document prepared by the law firm that two of the EPA officials were once part of, got into the mercury rule. So I would like to ask you, Administrator Leavitt, what steps will you take to make sure that the American public and the Congress can trust the information coming out of the EPA?

Administrator LEAVITT. Senator, it has been my experience that there are some remarkably able scientists and engineers at the EPA, and that we have partnerships with universities all over the world and all over the country. May I just emphasize that we are making decisions in this Administration at the EPA on the basis of science, peer-reviewed science. It is the first question I have

come to ask: Who has produced this science; has it been peer-reviewed; was it the basis of this decision.

With respect to what you said earlier, may I just say that in the context of any propose rule, information comes from lots of different sources. I took the rule home over the Thanksgiving holiday, at least I took 275 pages of it, to understand the policy of it. I do not know where all of it came from, but I will tell you that I am focused on and finalizing the rules, what is the policy. I want you to know that peer review is a very important standard we are holding all science to at the Environmental Protection Agency.

Senator INHOFE. Thank you, Senator Clinton.

Senator Jeffords has two UCs and then we will adjourn.

Senator JEFFORDS. I ask unanimous consent to place Senator Lieberman's opening statement into the record.

Senator INHOFE. Without objection.

[The referenced document follows:]

STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Thank you, Mr. Chairman, for convening this hearing today. And I join you in welcoming Administrator Leavitt in his first appearance before us as Administrator.

Mr. Chairman, as I said on the Senate floor last week, it is critical that we rise above partisan politics and take the long-term view in meeting the many foreign and domestic challenges during these difficult times for our nation and the world. The conventional wisdom is that this can't be done in an election year, but history says differently. In fact, the proximity of an election has induced exactly the kind of bipartisan leadership that produces progress many in times in our history, most recently with passage of welfare reform in 1996.

We need that kind of bipartisan leadership now in tackling our pressing environmental challenges. We can't wait until after the November elections to clean our air, to purify our water of toxins, or to begin curbing global warming. Our public health, our environment, even our national security are at stake. That is why I am committed to work with you, Administrator Leavitt, in addressing these problems in a bipartisan manner this year—and I appeal to my colleagues from both sides of the aisle to do the same.

The President must take the lead, however—and on the environment he has not, to date. In rolling-back environmental protections and delaying action on key environmental challenges, he has put special interests—and especially the interests of big polluters—before the national interests. Just this weekend, the New York Times ran a front page story detailing the domination of the Bush Administration's air policy by big energy interests, to the detriment of the public's health. Mr. Chairman, I ask unanimous consent that the article to which I referred be placed in the record.

I hope your tenure as EPA Administrator, Mr. Leavitt, will chart a different course. Your public comments on air pollution issues signal that you are prepared to lead in a serious, bipartisan way, and I applaud you. The policies emanating from your agency, however, have not reflected this new approach, however—and that I cannot applaud. It is essential that we match the rhetoric of holding polluters accountable with a new reality in strong environmental protections and enforcement.

Let me cite two specific examples. First, I believe that we have fallen far short in our efforts to limit toxic mercury emissions from power plants. There is hardly a more universally acknowledged toxin than mercury. This heavy metal has proven to cause development problems with children—and one in 12 women of child-bearing age have shown dangerous levels of mercury in their blood. Public health agencies in 43 States have issued formal advisories warning people against eating certain species of fish caught from lakes and streams because of mercury contamination. In my State of Connecticut, every single solitary lake and stream has such a warning.

And despite the EPA's claims to the contrary, we know that greater reductions are both technologically and politically possible. In Connecticut, legislators worked with industry and environmental groups to agree on a consensus proposal that would result in an 85 to 90 percent reduction in mercury emissions from all coal plants. That is now the law in Connecticut.

So you can see why I am frustrated to learn that EPA has retreated from its earlier intent to require strict mercury reductions by 2007 and instead has proposed

a rule that would require no reductions that would not result without the rule until 2018. We can and must do better.

Second, the challenge of global warming. It is now beyond scientific doubt that humans are causing the warming of the Earth. In last week's Commerce Committee hearing, witnesses described the devastating effects on coral reefs, wildlife, and Arctic animals and tribes. And as one witness, scientist Gerry Mahlman, put it, "Our burning of fossil fuels is the indisputably direct cause of the ever-increasing concentrations of carbon dioxide in the atmosphere. Our descendants are likely to judge us harshly for our not yet having begun to address this problem meaningfully."

Yet we continue to do nothing to reduce our ever-increasing greenhouse gas emissions. In particular, the United States' emissions constitute ★ of the world's problem. Just last week, the EPA released preliminary figures revealing that, despite the country's economic downturn, U.S. emissions rose another 7/10 of a percent from 2001 to 2002. Clearly, our current voluntary approach to emissions reductions is inadequate.

To date, the Bush Administration has opposed the modest proposal put forward by Senator McCain and me to tackle this urgent environmental threat. If the Administration is willing to address this problem in a serious, bipartisan way, I am confident that we can work together to take action and send a signal to the nation's investors and innovators to develop the long-term solution to our global warming problem.

Administrator Leavitt, in a speech you recently gave, you observed that no one could see society's appetite for environmental improvement as a fad. You are exactly right in that. No one could view what people think about their health and the world they leave their children and grandchildren as a fad. But we need to do more than observe this fact—we must act on it in a meaningful, bipartisan way. I hope we can work together to do so.

Senator JEFFORDS. I also ask consent to place the March 6 New York Times article entitled, quote, "How Industry Won the Battle of Pollution Control at EPA," end of quote, into the record.

Senator INHOFE. Without objection.

[The referenced document follows:]

[From the New York Times, March 6, 2004]

HOW INDUSTRY WON THE BATTLE OF POLLUTION CONTROL AT EPA

(By Christopher Drew and Richard A. Oppel, Jr.)

Just 6 weeks into the Bush Administration, Haley Barbour, a former Republican party chairman who was a lobbyist for electric power companies, sent a memorandum to Vice President Dick Cheney laying down a challenge.

"The question is whether environmental policy still prevails over energy policy with Bush-Cheney, as it did with Clinton-Gore," Mr. Barbour wrote, and called for measures to show that environmental concerns would no longer "trump good energy policy."

Mr. Barbour's memo was an opening shot in a 2-year fight inside the Bush Administration for dominance between environmental protection and energy production on clean air policy. One camp included officials, like Mr. Cheney, who came from the energy industry. In another were enforcers of environmental policy, led by Christie Whitman, a former Republican Governor of New Jersey.

The battle engaged some of the nation's largest power companies, which were also among the largest donors to President Bush and other Republicans. They were represented by Mr. Barbour and another influential lobbyist, Marc Racicot, who also would later become chairman of the Republican National Committee.

In an Administration that puts a premium on keeping its internal disputes private, this struggle went on well out of the public's view. But interviews and documents trace the decisions in which the Bush Administration changed the nation's approach to environmental controls, ultimately shifting the balance to the side of energy policy. Senior officials at the Environmental Protection Agency, including Mrs. Whitman, became isolated, former aides said, and several resigned.

Thirty years after the first Earth Day, the incoming Administration was still confronting power-plant smokestacks spewing fumes. The policy questions were arcane, involving strategies to control polluting particles. At stake, though, were environmental risks to human health and the nation's ability to produce cheap energy, as well as decisions about how the most polluting industries would be monitored for decades to come.

For operators of some coal-fired plants, the stakes were more tangible. Dozens of plants were facing lawsuits over air pollution brought by the Clinton Administration and several northeastern States—including New Jersey under Mrs. Whitman before she became head of the EPA. The industry, fearing billions of dollars in new costs, set about to undo the suits.

One of the most important decisions was Mr. Bush's reversal of a campaign promise to regulate emissions of carbon dioxide, a gas that many scientists say contributes to global warming. The Administration also has proposed looser standards for emissions of mercury—a highly toxic pollutant—than President Bill Clinton had sought. The most protracted fight concerned the Administration's decision to issue new rules that substantially reduced the requirements for utilities to build pollution controls when modernizing their plants. The final policy shift may ultimately help the coal-plant operators shed the lawsuits.

The struggle within the Administration, in skirmishes between Cabinet officers and volleys of memorandums, showed how the White House has transformed domestic policy through regulatory revision, rather than more contentious congressional debate.

Administration officials say the changes were needed to raise energy production and lift the burden of cumbersome and costly regulations on industry. They said that the approach will continue the trend of declining emissions and reduce some of the most harmful pollutants by about half in the next decade—cuts as deep if not deeper than the old measures would bring.

"It's not about whether air quality will get better," said James L. Connaughton, chairman of the White House Council on Environmental Quality. "It will, and it must. The question is what path you take to get there."

Critics on Capitol Hill and environmental groups say the policies will slow the cleaning of the air and undercut Congress's authority, while catering to companies that are big contributors to Mr. Bush's campaigns.

"Rather than work with Congress to move us forward on environmental issues, the Bush Administration is working with the special interests to undermine them," said Senator James M. Jeffords, the Vermont independent who is the ranking minority member of the Senate environment committee.

But both sides agree on one outcome of the struggle: The nation's approach to air pollution control shifted drastically.

An Early Challenge

As President Bush took office, he said he wanted to swiftly address energy shortages that had caused blackouts in California. Coming from the Texas energy industry, he was convinced that Clinton Administration environmental policies were restraining energy production. And utilities geared up to press the new Administration for big changes on a handful of issues that were crucial to them.

Their biggest worry was Mr. Bush's campaign pledge to carry through on a Clinton Administration effort to impose controls on power plant emissions of carbon dioxide.

The coal-fired power companies, which are among the nation's largest sources of carbon dioxide, were alarmed when Mrs. Whitman in her first days at the agency said Mr. Bush would carry out his promise. Not long after, Mr. Barbour sent his memorandum to Vice President Cheney, who was heading a task force Mr. Bush had ordered to conduct a broad review of energy policy.

Mr. Cheney had been chief executive at Halliburton, an oil-and-gas-services company. Energy corporations had been among the strongest supporters of Mr. Bush's Presidential campaign: There were more executives from energy than from any other industry group among Mr. Bush's most elite fund-raisers, called "Pioneers," who each generated more than $100,000 in donations.

The industry's outcry over carbon dioxide reached Mr. Bush. In March 2001, he reversed himself, saying there would be no carbon dioxide controls. "I was responding t realities," Mr. Bush said at the time, "and the reality is our nation has a real problem when it comes to energy."

After that victory, the utilities moved to press their advantage, turning to Mr. Cheney for help on another issue: a set of rules requiring them to add new pollution controls when they upgraded or expanded their plants. The power companies strongly objected to the rules, which were known as "new source review," calling them arbitrary, expensive and outmoded.

A small group of coal-fired utilities was especially unhappy. In 1999, the Clinton Administration had sued nine companies, saying they had expanded 51 older plants without adding the required controls. Among those facing suits were the Southern Company, based in Atlanta; the Duke Energy Corporation, based in Charlotte, N.C.; and the FirstEnergy Corporation, based in Akron, Ohio. Southern, one of Mr.

Barbour's biggest clients, was facing potential liabilities of hundreds of millions of dollars.

The rules had not previously been vigorously enforced, and the companies contested the suits, saying the Clinton Administration had focused on them unfairly and made it too costly to improve their plants.

Mrs. Whitman made it clear she was willing to revise the rules and settle the lawsuits. But, former aides at the EPA said, she favored old-fashioned political horsetrading: She would ease up on the old rules, but only after going to Congress with broad legislation to establish tough new controls on three important pollutants—sulfur dioxide, nitrogen oxide and mercury.

Mrs. Whitman's orders were to "find ways to deal with" the rules "without giving away the farm to industry unilaterally," said Jeremy Symons, a former agency official who works with the National Wildlife Federation, an advocacy group.

Industry lobbyists had a different strategy. C. Boyden Gray, who was White House counsel during the first Bush Administration and represented some utilities, said the companies viewed the pollution lawsuits as "a gun to the head." They feared, he said, that if their bid to change the rules got caught up in a bigger battle in Congress, "they might not get anything."

The industry's main lobbying group, the Edison Electric Institute, already had meetings with White House and Energy Department officials about relaxing the pollution rules. The group's president, Thomas R. Kuhn, had been a Yale classmate of President Bush, and was also a Pioneer.

Yet for some companies named in the lawsuits, the institute was not forceful enough. "We needed a strategy and an organization to take a more aggressive approach," said Todd Terrell, a spokesman for Southern. So, at Mr. Barbour's urging, a handful of coal-burning utilities formed their own lobbying group.

At the time, Mr. Barbour was probably Washington's most successful lobbyist. As Republican National Committee chairman from 1993 to 1997, he had helped the party gain control of Congress and had long been one of its most prodigious fundraisers. His corporate clients included many of the party's largest donors. That added to his entree with Republican officials.

The splinter group, organized by Mr. Barbour in the spring of 2001, was called the Electric Reliability Coordinating Council. Scott Segal, its executive director, said it sought a "more consistent" effort to rewrite the pollution rules. Several government officials and lobbyists said the group's underlying goal was bolder: to persuade the Administration to repudiate the old rules and thus torpedo the lawsuits based on them. According to the Center for Responsive Politics, the six utility companies now in the council and their employees made more than $10 million in political donations over the last 5 years, nearly three-fourths of that going to Republicans. Southern and its employees account for nearly $4 million of the total, with 72 percent of their donations going to Republicans.

Mr. Barbour had a meeting with Mr. Cheney on May 3, 2001, just 2 weeks before the task force was set to unveil its energy plan, Mr. Segal said. Mr. Barbour was accompanied by Mr. Racicot, a friend of President Bush who would become the Republican chairman in January 2002 and is now chairman of Mr. Bush's campaign.

Mr. Segal said that Mr. Barbour and Mr. Racicot "did not dwell" on the lawsuits, but suggested that the Administration should abandon the standards that the Clinton Administration had applied in bringing them.

Mrs. Whitman's aides said Mr. Cheney's office did not inform her of that meeting. But the next day Mrs. Whitman, knowing the debate was reaching a climax, sent a blunt memorandum to Mr. Cheney.

"We will pay a terrible political price if we undercut or walk away from" the lawsuits, she wrote. She said it would be "hard to refute the charge that we are deciding not to enforce the Clean Air Act."

She warned Mr. Cheney that a "broad attack" in his final report on the pollution rules would wipe out her leverage over the industry and "permanently destroy our chance to achieve any needed legislative reforms we may seek in the future."

As the task force neared its end, Southern and other utilities in Mr. Barbour's group were busy on another front. On May 15, 2001, they gave $100,000 to the Republican party.

A Shift in Lobbying Efforts

Mrs. Whitman's arguments succeeded in forestalling any recommendation in the Cheney task force report, issued on May 17, to rewrite the rules or cripple the lawsuits. Instead, the task force called only for the EPA to review the rules with the Energy Department, whose focus is to promote energy supply, and for the Justice Department to review whether the suits were valid.

In January 2002, though, Mr. Barbour and his group learned that they would get no help from the Justice Department. Its lawyers found nothing amiss with the pollution lawsuits, concluding that they were supported by "a reasonable basis in law and fact."

That setback did not slow the lobbying. Soon its locus shifted, as the Energy Department, led by Spencer Abraham, became increasingly involved, setting off a fight that reverberated inside the EPA as officials there said they felt outmaneuvered.

Mr. Barbour and Mr. Racicot joined a parade of industry lobbyists seeking out Energy officials.

Between July 2001 and November 2001, Francis S. Blake, then the deputy energy secretary, held seven meetings with industry groups about the pollution rules, attended by more than 60 executives and lobbyists, records show. During that time he met with only one lobbyist from an environmental group.

In early 2002, Energy and EPA officials got down to considering new rules. Environmental officials in charge of enforcement grew alarmed at the proposals emanating from Mr. Abraham's department, which often echoed the industry's demands.

In one memorandum, EPA officials attacked an Energy Department draft as "highly biased and loaded with emotionally charged code words" that would ultimately "vitiate" the pollution-control program.

At one point, her aides said, Mrs. Whitman set up what she thought would be a private meeting with Mr. Cheney to discuss EPA concerns. When she arrived at his office, though, she was disappointed to find that Mr. Abraham was already there to present counter arguments.

Soon an exodus began from the EPA's enforcement branch. Eric V. Schaeffer, who joined the agency during the first Bush Administration and was head of the Office of Regulatory Enforcement, sent a resignation letter to Mrs. Whitman that February. "We seem about to snatch defeat from the jaws of victory," he wrote, adding that the White House "seems determined to weaken the rules we are trying to enforce."

Mr. Schaeffer and his boss, Sylvia K. Lowrance, then the agency's top career enforcement official, both said in interviews they repeatedly warned Mrs. Whitman that the rule changes would jeopardize the enforcement lawsuits. Their view, shared by many industry lawyers, was that judges were often reluctant to penalize companies for failing to comply with rules that had been subsequently relaxed. Mrs. Lowrance later took early retirement.

A different view was held by some EPA policy officials, including Jeffrey R. Holmstead, a former aide to Mr. Gray in the first Bush White House, who was now in charge of writing air-pollution regulations. Mr. Holmstead had long criticized the old rules as unmanageable and counter-productive, and he believed revising them would have no impact on the lawsuits in court.

But Mr. Holmstead was uneasy with the lobbyists' participation. "This would have been so much simpler if they hadn't gotten Barbour involved, because that just created this new political intrigue," he said.

In June 2002, Mr. Holmstead had a chance to see how closely the White House was watching. At a party for the 50th birthday of Mr. Abraham, Mr. Holmstead ran into Andrew Card, the White House chief of staff.

Mr. Card "wanted to know how come we were having so much trouble" finishing up the rule revisions, Mr. Holmstead recalled.

Shortly after, on June 13, Mrs. Whitman sent a proposal to the White House. It contained many of the changes that the Energy Department had championed, and was the foundation of the final rule revisions published in October 2003.

Mrs. Whitman has never discussed the decisionmaking process or broken ranks in public with President Bush. But the new rules showed that the White House had thrown its weight behind energy priorities, both environment and energy officials said.

The rules said utilities would not have to add new pollution-control devices if upgrades and construction projects did not cost more than 20 percent of the plant's value—a loophole all sides said was huge.

Departures From EPA Mrs. Whitman resigned last May, saying she hoped to spend more time with her family. Several former aides said she was frustrated that she did not have more support within the Administration. She declined through a spokesman to be interviewed.

In a statement, Mrs. Whitman said she had supported streamlining the pollution rules because many groups agreed that they "had grown cumbersome, unreliable and unpredictable." She said that Mr. Bush "expects the members of his cabinet to advocate forcefully on behalf of his or her agency" before making major decisions.

Mr. Cheney, Mr. Abraham, Mr. Racicot and Mr. Barbour—now the Governor of Mississippi—declined to comment.

Late last year, top EPA officials announced a new pollution enforcement policy that seemed likely to critically weaken the pending lawsuits. By year's end three more of the agency's top enforcement officials resigned. "The rug was pulled out from under us," one of them, Rich Biondi, said.

The new rules evoked fierce opposition, though, as 14 States sued to block the change. In December, a Federal appeals court stayed their use, pending further arguments. EPA officials said they put the new enforcement policy on hold until the court challenge is resolved.

The Administration's goal now is to expand the use of a more flexible "cap and trade" regulatory system created in the early 1990's that worked with notable success to combat acid rain. It lets utilities buy and sell credits that give them a pollution allowance. The number of credits available nationwide shrinks over time, creating a cap to ensure that pollution levels decline. Late last year, Administration officials announced plans to move to the new cap-and-trade system by revising regulations, rather than pressing for a new pollution bill, as Mrs. Whitman had envisioned.

Under the Administration's plan, nationwide sulfur dioxide emissions from power plants would fall to 5.3 million tons by 2015, and nitrogen oxide emissions to 2.2 million tons, according to EPA estimates. Those would be reductions of 51 and 55 percent, respectively, over levels in 2001.

A recent Administration move to control diesel emissions has drawn praise from environmentalists. But in December, officials set off a new controversy by proposing a cap-and-trade approach for another pollutant: emissions from coal-fired power plants of mercury, which can cause neurological damage to humans. Instead of starting to curtail the emissions by 2007, as was widely expected, the proposal would give utilities until 2018 to make significant cuts.

Many environmentalists and some former EPA officials said that while the proposed pollution cuts are substantial, they give industry more time to make reductions than existing law. The critics contend that it was foolish to weaken the pollution lawsuits without extracting anything in return.

"They are packaging this as a pollution cut, but in fact it is a pollution delay imposed on a program that the Clean Air Act requires to go faster," said Dave Hawkins, a lawyer for the Natural Resources Defense Council in Washington.

What is clear is that the energy industry is satisfied with the way the Bush Administration has gone. "Cost-effective, and effective, are reasonable ways to describe the Bush Administration's clean-air policy," said Mr. Segal of the electricity lobbying group. "The Administration has a lot to be proud of on its air policy."

Senator JEFFORDS. Mr. Chairman?

Senator INHOFE. Yes?

Senator JEFFORDS. I would like to ask unanimous consent to include the results of my information survey on mercury control companies as part of the record.

Senator INHOFE. Without objection.

[The referenced document follows:]

THE REAL STATUS OF MERCURY CONTROL TECHNOLOGY, ACCORDING TO ITS DEVELOPERS

(By Senator Jim Jeffords, Ranking Member, Senate Committee on Environment and Public Works)

March 10, 2004

On October 24, 2003, Senator Jim Jeffords sent a letter of inquiry to several companies seeking a description of the mercury emissions control technologies they produce for installation in coal-fired electric utilities. Responses from W.L. Gore & Associates, Apogee Scientific, ADA Environmental Solutions, Powerspan, and KFx show with certainty that stringent control of utility mercury emissions in the range of 60–90 percent, depending on the technology, is economically feasible and technically achievable for even the dirtiest coal types. Two of the companies are confident their technologies could reduce mercury emissions from power plants by at least 80–90 percent from all types of coal combustion. One of these two can even achieve greater than 90 percent capture of mercury from the harder-to-control western sub-bituminous and lignite coals. Three out of the five companies responding indicate that their technologies are currently available commercially, while the remaining four plan to enter the market in between 2004 and 2007.

These technologies can avoid high capital or operating costs, or produce significant economic benefit, or both. One creates low-mercury coal fuel at a price comparable to untreated, high Btu coal, which the company says can help older coal-fired power plants meet proposed emissions standards without major capital costs that could be passed on to consumers. Two companies boast lowered disposal costs by reducing the amount of mercury residue that becomes solid waste. Another two systems have the ability to preserve the value of fly ash residue (often sold to cement manufacturers) from the post-mercury control waste stream. One company states that even for moderate facilities this can represent a savings of several million dollars per year. Another technology produces a valuable fertilizer co-product. A fourth system enables utilities to increase operating efficiency and heating value.

Not only are there economic plusses from mercury control, but there are real environmental benefits as well. These results show that the vast majority of toxic mercury air emissions from utilities can be avoided, and at levels far greater than those called for in the President's Clear Skies Proposal. Furthermore, many of these technologies have the ability to curb other air pollutants, such as particulate matter, nitrogen oxides, sulfur dioxide, carbon dioxide, and heavy metals. Municipal and hazardous waste incinerators have been dramatically reducing mercury emissions for the past two decades, using some of the same technologies available today for utilities.

These companies feel they can meet the more stringent standards being debated today, but that without a clear mandate from the government regarding future mercury emissions requirements, it will be difficult to dramatically increase investment in new technology research, development, and testing. However, as Dr. Richard Bucher of W.L. Gore & Associates states in his letter to Senator Jeffords, "we remain committed to developing a cost effective technology that provides maximum protection to the air we breathe." New and demanding mercury regulation would create a significant new market for these and other emissions control technologies, and would provide incentives for their continual advancement.

For further information about these mercury control technologies, please contact:
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[As of March 8, 2004]

SUBMISSION FOR THE RECORD BY SENATOR JAMES M. JEFFORDS

OUTSTANDING DOCUMENT AND INFORMATION REQUESTS TO EPA

1) Original Request: May 2001—The EPW Committee has repeatedly requested analysis of the costs and benefits of different multi-pollutant strategies, like the Jeffords-Collins-Lieberman Clean Power Act, since May of 2001. To date, the Committee has received cost information, but has not received a comprehensive analysis of the benefits of Senator Jeffords' Clean Power Act. EPW continues to request complete benefits analysis, taking into account all health care-related savings, air quality-related values, and ecosystem effects due to projected emissions reductions.

2) Original Request: August 2001—Sen. Jeffords wrote to Administrator Whitman on August 10, 2001, with follow-up questions to a July 26, 2001, hearing, seeking a consolidated estimate of the public health and environmental benefits, including tons of pollution avoided, achieved through full implementation of all Clean Air Act programs (including NSR, MACT, and PM 2.5/Ozone) that the Administrator mentioned during the hearing would be potentially "unnecessary" under a three-pollutant reduction scenario. The Committee has received only a qualitative analysis of some programs.

3) Original Request: December 2001—Concerning both rule packages, EPW Committee members requested in December 2001 letters to EPA and the Department of Energy the following analyses and all related documents:

A) the resulting impacts of the rules on future emissions (not provided and no effort has been made to collect the information);

B) the impacts on EPA, State, or citizen NSR enforcement, including settled or pending cases, or cases that may have been ripe had the rules not been changed, or future enforcement authority (not provided);

C) the impacts on attainment or maintenance of the NAAQS for SIPS, FIPs, or tribal implementation purposes (not performed or provided, and no effort has been made to collect the information);

D) the legal consistency or inconsistency of the rules (not provided); and

E) the extent to which fewer sources may take permit limits to "net out" of NSR, and the related future emissions impact (provided only a qualitative estimate with no mechanism to detect impact).

4) Original Request: December 2001—EPW members originally requested a log of documents relating to the proposed New Source Review rules on December 14, 2001. After EPA failed to deliver the log by the promised date of October 24, 2002, EPW resubmitted the request on December 20, 2002. A log was finally received on January 22, 2003—after the first set of rules was finalized. However, the log is only a partial collection of the documents that would be responsive to the request, it does not contain information pertaining to document content, and it ends on September 30, 2002. EPW has requested a log that identifies document content pertaining to both sets of rules finalized in December 2002 and August 2003, through the date of the Agency's response to this request, which covers all documents described in the original request.

EPW also requested all documents numbered 136–185 in the log on March 25, 2003, and in a subsequent email on May 15, 2003, but has not received these documents.

5) Original Request: December 2001 / July 2002—EPA has not produced a quantitative analysis of the effects that the new and proposed NSR rules would have on the environment and public health, as was promised during both a July 16, 2002, joint EPW-Judiciary Committee hearing and a September 3, 2002, HELP Committee hearing, and as is required by Executive Order 12866. Furthermore, in December 2001, EPW members requested a discussion of the impacts of the proposed NSR changes on attainment of the National Ambient Air Quality Standards. EPW still awaits this analysis.

6) Original Request: July 2002—Question number 24 of the July 30, 2002, NSR hearing follow-up request from Senator Jeffords asked for EPA to provide all written advice and comments from the Office of Enforcement and Compliance Assurance (OECA) regarding the effect of the Report and Recommendations on the ongoing enforcement cases. After receiving a second EPW request, EPA offered to allow EPW staff to view the documents at the Agency. The Committee has restated the request that the documents be delivered to the Committee and offered appropriate accommodation for sensitive material.

7) Original Request: February 2003—In an EPA briefing in February of 2003, EPW Committee staff asked for the amount of methyl bromide currently in stockpiles in the United States. EPA replied that it would not fulfill the request because it considered this confidential business information. As stated by Committee staff in subsequent email correspondence, this assertion does not apply to congressional requests.

8) Original Request: June 2003—Senators Jeffords, Graham, and five other Senators sent a letter on June 19, 2003, to EPA concerning the White House's involvement in eliminating and altering climate change language inthe agency's State of the Environment report. EPA's response on August 28, 2003, neglected to include a requested list of all inter-agency/Administration (internal) participant reviewers, copies of all internal drafts, and the name of the person who decided to delete the climate change section and insert a reference to an American Petroleum Institute-funded study.

9) Original Request: October 2003—EPA has not responded to an October 17, 2003, letter from Senator Jeffords and one other Senator seeking the Agency's confirmation of the accuracy of a statement by Bill Wehrum, counsel to the Assistant Administrator for Air and Radiation, regarding the enforcement approach that the agency will take in the event that the stayed NSR rule on routine equipment replacement is overturned.

10) Original Request: November 2003—On November 17, 2003, members of the EPW Committee requested EPA (and Council on Environmental Quality) documents relating to the EPA Inspector General's report concluding that the Agency's health based judgments and public communications were altered by White House personnel in the days following the collapse of the World Trade Center. To date, EPW has received none of the documents requested of EPA.

11) Original Request: November 2003—Assistant Administrator for Air and Radiation Jeffrey Holmstead has not yet responded to a November 18, 2003 request from Senators Jeffords and Leahy that he provide evidence in support of his July 2002 hearing testimony, in which he stated that the Administration's New Source Review changes would not negatively impact pending enforcement cases.

12) Original Request: January 2004—EPA has not responded to a January 13, 2004, letter regarding the Administrator's statements at an Edison Electric Institute meeting concerning both the agency's proposed mercury rule and New Source Review enforcement and routine maintenance. Specifically, the letter requested economic, legal, or policy analysis supporting the Administrator's statement that compliance with existing law and with the mercury settlement agreement would be less effective than EPA's proposed alternative. The letter also asked what the Administrator would be directing EPA to do with respect to the pending New Source Review cases, and cases previously under investigation for violation of NSR rules existing prior to the court stay of the routine maintenance rule.

Senator JEFFORDS. I believe that is all.

Senator INHOFE. OK. Did you have a final comment?

Administrator LEAVITT. I just wanted to make sure that Senator Jeffords knew that is 10 minutes you should flush your water, not five. I misspoke.

[Laughter.]

Senator INHOFE. Thank you very much, Mr. Administrator. We appreciate your time this morning very much.

The meeting is adjourned.

[Whereupon, at 11:49 a.m. the committee was adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. MICHAEL D. CRAPO, U.S. SENATOR FROM THE STATE OF IDAHO

Thank you, Chairman Inhofe, Senator Jeffords. Thank you, Governor Leavitt for being here with us today to discuss the proposed FY05 Budget for the U.S. Environmental Protection Agency (EPA).

This budget represents a move toward reducing the deficit while giving much needed attention to a number of programs that contribute greatly to enhancing our environment. I understand the challenges faced with preparing a budget request that is both responsive to the needs of all Americans while being responsible with their tax dollars. Balancing competing needs with limited resources is always a difficult endeavor. I commend you, Governor Leavitt, and the Bush Administration for meeting this challenge while keeping an eye to fiscal restraint and advancing this country on the environmental front.

The EPA's budget proposes increased funding for a number of programs that will greatly enhance our ability to meet our environmental needs. Specifically, I am pleased to see the $40 million increase for the Brownfields program. I support the Brownfields Program, as this assistance can make a world of difference in assisting communities that contain property that is unavailable for development due to environmental contamination.

Many rural western communities face enormous challenges in dealing with the rehabilitation of Brownfield properties and lack the funding necessary to revitalize the properties. These grants are vital sources of assistance, and are good for local economies, local communities, and the environment. While I will have some questions regarding the planned distribution of these funds, this is a very welcome increase and I appreciate the Agency's attention to this program.

I am pleased by the EPA's continued commitment to ensure the Superfund program prioritizes the cleanup work needs in North Idaho. Idahoans continue to face the challenges of living and working within the Coeur d'Alene Basin Superfund site in North Idaho, and I support efforts to allocate the funding necessary to clean up these sites in a timely manner. The Budget Resolution that we are currently debating on the floor of the Senate also supports this increase.

Additionally, the EPA's budget proposes a substantial increase for the Clean School bus program, taking it to $65 million. Meridian School District in Boise Idaho has utilized funding through this program to pilot a project to retrofit all 200 school buses in the Meridian School district fleet to reduce diesel emissions by 50 to 90 percent through the use of biodiesel. Children in Idaho have benefited through participation in this program, and I support the President's plan to retrofit the older buses that are now on the road. The proposed increase for this program is also reflected in the Senate Budget Resolution that would allow this program to be expanded into additional communities.

Again, I thank the Committee for holding this hearing and Governor Leavitt for being here with us today. I look forward to continuing to work with the Administration and my fellow Members of Congress to ensure that Fiscal Year 2005 funding levels meet our environmental objectives. Thank you, Mr. Chairman.

STATEMENT OF HON. JOHN CORNYN, U.S. SENATOR FROM THE STATE OF TEXAS

Thank you, Mr. Chairman. I just want to say a few words as we begin this hearing.

I would like to thank Administrator Leavitt for being here this morning to present the Administration's Fiscal Year 2005 budget request for the Environmental Protection Agency. Also, thank you for the leadership and vision that you bring to the EPA. I am confident that under your guidance, this agency is in good hands to address the challenges facing the Nation.

I think that our country has come a long way in improving our environment. From what we hear from critics and extremist interest groups, it would be easy to believe that the environment is getting worse. In truth, a recent EPA report showed that over the last 30 years, as our economy grew over 164 percent, we have reduced the aggregate emissions of the six principal pollutants by almost half. Under the President's administration, we have seen cleaner air and safer water for all of us, which is our collective goal.

That said, there is still much work to be done. I look forward to working with Texans, with my colleagues, and with you and your team at EPA on proposals that will ensure a cleaner environment, prevent unnecessary burdens on industry and the economy, and find reasonable solutions that are based on solid and tested science.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM THE STATE OF ALASKA

Mr. Chairman, thank you for giving me the opportunity to speak today.

Establishing a budget for the EPA is essential to continue to protect the environment and human health of the people of this Nation. We must ensure that the EPA be able to have adequate resources to implement its core programs, as well as allowing the agency to work in collaboration with others to protect our air, water, and land.

As we know, our nation is facing budget restraints. Funding for many of our agencies, including the Environment Protection Agency, must be restrained in times like these so we can balance the budget and steer our nation's economy in the right direction, while producing new jobs for Americans. I commend Administrator Leavitt's vision to use market based solutions, which I feel will allow the EPA to become more innovative and effective.

There is a lot of criticism that the Administration has lowered funding for this agency. This is wrong. We only have to look at the facts to show that the Administration has a firm commitment to environmental protection after having increased this year's budget by 133 million dollars. I urge the Administrator to target all programs that contain waste, fraud, abuse, and are unsustainable and either improve these programs or eliminate them. The agency can then focus on those programs which will make a positive impact on communities across the Nation.

One of the biggest problems with applying environmental standards to Alaska is the fact that a regulation made in Washington DC does not always make sense in a place 4000 miles away. In the past, there have been attempts to establish a new EPA region for Alaska. Such a proposal would actually reduce costs in the long-run

because it would cut down on unnecessary travel and other administrative costs. In the meantime, I hope the agency continues with its goal to support neighborhood solutions when trying to achieve compliance to national standards.

I am happy that the Administration is committed to Alaska Native Villages and has kept funding for infrastructure assistance at a constant level. However, I am concerned that the current funding level will be enough. Many of our native communities need to address their water and wastewater infrastructure needs to maintain a healthy standard of living. The EPA has estimated that there are 20,000 homes in Native villages that lack basic sanitation facilities. There is no other State in our nation that contains a figure such as this, where citizens of the United States must walk long distances to carry water to their house. I would be interested in finding out if the current funding will address this striking number.

It is my hope that the EPA, when administering these grants, can look toward applications that are efficient and will have an effective impact. I encourage Commissioner Leavitt to look into new technologies which can help cut costs but achieve the environmental goals set out in our nation's communities. For example, ozone technology may prove to be more cost effective when treating water infrastructure in Native Alaskan communities.

At the same time, I urge the EPA not to abandon those core areas which may often get overlooked when finding new alternatives. For example, Alaska is having problems covering its core program requirements of the Clean Air Act. Congressional funding increases in recent years have been channeled by the EPA to new priorities leaving core programs short of funding to complete our basic mission. Examples include developing air quality plans for locations that have historically violated particle pollution levels from wood smoke; insufficient resources to undertake air monitoring in rural communities where we suspect airborne dusts levels exceed health standards (PM–10). New planning funds for regional haze goes to regional planning organizations while much of the Plan development work must be done by State staff with no new funds.

I thank Commissioner Leavitt for coming today. I look forward to listening to his responses on questions asked by this Committee today and working with him on environmental issues affecting Alaska in the future.

STATEMENT OF HON. MICHAEL O. LEAVITT, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and members of the committee, I am pleased to be here to discuss President Bush's Fiscal Year (FY) 2005 budget request for the Environmental Protection Agency (EPA). The President's fiscal year 2005 budget request of $7.8 billion provides funding necessary for the Agency to carry out our mission to protect human health and safeguard the natural environment efficiently and effectively. Given the competing priorities for Federal funding this year, I am pleased by the President's commitment to human health and environmental protection.

I would like to begin, Mr. Chairman, by emphasizing that the President's budget request for EPA reflects the Agency's commitment to cleaning our air, cleansing our water, and protecting our land efficiently and effectively, while sustaining economic growth. The request promotes EPA's goals by facilitating collaboration, harnessing leading-edge technology, and creating market-based incentives for environmental protection.

This Agency remains committed to working with our geographic and regional partners and focusing on our core programs to protect human health and the environment. Of the $7.8 billion budget, $4.4 billion the highest level in EPA history is devoted to the Agency's core regulatory, research, and enforcement activities, and State program grants. The President and I both believe that enhancing EPA's core programs is a vital part of effective environmental management and stewardship. Our budget request reflects that.

As EPA continues to carry out its mission, I look forward to building upon a strong base of environmental progress. This budget, Mr. Chairman, will enable us to carry out our principal objectives while allowing us to react and adapt to challenges as they arise.

Clean Air and Global Change

The fiscal year 2005 President's Budget requests $1.0 billion to fund our clean air and global change programs, thereby helping to ensure that air in every American community will be clean and safe to breathe. The budget includes a large increase for EPA's Clean School Bus USA grant program to $65 million for projects that reduce diesel emissions from school buses through bus replacement or retrofitting.

Clean School Bus USA helps ensure that school children have the cleanest transportation possible. This program is an additional tool for communities to develop localized solutions for environmental protection to meet new air quality standards for particulate matter.

This budget also supports the President's Clear Skies initiative, which draws on EPA's experience to modernize the Clean Air Act. Clear Skies legislation would slash emissions of three power plant pollutants nitrogen oxide, sulfur dioxide, and mercury by 70 percent. Such emissions cuts are an essential component of improving air quality and thus environmental and human health. The Clear Skies initiative would buildupon the 1990 Clean Air Act's acid rain program by expanding this proven, innovative, market-based approach to clean air. The power plant reductions required under Clear Skies and our new diesel engine regulations will bring most of the country into attainment with the new ozone and PM air quality standards: by 2020, only 27 counties out of 263 will need to take further steps to be in attainment for ozone; only 18 counties out of 111 will need to take further steps to be in attainment for PM. Such a program, coupled with appropriate measures to address local concerns, would provide significant health benefits even as energy supplies are increased to meet growing demand and electricity rates remain stable. I look forward to working with you, your fellow Members of Congress, and the President on this landmark legislation. Next month, I will formally designate counties that will be out of attainment with the new ozone standards; in December, I will formally designate counties that will be out of attainment for particulate matter. These designations start the clock ticking on the often controversial and resource-intensive State planning process. By 2007, States must have plans to get into attainment approved by EPA. So, the budget would also support the Interstate Air Quality Rule we proposed in December and intend to finalize this year. This rule is similar to Clear Skies in that it requires an approximate 70 percent reduction in sulfur dioxide and nitrogen oxide from the power sector. However, due to authority under the Clean Air Act, its reach is limited to States in the eastern half of the U.S. that contribute pollution to neighboring States. Although this rule would allow us to take an enormous step forward in providing cleaner air across much of the country, it would not do so as fast or as effectively as would Clear Skies.

EPA's request for clean air programs includes $313 million for clean air grants to support our collaborative network of States and Tribes. These resources will assist States, Tribes, and local governments in devising additional stationary and mobile source strategies to reduce ozone, particulate matter, and other pollutants.

The clean air and global change request also includes $130 million to meet our climate change objectives by working with business and other sectors to deliver multiple benefits while improving overall scientific understanding of climate change and its potential consequences. The core of EPA's climate change efforts are government/industry partnership programs designed to capitalize on the tremendous opportunities available to consumers, businesses, and organizations to make sound investments in efficient equipment and practices. These programs help remove barriers in the marketplace, resulting in faster deployment of technology into the residential, commercial, transportation, and industrial sectors of the economy.

Clean and Safe Water

In fiscal year 2005, this budget requests over $2.9 billion for its water programs. EPA's fiscal year 2005 budget focuses on four strategies toward achieving the Nation's clean and safe water goals. To better address the complexity of the remaining water quality challenges, EPA will promote local watershed approaches to execute the best and most cost effective solutions to local and regional water problems. To protect and build on the gains of the past, EPA will focus on its core water programs. To maximize the impact of each dollar, EPA will continue to strengthen vital partnerships and collaborative networks with States, tribes and local governments, and others in working to achieve our shared goal of improving the Nation's waters. To leverage progress through innovation, EPA will promote water quality trading, water efficiency, and other market based approaches.

The budget makes a significant investment in a new water-quality monitoring initiative to solve water quality monitoring problems. Through this investment, EPA can make the most of scarce resources through information-based management, using tools such as prevention, source water protection, watershed trading, and permitting on a watershed basis. Monitoring is the foundation of information-based management and it is imperative that the data and information gaps be closed as quickly as possible. The budget provides a total of $20 million to strengthen State and tribal water quality monitoring programs, improve data management systems and improve monitoring tools. Of that amount $17 million in grants provides direct assistance to States and tribes. $3 million of this funding will provide technical as-

sistance to help States and tribes develop statistically representative water quality monitoring programs, a tool that will eventually allow EPA to make a national determination of water quality and ensure resources target the highest priority problems.

States are struggling with implementation of the National Pollution Discharge Elimination System (NPDES) permitting programs, as demonstrated by withdrawal petitions and permit backlogs. Compounding the problem is that the regulated universe increased tenfold due to new requirements for concentrated animal feeding operations and storm water runoff. The Agency requests a $5 million increase in Section 106 Grants to help States issue timely and effective NPDES permits. By providing additional resources in the form of State grants, EPA will help States and tribes meet obligations under the revised rule and help reduce pollutants and make necessary improvements in water quality.

EPA is also advancing water quality trading in voluntary partnerships on a watershed basis. It capitalizes on economies of scale and cost differences among sources. Trading allows one source to meet its regulatory obligations by using pollutant reductions gained by another source and provides incentives for voluntary reductions at a reduced cost to all. It provides an opportunity for innovative solutions to complex water quality problems. To encourage the implementation of water quality trading programs, the budget includes $4 million in the Targeted Watersheds Grants program.

The President's Budget continues its commitment to help provide affordable financing for States' water infrastructure needs. The Budget provides $850 million for the Clean Water State Revolving Fund, which will ultimately result in a $3.4 billion long term revolving level, helping communities across the country cleanup their wastewater. It also provides $850 million for the Drinking Water State Revolving Fund, resulting in a long term revolving level of $1.2 billion and protecting public health. However, growing populations are increasing demands on water resources, and addressing these demands, along with the nation's multi-billion dollar water infrastructure gap, will require creative solutions at the local, State and Federal level. As part of a long-term strategy to develop sustainable infrastructure EPA will work in partnership with States, the utility industry and others to enhance operating efficiencies and mitigate infrastructure needs by encouraging efforts to reduce water demand and wastewater flows, potentially downsizing capital needs. High priority activities in support of this effort include a new water efficiency labeling program and a sustainable infrastructure initiative that will promote best practices such as full cost pricing.

Land Preservation and Restoration

This budget continues EPA's commitment to clean up toxic waste sites with $1.4 billion for Superfund. This reflects a $124 million increase over the fiscal year 2004 appropriated level for Superfund's remedial program, which will allow for 8–12 additional construction starts in 2005 and a similar number of additional completions by 2006. As of January 2004, cleanup construction projects were underway or complete for over 93 percent of National Priority List (NPL) sites.

The President's Budget also includes an additional $26 million to strengthen EPA's partnership with States to monitor underground storage tanks. Recognizing that States have primary responsibility for monitoring tanks, issuing permits, and enforcing regulations, the additional grant money will provide funds for States to inspect a larger universe of federally regulated underground storage tanks on a more frequent basis.

Protecting America's Communities and Ecosystems

EPA is committed to building and enhancing effective partnerships that allow us to safeguard human populations and ecosystems across America. To help protect and restore land-based ecosystems, this budget provides $210.7 million, over $40 million more than the level provided in the fiscal year 2004 Consolidated Appropriations bill, for the Brownfields program, one of the Administration's top environmental priorities. The Brownfields program will draw on these additional resources to provide grants to State and Tribal partners to fund cleanup of lightly contaminated sites. By protecting land and revitalizing contaminated sites throughout the United States, EPA continues to expand efforts to foster healthy and economically sustainable communities and attract new investments to rejuvenated areas.

EPA's budget requests resources to protect individual ecosystems across the country, including a total of $30 million for the Chesapeake Bay. Ten million dollars of this total will be provided through the Targeted Watersheds Program for a pilot program to help municipalities reduce nutrient discharges to the Bay through collaboration with nonpoint sources. EPA's collaborative partnership in Chesapeake Bay

protection, which serves as a model for similar endeavors, includes Maryland, Virginia, Pennsylvania, the District of Columbia, the Chesapeake Bay Commission, and participating citizen advisory groups.

The Great Lakes are the largest system of fresh surface water on Earth, containing roughly 18 percent of the world's supply. The Great Lakes basin also is home to more than one-tenth of the population of the United States, one-quarter of the population of Canada, and heavy concentrations of industry. Over the years, industrial development has contaminated sediments throughout large areas of the lakes with toxics such as polychlorinated biphenyls (PCBs) and heavy metals, putting large populations and the tremendous water resource at risk. EPA's Great Lakes Legacy program provides funding to remediate contaminated sediments, keeping them from entering the food chain where they may cause adverse effects to human health and the environment. In 2005, this Administration will demonstrate its commitment to the health and well-being of the region and its citizens by proposing to fund the Great Lakes Legacy program at $45 million, nearly five times greater than previous levels.

To ensure that the American public will continue to enjoy one of the safest and most affordable food supplies in the world, the President's budget continues to meet implementation challenges of the Food Quality Protection Act (FQPA). The Agency's implementation of FQPA focuses on science-driven policies for pesticides review, seeks to encourage the development of reduced risk pesticides to provide an alternative to the older versions on the market, and works to develop and deliver information on alternative pesticides/techniques and best pest control practices to pesticide users. The Agency is also working to help farmers' transition to safer substitutes and alternative farming practices while minimizing production disruptions. Reassessing existing tolerances ensures food safety, especially for infants and children, and ensures that all pesticides registered for use meet current health standards.

Compliance and Environmental Stewardship

This budget also requests $751 million to promote and insure compliance with environmental laws, and to foster and support the development of pollution prevention strategies and innovative approaches to environmental protection. Since EPA's inception over thirty years ago, many environmental improvements in our country can be attributed to a strong set of environmental laws, and to our efforts to ensure enforcement of those laws. The Agency uses a "smart" enforcement approach, employing a mix of compliance assistance, incentives and monitoring strategies, supported by strong, effective civil and criminal enforcement and litigation teams. This "smart" approach maximizes the use of the Agency's resources and personnel, and allows us to quickly and effectively adapt both to emerging environmental threats and to changes in law and policy.

The President's fiscal year 2005 request also continues to support results-based, innovative, and multimedia approaches to pollution prevention and natural resource conservation by government, industry, and the public. Increasingly, Americans are recognizing the value of their own pollution prevention efforts, and the contributions made through sustainable business practices, to the preservation and restoration of community and national environmental resources. In addition, EPA will continue to support initiatives targeted toward improving compliance at public and private facilities, empowering State and Tribal environmental programs, encouraging corporate stewardship, and better informing the public.

Strong Science

Sound science is a fundamental component of EPA's work. The Agency has long relied upon science and technology to help discern and evaluate potential threats to human health and the natural environment. Much of our decisionmaking, policy, and regulatory successes stem from reliance on quality scientific research aimed at achieving our environmental goals. In fiscal year 2005 EPA will strengthen the role of science in decisionmaking by using sound scientific information and analysis to help direct policy and establish priorities. This budget request includes $572 million for the Office of Research and Development to develop and apply strong science to address both current and future environmental challenges. These resources support a balanced research and development program designed to address Administration and Agency priorities, and meet the challenges of the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Food Quality Protection Act (FQPA), and other environmental statutes. The budget request includes important new or increased research efforts in the following areas: computational toxicology, data quality, and EPA's Integrated Risk

Information System (IRIS) an EPA data base of Agency consensus human health information on environmental contaminants.

Accelerating Environmental Performance

To further promote environmental stewardship with localized solutions, the Agency requests $1.25 billion, the highest level ever, for categorical grants to support core State and Tribal environmental programs. A new State and Tribal Performance Fund provides $23 million in competitive grants to develop projects with tangible, performance-based environmental and public health outcomes that can be models for implementation across the Nation. The Administration believes that the best way to ensure strong, effective programs is to promote accountability, competition, and performance, and these funds will allow States and tribes that can link their proposed activities to health and environmental outcomes to receive additional assistance. EPA will also continue its emphasis on working with Tribal governments to build the capacity of their environmental programs.

Rewarding Results and Increasing Productivity

The President's proposed EPA budget for fiscal year 2005 fully supports the Agency's work. The request demonstrates EPA's commitment to our principal objectives safeguarding and restoring America's air, water, and land resources by facilitating collaboration, harnessing leading-edge technology, creating market-based incentives, and ultimately finding a better way for environmental protection. As we look to the future, I am confident that this funding will ensure the Agency's fulfillment of our responsibilities to the American public.

With that, Mr. Chairman and members of the committee, my prepared statement is concluded. I would be pleased to answer any questions you may have.

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

LIBBY, MONTANA

Question 1. How much does EPA plan to spend on clean-up activities in Libby, Montana this fiscal year? How much in fiscal year 2005?

Response. In fiscal year 2004, EPA has allocated $17 million to the cleanup activities in Libby, Montana, and $17 million are planned for this work in fiscal year 2005.

Question 2. How does this amount compare to the funding requested by the Region and EPA staff on the ground in Libby?

Response. EPA Region 8 requested $21 million for cleanup work in Libby for fiscal year 2004 and fiscal year 2005.

Question 3. Please detail the clean-up work that has yet to be completed at the Libby site and how long the EPA projects it will take to finish all work at the site.

Response. EPA currently has 400 residential property cleanup plans prepared, and is addressing residential contamination at the rate of 130 to 200 properties per year. There is a standing inventory of at least 1,200 more contaminated properties to address. This number does not include the potential for additional homes in the town of Troy, or other nearby areas which have not been evaluated.

At current funding and operating levels, EPA estimates that cleanup will continue for the next 6 to 9 years.

Question 4. Does the EPA believe its projected time-frame for completing work at the Libby site is reasonable, or, given the nature of the asbestos contamination in Libby and the risks it poses to human health, should more resources be allocated to the clean-up to allow it to be completed on a faster time-line?

Response. EPA will not meet the original estimate made in 2001 for completing cleanup work in Libby. At that time, EPA estimated that it would complete Libby cleanup operations by fiscal year 2005.

EPA's original estimate was based on limited knowledge about the extent of contamination in Libby. EPA had not conducted the extensive community outreach, site sampling and characterization, which now show that far more contamination is located in many more properties than initially anticipated.

The Agency started its Libby cleanup project by addressing the exposure sources most associated with illness—large, open sources of asbestos which ATSDR had linked to illness among the residents, including waste piles, ball fields, school playgrounds, and other open public sources of exposure. Most of this work is now finished. As such, EPA's work is now primarily focused on the remaining residential

cleanup needs, including contamination in yards, inside homes, and contaminated insulation in attics.

Question 5. Does the EPA have any concerns about impacts to public health in Libby as a result of an extended time-line for completing clean-up? If not, why not? Please explain your answer in detail.

Response. EPA began the Libby cleanup by working with the Agency for Toxic Substances and Disease Registry (ATSDR) to identify the asbestos exposure pathways which were most highly linked to illness among residents and former workers. This revealed three significant exposure pathways of concern: working for the mine or processor, being a family member of one of these workers, and playing in the waste piles. In addition, ATSDR determined that Libby residents who reported higher numbers of exposure pathways were more likely to be ill today.

EPA's response action was then tailored to address the worst sources of exposure first, ensuring the protectiveness of our remedial action. Most of this open, large source cleanup work has now been completed, and the remaining sources EPA will address are smaller, often buried or in closed walls and attics, presenting intermittent exposures that do not present the same level of threat as the four principal exposure pathways described above.

EPA's response in Libby meets highly protective levels, in part because the residents of Libby have a history of high levels of chronic exposure to what appears to be a particularly dangerous form of asbestos. EPA is taking prudent steps to ensure that Libby residents are not being exposed and will not be exposed to any additional asbestos contamination.

TEN MILE SITE

Question 6. Please detail the cleanup work yet to be completed at the Ten Mile site in Montana, and how long the EPA projects it will take to finish all work at that site.

Response. EPA has four phases of work remaining at the Ten Mile site. At present, EPA has several projects underway, including one chemical/physical treatment system and a source control project. Once these systems become operational and functional, EPA will continue to operate and maintain these systems for a period of 10 years. After the 10-year period, the State of Montana will take on the responsibility of operating and maintaining these systems. Other work at the site includes:

Yard cleanups and Source removal

- Estimated: 2–3 years to clean up the yards and removal of other waste sources in the community of Rimini; and
- Estimated: 1–2 years for cleaning up the contaminated roads and rail grade (made from waste) and cleaning up the yards and removal of other waste sources in the community of Landmark. This action is concurrent with the Rimini cleanup.

Mine cleanups

- Out of 150 mines inventoried, EPA concluded that approximately 70 mines required cleanup of approximately 250,000 cubic yards of wastes and contaminated soils. Based on the waste handling capability of the Luttrell repository, EPA expects to dispose of between 20,000 to 40,000 cubic yards of waste per year at Luttrell. This action requires approximately 6—8 years to complete.

Acid mine drainage

- EPA identified four principal mine discharge areas that require remediation. Thirty lower priority discharge areas require passive treatment. EPA plans to operate these water treatment systems for 10 years and then transfer the operation and maintenance to the State.

Stream flow augmentation

- This work is being addressed concurrently with the mine cleanups. The city of Helena is working with EPA's Redevelopment Program to explore options that would significantly enhance the benefits of EPA's cleanup at no additional cost.

Question 7. How much does EPA plan to spend on clean-up activities at Ten Mile this fiscal year? In fiscal year 2005?

Response. EPA has allocated a total of $6.1 million to the Ten Mile site for fiscal year 2004. Fiscal year 2005 allocations have not been decided.

Question 8. How does this amount compare to the funding requested by the Region and EPA staff on the ground at Ten Mile?

Response. The EPA plans to spend approximately $6.1 million at the site in fiscal year 2004, which represents roughly the level of funding requested by EPA's Montana office. The sources for these funds include $4.55 million from the Agency's remedial action account and $1.5 million from the following sources: U.S. Forest Service's repayment for waste disposal, repayment from town of Basin for waste disposal, and EPA's Removal Program funding.

Question 9. Could more funding be spent at Ten Mile in this and the next fiscal year, and would that result in a faster clean-up?

Response. No. EPA will be following a sequence of work that sets the rate at which cleanup can occur. Removal of waste will occur around homes in the Landmark subdivision. After all the waste from this location is moved up Rimini Road to the repository, removal of waste from the east half of Rimini road (through Rimini) will begin. This work will prevent further waste haulage from the Landmark subdivision. Concurrent with waste removal from the road through Rimini, EPA will relocate the Helena primary water line and install the infrastructure necessary to support the community of Rimini(s alternate water supply and waste water system. After the water and waste water mains have been installed, waste removal from Rimini yards can proceed. Additional funding beyond what EPA is requesting annually will not make this cleanup proceed faster.

Question 10. Are there public health concerns related to the Ten Mile site that would be resolved more quickly if more funding were allocated to clean-up at Ten Mile? Please explain your answer in detail.

Response. Additional funding at this time will not result in expediting short term risk reduction. The public health concerns at the Tenmile site stem primarily from exposure to heavy metals (primarily lead and arsenic) in soils and arsenic in drinking water.

The cleanup plan for Ten Mile addresses these risks in a sequential manner:

- Cleanup of Landmark yards prior to disturbing the road in Rimini;
- Excavate waste from road in Rimini while relocating the Helena water line and installing the potable and waste water systems through Rimini; and
- Cleanup Rimini yards and immediately hooking up new water and waste water systems.

TOTAL MAXIMUM DAILY LOAD (TMDL)

Question 11. It is my understanding that an assessment Category exists that will allow for not setting a Total Maximum Daily Load (TMDL) where pollution control measures are in place through Land Area Management Plans and where water bodies can reach water quality standards in a reasonable period of time under those plans. What is the EPA doing to facilitate the use of this Category of assessment by Federal agencies that have management plans in place? I believe that the assessment Category is called 4B.

Response. EPA's regulations for the Total Maximum Daily Load (TMDL) program provide that States do not need to list waters as requiring TMDLs if other pollution control requirements (e.g. best management practices) are stringent enough to implement water quality standards. These waters according to guidance issued in 2001 and 2003 can be placed in Category 4(b) of the Integrated Report. EPA believes that it is important to avoid duplication of effort and ensure that proper credit is given to other water quality restoration programs. EPA also believes that a reasonable basis for placing a water in Category 4(b) includes a demonstration that there is a clear link between implementation of the control mechanisms and achievement of water quality standards and that implementation is occurring or will occur. EPA's goal is to achieve water quality standards; TMDLs are one path, but the Agency recognizes that other paths can achieve the same results.

EPA has several initiatives that facilitate the use of Category 4(b) by States and other stakeholders. In the short term, EPA's Region 8 is working with Region I of the US Forest Service to resolve issues in Montana. From May 4–5, 2004, representatives from EPA, U. S. Forest Service (USFS), Montana State Department of Environmental Quality, and Montana Department of Natural Resource Conservation met in Helena, Montana, to discuss the need to accelerate the pace at which waters in National Forest Lands are taken off the list of impaired waters. A major subject of discussion was the correlation between various USFS planning documents and the demonstration needed to place waters in Category 4(b). Subsequent meetings are planned to further these discussions as well as coordinate TMDL development and USFS planning schedules to the best extent possible.

In the long-term, EPA is developing guidance for the 2006 assessment and listing cycle. As part of this effort, EPA is exploring options in addressing comments received regarding Category 4(b) to ensure that the criteria for placing waters in 4(b)

is useful and clearly understood. A draft of that guidance should be available for broad distribution by the end of June, and EPA will engage in consultation with all interested parties. EPA is also working with the Environmental Council of States (ECOS) to develop innovative strategies to encourage implementation activities that will lead to effective and efficient attainment of water quality standards. A key element of that project is a review of EPA guidance by an Innovative Action Council-ECOS workgroup to ensure that it allows for the efficient use of Category 4(b).

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR CARPER

CLEAN AIR PLANNING ACT (CAPA)

Question 1. EPA's fiscal year 2005 budget proposal includes $800,000 for implementing the Clear Skies Initiative or the Interstate Air Quality Rule. How would these funds be spent?

Response. The Clear Skies Act or the rules proposed in December 2003 are programs designed to cost-effectively reduce emissions of multiple pollutants from the power sector. This innovative approach addresses the major issues facing the Air Program—the adverse health and environmental effects caused by excessive $PM_{2.5}$, ozone, and air toxics in our communities—by replacing or streamlining the multitude of existing, uncoordinated regulatory approaches aimed at controlling emissions from the power sector with a single, national program that is comprehensive, cost-effective, and ensures emission reductions.

The types of actions that the Agency would need to take for implementation of either the Clear Skies Act or the rules proposed in December 2003 include:

Prepare the data and tools for completing the rules and/or implementing the Act. Design a cap-and-trade program, promulgate rules, and develop implementing tools and mechanisms.

Support the rules with technical and economic analyses. Determine control technology options and investigate the regulatory impacts on the U.S. economy, the environment, small business, and local communities.

Develop baselines and prepare to assess program benefits. Establish an integrated assessment program to include enhanced ambient and deposition monitoring and develop a baseline prior to implementation of the program.

Ensure the program's credibility and results. Successful trading programs require accurate and consistent monitoring of emissions from affected sources. Investigate monitoring alternatives (particularly as they relate to mercury), propose performance specifications, and develop mercury monitoring protocols.

Maximize flexibility for affected sources. Allow for optimum trading of emissions by building on existing Acid Rain electronic allowance trading and emissions reporting systems.

Develop the operating infrastructure. Operation of this program will be dependent upon E-Gov infrastructure that must be developed. The data collection requirements must be determined and operating software and hardware specifications developed. Initial software development should also begin.

Question 2. If the Congress passes a multi-pollutant bill other than Clear Skies, perhaps even the Clean Air Planning Act, would that $800,000 [that EPA said we need in order to conduct assessments in the Clear Skies Initiative] still be appropriate?

Response. Yes, EPA still believes that we would require resources to support programs essential to assessing the effectiveness of any pollutant reduction program, particularly those that use a cap and trade mechanism. There are needs regardless of whether a legislative or regulatory approach is used.

Question 3. Last summer, EPA staff provided results of their analysis of the Clean Air Planning Act. Recently, the data in support of that analysis was also provided. EPA's modeling data suggest that CAPA is better for public health and the environment than either Clear Skies or the recently proposed Interstate Air Quality Rule. CAPA reduces sulfur and nitrogen pollution further and faster throughout most regions of the country, providing over $50 billion per year more in public health benefits by 2020. Yet, EPA's own analysis shows that CAPA costs only 2 percent more than Clear Skies to implement over a 20-year period. Why is EPA proposing to reduce pollution through a costly and burdensome regulatory path when we have a solution that is much better for the country, but costs only slightly more to implement?

Response. EPA's analyses show that both CAPA and Clear Skies would provide substantial human health and environmental benefits. However, EPA's analyses

project that CAPA would cost significantly (over 50 percent) more than Clear Skies. Clear Skies is projected to cost $4.3 billion and $6.3 billion in 2010 and 2020, respectively. In comparison, CAPA's program costs are 53 percent higher in 2010 ($6.6 billion) and 57 percent higher in 2020 ($9.9 billion). On a present value basis, for the period 2005 to 2030, the cumulative cost of the Clean Air Planning bill is projected to be $82.7 billion—57 percent more than the present value of the cumulative cost of the Clear Skies legislation for the same period ($52.5 billion).

The Administration prefers a legislative approach as proposed by the President's Clear Skies proposal, which provides substantial health and environmental benefits with certainty, less complexity, and reasonable economic impacts. However, absent a legislative change, EPA is committed to following the current statutory requirements by proposing and finalizing the Clean Air Interstate and Mercury Rules. The Clean Air Interstate Rule (CAIR) will help cities and States in the East meet new, more stringent national ambient air quality standards for ozone and fine particles.

UTILITY MERCURY REDUCTIONS RULE

Question 4. In a recent article for the Environmental Law Institute journal that discussed options for removing mercury from coal fired power plants, Assistant EPA Administrator Jeff Holmstead asserted that Activated Carbon Injection, a technology expected to reduce mercury emissions by 90 percent from coal-fired power generating plants, should be available after 2010. If this is the case, why do EPA's proposed approaches to control mercury call for a reduction of 70 percent or less by 2010 rather than something tighter?

Response. EPA has proposed the Utility Mercury Reductions Rulemaking along with the Clean Air Interstate Rulemaking (CAIR) to reduce power sector emissions in an integrated manner. The proposed 15-ton cap in 2018 reflects a level of mercury (Hg) reductions that almost certainly exceeds the level that would be achieved through the installation of scrubbers and SCR needed to meet the SO2 and NOx caps in the proposed CAIR.

We believe the proposed 15-ton cap provides an incentive to encourage development of Hg control technologies like activated carbon injection (ACI), while at the same time providing health, welfare, and environmental benefits gained at a justifiable cost. It is not clear, however, that ACI will be capable of 90 percent reductions at all coal-fired plants.

Our proposed 15-ton cap is grounded largely in the modeling completed in support of the President's Clear Skies proposal. This modeling suggests that a cap of 15 tons in 2018 does not have a significant impact on power availability, reliability, or pricing or cause any significant shift in the fuels currently utilized by power plants or in the source of these fuels.

Question 5. Last year, EPW heard testimony from officials of the W.L. Gore Company regarding technology they have developed which can reduce mercury emissions by as much as 90 percent. Company officials believe their technology can be implemented in the near future. EPA has had the opportunity to evaluate the technology in its North Carolina research facilities and to test it in a more real-world setting. What are the results of those tests?

Response. W.L. Gore and Associates conducted a project examining its developmental proprietary mercury control process at the U.S. EPA's Air Pollution Prevention and Control Division (APPCD) combustion research facilities in Research Triangle Park, North Carolina. The testing performed was not funded by EPA and was not conducted as part of EPA's research to evaluate mercury control technologies. The Agency became involved when W.L. Gore and Associates entered into an agreement with ARCADIS, APPCD's onsite contractor, to develop data on their process. ARCADIS approached APPCD about using its facilities for the testing and an agreement was worked out. On several occasions, APPCD has entered into similar agreements with private companies interested in using its unique combustion facilities to test their technologies.

While EPA did not sponsor or conduct the tests, W.L. Gore presented the results of its testing at a symposium in 2003. The broad objective for this testing was to develop data on a fabric filter-based mercury removal concept which is based on using a porous fibrous filtration media designed to allow rapid chemical oxidation of incident elemental mercury (Hg0) and active binding of the oxidized mercury species to the surface of the media. The implementation of this process on coal-fired boilers would appear to involve use of mercury-trapping inserts in existing or new baghouses.

Typically new technology for large utility boilers requires testing beyond the scale at which W.L. Gore tested their technology at the RTP facility. EPA has not performed, or been provided with results of, any additional testing performed in a "real-

world setting." The likelihood that this technology could be implemented widely in the near future is unclear.

Question 6. Under the EPA's Section 111 alternative of the proposed Utility Mercury Reductions Rule, when will the Phase II cap level of 15 tons/year of mercury emissions be achieved? What effect will the safety valve provision of the proposed cap-and-trade rule have on the timing of achieving the Phase II cap level?

Response. EPA's Section 111 alternative program would place an emissions cap on mercury emissions from coal-fired electricity generating units. This cap would be implemented in two phases. The second phase of the program would begin in 2018, with a cap of 15 tons for emissions from these units.

Our analysis indicates that mercury emissions in 2018 probably would exceed the cap level as a result of banking and/or the safety valve provisions. We expect the 15-ton cap to be achieved after the 2020 timeframe, but due to uncertainties and limitations in the modeling, we are uncertain to the actual date. An important feature of the proposed mercury cap-and-trade program is the ability for sources to reduce emissions below the levels permitted by their emissions allowance allocations and bank those allowances for later use. It is important to note that the total mercury emitted over the life of the program will be the same with or without banking. However, banking of allowances provides flexibility to sources to optimize their compliance path (lowering compliance costs) and to realize a benefit from employing new, more effective technologies. It also encourages greater reductions than required during the early years of the program, which, in turn, can mean earlier human health and environmental benefits relative to what would occur without banking. It can result in extending the time until the final cap level is reached, but this extended time does not increase total loadings of mercury to the environment relative to a program without banking.

The safety valve is included in the program as a means of addressing uncertainty in the cost of mercury emissions controls. When the mercury allowance price reaches the safety valve level ($2,187.50 per ounce), a unit can borrow allowances from its own State's future budget, thereby reducing the State's budget in the year(s) from which allowances are borrowed. The safety valve, then, sets a maximum marginal cost for reducing emissions by making additional allowances available in the current year at the expense of the State's future budget. As a result, it delays the achievement of further reductions until the marginal mercury control cost falls below the safety valve price. When this occurs and borrowing from future years ceases, the existence of the safety valve—like banking—should not affect the cumulative mercury emissions reductions achieved under the program.

While EPA's IPM results do project that the safety valve price will be triggered before the cap is reached, a key limitation of our analysis is that it does not take into account the potential for advancements in the capabilities of mercury control technology and changes in their costs over time. We expect that innovations in mercury control technology will result in marginal mercury control costs being smaller than what we project in our analysis, as was the case with SO2 control costs under the Acid Rain Program.

Question 7. There is significant public concern regarding the role and impacts of mercury in the environment, including the potential for "hotspots." Does the EPA have the capacity to track, on a continuing basis, changes in human health and the environment due to mercury emissions reductions required by the proposed Utility Mercury Reductions Rule?

Response. There are EPA programs and some State programs that collect data on mercury in the environment. The National Atmospheric Deposition Program's (NADP) Mercury Deposition Network (MDN) routinely measures wet atmospheric deposition of mercury (There is currently no routine method available for measuring dry atmospheric deposition of mercury). States often monitor for mercury contamination in fish, with a particular focus on areas of enhanced fishing pressure. EPA's fish advisory program maintains a data base of fish tissue concentrations, submitted voluntarily by State, tribal, and territorial fish advisory programs. EPA is also currently conducting a national screening-level freshwater lake fish contamination study. The National Fish Tissue Study is the first national fish tissue survey to be based on a probabilistic (random) sampling design. The statistical design of the study may allow EPA to develop national estimates of the mean concentrations of mercury in fish tissue from lakes and reservoirs of the lower 48 States.

The Center for Disease Control's National Health and Nutrition Examination Survey (NHANES) has routinely collected information on blood levels of mercury (from all sources) in women of childbearing age and some children and will begin collecting data on everyone surveyed in 2005 or 2006.

None of these empirical monitoring studies specifically measures potential human health impacts associated with mercury emissions from utilities. However, EPA uses models to estimate how mercury emissions from utilities and other sources disperse in the atmosphere, cycle through the environment, and affect methylmercury levels in fish. EPA continues in efforts to improve upon the ability of these models to accurately predict mercury levels in the environment as well as to adequately characterize the uncertainties associated with these predictions.

Question 8. Are methods and networks available to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems?

Response. There are programs that routinely collect data on mercury in the environment. While there is currently no method or protocol that can track or measure the human health impact of mercury emissions specifically from utilities, there are approaches for estimating or predicting human exposures from mercury emissions from utilities using models and risk assessment methodologies. EPA continues in efforts to reduce the uncertainties in these models and methodologies.

The National Atmospheric Deposition Program's (NADP) Mercury Deposition Network (MDN) routinely measures wet atmospheric deposition of mercury. (There is currently no routine method available for measuring dry atmospheric deposition of mercury.) States frequently monitor fish tissue for mercury levels, and EPA's fish advisory program compiles these data in its own data base. But differences in current sampling methodology (non-random, and a variety of fish species) make these data difficult to use for trend analysis. However, EPA is currently conducting a national screening-level freshwater lake fish contamination study. The National Fish Tissue Study is the first national fish tissue survey to be based on a probabilistic (random) sampling design. EPA plants to use the study to provide a baseline to track progress of pollution control activities, and to identify areas where contaminant levels are high enough to warrant further investigation. These data sources consider all sources of human exposure to mercury, not just utility emissions.

In addition, EPA's STOrage and RETrieval (STORET) system, a repository for water quality data, contains limited data on concentrations of mercury in surface waters. EPA's Permit Compliance System (PCS) contains data on mercury concentrations in wastewater effluent from facilities with discharge permits requiring mercury analyses. However, historical mercury surface water and effluent data are generally not reliable. There was a growing awareness in the 1990's that existing mercury water sampling and analytical techniques were prone to contamination and produced artificially high measurements. For this reason, water mercury data in STORET and PCS is not adequate for purposes of trend analysis. EPA has recently made final an ultra-clean technique method for analyzing mercury in water (method 1631) and has a draft method for methyl mercury (method 1630). These recently developed methods will allow States to accurately assess the status of mercury contamination in their waterbodies. (Note: methods promulgated in 40CFR Part 136, such as method 1631, are required only when establishing wastewater effluent limits.)

INTERSTATE AIR QUALITY RULE

Question 9. The Administration's Clear Skies Initiative included environmental accountability provisions addressing monitoring and assessment needs. In the absence of legislation, does the EPA (alone or in cooperation with other Federal agencies) have the capacity to track, on a continuing basis, changes in human health and the environment due to SO2 and NOX emissions reductions required by the proposed Interstate Air Quality Rule?

Response. EPA has developed a National Monitoring Strategy in order to use currently available monitoring resources more efficiently. This strategy is the result of a significant partnership with State/Tribal/Local governments and academia. It examines the current monitoring networks and redesigns them to yield more targeted measurements for more pollutants. The strategy addresses multi-pollutant needs and is consistent with the recently released National Academy of Sciences report "Air Quality Management in the United States" which states that although the progress has been achieved in terms of cleaner air and improved health, a multi-pollutant approach is needed to meet future challenges. Networks that monitor air quality have documented decreases in concentrations of the criteria pollutants, but greater consideration must be given to how air pollution is transported across geopolitical borders. In addition to the new National Monitoring Strategy, EPA has other mechanisms in place to ensure tracking and reporting of changes in air quality. For example, EPA recently published a trends report that summarizes progress

in reducing levels of ozone and examines the link between air quality and emission reduction programs for precursors such as NOx and VOC. The Air Quality Index (AQI) is another mechanism that provides a link between measured pollutants and prevention of adverse health effects.

With respect to ecological (non-human health) effects, EPA has detailed the extent of our air quality, atmospheric deposition, and acidic surface water monitoring programs in our answer to the following question. These monitoring programs have operated for many years, in some cases for over 20 years, and we expect them to continue to operate in the future. Most of these networks are operated in conjunction with other agencies and organizations. For example, the National Atmospheric Deposition Program (NADP) is a long-term collaborative effort between EPA, other Federal agencies (particularly USGS), States, universities, and Indian Tribes.

While EPA, in conjunction with our partners, has been able to successfully assess the health and environmental impacts of pollution control programs, there are new challenges facing many of the monitoring networks. For example, at many atmospheric deposition monitoring sites the equipment has been in continuous use for over 20 years, and the networks now require wholesale refurbishment in order to continue collecting high quality data. Both EPA and our partners are determined to address environmental accountability in the most holistic manner possible.

Question 10. Are sufficient methods and networks available to routinely monitor, collect, and compile data on the status and trends of sulfur and nitrogen in the environment due to changes in emissions from affected facilities, including ambient pollutant concentrations, atmospheric deposition, surface water quality, and biological systems?

Response. Long-term environmental monitoring efforts are considered crucial to assessing the effectiveness of air pollution control programs. Below are description of networks that the Environmental Protection Agency uses to track status and trends for sulfur and nitrogen in the environment.

The EPA manages an ambient air quality network that is implemented primarily by State and local agencies to meet requirements related to the national ambient air quality standards. Sulfur dioxide and nitrogen dioxide are routinely monitored. The network includes a subset of sites which emphasize urban and multi-source areas. Another ambient air network that provide sulfur and nitrogen information is the Interagency Monitoring of Protected Visual Environments (IMPROVE). It is focused on visibility and regional haze.

The EPA administers the Clean Air Status and Trends Network (CASTNET), a long-term, routine monitoring network specifically designed to determine the effectiveness of national and regional emission reduction programs and provide trends information in regional air quality and atmospheric deposition. The sites use consistent methods for observing long-term and significant changes in atmospheric composition. The EPA is recognizing that different options for continued operation of CASTNET are based on the assumption that the network infrastructure needs refurbishment. The National Atmospheric Deposition Program National Trends Network (NADP/NTN) provides the longest record of precipitation chemistry across the U.S. for examining geographical and temporal long-term trends. Together, CASTNET and NADP/NTN allow for a regional assessment of total (dry + wet) acid deposition throughout the U.S. for sulfur and nitrogen species. The NADP is a cooperative effort among many partners.

In addition to routine ambient and deposition monitoring networks, EPA administers the Temporally Intensive Monitoring of Ecosystems (TIME) project on surface water chemistry. Similarly, EPA Long Term Monitoring (LTM) sites in acid sensitive regions of the northern and eastern U.S. monitor lakes and streams for responsiveness to changes in deposition loadings of sulfur and nitrogen among other parameters. A key issue for the evaluation of the 1990 Clean Air Act Amendments is the relationship between trends in deposition and trends in surface water chemistry.

Furthermore, State, local and tribal pollution control agencies conduct water quality monitoring to support assessments related to the Clean Water Act. Atmospheric deposition of pollutants such as nitrogen may be identified by a State as a cause for water quality impairment. Monitoring data include biological, chemical and physical data, habitat assessments, and toxicity data. The EPA also has been working with States to develop bioassessment programs and biocriteria to better show the cumulative impacts of pollutants on aquatic life. These water quality data may be used together with atmospheric deposition data to relate water quality conditions to changes in deposition.

METCHEM SITE

Delaware City, Delaware

Question 11. For the past 2 years, the EPA has been working to address the problems at the Metachem facility in Delaware City, Delaware. The Metachem site included an existing superfund site when the owners abandoned the factory in 2002. The EPA and the State of Delaware responded immediately and have been working to prevent any releases of chemicals from the factory. Does the EPA fiscal year 2005 budget request include sufficient funds to allow EPA to continue aggressive operations at Metachem throughout fiscal year 2005?

Response. The Standard Chlorine of Delaware (aka Metachem) site, in New Castle County, Delaware, was a responsible party-lead site until 2002. At that time the site owner, Metachem Products, LLC, declared bankruptcy. EPA's removal program is now removing chemicals from the site and performing operations that minimize the potential for chemicals that remain at the site to threaten the nearby community or the environment. EPA has conducted its actions in a prioritized manner that focuses on the most critical risks. Since 2002, the EPA removal program has spent $16 million on its ongoing activities at the site, and EPA has recently approved an additional $6.8 million to continue its emergency removal operations. EPA has sufficient funds to continue its planned and ongoing removal activities through fiscal year 2005.

Question 12. Does the EPA's superfund account have the funds necessary to continue operation at the Metachem site and at all of the other superfund sites nationwide?

Response. Since 2002, the Superfund Removal Program has spent $16 million on its ongoing activities at the site, and EPA has recently approved an additional $6.8 million to continue its emergency removal operations. EPA has sufficient funds to continue its ongoing removal activities. The Administration's Superfund budget request for fiscal year 2005 was $1.38 billion. This included a request for a $150 million increase for the Superfund long-term cleanup (remedial action) program. This represents a $124 million increase from fiscal year 2004 Superfund appropriation levels. Final decisions on funding new construction projects in fiscal year 2004 and fiscal year 2005 will not be made until later in the fiscal year.

MOTIVA REFINERY

Delaware City, Delaware

Question 13. The Motiva refinery in Delaware City is the largest source of sulfur dioxide emissions in the Nation, and has recently agreed to an EPA order to reduce those levels. The owners of that refinery have announced plans to sell to a new owner. I appreciate EPA's affirmation that the new owner will be held to the same expectations as Motiva. However, if the new owner seeks to delay installation of pollution control technology, would you take action to force them to meet the original timelines and cleanup the refinery on schedule?

Response. The Delaware City Refinery is one of four Motiva refineries nationwide (others are located in Louisiana and Texas) that is covered by the terms of a 2001 civil judicial consent decree entered into with the United States and the State of Delaware. The Consent Decree establishes an aggressive schedule for the installation of new controls and improved operations at Delaware City, which is the largest single source of SO2 emissions among refineries in the Nation, although there are other larger sources of SO2, such as TVA's coal-fired power plants and Ohio Edison's W.H. Sammis power plant in Stratton, Ohio.

On May 1, 2004, Premcor, headquartered in Old Greenwich, Connecticut, completed its purchase of the Delaware City Refinery. As a result, Premcor immediately assumed all of the obligations and responsibilities at Delaware City set out in the Consent Decree, including the schedule and timelines for installation of new controls. In addition, as a measure to help ensure that there is no slippage or delay in the scheduled installation of new controls and other obligations by Premcor at Delaware City, EPA and the Department of Justice, together with the State of Delaware, have negotiated an amendment to the Consent Decree. The amendment would specifically commit Motiva to continue to make its technical resources available throughout the permitting and construction processes for the primary air pollution control technologies to be installed at the Delaware City Refinery. Noncompliance with the schedule for installation of controls and other required actions would potentially subject both Premcor and Motiva to stipulated penalties and/or other appropriate sanctions. The sale does not affect the ability of EPA and the United States to act to ensure compliance with the Decree.

COMBINED SEWER OVERFLOWS (CSO)

Question 14. Combined Sewer Overflows are expensive to fix, and cities such as Wilmington Delaware and Washington DC need help in addressing the impacts of outdated sewers on water quality in our rivers and streams. Does the fiscal year 2005 budget request include increased funding to help States address CSO problems? Is it enough?

Response. The fiscal year 2005 President's Budget continues his commitment to Combined Sewer Overflows (CSO) correction and other infrastructure investment by proposing to continue to fund the CWSRF through 2011, providing an additional $4.4 billion in Federal capitalization of these State funds beyond the last Administration's funding plan. The President's proposal will significantly increase the CWSRF's capability to fund CSO projects in both the near and long terms. The Clean Watersheds Needs Survey 2000 Report to Congress lists $50.6 billion in national needs for CSO correction. To date, financing of wastewater infrastructure and other Clean Water Act programs through the Clean Water State Revolving Fund (CWSRF) has surpassed $43 billion. States chose to apply $3.6 billion of that amount to CSO correction projects to supplement the local utility revenues directed toward this problem.

Question 15. Do you think we could work together to develop a solution that addresses CSO problems and is acceptable to all parties?

Response. EPA strongly endorses collaborative processes to generate solutions to environmental challenges. To address the unique challenges facing Combined Sewer Overflow (CSO) communities, EPA and our stakeholders need to work together to develop innovative solutions to resolve the financial and technical issues that impact these communities. Some of EPA's efforts in this area are described below. Essential to the development of solutions on the local level will be the involvement of a wide range of stakeholders within the community including the State and local government, POTW operators, environmental groups, engineering firms, and other sectors.

EPA is working on the following activities to ensure better implementa-tion of the CSO Program:

- Guidance to ensure compliance with the requirement of the 2000 Wet Weather Water Quality Act that requires CSO permits and orders "shall conform to" the 1994 CSO Policy
- A Report to Congress that summarizes the public health and environmental impacts of CSOs and SSOs, identifies the resources spent by municipalities to address these impacts, and evaluates the technologies used by the municipalities to address these impacts. The Agency plans to develop and maintain a technology clearinghouse that will assist communities in selecting remedies to control CSO discharges.
- Encouraging the use of EPA's Guidance: Coordinating CSO Long-Term Planning With Water Quality Standards Reviews as CSO communities, NPDES and water quality standards authorities, and stakeholders coordinate in the development of CSO long-term control plans.

Future EPA efforts will focus on advocating sustainable solutions including efficient management methods, cost effective approaches to selection of CSO control alternatives, and real cost pricing by utilities. Additional funding, in the form of the Administration's Clean Water State Revolving Fund capitalization plan, will help to support this effort. Under the President's plan, CWSRF funding at $850 million a year through 2011 could raise the revolving level of the fund to $3.4 billion per year, a 70 percent increase over the $2 billion targeted by prior Administrations. It will result in total Federal capitalization of the fund of close to $27 Billion, more than 3 times the original CWA authorized level of $8.4 billion.

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

SUPERFUND

Question 1. I understand that EPA has made a commitment to completing the ongoing cleanups at existing Superfund sites. Could you please describe how EPA prioritizes the allocation of its Superfund budget at existing sites? Also, while it is clearly important to finish the cleanup process at ongoing sites, EPA is still taking on the important task of listing new sites on the NPL. With the strain on cleanup dollars, what can new Superfund sites reasonably anticipate in terms of allocation of Superfund dollars?

Response. Cleanup work at Superfund sites is usually comprised of several discrete activities that may be related but are not conducted simultaneously. When we begin work on a separate activity it is a program priority to finish it. Each separate activity at a site is evaluated by a Panel of national program experts with representatives from each region. The Panel considers relative risk to human health and the environment. This Panel's evaluation is a prime consideration in setting funding priorities.

EPA is strongly committed to ushering new Superfund NPL sites through the cleanup process even as we complete cleanups at existing NPL sites. Once a site is added to the NPL (and even prior to final listing), EPA engages in numerous activities to characterize the site contamination and its extent; develop, select, and design remedies to achieve cleanup goals; and engage State and local stakeholders in the record-of-decision and the cleanup processes. In fiscal year 2004, EPA allocated approximately $155 million to these and other functions (such as State capacity development, pre-NPL site assessment, records management, information technology). EPA plans to maintain this same level of funding to continue these activities in fiscal year 2005 provided the Congress enacts the President's 2005 request.

Question 2. I understand that the Office of Enforcement and Compliance Assurance is developing a uniform procedure for application of the Service Station Dealers Exemption at used oil Superfund sites. This is necessary because there are many former oil recycling facilities that mismanaged used oil collected for recycling and disposal. Unfortunately, many of these sites have been listed on the National Priorities List. With an eye toward preventing existing oil recyclers from becoming future Superfund sites, please describe in detail programmatic and enforcement activities EPA is currently undertaking at operational used oil recycling facilities?

Response. EPA recently launched the "You Dump It, You Drink It" campaign, aimed at the Hispanic automotive repair and service industry and consumers. Despite the fact that about half of all automotive mechanics in the United States are Hispanic, little if any Spanish-language material exists for the automotive repair industry and those consumers who change their own motor oil. EPA hopes to fill this void through a widespread distribution of these materials, which include posters, brochures and bumper stickers.

EPA recently requested comment on the Draft Model CERCLA Application/Information Request for Service Station Dealers, 69 Fed. Reg. 5,147 (2004), which would be used by the Agency to help decide which service station dealers qualify for the CERCLA Service Station Dealer Exemption. CERCLA provides an exemption from Superfund liability for certain "service station dealers" who accept "do-it-yourselfer" used oil and send it to another facility for recycling. The exemption is intended to encourage service station dealers to accept for recycling used oil generated by households by removing the fear of liability in the event the used oil recycling facility to which it is sent becomes a Superfund site. The exemption applies, however, only if the service station dealer itself managed the used oil in accordance with the Agency's used oil management standards while in its possession. The comment period on the Federal Register notice has recently closed. EPA is currently evaluating the comments and plans to finalize the Draft Model CERCLA Application/Information Request.

EPA takes appropriate enforcement actions to enforce the used oil management regulations. For example, the Agency recently prevailed in a case against the Dearborn Refining Company. Dearborn is a blender/marketer of lubricating and metalworking products primarily from virgin oils and various additives. Dearborn also receives, stores and processes used oil. Sampling from a multimedia inspection conducted by EPA in 1999 detected the presence of petroleum products in surface soils and water, subsurface soils, and groundwater. As part of a larger effort to clean up the Detroit and Rouge watersheds, EPA Region V had explored several approaches to achieving a cleanup at the Dearborn facility. After Dearborn failed to comply with a RCRA Section 7003 order, the Region brought an enforcement action for violations of the used oil regulations. The Administrative Law Judge assessed a penalty of $1.25 million and ordered Dearborn to comply with the regulations. EPA's case against Dearborn is one of several ongoing matters that are part of the Agency's Corrective Action Smart Enforcement Strategy (CASES) effort. CASES is an effort to compel facilities to address hazardous waste contamination that is potentially harmful to human health. EPA's goal is to have human exposures controlled by 2005 at 95 percent of facilities that were identified in 1999 as high priorities for cleanup under RCRA.

On January 29, 2004, the Agency won a remand from the Environmental Appeals Board in Consumers Recycling, Inc., another case involving a used oil recycler. In this multimedia enforcement action, a Michigan scrap yard failed to notify the State of its used oil processing activities and to prepare a waste analysis plan. The Board

ordered the Administrative Law Judge to develop the record for deciding the important issue of whether Consumers is a used oil generator or a used oil processor.

PHASE II STORM WATER RULE

Question 3. Beginning last March, States and municipalities with urbanized areas are in the process of coming into compliance with the EPA Phase II Storm Water Rule. The 2002 EPA Gap Analysis estimates nationwide stormwater funding needs at $8.3 billion over the next 20 years. With limited funding available for the nation's drinking water and wastewater infrastructure needs, the Clean Water and Drinking Water State Revolving Loan Funds will act as the primary source of funding for basic infrastructure projects. For many Northeastern States, little to no funding is available through the SRFs for addressing stormwater concerns. What other sources of funding has EPA identified to assist States in meeting their Phase II stormwater needs?

Response. EPA operates the Environmental Finance Program (EFP) as a way to assist communities in their search for funding opportunities. Key to this effort is EPA establishing nine universities in the United States as regional Environmental Finance Centers (EFCs) to help States and regulated entities manage environmental mandates required by Federal law. The EFCs are located at the University of Maryland, University of New Mexico, Syracuse University, Boise State University, Cleveland State University, California State University at Hayward, University of Louisville, University of Southern Maine, and University of North Carolina at Chapel Hill. Visit www.epa.gov/efinpage for more information on the EFC Network and each of its regional centers. These sites contain extensive, up-to-date information on funding sources, training, and case studies on how communities can access funds and use those funds to pay for various environmental programs, including storm water management. One of the key tools of many of these EFCs is the ability to search for funding sources for specific environmental programs. As an example, a search for "stormwater" identifies 50 potential funding sources.

Question 4. For many States with large urban areas, the Clean Water Act 319 funding stream has provided a significant source of funding for addressing nonpoint source pollution primarily caused by stormwater runoff. How is EPA working to ensure that States with smaller amounts of agricultural land, but large urban areas, will be able to continue to have the necessary flexibility to utilize 319 funding for their highest priority nonpoint source pollution problem?

Response. EPA's newly published guidelines, Nonpoint Source Program and Grants Guidelines for States and Territories (68 FR 60653, October 23, 2003), provides numerous additional examples of stormwater activities that are eligible for Section 319 funding and, by extension, are also fundable as nonpoint source projects under the State Revolving Loan Program under Section 601(a)(2):

- Technical assistance to State and local storm water programs;
- Monitoring needed to design and evaluate the effectiveness of implementation strategies;
- Best management practices (BMP) for pollution prevention and runoff control (except for BMP's required by a draft or final NPDES permit;
- Information and education programs;
- Technology transfer and training; and
- Development and implementation of regulations, policies, and local ordinances to address storm water runoff. (These may apply to areas covered by NPDES permits, provided that the regulations, policies and ordinances apply to non-permitted areas as well.)"

CLEAN WATER ACT

Question 5. Governor Leavitt, while I was pleased to see that the Administration decided to halt plans for issuing a new rule redefining federally protected streams and wetlands, I am concerned that the guidance document jointly issued by EPA and the Army Corps of Engineers in relation to the Supreme Court's SWANCC decision is still in effect. This guidance removes Clean Water Act protections for what your agency has estimated to be about 20 million acres of wetlands.

Given the decision not to proceed with the rule changes, and the recent GAO study which revealed that, at least for Corps of Engineers Districts, this guidance is resulting in widely varying interpretations of Clean Water Act jurisdiction, has your agency reconsidered the need for withdrawal or revision of this guidance document?

Response. EPA and the Corps are taking a number of steps in response to the Supreme Court's decision in Solid Waste Agency of Northern Cook County (SWANCC). As we implement these actions and monitor their effectiveness, we will

continue to assess the adequacy of existing field practices, guidance, and training programs and take appropriate steps to ensure Clean Water Act jurisdiction is correctly determined.

On January 15, 2003, EPA and the Army Corps of Engineers (Corps) issued joint legal guidance that clarified the scope of "waters of the United States" in light of the U.S. Supreme Court's decision in Solid Waste Agency of Northern Cook County (SWANCC) and subsequent judicial decisions (68 Fed Reg 1991, 1995 [January 15, 2003]). We respectfully disagree that the guidance removes 20 million acres from CWA protections. Rather, it clarifies for Corps and EPA field staff how the agencies are interpreting the jurisdictional status of isolated, intrastate, non-navigable waters in light of SWANCC and subsequent judicial rulings. The guidance states that field staff may no longer assert jurisdiction over isolated, intrastate, non-navigable waters based solely on the presence of migratory birds, and that agency headquarters approval should be obtained prior to asserting jurisdiction over such waters based solely on other types of commerce links. The legal memorandum emphasizes that field staff should continue asserting jurisdiction over navigable waters, their tributary systems, and adjacent wetlands. The memorandum also emphasizes that jurisdictional calls must reflect existing regulations and relevant case law. Consistent with this legal guidance, field staffs at both EPA and the Corps continue to vigorously implement and enforce programs affecting all "waters of the United States" protected under the CWA after SWANCC.

The guidance specifically provides that Headquarters concurrence is applicable only to isolated waters that are both intrastate and non-navigable. Given the rationale and reasoning in SWANCC and the extensive and varied case law since, the Agency believes it is appropriate for Headquarters to play a role before jurisdiction is asserted over such waters on the basis of commerce clause factors, both to ensure consistency with applicable case law and to foster national consistency on how such issues are approached.

As the question notes, on December 16, 2003, EPA and the Corps of Engineers jointly announced that we would not issue a new rule on Federal regulatory jurisdiction over isolated wetlands. At the same time, the agencies emphasized that they would continue to monitor implementation of section 404 and other Clean Water Act (CWA) programs to ensure their effectiveness. The continued viability and utility of the January 2003 joint legal memorandum is one of the factors that the agencies are monitoring. At present, EPA and the Corps have no specific plans to withdraw it.

MUNICIPAL WASTEWATER TREATMENT AGENCIES

Question 6. With a law in place to assist the nation's drinking water facilities in meeting their security needs, how is EPA working to ensure that municipal wastewater treatment agencies have the necessary resources to perform vulnerability assessments and make basic security enhancements to their plants?

Response. The President designated EPA as the Sector Specific Agency for the water sector, which in HSPD–7 specifically includes both drinking water and waste water systems. As such, EPA's efforts are not confined to assisting drinking water utilities, but instead include a robust program to help improve the security of the Nation's waste water systems. Although the Bioterrorism Act of 2002 requires certain drinking water systems to submit vulnerability assessments and emergency response plan certifications, there are no comparable requirements for wastewater facilities. However, the Agency has heavily promoted tools and assistance with which wastewater utilities can conduct vulnerability assessments and prepare emergency response plans.

Since September 11, 2001, the Agency has taken a number of different actions to help support wastewater utilities with their security needs, and as a result, many wastewater utilities are adopting aggressive security measures. With funding from the Agency, stakeholders have developed vulnerability assessment and emergency response tools, provided security training, developed and implemented their waste water research action plan, and provided technical assistance to wastewater utilities. While these efforts have led to significant improvements in the preparedness of waste water systems, we will continue to develop and refine the tools and assistance we provide to the sector as part of our ongoing responsibilities and duties as the Sector Specific Agency.

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

MERCURY RULE

Question 1. A January 21 letter to you from Eric Schaeffer, a former EPA enforcement official, asks you to clarify discrepancies between the levels of mercury reductions that EPA has claimed will result from its cap-and-trade rule and the results of an EPA model run of the Clear Skies proposal. That letter says:

> "EPA's emissions estimates for Clear Skies which include the same timetables and targets for mercury as the December 15 proposed cap and trade rule, are developed through its Integrated Planning Model, which is available on EPA's website. The IPM model compares likely emissions under Clear Skies to a "base case," and includes several variations to take into account regulatory and market uncertainties."

Regarding the table, Mr. Schaeffer says that "As the table illustrates, contrary to EPA's public statements, its mercury cap and trade proposal does not come close to reducing mercury emissions 70 percent by 2018. Indeed, while EPA cautions that emissions projections for later years are less reliable, the model projects that mercury emissions will decline by no more than 52 percent as late as 2026."

How do reconcile the difference between your stated mercury reduction targets and the results of your own models?

Response. The proposed mercury cap-and-trade program would place an emissions cap on mercury emissions from coal-fired electricity generating units. This cap would be implemented in two phases. The second phase of the program would begin in 2018, with a cap of 15 tons for emissions from these units. When this cap is fully implemented, emissions from affected units would be reduced by approximately 70 percent. Further explanation of how such a cap and trade system works, similar to the successful acid rain program, reveals why statements such as "reducing mercury emissions by 70 percent in 2018" are incorrect.

An important feature of the proposed mercury cap-and-trade program is the ability for sources to reduce emissions below the levels permitted by their emissions allowance allocations and hold or "bank" those allowances for later use. Banking encourages greater reductions than required during the early years of the program, which, in turn, can mean earlier human health and environmental benefits relative to what would have occurred without banking. It also provides flexibility to sources to optimize their compliance path so they can keep their compliance costs down, thus benefiting their customers, and realize a benefit from employing new, more effective technologies. The total mercury emitted over the life of the program will be the same with or without banking. Banking can result in extending the time until the final cap level is reached, but this extended time does not increase total loadings of mercury to the environment relative to a program without banking.

Question 2. As I mentioned in my opening statement, I am opposed to the mercury trading component of your proposed power plant rules because I am concerned about hotspots. I understand that EPA has dismissed this concern, but it is also my understanding that the regulatory docket does not contain any information on hotspots. What analyses did the Agency do or what information does the Agency have on mercury hotspots under the trading schemes proposed?

Response. EPA does not dismiss the concern about hot spots, either for mercury or for any other pollutant. Analyses to examine the effects of the Clean Air Mercury Reduction Rule are underway and will be provided to Congress and the public when completed.

Question 3. It has been reported that the Agency has incorporated, verbatim into the proposal sections of industry white papers. Assistant Administrator Holmstead has been quoted as saying these passages "came to him during interagency review." To what extent did personnel other than EPA staff contribute to the substance of this proposal? And why?

Response. Executive Order 12866 requires all significant agency rulemakings to be submitted to the Office of Management and Budget for review. As part of that review, other executive departments and agencies have the opportunity to review and comment on the rulemaking. This executive order was issued during the Clinton Administration and remains in effect today. The draft proposed mercury rule was submitted to OMB for review pursuant to the executive order. The Clean Air Act requires documents related to such a review to be placed in the public docket. We have complied with this docketing requirement, and the documents provide an indication of who participated in the review and to what degree.

Question 4. Regarding the emissions trading approaches for mercury preferred by the Agency, your advisor, Philip Angell, has been quoted as saying "Sure there are concerns about legal problems with this (trading) approach, but that doesn't mean you shouldn't try it." How does the Agency reconcile the potential delays in this legal experiment, which will likely be tied up in the courts for years, with its mandate to protect the public health from a persistent, bioaccumulative neurotoxin like mercury?

Response. The Clean Air Mercury Rule represents the first time under any administration that EPA has proposed to require coal-fired power plants to reduce their mercury emissions. We are committed to completing the rule in an expeditious fashion and will vigorously defend any challenge to the final rule.

Question 5. What advice have you received from your Office of General Counsel regarding the legality of mercury emissions trading?

Response. EPA believes that a trading program is the best overall system for controlling mercury emissions from utilities because it achieves the best balance of health protection, costs, and incentives. EPA's legal justifications for its proposed mercury rules are set forth in the preamble to the proposal. We are taking comment on all aspects of the proposal, including legal issues, and will carefully review all comments we receive.

NEW SOURCE REVIEW

Question 6. On November 5, 2003, a few days before you took your post, EPA announced that it would no longer investigate or prosecute past violations of the Clean Air Act's new source review (NSR) requirements where the alleged conduct fell within a new "equipment replacement" exemption that was set to take effect on December 26.

On December 24, the U.S. Court of Appeals for the D.C. Circuit stayed the equipment replacement exemption, concluding that it was likely unlawful and threatened irreparable harm to the public.

Since that time, the EPA and the Justice Department initiated several new NSR enforcement actions, but they were related to violations that were outside the scope of the new "equipment replacement" rule.

My question is this: Will EPA refer to the Justice Department any of the more than fifty outstanding NOVs identifying conduct that is within the scope of the "equipment replacement" exemption that was stayed by the courts?

Response. The "equipment replacement" rule primarily affects power plants. EPA has issued 15 NOVs to coal-fired power plants, and in all but one case the violations alleged in the NOVs have been referred to the Department of Justice. The non-referred NOV is currently the subject of active settlement negotiations. In addition, EPA has referred a significant number of other coal-fired power plant cases for which it has not issued, or does need not need to issue NOVs. Where EPA identifies violations, EPA plans to develop referrals of coal-fired power plant cases. Decisions about which new cases to refer will be guided by a myriad of factors, including expected environmental benefits likely to accrue from prosecution of the violations, as compared with the cases already referred.

ENVIRONMENTAL JUSTICE

Question 7. The March 1 EPA Inspector General's Report on Environmental Justice was quite clear in its conclusion that EPA has neither fully or consistently complied with the 1994 Executive Order that required all Federal agencies to identify and address disproportionately high and adverse human health and environmental effects of its programs and policies on minority and low-income populations.

The Inspector General's basic criticism is that EPA's Environmental Justice officials have not only failed to identify the minority land low-income populations that are the intended beneficiaries of the Executive Order, but are saying now saying that it is not necessary for them to do so.

Please explain how the Executive Order to ensure minority and low-income communities are not burdened by disproportionately high levels of air and water pollution or exposure to toxic wastes can be met if EPA cannot identify these minority and low income populations.

Response. The Agency believes that the intent of the Executive Order is to ensure that environmental actions or decisions do not result in disproportionately high and adverse human health or environmental effects by ensuring that the analysis of these effects includes the examination of secondary effects, cultural concerns, and cumulative impacts/effects. While such effects can occur in any community, the Agency recognizes that significantly greater adverse effects are often correlated with minority populations and/or low-income populations. Thus, EPA's approach includes

collecting and analyzing information on demographic factors and other relevant data, as well as the actual environmental and human health effects themselves as part of the scoping process.

The Agency's Office of Enforcement and Compliance Assurance is currently formulating its response to the Inspector General's report, "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice," (http://www.epa.gov/oigearth/publications.htm). The Agency's written response will be submitted to the Inspector General's office on 3 June 2004; we would be happy to answer any additional questions you may have that are not addressed in the Agency's response.

Question 8. As the IG notes in its report, it is already EPA's general mission to ensure adequate environmental protections for all members of the public, and the 1994 Executive Order on Environmental Justice was not meant to reiterate this mission, but "was specifically issued to provide environmental justice to minority and/or low income populations due to concerns that those populations had been disproportionately impacted by environmental risk." Do you disagree that was the purpose—and language—of the Executive Order?

Response. The Agency believes that the intent of the Executive Order is to ensure that environmental actions or decisions do not result in disproportionately high and adverse human health or environmental effects by ensuring that the analysis of these effects includes the examination of secondary effects, cultural concerns, and cumulative impacts/effects. While such effects can occur in any community, the Agency recognizes that significantly greater adverse effects are often correlated with minority populations and/or low-income populations. Thus, EPA's approach includes collecting and analyzing information on demographic factors and other relevant data, as well as the actual environmental and human health effects themselves as part of the scoping process.

The Agency's Office of Enforcement and Compliance Assurance is currently formulating its response to the Inspector General's report, "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice," (http://www.epa.gov/oigearth/publications.htm). The Agency's written response will be submitted to the Inspector General's office on 3 June 2004; we would be happy to answer any additional questions you may have that are not addressed in the Agency's response.

Question 9. In response to the IG's criticism that EPA must identify the populations who are the subject to the Executive Order, EPA's Office of Enforcement said that not doing so would allow EPA "to move beyond the dead-end questions relating to what is or is not an 'environmental justice community,' who are or who are no 'environmental justice individuals,' what are or are not 'potential environmental justice communities,' or what are or are not 'environmental justice potential areas of concern.' "

Administrator Leavitt, what does it mean that these are "dead-end" questions? Do you agree that trying to identify the communities intended to be protected by the Executive Order is a "dead-end"? The IG stated that "[w]hile the [EPA] believes these may be dead end questions, in our opinion it is impossible to carry out the intent of the Executive Order, which is to focus on minority and low-income populations, without first answering these questions." Do you disagree?

Response. The Agency believes that the intent of the Executive Order is to ensure that environmental actions or decisions do not result in disproportionately high and adverse human health or environmental effects by ensuring that the analysis of these effects includes the examination of secondary effects, cultural concerns, and cumulative impacts/effects. While such effects can occur in any community, the Agency recognizes that significantly greater adverse effects are often correlated with minority populations and/or low-income populations. Thus, EPA's approach includes collecting and analyzing information on demographic factors and other relevant data, as well as the actual environmental and human health effects themselves as part of the scoping process.

EPA's Office of Enforcement and Compliance Assurance is currently formulating its response to the Inspector General's report, "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice," (http://www.epa.gov/oigearth/publications.htm). The Agency's written response will be submitted to the Inspector General's office on 3 June 2004; we would be happy to answer any additional questions you may have that are not addressed in the Agency's response.

Question 10. In December 2001, the National Academy of Public Administration (NAPA) issued a report titled Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities Is Integral to the Agency's Mission, which, like

the IG report concludes that EPA must set clear expectations for producing results that are linked to the agency's mission, and that staff be given clear performance measures. The NAPA panel found that, despite the stated commitment of EPA leadership, the agency had not fully integrated environmental justice considerations into the agency's core mission or its staff functions. An October 2003 Report on environmental justice by the US Commission on Civil Rights restated many of the NAPA panel's and recommendations, and offered several concrete suggestions of its own.

There seems to be a growing consensus among these reports that EPA has not fully integrated environmental justice considerations into the agency's core mission or its staff functions. Do you disagree? Are you aware of any independent or outside EPA reports that concluded otherwise?

Response. EPA's vision for environmental justice is for all people to enjoy the same degree of protection from environmental risks and heath hazards and have equal access to the decisionmaking process. To achieve this vision, the Agency's Office of Environmental Justice is actively working to provide a consistent approach toward the integration of environmental justice ideas and practices into all policies, programs, and activities.

As a specific example of integration, the Office of Enforcement and Compliance Assurance (OECA) issued its Environmental Justice Policy in January 2004 to support the importance of environmental justice in program implementation. OECA also drafted an Environmental Justice Targeting Strategy and hopes to incorporate it into its programmatic activities. OECA's application of smart enforcement concepts will use existing environmental and health data, compliance tools, and enforcement actions to address significant environmental problems and to identify problems in communities with environmental and public health concerns. OECA can enhance its targeting efforts to identify and screen facilities, sectors, and geographic and demographic areas based on predicted or known impacts to human health and ecological resources.

EPA is not aware of any other independent or outside reports that conclude that EPA has not fully integrated environmental justice considerations into the agency's core mission or its staff functions or otherwise. Since the action plans were established in 2003, the agency believes it is too early to arrive at such conclusions.

Question 11. Since the release of the NAPA report in December 2001, has the EPA taken any concrete steps to implement any of that report's specific recommendations to adopt accountability and performance measures to incorporate environmental justice more fully into the agency's day-to-day activities?

Response. On August 9, 2001, the EPA Administrator directed the Agency to integrate environmental justice into all policies, programs and activities. To put this directive into action, each Headquarters and Regional office is required to develop and implement an Environmental Justice Action Plan. The Agency's first comprehensive Environmental Justice Action Plans were established in fiscal year 2003. These plans provide the roadmap for integration based on the following six objectives: (1) Risk Reduction (Protecting the Environmental and Public Health); (2) Outreach and Communication; (3) Training; (4) Federal, State, Tribal, and Local Government Coordination; (5) Grants and Contracts Administration; and (6) Environmental Justice Assessment. Each of these objectives includes action items as well as measurable outputs and outcomes. These offices are also required to submit an annual progress report on their action plans.

Question 12. Since the release of the US Commission on Civil Rights report in October 2003, has the EPA taken any concrete steps to implement any of that report's specific recommendations to adopt accountability and performance measures to incorporate environmental justice more fully into the agency's day-to-day activities?

Response. On August 9, 2001, the EPA Administrator directed the Agency to integrate environmental justice into all policies, programs and activities. To put this goal into action, each Headquarters program and Regional office is required to develop and implement an Environmental Justice Action Plan. The Agency's first comprehensive Environmental Justice Action Plans were established in fiscal year 2003.

Through these action plans, the members of the Environmental Justice Executive Steering Committee (comprised of the Deputy Assistant Administrators, the Deputy Regional Administrators, the Director of the Office of Environmental Justice, the Associate General Counsel of Cross-Cutting Issues, and the Assistant Inspector General for Program Evaluation or his representative) are responsible for the integration of environmental justice into the Agency's daily operations. The Office of Environmental Justice (OEJ) oversees the action plan development and implementation process.

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reach and Communication; (3) Training; (4) Federal, State, Tribal, and Local Government Coordination; (5) Grants and Contracts Administration; and (6) Environmental Justice Assessment. Each of these objectives includes action items as well as measurable outputs and outcomes. Each Headquarters program and Regional office is also required to submit an annual progress report to be reviewed by OEJ. The action plans for fiscal years 2004–2005 are available on OEJ's website at: http://www.epa.gov/compliance/resources/reports/actionplans/ej/index.html.

The Executive Steering Committee formed an Accountability Workgroup to develop the Environmental Justice Action Plan process, including the goal and objectives described above. The Steering Committee continues to meet periodically to discuss and evaluate progress toward achieving the Agency's overall Environmental Justice Program objectives. The Agency is currently working to develop a set of national priorities for environmental justice integration, which will include specific measures of success.

Question 13. In addition to its responsibilities under the Executive Order, under Title VI of the 1964 Civil Rights Act, every Federal agency including EPA must ensure that all federally funded programs are free from discrimination based on race, religion and national origin. How does EPA fulfill this obligation, which includes the obligation to ensure that minority communities are not subject to disparate impact discrimination in the funding, implement and enforcement of federally funded environmental programs if the EPA cannot even identify these minority communities?

Response. The External Compliance Program in the EPA Office of Civil Rights (OCR) ensures that recipients of EPA financial assistance and others comply with the relevant nondiscrimination requirements under Federal law. EPA's nondiscrimination regulations provide two vehicles for OCR to use to ensure compliance. The implementation of both mechanisms described below does not require the identification of minority communities prior to their use.

The first mechanism provides that OCR may periodically conduct reviews of recipients' programs and activities to determine whether they are complying with EPA's nondiscrimination regulations (see 40 C.F.R. Part 7 and 40 C.F.R. Part 5). EPA conducts compliance reviews, collects data and information from applicants and recipients, evaluates the materials, and seeks to bring recipients into voluntary compliance with the applicable civil rights statutes when violations are identified.

The second mechanism to ensure compliance with EPA's nondiscrimination regulations is through the complaint process. The External Compliance Program has the responsibility within OCR to process and review complaints alleging unlawful discrimination by EPA financial assistance recipients. EPA is committed to the investigation and resolution of properly filed complaints alleging unlawful discrimination by EPA financial assistance recipients.

The OCR External Compliance Program also conducts outreach activities to educate the public and others about their rights and EPA's responsibilities. OCR maintains a website that provides information on OCR's External Compliance (ex., Title VI) and Employment Complaints Resolution (e.g., Title VII) programs. It also provides the latest information on the diversity of EPA's work force. The OCR website is found at http://www.epa.gov/civilrights/.

The OCR External Compliance Program recently concluded training to provide EPA staff, recipient agencies (States), Environmental Justice community groups, and industry an opportunity to learn together about best practices in public participation. A number of the Title VI complaints that OCR has received alleged a problem in the public hearing process. This training was sponsored to teach good public participation practices in an area that could potentially affect all parties. It was an opportunity for dialog to take place, relationships to be established, and for names to become personalized. OCR hopes that as a result of this training, the number of complaints alleging a problem in the public hearing process will decrease and there will be an improvement in the hearings held by State agencies. OCR successfully sponsored this training in Alexandria, Virginia; Baton Rouge, Louisiana; Austin, Texas; Fresno, California; Phoenix, Arizona; and Columbia, South Carolina; Atlanta, Georgia; Boston, Massachusetts; and New York, New York. The course was designed and approved by the International Association for Public Participation, a nonprofit organization dedicated to promoting meaningful participation.

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR CRAPO

BROWNFIELDS

Question 1. I was pleased to see that the President's budget requested a $40 million increase for the Brownfields program. This program has the potential to provide rural communities with much needed assistance to deal with the contamination, or possibility of contamination that has hindered the re-development of properties in rural towns, many of which do not have the tax base to afford cleanup without assistance.

I also understand that the fiscal year 2005 budget proposal would transfer the Brownfields Economic Development Initiative, currently managed by the Department of Housing and Urban Development, to EPA.

What is the plan for consolidating these two programs?

Response. EPA does not know of any plan to consolidate the Department of Housing and Urban Development's (HUD) Brownfields Economic Development Initiative (BEDI) and its EPA Brownfields program. HUD's BEDI program has funded Brownfield's redevelopment activities (e.g., acquisition, demolition, and infrastructure redevelopment) which are not authorized uses of EPA's Brownfield's funds.

Question 2. This past fall, EPA informed me that the guidelines for the Brownfields grant competition were being revised. Will the needs of small rural communities be better addressed in with these revisions?

Response. A portion of the 2004 Brownfields grant competition guidelines requested applicants to submit population size in its application allowing EPA to track the number of applicants from small communities. In addition, we added a special section which highlighted the statutory consideration of urban versus non-urban communities. Based on the applicants' submissions, EPA estimates over half of the 2004 applications received are from communities of populations of less than 100,000. To further address the needs of these communities, EPA in conjunction with two nonprofit grantees is conducting special outreach sessions to rural communities. The first was held April 30, 2004, in Kansas, the second and third are scheduled for June 17, 2004, in Idaho and July 14, 2004, in Montana.

CLEAN SCHOOL BUS PROGRAM

Question 3. I agree with your environmental policy that I understand emphasizes bringing parties to the table to air concerns and solve problems and thus further environmental goals. Can you elaborate on how programs such as the Clean School Bus program provide for the partnering of schools with Federal, State and local governments?

Response. Programs such as Clean School Bus USA encourage partnerships by providing Federal seed money and technical expertise, and then bringing together key players to solve a specific environmental problem—in this case, exposure to diesel emissions from school buses.

The highly successful school bus retrofit program underway in the State of Washington provides an example of how these partnerships can work. The Washington program started in 2000 with a small Federal grant and partnership between EPA and the Puget Sound Clean Air Agency, a local governmental unit, to recruit a local school district to pilot a school bus retrofit project. EPA helped Puget Sound and the Everett School District connect with fuel suppliers, engine and retrofit equipment manufacturers and provided technical support to get the project going. This pilot inspired the Puget agency to take on a leadership role in securing the early introduction of ultra-low sulfur diesel fuel into the region and in recruiting additional partners to expand the program. Puget Sound's "Diesel Solutions" partnership has since grown to include seven school districts, four counties, the city of Seattle, fuel refiners and many others. The program has leveraged grant funding more than 10 to 1 and has commitments for more than 3,000 retrofits by the end of 2004, involving ferries, garbage trucks, and transit buses in addition to school buses. The early success of these projects attracted enough positive attention that the Washington State legislature has funded a statewide school bus retrofit program at the level of $5 million annually for 5 years. State government has also secured additional resources for school bus retrofits through enforcement settlements.

NORTH IDAHO CLEANUP

Question 4. During my tenure in Congress, I have been working with the EPA to ensure that North Idaho is provided with assistance to meet its cleanup needs. Is it your intention to continue with that commitment to clean up North Idaho?

Response. EPA is committed to continuing cleanup at the Bunker Hill Superfund Site in North Idaho. Since the 1980's EPA has provided approximately $368 million to protect human health and the environment at Bunker Hill and the Coeur D'Alene Basin. Cleanup activities at the Bunker Hill site have focused on 21 square miles encompassing the communities of Pinehurst, Page, Smelterville, Kellogg and Wardner, Idaho, collectively known as the "Box". Currently, our two highest priorities are to continue the pace of residential and community cleanups, and to finish cleanup work in the former industrial areas of the 21-square mile "Box" so the land can be available for economic redevelopment. EPA and the mining companies have already completed 85 percent of the residential and community properties in the "Box" and expect to fully complete this work in 2005.

In 2003, EPA transferred 500 acres of former industrial property to the State of Idaho. This land is being developed into a golf course and recreational area. In 2003, EPA provided funding to the State of Idaho to begin residential and community cleanups in the area outside the "Box". In summer 2004, we expect to complete an additional 200 to 300 properties, moving toward our goal of completing this work in 5 years. The Bunker Hill/Coeur d'Alene Basin project continues to be one of EPA's highest national priorities.

Question 5. I continue to believe that our water infrastructure in this Nation is in desperate need of attention. We have the kind of need that requires us to be focused and unified. I have been working to ensure that the Clean Water State Revolving Fund is allocated sufficient funding to address these water infrastructure needs.

Do you share this commitment to improving our basic water infrastructure?

Response. EPA and this Administration certainly share that commitment. The Clean Water State Revolving Fund (CWSRF) has been one of the nation's biggest environmental success stories, and Federal capitalization has helped States provide over $47 billion in loans to municipalities. The fiscal year 2004 President's Budget proposed to continue funding the CWSRF through 2011, providing an additional $4.4 billion beyond the last Administration's funding plan. The President's Budget for fiscal year 2005 continues this Federal commitment.

The Administration recognizes that improving our basic water infrastructure also requires actions and innovations to reduce the demand for new infrastructure. We have, therefore, proposed a $2.5 million Sustainable Infrastructure Initiative in the fiscal year 2005 President's Budget, through which EPA proposes to work in partnership with the water utility industry and other stakeholders to ensure the sustainability of water and wastewater systems through better management, water efficiency, full cost pricing and watershed approaches.

ARSENIC STANDARDS

Question 6. With mandatory compliance with the EPA's arsenic standards becoming effective in 2006, many small communities have been expressing considerable concerns with their ability to afford the enhancements to implement these regulations.

As chairman of this committee's Subcommittee on Fisheries, Wildlife, and Water I have been pleased to work with you on this issue. Could you provide an update as to what the Agency is doing to help these communities meet these standards?

Response. EPA understands that many communities will face a challenge in meeting the new arsenic standard. The Agency has a number of activities underway to provide financial, technical, and compliance assistance, and to identify new technologies that may serve to be more affordable for small systems.

EPA estimates that of the 74,000 systems subject to the new arsenic maximum contaminant level, only 3,000 community water systems and 1,100 non-transient, non-community water systems will need to install treatment for compliance. The total national capital costs for treatment technology and infrastructure to meet the arsenic standard are estimated to be approximately $900 million. Small systems make up the majority of the systems impacted by the rule, but the majority of the capital costs will be incurred by larger systems that serve more than 10,000 people.

EPA's Drinking Water State Revolving Fund (DWSRF) program will play an important role in helping many systems install treatment needed to protect the health of their customers. State DWSRF programs are currently providing more than $1.2 billion per year using annual appropriations of $850 million, bond proceeds, repayments and additional funds. More than 40 percent of the funding and 75 percent of the loan agreements are going to small systems that serve fewer than 10,000. The low-interest loans and disadvantaged assistance provided through the program will prove critical in helping States address needy communities. Some States, like Arizona, are already beginning to fund projects for arsenic. Fourteen of the top thirty

projects on the State's priority funding list for 2004 address arsenic treatment. Pursuant to a Memorandum of Agreement signed in 2002, EPA is also working with the Rural Utilities Service (RUS) of the Department of Agriculture to target grants and loans for small communities for projects that address arsenic-related treatment upgrades.

States can use the authority provided by the Safe Drinking Water Act to phase in the arsenic rule over time. This authority will allow States sufficient time to provide DWSRF assistance over the next several years to systems adding arsenic removal treatment.

With congressional support, the Agency has made a significant investment in research and development of effective lower-cost small system arsenic treatment technologies. For Round 1 of the Arsenic Rule Implementation Research Program arsenic treatment technology long term demonstrations, the Agency has selected the following 12 (12) volunteer small water systems and technologies for demonstration:

Round 1 Arsenic Treatment Technology Demonstrations

Site	Technology to be Demonstrated
Rimrock, AZ	AdEdge Iron Media
Valley Vista, AZ	Kinetico Activated Alumina
City of Fruitland, Fruitland, ID	Kinetico Ion Exchange
Queen Anne's County, Stevensville, MD	Severn Trent Iron Media
Brown City, Brown City, MI	Severn Trent Iron Media
Town of Climax, Climax, MN	Kinetico Oxidation / Co-Precipitation / Filtration
City of Lidgerwood, Lidgerwood, ND	Kinetico Modified Treatment
White Rock Water Company, Bow, New Hampshire	ADI Iron Adsorption / Regeneration
Rollinsford Water & Sewer District, Rollinsford, NH	AdEdge Iron Media
Desert Sands Mutual Domestic Water Consumers Association, Inc., Anthony, NM.	Severn Trent Iron Media
Nambe Pueblo, NM	AdEdge Iron Media
South Truckee Meadows GID, Washoe County Water Resources, Reno, NV.	US Filter Iron Media

For Round 2 of the demonstration program, thirty-two volunteer sites are being considered. The selected demonstrationsites will be announced shortly. The candidate sites and locations are:

Alvin, TX
Arnaudville, LA
Breaux Bridge, LA
Bruni, TX
Delavan, WI
Dummerston, VT
Felton, DE
Goffstown, NH
Greenville, WI
Grove City, OH
Homedale, ID [Klamath Falls, OR
Lake Isabella, North Smithfield, RI
Lyman, NE
Newark, OH
Okanogan, WA
Pentwater, MI
Sabin, MN
Sandusky, MI
Sauk Centre, MN
Springfield, OH
Stewart, MN
Stromsburg, NE
Susanville, CA
Taos, NM
Tehachapi, CA
Three Forks, MT
Tohono O'odham Nation, AZ
Vale, OR
Wales, ME
Wellman, TX

Additionally, development of new innovative treatment technologies is being supported through the Small Business Innovation Research program and the Science to Achieve Results grants program. Through the Agency's Environmental Technology Verification Program, short term testing of the effectiveness of four arsenic treatment technologies has been completed and four additional technologies will be verified this year. Office of Research and Development scientists and engineers have participated in over 20 conferences and meetings to speak on arsenic treatment to a number of utility industry workgroups. Engineering design manuals and other technical materials have been completed and are being made available to engineers, consultants, water systems and others. Detailed information on the program can be located at http://www.epa.gov/ORD/NRMRL/arsenic/

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

SPILL PREVENTION, CONTROL AND COUNTER MEASURES (SPCC)

Question 1. Following-up on my SPCC question, a year has passed since the 18-month extension and the agency may not be able to address small oil producer issues because of a delay in discussions due to the API lawsuit. What assurances can you give me that there will be adequate time to identify remaining issues, discuss and evaluate those issues thoroughly, and take action prior to the expiration of the 18-month extension this August?

Response. On March 31, 2004 EPA hosted a SPCC Stakeholder meeting to clarify expectations relative to compliance with the pending August 17, 2004 deadline for facilities to revise their SPCC Plans. At that meeting, EPA announced that it was still evaluating options relative to SPCC implementation and the compliance deadline.

Although EPA has yet to announce its decision, EPA has publicly stated that it will not put facilities in an untenable position with regard to coming into compliance with the requirement to revise SPCC Plans in response to the July 2002 final rule. With the August deadline just 3 months away, we recognize that there is insufficient time for facilities to revise their Plans in advance of the deadline. EPA expects to publicly release its decision in the next few weeks.

Question 2. And finally, one of the concerns that was raised when the extension was initiated related to the availability of professional engineers to develop and certify new or revised SPCC Plans. What is EPA's current assessment of this capacity?

Response. Certification of professional engineers is a State action, and EPA does not have information on the number of professional engineers in each State. However, EPA recognizes the number and availability of professional engineers is a limiting factor that should be considered in establishing expectations for the time facilities have to revise their SPCC Plans. We have been made aware of this limitation in correspondence with members of the regulatory community, and we are factoring this general knowledge into our decisions with regard to the compliance deadline.

NATION'S WATERWAYS

Question 3. What evidence does the agency have the oil spills on farms have had an impact of any kind of the nation's waterways?

Response. EPA has conducted a preliminary analysis of the number and volume of oil spills from farm facilities. The data base utilized contains information on oil spills that have threatened the nation's waterways during the years 1982 to 2003. These data show a total of 166 such spills from farms during this timeframe, with an estimated total oil volume spilled of 528,000 gallons.

These incidents include spills from farm-related oil storage tanks and vehicles, as well as spills related to farming activities, such as farmer's plows hitting and breaking oil pipelines running through agricultural lands. The latter type of incident occurred three times with spillage of 3,400 gallons. Also included are spills from farmers' fuel cooperatives, which involved the spillage of nearly 358,000 gallons of oil (nearly 68 percent of the total volume of spillage) in 11 incidents. Excluding the spillage from plowing-related pipeline breaks and fuel cooperatives, oil spillage from farm facilities involved 166,600 gallons of oil in 152 incidents.

WATER QUALITY

Question 4. The Administration has proposed a new $2.5 million program to assist treatment works with the management of their systems. In January 2003, the EPA held a water infrastructure summit that focused largely on asset management by locally owned treatment works. This combined with the cut to the SRF, implies that EPA believes the infrastructure gap—identified in several studies including one by EPA—is due to poor management at the local level.

However, according to the most recent drinking water needs survey, 20 percent of the nationwide need is due to regulations. In the most recent clean water needs survey, at least $113 billion of the $181 billion nationwide need is due to regulations. I applaud EPA moving forward with programs like trading that may help reduce the cost of meeting regulations without jeopardizing water quality. What more are you doing to address the cost of these regulations, one of the primary causes of the gap?

Response. EPA recognizes the significant challenges communities face in meeting public health and environmental objectives. While in some cases, poor asset management at the local level can be a factor; it is not a primary one. It is also our

view that regulations are not a primary cause of the infrastructure gap. Our infrastructure needs surveys, as well as others; consistently show that the majority of needs are for the replacement and continuing operations of aging infrastructure. The national resolve to maintain a level of basic sanitary requirements and environmental protection, and the need for improved maintenance (including timely replacement) of worn treatment plants and pipes, has led us to recognize the gap, and to raise it as a public policy issue.

We recognize that closing the gap also requires actions and innovations to reduce the demand for new infrastructure, including better management, more efficient water use, and cooperation on a watershed basis. We have therefore proposed a Sustainable Infrastructure Initiative in the fiscal year 2005 President's Budget through which EPA proposes to work in partnership with the water utility industry and other stakeholders to ensure the sustainability of water and wastewater systems. We believe that these efforts to reduce costs show great promise as a way to meet the water infrastructure needs of the Nation.

We do recognize that new regulatory costs are a factor and the Agency has tried to provide flexibility in the timeframes for utilities to comply with new regulations. To the extent possible within the confines of our statutory and public health protection and environmental stewardship responsibilities, we will develop regulations providing States with considerable flexibility to tailor implementation to local circumstances.

SUPERFUND

Question 5. Senators Jeffords and Boxer point to a recent GAO report concluding that Superfund appropriations have fallen 35 percent or $633 million over the last decade in real dollars. Please comment on the accuracy of GAO's findings, in particular, highlighting whether past appropriations included funding for other programs. If programs other than Superfund were funded through Superfund appropriations, please identify the relevant programs and the amount they were funded so that the committee will have a true measure of Superfund funding may be realized.

Response. In their report on Superfund appropriation and expenditure data (GAO–04–475R) issued on February 18, 2004, GAO provides a breakdown of sources and amounts of appropriations to the Superfund program for fiscal year 1993 through fiscal year 2004. In order to compare the level of funding available to the Superfund program over time, it is necessary to identify the portions of the Superfund appropriation specifically not available for the program. On May14, 2004, GAO issued a report (GAO–04–787R) that supplements the information provided in their earlier report with the amounts designated for the other programs funded under Superfund appropriations in previous years.

Superfund appropriations to EPA from fiscal year 1993 through fiscal year 2000 included specific appropriations for the Agency for Toxic Substances and Disease Registry (ATSDR) and the National Institute of Environmental Health Sciences (NIEHS). During this period, ATSDR and NIEHS were appropriated $977 million, of the $11.5 billion total appropriated to EPA for Superfund. Beginning in fiscal year 2001, appropriations for ATSDR and NIEHS are no longer included in the EPA Superfund appropriations, but are instead appropriated separately under their own line items.

The Superfund appropriation was also the source of funding for the Brownfields program from fiscal year 1993 through fiscal year 2002. During this period, Superfund funding for Brownfields totaled $506 million. Beginning in fiscal year 2003, funding for the Brownfields program has been appropriated under the Environmental Program Management and the State and Tribal Assistance Grants appropriation accounts.

The net Superfund appropriation from fiscal year 1993 through fiscal year 2004, excluding the amounts attributed ATSDR, NIEHS and Brownfields, is $15.1 billion. In fiscal year 1993, the net Superfund program appropriation was $1.46 billion and in fiscal year 2004, the net Superfund program appropriation is $1.25 billion, which is a $205 million, or 14 percent, decrease.

Question 6. EPA has been criticized for the slower pace of cleaning up Superfund sites in recent years versus speedier cleanups in the past. Are today's Superfund sites larger in scale and complexity, and are they consequently more difficult to clean up? If so, please describe how it could take EPA more time and resources to address larger and more toxic sites?

Response. EPA contends that the remaining universe of NPL sites that are not construction complete are more complex than sites that have already achieved construction completion. Many factors affect site complexity, which in turn affects the

duration and cost of cleanups. Examples of such factors include: contaminant characteristics, presence of multiple contaminants, area and volume of contamination, multi-media contamination, ecological issues, groundwater issues, remedial technology(ies) necessary, site location, proximity to populations, potentially responsible party (PRP) cooperation, presence of multiple PRPs, and interests of other stakeholders, including States, Tribes, communities, and natural resource trustees. For example, many of the larger Superfund sites have groundwater contamination, which requires more time for thorough analysis and consideration, given the uncertainty inherent in subsurface engineering activities and the rapidly state of the science with respect to characterization and treatment.

A few surrogate measures for site complexity, as of the end of fiscal year 2003, demonstrate how the current universe of non-construction complete NPL sites differs from NPL sites that are construction complete.

1. Type of facility: Twenty-one percent of the remaining non-construction completed universe of final NPL sites (632) are Federal facilities. The nature of contamination at these sites and their vastness defines most of these sites as complex. Only 5 percent of construction completed sites are Federal facilities.

2. Mega-sites: Mega-sites are non-Federal facility sites with total cleanup costs (Fund or PRP-financed) estimated at $50 million or more. Of the 142 mega-sites that EPA has identified, 69 percent are not construction complete.

3. Number of operable units per site: In order to address the multiple aspects of site cleanup, EPA may divide sites into smaller scale units, called operable units.

a. There is an average of 10.0 operable units per final, non-construction complete, Federal facility NPL site, which is 138 percent greater than the average number of operable units at comparable construction complete NPL sites.

b. There is an average of 4.2 operable units per final, non-construction complete, non-Federal facility mega NPL site, which is 50 percent greater than the average number of operable units at comparable construction complete NPL sites.

4. There is an average of 1.8 operable units per final, non-construction complete, non-Federal facility, non-mega NPL site, which is 20 percent greater than the average number of operable units at comparable construction complete NPL sites.

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

MERCURY

Question 1. According to EPA projections, the proposed cap-and-trade mercury rule option, which is very similar to the Clear Skies initiative's structure and schedule, would allow about 200 coal-fired power plants to avoid putting on advanced pollution controls as far into the future as 2020. What analysis can the Agency provide that demonstrates this option will not result in more toxic "hot-spots?"

Response. EPA is currently conducting analyses to examine the effects of the Clean Air Mercury Reduction Rule. When the analysis is completed it will be provided to Congress and the public, before the Mercury Utility Reduction Rule is finalized.

Question 2. What analysis can the Agency provide to the committee to demonstrate that mercury deposition in the Northeast will decline as a result of the proposed cap-and-trade option?

Response. We have not completed the analysis of the proposed Clean Air Mercury Reduction Rule. However, as you point out, it is similar to Clear Skies when fully implemented. Therefore, the reductions in deposition in the Northeast may be similar. For the detailed results of the Clear Skies analysis, see the Clear Skies website www.epa.gov/clearskies.

Question 3. What regulatory safeguards are in the mercury proposal that would prevent the development of any additional toxic "hot-spots" due to utility emissions?

Response. The Clean Air Mercury Reduction Rule reduces emissions and caps them at a level that is 70 percent lower than current emissions. With this cap it is unlikely that additional hotspots due to utility emissions will be created. In addition, States maintain their authority to require additional controls at any particular facility if they are concerned about hotspots.

Question 4. Section 112 of the Clean Air Act requires the Agency to issue a final rule that cuts mercury emissions from each and every coal-fired electric generating unit in the country, and also does not permit subcategorization by coal type. That's every single unit at a power plant. Why is the Agency proposing to allow some units to remain uncontrolled and thereby increasing emissions above what the law requires?

Response. The Clean Air Act requires power plants to be regulated under section 112 only if EPA determines such regulation to be "necessary and appropriate." EPA has, in fact, proposed to regulate power plants under section 112. EPA has alternatively proposed to regulate mercury and nickel emissions from power plants under section 111. This approach is based on a proposed determination that regulation under section 112 is not "necessary" because section 111 provide adequate legal authority and will produce an appropriate level of environmental protection.

Question 5. The Agency's proposed rule to slightly reduce mercury emissions from power plants contains three different options. As you may recall from my letter of March 16, 2004, I don't consider any of them to be legal or defensible from a public health or technological perspective. Will the Agency comply with the existing settlement agreement and promulgate a final rule under the authority of section 112 of the Clean Air Act to control hazardous air pollutants from each electric generating unit by December 15, 2004?

Response. While the previous Administration was sued for its slow pace in addressing mercury from coal-fired power plants, we have acted. Our proposal offers two basic approaches: (1) a traditional, command-and-control regulations under section 112 of the Clean Air Act (CAA), generally known as the maximum achievable control technology (MACT) approach, and (2) a market-based cap-and-trade approach under either section 111 or section 112 of the CAA. We are seeking comments on the legal, technical, and policy rationale put forward in the proposal rule and we will carefully evaluate the comments received, along with any additional data submitted, when proceeding toward finalizing a rule. As you are aware, the comment period was recently extended to run through June 29th and the deadline for the final rule was moved to March 15, 2005.

Question 6. Has EPA ever proposed to renege on a settlement agreement as in the December mercury proposal?

Response. EPA's issuance of a co-proposal to regulate mercury emissions from utilities under section 111 does not renege on its settlement agreement with NRDC. The settlement agreement calls for EPA to propose a regulation for the utility industry under section 112 by December 15, 2003. The co-proposals the Administrator signed on that date include a proposed section 112 regulation for utilities.

Question 7. Please compare, and quantify where possible, the benefits to public health over the next 10 years between compliance with the settlement agreement on mercury (EPA and NRDC in 1998) and any of the Agency's recently proposed mercury control options.

Response. The benefits achieved under the section 111 approach will be much greater than those under a traditional section 112 maximum achievable control technology (MACT) approach, which is limited by the available and achievable control technology.

The settlement agreement signed by EPA and NRDC committed the Agency to a rulemaking, if appropriate and necessary, but did not include any specifications on what such a rule should look like nor on any specific emission reductions. The Clean Air Act does not mandate a specific emission reduction; rather, it requires that a process be followed to determine the emission reduction being achieved by similar sources. It is this process that the Agency has followed in developing the January 2004 proposal.

The benefits to public health over the next 10 years associated with the Agency's proposed cap-and-trade approach for regulating mercury emissions from coal-fired power plants were highlighted in the January 2004 proposal. Under the section 111 approach, the Agency will set a 2010 mercury emissions cap that is reflective of the level of mercury emissions reductions associated with co-benefits from installation of wet scrubbers for sulfur dioxide (SO2) control and selective catalytic reduction (SCR) systems for nitrogen oxides (NOx) reduction. Additionally, this declining cap approach results in a 15 ton cap being implemented in 2018, while garnering significant reductions in SO2 and NOx emissions—both fine particle precursor species. The Agency continues to believe that a coordinated, multipollutant approach is the most cost effective and environmentally beneficial approach to regulating Hg, NOx, and SO2 from coal-fired power plants.

The traditional command-and-control approach, outlined under section 112, provides for only mercury controls by March 2008, with little impact on fine particle precursor species (i.e., NOx and SO2) in that timeframe. The Agency believes that, given the substantial public health benefits associated with fine particle reductions, an approach that provides significant reductions in ambient fine particle concentrations in conjunction with necessary mercury emission reductions provides the optimal protection of public health and the environment.

Question 8. I wrote to you in November 2003, along with 12 other Senators, noting our expectation that EPA would deliver on its promise to complete and distribute the analysis that was requested by the advisory workgroup on specified reduction scenarios. Why was that promise broken and no such analysis completed?

Response. The Agency conducted preliminary Integrated Planning Model (IPM) analyses in spring 2002. The results of these analyses, which included a range of potential regulatory outcomes, were discussed with the Working Group. These discussions led to the members of the Working Group making a number of suggestions on modifications that should be made to the IPM input and assumption files. These changes were discussed with the Working Group during Summer 2002 and were incorporated into the Agency's modeling for Clear Skies 2003 and the regulatory work done prior to proposal of the alternative approaches in January 2004. As the Working Group prepared its final report to the Clean Air Act Advisory Committee in fall 2002, it became clear that the Working Group would not achieve consensus on the issues. The Agency then moved forward on its own to prepare the analyses necessary to develop the proposed rulemaking. Analysis of the various stakeholder options put forward would not have aided in achieving consensus and would have distracted key resources from the Agency's mission of complying with the December 15, 2003, settlement agreement to propose a rule.

Individual stakeholders of the Working Group made suggestions regarding additional analyses that the Agency should consider and, possibly, conduct. However, the Working Group's final report demonstrates that there was no consensus on this issue.

Question 9. Does the fiscal year 2004 operating plan or the fiscal year 2005 budget request include funds to complete the economic and feasibility analysis on a range of mercury reductions that was promised by EPA and requested by the mercury MACT advisory committee?

Response. The Agency committed to review the recommendations of the Utility Federal Advisory Committee Act (FACA) Working Group Report, which was submitted to the Clean Air Act Advisory Committee (CAAAC) in October 2002. In that report, various stakeholder groups outlined their position(s) regarding the most effective way to regulate mercury emissions from coal-fired power plants. In delivering the December 2003 proposal, the Agency outlined two approaches for completing the first ever mercury emissions reductions from coal-fired power plants: (1) section 112, command-and-control, maximum achievable control technology (MACT); and, (2) section 111, cap-and-trade approach.

In extending the public comment period 60-days, and the promulgation date by 90-days, the Agency is committed to using this additional time to explore the analyses completed in support of the December 2003 proposal, and to identify the need for any additional analyses to support the upcoming final rule. Furthermore, the Agency has identified and allocated resources to support this rulemaking through fiscal year 2004, and the budget request includes funds necessary for fiscal year 2005.

Question 10. In the United States, nine chlor-alkali plants continue to use outdated mercury cell technology and emit as much as one hundred tons of mercury pollution annually. In 2000, the facilities added far more mercury to their cells than they reported released, resulting in 65 tons of unaccounted for mercury in that year alone. EPA acknowledges in its December 2003 rule, "the fate of all the mercury consumed at mercury cell chlor-alkali plants remains somewhat of an enigma." However, the rule fails to set emissions standards for this lost mercury, and recommends only voluntary measures to monitor fugitive mercury cell emissions. Why has EPA allowed these nine plants to continue outdated, polluting processes? Will the EPA work to account for these "lost" emissions?

Response. The issue of unaccounted mercury from mercury cell chlor-alkali plants has been the subject of intense scrutiny for environmental groups, EPA and the industry for quite some time.

Mercury that is purchased for use in the plant can go to the air, the product produced, become solid waste, or be caught in equipment including pipes, pumps, tanks, etc. Just because the cells are replenished does not mean that this volume of mercury is lost. The industry reclaims it from the product and solid waste stream and during equipment repair and upgrades. The industry has conducted studies over the last 10 years to better understand the balance of mercury coming in to plants with mercury going out by measuring mercury caught in equipment. Although the studies are continuing, facilities have in fact recovered quantities of mercury in tanks and other equipment that would otherwise go unaccounted.

Based on these studies and emission estimates from industry questionnaire responses, EPA estimates total mercury emissions currently from this industry to be

5.6 tons per year. We estimate the fugitive contribution of these emissions to be 4.7 tons per year. While it may appear that the discrepancy in the mercury material balance is the result of fugitive emissions, there is little evidence to support this conclusion. Because mercury is so dense, a small volume accounts for a significant mass. Several tons of mercury could easily be caught in the thousands of feet of pipe in one plant.

There is a provision in the final rule that requires facilities to report on mercury consumed each year. In addition, we believe the work practice standards required by the final rule, which are more stringent than the requirements of the 1975 rule, will result in reductions beyond current fugitive emission levels.

Nevertheless, the Agency has granted a petition to reconsider this rule. In addition, we are planning to conduct ambient monitoring around some mercury cell chlor-alkali plants. Data collected from this effort will help quantify fugitive emissions of mercury from these facilities. In addition, we will initiate discussions with petitioners to help determine other appropriate actions and the necessary timeline to address their concerns. We expect to learn more information about mercury use and emissions from this industry as the requirements of the rule are implemented and additional data are collected.

Question 11. Where does tracking this "enigmatic" mercury fall on EPA's priority list?

Response. The Agency is planning to conduct ambient monitoring around some mercury cell chlor-alkali plants. Data collected from this effort will help quantify fugitive emissions of mercury from these facilities. In addition, we will initiate discussions with petitioners to help determine other appropriate actions and the necessary timeline to address their concerns. We expect to learn more information about mercury use and emissions from this industry as the requirements of the rule are implemented and additional data are collected.

Question 12. A December 2001 EPA presentation to industry stated doing a utility MACT standard now—based on existing technologies—would yield a ninety-eight percent reduction in mercury emissions for existing plants. Why does the draft MACT standard aim only for a twenty-nine percent reduction?

Response. The December 2001 presentation represented a very preliminary effort by the Agency to estimate the impacts of a section 112 rule on the electric utility industry. Subsequent to the presentation, the Agency received input on industry-and Government-supported emission tests that indicated that some of the mercury removal assumptions reflected in the December 2001 presentation were erroneous (e.g., the impact on mercury removal of selective catalytic reduction on various coals). Further, at that time, the Agency had not yet fully evaluated the impacts of a number of other factors, including coal type and variability, as required by the Clean Air Act and recent court decisions. The emission levels provided in the January 2004 proposed rule reflect the Agency's current estimates of the level of mercury emission reduction that could reasonably be expected from the industry.

Question 13. You have suggested and the mercury rule says that there are no technologies available today designed to control utility mercury emissions. Last year, I wrote to technology vendors on that very question. They wrote back to say they have proven products on the market today that can cut mercury by ninety percent or more. I have placed a summary of my findings in the hearing record. Have you sat down and talked to these vendors?

Response. We have had several meetings with, and heard presentations from, many of the same equipment vendors from which you sought information. We do not believe that the summary of statements shows with certainty that control of utility mercury emissions in the range of 60 to 90 percent is technically or economically achievable within the timeframe we are discussing. Further, we do not believe that electric utility, coal, and pollution control industry statements contradict its view that advanced mercury control technologies are not yet ready for commercialization. The EPA agrees with industry that these new technologies show great promise, but are not and will not be available within a 3-to 4-year time-frame.

To date, there have been four full-scale field tests on activated carbon injection (ACI), the most promising mercury-specific control technology on the near-term horizon. These tests have been conducted on three bituminous-fired units and one subbituminous-fired unit. Continuous operation of ACI was conducted for two 5-day periods, one 4-day period, one 5-day period, and one 9-day period at the four tests. We believe that this limited amount of continuous ACI operation is sufficient of itself to indicate that the technology has not been sufficiently tested to be the basis for a nationwide regulation that would require compliance all day, every day, for the remainder of the life of the unit.

One long-term ACI test was initiated in April 2003 on a bituminous-fired unit. This test was to evaluate the mercury removal efficiency of ACI over a period of several months to 1 year, further assess the impact of ACI on balance-of-plant operations (i.e., how will ACI impact on maintenance frequency and costs, on ash disposal and utilization, on internal plant energy use, etc.), and provide additional information on the design characteristics and costs of ACI technology for other installations. Because of problems encountered, this test has not been completed and thus the final results are not known. However, it is our understanding that this test has shown the ability of ACI, when used at a bituminous-fired unit, to average 86 percent mercury removal over an extended period of time, but has highlighted design problems that must be corrected prior to full scale installation on other units.

On April 21, 2004, the U.S. Department of Energy (DOE) made a joint announcement with WE Energies about the initiation of a joint venture to demonstrate technology that will remove an "unprecedented" 90 percent (expected but not guaranteed) of mercury emissions from coal-based power plants. This 5-year project will involve the design, installation, operation, and evaluation of an integrated system on one coal-fired power plant to control emissions of mercury, particulate matter, sulfur dioxide, and nitrogen oxides.

Further, the electric utility industry reportedly has had trouble obtaining solid, guaranteed quotes for ACI installation on coal-fired units. We have heard from a number of utility companies indicating that they have tried without success to get bids on, and guarantees for, ACI installations. To date, we are aware of only one permit outside of a federally co-funded program (on a unit to commence operation in 2007 and burn low-sulfur Western coal) that has been issued that included ACI technology (MidAmerican Energy Station permit issued by the Iowa Department of Natural Resources). The lack of additional examples is indicative of the lack of industry confidence in guaranteeing permit levels at this time.

Of the other technology vendors noted in your summary (e.g., KFx, W.L. Gore & Associates, Powerspan, Apogee Scientific), we know of no full-scale installations utilizing their technologies. KFx has under construction one of their units but this facility will not become operational until later this year. At that time, they will be able to fully evaluate the technical and economic effectiveness of the process on a full-time, long-term basis. We have addressed the W.L. Gore technology in another of your questions but will state here that it also has not been used on any full-scale operation to our knowledge. Powerspan and Apogee Scientific have been involved in a number of DOE evaluations but, again, we know of no full-time, long-term operation.

We agree that, to date, there has been no regulatory incentive (beyond what the States are doing) to cause the utility industry to make the necessary investments to bring these advanced mercury control technologies to a level of commercial availability necessary for wide-spread utilization. We believe that our proposed rules will provide just this incentive.

Question 14. Executive Order 12866 requires that when an Agency proposes a rule, it should also analyze more and less stringent regulatory options. Why hasn't EPA produced analysis of a more stringent option than the mercury proposal?

Response. For a significant regulatory action (such as our proposed Clear Air Mercury Rule), Executive Order 12866 requires EPA to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) "[a]n assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives." EPA complied with this requirement.

Question 15. Has EPA modeled, or collected information on, the economic costs to society of mercury-related health or developmental problems, such as IQ decline or cardiac effects in adults? If not, does EPA plan to in the near future?

Response. As part of the normal rulemaking process we are developing a Regulatory Impact Analysis (RIA) as required by Executive Order 12866. We expect to have a final RIA around the time that we finalize the Clean Air Mercury Rule. Consistent with the Executive Order, we are attempting to quantify and monetize mercury-related health and developmental problems.

Question 16. On March 24, the EPA Office of Research and Development (ORD) released a study on mercury emission controls for coal-fired electric utilities. The results are clear: widely used technologies can achieve 98 percent reductions of mercury at bituminous coal plants and 70 percent reductions at sub-bituminous plants; and other technologies, which can be installed in 1 to 2 years' time, can achieve 90 percent reductions at all coal plants. What is the Agency's justification for proposing

a technology standard calling for a mere 29 percent reduction in mercury emissions by 2008 (i.e., the "Section 112" approach), and a cap and trade approach targeting emissions reductions of only 69 percent in 2018 (i.e., the "Section 111" approach)?

Response. The March 24th EPA Office of Research and Development (ORD) study builds on and contributes to extensive work that ORD and others have been doing to understand the state of mercury-specific control technologies. This study is one of the primary sources of information that we have used to inform our current understanding of the state of technology. The study concludes that, based on current information, it is projected that ACI technology will be available for commercial application after 2010 and that removal levels in the 70 percent to 90 percent range could be achievable for some coal types. This assumes the funding and successful implementation of an aggressive, comprehensive R&D program at both EPA and DOE. Such applications represent only the initiation of a potential national retrofit program which would take a number of years to fully implement.

Question 17. In responding to a question from Senator Carper about the effectiveness of W.L. Gore's mercury removal technology, I believe you incorrectly stated that the company has developed an activated carbon injection (ACI) process. In response to a letter I sent to W.L. Gore, Dr. Richard Bucher explained that his company has developed a filter bag insert that contains a chemical treatment effectively locking mercury to the material. Trial results of this technology show mercury capture rates consistently in excess of 90 percent. The company anticipates commercial sales in 2005, and projects that their technology could cost between 38–83 percent less than ACI. Is the Agency aware of this technology? If so, what is your response to these results?

Response. W.L. Gore and Associates conducted a project examining its developmental proprietary mercury control process at the U.S. EPA's Air Pollution Prevention and Control Division (APPCD) combustion research facilities in Research Triangle Park, North Carolina. The testing performed was not funded by EPA and was not conducted as part of EPA's research to evaluate mercury control technologies. The Agency became involved when W.L. Gore and Associates entered into an agreement with ARCADIS, APPCD's onsite contractor, to develop data on their process. ARCADIS approached APPCD about using its facilities for the testing and an agreement was worked out. On several occasions, APPCD has entered into similar agreements with private companies interested in using its unique combustion facilities to test their technologies.

While EPA did not sponsor or conduct the tests, W.L. Gore presented the results of its testing at a symposium in 2003. The broad objective for this testing was to develop data on a fabric filter-based mercury removal concept which is based on using a porous fibrous filtration media designed to allow rapid chemical oxidation of incident elemental mercury (Hg0) and active binding of the oxidized mercury species to the surface of the media. The implementation of this process on coal-fired boilers would appear to involve use of mercury-trapping inserts in existing or new baghouses.

Typically new technology for large utility boilers requires testing beyond the scale at which W.L. Gore tested their technology at the RTP facility. EPA has not performed, or been provided with results of, any additional testing performed in a "real-world setting." The likelihood that this technology could be implemented widely in the near future is unclear.

Question 18. It has been brought to my attention that EPA now has the ability to measure the way in which atmospheric mercury deposition impacts fish concentrations of mercury. If that is the case, can please you deliver to the committee the related findings. Can you explain how EPA will use that knowledge in setting a prospective MACT standard?

Response. In September 2001, EPA developed the Mercury Maps project which links air deposition and freshwater fish contamination over any geographic scale of interest. The application of the approach at the national scale is currently available on the EPA web page at: www.epa.gov/waterscience/maps. A regional application and formal peer review of the approach are currently under review within EPA. We anticipate the report and peer review documentation to be made available to the public later this summer. The Mercury Maps approach has been used at a screening analysis level to estimate the percentage of reductions in air deposition needed to reduce measured fish tissue concentrations down to the methyl mercury criterion level (the maximum advisable concentration of methyl mercury in fish and shellfish tissue to protect the health of fish and shellfish consumers). The approach will therefore allow one to predict, in water-bodies where significant sources are well characterized, how measured fish tissue mercury levels will respond to changes in air deposition levels.

NEW SOURCE REVIEW

Question 19. As you know from my letter of January 13, 2004, I am interested in specific information on the status of New Source Review enforcement. What is the status of a) the pending cases which EPA has already referred to Justice, b) those cases which are awaiting referral to Justice, and c) those cases that were previously under active investigation by EPA, with respect to the violations of New Source Review as those requirements existed prior to the stay of the routine equipment replacement rule? Item (c) includes materials gathered pursuant to section 114 requests made by the agency from 1999 onward.

Response. As you may already know from your recent meeting with DOJ, as part of EPA's utility sector New Source Review (NSR) enforcement initiative, DOJ has filed complaints against 15 companies,[1] and EPA has issued one administrative order.[2] Eight of these matters remain in litigation,[3] and seven have settled.[4] It is our understanding that a significant portion of the staff in DOJ's Environmental Enforcement Section are dedicated to all NSR work, and pending cases are being addressed in priority order. As Administrator Leavitt has noted, enforcement is an essential part of EPA's mission, and we will enforce the law. New Source Review is an important tool and one component of our comprehensive national strategy to achieve cleaner air. We will pursue all filed cases, and we will file new cases as appropriate.

Question 20. I understand that EPA is considering issuing guidance to the States for their use in determining what constitutes Best Available Control Technology for new and repowered coal-fired power plants. According to press accounts, this draft guidance appears intended to arrest the development of new, innovative and cleaner technologies, such as coal gasification, fluidized bed systems and similar improvements. Why would EPA try to limit the States' ability or enthusiasm to consider all available cleaner technologies when applying BACT as required under the Clean Air Act's PSD/NSR requirements?

Response. This issue has come up in several recent permitting decisions. The Agency has not yet completed its process of developing guidance, but will take into account all relevant factors.

Question 21. What resources will the Agency expend in fiscal year 2004 and in fiscal year 2005, if the budget request is approved by Congress, to comply with the requirements of section 111(b)(1)(B), which includes the Administrator's review every 8 years and revision, if appropriate, of the New Source Performance Standards?

Response. The Agency has budgeted for fiscal year 2004 $125,000 for the review and revision, if appropriate, of the new source performance standards (NSPS) applicable to electric utility steam generating units (subpart Da). Under a consent decree, we must propose any revisions by February 9, 2005, and promulgate such revisions by February 9, 2006. We anticipate similar funding at the program office level would be allocated for this effort for fiscal year 2005.

Question 22. Will the Agency review and revise, if appropriate, those New Source Performance Standards that are related to direct and indirect emissions of fine particulate matter prior to December 2007?

Response. Under a consent decree, the Agency is committed to reviewing, and revising if appropriate, the new source performance standards (NSPS) applicable to electric utility steam generating units (subpart Da). This review will include standards for particulate matter, sulfur dioxide, and nitrogen oxides—all potentially related to fine particulate matter emissions. Review of subpart Da will be completed by February 9, 2006.

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[1]American Electric Power; Cinergy Corp.; Ohio Edison; Illinois Power; Southern Company (split into Alabama Power and Georgia Power); Tampa Electric Company (TECO); Duke Energy; East Kentucky Power Cooperative; ALCOA (Sandow Station, TX—Industrial Boiler); Public Service Enterprise Group (PSEG); South Carolina Public Service Authority (Santee Cooper); Southern Indiana Gas & Electric Company (SIGECO's Culley Station); Virginia Electric (VEPCO); and Wisconsin Electric (WEPCO).

[2]Tennessee Valley Authority (TVA).

[3]American Electric Power; Alabama Power; Cinergy Corp.; Ohio Edison; Duke Energy; East Kentucky; Georgia Power; and Illinois Power.

[4]ALCOA (Sandow Station, TX—Industrial Boiler); Public Service Enterprise Group; South Carolina Public Service Authority; Southern Indiana Gas & Electric Company (Culley Station); Tampa Electric Company; Virginia Electric; and Wisconsin Electric.

PARTICULATE MATTER 2.5

Question 23. What are likely to be the lowest cost emissions reductions (by source) options available to States seeking to choose and impose State and local controls to achieve attainment of the ozone and $PM_{2.5}$ NAAQS before 2012, based on EPA work to date?

Response. A variety of control options are available for States to adopt for reducing ozone-forming NOx and VOC emissions, for reducing emissions of direct $PM_{2.5}$ emissions, and for reducing emissions of PM-forming emissions of sulfur dioxide, NOx, and other precursors. Control options are available for all sectors of the emission inventory, including measures for industrial point sources, on-road and non-road mobile sources, and "area sources" such as woodstoves and backyard refuse burning.

States have the principal responsibility to identify and adopt measures for reducing ozone and PM-forming emissions by the attainment deadlines. There is much work to be done by States in identifying and evaluating control strategies needed for attainment. Accordingly, it is somewhat difficult to characterize the measures that will be ultimately selected through this process.

For some measures, EPA has reliable cost effectiveness ($/ton) estimates. For example, EPA has calculation techniques for retrofitting school buses and other diesel engines with control devices such as oxidation catalysts and particulate traps. For other measures, cost-effectiveness is much less certain. For example, it is difficult to describe expected emissions reductions from programs such as ride-sharing, programs to reduce VMT, and measures to increase the efficiency of existing industrial $PM_{2.5}$ control devices. EPA has funded a grant to STAPPA/ALAPCO to develop a document called the "menu of options" document for $PM_{2.5}$. This document should serve to improve the available information on control measures. Moreover, as States develop their implementation plans, much more detailed information, tailored to the specific sources in their jurisdictions, will be developed.

For the proposed Clean Air Interstate rule, EPA conducted a preliminary analysis of potential local measures for addressing $PM_{2.5}$ nonattainment in the East. This analysis is described in a technical support document entitled "Technical Support Document for the Interstate Air Quality Rule Air Quality Modeling Analysis." This document is available online at http://www.epa.gov/interstateairquality/tsd0162.pdf. This document summarizes EPA's approximations of costs, where available, for a number of control measures across a variety of source types, beginning on page 46.

Question 24. What fiscal year 2005 funding does EPA propose to provide to the States, aside from the diesel school-bus request, to help them achieve attainment of the $PM_{2.5}$ standard?

Response. EPA's fiscal year 2005 Budget Request includes a request for $228.5 million in grant funding for State and local governments. Of this amount, $42.5 million is for air quality monitoring for $PM_{2.5}$ and approximately $25 million is for other State PM activities. As States develop their workplans with the regions, this funding level may change as States focus their funding on their highest priorities.

In addition to the funding provided to States, EPA also provides technical assistance, guidance and modeling tools to assist States in air quality planning and for the development of State Implementation Plan (SIP) attainment strategies. The fiscal year 2005 President's Budget requests an increase of $2.7 million to improve mobile source modeling tools for States to use in identifying cost-effective control strategies as part of their SIP development process for the new $PM_{2.5}$ standard. This increased funding will allow EPA to improve the models and tools that will be critical to States as they develop their air quality control strategies.

This initiative has two major components. The first component is the collection of more accurate emission data from vehicles operating in the field, under real-world conditions. This effort would be the first attempt at designing a nationwide emissions study of light-duty and heavy-duty vehicles using portable emission measurement systems (PEMS). The PEMS system was developed by EPA personnel at the OAR Laboratory in Ann Arbor, MI, and is an extremely cost-effective and highly accurate method for collecting real-world data. The resulting data will allow EPA and States to better identify potential sources of uncontrolled emissions in the existing fleet and evaluate the effectiveness of current and future emission control programs. In addition, this program will improve the underlying data that are used in the emission models used by the States.

The second component of this effort is the development of a new generation model based on real-world data with the flexibility required to meet present and future modeling needs for the States. This new model will allow the States to conduct modeling at all levels of resolution—from area-wide inventories to evaluating changes in emissions on a street corner (i.e., micro-scale modeling) as a result of a control

strategy. This new generation of emission model will include all mobile source pollutants of interest, and can be used by States for all mobile source-modeling purposes.

An additional $3.3 million is requested to develop the emission factors and inventories needed by the States to help them develop SIPs. To develop these tools we will develop data-based PM.2.5 emission factors (with speciation profiles) for 3 to 6 industrial processes prioritized by their contribution to the $PM_{2.5}$ inventory. Coal and wood waste combustion, metals processing, mineral products and pulp and paper are candidates for this effort. Together these sources represent 65 percent of industrial sources of $PM_{2.5}$. We will also develop factors for processes where new testing was not required. This assumes that some emissions factors would be paid for by industry.

Additional funding will develop and improve the following products and services used by States as they develop their State Implementation Plans to implement the NAAQS:

- new methods for ambient measurements, including: (1) routine testing for nitric acid, ammonia, and true nitrogen dioxide, and (2) improved artifact-free aerosol carbon measurements (e.g., to better address abatement of diesel PM);
- source characterization for measuring: (1) VOC on an actual mass basis, (2) sulfuric acid/sulfur trioxide in the presence of ammonia, (3) higher-resolution fugitive ammonia emissions from sources such as animal feeding operations, and (4) low concentration/high flow rate NOx emissions from sources such as internal combustion engines and stationary gas turbines;
- emission factors for source types that contribute substantial quantities of carbonaceous $PM_{2.5}$. For each source category, factors will be developed for primary and filterable $PM_{2.5}$ and PM10, condensable PM, SO2, NOx, VOC, 16 specific Polycyclic Aromatic Hydrocarbons (PAH), and all other compounds and elements analyzed in the speciation trends network;
- highly resolved fire emission inventories for the entire U.S., to allow separation of their effects from local sources of carbonaceous $PM_{2.5}$;
- guidance and methods for using source-receptor analysis to untangle the contributions that different source types make to ambient concentrations of carbonaceous $PM_{2.5}$;
- speciation profiles for important source types, better reflecting eastern US conditions than the profiles currently available;
- ready-to-use temporal and spatial allocation procedures and data files, so that air quality modeling with improved emission inventories can be used to assist in determining just how much contribution each source type makes to nonattainment, and
- information on the effectiveness and costs of regulatory and nonregulatory approaches for reducing emissions.

Question 25. Has EPA ever modeled the health-related costs of direct particulate matter pollution, or pollution originating from smokestacks as solid particles?

Response. In calculating the benefits of reducing fine particles (known as $PM_{2.5}$ pollution), EPA routinely models the benefits of reducing directly emitted particles along with the benefits of reducing $PM_{2.5}$ precursors (sulfur dioxides, nitrogen oxides and other compounds). We focus on the total $PM_{2.5}$ mixtures, because programs to reduce smokestack emissions generally remove both directly emitted particles and compounds that contribute to secondary particle formation. We estimate health benefits for total $PM_{2.5}$ reduction, to ensure we look at the full impact of our regulations.

AIR QUALITY RULES STATUS

Question 26. Please provide the committee with the status of the following rulemakings/actions: a) final 8-hour ozone implementation rules; b) the ozone NAAQS review; c) the proposed and final $PM_{2.5}$ implementation rules; d) the $PM_{2.5}$ NAAQS review; e) final rule on Phase II of the NOx SIP Call; f) the Agency's response to the court remand on Best Available Retrofit Technology (BART); and, g) the final non-road, heavy-duty diesel rules?

Response. The status of the following rulemakings/actions are as follows:

a) Phase I of the final 8-hour ozone implementation rule, addressing classification, transition from 1-hour to 8-hour standard, revocation of the 1-hour standard and anti-backsliding, was published April 30, 2004. Phase II, addressing RACM, RACT, attainment demonstrations and modeling requirements, is scheduled to be issued later this year.

b) The ozone NAAQS review has been delayed as a result of the delays in the Particulate Matter review. We are currently negotiating with litigants on a revised schedule.

c) The $PM_{2.5}$ implementation rule is currently in the Agency review process prior to being submitted for OMB review. Plans are to propose the rule in the summer of 2004 and finalize it in the spring of 2005.

d) The Clean Air Science Advisory Committee (CASAC) is meeting in July to review the $PM_{2.5}$ Criteria Document toxicology, epidemiology, and summary chapters. The Agency is negotiating with litigants on revised dates for the proposed and final rule as a result of the delays in the Criteria Document.

e) The final rule on Phase II of the NOx SIP Call was published April 21, 2004.

f) The Agency's response to the court remand on Best Available Retrofit Technology (BART) was signed by the Administrator on April 15, 2004, and published in the Federal Register on May 5, 2004 (69 FR 25184). We have entered into a consent agreement with Earthjustice to finalize the BART rulemaking by April 15, 2005.

g) The Clean Air Nonroad Diesel Rule was signed by Administrator Leavitt on Tuesday, May 11, 2004.

OZONE

Question 27. Will EPA review plans submitted by "early action compact" areas to their States by the ozone designation deadline of April 15, 2004, and discontinue those compacts if those areas have not submitted adequate plans to their States?

Response. Yes, EPA has conducted a detailed review of all the early action compact (EAC) plans that were submitted by the State and local participants. For example, the milestone that EAC areas were to have met on March 31, 2004 was to submit complete local plans to each State. These were to include, among other things, a modeling demonstration of attainment of the 8-hour ozone national ambient air quality standards by 2007. Three areas in Tennessee failed to successfully meet this critical milestone: Memphis, Knoxville, and Chattanooga. Accordingly, these three areas failed to receive a deferral of the effective date of their 8-hour nonattainment date.

The next key date is December 31, 2004. At this time States with EAC areas must submit State implementation plan revisions that contain federally enforceable control measures. The EPA is currently closely monitoring State progress to meet this date.

GENERAL AIR QUALITY

Question 28. The National Academy of Sciences has issued a report on the Air Quality Management in the United States. That report said that EPA needs to focus more resources and attention on air toxics monitoring and prevention and ensuring that States are enforcing their State implementation plans. How does EPA plan to respond to this report?

Response. EPA believes that the NAS' comprehensive, thoughtful report and recommendations contain reasonable long-term goals for air quality management in the United States. We are interested in using the report and recommendations as a framework for developing improvement to our current system.

We are especially pleased that several of these recommended approaches are consistent with recent initiatives EPA has undertaken in our continuing effort to provide Americans with cleaner air.

- The Report recommends improvements in air toxics monitoring. OMB's Program Assessment and Rating Tool (PART) assessment for the 2004 budget had the same conclusion, and that year's budget request included a $7 million increase for air toxics monitoring. These funds are now being put to use to enhance national and local scale monitoring of toxic air pollutants.
- The Report recommends the use of multi-pollutant approaches and cap-and-trade programs. We have applied both concepts in the President's proposed Clear Skies Act and EPA's recently proposed Interstate Air Quality Rule and mercury rule.
- The Report recommends additional research on fine particle pollution. EPA is continuing its research on fine particles, including research that should improve our ability to relate benefits to specific fine particle reductions.
- The Report recommends that existing diesel vehicles be cleaned up. EPA has launched a School Bus USA and other programs to retrofit existing diesel vehicles.
- The Report recommends that EPA prioritize the 188 listed air toxics so that we can focus on reducing those that pose the most significant risk. EPA took a step

in this direction when it identified 33 air toxics that are a special concern in urban areas.

• The Report recommends that State air quality plans address multiple pollutants instead of addressing one pollutant at a time. EPA has supported legislation and is taking administrative steps that, together, will allow States to coordinate their plans for reducing ozone, fine particle and regional haze pollution rather than addressing each air pollution problem individually.

The NAS report is critical of efforts to date under the Clean Air Act to protect ecosystems. EPA strongly agrees that ecosystem protection is a critical goal. We believe it is important to carefully consider the NAS recommendation in the context of the varying nature of ecosystem problems across the country. The kinds of approaches that are adequate to protect ecosystems in the Great Smokies, for example, may not be appropriate for the desert Southwest. This recommendation deserves a thoughtful examination before determining the best possible approach.

EPA agrees with the need to better integrate planning for various air pollutants. As the NAS points out in its report, the Clean Air Act has a variety of different programs with different timeframes and requirements, depending on nature of the pollutant. EPA is working to integrate these programs as much as possible, given the statutory differences. EPA will work with State and local air pollution control agencies in integrating these programs as well as any other affected Federal agencies.

AIR TOXICS

Question 29. According to the National Air Toxics Assessment, more than 200 million people have an increased risk of cancer and other health effects because of toxic air pollutants. What plans does EPA have in fiscal year 2004 and fiscal year 2005 for adding new substances to the list of Hazardous Air Pollutants that need to be controlled under section 112 of the Clean Air Act?

Response. EPA continues its research efforts to develop better knowledge of air pollutant emissions and toxicology. As new credible scientific knowledge emerges, EPA will review that information and decide if additional pollutants should be added to the section 112 list of hazardous air pollutants. In addition, EPA will continue to evaluate petitions which seek to add individual substances to that list. As always, EPA will favor the use of scientifically peer-reviewed information in making such determinations.

Question 30. What other plans does EPA have, aside from the proposed utility emissions rule, to reduce the involuntary exposure of Americans to hazardous air pollutants?

Response. In fiscal year 2004 and fiscal year 2005, EPA will continue its program of evaluating the impacts of maximum achievable control technology standards on individual and population risks. As mandated under section 112(f) of the Clean Air Act, EPA will develop additional standards for source categories as necessary to reduce cancer, noncancer, and environmental risks to acceptable levels. EPA will also be working on an area source standards required under Section 112(k) of the CAA which addresses smaller sources such as dry cleaners, autobody refinishers, and gas stations. These smaller sources in combination with other sources in urban areas add to people's exposure. In addition, we will continue to support community-based efforts which supplement but do not replace regulatory efforts to reduce air toxics. There are currently over thirty community-based projects on-going across the Nation. These projects will obtain reductions in air toxics through voluntary means, often quicker than regulations would. We are working on the tools to help any community actively address their local air toxic concerns. To assure continued progress in air toxics risk reduction from these rules EPA has developed the National Air Toxics Assessment (NATA) that we update every 3 years, we can evaluate the cumulative risk levels for the general population from a set of air toxics and measure changes in these risk levels over time. Further, the EPA is developing a national air toxics monitoring network to track reductions in ambient levels of toxics over time. The network, which is now fully operational, will measure a set of high risk air toxics. The network has been designed to measure long-term progress in air toxic reduction trends.

MONTREAL PROTOCOL

Question 31. If the Extraordinary Meeting of the Parties to the Montreal Protocol, which is occurring March 24–26, 2004, concludes that the Parties/the U.S. should promulgate a final rule by 2005 to control domestic stockpiles in a manner consistent with Decision IX/6 of the Protocol, will you have the ability to complete that rulemaking and will you commit to doing so?

Response. EPA is close to resubmitting a proposed rulemaking to OMB for review. At the present time, EPA is making final revisions to that proposal to address interagency comments and to incorporate requirements in Decisions Ex I/3 (the recent decision taken at the March 2004 Meeting of the Parties regarding the critical use exemption for 2005). Naturally, EPA will address the use of domestic stockpiles vis-a-vis Decisions EX I/3 and IX/6 in this proposed action. EPA anticipates publication of the proposed rule this summer to allow sufficient time for public comment and for publishing the final rule.

Question 31. What is the status of the Agency's development of the model to determine the effect of changes in the phase-out schedule of ozone depleting substances on the number of lives saved through implementation of the stratospheric ozone protection title of the Clean Air Act? The First Prospective Report on the Costs and Benefits of the Clean Air Act Amendments (Section 812 Report) was published in 1999 and estimated the total number of lives saved to be 6.3 million.

Response. In the 1980's, EPA developed the Atmospheric Health Effects Framework (AHEF), a model that quantifies the benefits of Clean Air Act programs to protect the stratospheric ozone layer. This model is comprised of five separate modules which allow EPA to continually update each of the modules as improvements are made and/or when new information becomes available.

The first module estimates current and projected emissions of ozone depleting substances (ODS) from the major industrial sectors where they are used. The second module uses a two-dimensional atmospheric model to account for the time to transport ODS emitted at ground level into the stratosphere. The amount of ODS that reaches the stratosphere is then used to determine the subsequent ozone destruction. The next module calculates the amount of UV that reaches the earth's surface at various latitudes for a given amount of ozone depletion. In the final step, the incidence and mortality from skin cancer are projected using a dose response relationship for UV and the development of both melanoma and non-melanoma skin cancer.

The health benefits that result from this analysis assume full compliance with the Montreal Protocol Adjustments and represent the incremental benefits when compared to the production freeze agreed to in the original Montreal Protocol (when no phase-outs were required). The model does not estimate the health impacts of a scenario where no controls are placed on the production and use of ODS (e.g., no Montreal Protocol).

EPA is currently reviewing newly published data on the immunosuppressive effects of UV exposure in humans. This new body of research provides epidemiological evidence to support the hypothesis that UVB exposure in humans causes a temporary reduction in the ability to produce antibodies and to fend off infection. Over the next few months EPA will determine whether the weight of scientific evidence is sufficient to develop another module for the AHEF and whether it is feasible to quantify immunosuppressant effects. In addition to this potentially large change, EPA is completing a peer review of the model and developing a paper simply to describe the AHEF in its current form.

This model upgrade and peer review of the model was initiated to support EPA's Second Prospective Report on the Costs and Benefits of the Clean Air Act (812 Study), which will include updated costs and benefits.

AIR QUALITY MONITORING

Question 32. Please provide the committee with a detailed description of the monitoring networks supported by the Agency in the fiscal year 2004 (as appropriated) and fiscal year 2005 (as requested), including the pollutants they monitor, their purpose, the entities operating them, and their funding.

Response. EPA oversees operation of several monitoring networks that are coordinated with State and monitoring agencies throughout the country. These networks are described below.

State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS) represent the majority of all criteria pollutant (sulfur dioxide (SO2), nitrogen dioxide (NO2), carbon monoxide (CO), ozone (O3), lead (Pb), particulate matter—aerodynamic diameter of 2.5 microns or less ($PM_{2.5}$), and particulate matter—aerodynamic diameter of 10 microns or less (PM10)) monitoring across the Nation with over 5,000 monitors at approximately 3,000 sites. These stations use Federal Reference or Equivalent Methods (FRM/FEM) for direct comparison to the National Ambient Air Quality Standards (NAAQS). NAMS are a subset of SLAMS that are designated as national trends sites. All these pollutants except $PM_{2.5}$ are funded in partnership with the State and local agencies under Section 105 grants. Federal funding for support of these parts of the network are approximately $100 million per year.

$PM_{2.5}$ is funded under Section 103 and as such is fully funded using Federal money distributed through EPA. This program is funded at $42.5 million per year. The $PM_{2.5}$ networks include three major components:

- Filter-mass measurements at nearly 1,000 FRM sites that measure 24-hour averaged concentrations through gravimetry. The primary purpose of these data are for comparison with the NAAQS;
- Continuous mass measurements by approximately 350 continuously operating using a range of technologies. These measurement are primarily used for the public reporting of the air quality index; and
- Chemical speciation measurements that consists of approximately 54 trend, 175 State Implementation Plan (SIP), and 150 Interagency Monitoring of Protected Visual Environments (IMPROVE) sites, respectively. The vast majority of these sites collect aerosol samples over 24 hours every third day on filters that are analyzed for trace elements, major ions (sulfates, nitrates, and ammonium) and organic and elemental carbon fractions. Most of the IMPROVE sites are operated by personnel from the Federal Land Management (FLM) and Forest and National Park Services. In addition to the 103 money that supports this program there is an additional $1.25 million that is appropriated under Section 105.

The Clean Air Status and Trends Network (CASTNET) originally was designed to account for progress of strategies targeting major electrical generating utilities throughout the Midwest which release acid rain precursor emissions, sulfur, and nitrogen oxides. Network operations are contracted out to private firms funded through Science and Technology (S&T) funds at a cost of $4 million per year. CASTNET consists of approximately 70 sites located predominantly throughout the East with greatest site densities in States along the Ohio River Valley and central Appalachian Mountains. Aggregate 2 week samples are collected by filter packs and analyzed for major sulfur and nitrogen oxide transformation compounds (e.g., end products such as sulfate and nitrate ions). CASTNET was deployed in the 1980's as part of EPA's National Acid Precipitation Assessment Program (NAPAP). A network assessment in the mid–1990's, lead to a more optimized and less extensive network.

Photochemical Air Monitoring Stations (PAMS) measure ozone precursors (i.e., volatile organic compounds (VOC) and nitrogen oxides (NOx) which react to form ozone) at 75 sites in 25 metropolitan areas that were classified as serious ozone nonattainment coincident with release of the 1990 Clean Air Act (CAA) amendments. These sites are operated by State and local agencies. The Federal share of operating these sites is $14 million per year through Section 105 funding. The addition of PAMS in the early to mid–1990's was a major addition to the national networks, introducing near research grade measurement technologies to produce continuous data for over 50 VOC compounds during summer ozone seasons.

EPA supports the National Air Toxics Trends Sites (NATTS) and community assessment studies of air toxics. The NATTS includes 23 sites operated by State and local agencies at a cost of $3.8 million using Section 103 funds. The NATTS sites focus on measurements that are of the most risk. These include benzene, acrolein, formaldehyde, chromium, 1–3 butadiene, and arsenic. $6.2 million of Section 103 funding is used to provide competitive awards for community assessment studies to State, local, and Tribal agencies. An additional $6.5 million of Section 105 funding is provided to State and local agencies for their own air toxic monitoring work.

CLIMATE CHANGE

Question 33. When do you expect that the "state of the environment" report will be finished?

Response. EPA released its first ever State of the Environment report in June 2003 as a draft with the intent of using it to engage stakeholders and the American public. Since its release, the Report has received valuable feedback collected from stakeholders through dialog sessions and advisory committee feedback. Stakeholders identified a number of opportunities for improvement in the report, which are being discussed for inclusion in the next Report on the Environment planned for release in Spring 2006. The new report will also provide an interactive web based capabilities allowing increased access and usability to relevant data and additional details. Enhanced analytical capabilities currently planned for development and implementation over the next two fiscal years will provide the tools necessary to address the improvements identified.

Question 34. What are the Agency's views on the likely effect of global warming on smog and air quality impacts on human health?

Response. This question actually has two questions embedded within it: 1) what is the effect of climate change on smog (ozone) and air quality? and 2) what is the effect of smog and air quality on human health?

For the second question, there is a wealth of evidence of the health effects of ozone and other air pollutants (e.g., particulate matter). These are summarized in Criteria Documents prepared by EPA's Office of Research and Development in support of the National Ambient Air Quality Standards. (See for example: http://cfpub.epa.gov/ncea/cfm/partmatt.cfm)

For the first question, there is cause for concern that climate change may affect ozone and air quality in the U.S. Climate change may affect air quality by changing local meteorology and atmospheric transport patterns, emission rates from natural and anthropogenic sources, and the type and distribution of airborne allergens. However, the directions and magnitudes of these changes for any given location are poorly understood and a matter of speculation at this time. The National Research Council, in a report titled Global Air Quality, notes "Changes in temperature and humidity patterns resulting from global climate changes can directly affect the concentrations of many important tropospheric chemical species" (http://books.nap.edu/catalog/10097.html). However, the NRC also highlights the uncertainty involved in estimating any effects of climate change on ozone and air quality: "Our understanding of many of these climate-chemistry linkages is in its infancy. A better understanding is needed in order to make accurate estimates of future changes in climate and air quality . . ." Similarly, in the National Research Council's June 2001 Report, Climate Change Science: An Analysis of Some Key Questions," this topic was addressed: "[M]uch of the United States appears to be protected against many different adverse health outcomes related to climate change by a strong public health system, relatively high levels of public awareness and a high standard of living. Children, the elderly and the poor are considered to be the most vulnerable to adverse health outcomes. The understanding of the relationships between weather/climate and human health is in its infancy and therefore the health consequences of climate change are poorly understood. The costs, benefits and availability of resources for adaptation are also uncertain."

The EPA has recognized the importance of improving our understanding of the potential impacts of climate change on air quality and public health in the U.S. and has developed a research program focused on addressing this issue. This research program comprises one of four focal areas within EPA's Global Change Research Program and is integrated into the larger interagency Climate Change Science Program. The research activities under this program include a series of extramural grants to universities focused on improving linkages between global and regional air quality models, improving our understanding of climate-chemistry interactions, and improving our ability to estimate future emissions scenarios. This extramural research complements an intramural research program focused on developing the methodology and data bases needed to assess the potential impacts of global change on air quality and public health. For information on future Federal scientific study in this area, please see the "Strategic Plan for the U.S. Climate Change Science Program," (July 2003), available at www.climatescience.gov.

Question 35. Does the Agency's fiscal year 2004 (appropriated) or fiscal year 2005 (requested) include any funds to complete the national assessment of the potential consequences of climate change and variability required to be submitted to Congress in 2004 (and quadrennially), pursuant to the Climate Change Research Act of 1990?

Response. EPA's fiscal year 2004 (appropriated) and fiscal year 2005 (requested) budgets do not include any funds to complete a national assessment of the potential consequences of climate change and variability. All of EPA's activities related to the first U.S. National Assessment were completed prior to fiscal year 2004. As part of the first U.S. National Assessment process, EPA was responsible for sponsoring three Regional Assessments (Mid-Atlantic, Great Lakes, Gulf Coast) and the Health Sector Assessment. All of these assessments were completed prior to fiscal year 2004.

Question 36. A recent National Academy of Sciences report concluded that the U.S. climate change science program lacks the necessary resources to follow through with the goals of its strategic plan. Does the Agency's fiscal year 2005 budget request do anything to help fill that resource void?

Response. The planned activities of EPA's Global Change Research Program are completely aligned and consistent with the CCSP Strategic Plan. The goals of EPA's Global Program are clearly articulated in its peer-reviewed Research Strategy (http://cfpub.epa.gov/gcrp/recordisplay.cfm?deid=18665). Also, the plan for implementing the program—including "critical paths" for doing the planned research and assessments—is described in EPA's Multi-Year Plan [MYP] (http://www.epa.gov/osp/myp/

global.pdf) (Both of these documents were completed prior to release of the final CCSP Strategic Plan.) However, EPA's existing Global Multi-Year Plan (MYP), which identifies the program's research goals and priorities, the specific research needed to address the most compelling science needs, and opportunities for collaboration and integration both within and outside of EPA, does not account for production of the new Synthesis Reports called for in the CCSP Strategic Plan. Since completion of the current version of the MYP, EPA has assumed responsibility for contributing to 10 of the priority "Synthesis Products" called for by the U.S. Climate Change Science Program (CCSP). EPA is the Lead or Co-Lead Agency for three of the Synthesis Products and a Contributing Agency for seven other products. EPA's role in completion of the Synthesis Reports will be carried out using budgeted funds.

TIRE INCINERATION

Question 37. As you may know, for many years I have strived to protect Lake Champlain and Vermont's air quality from potential pollution increases coming from International Paper's Ticonderoga Mill in New York. The plant now wishes to burn tire-derived fuel, a process that can release dangerous criteria, hazardous, and carcinogenic pollutants if combustion is not controlled properly. Just what "properly" means remains a great question to which EPA appears not to have a clear answer. Does the Agency plan to continue research and testing in this area? If so, please explain how. If not, why not?

Response. At this point we are not aware of any specific plans to conduct additional research and testing on the combustion of tire-derived fuels. In general, the Agency promotes the destruction of scrap tires through their use as tire-derived fuels, which prevents them from becoming greater environmental problems in landfills and other waste disposal sites. When combusting any substance, as long as the three conditions of good combustion practices are followed—time, turbulence and temperature—emissions from such sources will be minimized. Most of EPA's combustion regulations require good combustion practices, which serve to increase the time the fuel is resident within the combustion chamber, provide for sufficient turbulence for mixing of fuel (e.g., tire-derived fuels) and oxygen, and require combustion zone temperatures high enough to provide for destruction of the fuel (and its by-products) within the combustion chamber.

MACT REVIEW

Question 38. Section 112(d)(6) of the Clean Air Act states: "The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section [governing hazardous air pollutants] no less often than every 8 years." What is the status of EPA review under this mandate?

Response. EPA is reviewing MACT standards under 112(d)(6) in conjunction with its review of residual risks under section 112(f) of the Clean Air Act. So far, the results of these indicate that the MACT standards are still appropriate and need no further revision.

DEFENSE OF DEFENSE

Question 39. Just as Federal income tax payments would plummet without the IRS, I am deeply concerned that the military's stewardship of hazardous substances on its operational ranges would deteriorate if exempt from Federal and State oversight. Contamination from military munitions needs to be addressed before it migrates off-range and threatens public drinking water systems. As a retired naval officer, I know that military readiness can be achieved without compromising environmental safeguards. Do you agree, Administrator Leavitt, that the military should comply with the same environmental standards as everyone else?

Response. Yes, Federal laws, including the Federal Facility Compliance Act, require the entire Federal Government, including military facilities, to comply with environmental laws and meet the same standards as everyone else. One of EPA's important roles is ensuring that all Federal agencies comply with statutory environmental requirements in the same manner and to the same extent as privately owned facilities.

HOMELAND SECURITY / BUILDING DECONTAMINATION

Question 40. On the day that many of my staff were quarantined due to the ricin scare in Senator Frist's office, the President proposed to eliminate funding for EPA's building decontamination research. This research is critical as the Nation learns to

live with the risk of bioterrorism. Why is the President proposing to abruptly terminate this program?

Response. With fiscal year 2003 and fiscal year 2004 appropriations, plus the President's fiscal year 2005 request, EPA will spend $67.6 million for building decontamination and other cleanup efforts. This total consists of research ($50.8 million) and the establishment of a national decontamination team ($16.8 million).

In the specific instance of fiscal year 2005 funding, EPA has made adjustments in its fiscal year 2004 Building Decontamination Research Program to ensure that all critical decontamination technology evaluations are funded and that interim decontamination technical guidance is developed as planned by October 2005.

EPA will continue to coordinate homeland security research activities with the Department of Homeland Security, the White House Office of Homeland Security, DOE, DoD, CDC and other Federal agencies to assure that research needs are identified and met. Homeland Security Presidential Directive 10, released after the President's fiscal year 2005 Budget was sent to Congress, includes a significant role for EPA in the area of building decontamination research.

FEDERAL ROLE IN CHEMICAL SECURITY

Question 41. The Federal approach to requiring security vulnerability assessments/emergency response plans and certification varies for the 13 critical infrastructure segments. There is currently no Federal mandate for a comprehensive assessment of the chemical industry or requirement that chemical facilities do vulnerability assessments. What do you think is the appropriate Federal role concerning chemical facilities?

Response. The Department of Homeland Security (DHS) has assumed the responsibility for chemical facility security. Homeland Security Presidential Directive HSPD–7, issued December 17, 2003, outlines DHS' responsibilities in this area.

DRINKING WATER AND WASTEWATER SECURITY

Question 42. What is the extent of the EPA's current efforts to plan for a catastrophic or cataclysmic event in which, among other things, power and water would be disrupted for indefinite periods of time perhaps leaving millions of citizens without vital services? Who is involved and how much time and resources are being devoted to this effort?

Response. Designated in HSPD–7 as the Sector Specific Agency for water, EPA is taking a lead in promoting efforts to ensure continuity of supply in the event of a terrorist or other catastrophic occurrence. In close collaboration with our partners in the water sector, EPA has developed guidance, The Response Protocol Toolbox, to assist drinking water utilities in planning for and delivering an alternate water supply during an emergency. This guidance encourages systems to consider alternative sources that can meet the needs not just for routine domestic consumption and sanitation, but also for firefighting activities and customers with special requirements. We are also developing training and protocols for EPA regional and headquarters staff as they provide technical assistance during nationally sensitive security events, such as the G–8 Summit. In addition, EPA has prepared other emergency response planning guidance documents and training to help utilities complete their emergency response plan certifications as required under the Bioterrorism Act of 2002.

EPA is examining the potential for catastrophic losses of power and water through research and development. One of our projects with Argonne National Laboratory will examine the impacts of the loss of water service on other economic sectors. Argonne also is examining the impacts of failure of other sectors like transportation, electric power, and telephone on the water sector. Another EPA project is investigating the experiences of water utilities during the September 2003 power outages (North East grid failure and Tropical Storm Isabel), with direct input from the utilities that were adversely affected during these events. We expect that these studies will lead to an improved understanding of sector interdependencies and the importance of maintaining a reliable supply of water.

The Corps of Engineers is cooperating with EPA to examine the options available for dealing with loss of water at water utilities. The Corps study will examine options for reaching agreements between neighboring water authorities to share water in an emergency, as well as short-term solutions such as providing bottled water. EPA is also developing an agreement with the Office of Naval Research to apply research they are conducting on the development of expeditionary unit water purification to civilian disaster relief in the U.S.

EPA is also coordinating with FEMA, DHS, and U.S. Army Corps of Engineers on each agency's role in providing emergency drinking water supplies. Last, EPA

is conducting activities within the agency so that our response can be properly coordinated and information disseminated effectively through methods such as our emergency operations center.

Question 43. How is the EPA coordinating its efforts in all infrastructure sectors with those occurring in each sector at the Department of Homeland Security?

Response. Protecting critical infrastructure is a vital and challenging component of EPA's mission. An integral part of our water security efforts must involve a close collaborative relationship with the Department of Homeland Security (DHS) to ensure that we leverage our respective resources to maximize protection of the water sector. In general, EPA possesses expertise in understanding the water sector and enjoys long established relationships with water utilities, water-related government entities, and associations. DHS has expertise in the form of intelligence analysis and general security issues that can be used together with EPA's proficiencies in order to deliver the most robust, comprehensive assistance to the water sector.

Such a collaborative approach is in fact mandated in Homeland Security Presidential Directives (HSPD)–7 and 9. HSPD–7 designates EPA as the Sector Specific Agency responsible, with guidance from DHS, for improving water security. HSPD–9 directs DHS to develop a plan in consultation with EPA for establishing a nationwide surveillance and laboratory program for water. In response to these directives and to the threats confronting the water sector, EPA, with support whenever appropriate from DHS, must continue to provide an array of assistance to the water sector that includes training for preparedness, developing voluntary best security practices, enhancing contaminant information tools, and evaluating detection technologies. For example, in 2004 we will renew efforts with DHS's Office of Domestic Preparedness to provide emergency response training to water systems and emergency responders.

There are a number of interagency committees that are coordinating research and operational issues between various sectors. Several agencies either chair or have representation on these committees. During major security events, EPA is participating in Joint Operations and Planning groups (along with the FBI, Secret service, DHS, CDC, etc.) for the G–8 Summit, Presidential Conventions, and similar events of national security importance. EPA is also participating in major governmentwide exercises like TOPOFF–3 to improve coordination with other agencies.

In addition, EPA and DHS must continue to identify security concerns that present the greatest risks to the water sector. Our collective efforts should improve the capability of the water sector and others that support or rely on the sector, to not only understand security threats and vulnerabilities, but also to have access to the tools and assistance necessary to reduce security risks.

Question 44. Has the EPA provided comments regarding drinking water and wastewater security to the Department of Homeland Security for incorporation in the National Response Plan? If so, please provide a copy of those comments. If not, please provide your understanding of how water and wastewater security issues will be dealt with in the National Response Plan.

Response. The Homeland Security Act and Homeland Security Presidential Directive–5 mandated the creation of a National Response Plan (NRP) based on a new National Incident Management System (NIMS). The NRP and the NIMS provide the structure that weaves the capabilities and resources of the private sector and all of the jurisdictions, disciplines, and levels of government into a cohesive, unified, coordinated, and seamless national approach.

The NIMS provides interoperability and compatibility among Federal, State, local, and Tribal capabilities through a core set of concepts, principles, and terminology. Key elements of the NIMS include the Incident Command System (ICS); multi-agency coordination systems; resource management and typing; communications; and training, qualification, and certification processes.

The NRP incorporates the best practices and procedures from various incident management disciplines—homeland security, emergency management, law enforcement, firefighting, public works, public health, and emergency medical services—and integrates them into a unified structure. The NRP is an all-hazards incident prevention, preparedness, response, and recovery plan.

Yes, EPA's Office of Solid Waste and Emergency Response and the Office of Enforcement and Compliance Assistance have provided detailed comments on the NRP pertaining to drinking water and wastewater security (attached). The Nation's domestic incident management landscape encompasses a broad spectrum of threats and hazards, both man-made and naturally occurring. Given the complex and emerging threats of the 21st century, the Nation must embrace a unified and coordinated approach to incident management.

NRP DRAFT #1 COMMENT FORM

Agency or Organization: EPA/Office of Water
Point of Contact (name/phone number/email): Nanci Gelb, 564.3750 or Steve Clark 564.3784
Page #Line #Comment TypeComment
TOCGEN
The overall organization of the document is much improved over the May 15, Initial Plan Draft. We agree that all the various plans need to be organized. We agree strongly that DHS's role is to coordinate emergence response and for the supporting agencies to, as much as possible, operate under their own authorities.515SubstantiveThe Stafford Act declarations have specific requirements and procedures. We encourage DHS to develop some criteria to distinguish catastrophic incidents that would require a coordinated Federal response. Is contaminated mail in a Senator's mailroom significant?

Or if one Federal agency's mailroom is contaminated? We need to have decision criteria available or else we may not take the appropriate steps in a timely coordinated fashion.641SubstantiveThe shift in application of the color-coded threat level to local and sector specific have not been communicated particularly well. At minimum, each Agency's EOC should have a current (weekly?) status of cities, locations, and sectors above the national norm (currently yellow).77 “”The seamless transition will require prior knowledge of threats by participating D/A's signed on to this NRP.83 “”Will DHS be training all D/A's on the NIMS?1521 “” Again we need DHS to coordinate intelligence on sector threats so that the ESF agencies can be prepared. Short-term ideally is what, where, when. This allows response teams to be at maximum readiness. Long-term intelligence on types of attacks should be available to plan for purchase of equipment and training of personnel.403–11 “”The criteria for a catastrophic event need to be better defined or one might occur and no one knows until it is too late.4316–49 “”There need to be explicit criteria and published SOP's for events that are required to be reported to HSOC.4538–46 “”DHS should have some SOP for routine dissemination of threats to Sector Agencies and ESF leads. Preparedness requires advanced knowledge.ESFGeneralWe defer comment on the ESF appendices, as they are not sufficiently detailed.

Background. This form provides agencies and organizations a common format for providing comments on the Draft National Response Plan (NRP). Its design is intended to make it easy to merge comments from various respondents and arrange them in a single, consolidated matrix for review and incorporation into the plan.

Procedures

1. On the first page, include the organization providing the comments and a point of contact.
2. In the Page #, and Line # columns, insert the relevant page and line number(s) pertaining to the comment.

Note: For general comments that do not correspond to a specific page number, place the word “GEN” under the page # column.

3. In the Comment Type column, indicate whether the comment is Critical, Substantive, or Administrative in nature.
4. In the Comment column, place only one comment per row: and provide comment, recommendation and rationale.

Question 45. Has the EPA completed a comprehensive national plan for securing the nation's water and wastewater infrastructure? If not, has the Agency cooperated with DHS on a similar endeavor? If so, please provide a summary of your work with DHS and the information you provided to the Department.

Response. Following the terrorist events of September 11, 2001, EPA's mission expanded from safeguarding the environment from conventional sources of pollution to protecting the environment from the aftermath of terrorist acts. We recognized that the Agency needed a robust plan to articulate in a full and comprehensive manner our approach for meeting our responsibilities and duties as a Sector Specific Agency for water and as a supporting Agency for many other critical homeland security efforts. As a result, we published the Strategic Plan for Homeland Security in September 2002. Goal 1 of this plan specified the tactics that we would use to enhance the protection of the water sector and the results that we would use to gauge our success. The Agency is currently revising the strategic plan to incorporate Presidential Directives issued subsequent to the original plan and to catalogue those activities that have been completed since 2002.

As the designated Sector-Specific Agency (SSA) for drinking water and wastewater systems under HSPD–7, EPA is currently working to provide input to DHS for the development of the National Infrastructure Protection Plan (NIPP). EPA is coordinating with DHS in the preparation of a Sector-Specific Plan (SSP) for the water sector that will assist DHS in developing the NIPP. The water sector SSP de-

scribes how EPA is identifying key water sector assets and threats, promoting the assessment and prioritization of vulnerabilities, developing and implementing protective programs, and measuring progress in security. EPA will meet the requested DHS submission date of June 11, 2004, and will also continue to work collaboratively with DHS in updating the water sector SSP and providing input into the NIPP.

Question 46. Is training for water system contamination events being incorporated into water system operator and first responder training protocols? Please provide a complete description of what is being done to ensure that the initial response to contamination of a water system is effective. Please include a description of how your work is being coordinated with DHS.

Response. Yes. EPA, in partnership with the Department of Homeland Security, conducted 27 training sessions in 2003 focusing on emergency response planning for large drinking water utilities. In addition, we will have conducted approximately 30 more training workshops in 2004 targeting a broader size range of utilities. These workshops focus on various elements of emergency response planning such as coordination at the Federal, State and Local level with other first responders, and using EPA guidance documents effectively. Some of the workshops will also have a tabletop exercise. Additionally, the workshops will offer a description of some of the other tools EPA is providing to assist with utility security concerns. These include the "Laboratory Compendium" that is designed to assist utilities in identifying laboratories capable of analyzing emergency response samples. While vulnerability assessment and emergency response planning security requirements have not been mandated for wastewater utilities as they have been for drinking water systems, many of the same training activities are being planned for wastewater utilities.

Also, EPA is collaborating with the American Water Works Association and the Centers for Disease Control and Prevention to provide a training seminar for water utilities, public health officials, and other first responders. This training will be focused on health surveillance issues during an emergency drinking water response.

One of the most effective and efficient means to enhance the safety of the water sector involves incorporating security principles into business-as-usual and utilizing water system operators as a first line of defense. EPA has awarded a grant to the Association of Boards of Certification to develop voluntary State drinking water and wastewater security-related operator certification examination questions. These questions will be shared with all State operator certification programs and will be available for use by the end of this year. Some States such as Connecticut are also using portions of their State water security grants to incorporate security into operator certification.

EPA's response to emergencies is implemented through our 10 Regional offices, and is characterized by a system that includes Federal, State, and local cooperation. The strength of our program lies with our On-Scene Coordinators who are experienced responders. They bring with them delegated authorities and strong relationships with State and local responders that are backed up by a national network, Federal response assets, and contractor capabilities. They also have access to commercial laboratories. Our On-Scene Coordinators are accustomed to working in the Incident Command System now being implemented as the National Incident Management System. In addition, the National Oil and Hazardous Substances Pollution Contingency Plan (the NCP) is the foundation upon which the capabilities and response structure for not just EPA's hazardous materials responders, but also for local, State, and other Federal responders involved in responding to these incidents. All of the efforts described above address multi-media contamination scenarios, including water, and adopt an all-hazards approach to ensure that preparedness of the water and other sectors extends to cover the full array of threats and to invoke the entire breadth of the Nation's emergency response capabilities.

Question 47. Please provide a summary of the Agency's activities in both the drinking water security and wastewater security arenas. Please clearly describe the differences in the actions the Agency has taken in each area and the reason for those differences.

Response. In 2003, we established the Water Security Division (WSD) within the Office of Water to emphasize and implement EPA's commitment to help protect the safety and security of the Nation's drinking water supply and wastewater systems.

In the fall of 2002, ORD established the National Homeland Security Research Center (NHSRC). One of the teams in that center focuses on water and wastewater security. Another team is focused on risk assessment and works closely with the water security team. The primary components of the water security team's research efforts are: Characterization and detection; prevention and containment; decontamination and mitigation; residual disposal; risk assessment; technology

verification; and technical assistance. The NHSRC works closely with the Office of Water's WSD in both developing research needs and in conducting research projects.

In prior years, EPA's water security work focused on supporting assessment of vulnerabilities and creating a baseline of security-related information. To this end, we supported the development of a number of tools that are referenced on our web site, and supported the delivery of training and technical assistance on vulnerability assessments and general security for both drinking water and wastewater utilities of all sizes in locations across the Nation. As a result of our efforts, drinking water systems collectively serving over 150 million people have completed vulnerability assessments.

Current and future efforts involve providing the tools and assistance that drinking water and wastewater systems need to address vulnerabilities by, for example, disseminating information on the most up-to-date security enhancements and threats, identifying best practices, and offering training on emergency response. In terms of disseminating information, EPA continues to provide financial support and work collaboratively with the Water Information Sharing and Analysis Center to provide a secure forum for sharing threat information with water utilities, and to serve as a liaison with the intelligence community. With respect to best security practices, EPA has formed a Federal advisory group to develop voluntary practices that water utilities could adopt to enhance their security. Emergency response training represents one our most critical activities. We have recently released several guidance documents for drinking water utilities on emergency response planning, and we will provide a series of workshops and exercises to improve the sector's preparedness. Similar guidance and training is under development for wastewater systems.

EPA is also working to make advances in the development of contaminant monitoring and detection technologies for drinking water facilities. Emphasis on these efforts was accelerated with the release of HSPD–9, which directs EPA to develop a robust, comprehensive surveillance and monitoring program that would provide early warning in the event of a terrorist attack. HSPD–9 also directs EPA to develop a nationwide laboratory network that would support the routine monitoring and response requirements of such a surveillance program. EPA recently submitted a conceptual design for a national surveillance and laboratory program to DHS. Additional activities are outlined in our Water Security Research and Technical Support Action Plan.

In developing the Water Security and Technical Support Action Plan, EPA developed a Threat Scenario Analysis to prioritize the possible threats related to water and wastewater. The prioritization of possible threats helps to focus research on the most pressing needs. The needs fall into categories of physical security (including physical and cyber infrastructure, contingency planning, and interdependencies) and contamination threats (biological, chemical, and radiological). Research efforts are under way to evaluate distribution system modeling and how that would relate to early warning systems; treatment efficacy studies on how to destroy specific contaminants if they have been introduced into a water system; and how to decontaminate the water and wastewater systems once they have been contaminated. Detection and analytical technologies to rapidly monitor for both specific contaminants and for classes of contaminants are being evaluated.

EPA has also reached out to important partners beyond the sector that can provide additional support in the event of a threat or an attack.

ENFORCEMENT

Question 48. OECA has moved to a "results-oriented" metric for measuring the effectiveness of EPA's enforcement program. Specifically, OECA is now measuring the effectiveness of its enforcement efforts based on the number of "pounds of pollution reduced" as a result of enforcement actions. Can you provide information elaborating on the methodology used to come up with this number? Can you also include information or estimates regarding the total amount of pollution reductions that we could expect if the regulated community were close to full compliance?

Response. OECA began using "results-oriented" metrics for measuring the effectiveness of EPA's enforcement program in 1995 when it launched the Case Conclusion Data Sheet (CCDS) project. For the majority of the Clean Water Act and Clean Air Act cases, EPA staff is instructed to calculate pounds of pollution reduced as the difference between the non-compliant emission level and the permitted level. For RCRA, CERCLA and TSCA (asbestos, PCB, and lead-based paint) cases that involve the remediation, removal and proper disposal of contaminated material (e.g., soil), EPA staff are instructed to report the volume of contaminated material addressed by the action instead of pounds of pollution reduced.

Environmental benefits (i.e., pounds of pollution reduced; and volume of material reduced, treated or eliminated) are recorded in the year that the case is settled; although it may take several years for the pollutant reductions to be achieved, or the cleanup completed. For cases where compliance will result in continuous reductions (e.g., installation of an end-of-pipe control) 1 year's worth of pollutant reduction benefits is reported. For remediation and cleanup activities, the entire amount of materials to be addressed is reported.

To ensure consistency within and across programs, OECA has developed a statute-specific Case Conclusion Guidance Document that provides examples of how to calculate pollutant reductions for each of the major statutes. OECA has also trained its entire regional staff on the statute specific methodologies. As part of mid-year and end-of-year reporting processes, EPA staff certifies that they have followed the established methodologies in order to calculate the pollutant reductions.

We cannot provide estimates of the total amount of pollutants reduced if all facilities were to come into compliance. This is because we do not have data about the current level of compliance for all regulated facilities (over 800,000), with all regulatory requirements, for all environmental statutes. Our CCDS estimates are specific to individual cases and facilities. As part of case development we measure the facility-specific level of violation, and can then estimate the amount of pollution reduced as a result of an anticipated return to compliance.

Question 49. The October 2003 Inspector General's report on enforcement concluded that EPA did not have systems in place to evaluate whether the nation(s environmental laws were being adequately enforced. What steps are you taking to address this problem?

Response. Over the last several years, EPA(s criminal enforcement program has been updating and expanding its Criminal Enforcement Docket (CRIMDOC). In addition, the program is currently developing additional external and internal (management) performance measures to track major aspects and impacts of its criminal cases. Examples of the proposed measures include the pollutant impact of criminal enforcement cases; the acceptance rate for criminal referrals to the Department of Justice; and the extent to which criminal enforcement prosecutions result in improved environmental management practices.

The enhanced docket system, which will be called the Case Reporting System (CRS) is currently undergoing field testing and is expected to be on-line by the end of 2004. The CRS combines a case management and case reporting system in one data base. As this new information is entered into the system (e.g. attributes and results of investigations and cases), as well as its greater ease of use, CRS can be used by senior criminal enforcement managers to analyze trends in case selection and prosecution, and to develop a more systematic approach to case management. Potential enhancements include integrating criminal enforcement docket information with civil enforcement information; and adding capability within CRS to provide data necessary for improved program management (e.g. incorporating OECA national priorities, pollutant impact and pollutant reduction information, or referral declination data).

Question 50. How has the number of enforcement actions taken under the Safe Drinking Water Act changed between 1995 and the present? Please provide an annual total of enforcement actions when answering this question.

Response. The chart below provides final enforcement actions taken under SDWA from fiscal year 1995 to fiscal year 2003.

FY1995—2003 SDWA ENFORCEMENT ACTION CONCLUSIONS

Fiscal Year	1996*	1996*	1997*	1998	1999	2000	2001	2002	2003
Administrative Compliance Orders.	611	284	453	PWSS 280 ..... UIC 7	PWSS 251 ..... UIC 18	PWSS 2,067** ..... UIC 18	PWSS 542 ..... UIC 35	PWSS 283 ..... UIC 36	PWSS 419 UIC 33
Final Administrative Penalty Orders.	55	76	44	PWSS 14 ..... UIC 29	PWSS 16 ..... UIC 24	PWSS 21 ..... UIC 27	PWSS 51 ..... UIC 16	PWSS 32 ..... UIC 34	PWSS 20 UIC 14
Civil Judicial Conclusions.	4	7	9	PWSS 1 ..... UIC 1	PWSS 5 ..... UIC 1	PWSS 0 ..... UIC 2	PWSS 3 ..... UIC 1	PWSS 2 ..... UIC 0	PWSS 0 UIC 3
Total Civil Enforcement Actions.	670	367	506	332	315	2,135	648	387	489

Information is not available by program (PWSS, UIC) prior to 1998. PWSS = Public Water Supply System; UIC = Underground Injection Control.
* = The Consumer Confidence Rule accounted for a surge in Public Water Supply System administrative compliance orders.
Sources: fiscal year 1995 to fiscal year 2002 OECA Measures of Success Reports; fiscal year 2003 Press Release Materials.

HAZARDOUS WASTE

Question 51. On January 28, 2004, Senator Boxer and I wrote you concerning EPA's proposal to deregulate over 3 billion pounds of toxic hazardous waste from government oversight. The vast majority of this waste is now recycled in permitted facilities. Under the EPA proposal, these wastes could be shipped around the Nation without any tracking and be recycled by those without adequate training, storage equipment or financial assurance. EPA's own data shows that over a third of the Superfund sites that EPA reviewed were former recycling sites. What safeguards does the proposal include for offsite recycling to prevent creating the next generation of abandoned toxic waste dumps? At a minimum, since the vast preponderance of the benefits of the rule stem from companies recycling their own waste onsite, why not limit the exemption to onsite recycling?

I was very surprised to learn that EPA, in proposing a major revision of the hazardous waste program, acknowledged in the Agency's economic assessment that EPA has never evaluated the potential for the rule to result in releases of hazardous waste into the environment. Why didn't EPA prepare such an evaluation, and can you assure me that the rule will not be finalized until such an evaluation is prepared for public comment?

Response. EPA responded to Senator Jeffords in an April 22, 2004 letter addressing these questions. Please see attached copy of that correspondence.

ELECTRONIC COPY

The Honorable JAMES M. JEFFORDS, *Ranking Member,*
Committee on Environment and Public Works,
U.S. Senate,
Washington, DC 20510.

DEAR SENATOR JEFFORDS: I am pleased to respond to your letter of January 28, 2004, regarding the Environmental Protection Agency's (EPA) recent proposal that would make certain changes to the regulatory definition of "solid waste" under the Resource Conservation and Recovery Act (RCRA). I understand your interest in the proposal and appreciate the suggestions as to how the proposal could be improved.

In the October 28, 2003, proposal the Agency stated that it represented an important restructuring of the Agency's current regulations that distinguish wastes from non-waste materials for RCRA regulatory purposes, and that ensure environmental protections over hazardous waste recycling. We also expressed our expectation that this proposed rule would encourage safe, beneficial recycling of hazardous secondary materials by industry. We further observed that this regulatory initiative is thus consistent with the goals of RCRA and the Agency's longstanding policy of encouraging the recovery and reuse of valuable resources as an alternative to land disposal.

In your letter, you suggest how the rulemaking might be constructed differently and discuss issues the Agency should consider in its deliberations. We have provided an evaluation of your eight specific issues. (See enclosure.) We also have placed your letter in the public docket for this rulemaking and will consider your comments before issuing a final rule.

Again, thank your for your letter. If you have further questions, please contact me or your staff may contact Holly Smithson, in EPA's Office of congressional and Intergovernmental Relations, at 202–564–1609.

Sincerely,

MICHAEL O. LEAVITT.

ENCLOSURE

Response to Concerns on ABR Rule

A) We did not intend by characterizing the proposal as a "response" to recent court decisions to suggest these decisions contained a mandate (such as the D.C. Circuit's vacatur of the byproduct and sludge provisions of the 1998 mineral processing exclusion) to issue the proposal. Instead, the Agency was prompted by concerns articulated in Association of Battery Recyclers v. EPA, where the court repeated its view from the 1987 case of American Mining Congress v. EPA that materials that are generated and reclaimed in a continuous process within the same industry are neither disposed of nor abandoned and, therefore, are not solid wastes under RCRA. Prompted by this and other concerns articulated by the D.C. Circuit, the Agency developed a proposed exclusion that, together with legitimacy criteria, was designed to address those cases where discard most likely does not occur because materials are being truly reused or recycled in a continuous process within the generating industry.

B) We also note that Congress is urging EPA to act on this issue. Specifically, the 2004 House VA-HUD-Independent Agencies appropriations report language offers the following:

In 2000, the DC Circuit Court of Appeals held that EPA was improperly regulating recycling by using an overly broad definition of "discarded materials." The committee encourages EPA to promulgate a rule in fiscal year 2004 revising the regulation of recycling under 40 C.F.R. Part 261, by limiting the definition of "discarded material" to materials that are "disposed of, abandoned, or thrown away" as defined by the court.

C) We wish to address your suggestions that the proposed rule would, among other things, "wreak havoc" on RCRA's cradle-to-grave system for managing hazardous wastes, would result in many new toxic waste dump sites in the nation's communities, or would significantly undermine cost recovery at Superfund sites. It was our expectation that several aspects of the proposed rule would prevent the kinds of environmental problems that you suggest would result if the proposal were finalized. These include:

- The exclusion in the proposed rule would not affect the obligation to promptly respond to and remediate any releases of hazardous secondary materials that may occur. See, for example, 68 F.R. 61581.
- Only materials recycled legitimately would be affected by the proposed exclusion. The proposal contains specific regulatory provisions for distinguishing legitimate recycling from sham recycling practices. These provisions reorganize and clarify the legitimacy criteria that to date have been articulated only in guidance and preamble statements. See 68 F.R. pages 61581–88.
- The proposal would not change the existing regulations applicable to facilities in the waste management or remediation services industries, nor would it change the existing regulations applicable to such forms of recycling as burning for energy recovery, recycling of inherently waste-like materials, or recycling of materials that are used in a manner constituting disposal. See, for example, 68 F.R.page 61565. They would continue to be fully regulated under RCRA.
- Notification of EPA or the authorized State agency would be required for generators of secondary materials that have previously been regulated under RCRA Subtitle C, and that would become excluded under today's proposal. See 68 F.R. 61577.
- If a recycling facility were to generate hazardous residual wastes, they would be subject to RCRA regulatory requirements. See 68 F.R. 61566.

We offer these same safeguards as a general response to the five specific issues in your letter, with additional discussion below:

Issue 1: You request the Agency to provide it's evaluation of "the risks of mismanagement posed by this broad exemption, including data on the environmental performance of hazardous waste recyclers before and after implementation of RCRA's regulatory regime. Specifically, EPA should consider the number of RCRA imminent and substantial endangerments filings related to recycling operations, the number of CERCLA listings related to hazardous waste recycling, and how many of these filings/listings related to activities at facilities that did not yet have a RCRA permit."

Response: The proposed exclusion from the definition of solid waste would apply only to hazardous secondary materials that are legitimately reused in a continuous process within the same industry. This is only a subset of the larger universe of recycling practices. Nevertheless, EPA will carefully consider the need for additional analyses as we proceed with this rulemaking. During the development of the proposal, the Agency attempted to assess whether the kind of intra-industry recycling affected by the proposal may have caused serious contamination problems. However, the information available to the Agency did not lend itself to an analysis specific to recycling in a continuous process in the same industry. We note however, that this effort revealed very few sites where the kinds of legitimate recycling activities that would be affected by our proposed rule may have contributed to contamination problems in the past.

Issues 2, 3 & 5: You request evaluations of "the potential financial liability that may be borne by the Federal Government and the States for remediation costs at these new, unregulated recycling facilities;" "the impact of this proposal on EPA's ability to obtain cost recovery under CERCLA section 107 from parties that sent hazardous secondary material to be recycled;" and the identity of "each proposed or final Superfund National Priorities List site where hazardous secondary materials that would be covered by the proposed rule are suspected to be located or actually have been discovered."

Response to Issues 2, 3 & 5: The proposal was designed to be a "restructuring of the RCRA regulations that distinguish wastes from non—waste materials for Subtitle C purposes, and that ensure environmental protections over hazardous waste recycling practices." 68 F.R. 61560. It is our expectation that several aspects of the proposed rule would prevent the kinds of environmental problems that your letter suggests would result if the proposal were finalized. As noted in the preamble, the proposed rule also would not limit or otherwise affect EPA's ability to pursue potentially responsible persons under section 107 of CERCLA for releases or threatened releases of hazardous substances. 68 FR at 61590. However, as this rulemaking process continues, the Agency will carefully consider these issues that you and others raise.

Issue 4: You request an evaluation of "whether the Administration's proposal is consistent with and satisfies the criteria established for legitimate recycling by the Superfund Recycling Equity Act of 1999 (CERCLA section 127(c) and (f))."

Response: The proposed criteria for legitimate recycling and the criteria in section 127 of CERCLA apply to different kinds of materials and recycling. The proposed rule would not change the universe of recycling activities exempted from CERCLA liability pursuant to section 127. Rather, it would only change the regulatory definition of solid waste for purposes of implementing the RCRA Subtitle C regulatory requirements. As noted in the preamble, the proposed rule also would not limit or otherwise affect EPA's ability to pursue potentially responsible persons under section 107 of CERCLA for releases or threatened releases of hazardous substances.

Question 52. RCRA requires tracking of waste from cradle to grave through a paper manifest system. EPA has been working for years to standardize the manifest system, which would eventually enable the Agency to generate significant cost savings by replacing paper manifests with much more efficient electronic manifests. I understand that the Agency, after working with States, industry, and public interest groups, is ready to finalize the rule soon. Can you tell us the Agency's timeline to finalize the standardized manifest and what steps will be needed to move to an electronic system?

Response. The hazardous waste management regulation revisions, including the manifest form and continuation sheet, are in the final stages of internal Agency review, and will be submitted shortly to the Office of Management and Budget (OMB) for their 90-day review. EPA's goal is to publish the final rule notice by late 2004. Due to the need for further examination of the electronic manifest (e-manifest) part of the proposed rule, EPA anticipates finalizing only the form standardization part of the rulemaking at this time.

In May 2004, EPA held a public meeting to convene new outreach efforts and discuss alternative approaches to the e-manifest with our stakeholders. As a result of this meeting, EPA hopes to gather the information that will enable the Agency to move forward with the e-manifest and complete this essential piece of the manifest revisions rulemaking.

The Agency is in the process of identifying a means for making the e-manifest system self-sustaining. One method might be to involve the user community or IT vendors in sharing the system costs under a "user fee" approach or a "share-in-savings" contract authorized under the E-Government Act of 2002.

GENERAL BUDGET

Question 53. As I said in my testimony, I am concerned that the President's proposed budget does not provide adequate resources to the Agency. Could you explain why the gap over the past 3 years between what the President has proposed for EPA's budget and what finally gets enacted keeps getting bigger?

Response. The President's Budget reflects resources necessary to support EPA's priorities in a constrained budget environment. The levels enacted by Congress reflect different priorities that included increased funding for such areas as the Clean Water State Revolving Fund and congressional Earmarks. The increases in these and other activities account for the differences between the President's Budget and the appropriated levels.

Question 54. Would it be a poor use of Federal resources to fund EPA at the level contained in the Senate budget resolution?

Response. Federal resources would be used appropriately if the EPA were funded at the level requested in the fiscal year 2005 President's Budget ($7.8 billion). The fiscal year 2005 President's Budget funds the priorities necessary to protect human health and the environment.

RESEARCH CUTS

Question 55. Administrator Leavitt, could you please explain the rationale behind the proposed cuts in the Office of Research and Development and specifically with cuts in the Science to Achieve Results Grant Program?

Response. EPA's internal research program and its external Science to Achieve Results (STAR) program both have been and remain quality and effective contributors to the Agency mission of protecting human health and the environment. The goal of the STAR program is to promote excellence in environmental science by engaging the nation's best university scientists to conduct high quality research and provide innovative solutions to protect human health and the environment.

EPA's fiscal year 2005 budget request provides more than $65 million for the STAR program to continue to fulfill its important role by engaging the nation's best university scientists to conduct high quality research and provide innovative solutions to protect human health and the environment. The STAR program remains aligned to support Agency priority research efforts and leverage external resources. The fiscal year 2005 President's Budget request for STAR allows EPA to continue funding extramural research in important areas, including children's health, particulate matter, safe food, and drinking water, and will be funded consistent with previous years' investments in these areas.

ENVIRONMENTAL JUSTICE

Question 56. Last week, the EPA's Inspector General found that the agency is not fully implementing the 1994 Executive Order on environmental justice and has not consistently incorporated environmental justice concerns into the Agency's operations. According to the IG report, EPA has not taken steps to identify minority and low-income populations addressed in the Executive Order, nor has it developed criteria for determining when these communities are disproportionately affected by pollution. How can EPA ensure that minority and low-income communities are not harmed by high levels of pollution if the Agency has no means of identifying those communities?

Response. The Agency believes that the intent of the Executive Order is to ensure that environmental actions or decisions do not result in disproportionately high and adverse human health or environmental effects by ensuring that the analysis of these effects includes the examination of secondary effects, cultural concerns, and cumulative impacts/effects. While such effects can occur in any community, the Agency recognizes that significantly greater adverse effects are often correlated with minority populations and/or low-income populations. Thus, EPA's approach includes collecting and analyzing information on demographic factors and other relevant data, as well as the actual environmental and human health effects themselves as part of the scoping process.

EPA's Office of Enforcement and Compliance Assurance is currently formulating its response to the Inspector General's report, "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice," (http://www.epa.gov/oigearth/publications.htm). The Agency's written response will be submitted to the Inspector General's office on 3 June 2004; we would be happy to answer any additional questions you may have that are not addressed in the Agency's response.

PERSISTENT ORGANIC POLLUTANTS (POPS)

Question 57. Based on the POPs implementing legislation amending FIFRA that your Agency sent to the Senate Agricultural Committee last month and based on briefings by members of your staff and others in the Administration to the Senate Agriculture Committee, I gather that you now think that the TSCA legislation approved in this committee last summer has constitutional problems. Is that correct? Can you explain precisely why this legislation is or might be unconstitutional?

Response. Generally, an Administration determination as to whether a statute or bill is constitutional is in the purview and expertise of the Department of Justice, not the Environmental Protection Agency. As explained to your staff during development of S. 1486, with regard to the notice and comment procedures in POPs legislation, the Department of Justice has advised the Administration that it has concluded that a mandatory consultation requirement would raise constitutional concerns with respect to the President's authority to conduct negotiations with other nations.

RECYCLING

Question 58. Creating incentives to maximize pollution prevention and recycling is critical for long-term sustainable environmental progress.

Question 58a. Is EPA on track to meet its goal of increasing the nation(s recycling rate to 35 percent by 2005?

Response. In 1989 EPA challenged the Nation to recycle 25 percent of municipal solid waste. By 1996 this goal was attained, and EPA issued a new challenge to recycle 35 percent by 2005. The most recent available data are for 2001 and indicate a national recycling rate of 29.7 percent in 2001. While this represents substantial progress toward the aggressive 35 percent goal, current trends indicate that achieving that goal in 2005 will be difficult. EPA recognizes the need to work toward the goal with focused strategic targets, for particular waste sectors. These are under development and identified in the 2003–2008 EPA Strategic Plan: "Direction for the Future". These newly identified targets and measures include recovery and energy conservation for auto tires; beneficial use and energy savings for coal combustion products; and reduction in releases to the environment for priority chemicals.

Question 58b. Similarly, will the Nation achieve EPA(s goal of maintaining per capita municipal solid waste generation at the 1990 level of 4.5 pounds per day?

Response. Yes, we expect that this goal will be met. With the exception of the years 1999 and 2000, the U.S. per capita waste generation rate has been below the target level of 4.5 pounds per day; and EPA expects this to continue.

Question 58c. What are EPA(s municipal solid waste generation goals and recycling goals for 2006–2010?

Response. In September 2003, EPA set forth its most recent statement of goals in (2003–2008 EPA Strategic Plan: Direction for the Future.(For each year through 2008, the goal is to maintain the national average municipal solid waste generation rate at no more than 4.5 pounds per person per day. For recycling, the goal is to increase the recycling rate to 35 percent by 2008. EPA is working with strategic partners to identify additional performance goals to supplement the existing, interim target of 35 percent recycling. These newly identified targets and measures are currently under development and will be formalized with the submission of the fiscal year 2006 Request to OMB. EPA will continuously monitor its progress toward the 2008 goal and develop goals for fiscal years 2009 and 2010 based on the program's performance. As part of the measurement development plan, the Agency has begun an analysis of the qualitative and quantitative benefits for six program elements. In addition, and where available, EPA will also evaluate the specific commodities that makeup that element. The six elements are: (1) Product Stewardship, (2) Reducing Priority Chemicals, (3) Greening the Government, (4) Beneficial Reuse, (5) Energy Conservation and (6) Environmentally Friendly Design. Each element promotes resource conservation and individual benefits that may result in: reducing exposures to toxic chemicals in products and wastes; displacing raw materials in the manufacture of products; energy savings from beneficial use of materials and use of wastes as fuels; and reduction in green house gas emissions from manufacturing improvements and raw material substitutions.

EPA has developed partnerships with communities, industry and government to establish recycling and foster reuse. In the area of municipal solid waste EPA is working with partners to establish paper recycling as a routine business practice. The partnerships will also foster development of more uses for recycled paper and recycled paper products such as in building insulation, sub-flooring, roof systems, and siding. Also, for the wide array and rapidly growing volume of obsolete electronics products entering the waste stream, EPA is allied with manufacturers, communities, and governments to foster a new recycling infrastructure which will reclaim valuable materials and prevent release of heavy metals and other toxics into the environment. Additionally, EPA(s partnerships with tire and vehicle manufacturers, tire retailers, and government agencies at all levels are effectively reducing the disposal of the 250 million scrap tires produced annually in the United States; currently, markets now exist for 76 percent of scrap tires, up from 17 percent in 1990.

Question 58d. The nation(s recycling rate of aluminum cans has fallen dramatically over the last decade, from 65 percent in 1992 to 48 percent in 2002. Over 51 billion cans were wasted by not being recycled last year. What steps does EPA plan to take over the next year to reverse this trend?

Response. EPA is aware that recycling of aluminum cans in the U.S. has decreased. In part, this is likely the result of uses of aluminum cans in places where recycling is not convenient (i.e., "on-the-go" uses). Consumers increasingly use these single-serve aluminum containers "on-the-go," away from residences or other loca-

tions where recycling is convenient. EPA is considering ways to help ensure that these containers do not escape the recycling infrastructure. For example, later this month EPA will launch a new initiative targeting shopping centers, including aluminum cans generated at food courts. Co-sponsored by the International Council of Shopping Centers, the initiative will provide outreach, education, and assistance for shopping center managers, owners, and tenants, as well as for the consuming public. Recognizing that 96 percent of the American public has visited a shopping center within the last month, exposure to the "recycling" message at shopping centers will carry over to other facets of Americans' daily lives.

SUPERFUND

Question 59. I appreciate that EPA has proposed to include the Pike Hill Copper Mine in Corinth, Vermont on Superfund's National Priorities List. I am concerned, however, that the Administration continues to under-fund the Superfund program, leaving toxic waste festering at sites across the Nation. Two examples in Vermont illustrate the problem. According to State officials, lack of funds has significantly delayed investigation of the acid mine drainage occurring at the Ely Copper Mine site in Vershire. Similarly, for the second year in a row, the Elizabeth Mine site in Strafford has been denied funding to start cleanup. At a result of this delay, the Agency was forced to spend millions of emergency funds to stabilize the mountain of contaminated mine tailings to avoid a catastrophic mudslide. When will the Agency be able to fully fund remediation at these sites?

Response. EPA allocates its Superfund cleanup construction funding based on the risk posed by sites ready for construction. Sites that do not receive construction funding in any given year have not posed as great a risk as sites that did receive new construction start funding. EPA received an increase of approximately $24 million in the Agency's fiscal year 2004 appropriation. EPA used this increase to fund new projects; however, we could not meet all needs. The administration has not under funded the clean-up program. From 2001 to 2004, the average annual growth in Superfund plus Brownfields has been 4 percent per year. Furthermore, in comparison to 2004 enacted levels the President's 2005 budget requests an increase of $166 million or almost a 12 percent for Superfund and Brownfields. Should Congress fully fund the President's fiscal year 2005 Superfund budget request, EPA will use the additional funding for cleanup construction projects.

Question 60. The Bush Administration asserts that it is "level funding" Superfund compared to prior years. Yet the GAO recently reported that Superfund appropriations have fallen by 35 percent-or $633 million dollars-over the last decade in real dollars. At the same time, EPA has claimed that the complexity of the remaining Superfund sites has increased. Is this why the number of toxic dumps cleaned up has fallen by over 50 percent in the last few years?

Response. In their report on Superfund appropriation and expenditure data (GAO–04–475R), GAO provides a breakdown of sources and amounts of appropriations to the Superfund program for fiscal year 1993 through fiscal year 2004, using information included in the President's Budget Appendix. However, when portions of the Superfund appropriation directed to the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute of Environmental Health Sciences (NIEHS), and the Brownfields programs during this period are taken into account, the level of funding available for the Superfund program over this time period has remained more stable. From 2001 to 2004, the average annual growth in Superfund plus Brownfields has been 4 percent per year. Furthermore, in comparison to 2004 enacted levels the President's 2005 budget requests an increase of $166 million or almost a 12 percent for Superfund and Brownfields.

As to the drop in construction completions, EPA contends that the remaining universe of NPL sites that are not construction complete are more complex than sites that have already achieved construction completion. Many factors affect site complexity, which in turn affects the duration and cost of cleanups. Examples of such factors include: contaminant characteristics, presence of multiple contaminants, area and volume of contamination, multi-media contamination, ecological issues, groundwater issues, remedial technology(ies) necessary, site location, proximity to populations, potentially responsible party (PRP) cooperation, presence of multiple PRPs, and interests of other stakeholders, including States, Tribes, communities, and natural resource trustees. For example, many of the larger Superfund sites have groundwater contamination, which requires more time for thorough analysis and consideration, given the uncertainty inherent in subsurface engineering activities and the rapidly evolving state of the science with respect to characterization and treatment. Therefore, the construction completion target for fiscal year 2003 and fiscal year 2004 was reduced to 40 construction completions per year.

Question 62. In contrast to the 2001 Brownfields Revitalization Act, CERCLA is a public health and environmental protection statute. I am increasingly concerned about reports that EPA is using CERCLA funds to promote private real estate deals as opposed to clean up activities. For example, I understand that EPA is developing a "Revitalization Action Plan: Manual for Reuse/Redevelopment, Site Prioritization, and Outreach" to be used across all OSWER programs that requires Regions to prepare marketing plans, evaluate real estate vacancy rates, and meet with private developers.

Question 62a. What is the Agency's legal authority under CERCLA and RCRA to develop and implement this manual and other reuse and redevelopment activities in programs other than Brownfields?

Response. EPA continues to use CERCLA funds in a manner consistent with the statutory mandate of protecting public health and the environment. Remedies have been constructed at more than 850 National Priority List (NPL) sites and we believe that all of them meet the CERCLA mandate.

In the 24 years since CERCLA was enacted we have learned how to effectively and efficiently cleanup contaminated sites and ensure protectiveness. One of EPA's important lessons is that the selection and implementation of a remedy must take into account a site's reasonably anticipated future land use. Failure to account for the anticipated land use could lead to inadequate protection of future site users. When the remedy is not consistent with the anticipated land use, the site may remain abandoned and attract inappropriate activities that could damage the remedy or harm local residents. The well-planned, productive reuse of sites can help ensure the implementation and maintenance of the remedy and institutional controls. EPA issued the 1995 Land Use Directive (OSWER Directive No. 9355.7–04) to make sure that anticipated future land use is considered in the Superfund assessment and cleanup process. The "Revitalization Action Plan" manual is an additional tool and guide for EPA regions to use to further our efforts to effectively take future land use into account when developing protective cleanup remedies.

EPA is obligated by CERCLA and the National Contingency Plan to include the public and local governments in the cleanup planning process. We work closely with affected citizens, communities, and land owners to take into account their concerns about the effects of remediation on future land uses at Superfund sites. EPA is committed to selecting, designing, and implementing response actions that protect human health and the environment and, when possible, accommodate the productive reuse of the site. Once a remedy has been selected that will accommodate the reasonably anticipated future land uses, it is important that the remedy design and implementation not preclude those uses.

Question 62b. How much money and staff (in FTE) has EPA allocated at both the Headquarters and Regional level for this effort in fiscal year 2004 and fiscal year 2005?

Response. A total of $1.26 billion was allocated from the Superfund appropriation in the fiscal year 2004 Operating Plan, of which $879.363 million was allocated to the Regions and $377,962 million was allocated to Headquarters. A total of 3,375.7 FTE are allocated, of which 2,494.4 are allocated to the Regions and 881.3 FTE are allocated to Headquarters.

In the fiscal year 2005 President's Budget, EPA is requesting a total of $1.381 billion, of which $1 billion is requested for the Regions and $381.388 million is requested for Headquarters. A total of 3,352.7 FTE are requested, of which 2,471.4 are requested at the Regional level and 881.3 FTE are requested for Headquarters.

Question 62c. Reasonably anticipated future land use is an important consideration during remedy selection. Are CERCLA funds being used for reuse/redevelopment activities after remedy selection at Superfund fund lead sites? If so, how much money and staff (in FTE) has EPA allocated to these post-remedy selection activities?

Response. EPA does not use CERCLA cleanup resources for redevelopment activities at fund-lead sites, either before or after remedy selection. Consideration of reasonably anticipated future land use is not a redevelopment activity. It is a remedial activity that is an important and integral part of the remedial process, not only during remedy selection, but also at many other points in the Superfund decision pipeline. It is a vital consideration because it helps to insure the long-term integrity and protectiveness of the remedy under future use. In pursuing this long-term goal, EPA is committed to (1) working with communities to take into account the reasonably anticipated future land uses; and (2) selecting, designing, and implementing response actions that accommodate the future uses of Superfund sites without compromising the protection of human health and the environment. For example, once a remedy has been selected that will accommodate the reasonably anticipated future

land uses, it is important that the remedy design and implementation not preclude those very uses. In addition, since land uses and other conditions around Superfund sites often change, it may be necessary to evaluate whether a remedy will continue to be protective for proposed new uses not originally anticipated. Finally, while Superfund does not have a direct interest in the redevelopment of sites, EPA has observed that beneficial reuse of a site helps to prevent inappropriate uses such as illegal dumping or other activities that could cause further contamination.

These activities are a normal part of Superfund remedy selection and implementation. They are included in EPA's budget and FTE allocations for remedy selection and implementation.

Question 63. I understand that EPA prepares a prioritizationsite list as part of the process of determining the annual allocation of Superfund funds. Please provide a copy of the prioritizationsite list for fiscal year 2003, fiscal year 2004 and fiscal year 2005. We are happy to work with you to address any confidentiality concerns that you may have.

Response. We have attached the list of projects that were evaluated for construction funding in 2003 and 2004 respectively. These lists represent the universe of Superfund projects evaluated by the National Risk-based Priority Panel for potential construction funding in each of those fiscal years. The projects are grouped by Region and are not presented in sequential risk-ranked order. The Panel will be evaluating additional projects in the fall of 2004 for consideration for funding in fiscal year 2005. We will not have a list for 2005 until late November.

FY 2002 POSTPONED RA STARTS AND NCTRAS

Region	Site Name	Action Type	Regional Request
1	Atlas Tack Phases I & II	New Start RA	$13,100,000.00
1	Elizabeth Mine Phases I, II & III	NTCRA	$16,000,000.00
2	Burnt Fly Bog	New Start RA	$22,000,000.00
2	Chemical Insecticide	New Start RA	$30,000,000.00
2	Montgomery Township Housing Development.	New Start RA	$2,000,000.00
2	Roebling Steel	New Start RA	$12,000,000.00
4	Southern Solvents	New Start RA	$4,000,000.00
5	Jennison Wright	New Start RA	$12,500,000.00
5	Continental Steel	New Start RA	$30,000,000.00
6	Hart Creosoting	NTCRA	$9,880,000.00
6	Jasper Creosoting	NTCRA	$6,240,000.00
6	Delatte Metals	New Start RA	$14,000,000.00
6	Central Wood Preserving	New Start RA	$9,000,000.00
8	Vasquez Blvd/I–70	New Start RA	$7,500,000.00
8	Eureka Mills	New Start RA	$15,000,000.00
8	Davenport & Flagstaff Smelters	New Start RA	$9,500,000.00
			$212,720,000.00

FY 2003 PRIORITY SUPERFUND CONSTRUCTION PROJECTS BY REGION

Region	Site Name
1	Atlas Tack Corp.
1	New Hampshire Plating Co.
1	Pownal Tannery
1	Mohawk Tannery
2	Cosden Chemical
2	Genzale Plating
2	Imperial Oil
2	Rocky Hill Municipal Well
2	Roebling Steel (ongoing buildings)
2	Fried Industries
2	Federal Creosote (canal work)
3	Standard Chlorine
3	Kim-StanLandfill
3	Kim-StanLandfill
4	Solitron Microwave
4	TransCircuits
4	FCX Washington

FY 2003 PRIORITY SUPERFUND CONSTRUCTION PROJECTS BY REGION—Continued

Region	Site Name
4	Brewer Gold Mine
4	Marzone Inc.
4	Hollingsworth
4	Sapp Battery
5	Continental Steel (Federal lead)
5	Continental Steel (State lead)
5	Aircraft Components
6	North RR Ave.
6	Marion
6	Fruit Ave. Plume
6	Mallard Bay
6	Mt. Pine Pressure Treating
7	Newton County Mine Tailings
7	Second Street
8	Intermountain Waste Oil Refinery
8	Jacobs Smelter
10	Bunker Hill OU1RA5
10	Bunker Hill OU1RA7
10	Bunker Hill OU3RA4 (Coeur D'Alene Basin)
10	McCormick & Baxter OU14RA5
10	Northwest Pipe & Casing OU2RA2
10	Northwest Pipe & Casing OU1RA3

NOTE: Operable Units (OU) and Remedial Actions (RAs) identify specific site activities considered for funding evaluation.

FY 2004 PRIORITY SUPERFUND CONSTRUCTION PROJECTS BY REGION

REGION	PROJECT NAME
1	Atlas Tack Phase 1 (Bldg & Soils)
1	Atlas Tack Phase 2 (Wetlands)
1	Elizabeth Mine Phase I and II
1	Elizabeth Mine Phase III
1	Hatheway & Patterson
1	Mohawk Tannery
1	New Hampshire Plating
1	Ottati & Goss
1	Rose Hill
1	Troy Mills
2	Cosden Chemical Coatings
2	Federal Creosote (mall hot spots)
2	Genzale Plating Company
2	Imperial Oil Co.
2	Kaufman & Minteer
2	Mackenzie Chemical
2	Roebling Steel (Slag)
3	Crossley Farm
3	Franklin Slag Pile
3	Havertown PCP
3	Kim Stan Landfill
3	Standard Chlorine
3	Vienna PCE
4	Brunswick Wood
4	Marzone
4	Sapp Battery
4	Woolfolk OU3
4	Woolfolk OU4
4	Wrigley Charcol
5	Continental Steel CAMU
5	Continental Steel Main Plant
5	Continental Steel Markland Quarry
5	Jennison Wright
5	Ottawa Radiation (1,4,9,11,IL)
5	SE Rockford Groundwater
5	Tar Lake

FY 2004 PRIORITY SUPERFUND CONSTRUCTION PROJECTS BY REGION—Continued

REGION	PROJECT NAME
6	Hart Creosoting
6	Jasper Cresoting
6	Marion Pressure Treating
6	Mountain Pine Pressure
6	North Railroad Avenue Plume
6	Rockwool Industries
7	Hastings Groundwater
7	Omaha Lead
7	Railroad Ave
7	Riverfront Site (Front Street)
8	California Gulch
8	Central City/Clear Creek (Big 5)
8	Central City/Clear Creek (Chase)
8	Central City/Clear Creek (Gilpin)
8	Davenport & Flagstaff
8	Eureka Mills
8	Jacobs Smelter
8	Summitville
8	Upper Ten Mile (Tier 1)
8	Upper Ten Mile (Tier 2)
9	Pemaco
10	Bunker Hill OU3 (non-residential)
10	Pacific Sound Resource
10	Washington Recreational Areas

Note: Operable units (OUs) and Remedial Actions (RAs) identify specific site activities considered for funding evaluation.

Question 64. For fiscal years 2001–2004, how much funding was allocated for the Removal Advice of Allowance?

Response. The following table identifies the resources that were allocated to the Removal Advice of Allowance (AOA) under the initial budgets for each year's appropriation, 2001–2004. These allocations do not account for internal budget shifts that occur during the fiscal year nor the reuse of resources deobligated from prior year appropriations.

(Dollars in Millions)

Fiscal Year	2001	2002	2003	2004	2001—2004 Total
Removal AOA	$115.5	$115.5	$113.6	$114.8	$459.4

Question 65. Can you confirm that the historic norm for this account was approximately $200 million?

Response. The amount requested in the President's budget request from fiscal year 2001 to fiscal year 2004 for the Superfund Removal program has been approximately $200 million. This amount includes resources allocated to the Removal Advice of Allowance as well as additional resources associated with removal support, the Emergency Response Team, and staff and management.

Question 66. Has EPA instituted a policy of limiting the funds in this account?

Response. EPA strives to maintain the funding for the Removal Advice of Allowance at approximately $115 million (the fiscal year 2003 reduction reflects a congressional rescission) and has not instituted a policy of limiting the funds in this account.

Question 67. For fiscal year 2001–2004, how much funding was allocated for the Pipeline Operations Advice of Allowance?

Response. The following table identifies the resources that were allocated to the Pipeline Operations Advice of Allowance (AOA) under the initial budgets for each year's appropriation, 2001–2004. These allocations do not account for internal budget shifts that occur during the fiscal year, nor the reuse of resources deobligated from prior year appropriations.

(Dollars in Millions)

Fiscal Year	2001	2002	2003	2004
Pipeline AOA	$204.8	$200.4	$187.0	$155.0

Question 68. Has EPA instituted a policy of limiting the funds in this account?

Response. EPA has not specifically instituted a policy of limiting the funds in this activity, although reductions in the Pipeline Advice of Allowance (AOA) have taken place, which reflect, in part, congressional rescissions, and the increased demand for remedial action funding. In fiscal year 2003, the program decided to shift a portion of the initial Pipeline allocation (approximately $10 million) to the Remedial Action AOA. EPA continued this practice in fiscal year 2004. EPA will consider the impacts of prior year Pipeline AOA reallocations before deciding whether to shift Pipeline AOA resources to the Remedial Action AOA in fiscal year 2005.

In fiscal year 2004, the Pipeline AOA was permanently reduced by $32 million pursuant to an internal agency reorganization. The reduction represents a shift of removal support resources, historically provided through the Pipeline AOA, to a new AOA (Removal Support) of the removal program, which is now administered by a separate office within the EPA Office of Solid Waste and Emergency Response.

Question 69. Has the redistribution of funds from the Pipeline Operations to Remedial Actions in fiscal year 2003 been repeated in fiscal year 2004, and is it anticipated for fiscal year 2005?

Response. In fiscal year 2003, the program decided to shift a portion of the initial Pipeline allocation (approximately $10 million) to the Remedial Action AOA to address the increased demand for remedial action funding. EPA continued this practice in fiscal year 2004. EPA will consider the impacts of prior year Pipeline AOA reallocations before deciding whether to shift Pipeline AOA resources to the Remedial Action AOA in fiscal year 2005.

In fiscal year 2004, the Pipeline AOA was permanently reduced by $32 million pursuant to an internal agency reorganization. The reduction represents a shift of removal support resources, historically provided through the Pipeline AOA, to a new AOA (Removal Support) of the removal program, which is now administered by a separate EPA office.

Question 70. For fiscal year 2001–2004, how much funding was allocated to the Remedial Action AOA? How much of these funds are available for new starts?

Response. The following table identifies the resources that were allocated to the Remedial Action Advice of Allowance (AOA) under the initial budgets for each year's appropriation, 2001–2004. These allocations do not account for internal budget shifts that occur during the fiscal year, nor the reuse of resources deobligated from prior year appropriations, which starting in fiscal year 2002 (the first year we can distinguish these costs) have contributed significantly to the funding of new start projects. The increase in the fiscal year 2004 allocation represents the increase to the Response function of the fiscal year 2004 Superfund appropriation (minus the congressional rescission). The allocation of resources to new starts in fiscal year 2004 is a planned allocation based on data currently available regarding resource use projections for ongoing projects and is subject to change. As in previous years, we expect in fiscal year 2004 to increase funding for remedial action starts as a result of deobligations from prior year expenditures.

(Dollars in Millions)

Fiscal Year	2001	2002	2003	2004
Remedial Action AOA	$226.8	$220.9	$227.8	$251.2
Funds Available for New Starts	$52.5	$25.9	$7.0	$36.2

LAKE CHAMPLAIN

Question 71. In 2002 the President signed into law the Great Lakes and Lake Champlain Act. In this year's budget, the President asked for a funding increase to implement this Act. This is the second year in a row that the President has managed to ask for funds to implement the Great Lakes section of this Act but not managed to ask for funds to support Lake Champlain. Does the Administration believe

that protecting Lake Champlain is a priority? If not, why not? If so, can you explain why no additional funds have ever been requested since the Great Lakes and Lake Champlain Act became law?

Response. The administration does believe that protection and restoration of Lake Champlain and its watershed is a priority. This is demonstrated by our continued financial and staff support of the program. In fiscal year 2005, the Agency requested $954.8 thousand and preserved staffing levels for the program. We intend to continue our support for the Lake Champlain Basin Program by working with all the partners to implement the revised Lake Champlain Management Plan. In addition, other elements of the EPA's water program, such as the nonpoint source program and water quality and criteria will help improve water quality in Lake Champlain. Some notable examples of upcoming work our support will enable include:

- Blue-green algae research
- Non-chemical sea lamprey control methods investigation
- Continuing limnological monitoring
- Ongoing phosphorus reduction efforts

WATER INFRASTRUCTURE

Question 72. Does the EPA intend to focus on management reforms, such as the use of asset management, as a means to achieving cost savings that will reduce the spending gap? If so, how do you propose to get utilities to adopt these management reforms?

Response. EPA has announced an Agency initiative on better management, water efficiency, full cost pricing and watershed approaches to offer an important policy response to the issues identified in The Clean Water and Drinking Water Infrastructure Gap Analysis. EPA will encourage adoption of Sustainable Management Systems as a major feature of the better management initiative. Sustainable Management Systems include asset management, environmental management systems and other "brand name" methods to help water and sewer systems to become truly sustainable services. Sustainable Management Systems focus on achieving service goals while minimizing the total life cycle costs of wastewater treatment construction, operations and maintenance and repair.

EPA believes the best way to implement these approaches is through collaborative, voluntary undertakings with the owners and operators of these systems. In response to growing utility interest EPA has just completed a major project in cooperation with the Water Environment Federation (WEF) and the Association of Metropolitan Sewerage Agencies (AMSA) to produce a guide for water and wastewater utilities that describes the experiences of several utilities which have, or are in the process of developing, Sustainable Management Systems. We have sponsored collaborative projects including handbooks and training which participating utilities have received very well. Service providers have shown great interest and support for EPA's initiatives to promote voluntary efforts, and a significant number of leading utilities have voluntarily adopted these approaches. The 2005 Budget also includes $2.5 million for the Sustainable Infrastructure Initiative, of which $1.5 million is for sustainable management system demonstration grants.

Question 73. What is your estimate of the cost savings that will result from a single utility and from an industry-wide adoption of management reforms such as asset management and when will they be realized?

Response. EPA has found significant anecdotal evidence and some quantitative data that suggest a savings potential over the next several decades of as much as 20 percent of the cost of services can be realized by the adoption of Sustainable Management Systems such as asset management or environmental management systems. These management techniques focus on achieving service goals that minimize the total life cycle costs of construction, operations and maintenance, and repair.

Since most U.S. utilities are in early phases of implementation, there has not been extensive validation of these estimates. However, examples include:

- Orange County Sanitation District in Orange County, California estimated savings of $350 million over a twenty-five year period.
- The Seattle Public Utilities Commission claimed a reduction of 7 percent in its 2004 operating budget, based on the adoption of a series of new Sustainable Management Systems-inspired practices.

Question 74. By how much will these cost savings reduce the backlog?

Response. The Clean Water and Drinking Water Infrastructure Gap Analysis estimates that approximately $381 billion in capital outlays will be required for wastewater infrastructure between 2000–2019. Of that amount, $259 billion will result

from the current investment level, leaving a $122 billion gap under the conservative assumption of no growth in local revenues. Growth in local revenues (user charges) of 3 percent per year in real terms provides approximately $101 billion in additional spending capacity, leaving a $21 billion infrastructure gap.

The President's proposal will significantly increase the Clean Water State Revolving Fund (CWSRF) program's capability to fund projects in both the near term and in the long-run. It is not possible to fully quantify the economic benefits, but EPA believes that the combination of the extended commitment of the CWSRF, combined with better management, water efficiency, full cost pricing and watershed approaches, will substantially eliminate "The Gap".

NON-POINT SOURCE POLLUTION

Question 75. In the Administration's fiscal year 2005 budget, the Clean Water Act Section 319, non-point source program is reduced by almost $30 million from the fiscal year 2004 enacted level of $238 million. In the 2000 National Water Quality Inventory Report, the Agency identifies non-point source pollution as the leading source of water quality impairment. Can you explain how a reduction of $30 million in the non-point source program, which you have identified as the No. 1 source of impairment, will lead to an improvement in water quality nationwide?

Response. The new 2002 Farm Bill significantly increased resources for USDA conservation programs. The Administration supports focusing the Section 319 program to reduce overlap with USDA.

Background

USDA's Environmental Quality Incentives Program is receiving much higher levels of funding under the 2002 Farm Bill than under the previous Farm Bills. A significant portion of this funding is being used to implement best management practices (BMP(s) to address nonpoint source pollution.

EPA is focusing the Section 319 nonpoint source program to reduce program overlap with USDA and to focus funds on those critical needs that Farm Bill funds do not adequately address. Whereas Farm Bill funds can be used to implement agricultural BMP(s, they are generally unavailable for the critical steps of performing monitoring that helps determine the sources of NPS pollution; developing and implementing watershed plans that focus on those sources; and providing watershed coordinators who can work with local producers. Section 319 funds will focus on those areas, as well as continue to be the primary funding authority to address all other (non-agricultural) types of nonpoint source pollution (e.g., forestry, urban runoff, hydrological modification, and habitat modification).

To promote improved performance by State NPS programs, States will be developing watershed-based plans for impaired waters that will identify the management measures that will enable restoration of those waters. A combination of Section 319 dollars, Farm Bill dollars, and other Federal, State, and local funds will enable the most efficient implementation of these plans.

States will be implementing an upgraded grants tracking system that will enable them to publicly account for the amount of pollutant reductions obtained and the number of waters that are restored as the result of their implementation of their 319-funded watershed-based plans.

WASHINGTON, DC, LEAD CONTAMINATION

Question 76. What actions does the Agency plan to take to ensure that similar situations do not exist in other areas of the country? For example, is the Agency reviewing the public education requirements of the Lead and Copper Rule to determine if they are adequate? If so, please provide the status of this review, including an expected end date.

Response. EPA's drinking water program is working with regional and enforcement staff to conduct a thorough review of implementation of the Lead and Copper Rule. Our initial focus is reviewing information on 90th percentile levels, to determine the extent to which high lead levels are observed elsewhere in the Nation. We will then review efforts undertaken by systems that exhibited high lead levels in the first rounds of sampling conducted in 1991 and 1992 to assess the effectiveness of the rule in reducing lead levels. Finally, we will carry out an audit of selected systems and State programs to determine if the rule is currently being effectively implemented, particularly with respect to public education and monitoring requirements. Activities will be carried out during 2004 and will likely continue into 2005.

The review of compliance and implementation, expert workshops and other efforts underway will help the Agency to determine whether it is appropriate to develop

additional training or guidance or make changes as part of our review of existing regulations.

Question 77. Has the Agency reviewed lead testing results in other areas of the country to identify any situations similar to the Washington, DC. situation? If so, which areas have been reviewed and what are the results of those reviews?

Response. EPA is currently undertaking an effort to identify whether the high lead levels observed in Washington, DC. are representative of other areas in the country. The Agency is reviewing information on 90th percentile levels that States are required to submit to the Safe Drinking Water Information System (SDWIS). EPA's initial analysis was hindered by the fact that data in SDWIS was incomplete. Although States could report since 2000, they were only required to report 90th percentile lead levels for all systems serving more than 3,300 staring in 2002. As of early March 2004, EPA only had data for 22 percent of required systems and no data for 23 States and Puerto Rico.

On March 25, 2004, the Office of Water sent a letter to Regional Administrators to ask that they work with State programs to ensure that EPA has complete information on lead levels. States were asked to report data for systems serving more than 50,000 people by April 15, 2004. As of April 28, 2004, SDWIS held data for 85 percent of the 838 systems in the country within this size class. A report summarizing the findings was posted on the EPA website at http://www.epa.gov/safewater/lcrmr/implement.html. EPA found that 22 systems had exceeded the action level of 15 ppb for one or more monitoring periods since 2000. Only eight systems exceeded the action level in 2003. None of the other systems that have exceeded the action level appear to have a problem as serious as that observed in the District of Columbia.

As EPA obtains additional information from States on other size categories, the Agency will be able to better determine and report on the number of systems that have exceeded the action level. However, discussions with States and associations representing utilities indicate that they have not observed the high levels or the rapid increase of lead levels in drinking water observed in D.C.

Question 78. Are there other locations where similar problems have emerged?

Response. As noted in the response to question #83, EPA has reviewed data in its Safe Drinking Water Information System (SDWIS) for 85 percent of the systems in the country that serve more than 50,000. EPA found that 22 systems had exceeded the action level of 15 ppb for one or more monitoring periods since 2000. Only eight systems exceeded the action level in 2003*. None of the other systems that have exceeded the action level appear to have a problem as serious as that observed in the District of Columbia.

EPA is still working to identify the specific factors underlying each system's exceedance to identify the corrosion control treatment that is in place and to determine whether treatment changes played a role in increases. However, discussions with States and associations representing utilities indicate that they have not generally observed the rapid increase of lead levels in drinking water that was observed in D.C.

- Pompano Beach, FL; Massachusetts Water Resources Authority, MA; Hendersonville, NC; Syracuse, NY; Yonkers, NY; Salem, OR; El Yunque, PR; and Washington, DC.

Question 79. Can you describe the major changes that occurred in the Agency's drinking water program for lead contamination as a result of the 1991 Lead and Copper Rule?

Response. Unlike most contaminants, lead is not generally introduced to drinking water supplies from source water. The primary sources of lead in drinking water are from lead pipes or lead-based solder used to connect pipes in plumbing systems, and brass plumbing fixtures that contain lead. An interim standard for lead in drinking water of 50 micrograms per liter, or parts per billion (ppb), had been established in 1975, and did not require sampling of customer taps. Setting a standard for water leaving the treatment plant fails to capture the extent of lead leaching in the distribution system and household plumbing. In 1988, the Agency proposed revisions to the standard and issued a final standard in 1991 that significantly changed the regulatory framework.

The rule requires systems to optimize corrosion control to prevent lead and copper from leaching into drinking water. Large systems serving more than 50,000 people were required to conduct studies of corrosion control and to install the State-approved optimal corrosion control treatment by January 1, 1997. Small and medium sized systems are required to optimize corrosion control when monitoring at the consumer taps shows action is necessary.

To assure corrosion control treatment technique requirements are effective in protecting public health, the rule also established an Action Level (AL) of 15 ppb for lead in drinking water. Systems are required to monitor a specific number of customer taps, according to the size of the system. If lead concentrations exceed 15 ppb in more than 10 percent of the taps sampled, the system must undertake a number of additional actions to control corrosion and to inform the public about steps they should take to protect their health. If a water system, after installing and optimizing corrosion control treatment, continues to fail to meet the lead action level, it must begin replacing the lead service lines under its ownership.

Question 80. The definition of "lead-free" fixtures currently allows those fixtures to contain 8 percent lead. Are there fixtures available that are truly "lead free"?

Response. The fixtures that meet the "lead free" requirements of the Safe Drinking Water Act may contain a maximum of 8 percent lead. The amount of lead contained in a plumbing product is usually governed by its manufacturing process and natural impurities in the alloy. Fixtures containing levels of lead less than 8 percent are manufactured and are available at a slightly higher cost to consumers.

An industry consortium which includes which includes Asarco, the Copper Development Association, the AmericanμFoundrymen's Society, the Brass and Bronze Ingot Makers and the Canadian Government's Materials Technology Laboratory worked to develop a lead-free metal alloy that could be used in plumbing materials. Envirobrass" complies with California law (Proposition 65) and fully meets the National Sanitation Foundation Standard 61. Several manufacturers are using the material in meters, valves and fittings, and faucets. http://www.envirobrass.com/index.html

The Federal Metal Company has also developed a lead-free alloy that is being used in manufacturing. Federalloy passed NSF/ANSI Standard 61, Sections 8 and 9 for a wide variety of castings as experienced by end users. http://www.Federalmetal.com/fedalloy

Question. 81. Has the Agency taken any steps to share this information with consumers? If so, please describe them. If not, please explain how the Agency anticipates that consumers will obtain information about lead-free fixtures.

Response. The Agency has made an effort to inform consumers about the "lead free" requirements of the SDWA. The information is included in Agency outreach material, is on the Agency website, and is provided through the SDWA Hotline. However, the Agency does not provide information about the lead content of specific brands of fixtures. NSF International has information on their website (http://www.nsf.org/Certified/DWTU) about products that meet the NSF standard. NSF recommends that consumers who are interested in finding out how much lead is contained in a product contact the manufacturer or the importer/distributor and ask for a certificate of lead content.

Question 82. Has EPA initiated any enforcement actions against WASA with regard to the current lead contamination issue?

Response. On March 31, 2004, EPA issued an information request letter under Section 1445 of the Safe Drinking Water Act (SDWA) to WASA to obtain additional information regarding the lead contamination issue. EPA is currently reviewing the thousands of pages of WASA's response to this information request; based on an evaluation of this information the Agency will take appropriate action as necessary. On the same date, EPA also issued WASA a "show-cause" letter which identified a number of potential violations of SDWA regulations and asked WASA to provide an explanation for its actions leading to the potential violations.

In recent months, EPA has conducted numerous meetings and telephone calls with WASA and the District government. EPA has also provided technical expertise and compliance assistance to address the lead contamination problem.

EPA Region III is working closely with the District of Columbia government to ensure that WASA takes appropriate actions to protect public health immediately, and to ensure that WASA's future actions are effective and meet both the intent and the letter of the Safe Drinking Water Act. If, at any time, EPA feels that the current intervention efforts are not working, Region III will issue an administrative action or other appropriate action to enforce public health protections provided by our laws and regulations.

Question 83. How many enforcement actions has the EPA taken under the provisions of the lead and copper rule adopted in 1991? Please provide a summary of each of those enforcement actions, including the cause of the action, the public water system involved, and the resolution.

Response. EPA has issued 559 Federal enforcement actions from 1995 through 2003, in response to violations of the provisions of the lead and copper rule adopted in 1991. The breakouts by year are as follows:

Federal Enforcement Actions taken under the Lead and Copper Rules

Fiscal Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
No. of Actions	130	130	165	61	25	14	10	10	14	559

Source: Safe Drinking Water Information System (SDWIS)

The detailed summary of these enforcement actions, including the PWS ID number; the system name; a violation description; type of enforcement; and enforcement date is contained in attachment A.

Attachment A 13:20 Monday, May 10, 2004

LIST OF FEDERAL ADMINISTRATIVE ORDERS AND CASE CONCLUSIONS
FROM 1995-2003
SORTED BY ENFORCEMENT DATE AND PWS ID

PWS ID	NAME	VIOLATION DESCRIPTION	TYPE OF ENFORCEMENT	DATE
IN2540005	WALNUT ELEMENTARY SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-01-04
KS2001506	BUTLER CO RWD 4	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-01-15
WV3303602	FRANKLIN TOWN OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-01-20
KS2001506	BUTLER CO RWD 4	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-01-30
PA4560048	CONEMAUGH TWP MUNI AUTH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-03
VI3000060	REPCO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-16
VI0000058	HERBERT GRIGG HOME (KITCHE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-24
VI0000362	DAY CARE (FSTED), DHS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-24
VI0000377	PROJECT HEADSTART (HENDERS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-24
VI0000379	PROJECT HEADSTART EST PROF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-24
VI0000610	YOUTH REHABILITATION CENTE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-24
VI3000008	ALDERSHVILE CENTER, DHS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-24
VI3000025	HERBERT GRIGG HOME, DHS (L	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-24
VI3000104	ANNA'S HOPE HEADSTART	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-02-24
WV3302704	HARTFORD CITY OF	INITIAL WATER QUALITY PARAMETER WQP M&R	ADMINISTRATIVE ORDER ISSUED	1995-03-13
NC0136381	SPARROW MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-03-14
NC0235488	NELSON HEADSTART DAYCARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-03-14
NC0416417	BEAUFORT CHRISTIAN ACADEMY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-03-14
WV3301931	SHENANDOAH JUNCTION MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-03-14
WV3303002	GILBERT WATER WORKS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-03-14
WV3304701	DAVIS WATER WORKS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-03-14
WY5600165	SMOOT FARMERS PIPELINE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-03-20
PA2450050	SHAWNEE SUPPLY WATER COMPA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-03-23
NC0150153	ALPINE APARTMENTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-04-16
FL4130899	METATHERAPY INSTITUTE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-04-20
FL4134300	SECLANDS ACADEMY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-04-20
FL4134433	CHILDREN'S RAINBOW DAY SCH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-04-20
WI1131012	PINE CONE RESTAURANT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-04-28
WI1132392	MADISON SEVENTH DAY ADVENT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-04-28
WI1280163	BATTLE CREEK SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-04-28
WI7370957	ABBOTSFORD EVANGELICAL FRE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-04-28
WV3303602	FRANKLIN TOWN OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-01
ID3140017	CHAROLAIS MOTEL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-02
WI1130037	UNION 76 TRUCK PLAZA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-03
WI1250091	HOUSE ON THE ROCK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-03
WI4600136	FORMER HOWARDS GROVE CHILD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-03
WV3303914	ROWLESBURG WATER WORKS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-04
VI0000069	BAY COURT (#1 NORTH)	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-05
VI3000063	BAY COURT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-05
WV3302706	LAKIN STATE HOSPITAL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-09
WV3301412	GREEN SPRING VALLEY PSD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-12
NC0102125	BELL VIEW REST HOME	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0111150	HAZELWOOD HOMEOWNERS ASSOC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0111158	WALT ACRES MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0113117	JOHNNIE'S MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0113163	FOREST PINES S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0113192	MCMILLIAN ACRES S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0114161	INDIAN GRAVE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0136221	MARIA PARK S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0136237	GOODWILL ACRES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0136277	ROLLING HILL S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0136285	TWIN OAKS MHP I/II	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0136289	WOODLAND ACRES MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0136297	FAIRWAY WATERWAYS INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0136329	PINEVIEW S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0136385	SOUTHBOURNE/ROLLING HILLS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0144105	HIDDEN VALLEY ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0144107	LAKE JUNALUSKA ASSEMBLY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0149116	HIDDEN VALLEY MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0149119	ROLLING HILLS MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0149136	SHADY FORK MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0150182	PAW PAW COVE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0160127	COUNTRYSIDE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0160160	MINERAL SPRINGS MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0160168	REEDY CREEK MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0160219	WILSON WOODS S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0160230	CLEAR MEADOWS S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0160787	ELLIOTS REST HOME	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0180128	MARSHALL PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0180144	SHERRILL PARK S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0181121	HENRIETTA WATER SYSTEM #4	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0181122	HENRIETTA WATER SYSTEM #5	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0181124	CAROLEEN WATER SYSTEM #2	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0181125	CAROLEEN WATER SYSTEM #3	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0230117	OAKLAND HEIGHTS S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0239018	STOVALL, TOWN OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0241586	FELLOWSHIP HALL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0276158	BRARD ACRES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0276607	KIDS DAY OUT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0286538	MEET ME AT THE SANDBOX	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0326310	RAINTREE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0326776	HAPPY VALLEY REST HOME	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0347114	PILGRIM MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0351060	WHITLEY HEIGHTS SANITARY D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0351120	ADAMS MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0351877	KIDS COUNTRY DAYCARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25

NC0351878	SUGAR PLUM TREE DAYCARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0392131	FARM ROAD TRAILER PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0392162	MERRITT'S MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0392180	JEFFREY'S MHP #2	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0392188	SHADY ACRES MH VILLAGE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0392270	THE HOMEPLACE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0407128	IDEAL MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0410138	CREEKSIDE TOWNHOMES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0433112	MIDLAKE MH TERRACE #2	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0433135	MIDLAKE MH TERRACE #1	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0464113	MODERN TRAILER PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0471103	HITCHING POST TRAILER PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0474118	SMITH'S TRAILER PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
NC0496500	KIDDIE KASTLE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
WI1330138	FAYETTE ELEMENTARY SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
WI6630338	DE SOTO HIGH-MIDDLE SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-25
084690440	FORT THOMPSON WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-05-26
IN5206013	DON SUTTON MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-06-01
WI1130759	WINDSOR MARATHON TRUCK STO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-06-01
NC0144472	GHOST TOWN IN THE SKY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-06-07
WV3302427	HAMPTON ROADS WATER SYSTEM	INITIAL WATER QUALITY PARAMETER WQP M&R	ADMINISTRATIVE ORDER ISSUED	1995-06-16
OH2836612	PARKMAN PAROCHIAL SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-06-22
IL1977770	SUNSRT TRAILS APTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-06-26
IL1435145	DELUXE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-06-30
IN5220021	SKYVIEW MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-07-05
WI1140713	UBC - TIMBER ROOTS MTD, PL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-07-06
IN5224006	OLDENBURG WATER WORKS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-07-31
IN5256003	GOODLAND WATER WORKS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-08-08
KS2014104	PORTIS, CITY OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-08-31
IN5246022	REDWOOD MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-09-20
IN5246025	SHADY OAK MOBILE COURT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-09-20
KS2014103	OSBORNE CO RWD 1A	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-10-04
ID4010161	WYMOSA WATER ASSN INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-11-08
ID6030057	VALLEYVIEW ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-11-08
ID6060059	RIVERSIDE ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-11-08
ID6060078	SOUTH PARK WATER AND SEWER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-11-08
ID6390022	SEDRO SUBD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-11-08
KS2007703	ATTICA, CITY OF	INITIAL WATER QUALITY PARAMETER WQP M&R	ADMINISTRATIVE ORDER ISSUED	1995-11-22
ID6210018	THATCHER WATER COMPANY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-11-27
NC0136075	HIGH SHOALS, CITY OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-12-05
NC0326310	RAINTREE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-12-06
IN5246009	FRIENDLY ACRES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-12-11
WI1140158	HIDDEN MEADOWS WELLS 1 & 2	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-12-11
WI4450505	FAITH COMMUNITY METHODIST	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1995-12-11
NC0201594	MONARCH HOSIERY MILL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-01-19
NC0291126	POOL ROCK PLANTATION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-01-19
IL0435866	NORTHSIDE PETERSON WLFND	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-01-25
IL0977010	STURM SEDV	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-01-25
NC0217101	CAROLINA MANOR MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-01-26
NC0273104	C & M TRAILER PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-01-26
NC0309107	BAYTREE LAKES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-01-26
NC0276159	TOWN & COUNTRY MH ACRES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-02-08
IN5268009	SHADED ACRES WATER COMPA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-02-26
WY5600109	LANCE CREEK WATER DISTRICT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-06
IN5254001	BECKONING WOODS MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-11
NC0276210	EDGAR ROAD MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-12
NC0309050	EAST ARCADIA, TOWN OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-12
NC0326165	FRANK'S MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-12
NC0343104	SHADY GROVE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-12
NC0382723	OLD HICKORY BAR-B-QUE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-12
NC0136160	MCKEE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-13
NC0188128	INDIAN LAKES ESTATE S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-13
NC0201558	KIDZ-R-US	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-13
NC0276634	MT CALVARY CHRISTIAN SCHOO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-13
NC0241185	SERENITY CARE REST HOME	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-20
NC0293490	HARGROVE FAMILY DAYCARE CT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-20
NC0136199	VALLEYDALE S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-21
NC0180176	EAST LANDIS WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-21
NC0188118	TURKEY PEN MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-21
NC0276131	HILLSIDE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-21
NC0303435	ROGOSIN CONVERTERS,INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-21
NC0465212	BEAU RIVAGE PLANTATION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-21
NC0150192	RIVERSIDE APARTMENTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-22
NC0181567	MAE'S REST HOME	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-22
NC0383133	DOC-SCOTLAND CO CORRECTION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-22
IN5245005	CEDAR LAKE MOBILE HOME PAR	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-27
NC0217413	GRAVES CHAPEL BAPT CHURCH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-27
NC0112112	HOLLAR MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-29
NC0113189	WOLF MEADOW ACRES-SECT 2	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-29
NC0180060	EAST SPENCER, TOWN OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-29
NC0392480	REA CONSTRUCTION COMPANY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-03-29
IN5256011	RIVER BEND MANOR MOBILE HO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-01
NC0149116	HIDDEN VALLEY MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-02
NC0291515	HENDERSON HEAD START DAYCA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-02
IN5251001	BURNS CITY WATER DEPT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-15
IN5267008	RUSSELVILLE WATER WORKS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-15
IN5254012	WAVERLAND WATER WORKS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-22
WY5600275	ALTA COMMUNITY PIPELINE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-23
NC0276601	WRIGHT FURNITURE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-24
NC0383106	SCOTLAND WTR CO-LAURIN LAK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-24
NC0465141	HARMONY VILLAGE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-24
NC4392105	HUNT FARMS S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-24
NC0188129	INDIAN LAKE ESTATES EAST S	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-29
NC0234566	SMALL WONDERS LEARNING CEN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-29

NC0136265	MAGNOLIA MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-30
NC0136356	STONEY OAKS S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-30
NC0145127	HOOPERS CREEK WTR SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-30
NC0195118	SEVEN DEVILS, TOWN OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-30
NC0351133	BEST HOLIDAY TRAV-L-PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-04-30
NC0192751	STONES SOUTHERN SCHOOL SUP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-01
NC0192234	OAK HILL ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-07
NC0160196	BERRYHILL,HOLIDAY,WESTWOOD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-14
NC0181038	ELLENBORO TOWN OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-14
NC0105453	SKYLINE TELEPHONE CO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-15
NC0136662	LIT INDUSTRIES INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-15
NC0241413	VANDALIA CHRISTIAN SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-15
NC0383116	WAYSIDE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-15
IN5252010	WILLOW SPRINGS MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-16
NC0160605	BERRYHILL ELEM SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-17
NC0120025	MARBLE COMMUNITY WTR SYSTE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-30
NC0184521	UNITED SCREEN PRINTERS INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-30
NC0136172	PEACH ORCHARD S\D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-31
NC0184521	UNITED SCREEN PRINTERS INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-05-31
IN2570804	GROUP DEKKO CORPORATE HQ B	OCCT STUDY RECOMMENDATION	ADMINISTRATIVE ORDER ISSUED	1996-06-28
IN2570918	NOBLE WIRE PRODUCTS B-118	PUBLIC EDUCATION	ADMINISTRATIVE ORDER ISSUED	1996-06-28
IN2570919	PHILLIP SERV. CO.-RECLAIME	OCCT STUDY RECOMMENDATION	ADMINISTRATIVE ORDER ISSUED	1996-06-28
IN2760900	POKAGON ST. PARK-POTAWATOM	PUBLIC EDUCATION	ADMINISTRATIVE ORDER ISSUED	1996-06-28
MN1100018	LAKEVIEW HILLS APARTMENTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-06-28
MN1730043	ROSCOE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-06-28
OH0401312	GRAND VALLEY COUNTRY MAN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-02
OH1700512	RANCHWOOD MHC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-02
OH2201312	RIVERVIEW MANOR APTS.	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-02
OH2802612	TERRACE GLEN ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-02
OH6702412	NELSON LEDGES ESTATE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-02
OH7201612	WINDING LAKE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-02
OH8700512	SOUTHVIEW ESTATES MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-02
OH1130312	TRIAD ELEMENTARY SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH1134312	TRIAD HIGH SCHOOL-ATHLET	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH1134912	TRIAD MIDDLE SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH1800812	GREENTREE WATER COMPANY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH2901612	HUBER MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH3244412	HYWAY CONCRETE PRODUCTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH3730612	GENERAL CLAY PRODUCTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH4401012	PEACEFUL ACRES MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH5539412	PAUL SHERRY CHEVROLET	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH7002112	WATERFALL ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH7242912	TEMPLE CHRISTIAN ACADEMY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH8501412	HILLTOP VILLA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH8700912	COUNTRYSIDE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH8701412	MAURERS MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-03
OH1939012	TRI-VILLAGE ELEMENTARY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-08
OH1939112	CHRISTIAN LIFE OUTREACH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-08
OH3800112	BIG PRAIRIE WATER CO.	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-08
OH2000812	COUNTRY MEADOWS MOBILE HOM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-09
OH2802112	RUSTIC PINES MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-09
OH7401312	BROOK PARK ESTATES MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-09
OH7802512	PLEASANT PARK MOBILE COURT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-09
OH8702412	VILLAGE GREEN MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-09
OH6502412	SUNSET MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-10
OH7538512	OLDHAM INC - OLD BUILDING	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-10
OH7786512	CON-WAY CENTRAL EXPRESS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-10
IN2200809	JIMTOWN JR. HIGH SCHOOL &	OCCT STUDY RECOMMENDATION	ADMINISTRATIVE ORDER ISSUED	1996-07-11
IN5276012	LAMPLIGHTER ESTATES	INITIAL, FOLLOW-UP, OR ROUTINE SOWT M&R	ADMINISTRATIVE ORDER ISSUED	1996-07-11
ID1280072	FRANKLIN STREET WATER ASSN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-07-18
WY5600093	POINT OF ROCKS MERCANTILE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-09-11
WY5600156	ALPINE, TOWN OF	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-09-11
WY5600758	INDIAN PAINTBRUSH H.O. ASS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-09-11
WY5600836	SOUTH PARK VILLAGE SUBDIVI	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-09-11
ID6390007	SUNBEAM WATER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-09-16
OH1800812	GREENTREE WATER COMPANY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-09-23
UT4900086	AUSTIN SSD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-10-02
ID7220063	SHOTGUN CHEROKEE SUBD 5	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-10-15
NM3510801	CHILILI WATER USERS ASSN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-10-16
WY5600817	NORTH FORK ACRES WATER CO-	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-11-12
NC0241113	HADLEY MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-11-26
NC0351410	EVANSVILLE MOBILE VILLAGE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-03
UT4900077	ALTON	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-03
UT4900169	FAIRFIELD IRRIGATION CO.	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-03
UT4900182	FRANCIS TOWN WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-03
UT4900452	WALLSBURG TOWN WATER SYS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-10
WY5601100	RAINTREE ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-18
UT4901649	PARK VALLEY SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-19
UT4901736	ZOLLINGER WAREHOUSE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-19
NC0120109	GRANNY SQUIRREL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1996-12-20
MT0002935	DEER CREEK MOBILE HOME PAR	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-01-13
PA3060030	PSWC GEIGERTOWN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-01-15
VA6047260	HAZEL RIVER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-01-24
ID4010161	WYNDRA WATER ASSN INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-01-27
VA3800075	W N BUNCH WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-01-29
PA2660015	WESTGATE WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-01-31
PA5320102	EAST GREEN TWP WATER SYS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-06
UT4900116	CENTRAL WATERWORKS CO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-07
UT4900218	HOYTSVILLE PIPELINE CO.	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-07
UT4900471	ACME WATER COMPANY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-07
UT4900486	GREENWICH WATER ASSN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-07
UT4902345	GOOSENEST WATER COMPANY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-07
UT4908001	CEDAR RIDGE SUBDIVISION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-07
ID3140021	COUNTRY CLUB	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-10

ID3140022	COUNTRY CLUB 3	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-10
TX0200520	RIVERWOOD SUBDIVISION WATE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-11
UT4900185	GARDEN CITY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-11
UT4900238	KINGSTON	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-11
UT4900719	MONUMENT VALLEY HIGH SCHO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-02-11
UT4900086	AUSTIN SSD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-05
PA4560054	LIGONIER HIGHLANDS WATER &	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-06
WV3301325	LEISURE VALLEY-WEST	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-06
WV3301326	END OF THE TRAIL - CENTRAL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-06
WV3301327	LEISURE VALLEY-EAST	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-06
VA4075365	HICKORY HAVEN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-07
UT4900232	KANOSH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-19
UT4900096	SAN JUAN CO SRVC AREA 1	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-20
UT4901562	VIVIAN PARK HOMEOWNERS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-20
UT4902287	GORGOZA MUTUAL WATER CO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-21
UT4900941	THATCHER ENTERPRISES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-21
UT4900283	MENDON CITY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-25
ME0017576	NAPLES SHOPPING CENTER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-27
ME0000648	SCHOOL HOUSE DAY CARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-29
ME0091900	COUNTRY MEADOW APARTMENTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-29
MR0093825	LEE CHRISTIAN SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-29
MR0095660	TOWN AND COUNTRY WAYS M.H.	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-29
ME0094176	RAYMOND SHOPPING MALL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0113200	OAKLAND GLEN MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0118650	NEW RIVER FABRICS	INITIAL WATER QUALITY PARAMETER WQP M&R	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0136185	ROBINBROOK PLACE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0155132	S & L COUNTRY ESTATE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0160134	DOGWOOD TRAIL MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0180111	FISHERMAN'S COVE WATER SYS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0180123	WESTHAVEN MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0276601	WRIGHT FURNITURE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0291514	FRESH START CHILD CARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0343040	SHAWTOWN WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0363104	JACKSON HAMLET WATER COMPA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0392229	CREEKSIDE MOBILE VILLAGE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0392317	LINCOLN PARK NORTH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC0392324	HIDDEN HOLLOW S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
NC4392105	HUNT FARMS S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-03-31
UT4900204	HATCH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-04-07
UT4900471	ACME WATER COMPANY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-04-14
DE0000270	PINE RIDGE MOBILE HOME PAR	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-04-21
UT4900326	OAK CITY WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-04-23
WV9939053	FELLOWSVILLE ELEMENTARY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-07
DE0000649	LAYTONS RIVIERA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-15
DE0001029	NVF CORPORATION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-19
DE0002029	NVF CORPORATION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-19
DE0003029	NVF CORPORATION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-19
MD0070214	CONOWINGO M.H.P.	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-19
MD0080017	GREEN MEADOWS WATER COMPAN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-20
DE0000628	BETHANY CREST LLC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-21
DE0000262	HOLIDAY ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-27
MD0010001	BARRELVILLE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-29
MD0050208	MEADOW BROOK COURT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-29
MD0060206	HILLENDALE MOBILE HOME PAR	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-29
MD1090008	WARWICK MANOR BEHAVIORAL H	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-29
MD1230060	BEARY BEST DAY CARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-29
VA4127425	KENTWOOD MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-29
VA2003275	GLENAIR SUBDIVISION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-30
VA5031520	LAKE SEMINOLE TR PK C/O J	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-05-30
VA6047415	PONDEROSA MOBILE HOME PARK	FOLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	1997-06-03
WY5600276	WESTGATE MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-03
ID3140205	FREEMAN DEVELOPMENT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-05
UT4900192	GOSHEN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-05
UT4900225	JENSEN W.I.D.	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-05
UT4900331	ORDERVILLE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-05
UT4900366	RANDOLPH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-05
UT4900153	ELSINORE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-10
UT4900190	GLENDALE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-10
UT4900231	KANARRAVILLE WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-10
UT4900379	BALLARD WATER IMP DIST	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-10
UT4906009	AXTELL COM SERVICE DISTRI	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-10
VA6047431	RANDLE RIDGE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-12
VA6107200	HILLSBORO, TOWN OF	PUBLIC EDUCATION	ADMINISTRATIVE ORDER ISSUED	1997-06-12
WY5601270	MOUNTAIN VIEW ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-16
WY5601291	WYOMING CAMPGROUND	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-16
UT4900119	CHARLESTON WCD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-19
UT4900226	JOSEPH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-19
UT4900401	SCIPIO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-19
UT4900477	CENTER CREEK WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-19
UT4900149	ECHO MUTUAL WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-24
PA2520061	TAPTON WATER CO WILSON HIL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-25
FL3480539	HILLCREST MOBILE HOME VILL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-30
MD1060061	MONTESSORI SCHOOL OF WESTM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-30
MS0260027	WEST HOLMES WATER ASSOCIAT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-30
VA1185906	PEARL WILSON TRAILER PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-30
VA6113109	COUNTRYSIDE I - HOME FOR A	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-06-30
PR0002591	METROPOLITANO	OCCT INSTALLATION/DEMONSTRATION	ADMINISTRATIVE ORDER ISSUED	1997-07-02
PR0002652	ARECIBO URBANO	OCCT INSTALLATION/DEMONSTRATION	ADMINISTRATIVE ORDER ISSUED	1997-07-02
PR0003824	PONCE URBANO	OCCT INSTALLATION/DEMONSTRATION	ADMINISTRATIVE ORDER ISSUED	1997-07-02
PR0004635	CAYEY URBANO	OCCT INSTALLATION/DEMONSTRATION	ADMINISTRATIVE ORDER ISSUED	1997-07-02
PR0005066	CAGUAS SUR	OCCT INSTALLATION/DEMONSTRATION	ADMINISTRATIVE ORDER ISSUED	1997-07-02
PR0005306	FAJARDO CEIBA	OCCT INSTALLATION/DEMONSTRATION	ADMINISTRATIVE ORDER ISSUED	1997-07-02
PR0005386	RIO BLANCO,VIEQUES,CULEBRA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-02
WV3302941	NEW CREEK INVESTMENTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-10

WV3305528	GLOVER CO WTR - TN OF PIN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-10
WV3305530	WYO CO WTR - TN OF PINEVIL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-10
WV3303023	CREEKWOOD APARTMENTS-NEWTO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-11
WV3303317	TRI LAKE PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-11
WV3300204	JUDY LYNN MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-14
WV3301921	MILLVILLE WATER	FOLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	1997-07-14
WV3303025	NOLAN PSD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-17
WV3305510	KOPPERSTON PSD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-17
WV3305533	KOPPERSTON PSD-LOWER DISTR	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-17
WV3305535	HERNDON COMMUNITY WATER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-18
VA1071450	G W LINK TP C/O MR LINK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-22
WV3300239	HARRANDA MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-23
DE0000263	HOLIDAY PINES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-24
VA1185626	PORTER FARM SUBD WATER ASS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-25
VA4075420	JENKINS MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-07-31
WV3302828	PINNACLE WATER ASSOCIATION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-06
DE0000920	M AND S RENTALS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-07
WV3303310	SKY LINE VILLAGE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-11
IN5226007	PATOKA WATER & ELECTRIC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-12
MI0320350	INTERCARE COMMUNITY HEALTH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI1720002	WHITEFISH TOWNSHIP SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI1920197	GUNNISONVILLE ELEMENTARY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI2320093	DIMONDALE ELEMENTARY SCHOO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI2320153	SUNDANCE CHEVROLET	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI2520396	FENTON BIG BOY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI2520501	VALLEY CHRISTIAN ACADEMY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI2820155	NORTHERN STAINLESS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI3420086	IONIA COMMUNITY MENTAL HEA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI6321589	PINE RIDGE PLACE BLDG B	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI6321590	PINE RIDGE PLACE - BLDG A	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI6322199	BIG BOY RESTAURANT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI7420124	SAINT EDWARDS SCHL-CHURCH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI7820085	MAURELL PRODUCTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI8120196	STONEY CREEK PRESCH & CHIL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-21
MI2520728	PARO SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-28
MI2520796	GOODRICH MANUFACTURING CO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-28
MI2521161	BIG BEAR DAY CARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-08-28
MI4520018	LEELANAU COUNTY COURTHOUSE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-04
MI7320124	CHRIST EVAN LUTH CHURCH &	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-04
OH8300312	THE MEADOWS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-04
OH8550512	WAYNEDALE HIGH SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-04
OH2503012	PONDEROSA ESTATES MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-15
OH7049712	WOODLAWN SCHOOL AND CHURCH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-15
FL6512067	FOREST HILLS	FOLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	1997-09-16
MI2520525	JUDSON BAPTIST CHURCH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-18
OK3001119	KORRAL KREEK SUBDIV	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-22
OK2000614	SPORTSMAN PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-23
NC0150169	BIG SHEEP CLIFF	INITIAL WATER QUALITY PARAMETER WQP M&R	ADMINISTRATIVE ORDER ISSUED	1997-09-29
KY0480621	BLUEDIAMOND CAMP WATER SYS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-30
OK2000605	ROMAN NOSE STATE PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-09-30
NM3556813	CONTINENTAL MOBILE HOME PA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-10-23
OK2001907	CREEK CO RWD #10	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-10-31
OK2004514	BLOOD TRAILER PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-10-31
DR0001131	LEISURE HAVEN MOBILE HOME	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-11-07
DR0002131	LEISURE HAVEN MOBILE HOME	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-11-07
NM3500230	PAJARITO ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-11-24
NM3535223	CANYON MDWCA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1997-11-24
NM3559014	FAWN RIDGE PROPERTY OWNERS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-01-29
OK4005587	WATERFRONT ACRES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-01-29
084690438	BIG BEND WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-02-04
084690439	CROW CREEK SIOUX TRIBE WTR	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-02-04
MI6321467	BIBLE BAPTIST CHURCH (INDW	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-03-11
MI6321754	KENNEDY BORING & MACHINE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-03-11
MI6321783	B & V CONSTRUCTION	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-03-11
WV3305505	BROOKSIDE-OTSEGO COMMUNITY	FOLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	1998-03-31
MI2520711	ARGENTINE ELE SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-04-10
MI2521228	HILLSIDE CENTER LLC, WEST	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-04-10
MI6321547	OUR LADY OF THE LAKES H.S.	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-04-10
MI6321772	WEST POINTE CTR-SOUTH WELL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-04-14
MI6321782	WEST POINTE CTR-NORTH WELL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-04-14
LA1063035	SPRINGFIELD TERRACE SUBD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-04-30
MI2520797	BURKLAND TEXTRON	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-08
MI2521346	CENTRAL ELEMENTARY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-14
084690020	ST. FRANCIS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-17
MI6321444	CHAPMAN ACADEMY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-19
MI6321539	ORTONVILLE FOODS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-19
MI6322307	MILFORD COUNTRY DAY CHILD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-19
MI6920144	JIM WERNIG SALES & SERVICE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-19
MI6322223	PINE WOOD ONE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-21
MI6322304	MPD WELDING	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-21
MI6320246	WHITE LAKE TOWNSHIP HALL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-29
MI6321386	TULL LAKE PLAZA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-29
MI6321533	PROFESSIONAL PLAZA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-05-29
MI6320789	DIXIE BAPTIST- AUDITORIUM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-06-02
MI6321470	DIXIE BAPTIST- FOUNDERS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-06-02
MI6321471	DIXIE BAPTIST- GYM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-06-02
MI6321472	DIXIE BAPTIST/CHLD ARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-06-02
WV3301407	GREEN SPRING PSD (SPRINGFI	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-06-08
MI6320056	UNIFLOW PLANT #2	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-06-22
MI6320065	UNIFLOW PLANT #1(BLDG LEAS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-06-22
DE0000973	CARE-A-LOT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-07-15
NM3558214	CEDAR CREEK CABIN OWNERS A	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-08-14
NM3536625	CORPS OF ENGINEERS (ADMIN)	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-08-21
MI6321773	LIFT AID	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-15

MI6321834	BIG BOY- OXFORD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-15
IL0977010	STURM SBDV	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-17
MI2521364	BETA THETA PI	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-18
MI2521462	HONEY BEAR DAY CARE 2	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-18
MI6321672	GRANDMA'S HOUSE PRESCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-18
083890025	SPIRIT LAKE WTR MGMT BRD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-18
MI2520727	GENESEE GRAND JUNC CTR-VG'	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-25
MI2520901	CHILDS WORLD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-25
MI6321493	SCHOOL BELL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-25
MI2520389	FREEWAY SPORT CENTER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-29
MI6320142	INSULGUARD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6320316	WEE FRIENDS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6320498	FIRST BAPTIST CHURCH OF WI	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6321360	LAFONTAINE PONTIAC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6321389	K-MART #3723/KROGER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6322389	NEW LIFE DAY CARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6322411	CREAM OF THE CROP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6322428	MICHIGAN CAT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6322458	NOVI CHRISTIAN DAY CARE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI6322471	DELCOR HOMES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
MI8320107	FOREST VIEW SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-09-30
KY0040015	BANDANA WATER DISTRICT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-10-01
OK4005587	WATERFRONT ACRES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-11-12
MI4720540	TODDLING TOTS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1998-12-03
IL0630250	DIAMOND	POLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	1999-03-04
NC0326344	FORT BRAGG DIR OF FAC ENGR	PUBLIC EDUCATION	ADMINISTRATIVE ORDER ISSUED	1999-03-25
IL1610400	MILAN	PUBLIC EDUCATION	ADMINISTRATIVE ORDER ISSUED	1999-04-27
VA3800075	W N BUNCH WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-04-30
PA4140014	MOUNT EAGLE WATER ASSOC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-05-17
NM3562301	SUNSET MOBILE HOME PARK (A	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-06-03
MD0120211	LOU-MAR ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-06-04
MI6320753	DUGGANS WEST	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-06-10
IN5252010	WILLOW SPRINGS MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-06-29
IN5256011	RIVER BEND MANOR MOBILE HO	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-06-29
NC0160230	CLEAR MEADOWS S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-06-30
NC0392240	NC CENTER FOR MATURE ADULT	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-06-30
WY5600864	WESTVIEW VILLAGE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-07-15
VA5019380	HARDY ROAD TRAILER PARK, S	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-07-29
IN5206013	DON SUTTON MHP	INITIAL TAP SAMPLING FOR PB AND CU	CIVIL CASE CONCLUDED	1999-08-04
WY5601450	COOPER SUB MOBILE HOME PAR	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-09-01
OK2004534	BLOOD TRAILER PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-09-17
NC0111150	HAZELWOOD HOMEOWNERS ASSOC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-09-23
VA6047260	HAZEL RIVER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-09-28
UT4914019	ANGELL SPRINGS SSD	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-09-29
NC0136221	MARIA PARK S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-09-30
NC0149152	STATESVILLE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-09-30
NC0136329	PINEVIEW S/D	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-10-06
IL0190050	BROADLANDS	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-11-30
NM3513414	ALTO NORTH WATER CO-OP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	1999-12-30
NM3500214	LOMA GRANDE ESTATES WATER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-03
TX0030027	PRAIRIE GROVE WSC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-19
TX0150204	A 1 MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-19
TX0200019	WEYBRIDGE SUBDIVISION WATE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-19
TX0460205	KINGS POINT WSC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-25
TX0610169	NORTHLAKE VILLAGE INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-25
TX1010863	TALLOWS MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-25
TX1520026	FAMILY COMMUNITY CENTER MH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-25
TX1840033	ECHO VALLEY WSC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-25
WY5601385	AIRPORT BENCH WATER & SEWE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-05-31
OK2005710	TIMBERLINE MHP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-06-07
IN2493139	FOUNTAIN OF TRUTH CHRISTIA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2000-06-30
IN5246024	SHADY GROVE MOBILE HOME PA	POLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	2000-09-25
100211202	METLAKATLA-CWS	MPL NON-COMPLIANCE	ADMINISTRATIVE ORDER ISSUED	2000-10-24
WY5600904	KELLY SCHOOL-TETON CTY SCH	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2001-03-21
AK2247953	KACHEMAK SELO #3	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2001-04-23
100211203	METLAKATLA-ANNETTE	MPL NON-COMPLIANCE	ADMINISTRATIVE ORDER ISSUED	2001-05-10
WY5600119	HITCHING POST TRAILER COUR	POLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	2001-06-07
NM3591414	HONDO VALLEY SCHOOL	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2001-06-27
AK2247513	NIKOLAEVSK THIRD VILLAGE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2001-07-26
NM3511807	SUNLAND PARK WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2001-08-30
TX0190071	HARRISON MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2001-09-05
TX0590009	CORONADO WATER CO INC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2001-09-05
IL0977010	STURM SBDV	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2001-11-26
TX0140167	PLAZA WATER	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-01-10
TX1890011	CANDELARIA WSC	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-01-10
VA6061125	DRYSDALE SUBDIVISION	OCCT INSTALLATION/DEMONSTRATION	ADMINISTRATIVE ORDER ISSUED	2002-01-16
VA5019379	HARDY ROAD TRAILER PARK, S	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-03-06
WA5313335	CLARKTOWN WATER SYSTEM	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-07-14
VA5019380	HARDY ROAD TRAILER PARK, S	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-08-20
WY5601464	CARPENTER WATER & SEWER DI	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-09-17
WY5601476	BENTONITE PERFORMANCE MINE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-09-19
WA5342527	LAKE CASSIDY ESTATES	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-09-30
WA5315531	SPANAWAY 192ND WATER SYSTE	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2002-10-23
WA5320226	VISTA VU WATER USERS ASSN	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2003-05-24
WA5350295	MAHONEYVILLE WATER ASSOCIA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2003-05-29
WA5303014	CRISTALINA WATER COMPANY	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2003-05-30
WA5398190	WOODLAND PARK TRAILER COUR	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2003-08-04
VA6107200	HILLSBORO, TOWN OF	PUBLIC EDUCATION	ADMINISTRATIVE ORDER ISSUED	2003-08-14
IN5261001	BLOOMINGDALE WATER WORKS	POLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	2003-09-04
WY5600132	WATER UNLIMITED, INC.	POLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	2003-09-23
WY5600275	ALTA COMMUNITY PIPELINE	POLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	2003-09-23
WY5601004	SEVEN MILE WATER & SEWER D	POLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	2003-09-23
WY5600060	ENCAMPMENT, TOWN OF	POLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	2003-11-20
IN2490001	GOOD SHEPARD UMC/LITTLE LA	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2003-11-25
WY5600189	ALBIN, TOWN OF	FOLLOW-UP AND ROUTINE TAP SAMPLING	ADMINISTRATIVE ORDER ISSUED	2003-12-17
PA5100044	KENNEDY MOBILE HOME PARK	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2003-12-19
WY5601507	MEADOW SPRINGS SERV & IMP	INITIAL TAP SAMPLING FOR PB AND CU	ADMINISTRATIVE ORDER ISSUED	2003-12-24

PULLED FROM THE FY2004Q1 FROZEN DATABASE

Question 84. Please provide a summary of all of the enforcement actions taken under all provisions of the Safe Drinking Water Act since 1995.

Response. The table below summarizes final enforcement actions taken under all provisions of the Safe Drinking Water Act from fiscal year 1995 to fiscal year 2003. Civil enforcement actions include administrative compliance orders, final administrative penalty orders, and civil judicial settlements. For each year, the corresponding civil penalties assessed, estimated value of injunctive relief and value of Supplemental Environmental Projects (SEPs) are shown in millions of dollars.

SAFE DRINKING WATER ACT ENFORCEMENT ACTIONS, FY 1995–2003

(Dollars in millions)

Fiscal Year	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03
Civil Enforcement Actions*	670	367	506	332	315	2,135**	648	387	489
Civil Penalties	$0.2	$2.9	$0.4	$0.6	$2.1	$0.9	$1.1	$0.3	$0.3
Total Estimated Value of Injunctive Relief	$0.5	$117.7	$38.3	$38.2	$811.5	$357.7	$5.7	$292.1	$7.7
Total Value of SEPs	$0.02	$0.07	$0.2	$0.04	$5.8	$0.3	$2.3	$0.4	$0 0

*Includes PWSS and UIC SDWA programs. PWSS = Public Water Supply System; UIC = Underground Injection Control.
** The Consumer Confidence Rule accounted for a surge in Public Water Supply System administrative compliance orders.
Sources: 1995–2002: OECA Measures of Success reports; 2003: press release materials.

Question 85. What are the Agency's protocols/guidelines for testing drinking water for lead at schools, day care centers, and other entities that provide drinking water to children?

Response. In 1994, EPA developed guidance called: "Lead in Drinking Water in Schools and Non-Residential Buildings" to demonstrate how drinking water in schools and other buildings can be tested for lead and how contamination problems can be corrected if found.

The guidance, available at www.epa.gov/safewater/consumer/leadinschools.html, contains a protocol for collecting and analyzing drinking water samples. The protocol is designed to assist the school in determining whether or not there is lead contamination and if that contamination is localized or affects the entire facility.

Briefly:

- Aerators are removed from outlets as appropriate;
- The facility is flushed and then left idle overnight or 8–10 hours;
- First draw samples are collected in 250 ml bottles; and
- Follow-up samples are collected after each faucet is run for 30 seconds.

Additional resources that were developed subsequent to the 1994 guidance publication are available through EPA's web site at www.epa.gov/safewater/lead/schoolanddccs.htm.

Question 86. Does the WASA procedure of flushing drinking water fountains for 10 minutes prior to testing comply with these guidelines? If not, how are the test results likely to be altered using this approach?

Response. EPA shared its school monitoring protocol and associated guidance documents with WASA on February 12, 2004 through a telephone conversation and an electronic mail message. Prior to this date, the protocol and associated guidance was also available on the Internet. Trained by WASA, the District of Columbia Public Schools carried out testing in 154 schools and school facilities between February 14 and February 19, 2004. The procedure used for the testing did not follow recommended EPA protocols. Allowing fixtures to flush for 10 minutes prior to collection reduces the likelihood that the sample will contain elevated lead levels, and significantly reduces the ability to associate a result with the particular outlet from which the sample was taken. WASA released the results of its testing on February 24, 2004.

Due to concerns that the sampling method used by WASA was flawed, EPA sent a follow-up letter to WASA on February 26, 2004 to reiterate its offer to provide technical assistance to the utility in carrying our testing in schools. WASA subsequently worked with EPA, the D.C. Public Schools, and D.C. Department of Health to carry out another round of school testing using EPA recommended protocols. The testing focused on outlets in public schools that served the target population of children under the age of six. D.C. Public School employees who were trained by WASA conducted the sample collection. EPA provided input to the training materials used by WASA. This sampling was carried out starting March 29, 2004 and the results were released on April 30, 2004.

SECTION 1462 IMPLEMENTATION

Question 87. Please provided a review of the implementation of section 1462 of the Safe Drinking Water Act?

Response. Section 1462 of the Safe Drinking Water Act (SDWA) was added to the SDWA in 1988 as part of the Lead Contamination Control Act (LCCA). The section required that the Consumer Product Safety Commission issue an order requiring the manufacturers and importers of drinking water coolers identified by EPA as having a lead-lined tank cooler to repair, replace, or recall such coolers. EPA carried out the requirements outlined under section 1462, 1463, and 1464.

EPA established a laboratory protocol to determine the lead content in the interior lining of water cooler tanks. In February 1989, EPA distributed guidance and a testing protocol to States to assist schools in testing for and remedying lead contamination. The testing protocol was used in thousands of school districts across the country.

On April 10, 1989, EPA published a proposed list of lead-free water coolers. This proposed list served to initiate testing of water coolers in schools throughout the country. On January 18, 1990, EPA finalized the proposed list and published a new list of coolers classified lead-free under the LCCA. Halsey Taylor was identified as the only manufacturer of coolers with lead-lined tanks. As a result of EPA's work, a consent order agreement between the Consumer Product Safety Commission and the Scotsman Group was published on June 1, 1990 which stipulated a recall of Halsey Taylor water coolers that test above EPA's guidance level for individual outlets in schools.

LEAD

Question 88. What are the common sources of lead in drinking water?

Response. Although lead may be present in source water, the more common source of lead is its release as a byproduct of corrosion. The potential sources of lead corrosion by-products found in drinking water can include: Water service mains (rarely), lead goosenecks or pigtails, lead service lines and interior household pipes, lead solders and fluxes used to connect copper pipes, alloys containing lead, and some faucets made of brass or bronze.

The amount of lead in drinking water depends heavily on the corrosiveness of the water. All water is corrosive to metal plumbing materials to some degree, even water termed non-corrosive or water treated to make it less corrosive. The corrosiveness of water to lead is influenced by water quality parameters such as pH, total alkalinity, dissolved inorganic carbonate, calcium, and hardness. Galvanic corrosion of lead into water also occurs with lead-soldered copper pipes due to differences in the electrochemical potential of the two metals. Grounding of household electrical systems to plumbing may also exacerbate galvanic corrosion. Over time, lead-containing plumbing materials will usually develop a scale that minimizes further corrosion of the pipe.

Question 89. Can source water contamination be a source of lead in some drinking water systems? If so, what are the common causes of source water contamination?

Response. Lead may be released or re-released into the environment during its mining, ore processing, smelting, refining use, recycling, or disposal. Lead is rarely found in source water, but lead mining and smelting operations may be sources of contamination.

An example of where mining has affected drinking water quality can be found at the Newton County Mine Tailings site located in southwest Missouri. This site, located within the Tri-State Mining District, was added to the National Priorities List in September 2003 because of the presence of lead and cadmium contamination in residential drinking water wells significantly above the current health based drinking water limits. Information presented in the site narrative for the NPL listing (http://www.epa.gov/superfund/sites/npl/nar1677.htm) indicated that based on current information, the contaminated groundwater encompasses approximately 160 square miles. In 1999, EPA provided bottled water to county residents as an immediate, temporary response to the known health threat associated with the consumption of lead and cadmium contaminated water.

Question 90. Can you describe the major health impacts of lead contamination in drinking water supplies that exceed 15 parts per billion?

Response. EPA has not identified specific health impacts that correspond to specific lead concentrations in water. There are numerous factors that affect the concentration of lead in blood, including the degree to which a person is exposed to sources of lead in paint, dust, soil and water. Protocols for tap monitoring are designed to capture the highest concentration that would occur in a household during

the course of a day. However, because the amount of lead in drinking water varies during the day, this sample does not represent the concentration of lead in all of the water consumed by an individual.

The Centers for Disease Control and Prevention has identified a blood level of 10 micrograms per deciliter as the level of concern for lead in children and 25 micrograms per deciliter as the level of concern for adults. Health effects associated with elevated levels of lead in blood may include delays in normal physical and mental development in infants and young children; slight deficits in the attention span, hearing, and learning abilities of children; and, high blood pressure in some adults (which may lead to kidney disease and increased chance of stroke). Pregnant women and children are a primary concern. EPA set the maximum contaminant level goal for lead at zero because of the difficulty of identifying an exposure level for which there are no risks of adverse health effects. Exposure to lead in tap water alone at levels at or near 15 ppb should not cause blood levels to exceed 10 micrograms per deciliter without concomitant exposure to lead from other sources. EPA set the maximum level contaminant goal for lead at zero because of the difficulty of identifying an exposure level for which there are no risks of adverse health effects. This is assuming normal drinking water consumption.

Few publications are available that identify drinking water as the primary source of lead in cases of elevated blood lead levels or lead poisoning. Cosgrove et al. published a case study of a childhood lead poisoning in Massachusetts that was traced to drinking water (Cosgrove et al., 1989. "Childhood Lead Poisoning Case Study Traces Source to Drinking Water," Journal of Environmental Health, 52(1) p. 346–9). While the level of lead in water entering the house was far below the 50 ppb standard in force at that time (1984), the first flush samples from the kitchen exceeded 300 ppb. An investigation found that the source of lead was solder from newly installed pipes. The family was directed to allow water to flush through household pipes before use and to clean out faucet aerators. Over a 2-year period, blood levels in the child decreased from 40 ug/dl to approximately 20 ug/dl, which was below the threshold level of concern at that time (30 ug/dl set in 1975).

LEAD MCLG

Question 91. EPA established the MCLG for lead in drinking water at zero. Please explain why the Agency selected zero.

Response. In establishing MCLGs, the Agency seeks to determine the level at which there are no known or anticipated adverse effects on the health of persons and which includes an adequate margin of safety. At the time of the rulemaking, there was a body of scientific evidence that showed that the risk of adverse health effects was present at increasingly lower blood lead levels, and there was uncertainty that any blood lead level is free from risk of incurring adverse effects in sensitive subpopulations. EPA therefore established an MCLG of zero for lead in drinking water because of the difficulty of identifying a low lead exposure level at which there are no risks of adverse health effects. In addition, Agency policy stated that drinking water should have a minimal contribution to total lead exposure (given that a substantial portion of the sensitive population already had blood lead levels that exceeded the level of concern). Finally, lead is classified as a probable human carcinogen.

DRINKING WATER—PUBLIC INFORMATION

Question 92. EPA's drinking water hotline answers thousands of questions each year. The recent revelation about lead contamination in the D.C. water system underscores the importance of accurate and objective drinking water information. There have been reports; however, that the President's funding cuts may force EPA to terminate the drinking water hotline. Is this correct, and if so, how does the EPA plan to provide information about drinking water quality to concerned citizens?

Response. No. The Agency has no intention of terminating the Safe Drinking Water Hotline, which serves a critical role in EPA's outreach and public education efforts. In fact, questions about lead in drinking water are consistently among the most frequently asked of the Hotline. The Hotline is currently available by calling a toll-free number Monday through Friday from 9 a.m. to 5 p.m. and via email. During fiscal year 2003, the Hotline received close to 25,000 calls from around the country, an average of 125 inquiries a day. Approximately 13 percent of the requests were made by email. Within the last month, EPA has directed extra funding to the Hotline to ensure that they can manage additional calls from District residents who have questions about lead in their drinking water. Over the past 2 years, the Office of Water has funded the Hotline at approximately $330,000 per year and will likely maintain this funding level for 2005. While the cost of operating the Hotline is sig-

nificant, EPA believes that the benefits of being responsive to the public and increasing consumer awareness justify the costs.

Question 93. When you announced in December that the Administration was dropping plans to rewrite Clean Water Act rules, you stated that EPA would reconsider the January 2003 policy requiring Federal agencies not to protect particular waters without first getting permission from EPA or the Corps of Engineers, which leaves many waters at risk. Since then, what steps if any have you taken to reconsider and rescind this anti-clean water directive?

Response. EPA and the Corps of Engineers are taking a number of steps in response to the Supreme Court's decision in Solid Waste Agency of Northern Cook County (SWANCC). As we implement these actions and monitor their effectiveness, we will continue to assess the adequacy of existing field practices, guidance, and training programs and take appropriate steps to ensure Clean Water Act jurisdiction is correctly determined.

On January 15, 2003, EPA and the Corps issued joint legal guidance that clarified the scope of "waters of the United States" in light of the U.S. Supreme Court's decision in SWANCC and subsequent judicial decisions (68 Fed.Reg. 1991, 1995 (January 15, 2003). The legal guidance states that field staff may no longer assert jurisdiction over isolated, intrastate, non-navigable waters based solely on the presence of migratory birds, and that agency headquarters approval should be obtained prior to asserting jurisdiction over such waters based solely on other types of commerce links. The legal memorandum emphasizes that field staff should continue asserting jurisdiction over navigable waters, their tributary systems, and adjacent wetlands. The memorandum also emphasizes that jurisdictional calls must reflect existing regulations and relevant case law. Consistent with this legal guidance, field staff at both EPA and the Corps continue to vigorously implement and enforce programs affecting all "waters of the United States" protected under the CWA after SWANCC.

EPA does not believe the joint legal guidance "leaves many waters at risk" due to its requirement that field staff receive formal Headquarters approval prior to asserting jurisdiction based solely on links to interstate commerce. The guidance specifically provides that such concurrence is applicable only to isolated waters that are both intrastate and non-navigable. Given the rationale and reasoning in SWANCC and the extensive and varied case law since, the Agency believes it is appropriate for Headquarters to play a role before jurisdiction is asserted over such waters on the basis of commerce clause factors, both to ensure consistency with applicable case law and to foster national consistency on how such issues are approached.

As the question notes, on December 16, 2003, EPA and the Corps of Engineers jointly announced that we would not issue a new rule on Federal regulatory jurisdiction over isolated wetlands. At the same time, the agencies emphasized we would continue to monitor implementation of Section 404 and other Clean Water Act (CWA) programs to ensure their effectiveness. The continued viability and utility of the January 2003 joint legal memorandum is one of the factors that we are monitoring. At present, EPA and the Corps have no specific plans to withdraw it.

EPA and the Corps are committed to increasing consistency, transparency, predictability, and sound science for the CWA Section 404 program. For example:

- the agencies are working together to ensure that information on jurisdictional calls is collected and shared with the public;
- staff from EPA and Corps Headquarters and field offices are planning joint visits to sites that illustrate difficult issues regarding the scope of waters of the US, in order to develop a common understanding of the issues;
- EPA and the Corps are coordinating to expand and improve the Corps' permit-tracking data base, which will be made available to the public through the Corps' website, providing important access to agency actions;
- the agencies are engaging in opportunities to explain to stakeholder groups the scope of CWA jurisdiction in light of SWANCC, including national and regional conferences and other public forums;
- EPA is conducting a scientific review of information on "isolated waters" and their relationship to the physical, chemical, and biological integrity of "navigable" waters;
- EPA is co-sponsoring a U.S. Army Engineer Research and Development Center study on Ordinary High Water Mark indicators for delineating arid streams in the southwestern U.S.;
- EPA, Corps, and DOJ staff continue to have biweekly meetings to discuss jurisdictional issues and questions that arise in the field; and
- EPA is working closely with DOJ and the Corps in litigation, arguing that the SWANCC decision was focused on a subset of isolated waters and did not change CWA protections for tributaries, adjacent wetlands, and other waters. Since the

SWANCC decision, the government has prevailed in ten of 11 Appellate Circuit decisions.

Question 94. The January 15, 2003, EPA and Army Corps policy directive on Clean Water Act (CWA) jurisdiction tells the Federal agencies not to protect certain wetlands, streams and ponds without first getting permission from EPA or Army Corps of Engineers headquarters. How many miles of stream or acres of wetlands have been declared no longer subject to Clean Water Act jurisdiction because of the January 2003 policy?

Response. The January 2003 guidance calls for field staff to obtain formal EPA and Army Corps of Engineers (Corps) Headquarters approval prior to asserting jurisdiction based solely on links to interstate commerce. We have received six requests for formal headquarters approval, plus an additional half dozen that involved navigable-in-fact isolated waters that do not require Headquarters approval. Of those six, Headquarters is seeking additional information on two, found two to be jurisdictional, and two to not be jurisdictional. Of the two sites found non-jurisdictional as a result of the EPA HQ approval process, one site involved a wetland of approximately two acres, and one a stream of approximately 37 miles in length.

While the question focuses on resource impacts of the January 2003 Headquarters process for approving jurisdictional calls based solely on commerce links, the committee may be interested in other steps that EPA and the Corps are taking to gather data on the aquatic resource impacts of Solid Waste Agency of Northern Cook County (SWANCC). Beginning in March 2004, Corps districts began systematically collecting information on findings of no-jurisdiction over waters deemed isolated, intrastate, and non-navigable, in a common format that includes information on wetland acreage or stream mileage impacted. The Corps is beginning to make this information publicly available via the Internet.

It is important to note that the Corps data reflects only the results of jurisdictional determinations requested by landowners / permit applications and therefore does not represent activities that proceed without Corps review.

Question 95. Can you give any examples of waters that have been declared no longer subject to Clean Water Act jurisdiction?

Response. The January 2003 guidance calls for field staff to obtain formal EPA and Army Corps of Engineers (Corps) Headquarters approval prior to asserting jurisdiction based solely on links to interstate commerce. We have received six requests for formal headquarters approval, plus an additional half dozen that involved navigable-in-fact isolated waters that do not require Headquarters approval. Of those six, Headquarters is seeking additional information on two, found two to be jurisdictional, and two to not be jurisdictional.

One water found not jurisdictional was an isolated, intrastate, and non-navigable wetland located in Granite Park in Sacramento, California. The sole prospective basis for asserting CWA jurisdiction over the wetland was the potential use by interstate visitors, with no evidence indicating a basis for anticipating such visitors. We understand that Sacramento's request for a jurisdictional determination was to inform development of its Master Plan, and not as the result of plans to develop the wetland.

The second water found not jurisdictional was the lower reach of Poso Creek, an isolated intrastate non-navigable water located in California, in the southern Central Valley area northeast of Bakersfield. The sole prospective basis for asserting CWA jurisdiction over Poso Creek was the waters' contribution to a national wildlife refuge (NWF) that received a small number of interstate visitors. Gauge data indicated the stream's waters reached the NWF very rarely (on 34 days over the last 43 years) at times of the year the refuge was releasing water from the refuge and blocking new flows from sources such as Poso Creek. Thus, the link to interstate commerce was determined to be too attenuated to serve as a basis for jurisdiction.

As the Corps begins to collect and make available to the public information on determinations of no jurisdiction, this information is being posted on the Internet, as some individual Corps Districts have already begun to do.

Question 96. What is EPA doing to track the fate of the types of waters subject to this policy?

Response. EPA is working with the Corps of Engineers (Corps) to gather data on the aquatic resource impacts of Solid Waste Agency of Northern Cook County (SWANCC). Responding to a request from EPA, Corps Districts in March 2004 began systematically collecting information on findings of no-jurisdiction over waters deemed isolated, intrastate, and non-navigable. The information is being compiled in a common format that includes information on wetland acreage and stream mileage impacted, as well as rationale on why the water was deemed non-jurisdictional. The Corps plans to make this information publicly available via the Internet,

and some Districts have already begun posting no-jurisdiction summaries on their websites.

The Corps and EPA also are coordinating to expand and improve the utility of the Corps' OMBIL Regulatory Module (ORM), the permit-tracking data base currently being installed in all Corps districts. EPA's Office of Resource Management (ORM) will provide the Corps with more detailed information on permit impacts and mitigation and will be linked to a Geographic Information System (GIS) in the near future to provide spatial data for all permits. These data will be made available to the public through the Corps website with frequent updating. These will provide an excellent foundation for providing greater accessibility to information and help ensure consistency based on credible data.

The Corps and EPA are working together on a Corps-initiated project to make Corps data available for water quality and watershed managers by integrating it with other information systems. The objective is to enable geographically referenced data on Section 404 permits, compensatory mitigation, and compliance and enforcement actions to be evaluated along with data on water quality condition, impairment, and habitat in streams and other water bodies. This will facilitate the development and implementation of comprehensive watershed plans that address issues such as wetlands and water quality. The resulting data also will be available to the local entities, States, and general public to assist with their watershed and land use planning efforts.

It is important to note that the Corps data reflects only the results of jurisdictional determinations requested by landowners / permit applications and therefore does not represent activities that proceed without Corps review.

Question 97. Is the Army Corps conferring with EPA before declaring certain wetlands, streams, or ponds to be outside of the scope of the Clean Water Act?

Response. The Army Corps of Engineers (Corps) and EPA have undertaken a variety of actions to increase coordination on the Section 404 program implementation and jurisdictional determinations. EPA and Corps headquarters coordinate on requests from the field, in accordance with the January 2003 guidance, for formal approval of jurisdictional calls involving isolated intrastate non-navigable waters based solely on commerce links other than those in the migratory bird rule. Furthermore, a number of EPA Regions and Corps districts currently coordinate in advance on jurisdictional calls that raise challenging issues. Likewise, EPA, Corps, and Department of Justice (DOJ) staffs continue to have biweekly meetings to discuss jurisdictional issues and questions that arise in the field. Corps practice has generally been to consider as jurisdictional without further analysis those waters that have been subject to other CWA provisions, such as Section 402 water permits or Section 311 oil spill actions.

EPA will be working with the Corps to implement the recommendations in the recent Government Accounting Office (GAO) report, "Waters and Wetlands: Corps of Engineers Needs to Evaluate Its District Office Practices in Determining Jurisdiction." These recommendations include surveying Corps offices to identify significant differences in jurisdictional practices, evaluating whether and how these differences might be resolved, and better documenting jurisdictional practices and making information publicly available.

As EPA and the Corps jointly implement the scope of "waters of the United States" protected by the Clean Water Act after SWANCC, a variety of issues have arisen due to the differences in climate, geology, and geography throughout the country. The current regulations establish a framework that provides useful detail and consistency for applying best professional judgment on a case-by-case basis. EPA is committed to working with the Corps to ensure that approaches and results are consistent for similar aquatic resources, consistent with Clean Water Act goals, and legally defensible. Headquarters and field office staff will conduct joint visits to sites that may involve complex jurisdictional determinations regarding the scope of the waters of the United States, in order to work toward a common understanding of jurisdictional issues and potential approaches. Visited sites would include those that are illustrative of the hydrologic regime in the area, and would assess field conditions independent of any particular permitting actions.

Corps and EPA staff are working together to explain to stakeholder groups the scope of CWA geographic jurisdiction in light of SWANCC. For example, EPA and Corps staff recently spoke at national meetings of the National Association of Counties, National Conference of State Legislators, and at a widely attended meeting in Texas sponsored by the Texas General Lands Office. We also are taking steps to ensure Headquarters and Field staffs from both agencies have a common understanding of the scope of the CWA.

DRINKING WATER—RADIUM

Question 98. Drinking water infrastructure is of great importance to many States. As you probably know, naturally occurring radium is found in drinking water systems throughout Southeastern Wisconsin. What steps is EPA taking to assist communities in meeting water infrastructure needs such as those related to radium standards?

Response. EPA assists communities to meet their drinking water infrastructure needs through the Drinking Water State Revolving Fund (DWSRF) program. The DWSRF program provides grants to States, who then provide low interest loans and other forms of assistance to public drinking water systems to help these systems meet health-based standards, such as the radium standards, for safe drinking water. The President's fiscal year 2005 Budget Request includes $850 million for the DWSRF program. The allocation of funds to the States under the DWSRF program is determined by the results of the Drinking Water Needs Survey, which is conducted every 4 years.

In addition to the infrastructure funding of the DWSRF program, the DWSRF program also provides set-aside provisions whereby States can designate up to 31 percent of their grants to fund activities to support drinking water programs and systems. Set-aside funds are especially critical in helping communities to address drinking water challenges that may not qualify or be appropriate for infrastructure project loans from the State revolving fund.

EPA also provides assistance to State regulators, system owners and operators, and technical assistance providers by producing implementation guidance and tools such as:

- Radionuclides Rule: A Quick Reference Guide (EPA 816-F–0–003, June 2001)
- Radionuclides in Drinking Water: A Small Entity Compliance Guide (EPA 815-R–02–001, February 2002)
- Final Implementation Guidance for Radionuclides (EPA 816-F–00–002, March 2002)

In 2002, EPA conducted 7 face-to-face training sessions throughout the country. Topics covered included an overview of the rule, rule milestone dates, requirements of the rule, and compliance determination. EPA plans to conduct 2 additional, 3-hour web cast training sessions in 2004. The focus for these sessions will be treatment technologies, health effects, monitoring analysis of radionuclides, calculating compliance and waste residual handing. The first web cast is scheduled for June 29. The second session will be conducted in fall of 2004.

Question 99. Can you describe the specific programs in the budget that will provide for technical assistance for local communities to meet these and other drinking water standards?

Response. EPA's budget provides technical assistance to communities to meet drinking water standards through Public Water System Supervision (PWSS) grants and through the Drinking Water State Revolving Fund (DWSRF) program. The President's fiscal year 2005 Budget Request includes $105 million for the PWSS grants and $850 million for the DWSRF program.

The PWSS program provides grants used by State drinking water programs to monitor drinking water quality, conduct sanitary surveys, enforce drinking water standards, and provide technical assistance to local communities. Funds are distributed based on an allotment formula that considers the number of different types of water systems, State population, and geographical area.

The DWSRF program provides grants to States for capitalization of revolving State loan funds (SRFs), and also provides set-aside provisions whereby States can designate up to 31 percent of their grants to fund activities to support drinking water programs and systems. In particular, one of the set-aside categories under the DWSRF program is called "Technical Assistance to Small Systems". In addition to the small system technical assistance set-aside, funds from other set-asides can be used to provide technical assistance to communities, large and small.

EPA assesses the needs for drinking water infrastructure every 4 years through the Drinking Water Needs Survey process. This survey is called for and required by the 1996 amendments to the Safe Drinking Water Act. The results of the needs survey determine the allocation of the annual appropriations provided by Congress for the DWSRF program.

CLEAN WATER

Question 100. What is the status of the Agency's review of the stormwater Phase II regulation and its applicability to small oil and gas constructionsites? When do you plan to have this complete?

Response. EPA has started conducting an in-depth analysis of all potential economic impacts relating to oil and gas industry compliance with the Phase II stormwater regulations. The Agency expects preliminary information this summer and a completed analysis by the Fall. EPA will then determine if a rulemaking is necessary and publish a Federal Register notice documenting the Agency's decision prior to March 10, 2005.

DECREASE IN WORK YEARS

Question 101. The Administration's budget shows a decrease of 12 work years for the Agency goal of clean and safe water. Can you explain this reduction?

Response. The FTE in the Office of Water have actually increased by 14.4. The decrease apparent in the fiscal year 2005 congressional Justification is a result of a change in the methodology used to allocate Agency support resources (dollars and FTE from offices such as the Office of the Chief Financial Officer and the Office of the General Counsel) across the 5 goals. This change resulted in a net reduction of 12 support FTE in Goal 2.

GREAT LAKES

Question 102. What is EPA's position regarding GAO's recommendations for an overall restoration strategy for the Great Lakes and the need to develop indicators for measuring progress?

Response. EPA strongly supports an overall restoration strategy for the Great Lakes. EPA worked extensively over a 2-year period with its State, tribal, and Federal partners to develop the Great Lakes Strategy 2002. Public meetings were held across the basin in Duluth, Detroit, Chicago, and Niagara Falls. Over 2,000 public comments from the public were considered. Progress is being tracked under the Strategy for over 120 actions by EPA and its partners. EPA will buildupon work done in the Strategy to continue making progress restoring the Great Lakes ecosystem.

In addition to the Strategy, EPA has worked with Environment Canada to develop the State of the Lakes Ecosystem Conferences (SOLEC) which are geared toward the development and tracking of a science-based suite of indicators necessary and sufficient to assess and report progress toward the goals and objectives of the Great Lakes Water Quality Agreement. Over 800 indicators were initially reviewed by over 130 scientists and other participants, and a suite of 80 indicators has been identified as necessary to assess Great Lakes health. Five State of the Great Lakes reports based on Great Lakes indicators have been issued since 1995, with the latest report being released in August 2003. SOLEC will again be held in October 2004 to continue the work of assessing the State of the Lakes and reporting on indicators.

SEWAGE OVERFLOW

Question 103. What are EPA's plans to combat the growing problem of sewage overflows that are polluting our nation's waterways, particularly in the Great Lakes?

Response. Municipal wastewater infrastructure, which includes collection systems and treatment plants, plays a critical role in protecting public health by reducing human contact with raw sewage. Discharges of raw sewage, including combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs) can pose a significant threat to human health and the environment in many communities. In order to protect Great Lake beaches and other waters nationally, EPA places a high priority on controlling discharges of untreated sewage. A long-term goal of EPA and its State and local partners is to eliminate all discharges of untreated sewage to the environment.

The majority of overflows from the United States which discharge into the Great Lakes are located within EPA's Region 5. States within Region 5, along with the EPA Regional Office, are targeting enforcement inspections to cover large systems with CSOs and with potential SSO and treatment plant bypass problems affecting the Great Lakes. These efforts have led, for example, to the issuance of enforcement orders to the Western Lake Superior Sanitary District and the city of Duluth for SSO violations. In addition, EPA Region 5 has a goal to have by 2008 all CSO discharges in the Great Lakes Basin under permits or orders which require implementation of measures to comply with the nine minimum controls and development of long term control plans (LTCP) to meet water quality standards, and to assure that at least 75 percent of all CSO discharges have approved LTCPs and enforceable schedules in place to implement these plans. Region 5 and its States are directing significant resources toward the review and approval of CSO LTCPs, focusing on

those posing the most significant risk to public health, especially those that may impact the Great Lakes Beaches.

SPCC RULE

Question 104. Please provide the terms of the "arrangement" the Agency has reached with the American Petroleum Institute on the SPCC rule, referenced by Senator Inhofe during his questions.

Response. EPA is in the process of publishing in the Federal Register the full terms of the partial settlement achieved in the consolidated SPCC litigation complaints of the American Petroleum Institute (API), the Marathon Oil Company, and the Petroleum Marketers Association of America (PMAA). Together, these parties challenged EPA over five SPCC policy matters: (1) definition of "navigable waters", (2) role of cost in secondary containment decisions, (3) exclusion of produced waters from the wastewater treatment exemption, (4) requirements for loading racks, and (5) small business impacts. The agreement addresses all issues except the definition of navigable waters.

We recently posted a summary of the settlement terms on EPA's oil program website: www.epa.gov/oilspill. The terms represented the culmination of several months of settlement discussions, and addressed concerns raised by plaintiffs relative to the role that cost may have in decisions regarding the practicability of secondary containment, the scope of the requirements under the "loading rack" section of the SPCC rule, means to address integrity testing and facility security requirements, and the applicability of SPCC to produced waters in oil and gas production facilities. To the extent that the settlement terms are relevant to a SPCC facility, the policy clarifications are applicable to all facilities, not just to those owned by the litigants.

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

ENVIRONMENTAL IMPACT STATEMENT

Question 1. Administrator Leavitt, Connecticut is currently faced with an urgent need to conduct Federal dredging projects in several of the State's harbors. These dredging projects are crucial to ensure the continued safe and efficient flow of commerce in and out of Connecticut's harbors. The cost estimates and timeframes for several of these projects have been based on the disposal of dredge material from the projects at the Central Long Island Disposal Site. This disposal site was closed indefinitely on February 18th of this year due to the fact that the Environmental Impact Statement for permanent designation of this site and the Western Long Island Disposal Site has not yet been finalized. In order for critical dredging projects to commence this fall, the EIS for the two sites will need to be finalized as soon as possible. Can you commit to me that the EIS for these sites is completed in a timely manner so that Connecticut can address its most urgent dredging needs?

Response. The Final Environmental Impact Statement (EIS) was released on April 16, 2004, for a 30-day public review period, and subsequently extended 15 days to June 1, 2004, for a total of 45 days in response to requests from members of the New York congressional delegation and several Long Island-based citizen groups (who requested an additional 45 days and more public hearings). EPA and the U.S. Army Corps of Engineers (USACE) New England District (NED) also conducted two public meetings on May 4 in Islandia, New York (on Long Island) and on May 5 in Stamford, Connecticut. EPA anticipates publishing final rulemaking with the record of decision on or soon after July 1, 2004 (NEPA regulations require that rulemaking must be at least 30 days after end of the public review period). Disposal sites become available for disposal activity 30 days after the rulemaking is published in the Federal Register.

However, there is significant opposition to the site designations from New York elected officials at all levels of government and many Long Island residents. Most of the individuals who attended the May 4 public meeting in New York spoke in strong opposition to the site designations, while those who attended the Connecticut meeting spoke in favor of the site designations. We have already received several hundred letters, mostly from citizen groups and individuals on Long Island who are opposed to the site designations. In addition, on May 6 EPA received a letter from the New York Department of State (NY DOS) Coastal Zone Program requesting that EPA withdraw our Federal consistency determination because NYS DOS does not feel EPA has provided enough information on which to base their concurrence. The

review period for EPA's Federal consistency determination review by NYS DOS ends May 21, 2004.

MERCURY

Question 2. Administrator Leavitt, as I noted in my statement, I am particularly concerned about the new mercury proposals that you released in December. Under either proposal, you require very little reductions in mercury versus what many believe is possible; in fact, the cap-and-trade proposal yields no reductions beyond business-as-usual until 2018. This is particularly frustrating when States like Connecticut—and their regulated utilities—have arrived at consensus proposals to make 85 to 90 percent reductions in mercury emissions. How can you justify your proposal given these examples?

Response. The Clean Air Interstate Rule and the Clean Air Mercury Rule represent one of the most ambitious efforts to clean the air under any administration. When implemented, these rules will improve the quality of the air we breathe and the food we eat, enabling Americans to live longer, more productive, and healthier lives.

Cap-and-trade is preferred for several reasons. First, it will be effective from an environmental standpoint. Importantly, cap-and-trade will create powerful incentives for the large emitting facilities to be the first to reduce their emissions. The banking provisions will cause reductions far beyond "business-as-usual" well before 2018. Second, cap-and-trade is more efficient than a comparable command-and-control standard, such as our MACT proposal. Cap-and-trade is easier to administer, promotes nearly perfect compliance, and is more cost-effective. Last, the mercury cap-and-trade rule is our preferred regulatory tool because it would dovetail with the proposed Clean Air Interstate Rule.

The 70 percent reduction proposed under the cap-and-trade approach would necessitate the development of new mercury-specific technologies, such as activated carbon injection (ACI). Based on current information it is projected that ACI technology will be available for wide-scale commercial application after 2010 and that removal levels of 70 percent or more could be achievable.

MACT RULE

Question 3. We have heard the argument that although the technology to achieve these reductions exists, it cannot be adopted by the 2007 deadline specified within the MACT rule. Do you have any evidence to support that contention?

Response. Pollution control industry statements confirm our view that advanced mercury control technologies are not yet ready for commercialization. The EPA agrees with the equipment vendors that these new technologies show great promise. However, actions by various segments of the industry confirm our understanding that these mercury-specific control technologies are not, and will not be, available within a 3-to 4-year time-frame. To date, there have been four full-scale field tests on activated carbon injection (ACI), the most promising mercury-specific control technology on the near-term horizon. These tests have been conducted on three bituminous-fired units and one subbituminous-fired unit. Continuous operation of ACI was conducted for two 5-day periods, one 4-day period, one 5-day period, and one 9-day period at the four tests. This limited amount of continuous ACI operation indicates that the technology has not been sufficiently tested to be the basis for a nationwide regulation that would require compliance all day, every day, for the remainder of the life of the unit.

One long-term ACI test was initiated in April 2003 on a bituminous-fired unit. This test was to evaluate the mercury removal efficiency of ACI over a period of several months to 1 year, further assess the impact of ACI on balance-of-plant operations (i.e., how will ACI impact on maintenance frequency and costs, on ash disposal and utilization, on internal plant energy use, etc.), and provide additional information on the design characteristics and costs of ACI technology for other installations. Because of problems encountered, this test has not been completed and thus the final results are not known. However, it is our understanding that this test has shown the ability of ACI, when used at a bituminous-fired unit, to average 86 percent mercury removal over an extended period of time but has highlighted design problems that must be corrected prior to full scale installation on other units.

On April 21, 2004, the U.S. Department of Energy (DOE) made a joint announcement with WE Energies about the initiation of a joint venture to demonstrate technology that will remove an "unprecedented" 90 percent (expected but not guaranteed) of mercury emissions from coal-based power plants. This 5-year project will involve the design, installation, operation, and evaluation of an integrated system on

one coal-fired power plant to control emissions of mercury, particulate matter, sulfur dioxide, and nitrogen oxides.

Further, the electric utility industry reportedly has had trouble obtaining solid, guaranteed quotes for ACI installation on coal-fired units. We have heard from a number of utility companies indicating that they have tried without success to get bids on, and guarantees for, ACI installations. To date, we are aware of only one permit outside of a federally co-funded program (on a unit to commence operation in 2007 and burn low-sulfur Western coal) that has been issued that included ACI technology (MidAmerican Energy Station permit issued by the Iowa Department of Natural Resources). The lack of additional examples is indicative of the lack of industry confidence in guaranteeing permit levels at this time.

CAP AND TRADE

Question 4. Administrator Leavitt, you argue that the cap-and-trade methodology is the most efficient regulatory approach we have taken, and that we should therefore use a cap-and-trade to regulate mercury. Would you agree that cap-and-trade is also the most efficient means by which we can require mandatory reductions of greenhouse gases?

Response. Currently, the Administration opposes mandatory reductions in greenhouse gases and is pursuing a multi-part climate program that includes: enhanced research on the science of climate change; increased research and development on advanced energy and carbon sequestration technologies (hydrogen, fusion, nuclear); a stated goal to reduce greenhouse gas intensity by 18 percent; voluntary reduction programs for near-term emissions; over $4 billion in tax incentives for renewable and highly efficient energy technologies; incentives for carbon sequestration under the conservation programs of the multi-billion dollar 2002 Farm bill; and continued support for meeting our obligations under the United Nations Framework Convention on Climate Change.

According to the analysis of the independent Energy Information Administration (EIA), legislative proposals to mandate near-term greenhouse gas reductions across the American economy would impose significant job losses and economic harm on Americans. For example, with respect to S. 139, "The Climate Stewardship Act of 2003," the EIA estimated that it would cause average annual job losses of 460,000 through 2025, and a 50 percent increase in the natural gas end electricity bills of American consumers. And there is no convincing analysis suggesting that global greenhouse gas emissions would decrease if domestic legislation such as S. 139 became law. Instead, analysis suggests that it would merely force economic activity to migrate to the hundreds of nations that do not have any such limits, with the concomitant export of related greenhouse gas emissions and pollution.

GREENHOUSE GAS EMISSIONS

Question 5. Just recently, the EPA announced that our nation's greenhouse gas emissions rose again over the past year. To me, our inaction on global warming is becoming a moral and ethical problem—our nation consumes a quarter of the world's resources, emits a quarter of the greenhouse gases, but refuses to take action, when some of the poorest in the world will be faced with the heat, the weather conditions, and the other consequences of the warming of the Earth. Clearly, we must do more to reverse the upward march of our emissions, yet your Administration has clung to the voluntary reduction programs that have failed us for the past 12 years. What else does this Administration plan to do to stem the tide of U.S. greenhouse gas emissions?

Response. This Administration has ambitious and appropriate plans to address global climate change. In the near term and in the absence of complete knowledge, this Administration is pursuing greenhouse gas emissions reductions while sustaining economic growth. In 2002, the President set a national goal to reduce the greenhouse gas intensity of the U.S. economy by 18 percent over the next 10 years. This represents a 4.5 percent reduction from forecast emissions in 2012, a serious, sensible, and science-based response to the long-term challenge of global climate change. In addition, the Administration continues to make investments in science that will increase our understanding of global climate change. The U.S. leads the world in climate science investment and in recent years has spent nearly $2 billion annually on Federal research. Investments in technologies such as advanced energy and sequestration will provide future breakthroughs needed to reduce greenhouse gas emissions in the longer term.

The Administration recognizes that voluntary approaches can help limit greenhouse gas emissions while helping to grow the economy. Voluntary programs have been contributing to greenhouse gas reductions over the past decade and will have

increased benefits in future years. In 2000, U.S. climate change programs reduced greenhouse emissions growth by 242 million metric tons of CO2 equivalents (MMTCO2E) and significantly helped the U.S. to reduce carbon intensity (CO2 emitted per unit of GDP). More recently, the EPA's voluntary climate change programs saved 161 MMTCO2E in 2002 alone—equivalent to the emissions from more than 28 million automobiles. These savings provide real benefits and help Americans save money on their energy bills. The methane gas program is just one example of the achievements of voluntary programs. The voluntary methane partnerships, in conjunction with a regulatory program to limit air emissions from the nation's largest landfills, reduced national methane emissions to well below 1990 levels, and they are projected to remain below 1990 levels through 2012. As a whole, the voluntary climate change programs and partnerships are an effective way to reduce greenhouse gas emissions and play an important role in achieving the Administration's ambitious intensity reduction goal of 18 percent by 2012.

BART (BEST AVAILABLE RETROFIT TECHNOLOGY) RULES

Question 6. Administrator Leavitt, in your previous position as Governor, you wrote to Administrator Whitman about the section of the regional haze rule that addresses Best Available Retrofit Technology—BART requirements for Class I areas. In response, she told you that the EPA planned to publish a proposed rulemaking package on BART requirements and guidelines, by April 2004. I'm pleased to hear that the EPA is on target to release these rules. But I am concerned that these rules will never take effect. It is my understanding that you are considering putting these rules into repose until 2018, on the theory that the Interstate Air Quality Rule will be good enough. With all due respect, Administrator Leavitt, that just doesn't make sense to me. After all these years, all the court-battles, and now, the staff time to finalize the proposed BART rules by April, why would you think of delaying them for yet ANOTHER 14 years?

Response. We do not intend to put the BART rule into repose, or to delay it for 14 years; this represents a misunderstanding of the BART rule and its relationship to the Interstate Air Quality Rule, now known as the Clean Air Interstate Rule (CAIR). Here is what the BART rule provides:

1. If particular States put in place an alternative emissions trading requirement that applies to all BART sources, or to a particular subset of BART sources, in those States, and
2. If the alternative trading program will result in greater reasonable progress toward natural visibility conditions than BART controls on all of those sources would have gotten; then
3. For that subset of BART sources covered by the trading program, compliance with the trading program would satisfy BART.

We intend that in affected States, the CAIR would qualify as an alternative trading program for those sources that it covers. We believe that the CAIR achieves "better-than-BART" improvements in visibility.

In return for achieving greater reasonable progress than case-by-case BART would have achieved, we allow a longer time period for implementation of the trading requirements. The longer time period is NOT 14 years; if CAIR is implemented, it is 1, or at most, 2 years. Note that a trading program is likely to achieve greater reductions than case-by-case BART well into the future, because a trading program caps overall emissions, but case-by-case BART does not. Attached is an implementation timeline.

REGIONAL HAZE IMPLEMENTATION TIMELINE

January 2008[1]	Late 2008 or early 2009 (varies)	Late 2013 or early 2014[2]	2015	2018
Due date for regional haze State implementation plans (SIPs) that include BART.	EPA approves SIPs	Case-by-case BART controls must be installed.	IAQR trading program controls must be fully implemented.	All other regional haze SIP requirements must be met, including any State or regional trading program

[1]Three years after $PM_{2.5}$ designation, per Omnibus Act
[2]Five years after SIP approval, per statute

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

CLEVELAND AIR TOXICS PILOT PROJECT

Question 1. How will you expand the Cleveland Air Toxics Pilot Project? What do you think is the potential of the program?

Response. In keeping with the original goal of local sustainability, management of the Cleveland pilot project is now the responsibility of the American Lung Association (ALA) of Ohio. There are key lessons that can be drawn from the Cleveland pilot to inform a national program. The Agency is currently seeking to expand the number of community-based air toxics reduction programs, and a recent Request for Applications (RFA) will fund 6–10 toxics assessment or risk reduction projects in communities around the country. In addition, a new multi-media program at EPA, Community Action for a Renewed Environment (CARE), seeks to reduce exposures to toxics in overburdened communities. It is our intent that all of our locally focused toxics reduction efforts will apply the successful aspects of the Cleveland pilot.

The potential of this program is high and EPA will follow the Cleveland project and closely monitor its sustainability over time. From this project, it is clear that voluntary, community-based projects can lead to real reductions and we strongly believe that the experience can be replicated. Some of the key lessons learned from Cleveland include the following:

- Emphasize action
- Establish a dedicated and committed EPA team
- Identify entrepreneurs within the community that have credibility and the power to lead a project or component of the project
- Conduct a thoughtful, inclusive, and comprehensive convening process to recruit effective community participants
- Grant the community authority to make decisions and implement programs
- Provide sufficient funding to create interest, support a process, and reduce air toxics using voluntary approaches
- Use neutral and talented facilitation
- Establish focused, achievable, crystal-clear goals with the community
- Maintain an integrated focus among outdoor, indoor, and mobile sources
- Ensure consistent, regular and open communication about issues and strategy both internally and externally
- Use readily available assessment information and analysis to guide action
- Promote voluntary action as an integral and effective component of a comprehensive toxics strategy
- Encourage sustainability

CLEAN SCHOOL BUS PROGRAM

Question 2. How will communities participate in the Clean School Bus Program?

Response. Communities can participate in the Clean School Bus USA program in a variety of ways. Local governments and school districts in the community can compete for Clean School Bus USA grant funds to replace or retrofit their diesel school bus fleets. With the fiscal year 2005 President's Budget request of $65 million for this program, the number of communities participating in the program will be greatly expanded.

In addition, EPA has established an extensive outreach program to help communities find the information and resources to get involved. One step communities can take is to establish and implement an idling reduction program in their local school districts. There is an immediate benefit to the community of reduced diesel emissions and exposure, plus fuel savings and less wear-and-tear on engines. Idling reduction programs are being implemented across the country and have the full support of Clean School Bus USA's stakeholders, including diesel engine manufacturers. Communities can also adopt a variety of other immediately available, no-or low-cost operating practices that reduce diesel emissions and exposure.

Clean School Bus USA is an excellent way for communities to come together around the issue of reducing diesel emissions in general. Strong leadership and partnerships at the local level are critical factors to the success of school bus retrofit and replacement. Leaders bring enthusiasm and dedication necessary to sustain momentum. Local partners help leverage financial and other resources and can help with technical support. For example, the Cleveland community has integrated its air toxics reduction and clean school bus efforts. The local efforts helped convince the State of Ohio to apply enforcement settlements to fund school bus retrofits. In Maine and North Carolina, State and local air agencies have contracted directly

with retrofit technology companies on behalf of many school districts to increase efficiency and reduce costs of the retrofit equipment.

Question 3. How will EPA distinguish between the many communities that are reportedly in need of assistance from this program?

Response. EPA is still developing implementation plans for the $65 million Clean School Bus USA grants program proposed in the President's budget request. However, we anticipate applying criteria similar to those we used in our fiscal year 2003 and fiscal year 2004 grant programs to prioritize funding decisions and distinguish among the many communities wishing to access this assistance.

The evaluation criteria for fiscal year 2003 and fiscal year 2004 Clean School Bus USA grant decisions involved factors such as: the applicant's implementation plan; partnerships; ability to participate financially by leveraging local and private resources; technology diversity; geographic equity; ridership statistics; pollution reduction policy support; project sustainability beyond the grant funding period; and the environmental justice impact. In fiscal year 2005, these factors as well as the air quality status of the community will be considered. These selection factors allow us to maximize the health and environmental benefits.

It should be noted that Clean School Bus USA is a program designed to assist every community in the United States. EPA has implemented a far-reaching outreach strategy that provides free technical assistance, informational materials, and access to a variety of other resources so that all communities are able to benefit from the program on some level.

GREAT LAKES LEGACY PROGRAM

Question 4. How will the Great Lakes Legacy Program's $45 million be spent and what kind of progress do you expect this will make in addressing the contaminated sediment problems in the Great Lakes, including Ohio's four Areas of Concern (Maumee, Black, Cuyahoga, and Ashtabula Rivers)?

Response. The Program's $45 million will be spent on projects in sites selected in accordance with the provisions of the Legacy Act giving top priority to projects geared to on-the-ground remediation of contaminated sediments, particularly projects that would commence remediation no later than a year after receipt of funds. The next priority will be projects that seek to move a contaminated sediment site toward remediation such as: site characterizations, site assessments, source identification/source control, monitoring, remedial alternatives evaluations and short-term/long-term effects analyses, primarily on cleanup projects. Through March, 2004, 14 projects had been submitted pursuant to a Request for Projects from the Great Lakes National Program Office (GLNPO) for fiscal year 2004 funding. Twelve of these requests were for remediation, including an Ohio project proposed by the Ashtabula Port Authority, and two projects for monitoring and for source control. We expect that the selected Legacy Act projects will substantially advance contaminated sediment cleanup at sites in Great Lakes Areas of Concern, especially since most of these projects are for actual remediation. With the President's request of $45 million, we expect to fund approximately four to six projects in fiscal year 2005.

Question 5. This past summer, the General Accounting Office (GAO) released a report which stated that restoration is being hindered because there is little coordination and no unified strategy for Great Lakes environmental activities. How is EPA addressing these issues?

Response. In order to improve upon the delivery of Federal programs addressing the Great Lakes, President Bush issued an Executive Order on May 18, 2004. The Executive Order created a cabinet level Great Lakes Interagency Task Force chaired by the EPA Administrator and reporting to the President. Through the Executive Order, the Federal Government will partner with the Great Lakes States, tribal and local governments, communities, and other interests to establish aµregional collaboration to address nationally significant environmental and natural resource issues involving the Great Lakes.µ The Task Force will help executive departments and agencies of the Federal Government ensure that their programs are funding effective, coordinated, and environmentally sound activities in the GreatµLakes system. The Executive Order also creates the Great Lakes Regional Working Group to establish a mechanism for the Task Force to coordinate programs and identify priorities in concert with the eight Great Lakes States through communications with the Council of Great Lakes Governors, and with various local jurisdictions around the basin, through communications with the Great Lakes Cities Initiative.

We believe that the Task Force can buildupon the common goals and objectives and shared understanding of the environmental problems which were established by "Great Lakes Strategy 2002", and can enhance environmental protection through in-

creased visibility and collaboration, especially with local jurisdictions. After over 2 years of collaborative work with the U.S. Policy Committee, the Great Lakes Strategy 2002 was released in April 2002. The U.S. Policy Committee is comprised of senior level Federal, State, and Tribal agencies. Stakeholder input was provided through public meetings across the basin in Duluth, Detroit, Chicago, and Niagara Falls, and via over 2,000 comments from the public. The Strategy includes measurable, time phased objectives and over 120 supporting key actions that need to be carried out by the various partners, including 13 Federal agencies, eight Great Lakes States, and tribal authorities. We are now in the process of implementing the Strategy and tracking progress.

HUMAN CAPITAL

Question 6. How is the EPA on the issue of human capital?

Response. EPA has a strong tradition of supporting the people of the Agency (our "human capital") to insure we have the capability to fulfill our very challenging mission. With the release of the President's Management Agenda (PMA) and its strong emphasis on the strategic management of human capital, EPA took a fresh look at its human capital approach. Over the past couple of years, the Agency has conformed its human capital strategy to reflect the success criteria developed by the General Accounting Office, the Office of Personnel Management, and the Office of Management and Budget. As a result of EPA's dedication to human capital, the Agency has received "green" in 6 out of 7 quarterly PMA status reviews with OPM and OMB. Just this quarter, EPA's overall status in Human Capital was elevated from "Red" to "Yellow," one quarter ahead of our planned schedule.

Question 7. What percent of your workforce is eligible and expected to retire in the short term?

Response. Over 27 percent of the EPA's workforce will be eligible for retirement by 2007. Approximately 54 percent of the Agency's SES will be eligible for retirement by 2007.

In terms of expected retirements, there is general Federal-wide data suggesting that employees typically retire about 3 years after they become eligible (cite OPM). Whether employees eligible for voluntary retirement actually retire depends on circumstances such as the state of the economy, the number of children they have in college, second career opportunities, etc.

Question 8. Will there be shortages in any particular job category, such as scientists? Is the workforce at EPA appropriate for the mission of the Agency?

Response. Almost 26 percent of EPA's employees in the scientific/technical and information technology job categories will be eligible to retire by 2007.

Through the Agency's Strategic Workforce Planning effort, currently in progress, EPA will determine the magnitude of shortages in these job categories and will develop strategies for ensuring that EPA has the right skills in place to accomplish its mission.

Question 9. Considering the reduction in funding for "Environmental Programs and Management," does the budget reflect your needs in this area?

Response. The President's Budget fully funds our staffing needs. EPA expects to maintain current FTE levels through 2005.

RESPONSES BY MICHAEL O. LEAVITT TO ADDITIONAL QUESTIONS FROM SENATOR WYDEN

8-HOUR OZONE STANDARD

Question 1. Last year, EPA issued proposed regulations proposing to implement a new 8-hour standard for ozone with the intended repeal of the current 1-hour standard. I applaud your efforts to protect the health of American citizens with the new standard. I am, however, concerned about the potential affect that this new standard will have in Portland, Oregon where they have aggressively pursued measures to reduce vehicle, industry and area sources of emissions resulting in attainment of the 1-hour ozone standard in 1995. As I understand it, the Portland-Vancouver airshed is expected to be classified as an "Attainment" area under the new 8-hour standard and as a result will face a reduction of Congestion Mitigation Air Quality funds (CMAQ).

In actuality, the State and local governments must continue to implement measures to maintain compliance with the standard, including Transportation Control Measures (TCMs), to avoid backsliding into non-attainment. As such it seems wrong to reduce CMAQ funds to former ozone nonattainment or maintenance areas under

the 1-hour standard while other areas designated as "Maintenance" under the 8-hour standard won't face this loss of CMAQ funds. Can you work with my office to find an approach to avoid this reduction of CMAQ funds with this change in designation from "Maintenance" to "Attainment?"

As I understand it, the EPA proposed rule to implement the new 8-hour standard calls for these areas being redesignated from "Maintenance" under the old 1-hour standard to "Attainment" under the new 8-hour standard to submit a Maintenance Plan under Section 110(a)(1) of the Clean Air Act. The Portland region supports the requirement to develop plans that ensure there is no backsliding that puts the health of their citizens in danger.

If areas like the Portland-Vancouver region have the obligation to submit a Maintenance Plan under Section 110(a)(1), is this sufficient to retain their allocation of CMAQ funds based upon being a "Maintenance" area for ozone?

On September 5, 2003, the Oregon Department of Environmental Quality submitted comments to EPA Docket OAR 2003–0079 relating to the proposed regulatory text for the 8-hour ozone standard. In those comments, they recommended that EPA allow a local option to submit a streamlined Maintenance Plan under Section 110(a)(1) or a more rigorous Maintenance Plan under Section 175 A of the Clean Air Act. I understand that this more rigorous Maintenance

Plan could require that the area establish an emission budget for vehicle emissions and a periodic conformity determination to ensure transportation plans and programs are implementing TCMs and are consistent with adopted vehicle emissions budgets. If this local option were provided, would that be sufficient to retain their allocation of CMAQ funds on the basis of being a "Maintenance" area for ozone?

Response. To fully address your questions regarding Congestion Mitigation and Air Quality Improvement (CMAQ) program funding and the impact of an "attainment" designation for the Portland-Vancouver region under the 8-hour ozone standard, a number of issues require explanation. The following response addresses each of these issues in order to provide a comprehensive answer to your questions.

Actions taken by EPA to implement the 8-Hour Ozone Standard

On April 15, 2004, the EPA is designated and classified geographic areas under the 8-hour ozone standard. At the same time, we also promulgated the air quality planning and emission control requirements for such areas. Concurrently, EPA will revoke the 1-hour ozone standard effective June 15, 2005. Revocation of the 1-hour ozone standard is necessary to prevent duplication of planning and implementation activities in a substantial number of areas that are violating both the 1-hour and the 8-hour standards. Areas are designated under the 8-hour standard as:

a. A non-attainment area under subpart 1 without a specific classification. These areas must implement basic control programs such as New Source Review and transportation conformity. Beyond the most basic requirements, subpart 1 areas have the most flexibility to design their own air pollution control program;

b. A non-attainment area with a classification (marginal—extreme) under subpart 2. In addition to the basic requirements such as New Source Review and transportation conformity, classified areas have a prescribed set of control requirements from the Clean Air Act (CAA) that must be implemented. The set of requirements is commensurate to an area's classification i.e., the higher the classification, the more controls an area is required to implement; and,

c. An attainment area. These areas are required to submit a streamlined maintenance plan for the 8-hour standard under section 110(a)(1) of the CAA by June 2007. Note that no 1-hour nonattainment or maintenance areas are being re-designated from a non-attainment or maintenance area under the 1-hour standard to a maintenance area under the 8-hour standard.

The Effect EPA Actions Will Have on CMAQ Funding Eligibility and Apportionment of Funds to the State

The implementation of the 8-hour ozone standard and the revocation of the 1-hour ozone standard potentially can affect an area's CMAQ program. CMAQ investments have been channeled to areas that face the greatest air quality challenge through a statutory apportionment specified within the Transportation Equity Act for the 21st Century (TEA–21). This formula places greater emphasis on areas with the worst air quality by including increasing factors for classifications marginal through extreme, as well as a base factor for areas re-designated to maintenance. The eligibility to fund transportation projects through the State's apportionment of CMAQ funds is based upon an areas' designation as a non-attainment area or maintenance area. TEA–21 allows that areas designated as non-attainment after December 31, 1997 be eligible for CMAQ program funds. Thus, all areas designated non-attain-

ment under the 8-hour ozone standard are eligible areas in which to expend CMAQ funds. Those areas designated non-attainment without a classification are eligible, but the State apportionment of CMAQ funds does not account for the non-attainment area because the apportionment formula is based on classifications. Those areas designated non-attainment with a classification are eligible and the State apportionment of CMAQ funds accounts for the area in accordance with the TEA–21 CMAQ apportionment formula.

Those areas found to be in attainment of the 8-hour ozone standard, and required to submit an abbreviated maintenance plan to prevent air quality backsliding are not eligible. As noted above in response to your first question, among areas (both non-attainment and maintenance) where the 1-hour standard is being revoked, those areas that are attaining the 8-hour ozone standard will not be re-designated as 8-hour maintenance areas in the traditional sense because they were never non-attainment for the 8-hour standard. On April 15, 2004, such areas were designated as attainment for the 8-hour standard with the only requirement being to adopt and submit a maintenance plan consistent with CAA section 110(a)(1). These abbreviated maintenance plans differ from a re-designation maintenance plan submitted under CAA section 175(A), in that they provide more flexibility on implementation of local control measures and do not require the source permit program under CAA section 173 (New Source Review) or provisions for conformity with transportation plans under CAA section 176. Therefore, those areas found to be in attainment of the 8-hour ozone standard and required to submit an abbreviated maintenance plan to prevent air quality backsliding, are not eligible to receive CMAQ funds.

Options which exist for the Portland-Vancouver area to avoid a reduction of CMAQ funds

It is difficult to determine precisely, or even speculate as to the final effect implementation of the 8-hour ozone standard will have on the availability of CMAQ funds for the Portland-Vancouver area. If EPA redesignates an area to maintenance under Section 175A, including the statutory requirements carried in that section, that county would be factored into the CMAQ apportionment formula. Under the current law the Portland-Vancouver area is not eligible under the 8-hour ozone standard, as they were designated as attainment under such standard, and their maintenance plan will not be as the result of having been redesignated from nonattainment to attainment for the 8-hour standard with subsequent requirements under CAA section 175(A). Oregon will, however, receive the fiscal year 2005 CMAQ apportionment in October 2004, prior to the revocation of the 1-hour ozone standard in June 2005. Given this timing, Oregon's fiscal year 2005 CMAQ apportionment will still reflect the TEA–21 apportionment factor for 1-hour ozone maintenance areas. Under the current CMAQ program, Portland-Vancouver shouldn't be impacted until the fiscal year 2006 apportionments are made in October 2005. It is important to note that EPA does not have the authority to make any changes to the CMAQ program. The authority and criteria for the CMAQ program is provided for in TEA–21 and is administered by the Federal Highway Administration (FHWA) and the Federal Transit Administration. The Department of Transportation (DOT) is discussing options for a limited continuation of CMAQ funding during this transitional period between the two ozone standards.

As you know, reauthorization of TEA–21 is currently taking place in Congress and the impact of the 8-hour ozone standard is being considered. The Administration's proposal for reauthorization addressed these issues and the DOT has been providing technical support to congressional staff in an effort to balance the need for CMAQ funding in 8-hour non-attainment areas and former 1-hour non-attainment and maintenance areas. EPA has worked with DOT to identify the need for CMAQ funds in terms of geographic scope and emission reductions from the transportation sector. We support the use of CMAQ funds for transportation projects that produce substantial emission benefits in areas that must improve air quality. However, given the current law, we must look to Congress to make changes to the CMAQ program to balance the need with available funds.