

**NOMINATIONS OF THE 108TH CONGRESS,
SECOND SESSION**

HEARING

BEFORE THE

**COMMITTEE ON ENVIRONMENT AND
PUBLIC WORKS**

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

**STEPHEN L. JOHNSON, TO BE DEPUTY ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION AGENCY**

**ANN R. KLEE, TO BE GENERAL COUNSEL, ENVIRONMENTAL
PROTECTION AGENCY**

**CHARLES EDWIN JOHNSON, TO BE CHIEF FINANCIAL OFFICER, U.S.
ENVIRONMENTAL PROTECTION AGENCY**

**BENJAMIN H. GRUMBLES, TO BE ASSISTANT ADMINISTRATOR FOR
WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY**

**GARY L. VISSCHER, TO BE A MEMBER OF THE U.S. CHEMICAL SAFETY
AND HAZARD INVESTIGATION BOARD**

—————
MARCH 31, 2004
—————



Printed for the use of the Senate Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE

94-600 PDF

WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED EIGHTH CONGRESS
SECOND SESSION

JAMES M. INHOFE, Oklahoma, *Chairman*

JOHN W. WARNER, Virginia
CHRISTOPHER S. BOND, Missouri
GEORGE V. VOINOVICH, Ohio
MICHAEL D. CRAPO, Idaho
LINCOLN CHAFEE, Rhode Island
JOHN CORNYN, Texas
LISA MURKOWSKI, Alaska
CRAIG THOMAS, Wyoming
WAYNE ALLARD, Colorado

JAMES M. JEFFORDS, Vermont
MAX BAUCUS, Montana
HARRY REID, Nevada
BOB GRAHAM, Florida
JOSEPH I. LIEBERMAN, Connecticut
BARBARA BOXER, California
RON WYDEN, Oregon
THOMAS R. CARPER, Delaware
HILLARY RODHAM CLINTON, New York

ANDREW WHEELER, *Majority Staff Director*
KEN CONNOLLY, *Minority Staff Director*

C O N T E N T S

Page

MARCH 31, 2004

OPENING STATEMENTS

Bennett, Hon. Robert, U.S. Senator from the State of Utah	4
Bond, Hon. Christopher S., U.S. Senator from the State of Missouri	7
Crapo, Hon. Michael D., U.S. Senator from the State of Idaho	8
Inhofe, Hon. James M., U.S. Senator from the State of Oklahoma	1
Jeffords, Hon. James M., U.S. Senator from the State of Vermont	3
Thomas, Hon. Craig, U.S. Senator from the State of Wyoming	5
Wyden, Hon. Ron, U.S. Senator from the State of Oregon	6

WITNESSES

Grumbles, Benjamin H., nominated to be Assistant Administrator for Water, U.S. Environmental Protection Agency	13
Committee questionnaire	85
Prepared statement	84
Responses by Stephen Johnson to additional questions from:	
Senator Inhofe	93
Senator Jeffords	94
Senator Cornyn	107
Senator Lieberman	107
Johnson, Charles Edwin, nominated to be Chief Financial Officer, U.S. Envi- ronmental Protection Agency	11
Committee questionnaire	75
Prepared statement	73
Johnson, Stephen L., nominated to be Deputy Administrator, U.S. Environ- mental Protection Agency	9
Committee questionnaire	33
Prepared statement	31
Responses by Stephen Johnson to additional questions from:	
Senator Clinton	56
Senator Inhofe	51
Senator Jeffords	51
Senator Lieberman	54
Klee, Ann R., nominated to be General Counsel, Environmental Protection Agency	10
Committee questionnaire	59
Prepared statement	56
Responses by Anne R. Klee to additional questions from Senator Jeffords	72
Visscher, Gary L., nominated to be a member of the U.S. Chemical Safety and Hazard Investigation Board	14
Committee questionnaire	114
Prepared statement	112
Letter, U.S. Chemical Safety and Hazard Investigation Board	124

**NOMINATIONS OF THE 108TH CONGRESS,
SECOND SESSION**

WEDNESDAY, MARCH 31, 2004

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

The committee met, pursuant to notice, at 9:30 a.m. in room 406, Senate Dirksen Building, Hon. James M. Inhofe (chairman of the committee) presiding.

Present: Senators Inhofe, Jeffords, Wyden, Thomas, Bond, and Crapo.

Also present: Senator Bennett.

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

Senator INHOFE. The hearing will come to order.

We have a policy of starting on time, and it has just revolutionized things around here. We are delighted to have all of you here. The purpose of today's hearing is to consider the President's nominees for four positions at EPA and one Chemical Safety Board and Hazard Investigation Board.

The committee is quite familiar with some of the nominees here, including one who is a former EPW staffer, Ann Klee. It is nice to have you here. It is nice to know that there is room at the top for these people here.

Stephen Johnson has been nominated as Deputy Administrator for the EPA. He has been the Acting Deputy for several months now. Mr. Johnson is a longtime EPA employee, both in the career role and a political nominee. Three years ago, this committee reported Mr. Johnson's nomination to be the Assistant Administrator for the EPA's Office of Prevention, Pesticides, and Toxic Substances. We are very familiar with Stephen Johnson.

Ann Klee has been nominated by the President to be the General Counsel for EPA. Ann is a very familiar face to us.

She has been around for a long time. We are just delighted to have her here.

Charles Johnson has been nominated to be the Agency's new Chief Financial Officer. We have two Johnsons working here, unrelated, I think. Mr. Johnson comes to us from Utah where he has had a distinguished public and private career. He served as the Chairman of the Utah Board of Regents and is a member of both the Economic Development Corporation of Utah and Utah's Sports Commission. He was Governor Leavitt's Chief of Staff in the mid-

1990's, and most recently has been the President of the Huntsman Cancer Foundation. We welcome you here, Mr. Johnson.

Ben Grumbles has been nominated for the Assistant Administration for the EPA's Office of Water. He is currently the Acting Assistant Administrator of that office. He has been the Deputy of that office and was the acting head of the congressional office at EPA last fall. We have been with each other on the tour of Tar Creek, which is the most devastated superfund site in America. He took his life into his hands by going with us to that place. We have his full commitment to seeing that we get things done.

I also might add that we go way back to the mid-1980's in the House Committee. I spent 8 years, as Senator Jeffords and Senator Wyden did, in the House of Representatives. I was on the Transportation Committee at that time. We got to know each other quite well.

Gary Lee Visscher is before us as the President's nominee to be a member of the U.S. Chemical Safety and Hazard Investigation Board. Mr. Visscher is currently the Deputy Assistant Secretary at the Department of Labor at OSHA, and a longtime staffer on the House side working for Congressman Paul Henry, then as policy counsel on the committee.

We welcome all of you to this nomination hearing.
[The prepared statement of Senator Inhofe follows:]

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

Good morning. The purpose of today's hearing is to consider the President's nominees for four positions at EPA and one for the Chemical Safety Board and Hazard Investigation Board. The committee is quite familiar with some of the nominees here, including one who is a former EPW staffer (Ann Klee). I want to extend a welcome to both you and your families here today.

Steve Johnson has been nominated to be the Deputy Administrator for EPA—He has been the Acting Deputy for several months now. Mr. Johnson is a long-time EPA employee, both in a career role and as a political appointee. Three years ago, this committee reported Mr. Johnson's nomination to be the Assistant Administrator for EPA's Office of Prevention, Pesticides and Toxic Substances. He was confirmed without any opposition. He has strong management experience and a scientific background—both of which should serve him well as Administrator Leavitt's Deputy.

Ann Klee has been nominated by the President to be the General Counsel for EPA. Ann is a very familiar face to this committee having been Chief Counsel to the full committee for both Chairmen Chafee and Smith and prior to that serving as Senator Kempthorne's Environment Counsel for EPW. She was a very well respected and well liked member of the EPW family. We lost her 3 years ago when she left to become Counselor and Special Assistant to the Secretary of Interior. She has a strong legal background both in the public and private sectors. I am pleased to welcome her back to the committee today.

Charles Johnson has been nominated to be the Agency's new Chief Financial Officer. Mr. Johnson comes to us from Utah where he has had a distinguished public and private career. He has served as the Chairman of the Utah Board of Regents, and as a member of both the Economic Development Corporation of Utah and the Utah Sports Commission. He was Governor Leavitt's Chief of Staff in the mid-90's and most recently has been the President of the Huntsman Cancer Foundation. Mr. Johnson spent the first 30 years of his professional life in the accounting industry, a very good background to have for a CFO.

Ben Grumbles has been nominated to be the Assistant Administrator for EPA's Office of Water. He is currently the Acting Assistant Administrator of that Office. He has been the Deputy of that office and was the acting head of the congressional office at EPA last fall. Ben has had the pleasure of accompanying me on a tour of Tar Creek—when he joined Administrator Leavitt and myself in northeast Oklahoma last Fall. Prior to EPA, Mr. Grumbles was counsel on the House Transportation and Infrastructure Committee.

Gary Lee Visscher is before us as the President's nominee to be a Member of the U.S. Chemical Safety and Hazard Investigation Board. Mr. Visscher is currently the Deputy Assistant Secretary in the Department of Labor at OSHA. Mr. Visscher was a long-time staffer on the House side working for Congressman Paul Henry and then as a Policy Counsel on the Committee on Education and Workforce.

Again, I welcome you here today and thank you for your willingness to serve.

Senator INHOFE. Senator Jeffords.

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

Senator JEFFORDS. Thank you, Mr. Chairman. Good morning, and thank you for all for being here today and for your willingness to serve our Nation in these very important position at this important time in our history.

The Chemical Safety and Hazard Investigation Board's mission of promoting chemical safety has always been an important one. But in the wake of September 11th, we are looking at our homeland safety and security with heightened scrutiny. The responsibility of the Chemical Safety Board members are challenging. I look forward to hearing from you, Mr. Visscher, and how you plan to meet these challenges.

The Environmental Protection Agency has an even broader mission of protecting the environment. As each of you are looking toward assuming these new challenges, I want you to know that there is a major challenge that I have been faced with in dealing with your Agency, and that challenge is access to information. It is our duty to inquire from time-to-time about the Agency's conduct of its mission, the Agency's expenditures of funds and the Agency's implementation of statutes in his purview, including the development of regulations under those statutes.

I have never been encountered with such bizarre reasons for withholding information from Congress as I have encountered with this Administration. You may know that I requested information on Clean Air Act regulations back in 2001 when I was chair of the committee. After numerous discussions about the request, which included promises to provide some of the information, the Agency suddenly sent a letter to me in 2003 claiming that I could not have the information because I was no longer the committee chair.

This is what I mean by bizarre. A delay of over 2 years, and then a novel and baseless assertion that my party's status is the determining factor as to whether I may obtain information from the committee for my constituents.

Again, I want to thank Chairman Inhofe for joining me in writing to Administrator Leavitt to express our commonly held position that the Agency is obligated to respond to the requests from the Chair and Ranking Member, but despite a promise from Administrator Leavitt during the EPA budget hearing in early March, we have had no response from the Agency to either this letter or the outstanding request. This is an affront to every member on this committee.

It is my hope that each of you will help this Senator and the committee to fulfill our obligations to the American people for complete information regarding the health and safety of our environment.

I look forward to working with you as we go forward into an important part of our history in these important areas.

Thank you, Mr. Chairman.

[The prepared statement of Senator Jeffords follows:]

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

Good morning, and thank you all for being here today and for your willingness to serve our country in these important positions.

The Chemical Safety and Hazard Investigation Board's mission of promoting chemical safety has always been an important one, but in the wake of September 11th, we are looking at our homeland safety and security with heightened scrutiny. The responsibilities of the Chemical Safety Board members are challenging and I look forward to hearing from you, Mr. Visscher, on how you plan to meet those challenges.

The Environmental Protection Agency has an even broader mission—protecting the environment. As each of you are looking toward assuming these new challenges, I want you to know that there is a major challenge that I have been faced with in dealing with your agency, and that challenge is access to information.

It is our duty to inquire from time-to-time about the Agency's conduct of its mission, the Agency's expenditure of funds, and the Agency's implementation of statutes in its purview, including the development of regulations under those statutes. I have never before encountered such bizarre reasons for withholding information from Congress as I have encountered from this Administration.

You may know that I requested information on Clean Air Act regulations back in 2001 when I was Chair of this committee. After numerous discussions about this request which included promises to provide some of the information, the Agency suddenly sent a letter to me in 2003 claiming that I could not have the information because I was no longer a committee Chair. This is what I mean by bizarre a delay for over 2 years, and then a novel and baseless assertion that my party status is the determining factor as to whether I may obtain information for this committee and for my constituents.

Again, I want to thank Chairman Inhofe for joining me in writing to Administrator Leavitt to express our commonly held position that the Agency is obligated to respond to requests from each the chair and the ranking member. But despite a promise from Administrator Leavitt during our EPA budget hearing in early March, we have heard no response from the Agency to either this letter or the outstanding requests. This is an affront to every member on this committee.

It is my hope that each of you will help this Senator and this committee fulfill our obligations to the American people for complete information regarding the health and safety of our environment.

I look forward to hearing from you this morning.

Senator INHOFE. Thank you, Senator Jeffords.

I know that Senator Bennett is here and wanted to introduce Charles Johnson; is that correct, Senator Bennett?

Senator BENNETT. Yes.

Senator INHOFE. I do not know if there will be other opening statements. If so, we are going to confine them to 3 minutes apiece. Would you rather wait for that?

Senator BENNETT. I am obviously at your mercy.

Senator INHOFE. That is not what I asked you.

[Laughter.]

Senator INHOFE. Besides that, we know better.

Go ahead and introduce him right now.

STATEMENT OF HON. ROBERT BENNETT, U.S. SENATOR FROM
THE STATE OF UTAH

Senator BENNETT. Mr. Chairman, I appreciate your courtesy and that of the committee in allowing me to intrude in this fashion. You have Charlie Johnson's biography before you. I will not read through it again and tell you all of the things that he has done.

I sat here at this table when Governor Leavitt was nominated to be the Administrator of EPA and described what an excellent Administrator he was and what a superb Governor he had been. One of the reasons he was so successful as Governor is because Charlie Johnson was his Chief of Staff. He brings a calmness, a sense of maturity, a sense of stability, and an aura of "We can get this done. Do not panic, I will take care of it. Yes, we can work this through." He brings that kind of aura to his position.

He left Governor Leavitt to go to work for the Huntsman Foundation which is one of the leading philanthropic organizations in the State of Utah, took that same kind of calm, professional, "We can get it done," ability with him into that position.

I believe Charlie thought that he was out of the maelstrom of political activity and into the somewhat more tranquil waters of philanthropy and good works when Governor Leavitt decided that he desperately needed Charlie's ability and expertise back here in Washington. Charlie has answered the call and has given up the tranquility of that kind of life to be thrown into life here in Washington again to give the kind of stability and wisdom that I think any Administrator of EPA would be delighted to have at his elbow.

I want to share that with the committee to let you know that this is not just a very competent man with a strong resume and great abilities. He brings a particular flavor to public service that I am sure that Governor Leavitt, now Administrator Leavitt, will very much appreciate, and that the country will benefit from.

I give this committee my highest personal recommendation to Charlie's nomination and ask you to give it every possible consideration in terms of both time, as well as support in getting it through in an expeditious way as possible.

Senator INHOFE. Thank you very much for that excellent introduction, Senator Bennett. You may be excused if you would like to be.

Senator BENNETT. I will relinquish my seat.

Senator JEFFORDS. May I just say that I really appreciate the comments that you have given me, and as my seat-mate for many years, I have come to know you and admire all you have done. I now look forward with great enthusiasm to Mr. Johnson being in that office.

Senator BENNETT. Thank you, Senator Jeffords. I appreciate that tremendously.

Senator INHOFE. Thank you very much, Senator Bennett.

I am not encouraging opening statements, but if anyone would like to have an opening statement, confine it to 4 minutes, if you would. Proper order would be Senator Thomas.

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

Senator THOMAS. Thank you, Mr. Chairman. I can beat the 4 minutes.

I appreciate all of you being here and what you are willing to do. I have just a couple of general comments.

One, we need to find ways to make this system work more quickly and work better, not necessarily to change the rules, but to be

able to accomplish it in less time. I hear that constantly in Wyoming.

We need local input in these decisions, as we do in any other Federal Government decisions because that is very important. I think one of the other things that we find often happens is BLM will make their study and complete their study, and then suddenly EPA has to do it over again. They ought to be done simultaneously so that when it is over and there is a decision, all the agencies ought to be prepared to let that go forward.

Finally, I hope that we do not move into the area of managing based on threats and lawsuits. Lawsuits are going to be there, but that should not affect the decisions we make.

As a matter of fact, we have a bill in now that is going to have something to do with venue shopping. Maybe these lawsuits can be in the venue where the problem exists. We hope that can happen.

Thank you, Mr. Chairman.

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.

Mr. Chairman and colleagues, I do not think there are many tasks around here that are more important than our ability to do bipartisan, responsible oversight of programs that we have enacted that we have passed into law.

I regret to say, and it touches on what Senator Jeffords has talked about, I think the Administration has shut down the capacity to do responsible, bipartisan oversight over the programs at the Environmental Protection Agency. For several years, the Agency has claimed that it can ignore requests for information from Senators on the committee unless the information is requested by the Chairman. Basically it is as if every request has to be made under the Freedom of Information Act.

I cannot find any precedent for this position. I cannot find any basis in law for the Agency's position. In fact, legislative history makes clear that the Freedom of Information Act was never intended to justify withholding information from Congress. Controlling Court decisions have ruled that all Members of Congress have constitutionally recognized rights to seek information from executive branch agencies.

I think we are in a very unfortunate position this morning. We have five nominees. They are all, as far as I can tell, very decent people. They have loving families.

They are anxious to be able to go on with their business.

But I cannot support the nominees that are here today until we work this out on a bipartisan basis. I am interested in working with my friend of almost 20 years, Chairman Inhofe, to get this resolved. Congress cannot do oversight here.

That is just a fact. We have to get to the bottom of this.

We have to find out what the precedent is. I do not believe there is any. I certainly have not seen anything like this in my time in serving in both the other body and in this body.

I regret to say that I cannot support the nominees that are before us today until we resolve this issue which I believe for all practical purposes has shut down the capacity of this committee to do bipartisan oversight of Government programs. My constituents do not want us to pass new laws and new programs. They want us to take out a sharp pencil and make the programs that are on the books work. We cannot make programs work if, in effect, we are getting stonewalled constantly in our requests for information and basically are in a position of not getting unless anything unless you file a Freedom of Information Act request.

I want to repeat again, Mr. Chairman, my desire to work with you so that on a bipartisan basis we get this solved. I asked Ms. Klee yesterday, who I know to be a very capable person, whether given her history with Senator Chafee, for example, whether there was any precedent for this. I cannot find any. I think we have to address this issue. It cannot be allowed to linger any longer.

I thank you for the opportunity to speak.

Senator INHOFE. Thank you, Senator Wyden. I am sure you will get any information that you desire that is appropriate.

We will be working together on that.

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 appreciate your holding the hearing. The President's nominees for the EPA's Deputy Administrator, General Counsel, Chief Financial Officer, and Assistant Administrator for Water, and a member of the Chemical Safety Board, I think is a fine slate of nominees. One is a career employee of the EPA since 1979. Two have devoted their entire career to environmental protection and water quality, and two others have extensive backgrounds that will assure their success in their new positions.

I have had the pleasure of working with several of them, talking about the need for water infrastructure, talking about the whole range of EPA programs, and knowing that one had the experience on this committee of shepherding through what would have been a very productive improvement in the Endangered Species Act, perhaps she can give us some guidance on getting that long overdue and badly needed job done.

I think the best thing we can do for the environment is to get these EPA nominees confirmed. The Agency needs the leadership they can provide and any delay in confirming these will only hurt the environment.

So I hope my colleagues will join with us to approve the nominations without delay and remove any roadblocks that may be place and vote to confirm the nominations at the earliest possible time.

I thank you, Mr. Chairman.

[The prepared statement of Senator Bond follows:]

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

Thank you, Mr. Chairman, for holding this hearing to review the President's nominees for EPA's Deputy Administrator, General Counsel, Chief Financial Officer, Assistant Administrator for Water, and Member of the Chemical Safety Board.

This is a fine slate of nominees. One is a career EPA employee since 1979. Two have devoted their entire career to environmental protection and water quality. Two other have extensive backgrounds that will ensure their success in their new positions.

The best thing we can do for the environment is get these nominees confirmed. EPA needs the leadership it deserves. The environment deserves a fully staffed and aggressive EPA. Any delay in confirming these nominees will only hurt the environment.

So, I urge my colleagues to approve these nominations without delay, remove any roadblocks which they may have in place, and vote to confirm these nominations at the earliest point possible. Thank you.

Senator INHOFE. Senator Crapo.

**OPENING STATEMENT OF HON. MICHAEL D. CRAPO, U.S.
SENATOR FROM THE STATE OF IDAHO**

Senator CRAPO. Thank you very much, Mr. Chairman. I will be brief.

I think we have a very strong and capable group of nominees before us today. I have met with them. They are very capable of doing the job that the President has asked them to do. I believe it is important for us to move ahead expeditiously with their nominations and with the confirmation.

I look forward to the hearing today. Thank you.

Senator INHOFE. Thank you, Senator Crapo.

First of all, I know there are families here. Mr. Johnson, I think your grandson has already gone, but if any of you at this point would like to introduce your families, you are certainly welcome to do that.

Mr. STEPHEN JOHNSON. Thank you, Mr. Chairman.

I would like to introduce a number of members of my family who were able to be here today. My mother-in-law and father-in-law, John and June Jones; a close family friend for many years, Zona Chapman; my father, Bill Johnson; my wife, Debbie; our son, Matthew; our daughter Carrie; our son-in-law, Jeremy Jenkins; and, as you noted, Mr. Chairman, the most important person in our entire family, our one and only grandchild, our grandson, Carter Paxton Jenkins.

Senator INHOFE. Good. Thank you very much.

Ann.

Ms. KLEE. Thank you, Mr. Chairman.

Compared with Mr. Johnson, I feel like I have a very small family. I have brought my husband, John Macleod, with me.

Senator INHOFE. Good.

Mr. Charles Johnson.

Mr. CHARLES JOHNSON. Mr. Chairman, I have my wife, Susanna Johnson. She is my biggest cheerleader, and I am delighted to have her with me today.

Senator INHOFE. Thank you very much. It is nice to have her here.

Mr. Grumbles.

Mr. GRUMBLES. Mr. Chairman, my wife, Karen Grumbles, is here as well.

Senator INHOFE. All right, good.

Mr. Visscher.

Mr. VISSCHER. Mr. Chairman, my family was not able to be here.

Senator INHOFE. I see. All right. That is fine.

Let us go ahead and start with opening statements. We would ask you to try to confine them to 5 minutes. Your entire statement will be made a part of the record.

We will start with you, Mr. Johnson.

STATEMENT OF STEPHEN L. JOHNSON, NOMINATED TO BE DEPUTY ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. STEPHEN JOHNSON. Thank you, Mr. Chairman.

It is certainly an honor and a privilege to be here today. I enjoyed the opportunity to meet with many of you over the past number of weeks.

As I introduced my family members, it is always exciting for all of us and certainly for them to enjoy with me the honor and privilege of being able to be here today.

I want to make a special note of my father who spent over 30 years of public service to the Department of Navy. At the time I did not realize, but he was instilling in me an important legacy of the importance and the significance of public service in which I am eternally grateful. I find myself sitting here, a capstone of my career and our family's commitment to public service.

These are indeed exciting times at EPA. We are thrilled to have Administrator Leavitt. We are all excited to work with him as we deal with the challenges of the Environmental Protection Agency. As he joined the Agency, he identified four cornerstones toward a better way of improving environmental protection—that of collaboration, harnessing technology, market incentives, and focusing on results.

Those cornerstones are all ones that through my experience through the years, and certainly my own philosophy, that I highly support.

I believe that by using those cornerstones we can increase the velocity of environmental progress, while maintaining our economic competitiveness, an important feature.

Having spent 20-plus years both in industry and government, I think that my experiences make me well suited for this particular position. My operating philosophy, along with these cornerstones, includes the importance of sound science, the importance of communication and involvement of all stakeholders in our process, the importance of building and maintaining relationships, and looking at our work force, making sure that we have a strong, professional, and diverse work force at EPA.

Throughout my career and as the Assistant Administration of the Office of Prevention, Pesticides, and Toxics, I certainly worked hard to do all of those things. I certainly look forward to working with you, Mr. Chairman, and members of the committee on a bipartisan basis to advance the mission of protecting the environment on behalf of the American people.

Thank you, Mr. Chairman. I would ask that my full statement be placed in the record in its entirety.

Senator INHOFE. Without objection, so ordered.

Thank you, Mr. Johnson.

Ms. Klee.

**STATEMENT OF ANN R. KLEE, NOMINATED TO BE GENERAL
COUNSEL, ENVIRONMENTAL PROTECTION AGENCY**

Ms. KLEE. Thank you, Mr. Chairman, Senator Jeffords, and members of the committee. I want to thank you for providing me the opportunity to appear before you today. It is a tremendous honor for me to be here as the President's nominee for General Counsel of the Environmental Protection Agency.

On a personal note, it is a great pleasure to be back at Counsel table.

I know that I will face a daunting set of challenges should I be confirmed by the Senate. EPA deals with any number of very complex and contentious policy, legal, and practical issues every day. The Office of General Counsel plays a critical role in fulfilling the Agency's mission of protecting human health and safeguarding the environment by ensuring that its environmental policies and programs are supported by the law and are fully and fairly implemented.

That is an awesome responsibility, and one that I would take very seriously.

I am looking forward to joining Administrator Leavitt and his team as he leads the Agency in exciting new directions, using technology, markets and collaborations to get better environmental progress done more quickly.

I believe that my experience over the past 18 years as an environmental lawyer in private practice, as a staffer on the Hill, and most recently in the Administration at the Department of Interior, will allow me to provide Administrator Leavitt and the program offices with sound, unbiased, legal analysis to achieve the Agency's mission. Throughout my career I have strived to think independently, respect the rule of law, act in accordance with the highest ethical standards, and use sound judgment and common sense.

I have represented companies; I have sued polluters; and I have negotiated complex settlements with multiple parties.

I know from this experience that the issues that we are dealing with today, and that this committee is dealing with, are complex. They have nuances. They are not black and white. It pays to listen to and respect those who have differing views.

Let me give you a couple of examples. My experience on the Hill underscored for me the importance of collaboration and seeking consensus-based solutions. I was lucky enough to work on the Safe Drinking Water Act Amendments while I was staffing Senator Kempthorne and had an opportunity to work with many of the staff who are here in the room today.

That bill was passed by the Senate in 1995 by a vote of 99-0, and signed into law a year later by President Clinton.

That law improved public health; it reduced unnecessary costs; it encouraged voluntary measures to prevent contamination of drinking water supplies; and it incorporated, for the first time, benefit cost principles. It was innovative and it addressed real problems. To my mind, that law demonstrated that dialog, partnerships, and innovative thinking are really the path to better environmental protection.

If I am confirmed, I would hope to continue a collaborative relationship with the committee and its staff as we work through the challenging legal issues that we face today.

For the past 3 years, I have had the great pleasure of serving at the Department of the Interior as Counselor to Secretary Gale Norton. I saw every day how collaboration and partnerships can achieve real results on the ground. I was lucky enough to lead the Department's Everglades Team, a team to restore the Florida Everglades, and I am particularly proud of what we were able to accomplish in just the past 3 years by working with the State and local governments, environmental organizations, and the private sectors.

As a result, we now have a legal framework in which to implement individual restoration projects, we acquired and preserved thousands of acres of Everglades habitat; and we began construction this past year on the first Everglades Restoration Project.

I use these examples from my previous lives because I think they illustrate how I approach environmental issues. I think that is important for you to understand. I believe strongly in the framework of our environmental laws and in their enforcement. At the same time, though, I really believe that we should always look for opportunities to do better, to go beyond what the law requires.

My experience has always been that communities, businesses, and individuals, if given the chance and a little bit of encouragement, will step up to the plate and come up with a better way of protecting the environment. My job as a lawyer is to help make that happen.

Finally, I would like to acknowledge that I know that if I am confirmed I will not be alone in helping advance the Agency's mission within the Office of General Counsel. I have only been at EPA a week, but I have already seen that I will be surrounded by dedicated, talented, and creative lawyers in the office. I look forward to having the opportunity to working with them, as well as the rest of the members of Administrator Leavitt's team.

Thank you, Mr. Chairman, and members of the committee. I would be happy to answer any questions. I would ask that my full statement be placed in the record in its entirety.

Senator INHOFE. Without objection, so ordered.

Thank you, Ms. Klee.

Mr. Charles Johnson.

STATEMENT OF CHARLES EDWIN JOHNSON, NOMINATED TO BE CHIEF FINANCIAL OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. CHARLES JOHNSON. Thank you, Mr. Chairman, Senator Jeffords, and members of the committee. I am delighted to have this privilege. Let me publicly thank Senator Bennett first, for appearing on my behalf, and thank each of you for allowing me to appear here today.

I consider this a rare privilege, and if the nomination continues as set forth by President Bush, it will be a real pleasure for me to again join Michael Leavitt, the present Administrator, in this position. I am in your hands, and I understand that.

Let me also thank you and your staff. I have had meetings with each of you, and I have been treated very well.

I want you to know that I will reciprocate that if, indeed, my nomination goes forward and I am confirmed.

The Office of the Chief Financial Officer is a very fundamental office for the success of the Agency. This is all about trust. It is about respect. It is about fairness. It is about planning. I consider the office to be an office that is essential for future planning that will aid management in any plans that this Agency will set forth.

I have had 31 years in the practice of public accounting.

I served as a member of the Board of Directors of one of the largest CPA firms in the world. I think I have demonstrated my financial capabilities and also my leadership capabilities.

I joined the State of Utah as the Director of the Office of Planning and Budget, and then subsequently as Mike Leavitt's Chief of Staff. I have great respect for the role of government and its functionings in our world.

I have learned much from these past experiences. I think I have developed my financial skills and leadership abilities from my work in public accounting. From my time in government, I have learned that you have to be up-front, you have to provide the information that you are asked for, and you have to be transparent in your dealings.

From my service as chair of the Board of Regents in Utah, I have learned that you must continually put money into projects and into research and guard against excessive administrative costs. From my day-to-day dealing with citizens, I have learned that taxpayers will allow us to use their funds only if they believe that we are doing it to promote the common good and to help citizens. We are all taxpayers. We all recognize our accountability to taxpayers.

So the past has been an excellent preparation for appearing before you today. That being said, I know that the broad array of financial issues confronting EPA are more than just complicated financial questions. They are the fundamental questions about the stewardship of our air, our land, and our water. I believe that our fiduciary responsibility and that stewardship link hand-in-hand. I intend to continue to make sure that we link them.

It is clear to me from my short period of time with EPA that we have some very large and complex financial issues. It is also clear to me that these issues will not be solved by EPA alone, but it will take the collaboration of the Administration, the collaboration of Congress, and the collaboration of EPA to solve these very large financial issues. I want to serve the President, to serve the Administrator, and to serve the American people in a collaborative role. I want to work with you and your staffs in that collaboration.

I would also like to say what a pleasure it will be to serve with the men and women that I have met at EPA. They are remarkable. It has truly been an amazing experience to meet the people. They are hard working. They are dedicated. They are passionate. This is a group of people that I want to spend some time with. I am grateful for this opportunity.

In the grand scheme of things this is just a very small moment in time. But, Mr. Chairman, I have spent a lifetime building trust, confidence, and respect just for moments like this. I want you to know that if I am fortunate enough to have this nomination go for-

ward, and if I am confirmed, I look forward to serving the people of the United States.

I again thank you and the members of this committee for this opportunity. I will be happy to answer questions. I would ask that my full statement be placed in the record in its entirety.

Senator INHOFE. Without objection, so ordered.

Thank you, Mr. Johnson.

Mr. Grumbles.

STATEMENT OF BENJAMIN H. GRUMBLES, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. GRUMBLES. Thank you, Mr. Chairman. As a former committee staffer, I learned early on the wisdom of submitting full and complete statements for the record. I will briefly summarize the major points.

The most obvious point is how honored and privileged I am to be able to appear before you Chairman Inhofe, Senator Jeffords, and distinguished members of the committee to describe who I am and talk about the priorities, the opportunities, and the challenges in serving as Assistant Administrator for the Office of Water.

As you noted, I have a background that begins working on Capitol Hill in water and infrastructure, working on a bipartisan basis, forging together sustainable solutions—Clean Water Act, the Safe Drinking Water Act, and the Water Resources Development Act—all with the goal of protecting the Nation's waters, providing for infrastructure and jobs, and doing so in a way that protects the competitiveness of this country and also meets the fundamental objective and desire to keep America's waters clean, safe, and secure.

I joined EPA in February 2002, and what an honor and education that has been so far. I joined as the Deputy Assistant Administrator for the Office of Water. I have been working in that capacity. I did have the opportunity to step in for 4 months and serve as the Acting Associate Administrator for the Congressional Affairs Office, which has also been a great experience. Now I am Acting Assistant Administrator in the Office of Water.

Mr. Chairman, and Senator Jeffords, you all know full well of the great progress that has occurred on the waterfront, so to speak, in this country over the last 30 years, and you also know full well the many challenges that remain. We all know that many of them relate to not so much the low-hanging fruit, but the more complex issues associated with non-point source pollution associated with wet weather flows. There is also the objective of providing regulations under the Safe Drinking Act that protect human health, yet are also affordable and achievable.

I look forward to carrying out Administrator Leavitt's vision in his 500-Day Plan which focuses on increased monitoring for water, ensuring no net loss of wetlands, and restoring impaired watersheds and coastal waters. One area of particular emphasis for me with respect to conservation is water conservation. I know full well that EPA does not have the statutory authority, nor does it seek that authority, to regulate water quantity issues.

But what I am talking about is the ability to provide voluntary information and leadership to give the tools to help encourage

water use efficiency and water conservation to help reduce the infrastructure funding gap when it comes to water and waste water facilities. One of the areas that gives me great pride and interest is pursuing a Water Star program modeled on the Energy Star program where we provide, on a voluntary basis, standards for water efficient plumbing and appliances to help reduce the costs, protect the environment, and save jobs.

The last thing I would simply say, Mr. Chairman, is that I feel indebted to my family and friends for all of the support they have given over the years, and continue to give. Managing water is a team effort. I really hope that I have the opportunity to serve as the Assistant Administrator for the Office of Water.

I look forward to any questions you or your colleagues may have. Thank you. I would ask that my statement be placed in the record in its entirety.

Senator INHOFE. Without objection, so ordered.

Thank you, Mr. Grumbles. I will look forward to working with you, as we have done for the last 18 years.

Mr. Visscher.

STATEMENT OF GARY L. VISSCHER, NOMINATED TO BE A MEMBER OF THE U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Mr. VISSCHER. Thank you, Mr. Chairman, Senator Jeffords, and members of the committee. I appreciate very much this opportunity to testify and to appear before your committee today.

If confirmed by the Senate, I look forward to serving on the Chemical Safety Board. I believe I can help the Board to play an effective role in the continued improvement of chemical safety in this country. I believe in the Chemical Safety Board's mission, which is to prevent chemical accidents and to save lives through the thorough investigation of accidental chemical accidents, research into hazards that are related to releases or potential releases, and recommendations and interactions with government agencies, industry and labor, and others to prevent future individual chemical accidents from occurring.

I might mention the presence in the room today of several people from the Chemical Safety Board, including Chairperson Carolyn Merritt, and well as Member John Bresland. I appreciate their coming.

Since 2001, I have served as Deputy Assistant Secretary for the Occupational Safety and Health Administration at the U.S. Department of Labor. As Deputy at OSHA, I have been involved in the full range of occupational safety and health issues that come before the Agency, including numerous issues involving chemical processing and chemical plant safety.

Prior to my current position, I served as Vice President for Employee Relations at the American Iron and Steel Institute, where I worked with our member companies on a variety of safety and health issues.

From 1999 through 2000, I served as one of three Commissioners on the Occupational Safety and Health Review Commission, for which I was confirmed by the Senate in 1999. Prior to that, I worked for about 15 years in congressional staff positions, first as

Legislative Director to former U.S. Representative Paul Henry, and subsequently on the staff of the House Committee on Education and the Workforce.

As happens to many of us who work in congressional staff positions, my long-term interest and involvement in workplace safety and health came, to some extent, as a result of the involvement and expertise of the Member of Congress on whose staff I began working. Senator Jeffords may particularly recall, because I think you were instrumental in Congressman Henry assuming the position, Representative Henry served as ranking member on the subcommittee with jurisdiction over workplace safety and health issues, a position he held from 1987 to the year in which he died in 1993.

Through helping to prepare him and other subcommittee members and committee members for hearings and working on the issues that came before the subcommittee, I gained a level of expertise in many of the technical as well as policy issues.

If getting involved in the area came by way of congressional staff duties, I also have found that working in workplace safety and health to be both challenging and rewarding, and if confirmed by the Senate, I look forward to serving on the Chemical Safety Board in order to continue to contribute in some small way, at least, to the effort of making our workplaces and our communities safer.

A major role and function of the Chemical Safety Board is the investigation of chemical releases and incidents in order to identify what happened and, as much as possible, why it happened, and to recommend steps that might prevent such accidents from happening again.

To carry out these functions, one must be not only well versed in the technical and legal aspects of chemical safety but also be fair and objective. Each of the jobs and positions I have had in the safety and health area has involved oversight and review of workplace accidents. I believe I have a reputation for being both thorough and fair. I certainly will carry these values with me in carrying out my responsibilities on the Chemical Safety Board.

Mr. Chairman, I appreciate very much this opportunity to testify before you and for your consideration of my nomination. I look forward to answering any questions you may have. I would ask that my full statement be placed in the record in its entirety.

Senator INHOFE. Without objection, so ordered.

Thank you, Mr. Visscher, for an excellent opening statement.

First, I have two questions to ask each one of you. We will start with Stephen Johnson and go down individually. These are required.

No. 1, are you willing to appear at the request of any duly constituted Committee of Congress as a witness?

Mr. STEPHEN JOHNSON. Yes.

Ms. KLEE. Yes.

Mr. CHARLES JOHNSON. Yes.

Mr. GRUMBLES. Yes.

Mr. VISSCHER. Yes.

Senator INHOFE. No. 2, do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed to this position?

Mr. STEPHEN JOHNSON. No.

Ms. KLEE. No.

Mr. CHARLES JOHNSON. No.

Mr. GRUMBLES. No.

Mr. VISSCHER. No.

Senator INHOFE. Thank you very much.

Mr. Stephen Johnson, as I discussed in our concerns, there are some concerns that I have. The Spill Prevention Control and Countermeasures Rule that was finalized last year and extended for 18 months, my concern has been for groups such as airports, farmers, and others, by using the collective amount of fuel being stored. It is something that has really distressed me. I had occasion to talk with the American Farm Bureau yesterday. They are also concerned about it.

I guess the question I would have is this. I had sent you a letter asking: Would you delay the compliance deadline until we can address these problems so that we can work on them?

Mr. STEPHEN JOHNSON. Mr. Chairman, yes, with regard to the Spill Prevention Control and Countermeasures Rule, in fact today we are hosting a public meeting with interested parties to get feedback about the issues and discuss the implementation.

We, too, share your concerns, making sure that the affected parties can move in an appropriate way and a time for implementation. We are committed to working with you and other members of the committee, Senator Jeffords and others, to make that happen.

Senator INHOFE. Or if that could not happen, maybe to consider a new rulemaking process.

Mr. STEPHEN JOHNSON. Certainly we will take that into consideration. I should note that it is certainly my understanding that an agreement has been reached. I believe you are certainly aware that there was a lawsuit and that we have entered into an agreement with the American Petroleum Institute, the Marathon Oil Company, and the Petroleum Marketers Association of America to resolve all issues, except for one during the litigation. That one remaining issue will continue.

But more importantly, as your question indicated, we are committed to working with you and the major stakeholders to make sure that it can be done in an effective and appropriate way.

Senator INHOFE. Good. Thank you very much.

Mr. Charles Johnson, you are probably aware, and maybe you even watched some of the transcript of our hearing that we had concerning some of the discretionary grants. We really want to look at those. I would observe that as long as I have been here, and that is for 10 years on this committee, this subject has come up and nothing has been done. We made it very clear during this hearing that we plan to do something.

In looking at the discretionary grants, can we have your assurance and of your full cooperation in helping us resolve these problems that have not been resolved in the last few decades?

Mr. CHARLES JOHNSON. I think there are two issues with grants. One is the awarding of grants, and the other is the management of grants after they are awarded. Both need attention. The Chief Financial Office has been involved more in the management of grants rather than the awarding of grants. But I think we need a

better link between those two functions. It is an item that I have noted for followup, if indeed I am confirmed.

Senator INHOFE. But one of my concerns is the legal compliance, which I think has not been adhered to, and also the fact that we had a commitment in our previous hearing that full disclosure would be very helpful in two ways: No. 1, in what grants are available, and No. 2, to whom these grants were given and for what purpose, actually to be displayed on a website. Do you have a problem with that?

Mr. CHARLES JOHNSON. Not a problem. I think the more that we can be forthcoming and open about process and allow people to have that privilege, the better off we all are.

Senator INHOFE. That is all I would ask.

Ms. Klee, what, in your background do you have that you think that you can draw on to help you in this position?

Ms. KLEE. Senator, I think if I were confirmed, I would bring three qualities to the job. First of all, 18 years of experience as an environmental lawyer, and because of that experience I feel entirely comfortable thinking independently and expressing my views. I think anyone who knows me will say that no one has ever accused me of being a shrinking violet.

I think the second thing is that I understand the importance of the relationship between Congress and the Administration. We need to work together. I think I could help on that front as well.

Then third, I would say that my experience has given me a broader perspective on environmental issues. I have worked on a number of issues and seen different perspectives and different views. That has made me a better advocate for my client, which in this case would be EPA, particularly in a D.C. environment. But it has also made me more open-minded.

Senator INHOFE. Thank you, Ms. Klee.

Senator Jeffords.

Senator JEFFORDS. Thank you, Mr. Chairman.

Steve Johnson, the United States reportedly is lobbying aggressively against an European Union Chemical proposal that is expected to save thousands of lives each year by addressing the lack of basic safety data, and about the vast majority of chemicals in use today.

The U.S. position mirrors the concerns raised by the chemical manufacturers. You personally voiced some of these concerns during an official visit to Europe in December 2002. In developing the U.S. position, did EPA evaluate the potential health and environmental benefits of gathering this hazard data?

Mr. STEPHEN JOHNSON. Senator Jeffords, did we do a complete or thorough evaluation of the potential benefits?

No, we did not. What led me to make the comments that I did is this. At that point it was called the European White Paper, which is now referred to as the Reach Regulatory Program for Existing Chemicals.

There were really several aspects of the proposal that were troublesome to those of us in the United States and from a science standpoint. One was the full reach of the then-called White Paper, including chemicals such as one of the examples of the polymers that are in this pen. My concern, both from the United States

standpoint, and from a worldwide standpoint, is that we really did not spend our precious time and energy and resources focusing on polymers. There were other chemicals that we needed to draw our attention to. That is just an example of one of the problems.

Since that time, they have corrected and are focusing on what we believe are the more appropriate chemicals of concern.

The second is that depending upon how you count them, in the European arena, there are some 64,000 industrial chemicals on the market. In the United States there is approximately 90,000 industrial chemicals on the market, part of the inventory. We have to start someplace. What should we focus on?

In the United States we decided to focus on the 2,000 high production volume chemicals, those that are produced in excess of a million pounds, as well as those that may have a high exposure to children, some 20-something. So our principal message was that we think that worldwide that we need to focus on those high-priority chemicals. Worldwide companies have already committed to developing these data. We ought to be focusing our worldwide attention on evaluating those rather than requiring data for such things as polymers.

So it was really a prioritization on the focus on the world's limited resources.

Senator JEFFORDS. There was also a comment on the role of the EPA in developing the U.S. position and the extent to which environmental and public health groups were consulted during this process.

Mr. STEPHEN JOHNSON. In fact, I did meet both domestically as well as internationally with several of the public interest groups to share the same concerns which I have just raised with you, and to make sure to focus our resources to ensure that we are providing public health and environmental benefit, and we think focusing on those that are producing high volumes, those that may have exposure to children, are the right focus of our resources. In fact, we really did not get any disagreement among the environmental public interest community.

Senator JEFFORDS. Ms. Klee, imagine that you are defending the EPA in a judicial appeal of a rule. The Petitioner has pointed out that large chunks of the Agency's Rulemaking Notice was lifted verbatim from submission of 2(b) regulated industries, or for that matter, from the environmental community.

Do you think that the revelation would make your job more difficult?

Ms. KLEE. Senator, that is a very hard hypothetical question to answer because it would depend largely on the specifics of the situation, whether this was material that was in the administrative record, to what extent it influenced the scope of the substance of the rule, to what extent it was otherwise independently supported or consistent with the direction in which the Agency was going.

It is a very difficult question to answer in the absence of those kinds of details.

Senator JEFFORDS. Does not that kind of an occurrence make it look as if the Agency is not independently interpreting its statutory mandate? Would it not motivate the courts to scrutinize the record much more carefully?

Ms. KLEE. Senator, if I were confirmed, my job in the office of General Counsel would be to make sure that we evaluate and review rules before they go both to the Federal Register and to litigation. I would hope that we would not have that kind of situation. We would address those issues before we ever finalized a rule.

Senator JEFFORDS. You are concerned about that development. What do you plan to do about it, if confirmed?

Ms. KLEE. If confirmed, I would plan to do an excellent job in reviewing rulemakings before they go to the Federal Register. I am very confident that the EPA General Counsel staff can do that.

Senator JEFFORDS. The Chairman has asked me not to proceed further.

Senator INHOFE. The gentleman's time has expired.

Senator Wyden.

Senator WYDEN. Ms. Klee, no hypothetical. The Mercury decision, you look at it, and the proposal has whole paragraphs lifted from industry's proposal. Are you bothered by that?

Ms. KLEE. Senator Wyden, I am not familiar with the specifics of that rule. I have read accounts of some of it in the newspapers, but that is really the basis of my knowledge.

I have not reviewed the rule. I do not know what the facts are.

Senator WYDEN. Are you bothered by what you read in the paper? That is not a hypothetical situation. That is a real situation, where you took the industry stuff and basically it was a cut-and-paste job. That is not hypothetical. Are you bothered by that?

Ms. KLEE. Senator Wyden, my experience has been that newspaper reports frequently do not get facts completely accurate. So I would not base my evaluation of a situation based on a report in the *Washington Post*.

Senator WYDEN. Mr. Grumbles, you told me yesterday in the office that when you wrote to Senator Jeffords last October, refusing to provide the documents that we requested, you did so at the direction of the White House counsel and the Justice Department.

I would like to begin by asking you to tell me who told you to write the letter on October 27th, claiming that EPA could refuse to provide documents to a member of the committee by claiming that they were exempt from disclosure under the Freedom of Information Act?

Mr. GRUMBLES. Senator, I would like to restate what I said. What I told you was that when we were providing documents and information, and also claiming privileges for documents that we could not provide, in my capacity I was asking General Counsel for their view because I was being told by Counsel's office, since I am not an expert on documents or FOIA, or privileges, what is the current situation, of what is the policy and practice that this Administration and prior Administrations have followed.

I was told that was the case. Now what I also said was that the Department of Justice, they were the key in terms of having a statement, a 1980 policy, laying that out, and that also CEQ Counsel was involved. We had some conversations and it was primarily in the context of the President's nominee was trying to make it through the process. They were very much on a daily basis being kept abreast and up-to-speed on any potential issues. This was, as we all remember, one of the key areas of concern.

When I spoke with them, it was in the sense of reaffirming existing policy and that is, when a request is coming from someone other than the Chairman, then consistent with the 1980 policy from the Department of Justice, the approach is if exemptions from FOIA would apply, then you assert those.

Senator WYDEN. Again, who told you from the Justice Department and from the White House to write the letter? You did not come up with that idea on your own. Who told you to write it?

Mr. GRUMBLES. The letter was my letter.

Senator WYDEN. It was your idea to write the letter?

Mr. GRUMBLES. It was definitely my idea to write the letter. There were a series of letters. My objective when I came into the congressional office was twofold. One was to reach out to every member on the committee and in the Senate and to see what needs they had and to operate in a full bipartisan fashion.

The second one was to make sure that when sensitive issues or requests for information were coming, was to make sure that I followed the procedures that were in place and the policies that had continued to be in place. I do not remember the name, honestly, Senator, of the person I spoke with at Justice. It was more of staff working for me consulting Justice and CEQ to confirm that this was the approach that has been followed in the past.

Senator WYDEN. Well, since it was your idea to write the letter, and you have said that this is an approach that was followed in the past, can you provide us a similar letter that was written like the one that you wrote on October 27th? I cannot find anything close to this in my experience.

Mr. GRUMBLES. I know I—

Senator WYDEN. If I could finish. I would like for you to give us a similar letter to the one you wrote on October 27th that came sometime in the past when Congress tried to do oversight. We cannot find that. Do you have such a letter?

Mr. GRUMBLES. I have sent three letters, I believe. The whole purpose of the letters was to lay out for the committee and Senator Jeffords, with a copy to Chairman Inhofe, all of the different things we were doing. We all felt it was helpful working with the Minority Staff to have a specific road map to keep track of all the requests, questions, and also the documents they have.

I sent, I believe, three letters. The basis for each of those, when we did need to assert a privilege and say that we could not provide an item to the Senator's staff based on enforcement-related or attorney-client privilege, was because we were taking the view articulated, and continues to be articulated from the Justice Department, that providing information to Congress, if you are going to follow the FOIA approach, that applies when the requestor is not the Chairman of the committee or the subcommittee.

Senator WYDEN. Mr. Chairman, I have asked twice. I will ask it a third time.

I would like to see somebody who wrote a letter in the past, like the one you wrote on October 27th. I do not think it exists, Mr. Grumbles. I am going to oppose your appointment until I see some evidence that there is precedence for this. I just think it is not there. I asked you yesterday for it.

Mr. GRUMBLES. Senator, I can certainly provide you with lengthy memos and discussions from the Justice Department articulating the position, which is the position we followed with respect to enforcement sensitive or other privileged information.

Senator INHOFE. Senator Wyden, we will return to you.

Senator WYDEN. We will have another round?

Senator INHOFE. Yes, you will have another round. You will have ample opportunity, but I do want to keep regular order here, if you do not object.

Senator WYDEN. Fine.

Senator INHOFE. I would like to followup on that.

It was suggested I think both by Senator Jeffords and by Senator Wyden, that perhaps there was language that came from stakeholders or from industry. In the rulemaking process, there are comment periods. You receive comments from many different sources. I would suggest that there could very well be language that came from stakeholders, as well as environmentalist groups. Do any of you think that this is unusual?

Mr. STEPHEN JOHNSON. No.

Ms. KLEE. No.

Mr. CHARLES JOHNSON. No.

Mr. GRUMBLES. No.

Mr. VISSCHER. No.

Senator INHOFE. All right. This brought up something when Senator Jeffords was talking about it and that is I would hope that you folks in each one of your capacities would not be unduly influenced by either industry or the environmentalist groups, or as was brought up by Senator Jeffords, the European Union. I have had experience there with Margo Waldstrom, the Minister of Environment. I certainly do not think that we should put ourselves in the position to be overly influenced by anything that comes out of the EU.

I would like to hear a response to that.

Mr. STEPHEN JOHNSON. Senator Inhofe, I certainly agree with you. As I said in my opening statement, I also value the input of all stakeholders. I think we have to have an open ear. I think we need to hear all of the views, but again we are charged with the responsibility as EPA, to make an independent assessment following the laws and the regulations to make sure that we are protecting the public health and the environment, and the people of the United States.

So I certainly agree.

Senator INHOFE. I appreciate that. Are there any other comments in terms of that position?

[No response.]

Senator INHOFE. Mr. Visscher, I would like to ask you what you consider to be the most important aspects of this Board for which you will be hopefully confirmed, and what you bring to the table.

Mr. VISSCHER. Thank you. I think what the Board contributes, or the role of the Board is to be a transparent entity. It covers some areas that are also within the jurisdiction of EPA and OSHA. The Chemical Safety Board is not regulatory. It is not enforcement-oriented, and as a result of that, I think it can provide a level of transparency for investigations to reassure communities and work-

ers that things are being thoroughly looked at. Also by its focus on chemical safety, the Board works not only with the Federal agencies, but often with local governing bodies to take another look at issues involving chemical safety.

I know that just recently the Board announced some successes in New York City in getting the City Council to look at building code issues there. Because the Board has a fairly broad role, it can provide that.

I think what I bring is a long history of experience in the safety and health area, a long history of evaluating and analyzing accident investigations. I have had accident investigation experience with the Committee on Education and the Workforce, as well as the OSHA Review Commission, and currently in my position at OSHA.

I also have a familiarity with the other agencies and entities involved in safety and health. So I think I can contribute much there.

Senator INHOFE. That's good. Thank you, Mr. Visscher.

Mr. Grumbles, I would ask you the same question I asked Ms. Klee. I remember working with you many, many years ago, starting in the middle 1980's on the House side in the Transportation Committee. You have an abundance of experience. How do you think that can best be used?

I might add that you have always been a nonpartisan and bipartisan individual in your past life. I am sure you will continue to be. What do you think you will bring to the table?

Mr. GRUMBLES. Thank you, Mr. Chairman.

From an expertise standpoint, I have had the pleasure of being able to be right in the middle of the policy-level discussions, not only here in the Capitol but the ones that reflect what the State water managers and local water managers are dealing with. I have seen the formulation of the policies to implement the Clean Water Act and the Safe Drinking Water Act.

As you mentioned, I understand very well and appreciate the critical need for and the sustainability of bipartisan solutions. That is something that I think that has been a hallmark of my experiences in the water arena and addressing water quality issues.

Senator INHOFE. Thank you, Mr. Grumbles. I have no doubt that will be the case.

Senator Jeffords.

Senator JEFFORDS. Thank you, Mr. Chairman.

This is a question for Ms. Klee and Mr. Grumbles.

One of EPA's most important responsibilities is protecting the Nation's water supply. Since the Clean Water Act was passed in 1972, we have made much progress. Over 45 percent of the Nation's waters still are not safe for fishing, swimming, drinking supply, and other uses.

The Clean Water Act's main program for cleaning up these waters is the Total Maximum Daily Load Program. Do you support this approach for cleaning up water pollution from point sources and non-point sources?

Mr. GRUMBLES. Senator, I absolutely support the approach of the Total Maximum Daily Load Program. That is a program that is a planning tool to help reduce the amount of loadings to impaired water bodies.

We have seen that the number of TMDLs has gone from only 1,000 or so over the last 6 years to approximately 10,000 today. We not only support the implementation of that program, but we understand that this is just the beginning developing the pollution budget.

The key is finding ways to accelerate the progress in cleaning up those impaired water bodies. That is why we say that, in addition to implementing the TMDL Program, which addresses point sources and non-point sources, we need to look for smarter and better ways such as water quality trading, keeping the accountability, but moving forward on reducing the number of impaired waters.

Senator JEFFORDS. Ms. Klee.

Ms. KLEE. Senator, if I were confirmed, my primary role would be in ensuring that we were fully and fairly implementing the TMDL Program, but beyond that is a pure philosophical matter. I also strongly support it.

Senator JEFFORDS. This is for both of you again.

Would you be willing to develop a protocol concerning the sharing of budget and other financial information with this committee?

Ms. KLEE. Senator, I have only been at EPA for 4 days.

Senator JEFFORDS. I am sorry. That is for Mr. Johnson.

Ms. KLEE. OK. That is well beyond my scope of my knowledge. [Laughter.]

Senator JEFFORDS. I am sorry for giving you that angst.

Ms. KLEE. That is OK.

Mr. CHARLES JOHNSON. Senator, I think I described my philosophy as being open and forthcoming. I intend to bring that to the position, if confirmed. I believe that you should set forth protocols because the anticipation of events and release of information should be anticipated, not handled one at a time.

It would be my desire to do that. Once information is factual, we know it is right, we know it is timely, the release of information as far as I am concerned, if it is within my purview, it will be released promptly.

Senator JEFFORDS. Mr. Grumbles, 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 the 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 has not managed to find any funds for our Lake Champlain.

I extend a permanent invitation to you to come to visit Lake Champlain and to see the excellent work that is being completed there by the Lake Champlain Basin Program.

Do you believe that protecting Lake Champlain is a priority? If so, how would you implement this as Assistant Administration for Water for EPA?

Mr. GRUMBLES. Senator, I know the importance of Lake Champlain to you, to the region, and to the country. I know that there is great work that is going on and a number of challenges that are there. I know there are many great water bodies throughout the country that do not have specific set-asides or earmarked provisions in the budget or the budget request.

I can tell you that I have a great interest in Lake Champlain and also in other watersheds. We do have in the President's request funding of \$25 million for a targeted watershed program. We also have additional funds for State and tribal innovative grants to help advance environmental restoration. The criteria for that need to be further developed.

There are various tools and funds in the budget to help get funds toward important water bodies. I look forward to working with you and your staff and through the various programs that we have. I know full well that that is an important water body and the legislative background as well.

Senator JEFFORDS. Thank you.

Mr. Visscher, 2 years after we discovered that Al-Qaeda was interested in targeting U.S. chemical plants, reporters from 60 Minutes were able to wander unimpeded with their cameras into numerous chemical facilities.

If confirmed, would you encourage the Chemical Safety Board to be more proactive on chemical security concerns? For example, investigating and making recommendations on how to prevent or reduce the threat and consequences of terrorist release in chemical facilities?

Mr. VISSCHER. The 2004 Appropriations Conference Report calls on the Chemical Safety Board to enter into an agreement with the Department of Homeland Security for providing technical assistance and other means of assisting in that effort. I hope that that agreement would take shape soon, pursuant to congressional direction.

I think that that is the right way to go. I am not sure at this point what procedures are in place. Obviously it would be necessary for those to be highly confidential in any technical assistance role. But I think pursuant to congressional direction, that the agreement with the Department of Homeland Security would address those issues. The Board has much technical knowledge about chemical safety. So I think that would be the way to approach it.

Senator JEFFORDS. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Jeffords.

Senator Thomas.

Senator THOMAS. Thank you, Mr. Chairman.

Mr. Johnson, obviously there is never enough money for agencies, but we are faced overall in Government with perhaps better management of our money, as opposed to just more money.

Do you have any ideas? I know you are new at it, but how would you approach business plans or some kinds of things that perhaps would make us more efficient with the dollars that are spent?

Mr. CHARLES JOHNSON. I would begin with some of the future planning, the long-term thinking. It is very obvious to me that there are funding gaps in several areas. We had better capture that to see trends and where we are going. I would start with a look at where we are.

Then second, where do we want to be? How do we get from here to there? That is a fundamental business plan. But we need to capture this on a longer period of time than 1 year at a time. It would be my intent to add a great deal of future planning to the Office of the CFO and to sincerely analyze these potential funding gaps

so that we all have the same information—the Administration, Congress, and the EPA—will have that same information. We can only address it if we have the facts.

I have always said that where an agency spends its money indicates its true priorities. So we need to make sure that we are matching priorities with where our funds are being spent.

I think there is a lot of analysis to be done. Again, I do not want to speak as an expert at this point, but I can tell you philosophically I believe more future planning is very appropriate at this time.

Senator THOMAS. That is good.

I know it is difficult when implementing the law. It is your responsibility. But there should be priorities, should there not be, as to what the major efforts ought to be?

Mr. CHARLES JOHNSON. Absolutely. Budgets are all about comparisons. I have never met a budget request that was not valid. But somebody has to make hard decisions and set priorities. It has to start with us. Certainly this body is heavily involved in that.

It is a collaborative effort. Priority setting is fundamental to it.

Senator THOMAS. Ms. Klee, do you think there is a possibility of reducing the legal activity or the court activity by working more closely with other groups, particularly local groups prior to going to court?

Ms. KLEE. Senator, I think you got it right in your opening statement. I think we will never get rid of litigation altogether, but if we do a better job of working in a collaborative way, involving local communities and local groups, environmental organizations, the private sector, and industry, we have a better chance at the end of the day of reducing litigation, but never getting rid of it entirely.

Senator THOMAS. I am sure that is true.

Mr. Stephen Johnson, I am sure that you agree that most of your decisions have to be based on science. However, there are often a number of views as to what the science is.

How do you have defensible decisions with regard to science when there are different views within the scientific community?

Mr. STEPHEN JOHNSON. Well, Senator Thomas I think you have certainly hit the critical issue of science. The first is that the Agency needs to make sure that our decisions are based on and have a foundation in sound science. In fact, I am very proud of the dedicated professionals at EPA and the scientific staff. I think we have some of the world's leading scientists, both in our regulatory programs and in our research and development office.

I think to help ensure that we find that appropriate foundation, I think there are a number of steps that we have and expect to continue to take. One is that as we release our scientific analyses, that they have the appropriate references, that they have the appropriate range of uncertainties that we have identified, and what the uncertainties are in our science assessment.

And probably one of the most pivotal issues is making sure that our science is subjected to peer review, both inside the Agency and inside and across all of the scientific community within the Government, as well as the outside community, and are armed with an open and transparent science progress, and open with overseeing

with peer review. I think that in the end we get the best science that we have available.

Senator THOMAS. In Wyoming's case the Department of Environmental Quality can really have jurisdiction. Are you comfortable with that? Then what do you do? Oversee to see that Federal laws are enforced but let the State actually do it?

Mr. STEPHEN JOHNSON. Absolutely. For many of our programs at EPA, these are State-delegated programs. I am certainly supportive of that. That is the way the legal framework is set about.

But more importantly, my experience across EPA is that it is important in our role to set the national standard. But really when it comes down to it, we need a neighborhood solution. That is certainly, I would say, a philosophy that Administrator Leavitt from his own experience as Governor, and certainly my experience at EPA rings true as well.

Senator THOMAS. I am glad to hear that.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Thomas.

Senator WYDEN.

Senator WYDEN. Thank you, Mr. Chairman.

I have a question for you, Mr. Grumbles, and for you Ms. Klee.

The controlling case with respect to the right of Members of Congress to access information is *Murphy v. Army Department*. This is a U.S. Court of Appeals case. I want to read it to you. I want to read you the key findings:

"We find no basis in the statute or in public policy for distinguishing between a congressional committee and a single member writing in an official capacity. All members have a constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information."

So it seems to me what is being done by Mr. Grumbles—and I want to ask you this, Ms. Klee, because you are going to be counsel—is, in effect, Mr. Grumbles is saying, that some internal Justice Department opinions ought to take precedence over the controlling court case.

Mr. Grumbles, first your response to that. How does it come to be that some internal Justice Department opinion should take precedence over the controlling U.S. Court of Appeals case?

Mr. GRUMBLES. First of all, Senator, I do not know if it is internal or not. I know it has been published and provided to agencies since 1980. Then it was subsequently revised in 1984. Again, I would just have to say at the outset that I have not read through the Murphy case. I did not pretend to become, and never came close to being, a FOIA expert.

Senator WYDEN. You did not read the controlling case before you issued the October 27th letter?

Mr. GRUMBLES. I read parts of it. I read in detail the Justice Department guidance which went through some level of detail explaining that the position is that the Murphy case is distinguishable in various ways. It laid out arguments.

Senator what I did was to rely on the advice of counsel and the understanding that the Agency's position has been, and was in the previous Administration, that notwithstanding the Murphy case,

there was detailed guidance from the Justice Department that spelled out, "Well, here are the ways that it is interpreted. This is what this means and what that does not mean."

I never personally became more involved in that issue from that level. I basically was told and understood that the Murphy case is distinguishable. The guidance that has been controlling across the agencies and the Justice Department in 1980 and 1984 is that when a Member of Congress is seeking information, our approach at EPA and the congressional office, and not just my personal bias, but the institutional position toward providing information to Members of Congress, whether they are a chairman or members at large, to always be as responsible as possible. And when issues come up as to potentially sensitive documents, then look to what the Justice Department guidance is and what the policy is.

That is what I did. It was referenced in my letter to Senator Jeffords and staff as a way to explain the basis upon which the determination was made for not providing all of the information. That letter also accompanied information that we had been gathering and had probably a couple dozen people working on to gather air-related issues and other issues.

Senator WYDEN. Mr. Grumbles, I just find this more and more curious with each one of your answers. You have told us that this was your idea, No. 1. You did not read the controlling case, which is not at all ambiguous. And you seemed to have had some conversations with people at various parts of the executive branch, whether it is the Justice Department or the White House, but you are not going to tell us whose name it is.

I just find this exceptionally irresponsible and, in effect, you are all saying that these various positions from some parts of the executive branch would take precedence over a U.S. Court of Appeals decision, which is unambiguous.

My question to you is the same one, Ms. Klee. As I told you yesterday, I was going to ask you your opinion of the October 27th letter. I want to give you that opportunity to offer it if you choose to do so.

But tell me what you think of the practice of saying that a U.S. Court of Appeals decision that is unambiguous should have less weight than these various apparently ruminations within the executive branch on giving Members of Congress information?

Ms. KLEE. Senator, let me start by stating that as a former congressional staffer, I understand and appreciate how important the congressional oversight role is, and in order for this committee, or any committee to do its oversight function, it has to have access to documents. So I understand that very important principle and I support it.

As I mentioned to you last night, I have not reviewed any of the case law, including the case that you cited, nor have I have had a chance to review the DOJ guidance documents that are, as I understand it, interpreting those cases. Those guidance documents have been in place since 1980 and updated periodically. But I have not reviewed them.

If I were to be confirmed as General Counsel, I would anticipate that one of my very important functions would be to work through these issues with the committee to ensure that the committee gets

access to the documents that it needs to fulfill its oversight responsibility.

Senator WYDEN. I am not going to belabor this point, but again, Ms. Klee, I just think that to have no opinion on this issue, which is unprecedented and never took place when you were doing fine work for this committee, makes it impossible for me to support your nomination.

People ought to have opinions. They ought to know at least a modest amount about the controlling case on an issue that has clearly dominated this committee over the last couple of weeks. All members on this side of the aisle have expressed their concern about it.

I just think that the positions that we have heard today leave me with many more questions than answers.

Mr. Chairman, I again want to say how important it is that I think on a bipartisan basis we change this policy of non-cooperation with respect to information requests. I think that is what it is. I think it will shut down the oversight process. I think it sets a precedent that will be regrettable for both sides of the aisle.

Senator INHOFE. Senator Wyden, let me suggest something here. We were going to have another 5-minute round. You are already three-fifths of the way through the second round.

Go ahead and continue and take yours now.

Senator WYDEN. All right. I appreciate that, Mr. Chairman. I know that Senator Thomas had a number of questions as well.

I want to ask Mr. Stephen Johnson one additional question.

Mr. Johnson, if I might, for you, we have had extraordinary difficulty getting information about Portland.

My questions that were asked on September 15th to Tracy Mahan, the responses arrived last night. Basically whenever I have the good fortune of Chairman Inhofe of scheduling a hearing, there are months and months of delay, and we get a bit of information. It somehow goes by the board.

I would like to know whether you are going to change this policy and if it is going to be possible for us to get answer within 6 or 8 weeks rather than going through what seems to be bureaucratic water torture to try to get these kinds of documents. What is going to change on your watch?

Mr. STEPHEN JOHNSON. Senator Wyden, certainly I understand and share your frustration. I think that we need as an Agency to be responsive to your needs and to the committee's needs. We clearly need to improve.

As we had the opportunity to meet and talk about the Portland situation, I was not aware of the specifics of it and what was certainly a lack of responsiveness on the Agency's part. Charlie Johnson and I went back immediately. I know that we have been literally delivering boxes of information, as well as responding to specific questions.

What I intend to change and to work toward is to improve the responsiveness of the Agency so that you have the kinds of information that you need. That is certainly what I want to work toward.

With regard to the issue that I have been talking with Mr. Grumbles and Ms. Klee, I think it certainly is important.

You certainly have my commitment to work with you, Senator Jeffords, and Chairman Inhofe to find a path forward. I am certainly not an expert. I have watched this in one sense from afar through the years. I certainly understand the need of the committee and all committees for oversight. You need to have information to do that. You certainly have my commitment to work with you, Senator Jeffords, and Chairman Inhofe to try to find a way forward.

Senator WYDEN. My time is up. I would only say, Mr. Johnson, it is not just the committee. This is about individual U.S. Senators. We get election certificates and our constituents expect us to dig into these programs and to make them work.

I felt that your comment about meeting to improve was constructive. But understand this has to run with respect to individual members of the Senate.

I thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Wyden.

Let me just announce that it would be the intent a week from tomorrow for this committee to have a business meeting and hopefully to have a quorum present. We would ask that all followup questions be submitted by noon tomorrow. I know there will be followup questions from members of the committee.

Without objection, so ordered.

I had to step out while Senator Thomas was presiding and asking questions.

Mr. Johnson, the question he asked about sound science, there is not a person at the table there or this table here who is not aware that when I first became Chairman of this Committee that was one of the things that I said we were going to have to have. The notion that we will be going to be relying on sound science is outrageous in some people's minds.

But nonetheless we are going to do that. I am sure that all of you would agree with the responses of Mr. Johnson, that that is not unreasonable to assume.

That goes with your Board that you will be on, too, Mr. Visscher.

Mr. VISSCHER. Certainly.

Senator INHOFE. Good. Senator Jeffords.

Senator JEFFORDS. Thank you, Mr. Chairman.

I would like to talk about a serious problem in the District of Columbia. Mr. Grumbles, yesterday when we met in my office we discussed the Washington, DC. lead contamination issue.

When Administrator Leavitt was here at the budget hearing, I offered him a drink of water. We have D.C. water.

I would offer you the same, all of you to take a nice sip of this lead-loaded water. I would ask you this.

[Laughter.]

Senator JEFFORDS. One of the many failures in the Washington, DC. situation is the complete failure of the public communications apparatus to accurately and effectively communicate the appropriate level of health risk in this situation. One of the most frustrating for parents and pregnant mothers is the feeling of "if they had only known, they would have been able to take action to protect their children."

Do you feel that this situation has been rectified in Washington, DC.? How is the Agency ensuring that this event will not happen again?

Mr. GRUMBLES. Senator, I would say that EPA is fully engaged in overseeing vigorously the efforts in terms of compliance with the Safe Drinking Water Act, and also the critically important aspect you are mentioning, and that is the communications, the public outreach, and restoring consumer confidence.

The Region 3 administrator is the primary EPA entity that is overseeing the day-to-day efforts to comply. They are currently working with the District government to improve the outreach and have more meetings.

I can tell you from a national perspective, if there is a lesson to be learned from this experience, it is that across the Nation, as we look at the 1991 lead and copper rule, we feel that it is even more important to emphasize that the communications to the users, the consumers of water in the communities across the country, get the most helpful and robust information possible.

One of the items that we are very much engaged in is not just working with the District on their outreach campaign of communicating to the public directly or indirectly, but it is also to see how other communities across the country are doing.

You hit it right on the head that a key aspect of consumer confidence under the Safe Drinking Water Act and the lead rule is that once these exceedances occur, you must shift into high gear and let people know the risks and what steps they can take to minimize those risks and to completely prevent the risk.

Senator JEFFORDS. I am concerned because of the lack of information that is available. For instance, we are now buying bottled water, but I find out that no one knows whether the bottled water has lead in it or not. You cannot find that out.

When can you be sure that the water you are drinking is what it ought to be?

Mr. GRUMBLES. With respect to the District of Columbia, I think the key players involved in that, the key agencies and governmental entities, EPA Region 3, the City, and WASA are working hard on that front. I think it is critically important that the advisory that the Mayor issued was done at the time he did it, to address certain groups such as pregnant moms and parents of young children, that they should not be drinking water from their taps if they have lead surface lines.

I know on a daily basis the key is to get the information out to the public. I think we are very much in the midst of figuring out and trying to solve the riddle over what contributed to the increase in the corrosive nature of the water. We have a technical work group on that front that is reaching conclusions. We have an independent peer group that is reviewing those conclusions to try to help solve that problem.

But you are right. The key is to be able to say with confidence that the water is safe to drink. I can say, even though I am not the primary EPA official involved, that the data that we have received to date, really the Public Health officials' data, is that this is not a public health crisis, it is a very important public health

concern. We still do not know what has caused it, however and we do not know the extent of the contamination.

The blood testing for lead levels has not indicated that it is at levels that some might have thought several weeks ago.

Senator INHOFE. Senator Jeffords, I know you are aware of it, but some of the rest may not be aware, that we are holding a Subcommittee hearing next week from Thursday on this very subject. I know many of our other colleagues are equally interested in this.

Senator JEFFORDS. Thank you, Mr. Chairman.

Senator INHOFE. First of all, I thank you very much for your being here today.

Our meeting is adjourned.

[Whereupon, at 11:04 a.m., the committee was adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF STEPHEN L. JOHNSON NOMINATED TO BE DEPUTY ADMINISTRATOR,
U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and distinguished members of this committee, I have the honor and pleasure to appear before you today to seek your confirmation to serve as the U.S. Environmental Protection Agency's Deputy Administrator. Since joining the Administration's team at EPA, I have had the opportunity to visit with many of you to discuss your environmental priorities and to share with you my vision for environmental progress. I thank you for your time. It has been an enlightening and rewarding experience, and I hope to continue to work closely with the committee, should I be confirmed as EPA's Deputy Administrator.

Now is an exciting time to work at EPA. Administrator Leavitt has quickly demonstrated an extraordinary grasp of today's leading environmental issues, and his vision has already become an inspiration for our employees and management team. I am excited by the prospect of working with Administrator Leavitt in advancing his four cornerstones toward a "better way" for the environment. They include facilitating collaboration, harnessing technology, creating market incentives—and a commitment to measuring progress, not process. Administrator Leavitt has two emerging themes echoing throughout the agency—increasing the velocity of improvement and implementing "a better way." The Administrator is challenging EPA to reach new levels of environmental progress, and to do it in less time. I am proud to be nominated by the President to work with Administrator Leavitt at such a pivotal time in the Agency's history.

The American people trust EPA to protect their families, communities, and the land, air, and water where they live. I understand the enormous responsibility that comes with that trust, and I will do everything in my power to make sure those responsibilities are met. I have learned that the best way to fulfill our responsibility is to promote transparency in our work and base our decisions on sound science. While serving as Assistant Administrator of EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS), one of my top priorities was implementation of the landmark Food Quality Protection Act of 1996. The FQPA added new protections against pesticides, especially for children, and established statutory milestones for progress. During my 2 years at the helm, EPA met the law's rigid deadlines for reviewing the safety of existing pesticides. How did we do it? We conducted extensive outreach to stakeholders to improve our decisionmaking and to ensure broad support. We collaborated to ensure that EPA's actions not only reduced risks from pesticides, but provided the agricultural community with the products they needed to control pests. To support the process, we ensured expeditious and scientifically sound testing and registration of new lower risk pesticides, especially products of biotechnology. We were able to meet the ambitious goals of FQPA through a powerful combination of extensive collaboration, sound science, and new technology. It is a success that I believe we can replicate in other programs across the Agency.

In my experience, these approaches can apply to a broad range of environmental policy. For example, in the area of industrial chemical regulation, I worked to ensure the introduction of safe new chemicals as well as the protection of citizens against hazards posed by lead, mercury, asbestos, PCBs and other existing pollutants used in industry and homes. We moved the voluntary High Production Volume Chemical Challenge (HPV) from concept to reality. This program "challenged" chem-

ical companies to voluntarily generate and make public for the first time basic health effects information on the 2,800 industrial chemicals produced in the greatest quantities in the United States. Today hundreds of companies are submitting that data, which is posted on EPA's Web site. The collaboration brought together EPA, industry and the environmental community in an unprecedented partnership to inform and protect the American public.

As I address these and other priority issues, I want to mention my personal operating philosophy and principles I will follow if confirmed as the Deputy Administrator. They include: advance the best science to support our regulatory decisions; foster open communication and regular consultation with our stakeholders; build strong and trusting relationships with all our customers, including Congress, States, tribes, industry, the scientific community, other government agencies, the international community, and the consumer advocate community; and finally, promote professionalism, dedication and diversity in the Federal work force.

These principles serve us well for the challenges we know are before us, but serve even better for challenges we may never imagine. In the wake of September 11, 2001, we were able to focus the efforts of staff from various EPA offices on the additional goal of chemical and food safety from terrorist threats, as well as anthrax cleanup. EPA staff joined forces with several other Federal agencies and even other levels of government to effectively decontaminate anthrax at the Senate Hart Office Building and the Brentwood Post Office in Washington, DC. We were able to quickly step up to these new challenges precisely because at EPA we have fostered a culture of collaboration, internally and externally, and we had the existing relationships and networks necessary to succeed.

The success of our leadership team at EPA is inextricably linked to the productivity and creativity of the Agency's staff. EPA has an exceptionally talented and diverse work force. As the designee for Deputy Administrator, I believe I have a responsibility to invest in our people, promote professionalism and diversity, and prepare our work force for the future. This has been a longstanding interest of mine. In 1998 I became a charter member of EPA's newly reconstituted Human Resources Council. I actively participated in the HRC even while serving as Acting Deputy Administrator. Over the years I have remained actively involved in a number of HRC-sponsored activities including direct participation in supporting the Senior Executive Service Candidate Development Program. I promoted agency-wide human resources programs such as the Workforce Planning Strategy both in OPPTS and in the Office of the Administrator. During my tenure at OPPTS, a number of progressive human resource programs were implemented to make OPPTS a "model" employer. For example, OPPTS pioneered an innovative employee rotation program that allows mid-level employees the opportunity to compete for special assignments that stretch and develop them professionally. I have been involved in EPA's effort to meet the objectives of the President's Management Agenda, including the Strategic Management of Human Capital.

I would like to close with two personal observations. My family has a strong commitment to public service. My father served in the Department of the Navy for more than 30 years. In fact, he and other family members are with me today in the audience. I'd like to thank all of them for making the trip to support me. Growing up, I always admired my father's government service. During college in the early 1970s, I began my public service as a GS-4 intern, and I am proud to have worked in public service for more than 20 years. This experience has led me to have a deep appreciation and abiding respect for the importance of reaching for excellence in government.

On another personal note, I have been fortunate to be able to devote the majority of my career to environmental protection. For me, serving in the government, with the goal of helping all Americans and their families, has been a distinct privilege. When I reflect on my past service and consider the future, I know that I will face difficult, complex, and serious issues. I have confidence that sound science and collaboration will lead to successful outcomes and best serve the American people. If confirmed as Deputy Administrator, I pledge to work toward national goals with a keen sense of the needs and realities of our individual families and communities. I hope that my service will reflect positively on my children, their everyday choices, and the community that each of us live in.

I appreciate your consideration of my nomination, and I look forward to working with you on a bipartisan basis to advance the mission of protecting the environment.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING

WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Stephen L. Johnson

Business Address: U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Business Phone: (202) 564-4711

Home Address: Frederick, MD 21703

Home Phone:

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

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

Position to which nominated: Deputy Administrator
 Date of Nomination: January 21, 2004

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

Marital status: Married Full name of spouse: Deborah Lynn Johnson

Name and ages of children: Carrie Lynn Johnson Jenkins, Age 26

Matthew Stephen Johnson, Age 23

Allison Leigh Johnson, Age 22

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

Employment record:

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

July 2003 to Present – *U.S. Environmental Protection Agency, Acting Deputy Administrator* – The responsibilities of the Office of the Deputy Administrator include serving as the Chief Operating Officer of the Agency's approximately \$8 billion budget and 18,000 people. Manages the development and execution of major Agency policy and management initiatives. Directs the regulatory, policy and enforcement responsibilities of the Agency's 12 national programs and 10 regional offices. Oversees the Agency's rulemaking process, ensuring that sound science and economic analysis are strengthened in Agency decision-making. Member of the President's Management Council, responsible for EPA's implementation of the President's Management Scorecard. EPA continues to demonstrate significant progress in all 5 areas targeted by the President for improvement. Principal representative of the

Administrator to the White House on significant and controversial policy matters. Represents the Administrator and the Agency at Cabinet meetings and Senior Policy Coordinating Committee meetings. Oversees the Agency's Homeland Security responsibilities, policies and strategy.

May 2001 to July 2003 – *U.S. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances, Assistant Administrator*, **January 2001 to May 2001** – *U.S. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances, Acting Assistant Administrator* – The responsibilities of OPPTS include implementing the nation's pesticide, toxic chemicals, right-to-know, pollution prevention, and lead-based paint laws, regulatory and scientific programs. This senior-level position establishes policy and manages communication and coordination efforts throughout the Administration, with Congress and with a diverse group of stakeholders on scientific and regulatory issues affecting pesticides and toxic chemicals. The office employs approximately 1,450 people, with a budget of around \$250 million.

January 1999 to December 2000 – *U.S. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances, Deputy Assistant Administrator and Principal Deputy Assistant Administrator* – In this role I served as the career Deputy to the Assistant Administrator, and helped manage the nation's scientific and regulatory programs for pesticides and toxic chemicals. In this position I played a key role in implementing the Food Quality Protection Act (FQPA), the Toxic Substances Control Act (TSCA), EPA's biotechnology program, and worked substantially on the science policies associated with FQPA implementation. My major responsibilities also included serving as the Agency's spokesperson on pesticides and biotechnology issues, and managing OPPTS financial and personnel resources.

September 1997 to December 1998 – *U.S. Environmental Protection Agency, Office of Pesticide Programs, Deputy Office Director* – The Office of Pesticide Programs is the organization under OPPTS that implements the federal pesticide laws. In this position I worked extensively on establishing the legal, policy, scientific and administrative framework necessary for FQPA implementation.

June 1994 to September 1997 – *U.S. Environmental Protection Agency, Office of Pesticide Programs, Division Director, Registration Division* – This division within the Office of Pesticide Programs is responsible for evaluating new pesticides to determine if they meet the health and safety requirements for registration. I worked extensively with the regulated and the scientific community to ensure rigorous scientific data, coupled with an extensive evaluation, supported the registration of new pesticides. During my tenure in this office, I made significant administrative improvements that lead to faster and more predictable review periods for new pesticides.

December 1988 to June 1994 – *U.S. Environmental Protection Agency, Office of Pesticide Programs, Division Director, Field Operations Division* – In this position I was responsible for the outreach and communications functions in the Office of Pesticide Programs. This position required substantial coordination with our stakeholders, including our State partners. Our office worked on a wide variety of state and local issues, including pesticide re-registration, endangered species, worker protection and groundwater.

April 1984 to December 1988 – *U.S. Environmental Protection Agency, Office of Pesticide Programs, Deputy Director, Hazard Evaluation Division; Served as Executive Secretary, Scientific Advisory Panel* – In these position I worked with and helped manage a scientific staff responsible for conducting health and safety evaluation on pesticides. I was also responsible for managing the scientific peer review function in the Office of Pesticide Programs. Duties included writing technical documents, and organizing and managing scientific peer review meetings.

February 1982 to March 1984 – *Hazleton Laboratories America, Inc., Vienna, Virginia, Director of Operations* – Duties included overseeing laboratory operations, including toxicological evaluation of chemicals.

July 1981 to February 1982 – *U.S. Environmental Protection Agency, Office of Research and Development, Senior Advisory for Chemical Testing and Science Policy* – Served as science and policy advisor in the office to research and develop a variety of new technical and toxicology programs for chemicals and pesticides.

September 1979 to July 1981 -- *Environmental Protection Agency, Office of Pesticides and Toxic Substances, Oncology Branch, Pathologist* – Evaluated scientific data on potential toxic effects from industrial chemicals. Helped coordinate testing and evaluation activities to improve the toxicity testing methods.

June 1976 to September 1979 – *Litton Bionetics, Inc. Kensington, Maryland, Acting Director, Department of Pathology* – Responsible for the technical and administrative management in the pathology department to support commercial scientific testing.

Honors and awards:

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

Annual Performance Award (12/91; 11/93; 11/94; 11/95; 11/96; 12/98; 12/99; 12/00; 12/01; 12/02; 12/03)

Meritorious Presidential Rank Award, 09/97

Received the Distinguished Presidential Rank Award, 2001

Memberships:

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

Organization Dates	Office held (if any)	
<u>Fredericktown Baptist Church</u>	<u>Member</u>	<u>1972 - present</u>
<u>Taylor University</u>	<u>Parent's Cabinet - Volunteer member</u>	<u>1999 - 2003</u>
United States Tennis Assoc. - Maryland District	Board of Directors, Volunteer member	01/94 - 12/00
- Mid Atlantic Section	Board of Directors, Volunteer member	01/96 - 12/00
Frederick Tennis Patrons	Board of Directors, Volunteer member	1990 - 2000

Qualifications:

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

I have over 25 years of direct experience, with a solid track record, that will contribute to serving successfully as the Deputy Administrator. In this section, I will describe my education, scientific, policy, management, and communication qualifications.

I have a Bachelors degree in Biology and a Masters degree in Pathology. This scientific background allows me to fully understand and appreciate the science underlying our decisions in regulating pesticides and industrial chemicals, whether they result in pollution in air, water or land. This scientific education, as well as working directly within various scientific disciplines at EPA, helps ensure that science is the foundation of all our regulatory decisions. Our modern risk assessments on pesticides and industrial chemicals are very complex and rely on a variety of scientific disciplines. I believe my scientific training and scientific work experience, will allow me to continue to strengthen the science at the Environmental Protection Agency.

Serving in OPPTS and the Office of Pesticide Programs (OPP) for 17 years, and being intimately involved at a senior level on a variety of significant policy issues, has provided me with broad knowledge and first-hand policy experience. This experience has given me an in-depth understanding of the many complex policy challenges we face. I have successfully participated in the policy making process with the government, as well as with our stakeholders – that has led to balanced and reasonable policy decisions.

In the area of management, serving as the Acting Deputy Administrator for the past 6 months I have overseen a staff of 18,000 people with a budget of approximately \$8 billion. I successfully oversaw a staff of approximately 1,450 people, with a budget of around \$250 million while serving as the Assistant Administrator in OPPTS. During my 12 years in the Senior Executive Service, I have managed many people and significant resources. I have successfully worked on budget formulation, resource allocation, and sound financial management of OPPTS. In the area of personnel management, I come with a wealth of managerial experience and an exceptionally strong commitment to support equal, diverse and fair employment. My style of leadership is informal, friendly, accessible, fair-minded, reasonable – which I believe all contribute to an exceptionally motivated and productive staff.

One of my strengths is effective and clear communication. I have had the opportunity to manage complex and controversial risk management issues on pesticides, biotechnology, food safety, and a variety of other issues. I am frequently tapped to be the Agency's spokesperson to address public health and other crisis in a credible and articulate manner. I believe open and effective communication is a vital part of managing a successful program.

Given the unique challenges we face, I believe I am highly qualified to lead EPA. To summarize, my qualifications include: a strong scientific background, a successful record of resolving difficult and demanding policy issues, exemplary financial and personnel management experience, and an exceptional ability to communicate highly technical and controversial subjects in a clear and concise way. I have established solid and trusting relationships with our stakeholders – that has allowed me to help resolve many complex scientific, legal and policy issues.

**Future
employment
relationships:**

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

No - maintain current status as a member of the Senior Executive Service, U.S. E.P.A.

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

Return to Senior Executive Service, U.S. E.P.A.

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

No

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

Does not apply.

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

No

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

No

**Financial
Statement:**

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

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

None

2. Are any assets pledged?

No

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

No

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

Yes

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

No

Potential conflicts of interest:

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

None

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

None

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

None

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

None

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

[See attached Ethics Agreement]

**Political affiliation
and activities:**

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

None

**Published
writings:**

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

[See attached speeches.]

**Additional
Matters:**

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

None

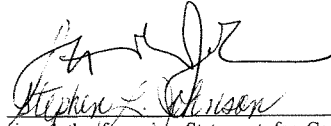
2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

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

None

AFFIDAVIT



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

Subscribed and sworn before me this 29th day of January, 2004.

Doris H. Mack
Notary Public

DORIS H. MACK
Notary Public District of Columbia
My Commission Expires: 2-28-2006

Attachment #1

**Dates, Sponsoring Organizations of Speeches Delivered by
Stephen L. Johnson, Assistant Administrator
Office of Prevention, Pesticides and Toxic Substances
U.S. Environmental Protection Agency
January 1999 - July 2003**

June 25, 2003, Biotech Industry Organization (BIO) International Annual Meeting. Biotech regulatory framework, major issues.

June 23, 2003, Presidential Green Chemistry Awards, EPA and corporate sponsors, National Academy of Sciences, Washington, D.C.

June 20, 2003, "The U.S., the EU and Precaution: Comparing Risk Management in a Complex World," Berlin. Sponsored by European Commission, Duke University, German Marshal Fund and U.S. State Department. Precautionary approach used in environmental regulation in U.S. using implementation of the Food Quality Protection Act (FQPA) as a case study.

June 17, 2003, American Bar Association's Pesticide Committee, Washington, D.C. Update on FQPA implementation and major pesticide issues.

June 11, 2003, Akzo-Nobel's Health, Safety and Environmental Conference, Chicago, IL. "EPA's Chemicals Program: EPA as Regulator, Advocate, Partner."

June 5, 2003, Agriculture Technologies and Innovations Conference, sponsored by Crop Life International, Brussels. "Thoughts on EU's Proposed Chemical "REACH" System."

June 4, 2003, Agriculture Technologies and Innovations Conference, sponsored by Crop Life International, Brussels. Biotech and EU's proposed Chemical "REACH" System.

April 17, 2003, Ag Biotech Forum, sponsored by National Food Processors Association, Washington, D.C. Biotech issues and update on FQPA implementation.

April 1, 2003, Global Chemical Regulation Conference, sponsored by American Chemistry Council, Synthetic Organic Chemical Manufacturers Association, Baltimore, MD. "EPA's Chemical Program: Chemical Security, Advocacy of Pollution Prevention, Ensuring National and International Chemical Safety."

March 13, 2003, Small Business Summit, sponsored by EPA, Washington, D.C. "Voluntary Programs Helping Small Businesses Prevent Pollution."

February 25, 2003, Agriculture Retailers Association Conference, Washington, D.C. President's budget request, biotech, and key FQPA issues.

February 25, 2003, National Potato Council Delegates Meeting, Washington, D.C. President's budget request, key FQPA issues.

January 16, 2003, National Alliance of Independent Crop Consultants Conference, Arlington, VA. Update on FQPA Implementation.

December 16, 2002, Charge to the National Academy of Sciences Committee on Human Testing, National Academy of Sciences, Washington, D.C.

December 10, 2002, National Agricultural Aviation Association's Annual Convention. Homeland security, update on major FQPA issues.

October 31, 2002, Kickoff of GM's Suppliers Partnership for the Environment, Washington, D.C.

October 4, 2002, Taylor University, Upland, Indiana. Lecture on history of EPA and two case studies: Homeland Security v. Community Right-to-Know and Biotechnology – Accept GM Corn or Face Starvation.

October 7, 2002, Conference sponsored by Crop Life America and California Plant Health Association, Indian Wells, California. Update on FQPA Implementation.

August 8, 2002, Association of American Pesticide Officials Summer Meeting, Kansas City, Kansas. "FQPA: Six Years of Implementation."

July 22, 2002, Renewal and Remembrance Project Work Dedication, sponsored by Professional Lawn Care Association of America, Arlington Cemetery, Arlington, VA.

June 14, 2002, European Chemical Industry Council, "U.S. Approach to Chemical Regulation." Versailles, France.

May 1, 2002, EPA's Science Forum, Washington, D.C. "Protection of Sensitive Population under FQPA."

April 4, 2002, National Pollution Prevention Roundtable's Annual Conference, Portland, OR. Homeland security activities, Gov. Whitman's priorities, EPA's pollution prevention priorities.

March 11, 2002, conference sponsored by Association of American Pesticide Control Officials, Arlington, VA. Homeland Security, President's budget request, update on FQPA implementation.

December 6, 2001, Capitol Chapter Society of Toxicology: Issues in Food Safety Symposium.

Homeland security, Gov. Whitman's priorities, update on FQPA implementation, biotech.

December 13, 2001, American Crop Protection Association Executive Committee/Operations Directors. Washington, D.C. Homeland security, especially in regard to pesticides.

December 11, 2001, Voluntary Children's Chemical Evaluation Program Test Workshop, stakeholders meeting. Update on homeland security activities and discussion of new voluntary testing program for chemicals to which children are most exposed.

November 28, 2001, National Pesticide Stewardship Alliance Second National Conference, Memphis, Tenn. Homeland security; EPA's proposed Innovations Policy, pollution prevention programs update.

November 15, 2001, National Farm Broadcasters Association, Kansas City, Kansas. Homeland security, Gov. Whitman's priorities, update on FQPA implementation.

November 7, 2001, Fifth Annual Anti-microbial Workshop, sponsored by American Chemistry Council, Consumer Specialty Products Association and International Sanitary Supply Association. Homeland security efforts; update on anti-microbial registration and major anti-microbial issues.

November 1, 2001, The Food Group, luncheon. Homeland security; Gov. Whitman's priorities, update on FQPA implementation.

October 1, 2001, Annual Meeting of the American Crop Protection Association, White Sulphur Springs, W. Virginia. Response to Sept. 11; Gov. Whitman's priorities, and update on FQPA implementation.

September 19, 2001, Statewide Pollution Prevention Roundtable Conference, State College, PA. Homeland security; EPA's proposed Innovations Policy, pollution prevention programs update.

August 26-27, 2001, Southern Appalachian Apple Integrated Pest Management Project Tour, Hendersonville, NC. Update on FQPA implementation.

July 13, 2001, Louisiana Farm Bureau Convention, New Orleans, LA. Transition news, President's budget proposal, update on FQPA implementation.

April 18, 2001, National Food Processors Association, Washington, D.C. Update on Food Quality Protection Act (FQPA).

April 6, 2001, American Crop Protection Association's Spring Meeting, Washington, D.C. Update on FQPA.

April 3, 2001, American Bar Association Section on Environment and Energy Committee's Meeting of the Special Committee on Pesticides and Chemical Regulation and Right-to-Know,

Washington, D.C. Update on FQPA and chemical regulation.

March 30, 2001, Apple Processors Association's 1999 Annual Pre-Growing Season Briefing, FQPA Implementation, Washington, D.C.

March 12, 2001, "Living with TSCA 2001 -- Global Chemical Regulations Conference" keynote speaker, organized by the American Chemistry Council and the Synthetic Organic Chemical Manufacturers Association, Baltimore, MD. Transition news, update on High Production Volume Voluntary Chemical Testing Program, Voluntary Children's Chemical Testing Program, International Chemical Safety Issues.

August 23, 2000, American Cotton Producers and Cotton Foundation Joint Meeting, Cary, N.C. Update on FQPA and biotech.

March 2, 2000, U.S.-Japan Joint Planning and Cooperation Committee Meetings, Washington, D.C. Overview of the work of the Office of Prevention, Pesticides and Toxic Substances, discussion of global chemical safety issues, including harmonization, chemical testing, and chemical right-to-know.

February 15, 2000, Chemical Producers and Distributors Association 2000 Annual Meeting, Washington, D.C. Update on FQPA.

January 14, 2000, Fourth Annual Ag Partnership Meeting, sponsored by EPA's Region 8 for the Region's State Ag Commissioners, Denver, CO. Update on FQPA, biotech.

January 11, 2000, American Farm Bureau National Convention, Houston TX, Update on FQPA.

October 4, 1999, American Nursery and Landscape Association's Fifth Biennial Leadership Council, Washington, D.C. Update on FQPA, particularly in regard to minor crops, nursery crops.

October 14, 1999, Food Quality Protection Act Conference, sponsored by the Texas Farm Bureau, Texas A&M University System Agriculture Program, Texas Department of Agriculture and others, Lubbock, Texas. Update on FQPA as it affects Texas crops.

September 9, 1999, Meeting of the Local Government Advisory Committee and the Small Government Advisory Committee, Alexandria, VA. Pesticides, chemicals, lead, right-to-know and pollution prevention regulatory issues affecting local and small governments.

February 16, 1999, Wisconsin Potato and Vegetable Growers Association/University of Wisconsin Integrated Pest Management Team Annual Growers Education Meeting, Stevens Point Wisconsin. Recognition of this partnership's innovative integrated pest management program and update on FQPA.

Prior to serving in the Office of the Assistant Administrator, Steve Johnson held top leadership positions for more than a decade in the Office of Pesticides, including the deputy director job. During that time, he gave hundreds of speeches to groups associated with agribusiness, including the American Crop Protection Association, the American Farm Bureau, the Chemical Producers and Distributors Association, the American Cotton Producers Association, and the National Food Processors Association, as well as state and local organizations and NGOs.

Attachment #2

**Speeches Delivered by
Stephen L. Johnson, Acting Deputy Administrator
U.S. Environmental Protection Agency
July 2003 - December 2003**

December 2, 2003, Launching of the "Green Suppliers Network", Washington, DC

December 2, 2003, Office of the Inspector General National Training Conference, Washington, DC

November 19, 2003, EPA's OPPTS National Meeting with State and Tribal Representatives, Boston, MA

November 18, 2003 EPA's Science Inventory Announcement, Washington, DC

November 13, 2003, EPA-ECOS Alignment and PPA Workgroup Meeting, Washington, DC

October 30, 2003, Taylor University, Upland, Indianapolis. Lecture on history of EPA and Emergency Response

October 29, 2003, Phoenix Awards Ceremony at the Brownfields Conference, Portland, OR

October 27, 2003, Indoor Air Quality Tools for Schools Award Ceremony - 2003, Grand Hyatt Hotel, Washington, DC

October 20, 2003, President's Environmental Youth Awards, Washington, DC

October 16, 2003, Performance Partnership Steering Committee Meeting, Washington, DC

October 15, 2003, Bayer Public Policy Advisory Council, Washington, DC

October 1, 2003, Assistive Technology Center, Washington, DC

September 22, 2003, CropLife America - RISE Annual Conference, Naples, FL

September 17, 2003, Hospitals for Healthy Environment, Washington, DC

September 11, 2003, 9/11 Remembrance Ceremony, Washington, DC

September 9, 2003, Innovation Action Council Meeting, Washington, DC

August 11, 2003, 2003 ECOS Annual Meeting, Salt Lake City, Utah

August 7, 2003, EPA's Voluntary Climate Change Programs U.S. - Japan High Level Consultation on Climate Change, Washington, DC

July 29, 2003, Chemical Producers and Distributors Association Annual Conference, Seattle, WA

Mr. Johnson has given no speeches in a non-governmental capacity.

JAN 28 2004

Anna L. Wolgast
Principal Deputy General Counsel and
Designated Agency Ethics Official
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Ms. Wolgast:

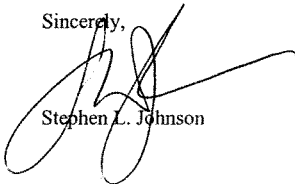
The purpose of this letter is to describe the steps that I intend to take to avoid a conflict of interest or loss of impartiality if I am confirmed and appointed as Deputy Administrator of the United States Environmental Protection Agency. These steps are as follows:

Consistent with the prohibitions of 18 U.S.C. 208(a), unless I obtain a waiver under section 208 or qualify for a regulatory exemption under section 208(b)(2), I will not participate personally and substantially in any particular matter in which I, or any person or organization whose interests are imputed to me, have a financial interest if the particular matter will have a direct and predictable effect on the financial interest.

If confirmed and appointed as Deputy Administrator, I will issue directions to my staff that any matters that may raise a potential conflict of interest are not to be referred to me and are to be decided, without my participation, by the Assistant Administrator with subject matter responsibility for the matter.

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

Sincerely,



Stephen L. Johnson

RESPONSE BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTION FROM
SENATOR INHOFE

Question. As OSHA moves forward with a rulemaking on exposure to hexavalent chromium, will EPA be part of that process and will you commit to cooperating with OSHA in evaluating the risk from hexavalent chromium in ACC?

Response. Yes, we are cooperating with OSHA regarding the rulemaking for exposure to hexavalent chromium. Through an existing Memorandum of Understanding between EPA and OSHA, the two agencies have enjoyed many years of strong coordination and cooperation on several issues. In addition, EPA will coordinate this issue through the OMNE (including EPA, OSHA, NIOSH, and the Mine Safety and Health Agency) Committee which meets regularly to coordinate on a range of chemical issues that relate to occupational safety and health concerns.

With regard to EPA's efforts to develop a risk assessment for the hexavalent chromium in acid copper chromate (ACC), we are working closely with OSHA and NIOSH. OSHA's Permissible Exposure Level (PEL) for the workplace will be an important consideration in our review of this chemical. In addition, the issue of dermal sensitization, including as related to hexavalent chromium in ACC, will be presented to an EPA Scientific Advisory Panel (SAP) meeting on May 4-5, 2004. As part of this process, EPA scientists are working jointly with OSHA and NIOSH scientists who have been invited to participate in the SAP.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM
SENATOR JEFFORDS

Question 1a. The High Production Volume Challenge Program, launched by EPA in 1998, has made important progress in getting chemical manufacturers to voluntarily commit to fill gaps in basic screening-level hazard data for chemicals they manufacture. Now that this data is beginning to be submitted, how does EPA plan to use the information?

Response. EPA is already using and plans further to use the data being made publicly available under the HPV program for a number of purposes. To assist the Agency, the Office of Pollution Prevention and Toxics established a Federal Advisory Committee called the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). We hope to obtain consensus recommendations from the NPPTAC concerning elements in an approach to setting priorities for the assessment of the HPV Challenge Chemicals. The results of the screening will set priorities for risk management, risk assessment, or additional testing and information development. In addition, opportunities will be explored to integrate the HPV data into OPPT's Pollution Prevention program through new initiatives based on the wealth of data that will be acquired on many widely used industrial chemicals. This data will allow EPA to better assess and manage the chemicals citizens are likely to encounter in their everyday lives.

This data will also help promote more sustainable approaches to looking at both the risk management of chemicals and the development of safer alternative chemicals or technologies—this will result in the Agency being better able to produce positive, measurable environmental results, more efficiently. The data will also help other Federal and State entities and tribes in prioritization and assessment/management activities.

Another significant use of the data will be in Structure Activity Relationships (SAR). The Agency is a world leader in the development and use of SAR models to assess chemicals. The wealth of data received under the HPV Challenge program will allow EPA to evaluate and strengthen the SAR models currently in use, such as Quantitative SARs for environmental effects, and more importantly to significantly increase the pace of development of health effects SAR models. As SAR capabilities are further developed and expanded, the Agency will be able to more quickly and reliably screen chemicals for a wide range of health and environmental effects and environmental fate indicators such as persistence.

Question 1b. Further, when does EPA plan to finalize the December 2000 proposed rule requiring manufacturers of the first set of "orphan" chemicals to develop hazard data, and when does the Agency plan to issue additional rules for the remaining "orphan" chemicals?

Response. EPA plans to issue the final test rule on the first group of unsponsored HPV chemicals and hopes to issue a proposed rule for additional unsponsored chemicals by the end of 2005.

Question 2. EPA recently acknowledged that the wood preservative acid copper chromate (ACC) has not been evaluated using current safety standards. There is a

clear need to ensure that the health risks of ACC, including risks from oral ingestion and dermal absorption, are fully evaluated and subject to all appropriate testing. Will EPA assure us that the pending pesticide registrations for ACC will not be granted before such a full and detailed evaluation has been completed?

Response. Yes, the Agency is working hard on resolving the outstanding questions associated with the ACC registration applications. EPA is committed to developing a solution that ensures that the most economic and environmentally safe wood-treatment products are available for consumers. On January 9, 2004, the Agency sent letters to the potential manufacturers, Arch Wood Protection, Inc. and Forest Products Research Laboratory, informing them that the Agency was unable to accurately assess the risks that may be associated with ACC without additional exposure information. The kind of data needed largely relates to how much chromium people would be exposed to from treated wood. In order to facilitate the generation of this new data, on March 3 the Agency staff met with the applicants. To date, the Agency has not received the requested data. Absent of any other new information that would resolve the Agency concerns, EPA needs the information identified in the January 9 letter before it can accurately and thoroughly assess the potential risks and reach a decision on the applications.

Question 3a. In your written testimony, you state that the High Production Volume (HPV) program challenged chemical companies "to voluntarily generate and make public for the first time basic health effects information on the 2,800 industrial chemicals produced in the greatest quantities in the United States. Today hundreds of companies are submitting that data, which is posted on EPA's Web site." My understanding is that the data available on EPA's HPV webpage are summaries of pre-existing data, as opposed to newly generated data to fill the information gaps. Is this correct?

Response. Most of the initial data posted on the website was existing data that had been in company files and had not been publicly available. The Agency wanted to make that data available as soon as possible. The more recent posting include newly generated data that has been developed in response to the HPV Challenge Program.

Question 3b. When does EPA plan to establish a repository data base so that the new data can be made publicly available?

Response. The Agency plans to have the data base available by early 2005. At the present time, there is an effort underway to enhance this data base with additional search capabilities. The Agency is working with some of the NPPTAC members, industry data submitters, environmental organizations, and State representatives to ensure that the data base is as useful as possible. When available, the relational data base will house the data previously submitted under the program as well as all new data.

Question 4. You testified that EPA did not conduct a "complete or thorough evaluation of the potential benefits" of REACH. Please provide a copy of whatever evaluations EPA has conducted to date regarding the public health and environmental benefits of REACH.

Response. EPA has consistently stated that it supports the goals of the EU's REACH proposal. EPA recognizes that the EU has the right to determine the levels of protection it deems appropriate for its citizenry. In that vein, EPA's role in the review of the proposed and revised legislation was with respect to our experience as regulators of new and existing chemicals and with the workability of the proposal. EPA has had an ongoing dialog with the European Commission regarding the development of the REACH proposal. It has been a collaborative process where the EPA has provided technical guidance and feedback to commission staff on various components of the REACH program, many of which are new elements in the EU's regulatory approach to chemicals but for which EPA has had long experience (e.g., polymers, intermediates, compensation procedures for sharing testing costs, etc.). At the request of European Commission staff, the Agency has provided copies of relevant U.S. Federal Register notices and text from the Code of Federal Regulations, and other information on the approaches and tools we use here in the U.S. to address such matters. The working relationship has been a positive and productive bilateral effort. EPA has not done an analysis of environmental or public health benefits of the REACH proposal.

Question 5a. You testified that you met with public health and environmental organizations to discuss the development of the U.S. position on REACH. Please provide the names of any public health and environmental organizations with whom you (or senior EPA management) met, the names of the individuals attending, and the date and location of the meetings to discuss REACH. Please provide the names

of any industry or other non-governmental organizations with whom you (or senior EPA management) met, the names of the individuals attending, and the date and location of the meeting to discuss REACH.

Response. The following is a list of the majority of meetings held on REACH with external parties, however the Agency will continue its work to determine if there are any other such meetings.

January 2002, Arlington, VA Transatlantic Business Dialogue Charles Auer, EPA, Officials from European Commission, Rob Donkers, Reinhard Schulte-Braucks, industry, and the public

June 13–14, 2002, Paris CEFIC Conference Delivered keynote address on U.S. approaches to chemicals management Steve Johnson, EPA

Sept. 13, 2002, Washington DC Meeting on EU Chemicals Policy with WWF Cliff Curtis, World Wildlife Fund (WWF), Charlie Auer and Susan Hazen, EPA

Sept. 24, 2002, Washington DC Meeting on EU Chemicals Policy Susan Hazen and Charles Auer, EPA, met with American Chemistry Council representatives Joe Mayhew and Mike Walls

Nov. 7–8, 2002, Chicago Transatlantic Business Dialogue Steve Johnson and Charles Auer, EPA, met with transatlantic officials from Directorate General (DG) Trade, Enterprise and Environment, business and the public

Sept. 30–Oct. 2, 2002, Brussels Discussions with EC, UK & other countries, industry and ENGO's, to exchange information on aspects of regulatory programs and current environmental issues including REACH, POPs, PIC, asbestos, Octa-BDE, and other issues Susan Hazen and Charles Auer, EPA, met with DG Environment Catherine Day, Eva Hellsten, Rob Donkers; DG Enterprise Reinhard Schulte-Braucks, Countries UK and country representatives to the EC, Industry Alain Perroy of CEFIC, and other industry representatives, ENGO's representatives from WWF, Michael Warhurst; Greenpeace; Jorgo Iwasaki-Riss; and European Environment Bureau, Stephan Schuer

Dec. 2–5, 2002, Brussels Discussions with EC, UK & other countries, industry and ENGO's Stephen L. Johnson, Charlie Auer & Breck Milroy, EPA; DG Environment and Trade Business Roundtable; Country Representatives to the EC; ENGO's WWF, Michael Warhurst; and EEB, Stephan Scheuer, Roberto Ferrigno; and Members of the EU Parliament

Jan. 30, 2003, Washington, DC Trade and Environment Policy Advisory Committee, Co-chaired by USTR and EPA Linda Fisher, EPA, met with members, including several NGO's among other groups

June 3–5, 2003, Brussels Steve Johnson and Breck Milroy, EPA, met with DG Environment, Health & Enterprise; Italy Rep. to the EC; Business Roundtable and European Environment Bureau

Sept. 15, 2003, Stockholm International Chemical Control Policies Approach to the Sound Management of Chemicals Susan Hazen, EPA, met with participants and attendees including DG Environment; Sweden; UK; CEFIC; WWF; academia; etc.

Oct. 6–9, 2003, Brussels Discussions with European commission staff and others Susan Hazen, Charles Auer, and Breck Milroy, EPA; DG Environment, Members of European Parliament

Oct. 21, 2003, Washington DC Lowell Center for Sustainable Production Various EPA staff met with Joel Tickner & Ken Geiser with other European Experts & ENGO's

Nov. 5, 2003, Washington, DC Trade and Environment Policy Advisory Committee, Co-chaired by USTR and EPA Judith Ayres, EPA, and members including several NGO's among other groups

Question 5b. In the future, what process does EPA, or the REACH interagency task force of which EPA is a member, intend to use to gather input from the environmental and public health community to ensure that the US position on REACH reflects a balanced set of views?

Response. EPA remains open to meeting with all interested parties on various health and environment issues, and will seek input via appropriate means where necessary to ensure that the Agency understands the range of stakeholder views. EPA notes that a wide range of views on the REACH issue have been solicited through various advisory committees established and supported by other agencies. This is the typical process used for matters that affect U.S. commerce and at least one of the advisory committees is dedicated to trade and environment interests while other functional or sectoral committees include representatives of the broader public, including manufacturers, small business, service providers and environmental, consumer and/or health organizations. EPA notes that the U.S. did encourage all interested parties to comment on the proposed REACH as the European Commission (EC) conducted an internet consultation process in May to July 2003.

In response to this internet consultation, the EC received approximately 6,400 comments from governments, industry, and other organizations worldwide.

Question 5c. Please clarify whether support by environmental and public-health groups for focusing on high-volume chemicals was in the context of the U.S. HPV program, or whether such groups also supported restricting the scope of REACH to focus solely on high-volume chemicals. If the latter, please provide specific details of which environmental and public-health groups voiced such support.

Response. Environmental and public health groups have supported the focus on high production volume chemicals in the context of the U.S. HPV program. Recognizing the need to set priorities with such a large number of chemicals, the HPV priority screen identified a workable first tier.

Question 6. In your testimony, you cited the existence of 90,000 chemicals used commercially in the U.S. My understanding is that approximately 90,000 chemicals have been registered with the government, but the true universe of chemicals actually used in commerce is significantly smaller. For example, the number of chemicals reported on the TSCA Inventory (namely, those produced above 10,000 lbs annually aggregated across all producers) is only about 15,000. Is this correct?

Response. There are approximately 90,000 chemicals on the TSCA Inventory and of these, approximately 20,000 are new chemicals that have been added since the original inventory. In 1986, EPA promulgated the Inventory Update Rule (IUR), for the partial updating of the production volume data reported to the Inventory. The rule required manufacturers of nonpolymeric organic chemical substances included on the Inventory to report current data on the production volume and the information on these substances if produced or imported at levels of 10,000 pounds or more per year per site. Based on EPA's analysis of the IUR data, there are about 13,000 organic chemicals in commerce at or above this level of production. There are an estimated 2,000 inorganic chemicals that might be produced above 10,000 lbs per site, resulting in approximately 15,000 non-polymeric chemicals that are of interest for priority setting purposes.

The 15,000 estimate does not include organic or inorganic chemicals produced below 10,000 lbs nor does it include polymers and there are approximately 28,000 polymers among the Inventory chemicals.

Question 7. You stated in your testimony that the revised version of REACH now focuses on the appropriate chemicals of concern. Do you view REACH's revised provisions as consistent or inconsistent with the express policy statement in section 2(b)(1) of TSCA that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [defined to include import] and those who process such chemical substances and mixtures."? If inconsistent, please explain.

Response. The Agency believes the statement of U.S. policy in section 2(b)(1) of TSCA that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures" is consistent with aspects of REACH addressing the development of data.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM
SENATOR LIEBERMAN

Question 1. What steps has EPA undertaken over the last 12 months to step up its pollution prevention activities?

Response. The Agency remains committed to the goals of pollution prevention and in the past year alone, has taken dramatic steps. One significant effort is the launch of an exciting new program—the Green Suppliers Network (GSN)—with industry aimed at greening the supply chains of major corporations involved in automobile, aerospace, office furniture and healthcare/pharmaceutical manufacturing sectors. Working collaboratively with manufacturers, the States, and in partnership with the Manufacturing Extension Partnership program in the Department of Commerce, the Agency and the business community are finding numerous pollution prevention (P2) opportunities within supply chains.

EPA continues to achieve significant Pollution Prevention cooperation with the Healthcare industry through the voluntary Hospitals for a Health Environment (H2E) program. To date, there are more than 2,200 health care facilities participating in the program and hundreds of other organizations, including the Dept. of Veterans Affairs and 14 State governments that have joined the H2E effort to vir-

tually eliminate the use of mercury and reduce the overall waste in the health care industry.

The Agency is also committed to greening the Federal Government and as part of this effort, this year launched a broad initiative within EPA to make mandatory the purchasing of green office products and supplies. In addition, the Agency has established an online directory of environmentally preferable products and services available for sale under a pre-negotiated blanket purchase agreement (BPA) with a commercial vendor. EPA believes that leading by example and developing tools and providing assistance will encourage others in the Federal family to join in this effort.

The Agency also remains committed to the on-going development of new tools to be used to further advance pollution prevention. For example, EPA's Sustainable Futures program offers powerful chemical screening tools to industry, together with training, technical assistance, regulatory incentives and assistance to small businesses. EPA helps chemical companies use these tools, generally known as Structure Activity Relationships (SAR), at R&D to compare alternatives for risk-related considerations, potentially leading to the development of safer chemicals and therefore, P2 outcomes. Already recognized as a world leader in the development and use of Structure Activity Relationships (SAR), this effort further builds on our commitment to assist industry with prevention tools. Companies participating in Sustainable Futures indicate that the program can significantly reduce product development costs, reduce generation of chemical waste, reduce regulatory uncertainty and reduce time to market. Industry has conducted over 20,000 analyses using Sustainable Futures tools in the last 12 months. Other significant efforts in the past year include:

- Design for the Environment (DfE)—partnership a voluntary program with industry that promotes integrating cleaner, cheaper, and smarter solutions into everyday business practices to assist the furniture manufacturing industry with the development of safer fire retardant materials following the voluntary phaseout of a number of the existing chemicals presently being used.
- EPA's Office of Pollution Prevention and Toxics (OPPT) established a committee under the Federal Advisory Committee Act (FACA), in part, to provide consensus recommendations from a balanced group of stakeholders on issues relating to implementation of TSCA and the Pollution Prevention Act. As part of this effort, the National Pollution Prevention and Toxics Committee (NPPTAC) is exploring pollution prevention areas for potential advice and recommendations to EPA/OPPT focusing on enhancements and future directions for further integrating pollution prevention in our programs. The consensus recommendations from this balanced group of stakeholders will assist in elevating pollution prevention as the first principle in the hierarchy for protecting human health and the environment.
- Major P2 Conference scheduled for April 2004. EPA and the National Pollution Prevention Roundtable, are co-hosting the National Environmental Assistance Summit 2004. This meeting will bring together over 500 environmental assistance providers and Agency and industry representatives with the goal of developing partnerships and exchanging information that will accelerate the positive environmental impacts of compliance assistance, pollution prevention and other innovations.

Question 2. What has EPA done to facilitate the development of industrial biotechnology applications that can prevent pollution?

Response. EPA strongly supports finding newer ways to advance the agenda of environmental protection. Many of EPA's voluntary programs do just that. Programs such as the Green Chemistry Challenge, for example, are aimed at encouraging industry to develop and implement pollution preventing technologies in the traditional chemicals sectors as well as in the biotechnology sectors. Biotechnology offers the potential for safer product alternatives and lower hazard manufacturing methods and also the development of technologies for converting renewable resources to energy, fuels, and commodity chemicals. As an incentive, EPA has provided awards through the Green Chemistry Challenge Program for innovative bio-based products, including several reduced-risk pesticides.

Question 3. Has EPA undertaken, or is EPA planning to initiate, activities to educate the manufacturing about new biotech and other pollution prevention tools that are becoming available?

Response. The use or substitution of biotechnology in certain industrial processes is an example of the newer approaches that can be used to reduce energy inputs and waste outputs. Because the reduction of energy inputs and waste outputs can represent monetary savings for companies, the Agency believes that outreach and education are efficient methods for quickly disseminating knowledge of the potential benefits of industrial biotechnology throughout industry. As an example of this kind

of targeted outreach and education effort, EPA is working with its various partners in pollution prevention activities to create a workshop on Industrial Sustainability for the National Environmental Assistance Summit scheduled for April 21, 2004. The Summit, a joint EPA and National Pollution Prevention Roundtable effort, is a conference that will attract representatives from States, industry, environmental assistance providers and many others. The workshop, entitled Industrial Sustainability through Biotechnology, will present and discuss biotechnology as it encompasses the use of biological processes to perform specific manufacturing processes in the industrial, agricultural, and pharmaceutical sectors. Recent work shows that biotechnology has tremendous potential to increase sustainability in industry and reduce pollution, through reducing both energy inputs and waste output.

Additionally, EPA has an innovative partnership with the National Institute of Standards and Technology's Manufacturing Extension Partnership (MEP) called the Green Suppliers Network (GSN). This program utilizes MEP's State partners to provide assistance that enables large manufacturers to actively engage all levels of their supply chain in the development of good business approaches to prevent pollution. GSN improves performance, minimizes waste generation and removes institutional roadblocks through its innovative approach to leveraging MEP's national network of manufacturing technical assistance resources. With GSN support, suppliers can learn how to improve their products and processes, increase energy efficiency, identify cost-saving opportunities, and optimize resources and technologies with the aim of eliminating waste.

Question 4. Would congressional direction assist in accelerating the use of industrial biotechnology in EPA's Pollution Prevention program?

Response. Because there are a number of initiatives presently underway that will increase and promote the integration of biotechnology and pollution prevention, congressional direction is not necessary at this time. The Agency welcomes continued participation from the Committee on this issue.

RESPONSE BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTION FROM
SENATOR CLINTON

Question 1. As the former Assistant Administrator for OPPTS you are very familiar with the me-too registration process and the science EPA requires to determine the safety of wood preservative chemicals. On January 9, 2004, Antimicrobial Division Director Frank Sanders set forth an extensive set of data requirements to determine the risks associated with the hexavalent chromium contained in acid copper chromate (ACC), an old wood preservative chemistry for which a me-too registration is now being sought. Can you assure this Committee that, under no circumstances, will EPA grant a me-too registration for ACC prior to receiving and reviewing all the scientific data requirements set forth in Director Sanders' January 9, 2004 letter?

Response. Yes, the Agency is working hard on resolving the outstanding questions associated with the ACC registration applications. EPA is committed to developing a solution that ensures that the most economic and environmentally safe wood-treatment products are available for consumers. As you mention, on January 9, 2004, the Agency sent letters to the potential manufacturers, Arch Wood Protection, Inc. and Forest Products Research Laboratory, informing them that the Agency was unable to accurately assess the risks that may be associated with ACC without additional exposure information. The kind of data needed largely relates to how much chromium people would be exposed to from treated wood. In order to facilitate the generation of this new data, on March 3 the Agency staff met with the applicants. To date, the Agency has not received the requested data. Absent of any other new information that would resolve the Agency concerns, EPA needs the information identified in the January 9 letter before it can accurately and thoroughly assess the potential risks and reach a decision on the applications.

STATEMENT OF ANN R. KLEE, NOMINATED TO BE GENERAL COUNSEL,
ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Jeffords, members of the Committee: Thank you for providing me with the opportunity to appear before you today. It is a great honor and privilege to be here today as the President's nominee to be General Counsel of the Environmental Protection Agency. On a personal note, as a former Chief Counsel to this Committee, it is also a pleasure to be back sitting at counsel's table.

The Office of the General Counsel plays an important role in ensuring that our environmental policies and programs are fully and fairly implemented, supported by law, and advance the goals of protecting public health and the environment. That is a significant responsibility and one that I take seriously. I know from my experience as an environmental lawyer that the environmental issues we face today—from reducing air emissions of hazardous pollutants to controlling nonpoint source pollution to protection of our natural resources—are increasingly complex and contentious. Solving those issues will require that we work together with open minds to seek creative solutions, encourage partnerships, and emphasize results. If I am confirmed, I pledge to you that I will do everything in my power to work with the dedicated and expert staff in the Office of the General Counsel to provide Administrator Leavitt and the program offices with sound, unbiased legal analysis to achieve the Agency's mission of protecting human health and safeguarding the environment. And I pledge to work with you and your staff in carrying out our shared goal of environmental protection.

I have had the privilege over the past 18 years to practice environmental law from several different perspectives: as an associate and then a partner in private practice, as a Hill staffer, and most recently, as a senior executive at the Department of the Interior. I learned firsthand that litigation is only one tool and, usually not the best one, to solve problems; that bringing parties together to talk through issues often leads to innovative solutions; and that when Congress and the Administration work together, they can accomplish tremendous things.

I started my career as a litigator. My most significant case, and certainly one of the highlights of my career, involved a groundwater contamination problem in South Florida. Our client was the city of Delray Beach, which was forced to shut down a number of its drinking water wells after detecting high levels of various industrial solvents. After 2 years of developing the technical case and a 4-week jury trial, we were able to identify the source of the contamination—a company that had been dumping used solvents on its property for years—and obtain a \$8.7 million verdict under State law on behalf of the City for cleanup costs and future operation and maintenance of the treatment structures. The City won the lawsuit, but in reality, the litigation did little to achieve real results. To my knowledge, the city of Delray Beach still has not collected on the judgment.

My experience on the Hill underscored for me the importance of collaboration and outreach to those with potentially differing viewpoints. During my first week as a Senate staffer, this Committee reported out the Safe Drinking Water Act Amendments. One year later, the Senate passed the bill (S. 1316) by a vote of 99 to 0, and it was signed into law a year later by President Clinton. That legislation was developed with strong bipartisan support and with the active support and engagement of the Administration. It improved public health, reduced unnecessary costs, encouraged voluntary measures to prevent contamination of water supplies, and incorporated risk assessment principles. To my mind, the Safe Drinking Water Act Amendments of 1996 demonstrates that dialog, partnerships, and innovative thinking are the path to better environmental protection. The Safe Drinking Water Act served as a model for me on virtually every legislative project that I worked on while serving as Chief Counsel of the Environment and Public Works Committee and to this day. If I am confirmed, I would hope to continue a collaborative relationship with the Committee and its staff as we work through the challenging legal issues we face today.

For the past 3 years, I have served at the Department of the Interior as Counselor and Special Assistant to Secretary Gale Norton. I have observed daily how collaboration and partnerships can achieve significant results on the ground. I have worked with landowners who want to take proactive measures to protect wildlife and their habitat; I have coordinated Departmental efforts to enhance habitat and preserve species, while providing water to farmers and cities; and I have led negotiations with States and Tribes to enhance and restore public and private lands. As Counselor to the Secretary, I led the Department's efforts to restore the Florida Everglades and am particularly proud of what we were able to accomplish in just the past 3 years by working with our partners in the State and local governments, environmental organizations, and private sector. As this Committee knows, Everglades restoration is truly a complex venture, raising difficult legal and practical questions relating to land management, environmental protection, flood control, and growth management. The parties are working through these issues together, though. The result is that we now have a legal framework in which to implement individual restoration projects; we have acquired and preserved thousands of acres of Everglades habitat; and have begun construction on the first Everglades restoration project.

I use these three examples from my past environmental practice—Delray Beach, the Safe Drinking Water Act, and Everglades restoration—because I think that they

best illustrate how I approach environmental issues. I believe strongly in the framework of our environmental laws and regulations and in the enforcement of those laws and regulations. Litigation, whether in defense of a regulatory program or in the context of an enforcement action, remains an important tool for ensuring environmental protection. At the same time, however, I believe that we should always look for opportunities to go beyond just what the law requires. My experience has always been that communities, businesses, and individuals, when given the chance and some encouragement, will step up to the plate and come up with a better way of protecting and enhancing our environment. My job as a lawyer is to help make that happen.

Throughout my career, I have strived to think independently, respect the rule of law, act in accordance with the highest ethical standards, and use sound judgment and common sense. I try to listen to all sides of an argument, respecting the views of those with different perspectives, before making a judgment. My goal is to lead by example and learn from others. I hope to have that opportunity in EPA's Office of General Counsel.

Thank you, Mr. Chairman and members of the Committee. I would be happy to answer any questions that you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING

WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Ann R. Klee

Business Name: U. S. Department of the Interior

Business Address: 1848 C Street, N.W.,

City, State & Zip: Washington, D.C. 20240

Business Email: Ann_Klee@ios.doi.gov

Business Phone: 202.208.6182

Cell Phone: _____

Home Address: _____

City, State & Zip: Mauretown, Virginia 22644

Home Phone: _____

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

Full Legal Name: Ann Renee Klee

Position to which nominated:
Date of Nomination: General Counsel, U.S. Environmental Protection Agency

Date of birth: 8.28.61 **Place of birth:** Basel, Switzerland

Marital status: Married **Full name of spouse:** John Amend Macleod

Name and ages of children: None

Education:

Institution	Dates Attended	Degrees Received	Dates of Degrees
Swarthmore College	1979-1983	B.A.	1983
University of Pennsylvania Law School	1983-1986	J.D.	1986

Employment record:

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

Position Title	Employer	Address	Dates	Terminated (Y/N)
Research Assistant	Professor Clyde Summers	University of Pennsylvania Law School, Philadelphia PA	Spring Semester 1984	
Research Assistant	Dechert, Price & Rhodes	Philadelphia, PA	Oct 1984 - May 1985; September 1985-May 1986	

Position Title	Employer	Address	Dates	Terminated (Y/N)
S u m m e r Associate	Tucker, Flyer, Sanger & Lewis	Washington, D.C.	Summer 1984	
S u m m e r Associate	Crowell & Moring	Washington, D.C.	Summer 1985	
Associate	Crowell & Moring	Washington, D.C.	October 1986 - October 1990	
Partner	Preston Gates Ellis & Rouvelas Meeds	Washington, D.C.	October 1990 - October 1995 (Associate until 12/94)	
Environmental Counsel	Senator Dirk Kempthorne, U.S. Senate	Washington, D.C.	October 1995 - November 1996	
C o u n s e l, Subcommittee on Fisheries, Wildlife and Drinking Water	Senator Dirk Kempthorne/ Senate Committee on Environment & Public Works	Washington, D.C.	November 1996 - November 1997	
Chief Counsel	U.S. Committee on Environment & Public Works	Washington, D.C.	December 1997 - January 2001	
Counselor and Special Assistant to the Secretary	U.S. Department of the Interior	Washington, D.C.	January 2001 - Present	

**Honors and
awards:**

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

Date	Honor/Award
May 1983	B.A. with High Honors in Ancient Greek and Ancient History (Swarthmore)
May 1983	Phi Beta Kappa
May 1983	Award for Excellence in Classics
1986	Editor, Journal of Comparative Labor Law
May 1986	Award for Outstanding Paper in Labor Law
1996	Honorary Member, Idaho Rural Water Association (in recognition of staff work on Safe Drinking Water Act Amendments of 1996)

Memberships:

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

Organization	Office held (if any)	Dates
District of Columbia Bar Association		1987 - Present
Pennsylvania Bar Association		1986 - Present
American Bar Association, Section on Natural Resources and Environmental		1986 - 1995

Qualifications:

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

I have been an environmental lawyer for almost 18 years. I have had the opportunity to serve in private practice, on the Hill as a Senate staffer, and most recently in the Administration as a senior advisor to the Secretary of the Department of the Interior. I have gained significant substantive expertise over the past 18 years in many of the statutes that are within EPA's jurisdiction. For example, as a Partner at the law firm of Preston Gates & Ellis, I chaired the environmental group in the Washington D.C. Office and was responsible for a growing practice covering all aspects of environmental policy and implementation, including legislative initiatives, counseling, regulatory matters, and litigation under RCRA, Superfund, the Clean Water Act, the Clean Air Act, and the Oil Pollution Act. As Chief Counsel to the Senate Committee on Environment and Public Works, I had the opportunity to work on a number of bills amending the Safe Drinking Water Act, the Endangered Species Act, Clean Water Act, RCRA, TEA-21 (NEPA streamlining), and Superfund. At Interior, I have worked closely with lawyers and professional staff both within the Department and in other Departments to address complex environmental and resource management issues. Throughout my career, I have sought balanced solutions to environmental challenges that protect and enhance our natural resources, while respecting the legitimate needs and interests of landowners, communities, and businesses. I believe that my experience in the government and in private practice would enable me to be an effective and responsible General Counsel of EPA, should the Senate confirm me to that position.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate. yes no

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

- yes If so, please explain _____
- no

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

- yes If so, please explain _____
- no

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

- NOT APPLICABLE
- yes
- no

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

- yes If so, please explain _____
- no

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

NONE (OTHER THAN PRESENT POSITION)

Financial

Statement:

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

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or

from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF-278, Schedule A.

None _____

2. Are any assets pledged?

- yes If so, please explain _____
- no

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

- yes If so, please explain _____
- no

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

- yes
- no If not, please explain _____

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

- yes If so, please explain _____
- no

Potential conflicts of interest:

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

None _____

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

My husband is a partner with the law firm of Crowell & Moring in Washington D.C. My husband does not, and will not, represent clients before EPA for as long as I may be employed at EPA. In addition, in accordance with guidance from the Office of Government Ethics, I have agreed that I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interest of Crowell & Moring. Furthermore, I will not participate in any particular matter involving specific parties in which to my knowledge any client of my spouse is or represents a party, unless I am authorized to participate.

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

None _____

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

See answer to Question 2 above _____

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

See attached letter dated February 27, 2004 from myself to Anna Wolgast, Principal Deputy General Counsel and Designated Agency Ethics Official

Political affiliation and activities:

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

Membership/Office/Political Party	Dates	Amount (if applicable)
Lead Team Member, Bush-Cheney Transition Team	December 2000 - January 2001	

Ann R. Klee

February 27, 2004

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

Dear Ms. Wolgast:

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

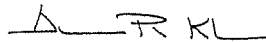
Consistent with the prohibition of 18 U.S.C. §208(a), unless I obtain a waiver under section 208(b)(1) or I qualify for a regulatory exemption under section 208(b)(2), I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on my financial interests or those of any other person or organization whose interests are imputed to me.

My spouse is employed as a partner with the law firm of Crowell & Moring, LLP, from which he receives a partnership income. With respect to 18 U.S.C. §208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interest of Crowell & Moring. Furthermore, pursuant to section 2635.502, I will not participate in any particular matter involving specific parties in which to my knowledge any client of my spouse is or represents a party, unless I am authorized to participate. In addition, my spouse has agreed not to represent any client with respect to any particular matter before the Environmental Protection Agency during my tenure.

If confirmed and appointed as General Counsel, I will issue directions to my staff that such matters are not to be referred to me and are to be decided by the Principal Deputy General Counsel or the Associate General Counsel with subject matter responsibility for the matter, without my participation.

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

Sincerely,

A handwritten signature in black ink, appearing to read "A R Klee". The signature is written in a cursive, slightly stylized font.

Ann R. Klee

ANN R. KLEE
Published Writings

Speeches (with Papers Printed in Meeting Materials)

ABA 21st Annual Water Law Conference, San Diego, CA, American Bar Association, Section of Environment, Energy, and Resources. Title: "A Fish Needs More Than Water: The Middle Rio Grande and Collaborative Conservation" (February 2003)

Keynote Speech ESA/CLE Conference, Austin, TX, Title: Opportunities for Partnerships - Improving Implementation of the ESA"(September 2002)

North American Wildlife & Natural Resource Conference in Dallas, TX, Title: "Administration's Approach to the ESA - Building a Stewardship Ethic for the 21st Century (April 2002)

"Impacts of a New Water Act on Mining," AMC Mining Convention '94, Phoenix, Arizona (September 1994) Paper published in Conference Proceedings)

"The Greening of the United States – An Environmental Agenda for the Nineties," PPI Transport Symposium 9, St. John, New Brunswick, Canada (October 1991)

"Ownership and Control and the SOCM Agreement: The Snares of the Applicant Violator System." J. MacLeod, A. Klee, paper presented at American Mining Congress Conference, New Orleans, Louisiana (September 1990)

"Defending Citizen Suits Under Environmental Statutes," paper presented at Eastern Mineral Law Special Institute, Ft. Lauderdale, Florida (February 1990)

Articles

"The Moribund State of CERCLA Reauthorization," (coauthored with Ernie Rosenberg), 13 Natural Resources and Environment 451 (ABA) (Winter 1999)

"Superfund Update," Reinsurance Bulletin (Published by Preston Gates) (December 1994)

"Legislative Update: Prospects for Superfund in the 104th Congress," Perspectives (Published by Preston Gates) (December 1994)

"Impact to a Clean Water Act on Mining," Proceedings of American Mining Congress, (September 1994)

"Washington, Report: Superfund," Reinsurance Bulletin (Published by Preston Gates) (September 1994)

- "Reauthorization of the Clean Water Act – Expanding the Scope of Regulation," AMC Journal (Spring 1994)
- "Prospects for Environmental Reform in the 103rd Congress," Perspectives (Published by Preston Gates) (Winter 1993)
- "Small Business Woes," Legal Times (May 1993)
- "Congressional Action Begins on High Stakes Environmental Technology Program," Perspectives on Environmental Legislation (Published by Preston Gates) (February 1993)
- "Moving Toward A New Waste Management Strategy," Perspectives (Published by Preston Gates) (Fall 1991)
- Case Updates (Published by the Eastern Mineral Law Foundation), Reporter for the District of Columbia (Summer 1989 - Fall 1990)
- Mining Law Monitor (Published by Crowell & Moring), Assistant Editor (January 1989 - July 1990)
- "Supreme Court Limits Operation of Equitable Estoppel Against Government," T. Means, A. Klee, 6 Mining Law Monitor 7 (July 1990)
- "Alert: Proposed Tax on Carbon Emissions Disproportionately Impacts Coal Industry," 6 Mining Law Monitor 8 (July 1990)
- "Environmental Enforcement Efforts Heat Up At EPA And In Congress," A. Klee, W. Anderson, 6 Mining Law Monitor 10 (April 1990)
- "Environmental Update," 6 Mining Law Monitor 8 (January 1990)
- "EPA's Proposed Storm Water Discharge Regulations - More Than An Tempest In A Teapot," 5 Mining Law Monitor 8 (April 1989)
- "Post Hoc Unwarrantable Failure Citations Survive Judicial Review," T. Means, A. Klee, 5 Mining Law Monitor 4 (January 1989)
- "Sobering Thoughts About The Importance of Clean Water Act Compliance Planning," 4 Mining Law Monitor 4 (October 1988)
- "Worker Participation in Japan: The Temporary Employee and Enterprise Unionism," 7 Comparative Labor Law Journal 365 (Summer 1986)

Contributing Author and Editor

Natural Resources Damages, Government Institutes, First Edition, 1992

Superfund Manual, Government Institutes, Fourth Edition, 1990

RCRA Hazardous Waste Handbook, Government Institutes, Eight Edition, 1989

Superfund Manual, Government Institutes, Third Edition, 1988

Practical Environmental Law, Federal Publications, 1989

Practical Environmental Law, Federal Publications, 1988

Practical Environmental Law, Federal Publications, 1987

RESPONSES BY ANN R. KLEE TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. As you may know, the POPs Convention will enter into force in May, but the United States is still not a party. This Committee adopted legislation in July 2003 amending the Toxic Substances Control Act in order to implement the POPs Convention. As I understand it, the Administration is raising constitutional concerns with provisions that require domestic notice and comment when new chemicals are proposed for control under the POPs Convention.

However, there are currently U.S. laws implementing international agreements that require executive agencies to act in response to decisions taken by an international body, such as the Clean Air Act provisions that require EPA to issue regulations if the parties to Montreal Protocol agree to hasten the phase-out schedule for certain substances.

There are similar provisions in the implementing legislation for the Chemical Weapons Convention and the North American Free Trade Agreement. Do you think that all of these provisions are unconstitutional, and would you so advise the Administrator?

Response. I am aware that the United States is a signatory to the Convention on Persistent Organic Pollutants (POPs Convention). I also understand that certain conforming legislative amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA) are required for ratification. I have been told that EPA is working closely with Congressional staff of the House and Senate committees of jurisdiction to draft mutually agreeable text for amendments to those statutes in order to ratify the POPs Convention as soon as possible.

I am not familiar with the constitutional issue that you raise. With regard to constitutional issues raised in the context of legal issues arising at EPA, I would expect, if confirmed, to advance EPA's interests while coordinating closely with the Department of Justice. If confirmed, I further pledge to work with the Committee and staff to resolve any legal issues relating to implementation of the POPs Convention.

Question 2. Under Section 302(g) of the Clean Air Act, "the term 'air pollutant' means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used."

Is carbon dioxide a "chemical substance"? Is carbon dioxide "emitted into the ambient air"? If carbon dioxide is a "chemical substance which is emitted into the ambient air," then it seems to fall within the Clean Air Act's definition of an air pollutant, don't you agree?

Response. I understand that on August 28, 2003, OGC's General Counsel, Robert Fabricant, signed a legal opinion in which he concluded that the CAA does not authorize regulation of carbon dioxide or other greenhouse gases to address climate change. Based on his belief that the CAA did not authorize regulation to address climate change, Mr. Fabricant also concluded that carbon dioxide was not an air pollutant under the Clean Air Act's regulatory provisions.

Given that the Agency has expressed a position on the scope of the applicability of Section 302(g) of the Clean Air Act with respect to carbon dioxide, I would not anticipate revisiting that position at this time.

Question 3. It is my understanding that section 112 of the Clean Air Act lists mercury as a hazardous air pollutant subject to regulation. It is also my understanding that EPA concluded in its published finding in the year 2000 that regulation of mercury from power plants was "appropriate and necessary" within the meaning of section 112. Do you agree that as a matter of law—absent withdrawal of the regulatory determination which has not occurred—the Agency is therefore obligated under section 112 to regulate mercury emissions from power plants by prescribing the maximum achievable control technology and requiring its installation?

In the 1998 settlement agreement between the Natural Resources Defense Council and the EPA the Agency committed to promulgating a section 112 standard for mercury emissions from power plants by December 2003. The Agency's recent proposals related to mercury are not consistent with the Agency's commitments under that agreement.

As the official at EPA responsible for signing off on legally binding settlement agreements, I assume it would be your intention to abide by these agreements according to their terms.

Would you expect that the Agency would abide by settlement agreements to which it is a party even if those agreements were signed by a prior Administration?

Response. I am aware that in January of this year, EPA issued two proposals to regulate mercury emissions from utilities, including a proposed MACT standard for mercury emissions. I am not familiar with the legal theories articulated as a basis for those proposals. I am also unfamiliar with the details of the settlement agreement that you reference addressing mercury emissions. If confirmed, however, I would expect to review any legal issues raised by the final regulations governing mercury emissions to ensure compliance with the Clean Air Act and consistency with the settlement agreement.

As a general matter, if confirmed as General Counsel, I would strongly advise EPA client offices to abide by the commitments made in either settlement agreements or consent decrees. That advice would not depend on when the commitment on behalf of the Agency had been made.

Question 4. The EPA General Counsel is responsible for providing legal advice to the Agency, including alerting top management when options under consideration involve significant legal risk. On occasion, potential policies are not just risky, but squarely counter to Federal law. As a Presidential appointee confirmed by the US Senate to uphold the Constitution and the law of the land, will you commit to forcefully objecting if the Administration wants to pursue policies that are legally indefensible?

Response. As I stated in my confirmation hearing, one of the attributes that I believe that I bring to this job, if confirmed, is that of independent judgment. I agree that if I were to become the General Counsel, an important aspect of that job is ensuring that policy decisions are informed by a thorough understanding of the legally available options and of the risks associated with those options. I would not be hesitant to express those views.

STATEMENT OF CHARLES JOHNSON, NOMINATED TO BE CHIEF FINANCIAL OFFICER,
U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Jeffords, and Members of the Committee, it is a great privilege to appear before you today as the nominee of President George W. Bush to serve as Chief Financial Officer (CFO) of the Environmental Protection Agency (EPA). It is also a privilege to seek concurrence from this Committee that I am qualified, both by skills and by personal character, to hold this trusted position. If recommended to and confirmed by the U.S. Senate, it will be a further privilege to again associate with Michael O. Leavitt, Administrator of the EPA and a man I deeply respect.

As I begin, let me thank you and your staffs for every courtesy extended to me in the preparation for this hearing. At all times I was treated respectfully and professionally and, if confirmed, it will be my intention to reciprocate in working with you and your staffs.

The Office of the Chief Financial Officer at EPA is core to the success of the Environmental Protection Agency. The CFO Office Mission Statement reflects its comprehensive responsibilities for developing, managing, and supporting an Agency-wide goals-based system that involves strategic planning and accountability for environmental, fiscal, and managerial results. How an agency spends its money reflects its true priorities. As part of the management team, the CFO oversees budget formulation, preparation, and execution and is accountable for resources management and financial management functions that include analysis and annual planning, as well as controls and systems for payroll and disbursements. The office of the CFO is also responsible to look to the future and aid the management team in long-term thinking.

With 31 years in the practice of public accounting, including service as a member of the Board of Directors of one of the nation's largest firms, I believe I have demonstrated the financial competence as well as managerial leadership abilities to assume such a post. As Utah's Director of the Office of Planning and Budget, and as then Governor Leavitt's Chief of Staff, I have demonstrated these same qualities in the public sector. I take the public accountability very seriously.

I have learned much from my past experiences. I have developed financial skills from my years in public accounting that will guide me in the fiduciary responsibilities over the Agency's financial resources. I know from my government experience of the need to be up-front and open in providing information to constituencies. I have learned that all budgets are exercises in comparisons and hard choices have to be made. From my service as Chair of the Utah State Board of Regents, I have found the continuing need to allocate funds to programs and necessary research and

to reduce unnecessary administrative costs. From my day-to-day dealings with citizens, I have found taxpayers willing to give government responsibility over their taxes only when they believe that spending goes for the common good of the country and to the benefit of its citizens.

The past has been excellent preparation for the job to which I have been nominated.

That being said, I know the broad array of financial issues confronting EPA are more than just complicated financial questions. They are, fundamentally, the questions that address EPA's stewardship of the nation's air, water, and land. Being true to the fiduciary responsibilities I mentioned earlier is the best way I know for me to help EPA fulfill this stewardship role.

It is clear that the EPA has many large and complex issues before it. But it is also clear that addressing these issues successfully will require the collaboration of everyone in this room. As Administrator Leavitt said in his confirmation hearing, "Every significant step of environmental progress . . . has been a product of collaboration." I want to be a catalyst for collaboration. I want to do this to serve the Administration, the Administrator, and the American people.

I also would like to say what a pleasure it will be to be associated with the men and women that make up the staff of the Office of the CFO. They are a very dedicated group of people, equally focused on their profession and their professionalism. They care about immediate tasks and ultimate goals in pursuit of EPA's mission. I will be proud to serve with each and every one of them.

Mr. Chairman, I have spent a lifetime in building trust, confidence, and respect for moments such as this and I want you to know that if I am fortunate enough to be confirmed, I look forward to serving the people of the United States of America to the best of my ability. I again thank you and the Members and staff of this Committee for every courtesy extended to me and am ready to address any questions you and the Members of this Committee may have.

Thank you, Mr. Chairman.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENTAL AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING

WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Charles Edwin Johnson

Business Address: 1200 Pennsylvania Avenue, NW, Room 4432 ARN
Washington, DC 20460

Business Phone: (202) 564-1350

Home Address: _____
Sandy, Utah

Home Phone: _____

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

Name: Johnson Charles Edwin
 (Last) (First) (Middle)

Position to which Nominated: Chief Financial Officer, Environmental Protection Agency

Date of Nomination: January 21, 2004

Date of birth: 15/ 06/ 1936 Place of birth: Grantsville, Utah
 (Day) (Month) (Year)

Marital status: Married Full name of spouse: Susanne Louise Brown Johnson

Name and ages of children:

<u>Douglas Charles Johnson (46)</u>	<u>Lisa Ann J. Knight (34)</u>
<u>Wendy Susan J. Sumner (45)</u>	_____
<u>Brent Michael Johnson (42)</u>	_____
<u>Michael Alan Johnson (41)</u>	_____
<u>Kristin Johnson Homer (37)</u>	_____

Education:

<u>Institution</u>	<u>Dates Attended</u>	<u>Degree</u>	<u>Date</u>
<u>Brigham Young University</u>	<u>09/1954 - 06/1956</u> <u>01/1960 - 06/1960</u>	<u>BA</u>	<u>1960</u>
<u>University of Utah</u>	<u>01/1959 - 12/1959</u>	<u>-</u>	<u>-</u>
<u>LDS Business College</u>	<u>04/1958 - 12/1958</u>	<u>Certificate</u>	<u>1958</u>
<u>Grantsville High School</u>	<u>09/1951 - 06/1954</u>	<u>Diploma</u>	<u>1954</u>

Employment Record:

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

Position	Employer	Location	Date
President	Huntsman Cancer Foundation	Salt Lake City, UT	2001-2004
Vice President	Huntsman, LLC	Salt Lake City, UT	2001-2004
Vice Chairman of the Bd.	Garff-Warner (a subsidiary of Ken Garff Automotive)	Salt Lake City, UT	1997-2001
Chief of Staff to the Governor	State of Utah	Salt Lake City, UT	1993-1997
Director of the Office Of Planning & Budget	State of Utah	Salt Lake City, UT	1991-1993
Partner	KPMG and Predecessors	Salt Lake City, UT (New York, NY)	1963-1991 1968
Senior Accountant	Ernst & Young and Predecessors	Los Angeles, CA	1960-1963

Honors and Awards:

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

Award	From	Date Received
Outstanding CPA Award	Utah Assn of CPA's	1995
Outstanding Alumnus	Brigham Young University School of Accounting	1985
Graduate with Honors	Brigham Young University	1960

Memberships:

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

<u>Organization</u>	<u>Office held (if any)</u>	<u>Dates</u>
Board of Regents, State of Utah	Chairman	1997 – 2002
Economic Development Corporation of Utah	Executive Committee Member	1992 – 2003
Utah Sports Commission	Executive Committee Member	2002 – 2004
Utah Supreme Court/ Appellate Court	Judiciary Nomination Commission	1999 – 2003
American Institute of CPA's Accounting Practices Com.	Chairman	1978 - 1980
American Institute of CPA's Grading Committee	Chairman	1978 - 1980

Qualifications:

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

Over my lifetime, I have demonstrated characteristics of trust and integrity with a willingness to assume leadership in any role I have undertaken. This demonstration has covered a wide range of areas including education, professional service in the private sector, professional service in the public sector, church service, and service with family and friends.

With 31 years in the practice of public accounting, including service as a member of the Board of Directors of one of the nation's largest firms, I have demonstrated financial competence as well as leadership abilities. With service as Utah's director of the Office of Planning and Budget and as Chief of Staff to the Governor, I have demonstrated abilities in government service. As chair of the Board of Regents of the State of Utah, I have demonstrated that my skills and leadership can be transferred to other important service. My continuous record of assuming more and more responsibility provides acknowledgement that others recognize that I demonstrate performance.

I believe that I have strong people skills and negotiating skills which are essential to this position. I also believe that openness and a demonstration of integrity are important characteristics which I possess. People lead by setting a tone and creating a vision for an organization. My abilities reflect that.

Inasmuch as I have worked closely with the current Administrator of the Environmental Protection Agency, I feel that relationship will enable me to provide effective leadership to the financial goals of the Agency. It would be a privilege for me to serve the people of the United States in this very important role.

Future employment relationships:

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

Yes.

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

None.

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

No.

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

There is no fixed term.

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

There are no known limitations on my service.

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

None.

Financial Statement:

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

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

<u>Former Employer</u>	<u>Arrangement</u>
KPMG Retirement Account	Retirement payment of \$5,495 monthly for life
KPMG Personal Retirement Acct.	Tax Deferred Account of \$100,000 - \$250,000
KPMG 401K	Tax Deferred Account of \$250,000 - \$500,000
KPMG Group Life Universal Cash Accumulation Account	Tax Deferred Account of \$100,000 - \$250,000
State of Utah 401K/457K	Tax Deferred Account of \$100,000 - \$250,000
Huntsman, LLC 401K	Tax Deferred Account of \$15,000 - \$50,000
Garff-Warner 401K	Tax Deferred Account of \$50,000 - \$100,000
Vehix, Inc.	Board of Director's Option to purchase \$55,560 Common stock for 5 years ending in Jan. 2009 (No current value).

2. Are any assets pledged?

Personal residence has a first mortgage. Personal savings account has been pledged to secure a granddaughter's automobile loan of \$7500.

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

No.

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

Yes.

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

Letter audit in the 1970's or 1980's for a disallowed tax shelter. Tax was paid.

Potential conflicts of interest:

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

See ethics agreement letter (attached).

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

See ethics agreement letter (attached).

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

Worked as part of a team at Huntsman to obtain federal funding for projects to assist the Huntsman Cancer Institute at the University of Utah. My ethics agreement covers my agreement regarding Huntsman entities (See attached letter.)

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

I will consult with EPA's ethics official and general counsel's office to take all necessary resolution action, as may be appropriate in the circumstance.

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

I will consult with EPA's ethics official and general counsel's office to take all necessary resolution action, as may be appropriate in the circumstances.

Political affiliation and activities:

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

<u>Party Affiliation</u>	<u>Office Held</u>	<u>(over \$1000)</u>
Senator Robert Bennett 2004 Re-Election		\$1000
Governor Michael O. Leavitt 2000 Re-Election	Campaign Director	-
Governor Michael O. Leavitt 1996 Re-Election	Member, Campaign Committee	-

Published writings:

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

I have never written any publication or given any speeches that involve environmental or related matters.

Over my professional career, I may have written a small number of accounting-related articles, none of which appeared in any major accounting journal or other major publication.

Additional matters:

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

No.

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

Yes.

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

No.

~~Paul Edwin Johnson~~

AFFIDAVIT

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

Subscribed and sworn before me this 29th day of January, 2004.

Doris H. Mack

Notary Public

DORIS H. MACK
Notary Public District of Columbia
My Commission Expires: 2-28-2006

STATEMENT OF BENJAMIN GRUMBLES, NOMINATED TO BE ASSISTANT ADMINISTRATOR
FOR WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Jeffords, Members of the Committee, thank you for the opportunity to testify before you today as the nominee for the position of Assistant Administrator for Water at the United States Environmental Protection Agency. I am grateful to President Bush, Administrator Leavitt, and to this Committee for considering me for this position and its challenging and exciting responsibilities.

Since 1985, I have been blessed with several opportunities to serve in the House of Representatives as Counsel to the House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment, and as Deputy Chief of Staff and Environmental Counsel for the House Science Committee. Since 2002, I have been at the U.S. Environmental Protection Agency. While in these positions, I have poured most of my energy into enacting, overseeing, and now implementing key pieces of America's landmark water laws the Clean Water Act, the Safe Drinking Water Act, Ocean Dumping Act, and the Water Resources Development Act.

It is my honor to appear before this Committee because, through it all, you and your colleagues have articulated the vision, forged the coalitions, and overseen the progress in protecting the environment, and providing the infrastructure and jobs to keep America strong and healthy. I aspire to do the same at the Environmental Protection Agency's Office of Water, should I be confirmed.

On the waterfront, so to speak, we have seen dramatic progress, but we face complex challenges. Nonpoint source runoff and other "wet weather flows" including sewer overflows and stormwater discharges, and protective yet affordable drinking water regulations, will continue to demand attention, innovation, and flexibility.

Administrator Leavitt has articulated a "better way" for the Agency that will accelerate the environmental progress being realized over the past thirty years while maintaining our national economic competitiveness. Collaboration and innovation are two of several key components, and the National Water Program will continue to advance both. Regional collaborations, such as those in the Great Lakes and the National Estuaries Program, and water quality trading are prime examples. Such efforts will also continue.

Administrator Leavitt has recently articulated a 500 Day Plan for water that focuses on three key areas: monitoring, wetlands, and coastal watersheds. Since assuming the position of Acting Assistant Administrator for Water in December 2003, I have also emphasized monitoring, conservation, and restoration. For me, conservation means not only conservation of wetlands but also water use efficiency. I look forward to progress in sustaining America's infrastructure through conservation, full-cost pricing, and other mechanisms including the Agency's emerging "Water Star" program, modeled on Energy Star, to encourage voluntary labeling of water efficient products and appliances. Restoring watersheds and coastal waters is also a priority of mine particularly when one considers that over half of the country's population lives near the coast and one of every six jobs in the U.S. is marine related.

Mr. Chairman, I commit to you and your colleagues my complete energy and enthusiasm in working to keep America's waters clean, safe, and secure and in the pursuit of what Administrator Leavitt characterizes as the "productive middle" using collaboration and innovation to achieve sustainable results.

Last, and no doubt most importantly, I want to thank my family and friends, many of whom include current and former staff, for their support and endurance. Managing water is truly a team effort.

Mr. Chairman, I look forward to any questions you and your colleagues may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING

WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Benjamin Howard Grumbles

Business Address: Office of Water, EPA
1200 Pennsylvania Avenue, N.W
Mail Code 4101M

Business Phone: Washington, DC 20460-0001
(202) 564-5700

Home Address: _____
Arlington, VA 22207

Home Phone: _____

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

Name: GRUMBLES BENJAMIN HOWARD
 (Last) (First) (Middle)

Position to which nominated: Assistant Administrator for Water, EPA

Date of Nomination: March 3, 2004

Date of birth: 01 10 1960 Place of birth: Louisville, KY
 (Day) (Month) (Year)

Marital status: married Full name of spouse: Karen Jane Kulp Grumbles

Name and ages of children: Kathryn Jane Grumbles, 8
Daniel Aidan Grumbles, 5

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	George Washington U. Law School	1990-93	LL.M.	1993
	Emory U. Law School	1982-85	J.D.	1985
	Wake Forest U.	1978-82	B.A.	1982

Employment record:

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

Acting Assistant Administrator, Office of Water, EPA, Washington, D.C., 12/29/03 to Present;

Acting Associate Administrator, Office of Congressional and Intergovernmental Relations, EPA, Washington, D.C., 09/03/03 to 12/28/03;

Deputy Assistant Administrator, Office of Water, EPA, Washington, D.C., 02/04/02 to 09/02/03;

Deputy Chief of Staff, Environmental Counsel Science Committee, House of Representatives, Washington, D.C., 02/01 to 02/03/02;

Subcommittee Counsel, Transportation and Infrastructure Committee, House of Representatives, Washington, D.C., 01/85 to 02/01;

Employment record—continued:

Subcommittee Minority Counsel, Public Works and Transportation Committee, House of Representatives, Washington, D.C., 06/85 to 01/95;

Adjunct Professor, George Washington Law School (Water Law), Washington, D.C., 08/91 to Present

Honors and awards:

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

Carswell Scholarship at Wake Forest University

Memberships:

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

Organization	Office held (if any)	Dates
<u>Maryland State Bar</u>		<u>1986 to Present</u>
<u>Phi Beta Kappa</u>		<u>1981</u>
<u>Theta Chi Fraternity, Wake Forest U.</u>	<u>President (1981-82)</u>	<u>1980 to 1982</u>

Qualifications:

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

I have served as Acting Assistant Administrator since December 29, 2003, and as Deputy Assistant Administrator (with the exception of a four month detail to EPA's Congressional Office) since February 4, 2002. Prior to that, I served as a Congressional Counsel for 16 years, focusing on water law and policy. Over the last 12 years, I have Taught a course at GW Law School on Water Pollution Control.

Future employment relationships:

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

n/a

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

n/a

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

No

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

Yes

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

No

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

EPA promotions to current position: 2003

Financial Statement:

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

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

None

2. Are any assets pledged?

No

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

No

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

Yes

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

No

Potential conflicts of interest:

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

None

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

None

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

None

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

n/a

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

See attached

Political affiliation and activities:

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

\$2,000 to Re-elect George Bush Campaign -- 2003

Published writings:

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

See attached

Additional Matters:

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

n/a

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

Yes

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

No

AFFIDAVIT

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

DISTRICT OF COLUMBIA:

Subscribed and sworn before me this 5th day of March, 2004.

Trudy M. Black
Notary Public

Trudy M. Black
Notary Public, District of Columbia
Commission Expires 12-14-2007

Publications:

- "Clean Water Act and Wetlands Developments: A Congressional Perspective," ALI-ABA, Smithsonian, Environmental Law Institute Course Materials on Environmental Law 147-52 (February 2000).
- "Superfund or Sewerfund: POTW Liability Under CERCLA," 9 Water Environment and Technology 80 (April 1997) (Coauthored by Thor Ketzback).
- Wet Weather Flows: A Course Manual on Clean Water Act Permits, Policies, and Practices, Environmental Law & Policy Program, National Law Center, The George Washington University, November 1993, 2d ed. May 1994, Principal author and editor. 300 pages.
- "The Oil Pollution Act of 1990: Legislation in the Wake of a Crisis," 10 Natural Resources and Environment 35 (Fall 1995) (Coauthored by Joan Manley).
- "Wetlands Debate Still Far From Over," 5 Environmental Protection 32 (January 1994).
- "The Water Resources Development Act of 1992: Expanding the 'Corps of Environmental Engineers'" 23 Environmental Law Reporter 10379 (June 1993) (Coauthored by Ken Kopocis).
- "The Oil Pollution Act of 1990: Mixing Oil, Water, and Hazardous Waste," IV Georgetown International Environmental Law Review 151-227 (1991).
- "Section 404(f) of the Clean Water Act: Trench Warfare Over Maintenance of Agricultural Drainage Ditches" 17 William Mitchell L. Rev. 1021-53 (1991).
- "Wetlands, Drainage Ditches, and the Clean Water Act," 3 Journal of Soil and Water Conservation 174 (May/June 1991).
- "Wetlands Legislation in the 101st and 102d Congresses," Sixth Annual Conference on Wetlands Law and Regulation, Sponsored by American Bar Association and Environmental Law Review, Washington, D.C., June 11-12, 1991.
- "Water Resources Acts: Developing an Environmental Corps" 21 Environmental Law Reporter 10308 (May/June 1991) (Coauthored by Ken Kopocis).
- "Wetlands, Waste Sites, and Oil Spills: To Federalize or Not to Federalize," 20 Environmental Law Reporter 10513 (December 1990).
- "Federal Oil Spill Legislation in the Wake of the Exxon Valdez," 24 Marine Technology Society Journal 5 (December 1990).
- "Major Provisions, Themes of the Oil Pollution Act of 1990," 21 Environment Reporter 1264 (November 2, 1990).
- "Pesticides in Ground Water and Section 106 of CERCLA," 12 Chemical Regulation Reporter 428 (June 17, 1988) and 19 Environment Reporter 281 (June 24, 1988).

RESPONSES BY BENJAMIN H. GRUMBLES TO ADDITIONAL QUESTIONS FROM
SENATOR INHOFE

Question 1. I would like to get your views on the water infrastructure financing. You have worked on this issue as both a Committee staffer and an EPA official so you have a unique perspective to provide. EPA has sent some signals recently that the Agency believes better management of systems would fill the gap. However, the greatest contributor to the problem seems to be that these systems are at the end of their useful life at the same time new requirements are being imposed.

In your view, what is the cause of the funding gap and what do we need to do to address it? What do you think is the appropriate Federal role in helping towns and cities meet these costs?

Response. There are several reasons for the funding gap. Our wastewater and drinking water systems are aging. Treatment plants typically have an expected useful life of 20–50 years before they require expansion or rehabilitation. Also, populations are increasing and shifting geographically and our treatment systems will need to increase capacity to meet the demands posed by this growth. Last, current levels of treatment may not be sufficient to address today's water pollution control problems.

Over the past 20 years communities have spent more than \$1 trillion (in 2001 dollars) on drinking water treatment and supply and wastewater treatment and disposal. As a Nation, we will be challenged to ensure that we can keep pace with the infrastructure needs of the future. Utilities and their local communities must provide the primary sources of funding to meet those needs. While Federal and State funding can help water utilities meet future needs, other strategies may be appropriate for addressing these challenges, including more targeted operations and maintenance efforts.

Currently, the Agency is working to implement a sustainable infrastructure strategy to enhance the operating efficiencies of water and wastewater systems. This involves four pillars:

(1) Better Management—Better management practices like asset management, environmental management systems, consolidation, and public-private partnerships can offer significant savings for water utilities—both large and small.

(2) Full-Cost Pricing—A key consideration in constructing, operating and maintaining infrastructure is ensuring that there are sufficient revenues in place to support the costs of doing business. Sensible pricing can also have the added benefit of encouraging efficient water use.

(3) Efficient Water Use—One way to reduce the need for costly infrastructure is to better manage uses of water. There are many options for enhancing water efficiency including metering, water reuse, water-saving appliances, landscaping and public education.

(4) Watershed Approaches to Protection—In addressing infrastructure needs for the purposes of water supply and water quality, it is important to look more broadly at water resources in a coordinated way. Targeting resources toward highest priorities, permitting on a watershed basis and water quality trading are all means of ensuring that actions achieve the greatest benefit.

EPA has been working in partnership with municipalities and States to continue to provide high quality management services to address their wastewater and drinking water needs. The wastewater infrastructure needs of towns and cities are growing and we are collaborating with State and local officials to develop strategies, approaches, and tools to address their environmental needs.

The President's 2005 Budget proposes an annual funding level of \$850 million through 2011 for the Clean Water State Revolving Fund and 2018 for the Drinking Water State Revolving Fund. I support the President's budget request as an appropriate Federal contribution to help meet the funding needs of utilities. We are working to encourage a greater State role in providing financial assistance for cost-reasonable technologies to ensure water quality and human health needs are met.

Question 2. EPA has been promoting trading and watershed permits as innovations to assist municipalities in meeting their regulatory obligations while protecting water quality. I am pleased to hear you testify that you will follow Governor Leavitt's mission of using collaboration and innovation to achieve sustainable results. As you know, I have a lot of concerns about the costs we are imposing on local systems and the science behind many of these regulations. The Agency and Congress must continue to pursue different approaches to achieving our water quality objectives which can be done sensibly without bankrupting local ratepayers.

Will you create an atmosphere in which stakeholders are encouraged and given the flexibility to use these innovative tools and the writers of these regulations are encouraged to think outside the box for new, more cost-effective approaches?

Response. EPA is promoting trading and watershed permits because the Agency believes these tools can achieve water quality standards be cost-effective for businesses and municipalities. The Agency is committed to encouraging trading and the watershed approach throughout the water program. As an example, OW is working with Regions, States, and permittees to identify and promote case studies of successful watershed-based permitting and water quality trading. Examples of these innovations are being documented and pilot studies have been developed to test different approaches for implementation in the NPDES and non-point source programs. EPA believes that developing and issuing NPDES permits on a watershed basis can benefit all watershed stakeholders. In addition to increased environmental results, many of these benefits involve administrative efficiencies. I wholeheartedly endorse the approach established by this Administration and intend to continue to promote the use of innovative and flexible approaches to achieve water quality goals. I am also interested in other innovative approaches that will help accelerate our progress in meeting water quality standards.

RESPONSES BY BENJAMIN H. GRUMBLES TO ADDITIONAL QUESTIONS FROM
SENATOR JEFFORDS

Question 1. In my home State of Vermont, stormwater runoff is a major source of pollution in the States' waterways. Paved surfaces such as parking lots, roads, and highways are the major contributors of stormwater pollution. Communities in Vermont struggle daily to find ways to use limited resources to pay for stormwater protections. Can you describe your perspectives on the magnitude of the stormwater runoff issue, the comparative size of Federal funding assistance available to States and communities and the size of the need, and the impact that additional funds could have on improving water quality by reducing the impacts of stormwater runoff?

Response. EPA compiles data on water quality impairments and sources of impairments consistent with the requirements of Section 305(b) of the Clean Water Act. The most recent biennial report for which data are available is from calendar year 2000 (2000 National Water Quality Inventory Report). In that report, EPA presents data independently for three significant types of waterbodies: rivers and streams, lakes and reservoirs, and coastal resources. The report defines a number of categories for sources of waterbody impairments. One of the categories is Urban Runoff/Storm Sewers. Other sources of impairment, such as Hydrologic Modification, are also likely related to storm water. Following is impairment data for each of the waterbody types:

Rivers and Streams: 39 percent of assessed miles are impaired and Urban Runoff/Storm Sewers is a source of impairment in 13 percent of the impairments.

Lakes: 45 percent of assessed acres are impaired and Urban Runoff/Storm Sewers is a source of impairment in 18 percent of the impairments.

Coastal Resources: 51 percent of assessed square miles are impaired and Urban Runoff/Storm Sewers is a source of impairment in 32 percent of the impairments.

The 2000 Clean Watersheds Needs Survey documented \$5.5 billion in storm water management program needs from 19 States and the District of Columbia. These needs include the capital costs for developing and implementing municipal storm water management programs to meet the requirements of Phases I and II of the National Pollutant Discharge Elimination System storm water regulations. Not all States submitted storm water management program needs.

The most prominent funding programs that provide money for storm water projects are the Clean Water State Revolving Fund, Water Quality Cooperative Agreements (CWA section 104(b)(3)), and Nonpoint Source Implementation Grants (CWA section 319). EPA does not track funding specifically for storm water management in all grant programs, mainly because of the multi-faceted nature of storm water management. EPA does have data indicating that between 1991 and 2003, the Clean Water State Revolving Fund has provided \$216 million in loans for Storm Sewers. This investment excludes the investment in combined sewer overflow (CSO) and sanitary sewer overflow (SSO) correction. The Clean Water State Revolving Fund also provided loans totaling over \$1.7 billion for nonpoint source projects between 1990 and 2003, many of which addressed storm water runoff from urban and rural areas. For Section 319 grants, EPA estimates that from FY1994 to FY2002, at least \$100 million was used for urban runoff projects. Additionally, EPA regularly funds storm water projects under Section 104(b)(3) cooperative agreements and in recent years has funded more than \$5 million in storm water management projects. EPA will continue to work collaboratively with States and municipalities to reduce/mitigate the environmental impacts of urban runoff. EPA will continue to encourage

municipalities to use the Federal and State funding sources available to achieve the goals of the Clean Water Act.

Question 2. Much progress has been made since the 1970's on improving water quality in this Nation, primarily by focusing on point source pollution. It is generally believed that the next major step forward in improving water quality is reducing non-point source pollution, including the addition of phosphorus to our waters. However, this is a challenging issue.

In my home State of Vermont, farmers are constantly struggling to do the right thing by the environment while still meeting their bottom line. In addition, urban stormwater runoff in Vermont is a major contributor to water quality problems and in many ways just as difficult to address as agricultural runoff.

Small communities struggle with limited resources to do the right thing for the environment. What are your ideas about how we can make progress on non-point source pollution?

Response. Nonpoint source pollution and diffuse point source pollution, such as urban stormwater, constitute one of the most significant remaining water quality challenges in the United States. For example, the States have reported that the five leading sources of impairments to rivers and streams are agriculture, hydrologic modification, habitat modification, urban runoff/storm sewers, and forestry. For lakes, the situation is very similar. These sources in many cases contribute excess sediment, pathogens, nitrogen and phosphorus that can result in impairment of water quality.

To make progress on nonpoint source pollution, EPA believes that it is important to use available programs and resources as effectively as possible. Strengthening States' implementation of watershed-based approaches to solving water quality problems will be a key factor in reducing water quality impairments as well as preventing new water quality problems. In accordance with EPA guidelines for the Section 319 nonpoint source grants, beginning in fiscal year 2002, States are devoting \$100 million per year to develop and implement watershed-based plans that identify the significant sources of water quality impairments and threats; the most effective measures and practices that will be needed to achieve and maintain water quality standards; the funding sources and authorities that are available to implement those effective measures and practices; and a process to work with local governments and citizens to assure implementation. EPA expects that these concerted efforts will result in numerous successful projects that will restore impaired waters and protect good-quality waters from degradation.

Question 3. 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. As Assistant Administrator for Water, what actions will you take to ensure that forward progress is made on non-point source pollution?

Response. EPA is working with the States to strengthen the use of watershed-based planning and implementation to assure that problems are clearly identified and quantified and that appropriate solutions are then identified and implemented. In addition, EPA believes that the challenge of solving and preventing nonpoint source pollution will be successfully addressed only if all stakeholders are actively engaged in working toward this common goal.

Since agriculture is a leading source of nonpoint source pollution, EPA believe that effective implementation of the Farm Bill will be a key component of successful nonpoint source pollution control efforts in virtually every State. EPA is working closely with USDA, and promoting close cooperation between water quality and agricultural interests at the State and local level, to promote the use of the financial and technical resources made available by the Farm Bill to restore and protect water quality. Similar cooperative relationships among EPA and other Federal agencies, our respective counterparts at the State and local level, private-sector stakeholders, and local citizens will be necessary to assure that we collectively can restore and maintain our Nation's waters.

Federal funds provide approximately \$200 million annually in direct support for nonpoint source control projects. Our Targeted Watershed Grants Programs provide support for locally driven watershed protection efforts, a significant portion of which are directed at nonpoint source pollution.

Question 4. Do you believe that the water infrastructure spending gap is real?

Response. Yes, I accept the results of EPA's September 2002 Clean Water and Drinking Water Infrastructure Gap Analysis, which highlighted the funding gap

that could result in the absence of increases in spending to address future needs. Our wastewater and drinking water systems are aging and maintenance has been deferred in many areas. Treatment plants typically have an expected useful life of 20–50 years before they require expansion or rehabilitation. Also, populations are increasing and shifting geographically and our treatment systems will need to increase capacity to meet the demands posed by this growth. Last, current levels of treatment may not be sufficient to address today's water pollution control problems.

However, it is important to note that while the spending gap is real, this does not mean it is inevitable. The magnitude of the gap can be managed by changes in business and infrastructure practices. More appropriate pricing of services, competitive practices, asset management, technology innovations and life extension strategies can all help to reduce the gap in the future. The Agency's fiscal year 2005 sustainable infrastructure budget initiative is aimed at promoting these and other practices that will help to address the gap.

Question 5. Do you believe that the water infrastructure spending gap is a water quality problem?

Response. While we have not projected the potential water quality effects of the water infrastructure spending gap, we do have estimates of current impact from the 2000 305(b) reports on water quality. Those reports identify municipal point sources among the sources of impairment for a portion of the waters assessed. For example, for the almost 700,000 miles of rivers and streams assessed, States identified municipal point sources as a source of impairment for almost 30,000 miles.

Unless we address our aging infrastructure, we can expect to experience a decline in service quality, which will impact both public health and water quality. The municipalities that are at the forefront of change see that reducing life-cycle costs and increasing revenues are necessary to maintain and even improve community standards.

Question 6. The President's Budget proposes over a 30 percent reduction in funds for the Clean Water SRF. EPA's own numbers show a huge funding gap for water infrastructure spending. National opinion polls show that Americans are willing to pay for Clean Water protections. Why is there such a disconnect between what is needed and what the administration is requesting?

Response. The Administration understands the value of infrastructure and the needs facing States and communities. The fiscal year 2004 budget proposed to continue funding the CWSRF through 2011. This extended funding is projected to close the \$21 billion gap between current capital funding levels and future water infrastructure capital needs estimated by EPA. The President's Budget for fiscal year 2005 continues to reinforce this Federal commitment.

The Agency recognizes that closing the gap also requires actions and innovations to reduce the demand for infrastructure, including better management, conservation (or smart water use), and intergovernmental cooperation through the watershed approach.

In the fiscal year 2005 President's Budget, the Agency is proposing a sustainable infrastructure initiative where we will work in partnership with States, the water utility industry, and other stakeholders to ensure sustainability of water and wastewater systems. Funds are also included to continue developing a "Water Star Program (water efficiency product labeling) to advance voluntary water conservation efforts.

Question 7. As Assistant Administrator for Water, do you 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? 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? By how much will these cost savings reduce the backlog?

Response. We believe that the utilities in this country can be positively influenced by the improvements and cost savings that are achievable through sustainable management techniques such as environmental management systems and advanced asset management.

Utilities, as service providers, take pride in their efforts and accomplishments and do not want to see their ability to provide safe drinking water and high quality wastewater treatment decline as their infrastructure ages. Within the industry, forward thinking and innovation are making a difference. For example, the Orange County Sanitation District invested in advanced asset management planning and reduced the life cycle cost of their capital improvement program at a return of ten times their investment. Seattle Public Utilities invested in improvements to their

infrastructure management and was able to identify savings from the approved 2004 budget of 13 percent for capital improvements and 7 percent for operating expenses. These utilities are not alone. Across the country, many utilities are pursuing improved, sustainable management techniques. Utilities that have invested in improved practices have begun to see savings within one to 2 years.

While the Agency has not done an official assessment of the costs savings from such reforms, an assessment of Australia's advanced asset management practices suggests that a 20–30 percent savings in life cycle costs is possible for many U.S. utilities. EPA intends to work collaboratively to encourage utilities to undertake voluntary efforts to adopt management reforms. These efforts, in combination with efficient water use, intergovernmental cooperation through the watershed approach, full-cost pricing, and the President's commitment to extend Federal capitalization of the State Revolving Fund infrastructure financing programs are projected to help utilities close the gap.

Question 8. 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. In response to the situation in the District's drinking water, I have asked my staff to take a wide-ranging look at the implementation of the Lead and Copper Rule, which will include a review of public education requirements. This review will be carried on throughout 2004 and is expected to include an expert workshop to discuss risk communication and public education requirements of the rule. Currently my staff is working with Region 3 staff to conduct a review of the DC Water and Sewer Authority's public education efforts in order to provide them with recommendations as to how they can improve public education. As part of that effort, the team is reviewing public education material from systems across the country. In 2002, EPA released an updated version of its Public Education Guidance for the Lead and Copper Rule. The guidance, while not binding, stresses the importance of tailoring education material for different audiences, involving the community by establishing a task force to guide efforts, and effectively using mass media to reach all consumers. The review we undertake may help us to identify additional practices and examples of effective public education campaigns that we will be able to promote for use throughout the country.

Question 9. 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? Are there any other locations where similar problems have emerged?

Response. My staff is currently undertaking an effort to identify whether the high levels observed in Washington, DC are representative of other areas in the country. We are reviewing information in our Safe Drinking Water Information System (SDWIS) and also reviewing Consumer Confidence Reports from a number of utilities. Our analysis is hindered by the fact that data in SDWIS is currently 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 starting in 2002. For the period between 2000 until January 2004, we only have data for 22 percent of required systems and have no data for 23 States and Puerto Rico.

From data we currently have, only 4 of 199 systems serving more than 50,000 people (2.0 percent) exceeded the action level, one of which was DC. All of these systems except for DC are now back below the action level. For systems serving between 3,300 and 50,000 people, 56 of 1,761 systems (3.2 percent), exceeded the action level, with only 14 reported to exceed the level since 2002. We also reviewed 109 recent Consumer Confidence Reports for systems serving more than 50,000 people that had exceeded the action level in the initial sampling conducted in 1991 and 1992. Only 9 systems reported that they had exceeded the action level in the last several years—one of these systems was DC and another was a customer of another system on the list. We are working to determine the current status of these systems, but know that at least three of them are now testing below the action level.

On March 25, 2004, I sent a letter to Regional Administrators to ask that they work with State programs to ensure that EPA has complete information on lead levels. As we obtain additional information from States, we 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 high levels nor the rapid increase of lead levels in drinking water observed in DC.

Question 10. 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 the source water. The primary sources of lead in drinking water are from lead pipe, lead-based solder used to connect pipe 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, which 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 which 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 11. The SDWA definition of "lead-free" fixtures currently allows those fixtures to contain 8 percent lead. Are there fixtures available that are truly "lead-free"? Has the Agency taken any steps to share this information with consumers? If not, please explain how the Agency anticipates that consumers will obtain information about lead-free fixtures.

Response. The fixtures that meet the "lead free" requirements of the SDWA 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.

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 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 12. Has EPA initiated any enforcement actions against WASA with regard to the current lead contamination issue? 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 not yet issued a formal enforcement action against the DC Water and Sewer Authority (WASA). EPA's Region 3 office has been conducting an audit of WASA's compliance with the Lead and Copper Rule over the past several weeks. Although the compliance audit is still underway, the Region's Water Division Director sent a letter to WASA on March 31, 2004, notifying them that the Region has identified six potential matters for non-compliance. The letter provides WASA 21 days in which to respond as to whether it disagrees with EPA's assessment and to provide additional information in support of their position. On that same date, the Water Division Director also issued an Information Request pursuant to section 1445(a) of the Safe Drinking Water Act, requesting information that will allow the Region to further evaluate whether WASA has violated provisions of the regulation. Depending on the response to the Information Request an Administrative Order may be issued under Section 1414 of the SDWA.

Since 1991, EPA has taken 11,056 enforcement actions nationally to address Lead and Copper Rule violations, more than 96 percent of which addressed initial tap monitoring or reporting violations. Most of those violations occurred early in imple-

mentation of the rule. We will provide followup information that gives additional details about the actions, however, the following table summarizes the type and number of violations.

Violation Addressed by Enforcement Action	Number
Monitoring and Reporting—Initial Tap Monitoring	11,083
Followup or Routine Tap Sampling	110
Monitoring and Reporting—Initial, Followup or Routine Source Water Treatment	7
Optimal Corrosion Control Study	25
Optimal Corrosion Control Installation or Demonstration	21
Noncompliance with Maximum Permissible Level*	7
Public Education	40

*set by the primacy agency if the system has lead in its source water and has to install source water treatment

Question 13. 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. The 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 and because Agency policy was 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.

Question 14. EPA’s drinking water hotline answers thousands of questions each year. The recent revelations about lead contamination in the DC 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. As Assistant Administrator for Water, what will you do to ensure that the Agency is able to provide answers to questions about drinking water from concerned citizens?

Response. 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 additional 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 2004. While the cost of operating the Hotline is significant, EPA believes that the benefits of being responsive to the public and increasing consumer awareness justifies the costs.

Question 15. In view of the complexity and workload associated with State drinking water programs (which implement all SDWA mandates in 49 of the 50 States) and, in view of the documented resource gap in State program funds, as Assistant Administrator for Water, what action would you take to ensure that the Public Water System Supervision account is adequately funded and administered?

Response. I appreciate the significant efforts that are required and undertaken by States to implement drinking water programs that ensure provision of safe drinking water to citizens and am pleased to report that the Bush Administration has already taken action to increase funding for the Public Water System Supervision grant program to the States. The fiscal year 04 President’s Budget requested \$105.1 million for this grant program and Congress appropriated \$102 million. This is almost a \$10 million increase over the fiscal year 03 level of \$92.5 million. The fiscal year 05 President’s Budget again includes a request of \$105.1 million for this grant

program. EPA's financial support to the States through Public Water Supply Supervision grants is critical in light of the significant projected shortfalls in State program resources as well as the States' continuing need to train new staff due to high turnover rate, as cited in the Association of State Drinking Water Administrators' report on the State program management resource gap. Other EPA efforts to support State programs include continually providing guidance, training and technical assistance on the implementation of drinking water regulations; developing new, easily accessible tools (e.g. Web-based) to assist States and water systems; and promoting consumer awareness of the quality and safety of drinking water supplies. Together, this financial and technical support is a significant level of assistance to the States to carry out their primary enforcement authority, or primacy, set forth in the Safe Drinking Water Act.

Question 16. In December 2003, the Agency announced that the Administration was dropping plans to rewrite Clean Water Act rules. As part of this announcement, the Agency 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 have been taken to reconsider and rescind this anti-clean water directive? As Assistant Administrator for Water, what steps will you take to ensure that our nation's waters are protected?

Response. 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 *Solid Waste Agency of Northern Cook County (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 continues to vigorously implement and enforce programs affecting all "waters of the United States" protected under the CWA after SWANCC.

I do not believe the joint legal guidance "leaves many waters at risk" due to its requirement that field staff get 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 caselaw since, we believe 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 decisions reflect 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 CWA programs to ensure their effectiveness.

As Assistant Administrator for Water, I will encourage EPA and the Corps to continue taking steps to increase consistency, transparency, predictability, and sound science for section 404. 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 chemical, physical, 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
- EPA is working closely with DOJ and the Corps in litigation, arguing that the SWANCC decision was focused on isolated waters and did not change CWA protections for tributaries and adjacent wetlands. Since the SWANCC decision, the government has prevailed in 10 of 11 Appellate Circuit decisions.

Question 17. The January 15, 2003 EPA and Army Corps policy directive on Clean Water Act 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? Can you give any examples of waters that have been declared no longer subject to Clean Water Act jurisdiction?

Response. To date, we have received six requests for headquarters approval, plus an additional six that involved navigable-in-fact isolated waters that do not require Headquarters approval. Of those six being reviewed in Headquarters, we are seeking additional information on three, found one to be jurisdictional, expect to find another one jurisdictional, and one not to be jurisdictional. The one found not jurisdictional was an isolated, intrastate, and non-navigable wetland. The sole basis proposed for asserting CWA jurisdiction was the potential use by interstate visitors—a conclusion not supported by the record. It is our understanding that the request for a jurisdictional determination in this case was to inform development of a planning document and not prompted by a proposal to develop the wetland.

With respect to other steps that EPA and the Corps are taking to gather data on the aquatic resource impacts of SWANCC, the Corps Districts are systematically collecting information on findings of no-jurisdiction over waters deemed isolated, intrastate, and non-navigable. The information will be compiled in a common format that includes information on wetland acreage and stream mileage impacted. The Corps plans to make this information publicly available via the Internet. EPA is working with the Corps to implement the recommendations in the recent 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.

Question 18. 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? What is EPA doing to track the fate of the types of waters subject to this policy? As Assistant Administrator for Water, would you seek to change either the interaction with the Army Corps or the EPA’s tracking system for waters affected by the guidance?

Response. The 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. And, EPA, Corps, and DOJ staff 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 402 water permits or 311 oil spills.

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 useful framework that provides 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 selectively 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.

The agencies have agreed to coordinate and share jurisdictional data. The Corps routinely collects information on jurisdictional calls and has agreed to collect and share information on district jurisdictional calls with EPA and the general public, including findings of no-jurisdiction. 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. In addition, 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.

As this coordination continues, I am committed to ensuring that enough information is available to make sound decisions regarding jurisdiction under the CWA, and if information is lacking, to pursue additional mechanisms with the Corps to rectify any shortfalls.

Question 19. What is the status of the Agency's review of the stormwater Phase II regulation and its applicability to small oil and gas construction sites? As Assistant Administrator, when will you have this review completed?

Response. EPA has started conducting an in-depth analysis of all potential economic impacts relating to oil & gas industry compliance with the Phase II stormwater regulations. We expect preliminary information this summer and a completed analysis by the fall. We will then determine if a rulemaking is necessary and publish a FR notice documenting the Agency's decision prior to March 10, 2005.

Question 20. It is imperative that our nation's water and wastewater infrastructure be adequately protected from potential terrorist attack or other event. As Assistant Administrator for Water, please describe how you would approach this issue, with particular focus on the relationship between the EPA and 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.

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 have access to the tools and assistance necessary to reduce security risks.

Question 21. In your current work at the Agency, please describe your experiences with the water and wastewater security program and how you would or would not seek to modify it as Assistant Administrator for Water.

Response. Promoting the security of the Nation's water infrastructure is one of the most significant undertakings and responsibilities of the Agency in a post-September 11 world. An attack, or even a credible threat of an attack, on water infrastructure could seriously jeopardize the public health and economic vitality of a community. A key practical objective of our security efforts must be to provide the tools and assistance that drinking water and wastewater systems need to prevent, detect, and respond effectively to such a threat or incident. EPA also needs to continue to provide programs that forge critical links between the water sector and those who support or could support the sector in detecting and responding to threats and incidents, such as local law enforcement and public health departments. In 2003, we established the Water Security Division within the Office of Water to emphasize and

implement EPA's commitment to protect the safety and security of the Nation's drinking water supply.

While in prior years EPA's water security work focused on supporting assessment of vulnerabilities and creating a baseline of security-related information, future efforts will involve providing the tools and assistance that drinking water and wastewater systems need to address these vulnerabilities including the identification of the most up-to-date security enhancements, sharing information on threats and contaminants, and training on emergency response.

In my experience, we have developed a water security program at EPA that fulfills expectations expressed in Homeland Security Presidential Directive-7, which assigns to EPA a pivotal role in coordinating and facilitating the protection of the Nation's drinking water and wastewater systems. EPA has produced a broad array of tools and assistance that the water sector is using to assess its vulnerabilities and to develop emergency response plans. As a result of our efforts, drinking water systems collectively serving over 150 million people have submitted vulnerability assessments. EPA has also reached out to important partners beyond the sector to ensure that the sector receives the support necessary in the event of a threat or an attack.

Question 22. 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.

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. For example, 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.

With respect to emergency responders, EPA, in partnership with the Department of Homeland Security, is in the process of developing a 30 city training program for water operators and all sector first responders. The training will foster an understanding of the Federal, State and Local emergency response planning and coordination requirements. In addition to the training, table-top exercises will be conducted to capture real life contamination events. Also, EPA is collaborating with the American Water Works Association and the Centers for Disease Control and Prevention to provide a 2-day training seminar for water utilities, public health and other first responders on the protocol for responding to contamination events. EPA also provides financial assistance to the States for efforts to assist in emergency response and recovery preparedness. Among the emergency response and recovery plan implementation activities being undertaken are table-top workshops, exercises, drills, response protocols and other activities focusing on improving the readiness of individuals and groups involved in first response at a drinking water system.

Aside from these activities, EPA has longstanding capabilities in its core programs that are directed to homeland security and emergency response. In the last 2 years, we have been called upon to respond to domestic incidents and to enhance our role in several areas. For example, EPA conducted sampling at over 30 facilities potentially contaminated during the anthrax incidents. After September 11 and the following anthrax responses, EPA's Administrator issued a new National Approach to Response to ensure that all of our resources are being prepared and used in a coordinated manner to address Nationally Significant Incidents.

EPA's response to emergencies are implemented through our 10 Regional offices, and are characterized by a system that includes Federal, State, and local cooperation. The strength of our program is that our On-Scene Coordinators are experienced responders who bring with them delegated authorities, strong relationships with State and local responders, backed up by a national network and both Federal response assets and contractor capabilities, including 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 23. An ongoing issue for the clean water program has been the failure to adequately enforce the conditions of NPDES permits and the adequacy of existing data to determine the progress on improving enforcement. Can you describe what actions you will take as Assistant Administrator for Water to ensure that the Clean Water Act is enforced and that data systems supporting this function have necessary capabilities? What actions will you take as Assistant Administrator for Water to ensure that the Safe Drinking Water Act is enforced?

Response. EPA is committed to vigorous enforcement of each of the environmental statutes. We recognize that a strong and balanced program of compliance assistance and enforcement is an essential complement to the work that EPA, the States and municipalities have undertaken over the last 3 decades to implement the Clean Water Act. The Office of Enforcement and Compliance Assurance (OECA) is responsible for the Agency's enforcement and compliance assistance programs, including those for the Clean Water Act. As the Assistant Administrator for the Office of Water (OW), I will continue to work closely with the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) to ensure that the Clean Water Act and the Safe Drinking Water Act are appropriately enforced. OW and OECA work together to ensure that regulations and permits are enforceable and achieve compliance with the statutes.

An important element of the enforcement effort is the effective operation of data systems. The Office of Water and OECA have been collaborating on improvements to the main national data system for CWA compliance, the Permit Compliance System (PCS). PCS supports the regional and State implementation of the NPDES program.

Some of EPA's national data systems are relatively old and need to be updated to meet the evolving business needs of the Agency's programs and the expectations of users for current technology. The current PCS Legacy system has little or no data for major new NPDES requirements, such as Concentrated Animal Feeding Operations (CAFO's), storm water, and Combined Sewer Overflows (CSOs). PCS is being modernized to address these serious data gaps, as well as provide for easy use of and access to the system, use of current information technology, support of the Agency's initiative for data integration, and to promote the exchange and sharing of data with our State partners.

To address these concerns, OECA initiated the phased development of an innovative and integrated data system: the Integrated Compliance Information System (ICIS). ICIS Phase I, the core multi media Federal enforcement program component of the system, was implemented in June 2002. The Permit Compliance System (PCS) Modernization, or ICIS—Phase II, is the modernization of the PCS system, the official EPA national system for management of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program.

The availability of more comprehensive data in a modernized PCS will enhance the Agency's ability to more effectively manage the CWA NPDES program. The systematic tracking of discharge monitoring data for existing and new NPDES program areas will provide the Agency the capability to determine national compliance rates and emissions for program areas such as CAFOs. Similarly, the capability to determine national compliance rates for wet weather events, which has been identified as a major environmental problem, will also be possible. PCS modernization is also the key to the Agency's ability to comply with the Government Performance and Results Act through the tracking of environmental results to show environmental improvements (e.g., improved water quality), as well as a major step toward the Agency's efforts to provide the States with the ability to exchange environmental and compliance information with EPA.

Question 24. Please provide a summary of all of the enforcement actions taken under all provisions of the Safe Drinking Water Act since 1995.

Response. EPA and States have the authority to carry out enforcement actions to address violations of the Safe Drinking Water Act and relevant regulations. All States, with the exception of Wyoming, have primary enforcement responsibility for national primary drinking water regulations. EPA has primary enforcement authority for those rules that have not yet been adopted in a State and for programs it directly implements (e.g., D.C., Wyoming, Indian Tribes). EPA can also take an enforcement action as needed to supplement State activity. Actions can be informal or formal. Generally, a State or EPA will initiate an informal action and then escalate to formal action if the system fails to respond. However, depending on the seriousness of the violation, a State or EPA can move directly to a formal action. Based on a preliminary analysis of the numbers, EPA and States have issued more than 693,000 informal actions and 177,000 formal actions between 1995 and 2003. The table below summarizes the actions:

Type of Action	EPA	States
Informal Actions	3,904 (64 percent notice of violation, 19 percent public notification)	689,593 (41 percent notice of violation, 43 percent public notification)
Formal Actions	11,458	165,753
Formal Notices of Violation	7,059	154,216
Final Administrative Orders without Penalty	4,227	6,811
Administrative Orders with a Penalty	145	4,176
EPA civil referrals to the Department of Justice (EPA) or Attorney General (State)	27	550

Question 25. What is the status of the TMDL rule and when does he expect the Agency to put the new proposal on the table?

Response. A staff draft of the Watershed Rule was sent to the Office of Management and Budget (OMB) for informal review in January 2003. At this time there has been no decision whether to go forward with a formal submission to OMB.

States and EPA continue to implement the existing regulations. EPA and the States have made considerable progress in establishing TMDLs. As reported in the Agency's Annual Report for fiscal year 03 more than 9,000 TMDLs have been established since 1999. These, added to the TMDLs established in prior years, brings the total to more than 10,000 TMDLs. In addition EPA, with the States' help, continues to meet deadlines established in court orders covering 22 States.

In addition, EPA has been working with the States to make the TMDL program more effective and to facilitate incorporation of TMDLs into watershed planning processes:

EPA has issued guidance to improve the assessment and impaired water listing process and increase the scientific rigor of water quality standards attainment determinations. The guidance:

Combines two separate statutory requirements to provide an integrated and comprehensive picture of the status of a State's water quality the integrated report.

Asks the States to develop and make public their water quality assessment methodologies.

Clarifies that waters do not have to be listed as needing a TMDL where other programs designed to achieve water quality standards are in place and being implemented.

Finally, EPA has issued guidance for use of CWA section 319 funding to ensure that funds are used to develop and implement watershed plans that incorporate completed TMDLs.

Question 26. The administration has proposed 20 million in additional funding for water quality monitoring. How can he assure that the funds go toward actual, on the ground, improvements to water monitoring programs in the States.

Response. These funds will help with what the States have identified as a \$100–150 million annual shortfall in funds States need to collect and analyze data essential for documenting the condition of waters, making day-to-day decisions about the best way to protect water quality, and evaluating progress and effectiveness of programs. These funds will also provide essential monitoring data to support local and regional watershed protection efforts.

To improve water quality monitoring, EPA is focusing on four major areas: strengthening State programs; using the most cost-effective combination of tools to gather data on water quality; expanding the use and accessibility of data; and using partnerships to maximize use of monitoring resources.

The administration has proposed that \$17 million of the requested funds be used for State grants under section 106 of the Clean Water Act. The remaining \$3 million would be used by EPA to support water quality monitoring activities, particularly to enhance data management systems to ensure easier access to and use of monitoring data. These funds constitute an incremental step in reducing the \$100–150 million annual shortfall identified by States.

States are now developing comprehensive State monitoring strategies, as recommended by EPA in its March 2003 guidance, "Elements of a State Monitoring and Assessment Program." These funds will help States implement their monitoring strategies and provide improved data and information for State water quality standards, NPDES permits and nonpoint source pollution controls, completion of State In-

tegrated Reports (Clean Water Act sections 305(b) and 303(d)), and establishment of Total Maximum Daily Loads to achieve water quality standards. EPA is now working with States to determine how best to ensure that these funds are used to enhance existing State monitoring efforts. Our intention is to track progress through implementation of the State monitoring strategies and State workplans under the section 106 grants.

Question 27. EPA is working with a number of national and international groups to promote the institutionalization of the annual World Water Monitoring Day. As the Assistant Administrator, what do you see as EPA's continuing contribution to this effort to engage the worldwide public in this citizen education and involvement event?

Response. EPA will continue to promote and support World Water Monitoring Day by hosting and participating in events that educate the public about the importance of water monitoring and what citizens can do to protect water quality. EPA cosponsored National Water Monitoring Day in 2002, in which more than 75,000 Americans participated. In 2003, EPA worked with American's Clean Water Foundation, the International Water Association, and other Federal partners, State and interstate agencies, watershed organizations and individuals throughout the world to promote personal stewardship and individual responsibility for the integrity of our world water. The goal was to involve people throughout the world in this annual event.

Our headquarters and regional offices will continue to develop and share educational materials and expertise with interested organizations here in the United States and around the globe in celebration of World Water Monitoring Day.

Question 28. In a hearing before the House Water Resources and the Environment Subcommittee on March 30, 2004, you responded to questions regarding activities that drain wetlands and other waters by stating that as long as material used to excavate ditches in waters of the United States was trucked offsite, no Clean Water Act Section 404 permit was required.

This statement is inconsistent with the law. In January 2001 EPA and the Army Corps modified the Clean Water Act regulatory definition of "Discharge of Dredged Material." That rule includes a statement that, "The Corps and EPA regard the use of mechanized earth-moving equipment to conduct land clearing, ditching, channelization, in-stream mining or other earthmoving activity in waters of the United States as resulting in a discharge of dredged material unless project-specific evidence shows that the activity results in only incidental fallback." (40 CFR Chapter I, § 232.2 (2)(i)). Can you explain how your interpretation of the dredged material rule and your understanding of how the EPA and Corps are implementing it with regard to ditching activities fits with the rule that is currently in force? Is the EPA enforcing the regulation against those who conduct drainage, excavation, or mining activities in waters of the U.S. without a permit? Please explain what types of activities you consider exempt under the current rules?

Response. I believe the House hearing questions regarding discharge of dredged material were answered by Mr. John Paul Woodley, Assistant Secretary of the Army for Civil Works. However, I am pleased to provide some background on the January 2001 rule and my perspective on when a section 404 or other CWA permit is required for ditching and dredging activities.

In 1993, EPA and the Corps promulgated the original rule (commonly known as the "Tulloch Rule," after the name of associated litigation). That rule defined "discharge of dredged material" to include "any redeposit" of dredged material associated with landclearing and excavation activities, including small volume redeposits that incidentally occur during such activities. In 1998, the D.C. Circuit Court of Appeals upheld a lower court's invalidation of the Tulloch Rule in *National Mining Association v. Corps of Engineers (NMA)*. In NMA, the Tulloch rule was held to exceed statutory authority because some redeposits, specifically "incidental fallback" (material that basically falls back during excavation) is not an "addition." Agencies were enjoined from applying or enforcing the rule. EPA and the Corps promulgated a conforming regulation excluding "incidental fallback" and the word "any" from the definition of "discharge of dredged material." 64 Fed. Reg. 25120 (May 10, 1999).

As noted in the question, in January 2001 EPA and the Corps modified the regulatory definition of "discharge of dredged material" to indicate that the agencies regard the use of mechanized earth-moving equipment as resulting in a discharge of dredged material unless project-specific evidence indicates that only incidental fallback will result. "Incidental fallback" was defined, consistent with the NMA decision, as "the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal." Examples of incidental fallback

include soil that is disturbed when dirt is shoveled and back-spill that comes off a bucket when such small volume of soil or dirt falls into substantially the same place from which it was initially removed. The 2001 definitional changes created no presumption, however, and instead reflected the view that mechanized earth-moving equipment typically results in a regulable discharge, while leaving the door open to the facts of a particular case showing otherwise.

As a result, a section 404 permit is required for mechanized land clearing, ditching, or other activities in wetlands that result in more than “incidental fallback.” If a project proponent can complete activities in wetlands without discharging more than incidental fallback, however, consistent with the NMA decision and subsequent rules, a section 404 permit would not be required.

OW works closely with the Office of Enforcement and Compliance Assurance (OECA) to ensure the enforcement of all CWA programs, including section 404. EPA is actively enforcing regulations, requiring a section 404 permit for discharges of dredged material in wetlands in amounts greater than incidental fallback. It is important to note that, even where an activity in wetlands might not result in a regulable discharge of dredged material, it may be subject to other CWA provisions such as the section 402(p) stormwater program where wet weather flows are increased due to a project. Attached is an OECA publication, “EPA Takes Enforcement Actions Against Violators Who Ditch Wetlands and Channelize Streams,” explaining the link between ditching activities in wetlands and stormwater requirements.

RESPONSE BY BENJAMIN H. GRUMBLES TO ADDITIONAL QUESTION FROM
SENATOR CORNYN

Question. I have been contacted by the Texas Commission on Environmental Quality (TCEQ) and the Texas Rural Water Association regarding the use of the Drinking Water State Revolving Fund’s 10 percent State set aside for chemical sampling collection for public water systems. It is my understanding that you have been part of the negotiations on determining whether these funds can be used for this purpose. Can you give me an update on these discussions from your perspective?

Response. I have recently participated in very productive discussions with the Texas Commission on Environmental Quality (TCEQ) and the Texas Rural Water Association and am pleased to report that I believe we are reaching agreement with the parties regarding how to address this issue. Although the Safe Drinking Water Act prohibits use of the 10 percent State program management set-aside for routine operations and maintenance expenses, such as routine sampling costs, there is another set-aside category to which this statutory prohibition does not apply. I believe that all parties understand that the 15 percent set-aside for local assistance, which includes capacity development assistance for public water systems, is a more appropriate source of funding for the monitoring in question at this time.

However, because we believe that the use of set-aside funds for routine monitoring is inconsistent with the overall statutory focus on water system capacity development, we issued a policy indicating that use of the funds for that purpose should stop by January 1, 2005. To be responsive to Texas and other States with biennial legislatures, I am extending the time period for States to transition from use of this set-aside to January 1, 2006 (with provisions for individual States facing exceptional circumstances to negotiate additional time with their EPA Regional Office). In the specific case of Texas, this provides the TCEQ additional time to work with the State Legislature to determine how best to fund chemical sample collection costs in the long-term. We will continue to work closely with the National and Texas Rural Water Associations and TCEQ on ways to address the unique monitoring issues in Texas and am confident we can reach agreement on a long-term approach for public water system chemical sampling in Texas.

RESPONSES BY BENJAMIN H. GRUMBLES TO ADDITIONAL QUESTIONS FROM
SENATOR LIEBERMAN

Question 1. On June 6, 2002, you testified before the Subcommittee on Clean Air, Wetlands, and Climate Change on behalf of the administration about the impacts of the EPA’s and Army Corps of Engineers’ revisions to the Clean Water Act regulatory definition of “fill material” with respect to mountaintop removal coal mining.

In your testimony before the subcommittee, which I chaired at the time, you assured me and other Senators on the subcommittee that the EPA and Corps’ rule change would “result in more effective regulation of activities under the [Clean Water Act], leading to a reduction in environmental impacts” from mountaintop removal coal mining. You answered our concerns that changing the Corps’ definition of “fill material” especially as it applied to mountaintop removal coal mining and

associated filling of valley streams would not be significant because the Clean Water Act 404 permitting process:

“ . . . carefully screens proposed discharges and applies the 404(b)(1) Guidelines, which provide a comprehensive means of evaluating whether any discharge of fill, regardless of its purpose, is environmentally acceptable. First, a discharge is categorically prohibited if it would significantly degrade a water of the United States. In addition, no discharge may be allowed if there is a less environmentally damaging practicable alternative to placing the material in waters of the United States. Finally, where there is no other alternative, the discharge may be allowed if the permit applicant has taken all practicable steps to minimize the amount of material discharged, and compensate for the remaining, unavoidable impacts through mitigation.”

Additionally, you assured the subcommittee that Clean Water Act permit authorizations:

“ . . . would have to be conveyed either through compliance with a Corps nationwide Permit or Regional General Permit, the terms and conditions of which are designed to ensure that impacts are no more than minimal, or through an individual permit process in which the effects are individually assessed.”

In evaluating your nomination to be the head of EPA's Office of Water, I would appreciate your answers to some questions about how your commitments to me and the subcommittee have been fulfilled by EPA in exercising its oversight role for ensuring the implementation of the Clean Water Act's requirements since the rule change was adopted. I understand that section 404 permits are issued by the Corps of Engineers, not EPA. Nonetheless, EPA has significant responsibilities under the law for ensuring that section 404 permits are properly granted and has the ability under the statute to veto permits that do not comply with the statute of EPA's section 404(b)(1) guidelines.

Since the change in the definition of “fill material” took effect, how many Clean Water Act authorizations for valley fills for surface coal mining have been approved? How many miles of streams and of wetlands and other waters have been permitted under the Clean Water Act to be filled by coal mining overburden waste material from surface coal mining, including mountaintop removal mining?

Response. This question and related questions that follow regarding the agencies' implementation of the May 2002 “Fill Rule,” appear to be based on the premise that this rulemaking changes the fundamental manner in which certain coal mining activities (i.e., discharges of coal overburden/excess spoil in valley fills) are regulated under the Clean Water Act (CWA). It is important to emphasize that, as the agencies State in their Preamble to the final rule, we do not believe that the revised regulation alters, as a general matter, the manner in which discharges to waters of the US, have historically been regulated, a conclusion that is applicable to the regulation of valley fills. We also recognized that the May 2002 rule adopted EPA's longstanding effects based standard for defining fill material contained in EPA's regulations since 1978. It is our view that the single definition ensures proper, consistent, and more effective regulation under the CWA. In addition, since 1998, Department of Justice briefs filed in response to challenges of the Corps' authority to regulate valley fills, clearly recognize that coal overburden/excess spoil is properly subject to regulation as fill material under CWA Section 404, a position upheld by the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit specifically concluded that valley fills constructed in waters of the U.S. were properly regulated under the agencies' previous CWA Section 404 regulations, i.e., under regulations that existed prior to the 2002 rulemaking.

In providing the permitting data being requested, it is the agencies' view that the Section 404 program's regulation of coal mining activities, including valley fills, was not generally affected by the 2002 fill rule. As a result, we do not believe that these data would reflect significant changes caused by that rulemaking. In response to your request for information on Clean Water Act authorizations for valley fills and associated environmental impacts, EPA has requested the Corps to provide this information and we will provide this data to you as soon as we receive it. The Corps has indicated, however, that as a general matter, the extent of stream impacts associated with surface coal mining activities has trended downward in recent years.

Question 2. How has EPA ensured the implementation and enforcement of the Clean Water Act's protections for waters since the change in the definition of “fill material” took effect? Specifically, you stated to the subcommittee that the discharge of waste material that buries streams or other waters “would not be authorized without a thorough review of their potential impacts on the environment, as well as other aspects of the public interest.” Please describe in detail how you have implemented this “thorough review” of the impacts of mountaintop removal valley fills

on the environment and the public interest for each of the valley fills approved under the revised Clean Water Act rules since June 2002.

Response. It is the agencies' view that neither Clean Water Act permitting nor enforcement of surface coal mining activities in waters of the U.S. was generally affected by the EPA/Corps May 2002 fill rule. EPA Regional program offices are involved in the review of Pre-Construction Notifications for General Permits and Public Notices for individual permit applications issued by the Corps of Engineers under the CWA Section 404 permit program. EPA review of applications for authorization of coal mining activities in waters of the U.S. focuses on ensuring that potential adverse environmental impacts are avoided and minimized to the maximum practicable extent and that remaining impacts are effectively mitigated. We are compiling EPA comments on all individual permit applications filed since June 2002 and will forward those to you as soon as they are collected. Specific enforcement information is provided in response to the enforcement question below.

Question 3. Of the applications for mountaintop removal valley fill authorizations applied for since the new definition of "fill material" took effect, how many miles of streams and acres of wetlands and other waters have the coal mining companies sought to fill with mining waste?

Response. It is the agencies view that Clean Water Act permitting of surface coal mining activities in waters of the U.S. was not generally affected by the EPA/Corps 2002 fill rule. We have requested data from the Corps to respond to your questions about the number of CWA authorizations applied for since May 2002 for discharges of mining waste (i.e., coal slurry) and associated stream impacts, and we will provide this data as soon as we receive it. The Corps has indicated, however, that the extent of stream impacts associated with coal mining activities in waters of the U.S. has trended downward in recent years.

Question 3a. Of the valley fill applications made since June 2002, what is the total of miles of streams fills and acres of wetland fills applications that were denied because the discharge "is categorically prohibited" because "it would significantly degrade a water of the United States?" Similarly, what is the total of miles of streams fills and acres of wetland fills protected because authorizations were denied on the basis that there was "a less environmentally damaging practicable alternative to placing the material in waters of the United States?"

Response. EPA has requested that the Corps provide the permitting data you requested regarding the number of permits for surface coal mining activities denied based on a finding that the discharge would significantly degrade a water of the U.S. or on the basis that a less damaging practicable alternative was available. We will provide this data as soon as we receive it. The Corps has initially indicated that the rate of permit denial associated with proposed surface coal mining activities is likely to be similar to the National average rate of permit denial for all activities under CWA Section 404. The Corps National denial rate for all CWA section 404 permits is approximately 1 percent.

Question 3b. What is the total of miles of streams fills and acres of wetland fills protected (i.e. not filled) when authorizations were approved where the permit applicant took "all practicable steps to minimize the amount of material discharged, and compensate for the remaining, unavoidable impacts through mitigation."

Response. The Corps has indicated to EPA that avoidance and minimization data have generally not been tracked historically in the CWA 404 permit program. The Corps is working more recently to collect this data for all authorizations as part of implementing their updated permit-tracking data base. The Corps has stated, however, that the extent of stream impacts associated with authorized surface coal mining discharges in waters of the U.S. has generally decreased in recent years. With respect to compensatory mitigation, the Corps has taken steps to improve compensatory mitigation provisions associated with authorizations for surface coal mining activities. For example, the latest National reauthorization of nationwide Permit 21 now includes a requirement for mitigation for the first time. Applicants for authorization under this nationwide permit must include a mitigation plan to ensure all practicable steps have been taken to offset permitted impacts to waters of the U.S. The Corps is also putting in place a "stream protocol" in each State in Appalachia to ensure applicants are collecting stream-specific environmental data so that environmental impacts can be more effectively assessed and those impacts can be better mitigated.

Question 3c. If you are unable to provide stream mile and wetland acres figures for the impacts on waters where fills were prohibited, avoided, minimized or mitigated, then please provide all information addressing these concerns that you do have, including all information about particular mining operations authorized since June 2002 that demonstrate how the revised definition of "fill material" has been

implemented since it took effect, providing specific examples. If you cannot provide summarized information, then please provide all permit applications applied for and subsequent authorizations applied for and received for mountaintop removal operations since June 2002.

Response. It is the agencies view that Clean Water Act permitting of surface coal mining activities in waters of the U.S. was not generally affected by the EPA/Corps 2002 fill rule. Preliminary information from the Corps indicates, however, that impacts to waters of the US associated with surface coal mining activities since the May 2002 rule is trending downward. We have requested specific data from the Corps in response to your question and we will provide it to you as soon as we receive it.

Question 4. Of the fills that have been permitted in waters of the U.S. since the "fill" rule change took effect, how many have been authorized under nationwide Permits and how many have been authorized under individual permits?

Response. As a general matter, more individual permit applications for surface coal mining activities have been submitted in recent years than ever before. The Corps has indicated, however, that the majority of coal mining related discharges in waters of the U.S. continue to be authorized under the nationwide permit program. We have requested permitting statistics from the Corps in response to your question and will provide those data as soon as we receive it.

Question 5. In response to questions from the subcommittee, your written response stated that, in response to concerns raised, that:

"[T]his Administration is working to improve regulation of valley fills. For example, the settlement agreement for the court case Bragg v. Robertson generally limited the use of NWP 21 in West Virginia by setting an impact threshold of 250 acres (valley fills extending to that point where the stream drained more than 250 acres generally require an individual permit). Under this Administration, the five Corps districts listed above will be placing three special conditions on NWP 21 which: (1) set the aforementioned 250 acre threshold for all valley fills not just those in West Virginia (until additional information is obtained via the Corps Stream Assessment Protocols), (2) evaluate cumulative impacts to aquatic resources as part of the application process and (3) require appropriate mitigation, over and above any that may be required under SMCRA or other State authorities, for all permanent fills.

While these conditions do not suffice to replace the stream protections provided by the 1977 rule repealed by this administration in May 2002 that forbade the permitting of waste materials to fill waters of the U.S., nonetheless I would like to know how this "improved regulation of valley fills" we were told about have been implemented since June 2002.

Please identify which of the Corps' five districts referenced in your response have adopted the conditions identified in your response to the Subcommittee specifically, please list which of these five districts has adopted the "impact threshold of 250 acres" limiting the use of nationwide general permits for valley fills greater than 250 acres. Also, please describe and provide documentation showing how all of these districts are evaluating cumulative impacts and are requiring mitigation for destroyed streams.

Response. We have requested that the Corps provide EPA with the specific information that responds to this question. We will provide this information to the Committee as soon as we receive it.

Question 6. Another of the concerns I expressed at the time of the Subcommittee's hearing on the Clean Water Act rule change is that no Environmental Impact Statement on the change on the definition of "fill material" had been conducted. In partial answer to this concern, in your joint EPA/Corps response to written questions, you responded that:

"[D]eterminations related to the need for an EIS should be conducted at the point where the new definition of the term 'fill material' is actually applied in a permit situation, when actual environmental effects are reasonably predictable."

Since June 2002, how many EIS's have been conducted "at the point where the new definition of the term 'fill material' had been applied in a permit situation?" Please list all of the circumstances in which it has been determined that an EIS is required before an authorization for a valley fill applied for by a mining operation has been approved.

Response. An Environmental Assessment under the National Environmental Policy Act is prepared by the Corps as part of the record for every individual permit evaluation associated with proposed surface coal mining activities in waters of the U.S. In addition to the programmatic Environmental Impact Statement evaluating the regulation of surface coal mining activities in waters of the U.S. currently under

development, EPA is aware of one other EIS being prepared. The Corps is currently writing a draft Environmental Impact Statement on the Spruce Fork Mine Project proposed by Arch Coal in West Virginia.

Question 7. Since the Subcommittee's 2002 hearing, the administration's programmatic draft Environmental Impact Statement (DEIS) was released for public comment. The DEIS consists of 5000 pages of scientific, technical and economic studies on the environmental consequences of mountaintop removal coal mining. These studies confirm in detail—and quite unequivocally—that the environmental effects of decapitating mountains and burying streams are detrimental and largely irreversible. Among the study's findings are that over 1200 miles of streams have already been polluted or destroyed by mountaintop removal valley fills. Perhaps most startling are the results of the cumulative impact study, which found that without additional environmental restrictions, another 1000 miles of streams will be buried over the next decade.

Under the Clean Water Act, nationwide general permits can only be granted for activities that have no more than a minimal environmental effect on waters and related natural resources, either individually or cumulatively.

In light of the data compiled in preparing this DEIS, what is your view of whether this level of stream destruction is "minimal" for individual mines or for mountaintop removal mines approved collectively under nationwide permits?

Do you consider this level of stream destruction identified in the DEIS to be "minimal"? Have your views on this subject changed from the time you testified before the Committee on this subject in June 2002 in light of the information released as part of the DEIS?

Response. EPA and the other cooperating agencies undertook preparation of the programmatic EIS to develop better scientific and technical information on which to base improvements to the environmental review of proposed surface coal mining activities under the Clean Water Act, Surface Mining Control and Reclamation Act, and Endangered Species Act. While we have not completed our review of the 83,000 public comments received on the DEIS, the information collected is already being put to use in evaluating proposed permits.

With regard to your questions about impacts being authorized under nationwide Permit 21, that issue is specifically being raised in the context of ongoing litigation in Federal District Court. Because this matter is currently the subject of ongoing litigation, it would not be appropriate to respond at this time.

Question 8. Last year, EPA and other Federal regulators found, in a preliminary review, that hundreds of coal mining operators were burying streams without any Clean Water Act permit at all. In response, EPA proposed to create and implement a "Mountaintop Mining Self-reporting Program." After this coal industry "self-audit" program was announced and reported in the press, it seemingly was dropped.

What is the status of this Self-reporting" plan? Is it EPA's responsibility to enforce the Clean Water Act when a company discharges pollutants without a permit? If so, what specifically do you plan to do about these violations, and when?

Regardless of whether "Mountaintop Mining Self-reporting Program" has been adopted, please provide the list of coal mining operations EPA and other agencies identified as filling waters without permits. If any of these coal companies been fined or have had any enforcement actions initiated by EPA of the Department of Justice since these Clean Water Act violations that were identified last year, please provide this information either by identifying the mines or, if you refuse to provide this specific information, provide it in summary form.

How many of these violators have been fined by EPA or the Corps? Is the Department of Justice pursuing civil or criminal actions against any of these mines?

Response. In early 2003, the Army Corps of Engineers informed EPA that it was becoming increasingly aware of circumstances in Kentucky, West Virginia, and Ohio involving coal mining operations that may be discharging dredged or fill material in waters of the United States without current CWA authorization or a permit application to the Corps of Engineers. The Agencies worked on several fronts to address this information to attempt to ensure compliance with the requirements of CWA Section 404. The Corps worked to clarify the need for coal operators to apply for reauthorization under the recently issued nationwide permit 21 for their ongoing mining related discharges previously approved under permits that expired in February 2003. The Corps' compliance assistance efforts included mailing information letters to mining companies that encouraged them to contact EPA or the Corps for information and advice, as well as conducting a number of Corps-sponsored workshops for the coal mining industry to assist operators in ensuring that their activities fully comply with the requirements of CWA 404. The Corps has reassessed its

original estimates of unauthorized mining activities and believes there are far fewer than originally thought.

Based on a number of factors, including the Corps' reassessment and recent litigation, EPA determined that it is best not to proceed with the proposed self-reporting program for mountaintop mining at this time. Mining companies are encouraged to self report CWA violations and discussions involving settlement would take voluntary reporting into consideration.

The respective enforcement roles of EPA and the Corps are outlined in a 1986 Memorandum of Understanding between the two agencies. Normally, if an unpermitted discharge warrants an enforcement action, EPA will issue an administrative order or file a complaint. If a discharge in violation of an issued permit warrants an enforcement action, the Corps will issue an administrative order or file a complaint.

EPA has been conducting an enforcement review of the mountaintop mining area and is working to define the nature, scope and location of CWA violations. We will take timely and appropriate enforcement actions as violations are identified.

EPA's Region 4 (Atlanta) office has initiated administrative enforcement actions for CWA violations against three coal mine operators working in Kentucky. These cases were referred to EPA by the Corps' Louisville District. Because these cases involve ongoing EPA investigations, Region 4 may not disclose any additional information. EPA cannot provide information on other matters currently under investigation. No enforcement cases have yet been concluded and there have been no monetary penalties assessed. As yet, no cases have been referred to the Department of Justice.

Question 9. On January 7, 2004, the Bush Administration proposed to repeal a Reagan-era rule known as the "buffer zone rule" that prohibits coal-mining activities from disturbing areas within 100 feet of streams. This is a regulation adopted under the coal strip mining law, the 1977 Surface Mining Control and Reclamation Act (SMCRA).

What is your opinion of whether the January 7, 2004 proposed changes to the Stream Buffer Zone rule comply with the Clean Water Act?

Do you believe that EPA is obliged to comment on the effect of this rule change on water quality? Is the Office of Surface Mining required by statute to consult with EPA on rule changes that could effect water quality? Has the EPA Office of Water submitted comments on this proposed "Buffer Zone" rule change? If so, please provide those comments to the Committee.

If the EPA has not yet commented on this proposed rule change the comment period expires next week on April 7 can you describe what steps you are taking to review the environmental effects of this proposed rule change? Does the Office of Water plan to formally comment on this rule change? Will you provide EPA's comments on this proposed rule change to this committee?

Response. The Office of Surface Mining (OSM) is currently seeking public comment on their proposed revisions to the Buffer Zone Rule. EPA staff are reviewing the proposed rule and preparing written comments, which we expect to provide to OSM. EPA has also met with OSM staff during the comment period to obtain additional clarification about provisions in the proposed rule. Office of Water staff are also coordinating internally with staff from other Headquarters' offices as well as EPA Regional offices in the preparation of Agency comments. We would be pleased to provide a copy of any comments to the Committee as they are submitted to OSM.

STATEMENT OF GARY L. VISSCHER, NOMINATED TO BE A MEMBER OF THE U.S.
CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Mr. Chairman and Members of the Committee: I am grateful for and honored by the President's nomination to serve as a member of the Chemical Safety and Hazard Investigation Board, and I appreciate this opportunity to appear before your Committee today.

If confirmed by the Senate, I look forward to serving on the Chemical Safety Board and believe I can help the Board play an effective role in the continued improvement of chemical safety in this country. I believe in the Chemical Safety Board's mission, which is to prevent chemical accidents and save lives through the thorough investigation of chemical accidents, research into hazards that are related to releases or potential releases, and recommendations and interactions with government agencies, industry and labor, and others to prevent future industrial chemical accidents from occurring.

Since 2001 I have served as Deputy Assistant Secretary for the Occupational Safety and Health Administration (OSHA) at the U.S. Department of Labor. As Deputy

at OSHA, I have been involved in the full range of occupational safety and health issues that have come before the agency, including issues involving chemical processing and chemical plant safety. I also directly oversee the agency's offices responsible for standards and guidance documents; compliance assistance, training and cooperative programs; and technical support and analysis. Included in the products and programs from these offices during my tenure as Deputy Assistant Secretary have been a several dealing with chemical safety, including most recently an initiative to improve compliance with OSHA's Hazard Communication Standard on which the Assistant Secretary for OSHA, John Henshaw, testified before the Committee on Health, Education, Labor and Pensions last week.

Prior to my current position I served as Vice President for Employee Relations at the American Iron and Steel Institute. A large part of my responsibility at the Institute was working with the member steel companies on safety and health issues in the steel industry.

From 1999 through 2000, I served as one of three Commissioners on the Occupational Safety and Health Review Commission. The Review Commission is an independent agency which adjudicates contested OSHA citations and penalties.

Prior to my confirmation by the Senate in May, 1999 to be a Commissioner on the Occupational Safety and Health Review Commission, I worked for 14 ° years in congressional staff positions, first as Legislative Director to former U.S. Representative Paul B. Henry (R-Michigan) and subsequently on the staff of the House Committee on Education and the Workforce.

As happens to many of us who work in congressional staff positions, my long term interest and involvement in workplace safety and health was to some extent a result of the involvement and expertise of the Member of Congress on whose staff I began working. Congressman Henry served as the Ranking Member of the House Subcommittee with jurisdiction of workplace safety and health issues for several years, from 1987 to the year he died, in 1993. Through helping to prepare him and the other Subcommittee Members for hearings and reviewing the issues that came before the Subcommittee, I gained a level of expertise in many of the technical as well as the legal and policy questions and issues in the safety and health area.

In fact, one of the very first oversight issues I worked on after joining the Committee staff in 1989 was the explosion and fire and subsequent investigation of the Phillips 66 Company's Houston Chemical Complex facility in Texas in which 23 people died, and which was one of the incidents that helped trigger support for the creation of the Chemical Safety Board in the Clean Air Act Amendments.

But having initially become involved with these issues by way of my congressional staff duties, I also have found working in occupational safety and health to be challenging as well as rewarding. Certainly, as Assistant Secretary Henshaw often reminds us and the staff at OSHA, "there can be no work more rewarding and no job more fulfilling than helping to protect the lives and well-being of the working men and women who keep our Nation strong." If confirmed by the Senate, I look forward to serving on the Chemical Safety Board in order to continue to contribute to the effort of making workplaces and communities safer.

A major role and function of the Chemical Safety Board is the investigation of chemical releases and incidents in order to identify what happened, and, as much as possible, why it happened, and to recommend steps that might prevent such accidents from happening again. To carry out these functions, one must be not only well-versed in the technical and legal aspects of chemical safety, but also be fair and objective. Each of the jobs and positions I have held in the safety and health area has involved oversight and review of workplace accidents and investigations and responsibility for understanding, evaluating, and analyzing the technical, the legal, and the human issues involved. I believe I have a reputation for being thorough as well as fair minded, and if I am confirmed by the Senate, I will certainly carry those values with me in carrying out my responsibilities as a member of Chemical Safety Board.

Mr. Chairman, I appreciate this opportunity to testify before you and your consideration of my nomination. I would be happy to answer any questions you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING

WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Gary Lee Visscher

Business Address: U.S. Department of Labor
S - 2315
200 Constitution Avenue, NW
Washington, DC 20210

Business Phone: 202-693-2302

Home Address: Silver Spring, MD 20902

Employment record—continued

Deputy Assistant Secretary, U.S. Department of Labor, Occupational Safety and Health Administration, Washington DC, November, 2001 to present.

Vice President, Employee Relations, American Iron and Steel Institute, Washington, DC, November, 2000 to October, 2001.

Commissioner, Occupational Safety and Health Review Commission, Washington, DC, July, 1999 to November, 2000.

Professional Staff/Workforce Policy Counsel, Committee on Education and the Workforce, U.S. House of Representatives, Washington, DC, January, 1989 to July, 1999.

Legislative Director, Office of U.S. Representative Paul B. Henry, Washington, DC, 1985 to 1989.

Legislative Assistant, Office of Michigan State Senator Paul B. Henry, Lansing, MI, 1983 to 1984.

Associate, Law Firm of Nederlander, Dodge, and McCauley, Detroit, Michigan, 1981 to 1983.

Law Clerk, U.S. District Court Chief Judge John Feikens, (E.D. Michigan), Detroit, Michigan, 1979 to 1980.

Honors and awards:

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

(none)

Memberships:

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

Organization	Office held (if any)	Dates
Michigan State Bar Association		1979 to present

Qualifications:

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

I believe that my background as a Congressional staffer, Commissioner on Occupational Safety and Health Review Commission, and Deputy Assistant Secretary for OSHA well qualifies me to serve as a Member of the Chemical Safety and Hazard Investigations Board. In all three positions I have had considerable experience with the legal and technical and human aspects of workplace safety and health. I have also had considerable experience overseeing and reviewing investigations of workplace accidents of all types, including chemical accidents. I also believe that my broad experience in workplace safety and health, including having worked at both OSHRC and OSHA, as well as a Congressional staff person, will help the work of the Chemical Safety and Hazard Investigation Board as it interacts with the other government agencies which have a role in workplace safety and health.

Future

**employment
relationships:**

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

Yes, I will sever my employment relationship with the US Department of Labor if confirmed as Member of the Chemical Safety and Hazards Investigation Board

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

No, I have no such plans.

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

No

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

Yes

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

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

U.S. Occupational Safety and Health Review Commission. Term was expiring, left to accept other employment (October, 2000)

**Financial
Statement:**

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

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements,

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

None

2. Are any assets pledged?

No

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

No

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

Yes

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

Not that I am aware of.

Potential conflicts of interest:

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

None

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

On review of my financial statements, I was asked to and have signed a letter to the Ethics Official of the Chemical Safety and Hazards Investigation Board indicating that I will recuse myself from participating in matters affecting Emerson Electric, Abbott Laboratory, and DTE Corporation, unless I first obtain a written waiver. I and my wife own small amounts of stock in each of these three companies.

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

None

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

See response to Question 2, above.

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

As required by 18 U.S.C. sec. 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as an officer, director, trustee, general partner, or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I currently own interests in Emerson Electric, Abbott Laboratory, and DTE. It is unlikely that matters affecting the financial interests of Emerson Electric, Abbott Laboratory, or DTE will come before the CSB because these entities do not have business before the CSB. Nevertheless, in the future, if a particular matter in which these entities has an interest does come before the Board, I will recuse myself from participating in an official capacity in the matter, unless I first obtain a written waiver or qualify for a regulatory exemption.

Please see attached letters from CSB's DAEO, Christopher Warner, dated October 17, 2003, and my letter to the DAEO dated October 16, 2003."

**Political affiliation
and activities:**

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

Member, Republican Party of Montgomery County
Campaign worker/volunteer on several Morella for Congress campaigns in Montgomery County, Maryland

**Published
writings:**

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

"Dare to Be a Daniel," in Serving the Claims of Justice, Douglas Koopman, ed., (Calvin College, 2001);
"Paul Henry: A Model for Integrating Christian Faith and Politics," with Douglas Koopman, in Politics and Public Policy, A Christian Response, (Kregel Publications, 2000). I also wrote a very short article on child care legislation in the 1996 welfare reform law, in the June or October, 1996 Public Justice Report.

**Additional
Matters:**

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

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

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

AFFIDAVIT

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

Gary Visscher

Subscribed and sworn before me this 22nd day of October, 2003

Notary Public *Margo Terrell*

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE
THIS 22nd DAY OF Oct, 2003, IN THE
DISTRICT OF COLUMBIA
Margo Terrell
MARGO TERRELL
Notary Public, District of Columbia
My Commission Expires Oct. 30, 2005

October 16, 2003


Christopher W. Warner
Designated Agency Ethics Official
Chemical Safety and Hazard Investigation Board
2175 K Street, NW
Washington, DC 20037

Dear Mr. Warner:

The purpose of this letter is to describe the steps that I intend to take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner, Chemical Safety and Hazard Investigation Board (Board). As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I currently own interests in Emerson Electric, Abbott Laboratory, and DTE. I understand that it is unlikely that matters affecting the financial interests of Emerson Electric, Abbott Laboratory, and DTE will come before the Board. Nevertheless, in the future, if a particular matter will have a direct and predictable effect on the financial interest of one of these entities, I will recuse myself from participating in an official capacity in the matter, unless I first obtain a written waiver or qualify for a regulatory exemption.

Sincerely,



Gary L. Visscher

Gary L. Visscher



U. S. Chemical Safety and Hazard Investigation Board

2175 K Street, NW Suite 400 Washington, DC 20037-1809

Phone 202-261-7600 Fax 202-261-7650

www.chemsafety.gov

Gerald V. Poje, Ph.D.
Board Member

Carolyn W. Merritt
Chairman

Irv Rosenthal, Ph.D.
Board Member

Andrea Kidd Taylor, Dr. P.H.
Board Member

John S. Bresland
Board Member

October 17, 2003

Honorable Amy Comstock
Director, U.S. Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, D.C. 20005-3917

Dear Ms. Comstock:

In accordance with the Section 203(c) of the Ethics in Government Act, enclosed is the financial disclosure report of Mr. Gary Visscher who has been nominated as a Board Member to the United States Chemical Safety and Hazard Investigation Board.

In our review, we examined his financial interests in light of the issues that he may be asked to address in this position and have concluded only a small likelihood exists that he would have to recuse himself on matters involving the interests that he will retain. Based upon our review of the report and Mr. Visscher's letter to the Board to recuse himself as appropriate (copy attached), we have determined that the report discloses no conflict of interest under applicable laws and regulations.

I therefore recommend that you sign Mr. Visscher's report and submit the report along with your letter to the Senate Committee on Environment and Public Works.

Sincerely,

A handwritten signature in cursive script that reads "Christopher W. Warner".

Christopher W. Warner
Designated Agency Ethics Officer

Enclosures

125

