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ENVIRONMENTAL PROTECTION AGENCY'S FISCAL YEAR 2004 BUDGET

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

FEBRUARY 26, 2003

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ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION

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C O N T E N T S

ENVIRONMENTAL PROTECTION AGENCY'S FISCAL YEAR 2004 BUDGET

WEDNESDAY, FEBRUARY 26, 2003

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

The committee met, pursuant to notice, at 9:39 a.m. in room 406, Senate Dirksen Building, Hon. James M. Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Jeffords, Allard, Voinovich, Thomas, Murkowski, Boxer, Carper, Warner, and Cornyn.

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

Senator INHOFE. Quite often Senator Jeffords and I don't agree on everything, but we do agree that we are going to be starting on time and running a pretty tight meeting.

So we want to, first of all, welcome Governor Whitman. We are pleased to have you testify before this committee today on President's Bush's Fiscal Year 2004 budget proposal for the EPA.

Because the hearing will be well attended and I anticipate enthusiastic rounds of questioning, I will ask for opening statements to be kept short, under 5 minutes.

I would also like to start by making three observations and then broach a few specifics. My first observation is that President Bush's budget for the EPA stresses results over bureaucratic mandates and processes: cleaner air, cleaner water, cleaner land, as opposed to more paperwork and more lawsuits.

My second observation is that President Bush's budget harnesses the power of innovation and technology to address the Nation's environmental challenges.

The third observation is that President Bush's budget continues the Nation's strong progress toward a cleaner environment. He has proposed the most aggressive Presidential initiative in history to reduce emissions from power plants. I congratulate this Administration on its environmental record, which demonstrates excellence under all honest scrutiny.

However, some systemic problems have existed at EPA virtually since its inception. These systemic problems have been recognized by the General Accounting Office, the Inspector General, and the Office of Management and Budget.

Moving into the specifics, I want to thank Administrator Whitman for the most comprehensive EPA report on children's health to date. Our children's health is of utmost concern, and I am

pleased that, as a direct result of progressive Federal initiatives, there have been significant improvements in children's environmental health.

However, I found the alarming snapshot of information about mercury levels to be vague and potentially misleading. Though the report stated there was, and I am quoting now, "some increased risk of adverse health effects," it failed to specify how much risk and which women this would impact. Apparently, the risks were overstated. As such, I think it unnecessarily, needlessly scared a lot of woman. I would appreciate clarification on what to be appears ambiguous information.

This is just another example of concerns I have raised in the past regarding the need for EPA to be responsible with science and provide sound science which is easily explained to the American people. For example, if you listened to CNN yesterday, you would assume that 1 in 12 women were in serious jeopardy of mercury poisoning, and this just is not true.

Along with sound science, I have long been concerned with the topic of achieving the biggest bang for our environmental buck. We need to prioritize our spending to achieve maximum health benefits.

For example, I note that OMB's review of the Air Toxics Program at EPA observes, and I quote, "The program has not shown it is maximizing net benefits and proposing the most cost-effective regulations." I am pleased that, in response to this observation, an aggressive plan has been devised to increase funding for the Toxic Air Pollutant Program by $7 million in State grants for monitoring and to help fill the data gaps and refocus on maximizing programmatic net benefits. We need to make sure that all regulations are cost-effective.

On the topic of Superfund, I am particularly interested in the effectiveness of the program, in no small part since in my State of Oklahoma we have Tar Creek, which is the largest Superfund site and the most devastating damage anywhere in the Nation.

I was distressed a little bit to hear our Governor yesterday say, well, our solution is to file a lawsuit against the EPA. I see that as a copout. I would hate to see litigation pursued as the answer at Tar Creek because it is something we are working on, and I am sure that the Administrator will have some comments to make about that. We shouldn't get bogged down in processes that would delay the ultimate cleanup of this site. I want to focus on results, cleaning the soil, and, most importantly, bringing down the levels of lead in our Oklahoma children.

As chairman of this committee, I will continue to work closely with you and other Federal agencies, including the Department of Interior and the Army Corps of Engineers, that these results are quickly in coming.

Senator Jeffords?

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

Senator JEFFORDS. Good morning. I will be brief with my statement and most of it will be made a part of the record.

Administrator Whitman, welcome. It is always nice to see you, though I realize budget hearings are not the most pleasant affairs. However, I want to publicly acknowledge my admiration for your commitment to public service and enthusiasm for one of the most difficult jobs in Washington.

It has been a year since you testified before this committee on the EPA's budget. Last year you took pride in the fact that the Agency budget requested a $200 million increase over the previous year's request. I am disappointed that you cannot make a similar claim this year.

If enacted, this budget request would represent about a 6 percent cut in spending compared to what the President signed into law last week and does not even take into account inflation. It is my opinion that the Administrator's 2004 budget request for EPA is inadequate to the task at hand.

How can the Agency justify the $500 million cut in the Clean Water State Revolving Loan Fund? Even the Office of Management and Budget has written to me stating that over the next 20 years $21 billion in capital funding will be needed for clean water and $45 billion will be needed for drinking water. I might add that the Congressional Budget Office and others have estimated our national water infrastructure needs in the range of $300 billion over the next 25 years.

At a time when the water systems are coping with additional cost of security, I don't want to be told that a bean counter at OMB has decided that, for budgetary reasons, the State Revolving Funds are ready to revolve. I don't believe it and I don't think water experts in EPA believe it.

Last year one bright spot in the budget request was a large increase in funding for the Brownfields Program, and I should note that EPA is requesting a modest increase this year as well. I can only ask, where is the beef? Enacting Brownfields funding for competitive grants remains at less than $100 million, despite the promises of more resources and a new authorizing law. It is kind of like ordering a double cheeseburger and coming up "patty short."

Speaking of the frustration we authorizers are feeling when it comes to appropriations, as you know, new legislation was enacted at the end of the last Congress to protect Lake Champlain. The new bill authorizes substantially more resources than had been requested by the Agency. I hope I can work with you to make sure that this is the last budget that will request so little in funding for Lake Champlain.

I am sure that other members will focus their attention on the Superfund budget and resources the Agency is devoting to its enforcement activities. I would like to voice my displeasure with the Agency's responses to the committee's request for information.

Over the past year and a half, we have sent repeated requests pertaining to the Agency's proposed changes in the New Source Review Program as well as questions pertaining to the Administration's Clear Skies proposal. To my dismay, the Agency's responses have ranged from inadequate to incomplete, and in some cases no response was received at all. This is untenable and, unfortunately, not unique. I am also waiting for promised responses to my question from the Council on Environmental Quality.

Both you and I are trying to make the environment safer for our children and grandchildren. We must strive to do better.

On the air front, I have been encouraged by the Agency's move to better regulate diesel vehicles, but I am concerned that the Agency is becoming better known for its "New Year's Eve revisions in the Clean Air Act," weakening the requirement that the oldest and dirtiest power plants and refineries install modern pollution controls whenever they make major repairs. My State and eight others that are challenging the EPA's actions in court cannot permit our air to become dirtier, our mountain vistas smoggier, and our citizenry sicker.

I am also very deeply concerned with the Administration's effort to promote its Clean Skies Initiative. Despite EPA claims to the contrary, the proposal would carve up crucial aspects of the current law, weakening enforcement and dismantling regulation. By delaying compliance deadlines, Clear Skies would result in thousands of deaths, asthma attacks, and hospitalization.

Finally, I hope that we can hope to agree to do something to guarantee reductions in emissions of carbon dioxide. Global warming's damaging environmental and economic impacts are upon us. We must act and act soon.

Thank you. I look forward to your testimony.

Senator INHOFE. Thank you, Senator Jeffords. Senator Allard?

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

Senator ALLARD. Thank you, Mr. Chairman. I would like to join you, Mr. Chairman and Ranking Member here, in welcoming Administrator Whitman to this committee. We are all looking forward to a great discussion on the "noncontroversial issue" of the environment and budget.

As you know, Colorado has a storied history between working with the Environmental Protection Agency on Colorado's sensitive environmental sites. Our rich resource heritage and a variety of resource-based issues forces constant interaction between Colorado and your agency. I use the term "working with Colorado" because that is the relationship I hope the EPA will continue to foster, working with the various actors to achieve goals in a positive and nonpunitive manner.

As we discuss the EPA budget request and as funding issues are raised, I would like to mention a few other important initiatives that have broad-based policy implications as well as a budgetary impact.

During the 107th Congress, Senators Crapo, Specter, and I worked with Senator Jeffords and several of our colleagues, both Republican and Democrat, to get legislation concerning the Office of the EPA Ombudsman passed by the Senate. I just want to take this opportunity to reiterate my dedication to getting comprehensive legislation passed during this Congress through an act to establish an effective, independent ombudsman.

I also want to reiterate the relationship of the ombudsman to the Shaddock Superfund cleanup: that while progress is being made and shipments of material will begin very soon, it is this project that first brought the importance of the ombudsman to light. I will

continue to focus on Shaddock until cleanup is complete and will work with my colleagues to ensure our ombudsman's goals.

Before I conclude, I would be interested to learn how the various EPA programs intend to aid States such as Colorado that have suffered, and probably will suffer in the future, from ravaging forest fires. This does not mean new money or new programs; simply a new way of looking at old programs.

The ash and debris from a fire destroys the health of watersheds, forcing communities to deal with the ramifications of not only a destroyed landscape, but with drinking water consequences. I would appreciate any help and guidance that your agency may offer to address both mitigation and preparation to deal with the aftereffect of forest fires, those that have occurred and, obviously, will occur in States like Colorado again.

That is especially important with one particular case involving a large municipal water supply in Denver, where we have from the previous summer the silt and the ash and everything washing down into the reservoir that provides all the water for Denver. We are in a drought in Colorado, probably the worst one in 300 years, and maybe even longer. We have got a lot of tree ring experts now in Colorado. But it is a problem. I think that perhaps there will be ways in which we can get some mitigation there under current programs without having to create a new program.

Mr. Chairman, thank you and, Administrator Whitman, for your listening and interest. I need to apologize in advance. I have two committees going on here at the same time, and I wanted to be here early to have an opportunity to address the committee and Administrator Whitman.

Mr. Chairman, now I yield back my time. Thank you.

Senator INHOFE. Thank you, Senator Allard. Senator Voinovich?

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

Senator VOINOVICH. Thank you, Mr. Chairman, for calling this hearing. I am pleased that we are holding this hearing, and I take our committee's responsibility, oversight responsibilities, very seriously.

In addition, I would like to thank Administrator Whitman for being here today to discuss the President's proposed budget for the EPA. I know that you have a very difficult job in trying to bring a sense of fiscal responsibility to an area like environmental protection, and I respect the enormous challenges that you have addressed in working out a budget proposal, particularly with the pressure that you are getting from OMB to keep your spending down.

I want to personally thank you for serving as the Administrator of the EPA and also to thank your husband and your family for the sacrifice they are making, so that you can serve our country.

As you know from being a Governor, the burdens placed on budget by priorities in one area, such as homeland security and national defense, squeeze out other priorities and can leave them underfunded. Putting together a budget is a process that requires responsible prioritizing and fiscal discipline in order to avoid breaking the bank.

Unfortunately, as is often the case around here, responsibility often gives way to rhetoric, and the knee-jerk response to those who claim "it is just not enough" is to offer "pie-in-the-sky" budget numbers that are not feasible, let alone necessary.

In 2002, this past Fiscal Year, I think we should know that we suffered a budget deficit of $317 billion. In other words, we spent the entire $160 million Social Security surplus. According to OMB's numbers, even though we have kept discretionary spending down in Fiscal Year 2003, and the President's 2004 budget keeps discretionary spending to an increase of 4 percent—everybody understands that; that is what he has got, 4 percent—we will still suffer budget deficits close to a half trillion dollars—a half trillion dollars—in 2004.

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

That being said, there are a few issues in this budget proposal that I would like to address today. For example, October 30, 2002 marked the 30th anniversary of the Clean Water Act. The anniversary is not only a cause for celebration, but also a cause to recommit ourselves to achieving the goals of the act. We have come a long way since the passage of the Clean Water Act in 1972, but we still have a long way to go.

For example, approximately 45 percent of our waters are still not clean enough for fishing or swimming. Clean water has been a priority of mine since I was elected to the general assembly in 1967 in Ohio and made a commitment to stop the deterioration of Lake Erie and to wage what I call the "second battle of Lake Erie" to bring that around and restore it.

Last year I worked with my colleagues on this committee to pass the Great Lakes Legacy Act and to clean up contaminated sediments. While I am pleased the President recognizes the importance of this natural resource to the Nation by including $15 million in the budget for this program, this funding is well below—well below—the $54 million that was authorized. I intend to send a letter to the appropriators asking them to fully fund the Great Lakes Legacy Program.

As a member of this committee, I have also worked hard to bring attention to the Nation's wastewater infrastructure needs. That is why I introduced legislation that would reauthorize funding of the Clean Water State Revolving Loan Fund. My legislation would authorize a total of $15 billion over 5 years and provide improved State flexibility to run the program.

Unfortunately, as Senator Jeffords has pointed out, the budget just is not adequate in that area. It really needs to be looked at.

I firmly believe that the Federal Government is responsible for paying a fair share of the mandate that we have put on local municipalities and sewer districts to take care of their combined sewer overflow problems.

Recently, I was in Akron, Ohio and met with the people that were there, and they indicated that they finally have come up with a 30-year plan, $370-some million, and they were told that that

plan doesn't fit the rules. It is too long, that it has got to be 15 years.

I think one of the things that this committee needs to consider is that, if we have programs out there where we have mandated costs on State and local government, where we truly are a partner, that either we ought to come up with the money to take care of our partnership or understand that some of these local communities don't have the money necessary to get the job done.

Now we have a financial problem here. But let me tell you something: The States and local communities in this country are really in sad shape today, and I think we need to really start to look at some of these deadlines that we have set to see if there isn't a way that we can maybe adjust them and, if we can't adjust them, then we need to come up with the money to pay for them.

When I was in Akron the other day, I said, "Well, 30 years," and they said, "No, it's 15." And they said, "Well, tell them that that, if it is 15, then you pay for half the cost." We defy logic.

On Monday I had the pleasure of visiting EPA's newly created National Homeland Security Research Center in Cincinnati and met with Dr. Paul Gilman. By the way, I know you wanted to be there and we missed you. By the way, Paul did do a good job for you.

But since the terrorist attacks of September 2001, this committee has worked closely with the EPA to identify the vulnerabilities of our water system and chemical plants, and to find the means to protect them. I know that Senator Jeffords and Senator Corzine have worked very hard on these issues.

Although EPA was not moved into the Department of Homeland Security, it is important the Agency be able to carry out its responsibilities. We really have to do a better job I think in terms of science. You have some money in your budget for science. I would like to know, what are you going to do with the money, and how have you tried to respond to our concerns about the fact that the EPA does not have the folks available to do the kind of science that we think needs to be done?

I think that Senator Inhofe has mentioned that; other members of this committee have. I would be interested in knowing, what are you doing with the money that you are getting and how is Dr. Gilman going to be fitting into that, and what is your response to my legislation that says that we need to require a science individual in your Department?

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Voinovich follows:]

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

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

In addition, I would like to thank Administrator Whitman for being here today to discuss the President's proposed budget for the EPA. I know that you have a very difficult job in trying to bring some sense of fiscal responsibility to an area like environmental protection, and I respect the enormous challenges that you have to address when working out a budget proposal. I personally want to thank you for your willingness to serve.

As you know from being a Governor, the burdens placed on a budget by priorities in one area (such as homeland security and national defense) squeeze out other priorities and can leave them underfunded. Putting together a budget is a process that requires responsible prioritizing and fiscal discipline in order to avoid breaking the bank. Unfortunately, as is often the case around here, responsibility often gives way to rhetoric and the knee-jerk response to those who claim "it's not enough" is to offer pie-in-the-sky budget numbers that they know are not feasible, let alone necessary.

In 2002, this past fiscal year, we suffered a budget deficit of $317 billion. In other words, we spent the entire $160 billion Social Security surplus and then had to go out into the private markets and borrow an additional $158 billion.

And according to OMB's numbers, even though we kept discretionary spending down in fiscal year 2003 and the President's fiscal year 2004 budget keeps discretionary spending to an increase of 4 percent, we will still suffer budget deficits of close to half a trillion dollars ($468 billion and $482 billion, respectively) in fiscal year 2003 and fiscal year 2004.

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

That being said, there are a few issues in this budget proposal that I would like to address today. For example, October 30, 2002 marked the 30th Anniversary of the Clean Water Act. The Anniversary is not only a cause for celebration, but also a cause to recommit ourselves to achieving the goals of the Act. We have come a long way since the passage of the Clean Water Act in 1972. But we still have a long way to go. For example, approximately 45 percent of U.S. waters are still not clean enough for fishing or swimming.

Clean water has been a priority of mine ever since I was elected to the Ohio General Assembly in 1967 and made a commitment to stop the deterioration of Lake Erie and to wage what I call the "Second Battle of Lake Erie." I have continued that fight throughout my career.

Last year, I worked with my colleagues in this committee and in the Congress to pass the Great Lakes Legacy Act to clean up contaminated sediments. While I am pleased that the President recognizes the importance of this natural resource to the Nation by including $15 million in the budget for this program, this funding is well below the $54 million authorized. I intend to send a letter to the appropriators asking them to fully fund the Great Lakes Legacy Program.

As a member of this committee, I have worked hard to bring attention to the nation's wastewater infrastructure needs. That is why I have introduced legislation that would reauthorize funding for the Clean Water State Revolving Loan Fund (SRF) program. My legislation, the Clean Water Infrastructure Financing Act (S. 170), would authorize a total of $15 billion over 5 years and provide improved State flexibility to run the program.

Unfortunately, as we on this committee know, billions of dollars have already been spent and billions more are needed to upgrade the nation's aging wastewater infrastructure. I firmly believe the Federal Government is responsible for paying its fair share. The city of Akron, for example, has proposed to spend $377 million over 30 years to fix the City's combined sewer overflow problems. Yet, city officials told me last week as I toured the City's wastewater treatment plant, that the U.S. EPA is pressuring them to do the work in half the time.

In addition, the Administration's fiscal year 2004 budget proposes spending cuts for this important program. What I would like to know from you, Administrator Whitman, is how you expect cities like Akron to spend millions of dollars for water infrastructure upgrades when the Administration plans to cut funding for programs like the Clean Water SRF program. In the absence of sufficient Federal funding, what kind of assistance can EPA give local communities trying to improve water quality by investing in infrastructure upgrades?

Senator Carper and I introduced legislation in the last Congress to strengthen science at the EPA by creating a Deputy Science Administrator at the Agency. This legislation was based on a 2000 National Research Council study (entitled Strengthening Science and the U.S. EPA). That report included several recommendations on how to improve the research, management and peer review practices at the Agency. I know that Chairman Inhofe has a very serious interest in ensuring that the Agency utilizes sound science in its decisionmaking—an interest that I wholeheartedly share. I would like to hear what you intend to do to increase the use of sound science at the Agency, and whether or not this budget provides adequate funding for that task.

On Monday, I had the pleasure of visiting EPA's newly created National Homeland Security Research Center in Cincinnati and meeting Dr. Paul Gilman, the As-

sistant Administrator of Research and Development at EPA. Since the terrorist attacks of September 2001, this committee has worked closely with EPA to identify the vulnerabilities to our water systems and chemical plants and to find the means to protect them. I know that Senator Jeffords and Senator Corzine have both worked very hard on these issues.

Although the EPA was not moved into the Department of Homeland Security, it is important that the Agency be able to carry out its homeland security responsibilities and work closely with that newly created Department. President Bush's fiscal year 2004 Budget request for EPA includes $123 million for Homeland Security activities. I would like to hear what EPA intends to do with this money and how it intends to work with the newly created Department of Homeland Security.

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

Senator INHOFE. Thank you. Senator Voinovich, you went a minute over, so we will give everyone else 6 minutes. Senator Thomas?

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

Senator THOMAS. Mr. Chairman, I will try to fix it by taking four or less. How's that?

[Laughter.]

Welcome, Administrator. I, too, have other committees I have to go to, but I am very interested in this one, of course. Being from the western States, we have sort of a unique arrangement, obviously, with some of the things, the public lands, and all those things. We had hearings yesterday on energy and how we are going to be able to continue to provide the kinds of energy volumes that the American citizens now utilize. Of course, it has to do with the economy, whether you are talking about coal or gas or CO_2. We must look to the future. In Wyoming we are doing a pilot project on carbon sequestration.

We can, I believe, make use of energy resources and still maintain the environment. That is our real challenge. Wyoming is a perfect example of where we have been doing that for years. We are the Btu Capitol of the Nation and at the same time we have the some of the cleanest air in the Nation.

Also, I hope that we can continue to stress the notion of having input and local cooperation between the Agency and local people. I agree with the Senator that some of the water requirements, and so on, are putting very difficult financial stress on some of the small communities, and so we need to do that.

In any event, thank you for what you do, and I know it is tough to try to figure out what is the best budget, and so on, but I hope we look beyond the budget as to what it is we want to accomplish over a period of time, so that we are not just totally immersed in immediate things, but have a little goal of where we are going to go and have our dollars take us.

Thank you for being here. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Thomas. In my opening statement I talked about the fact that this Administration is results-oriented, and I think that is exactly what you are recommending here.

Senator Murkowski?

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM THE STATE OF ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. Good morning. I don't have any opening comments I would like to make at this time other than to commend Administrator Whitman. I am looking forward to the opportunity to work with you on some issues that are of particular interest to my State that are probably pretty isolated. Looking at those that are here to listen, they wouldn't have much connection with what is going on with our fish processors or what is happening up in our Red Dog Mine.

But I am looking forward to working with you and perhaps having an opportunity to sit down and discuss some of our more local issues directly with you. So welcome this morning. Senator Inhofe. Governor Whitman, you are recognized now for an opening statement. Take all the time you want. There's not as many people here as we thought there would be this morning. You are recognized.

STATEMENT OF HON. CHRISTINE TODD WHITMAN, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. WHITMAN. Thank you, Mr. Chairman. and to members of the committee, I welcome to the opportunity to be back here with you to discuss the Fiscal Year 2004 request for the Agency. I do have a written statement that I would like, with your permission, to submit for the record.

Senator INHOFE. Without objection.

Ms. WHITMAN. First of all, I would like to start, Mr. Chairman, by congratulating you on the assumption of the chairmanship and indicate I look forward to working with you, with the staff, and the other members of the committee as we move forward on our shared goals: a cleaner and healthier environment for the people of the United States and, as we like to say, cleaner air, purer water, and better protected land.

The President's budget request of $7.6 billion for the Environmental Protection Agency provides the funding we need to advance those goals and to meet our agency's mission to protect human health and safeguard America's precious environment. It is a fiscally responsible request that recognizes the many competing priorities on taxpayer resources, particularly with respect to homeland security and in a time of possible war, without shortchanging our commitment to environmental protection, and that is an important understanding that we need to share.

The budget request also advances our commitment to building strong partnerships with State, local, and tribal governments. More than 40 percent of our budget request, some $3.1 billion, goes directly for assistance to our non-Federal partners.

I would like to take just a few minutes to point out some of the highlights of the President's request, and then, of course, I would be happy to answer any questions that you might have.

To promote cleaner air, the President's budget requests $617 million in the next Fiscal Year. These funds will allow us to improve air monitoring and analyze and provide $16.5 million in grants to State, tribal, and local governments for air toxic monitoring. It would also allow us to raise to $23.9 million, a $3 million increase, our funding efforts to combat childhood asthma.

In addition, the President's budget supports the Administration's Clear Skies proposals. Clear Skies, which would require mandatory reduction in power plant emission of sulfur dioxide, nitrogen oxide, and mercury by 70 percent, is the President's most important environmental legislative initiative this year. I look forward to working with the committee to move Clear Skies legislation through to the President's desk.

To promote purer water, the President's budget places a strong emphasis on our core water programs which have proven so successful over the years. We propose to increase spending on those programs by $55 million, for a total of $470 million. This includes $20 million in the Clean Water Section 106 grants and $12 million for Public Water System Supervision grants to our non-Federal partners.

Our proposed budget also includes a $5 million increase in grants to help State, local, and tribal governments protect wetlands and $20 million to again fund the program we began last year to help advance watershed protection efforts in a number of additional threatened watersheds around the Nation.

This budget also seeks $850 million for the Clean Water State Revolving Fund, which is less than we requested last year, as Senator Jeffords has pointed out. However, the Administration is committed to financing the Clean Water SRF at this level through 2011, 6 years beyond any previous commitment. This means the long-term revolving level of the fund will be at $2.8 billion, a 40 percent increase over the $2 billion commitment that had been made in the last Administration, although I will note that there was no commitment made in the enabling legislation that created this.

We also propose to fund the Drinking Water SRF at $850 million a year through 2018, so that it can revolve at $1.2 billion a year, a 140 percent increase over the previous goal of $500 million.

Given our proposed increase in the core water programs, the current fiscal restraints, and the variety of innovations that we are pioneering, we believe that this budget fully supports our commitment to purer water across the Nation.

To better protect the land, this budget includes two significant increases. The first, an additional $150 million for Superfund cleanup. These additional dollars will allow us, we estimate, to start an additional 10 to 15 construction projects at Superfund sites nationwide. The second, a $10 million increase over last year's record request for the Brownfields Program, brings our budget request to $210.7 million for brownfields.

Over the years both the Superfund and the Brownfields Program have demonstrated their value, not just in restoring the environment and protecting the health of America's families, but in revitalizing neighborhoods and communities in every part of our country.

In addition to our traditional environmental mission, EPA plays an important role in homeland security. The President's budget request of $123 million for our homeland security efforts is incorporated in this budget. These funds will allow us to carry on the work that we have been doing to protect the Nation's water infra-

structure and will give us resources to enhance our emergency response capabilities.

Given our time constraints, Mr. Chairman, I would like to mention just two other areas that are fundamental to our mission, our ability to use the best available science, to which you have referred, and to enforce the law. The President's budget requests a total of $607 million to develop and apply strong science to address both current and future environmental challenges. It also adds $503 million, the largest ever requested for enforcement and a $21 million jump over our request last year. This will allow us to add an additional 100 FTEs to our enforcement efforts.

Mr. Chairman, I am confident that our budget request fully funds and supports our obligation to be both good stewards of the Nation's environment and good stewards of the taxpayers' dollars. I would be happy to answer any questions that the committee might have now.

Senator INHOFE. Thank you, Madam Administrator. You were just talking about the Brownfield funding. I had an amendment on there that increased the number of sites by 200,000 to include the petroleum sites, and I would assume, then, that that appears to be fully funded to be able to clean those up.

Ms. WHITMAN. Yes, we are very receptive to that change, and the ability to include petroleum sites is going to enable us to address many more of these sites around the Nation.

Senator INHOFE. We will do 5-minute rounds and just keep going. Others, I am sure, will show up, and if not, I know it will hurt your feelings if we have to end a little bit early.

[Laughter.]

Senator Jeffords talked about the Clear Skies Act. I just want to make sure that we get in the record that I don't agree with his comments there, because I believe that the Clear Skies Initiative is the largest proposed reduction in pollutants that any President, any Administration, has ever proposed. Would you agree with that?

Ms. WHITMAN. I would, Senator, because this is a mandatory reduction. The beauty of having Congress do it is that, when Congress sets the standards, there isn't the same recourse in the courts. While the Clean Air Act has made enormous strides in cleaning up our air, we are finding now that we are starting to hit the point of diminishing returns. There is overregulation by the Agency, and we believe that marshaling the private sector through the cap-and-trade mechanism, as has proven so successful in the Acid Rain Program, will be just as successful in reducing these three most onerous of pollutants from power plants. The program is mandatory. It goes directly at those power plants which have continued to function under the current Clean Air Act and have caused such a problem for many of our States.

Senator INHOFE. Some 70 percent reduction by 2018 or——

Ms. WHITMAN. In 10 years. The beauty of it is, when Congress passes mandatory standards, as we saw under the Acid Rain Program, that the utilities begin to take action immediately because they know what the standards are. We are not telling them how to reach those standards, but they know what they are and they know the type of capital investment to make.

The estimate is, and we are very confident of this because we know a great deal about utilities, that we will see a 35-million-ton reduction of those three emissions over the next 10 years beyond what we would get through current business as usual under the Clean Air Act. That is a 35-million-ton reduction, better than we will get just continuing down the path——

Senator INHOFE. I think we need to keep saying that. Also, you briefly addressed the fact that this has been a successful story, but the more success you have, the more difficult it is going to be.

I mean, since the middle seventies our reductions in pollutants has been about 29 percent, I believe, while we have had a population increase of 34 percent; we have driven, what, 148 percent of the miles; the GDP has gone up 160 percent, but we reduced emissions, pollutants, by 29 percent. It is a successful story.

I would also voice just a very friendly disagreement with something else that Senator Jeffords said having to do with the thousands of deaths. I am reminded a little bit of, Senator Jeffords, when we had Administrator Carol Browner and she talked about quantifying the number of deaths at that time—this is the Ambient Air Amendments of 1996—as being 60,000 premature deaths, and that was later downgraded to 40,000 and then 20,000. Then Dr. Kay Jones went in and did a study, and it ended up being closer to 1,000. I think it is easy to throw around a lot of thousands of figures, but I would caution all of us not to unnecessarily concern people, when perhaps it is not all that accurate.

I want to in this first round address Tar Creek, and I am sure it will go into the next round, too. This has been a top priority, as I mentioned in my opening statement. It is something that has been involved in delays. Over a period of time we have spent, I believe, what, $100 million, over a period of time on it. There are some results there or some improvements. But I know that we are working on it now, and I would like to have you take a minute just to provide an update on what is going on specifically at Tar Creek, the Nation's worst site.

Ms. WHITMAN. Certainly, Senator. Remediation of an additional 457 residential properties, 3 day care centers, and ten park properties started on November 20th of 2002. The cost to complete this phase of remediation is estimated to be at about $15 million.

Residential cleanups, as you noted, have been under way since 1996. Almost 1,650 properties have been addressed. One hundred five Indian properties and eight school properties have been cleaned up, and that cost has been close to $45 million.

Negotiations for an Administrative Order and Consent with the Department of the Interior, the Gold Fields Mining and Blue Team Mining to perform and finance the remaining issues before us on the non-residential portion of mining wastes is ongoing. So we are seeing significant progress at the site. We are addressing our attention to the human health risk, and we are remediating in the homes and the day care centers, where there is the maximum exposure, but we also recognize that we still have the commercial interests to deal with, and we are negotiating those.

We expect that that part of it will take about 2 years to complete. Upon completion of that, the remedy for the non-residential portion will be proposed.

Senator INHOFE. When do you think we could expect the Administration's task force report?

Ms. WHITMAN. We expect to have the residential sites cleaned and finished and be out of there in 2 years, and then we will take up the commercial. I'm not sure, do we know when we are going to see the report? [confers with her staff] That's in CEQ. I can't tell you when it will get out of CEQ.

Senator INHOFE. The Tar Creek Task Force was to have a report. It is my understanding it was due, wasn't it?

Ms. WHITMAN. It has been completed by the Agency and sent to the Council on Environmental Protection.

Senator INHOFE. Very good.

Senator Jeffords?

Senator JEFFORDS. I guess referring to figures from the past is one thing, but let's look at the figures presently and what the bill would do. EPA released the Report on Children's Health Risk from the Environment. Among other things, the report contained the disturbing statistic that 8 percent, 5 million, of the women of childbearing age had high enough levels of mercury in their blood to have a high risk of adverse effects.

As you know, I have introduced the Clean Power Act, which requires power plants to reduce mercury by 90 percent over the next 6 years. By contrast, the Clear Skies proposals we reviewed last year would actually increase mercury emissions as compared to full implementation of current law. In effect, no reduction of mercury would be called for under Clear Skies. In light of this study, surely the Administration realizes that such a proposal would be irresponsible.

I understand the EPA is on the verge of finalizing its Clear Skies proposal for introduction as early as this week. I welcome that proposal. Perhaps EPA has made some revisions that I am not aware of, particularly in light of the Agency's release of this disturbing study.

What revisions has the Agency made to Clear Skies to assure this disturbing problem of mercury contamination is resolved?

Ms. WHITMAN. Well, Senator, we share the concern on mercury, as evidenced in the President's proposal. I would just, with all due respect, indicate that we are in the process of establishing a mercury standard. There is no standard now. There is no mercury MACT standard. That will not be completed until 2004 and not go into effect until 2007, under the Clean Air Act. We are moving forward as expeditiously as possible on that—we are not assuming that Clear Skies passes. It would not become mandatory until the year 2007, which is why we feel so strongly that by establishing a standard now that would require a 70 percent reduction, we would start to see the benefits immediately because that is what we saw when we introduced the Acid Rain Trading Program.

There is no mercury MACT now, and we are continuing to move forward with that process, but the Clear Skies would give us a definitive number. If Clear Skies passes, it is in the utilities' best interest to make their capital investment all at once, and they would start making it now. So we would start seeing reductions in mercury, we believe, immediately upon the legislation being signed into law.

Senator JEFFORDS. We just talked about mercury, but how many people are dying prematurely every year from power plant pollution now?

Ms. WHITMAN. There are no studies, and the Study on Children's Health did not indicate the causal relationship. In fact, in mercury it was an emerging issue because we don't have the trends to indicate specifically that this is where it is coming from. We don't know the pathway in. Whether it is ingesting the fish and local consumption, we just don't know at this point. We need to get more information on that.

Senator JEFFORDS. Leaving the mercury problem, what about the prematurity every year from power plant pollution?

Ms. WHITMAN. We estimate that when Clear Skies is fully implemented over the next 10 years—that we will see a reduction of 12,000 fewer premature deaths than we will see under, again this is assuming that we get Clear Skies through, than we will under the current Clean Air Act.

Senator JEFFORDS. It is my understanding that Clear Skies will increase the number relative to present law, if present law were put in place. Is that accurate or not?

Ms. WHITMAN. That is not what any of our studies show, no. In fact, we would see a decrease of 12,000 premature deaths beyond which we would expect under the Clean Air Act from existing regulations. I believe it is 2 million fewer missed work days from bronchial and asthma attacks because of bad air quality causing asthma and bronchial attacks.

Senator JEFFORDS. But wouldn't current law do better than that?

Ms. WHITMAN. No, this is better than current law.

Senator JEFFORDS. On global warming, do you believe in reducing greenhouse gas emissions will reduce the risk of economic and environmental damage from global warming and planet change?

Ms. WHITMAN. The President has indicated his concern about the issue of global climate change and has set a target of an 18 percent reduction. We are fully on board with that. We are supportive of it, and we believe that it is an issue that, while it needs more science, it still deserves to take action now. That is what the President has asked for.

Senator JEFFORDS. Considering the record of the power plants, why should anyone in Congress or the public believe that voluntary measures are going to be adequate to reduce the greenhouse gas emissions at a time to avert global warming?

Ms. WHITMAN. Well, I would tell you, Senator, and I can get you all the information, when the President announced his Greenhouse Gas Initiative, we at the same time announced a Global Climate Leaders Program. We had nine companies that were participants then. We are now up to 37.

It is a voluntary program. These companies, ranging from General Motors to Alcoa Aluminum, come in to us. We have South Florida Power Company and Miller Brewing Company. These companies benchmark their greenhouse gas emissions, agree to targets well below business as usual, and then report to us on an annual basis on how they are going. Nine of those companies now have agreed to those standards, agreed to the program, and have established standards.

Miller Brewing Company I believe is an 18 percent reduction per barrel produced by 2006. General Motors is doing it on an automotive, facility-wide basis. It is about a 10 percent reduction in greenhouse gases, again by 2006, below 2000 levels. So we are seeing a real commitment.

The Energy Star Program, again a voluntary program that we run, in 2001, the last year for which we have numbers, just by voluntary purchases by the public when they are informed of the benefits that can be had, saved the equivalent energy to fuel 10 million homes, reduced carbon emissions the equivalent of removing 12 million cars from the road, and saved energy bills of $6 billion.

These programs are working. Voluntary programs are significant. The benefits are measurable, and we believe that we can reach that 18 percent target that the President has established in the timeframe that he has called for.

Senator INHOFE. Thank you, Senator Jeffords.

If there is no objection, I will interrupt our questioning to give Senator Boxer time for an opening statement. Senator Boxer, we had opening statements of 5 minutes. You are recognized if you would like one.

Senator BOXER. That is very kind of you. Thank you very much.

Administrator Whitman, thank you for being here today. We are looking at EPA's 2004 proposed budget. We are looking at a number of other things, too.

Since my schedule requires me to be at Foreign Relations in just a few minutes, and we have President Karzai from Afghanistan there, I would like to skip my statement and ask unanimous consent to place it into the record, and try to ask a couple of questions, if that is OK with you, Mr. Chairman.

Senator INHOFE. Senator Murkowski, would it be all right if she asked her questions in advance of yours?

Senator MURKOWSKI. That is fine, but——

Senator INHOFE. Oh, well, let's let Senator Murkowski——

Senator BOXER. I was just going to say I will take my 5 minutes that way.

Senator INHOFE. All right, that is fine.

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

Senator BOXER. I won't go over my 5 minutes. Thank you.

I am very concerned on the mercury issue. I totally disagree with your statement that your so-called Clear Skies Initiative is going to get rid of more mercury than current law. If you read current law and you follow it, which your Administration hasn't done and doesn't seem to want to do, if you follow the letter of current law, you are going to see a 90 percent decrease in mercury.

I am going to submit to you a number of questions and comments written to me by scientists, and I am very interested in getting your written responses because we really don't have the time to go back and forth on "No, it won't," "Yes, it will."

So, respecting your answer, I, nonetheless, agree with Senator Jeffords completely on this, and I don't want to take a lot of my time, but I will be submitting to you some quotes from scientists

for you to rebut, since you say that you are going to do a better job.

What are the consequences of kids having mercury in their blood?

Ms. WHITMAN. It leads to developmental disabilities. There are severe concerns about elevated mercury levels in the blood of pregnant women and in children because it is an inhibitor to growth and development and intellectual capacity.

Senator BOXER. Exactly, and it really is something, Mr. Chairman, I would be so proud to work with you on. Just as we took the lead in the lead issue, regardless of our ideology, we have got to protect our kids from mercury. We may come up with different plans on how to do it, but I just want to say that I was distressed to see the Administration wait so long to release your report on Children and Environmental Risks. It finally came out. It was done in June, and then it finally came out 3 days after The Wall Street Journal had somebody leak—somebody leaked it to them.

Essentially, it says 4.9 million women of child-bearing age have elevated levels of mercury from eating contaminated fish, and approximately 320,000 newborns are at risk of neurological effects from being exposed in utero.

So my question to you is, this is a terrible problem right now, and a lot of women of child-bearing age are unaware that certain fish carry the higher levels. Are you planning some type of campaign before we get into whether we are going to pass, which I hope we will, Senator Jeffords' bill, your bill, or another bill? What is EPA planning on doing to get this information out to women of child-bearing age.

Ms. WHITMAN. Well, Senator, as you know, this is the first time that there has been a report on mercury. The first Report on Children's Health was really a compilation of available data and did not mention mercury at all. So we have included it for the first time. Right now we are working with our Federal partners to set up the next steps for further research. Mercury is an issue that we don't know what the pathway is. We don't know how those elevated levels are turning up, what type of fish ingestion, whether that it is the way that it is getting into the bloodstreams. We continue to work very closely, with States and tribes on how to go forward with fish advisories. There have been more fish advisories, and that was actually noted in the report. Much of that comes about because we have been working so closely with them to help them identify this as an issue.

We will continue to be aggressive in those areas.

Senator BOXER. I'm sorry to interrupt. It is just my time is going, and I know you will be aggressive, I hope you will be aggressive, but now you seem to say it is the first time the Federal—I am going to send you some of these studies done——

Ms. WHITMAN. It is the first time in the Children's Health Report.

Senator BOXER. No, no, in addition to it, that's right.

Ms. WHITMAN. Yes.

Senator BOXER. But other outside studies done by The International Journal of Obstetrics and Gynecology, other scientific studies, Mr. Chairman, say patients who had high fish diets or who

were exhibiting symptoms of mercury exposure, including fatigue, headaches, joint pain, participated in these studies, and it doesn't seem to be much question but that this intake of fish—and there are certain fish that are named; I don't want to put them out here now because I really want to see you do that. But I guess my plea to you right now is to please, please move on this.

Now what I said, when we got this study finally—it was sitting there since June. We have wasted precious time. There are women who have no idea, who are of child-bearing age, pregnant now, eating too much of this fish and getting too much mercury, and their kids will have problems or could well have problems. So, regardless of our arguments over the best way to reduce it, we have got to, it seems to me, wrap our arms around this one, regardless of party, and move forward.

My last point, and I won't make it a question, is: I am very disturbed about our abandoning, the Administration abandoning, polluter-pays for cleaning up Superfund. We have seen these sites. We have seen them going from 87 sites a year cleaned to 40. It is an outrage. People in my State are completely disgusted that we have got the second largest number of Superfund sites. We want action. We want polluters to pay into a fund, so that taxpayers don't have to pick up 85 percent of the cost of this program, which is what your Administration is doing.

Another time I will get to ask you some more questions.

I thank you for your indulgence, Mr. Chairman.

Senator INHOFE. Thank you, Senator Boxer.

Ms. WHITMAN. If I could, just on the presumption that the last had a question with it, just I want to assure you, Senator, that last year 71 percent of the cleanup was actually funded by the polluters. As you know, the average has been 70 percent the polluter pays, and we believe that——

Senator BOXER. You are using up the fund. There is hardly anything left.

Ms. WHITMAN [continuing]. And we believe that, and those sites continue to be paid for and we continue to be focused on getting the polluter to pay.

Senator BOXER. You are talking about lawsuits; I am talking about the Superfund itself. They are different.

Senator INHOFE. Governor Whitman, I am going to be getting into that in my line of questioning. At this time I would like to recognize Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Since we have been discussing mercury so much this morning, and specifically as it relates to seafood and the amount of mercury in the environment there, we would like to think——

Senator INHOFE. Excuse me. I think there is a problem with your mike.

Senator MURKOWSKI. As to seafood and mercury, in Alaska we don't seem to have, at least with certain of our fisheries we don't seem to have the levels of mercury that you might find perhaps on the Atlantic side.

Unfortunately, it seems that the classifications or the groupings are just broad. Crab is crab, and you don't designate whether it is Maryland crab or whether it is crab from our clear, pristine waters.

The same can be said for halibut. The halibut off Alaskan waters is different, and actually it is a completely different species than you have on the Atlantic side or the Greenland side.

Unfortunately, our seafood seems to get lumped into the same kind of generic categories. If we are going to talk about the science behind it, we would like to think that there is a branding or a recognition that we don't just lump and categorize it all, because it certainly affects our ability to market our product.

I am not asking for assistance in seafood marketing here, but just a recognition and an acceptance that, when we look to the science of it, that we do designate that there might be differences and that they should be treated accordingly.

Ms. WHITMAN. Senator, that is a very important point as we move forward. That is why we work so closely with State and local tribes in the warnings, recognizing that in the locally caught fish there are differences. We need to be respectful of that.

We also regulate the emissions of direct discharge of mercury into water. We have been encouraging industries to develop substitutes for mercury. We have seen a reduction of mercury by 90 percent from medical waste incineration and from municipal waste incineration.

We are taking a number of steps to address the mercury issue, but we are very sensitive to the fact that there are differences in the waters; there are differences in the deposition of mercury around the country and in fish tissue as well. So we have to be careful as we move forward, and that is why we have, to date, have been working, we as an agency have been working, with the local States and tribes, where appropriate, to issue those advisories and make sure that those advisories are well-publicized where they need to be.

But it is going to be the Centers for Disease Control, not the FDA, that will do the additional testing and make the final determination. [confers with her staff] It is FDA? OK, it is FDA that is going to be doing that. So they will be doing that part of it.

We have an extensive research and development and assessment program to better understand how mercury behaves in the environment and in human health, and how to control the releases in the environment, all of which are part of a comprehensive approach to ensure that we have the science behind the concerns that we raise, and that when we raise them we are cognizant of the differences and don't just have a broad-brush stroke that captures everybody, when it is not appropriate to so do.

Senator MURKOWSKI. Since we are talking about seafood, I mentioned just very briefly in the opening that the seafood industry in Alaska is a key industry for us. We have had, as you know, some difficulties of late.

One of the regulations that has come through your Department, of course, is the discharge from the fish waste, if you will. There is regulation coming out of EPA that requires grinding of the waste to less than one-half of an inch in any dimension. It is my understanding that this standard was adopted with very little science behind it, if you will, discussion, or actual study; that, in fact, reducing it to this small amount, this small standard, actually contributes to pollution problems. Well, reducing it that low may con-

tribute to pollution problems because the waste deposits form such small particles that they don't receive the oxygen that they need to decompose.

So, in other words, through the regulations, we are encouraging other problems that we did not anticipate. I would like to think that we could count on your support to conduct a new and objective study as to whether these requirements are really the appropriate standard for all cases, whether it does need to be reviewed and, if so, how we can address that problem.

Ms. WHITMAN. I know our Administrator from Region 10, John Iani, has been working closely with representatives of the fish industry and others, and scientists as well, to try to address this issue. We have, as you know, a satellite office in Juno. Actually, it is not in Juno, but we have more people in Alaska, actually, than we have in the office, in the regional office in Washington State. They have been working very closely on this issue. We are aware of it, and we are trying to get to the science behind it in order to make the appropriate final decision on how to deal with this fish waste.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Murkowski.

Let me get back to the discussion on the Superfund polluters-pay. You know, we hear this all the time. It is implying that somehow the Administration is letting off the hook those who are responsible for contamination at Superfund sites.

I would just like to ask you, Governor Whitman, can you identify any Superfund site—past, present, or in the pipeline—where an identifiable and viable polluter has not been held liable, consistent with the law, for their share of contamination? Can you identify any?

Ms. WHITMAN. No, Senator, I couldn't think of an instance where a viable, responsible party has not been held liable. There have been instances where we can identify a responsible party but the company has subsequently gone out of business, gone into bankruptcy, where we have had difficulty in recovering. But wherever we know the responsible party, that is our first line of defenses, our first line of funding for Superfund sites. Last year we stayed up at the level that has been consistent throughout the history of Superfund, the 70 percent. We were actually a little bit higher at 71 percent, but that goes up and down from year to year. We are absolutely committed to the polluter-pays principle here.

Senator INHOFE. I agree with that. I think we all need to keep saying it, because we keep hearing things to the contrary.

I think also, and I would ask you this, it is kind of false to call the expired Superfund tax a tax on polluters, in that it taxes many people, many entities out there that are not polluters.

Ms. WHITMAN. It was certainly a broad-based tax that captured everyone in the industry, whether they had, in fact, been responsible for specific pollution or not.

Senator INHOFE. I would like to hear about the Agency's chemical securities initiatives. I have some real concerns that multiple government entities are pursuing the same goals, that it is confusing a lot of people. It is an overlap.

I had personal experience in this in the real world, some 26 agencies in my case all making certain demands, when in this Information Age we shouldn't have to do that. I think you know that we are going to introduce legislation which will ensure that our Nation's chemical infrastructure is secure while consolidating and streamlining these efforts.

I would like to hear what your thoughts are on that.

Ms. WHITMAN. Senator, I agree absolutely with the target of that legislation. I believe it should be streamlined in one place. Homeland Security we believe has the responsibility for that. We work with them to support them in any way that we can.

Obviously, right after September 11, 2001, we worked with the chemical industry associations on vulnerability studies, the need for vulnerability studies, and we have continued to do that because we were the Agency that did that kind of thing and the only ones who were in a position to do it.

But I agree with you that this should not be an area where you have overlapping jurisdictions. It is too important an area. We need to ensure the security of our chemical infrastructure, and if that is Homeland Security, if legislation passes that gives that to Homeland Security, I am more than happy to have that rest there with them and have them do it, but I think there should be one agency, one department, that has that responsibility.

Senator INHOFE. Which is really the whole key to the Homeland Security, to consolidate these functions so that you are listening to one person, one department.

Ms. WHITMAN. Believe me, I try to give things away. I would be happy to give this to them.

[Laughter.]

Senator INHOFE. My next question is a pretty long one, so I am going to yield to Senator Jeffords right now and then pursue that.

Senator JEFFORDS. About the Superfund, to follow up on that, the EPA Inspector General has documented that there was a funding shortfall of over $200 million in the Superfund program last year. Seven sites identified as high priority by EPA, including Elizabeth Mine in Vermont, received no funds while 48 others were underfunded.

What is the EPA doing to ensure that the communities get the money they need to clean up these toxic sites?

Ms. WHITMAN. Senator, we are in the process of doing a whole pipeline review of sites and how sites are brought on to the National Priority List. We are committed and continue. No work has stopped, no ongoing work has stopped on any site in the country. Where we have started work, we are continuing through with that work.

What goes to the top of the list always is any indication that we get that a site is posing a threat to human health or the environment. If it is posing a health threat, we are going to get on that site one way or another, and we have continued to do that.

We are seeing sites, obviously, that, as we talked about last year, that are larger and more complex than sites we have had to deal with in the past. That is part of the reason why the number of closures onsites, completions onsites, is not what we would like it to be, either. But we continue to move forward. We continue to re-

spond to sites that are of immediate public or environmental health, and we continue construction and completion work onsites where we have begun work.

Senator JEFFORDS. As I mentioned a few moments ago, over the course of the last year and a half the EPW Committee has sent a number of informational requests to EPA concerning its proposed rule changes to the New Source Review Program. By and large, the Agency's responses have been quite inadequate. In fact, EPA responded fully to only one of five questions submitted in a December of 2001 letter, and it has still not given us a thorough log of documents pertaining to the new NSR rules.

Questions submitted prior to a July of 2002 hearing received cursory attention. Many questions were even refused, based upon claims of ambiguous pre-decisional criteria. Interestingly, I have received answers to my July post-hearing questions just last night.

Also unanswered is the December 2002 letter seeking an estimate of the number of sources that will, under new rules, be excluded from review. I would like to ask you now, when does the EPA plan to respond in detail and in good faith to these questions? What can be done to ensure more timely responses in the future?

Ms. WHITMAN. Senator, I understand that it has taken a significant amount of time for the Agency to respond to your New Source Review questions, and I apologize for that. As you know, there were two sets of questions, one pre-and one post-hearing questions. We made the determination on the post ones to wait until we had the rule promulgated to be able to fully answer. I recognize that that has not been satisfactory to you.

We did get a substantial number of those answers to you finally last night. There are 12 more which I will commit we will get to you in the next couple of weeks, and we are looking at the process. We need to do a better job. I can't deny that you deserve to have your questions answered sooner.

I am not sure we will always agree on what is "fully answered" because of the types of information. You know, they are very technical questions, as you well know, very detailed questions. We try to give you the fullest answer possible, but we are working on that one.

Senator JEFFORDS. As I mentioned in my opening remarks, I am concerned that the proposed budget would represent an almost 40 percent cut in funding to the Clean Water State Revolving Loan Fund. I was one of 38 Members of Congress who sent a letter last December to the President asking him to make an investment in clean water infrastructure providing at least $3.2 billion for Clean Water SRF. Can you explain the rejection of this advice in the face of well-documented needs, and without a substantial increase in funds, how can we continue to maintain and improve our Nation's water quality?

Ms. WHITMAN. Senator, as I indicated in my opening statement, this request does represent a cut in that fund account from last year's request, but, as we look at the revolving nature of the fund and the level of that revolving nature, we believe that taking it out to 2011, which is beyond what had been anticipated—I believe 2006 had been the initial date—and ensuring that it revolves at a

level well above what was—again, not anticipating the legislation because there was nothing anticipated in the legislation.

If you also look at some of the other ways to address the infrastructure challenges that we face, if you anticipate a real level of growth of 3 percent, there are some other actions that can be taken. We believe we can close that gap to an amount that is very manageable, but it is an area where we also think it is important to look at all the other dollars that we provide to our State and local partners to address water issues, not just that—that fund alone, that revolving fund alone, does not represent the totality of what the Federal Government provides to States and local governments to address water infrastructure needs.

Senator JEFFORDS. My time is up, Mr. Chairman.

Senator INHOFE. Thank you, Senator Jeffords.

Now for the longer question here: In October of 2000, I, along with JoAnn Emerson, Joe Knollenburg, and others, filed a lawsuit against the National Assessment on Climate Change for three principal reasons: First, the purported science was not subjected to peer review. Second, it did not even attempt to address a list of items that the relevant law mandated "shall" be addressed for any document to qualify as a national assessment. In fact, it admits that in its introduction. Then, third, the Freedom of Information Act inquiries revealed intense political motivation for the report prior to the 2000 elections.

Ultimately, we agreed to withdraw our complaint in return for the White House's guarantee in writing that the National Assessment does not reflect policy positions or official statements of the U.S. Government. Yet, somehow the EPA revived the National Assessment by submitting it to the United Nations as Chapter 6 of the Climate Action Report 2002 as a, quote, "policy position" or an official statement of the U.S. Government.

As you are quite aware, some State attorneys general have seized on this disavowed, yet somehow revived, document to claim that EPA must regulate carbon dioxide under the Clean Air Act.

I guess my question would be, would the EPA cease dissemination of and withdraw the Climate Action Report because it plainly fails sound science and other requirements? It is a question, yes.

Ms. WHITMAN. Senator, first of all, that Climate Report to which you refer was part of a report submitted to the United Nations under the U.N. framework that is required every 4 years. It is an Administration-wide document. The Environmental Protection Agency simply collated and contributed to one chapter of that.

But the important thing is that the assessment titled, "Climate Change Impacts," the one to which you refer, has not become U.S. Government policy, and it did not in this report. In fact, there are number of places in the report where it points out the fact that there are potential scenarios here. This was drawn on for that particular chapter as other things were drawn on, other documents and other research documents. It does not represent, though, the position of the Administration.

Chapter 6 of the Climate Report, where this particular report to which you refer was cited, says in several places that the information presented there is potential scenario and does not necessarily represent the position of the U.S. Government, and the U.S. Gov-

ernment has not changed that position. But it is documented as research that is out there that was referred to as just one part of an overall assessment.

Senator INHOFE. And I appreciate that, but the perception is that this is policy. I would ask you to do what you can do to clear this up.

Now I understand your Mercury Advisory Group has made recommendations for reductions that range from 25 percent to 90 percent. So Senator Boxer's 90 percent reduction claim from the current law may be too high. Would you have any comments to make about that?

Ms. WHITMAN. We are, as I indicated to the Senator, in the process of developing the mercury standard under the maximum available control technology portion of the Clean Air Act. That standard has not yet been set. So it would be premature of me to indicate where it is. I don't know. There is not a standard yet for mercury.

We recognize that mercury is an emission of great concern. That is why the President has put it in the Clear Skies legislation and has called for a 70 percent reduction. It is why we have worked so closely with the medical incineration industry and the municipal waste industry. We are also working to remove mercury from the lake streams at the front end. We are work with the health care industry and the chlorine industry specifically to try to get mercury out of their various products. So we are taking this issue very seriously, but as far as a standard, mercury standard, for emission from power plants, there is none yet.

Senator INHOFE. Senator Jeffords?

Senator JEFFORDS. Regarding the water infrastructure spending, EPA does not specify where the 3 percent real increase in spending should come from. Do you support an increase in rates? Do you support an increase in State spending? Do you support an increase in Federal spending?

Ms. WHITMAN. There are a number of different ways that we believe we can address that infrastructure gap. In fact, Senator, as you may know, we had a conference of all the interested parties and stakeholders to address that. They came up with a number of different suggestions, best practices, asset management best practices. They have looked at more flexibility in the dollars that we provide. We are promoting the environmental management systems again that they have called for.

So money is going to be one part of it, and what the consumer pays is going to be a decision left up to individual companies. As you know, we have real concerns about doing anything that will increase the cost of any basic service to the public. On the other hand, we recognize that there is no one entity that is going to be able to fund this need exclusively itself. The Federal Government is not going to be able to do it, and we are going to have to be more creative as we look at approaches that can address the needs that we see in providing clean and healthy water to the residents of this country.

Senator JEFFORDS. During the 107th Congress, the Great Lakes and Lake Champlain Act of 2002 was enacted. This law authorizes $11 million per year for Fiscal Years 2004 through 2008, and for

EPA to support Lake Champlain Basins or to restore and protect Lake Champlain.

Since 1990, the Basin Program has received $19 million. The action by the 107th Congress authorizes a new phase to the program. This new authorization appears to be completely ignored in the President's budget.

Can you explain the fact of why the Agency budget contains an additional 15 for the Great Lakes and zero for Lake Champlain?

Ms. WHITMAN. Senator, the Lake Champlain Basin Program is a very successful interagency and international partnership. We intend to continue to our support of that. Region 2 has been very involved in it. The budget is just over $1 million. Actually, Regions 1 and 2, both regions will continue their participation there.

We believe that it is successful, and we believe that we are helping improve the status of the lake. Reducing phosphate loading is the biggest issue, and the next largest is the control of invasive species. We have focused on those issues—we believe that it has worked very well.

Funds for the Lake Champlain effort have been split in the past 3 years between the Great Lakes Basin Program, Great Lakes Champlain Basin Program, and the Rubenstein Environmental Lab at the University of Vermont, and the Lake Champlain Science Center. Together with leveraging of those dollars, we are seeing progress being made on that lake.

Senator JEFFORDS. Is your Advance Notice of Proposed Rulemaking relative to the navigable waters limited to comments related to isolated, intrastate, non-navigable waters and whether regulations should define isolated waters?

Ms. WHITMAN. We on that Advance Notice of Proposed Rulemaking have limited what we have asked for comment on to those issues that were raised by the Supreme Court. When the Supreme Court determined that the Agency could no longer use the Migratory Bird Act as a way to protect isolated waters, we have focused on that. That, obviously, changed the way we go forward with those protections. We are asking for comments on those issues. That is where our focus is.

Senator JEFFORDS. I have before me a list of 60 point sources of discharge into Lake Champlain from Vermont and another 28 sources of discharge into the lake from New York. It is possible that some or all of these point sources could be excluded from the protection of the Clean Water Act if the Agency's rulemaking goes forward. Can you elaborate on which waters you will be evaluating to determine if the Clean Water Act should apply?

Ms. WHITMAN. We don't have a rulemaking now. We have an Advance Notice of Proposed Rulemaking, and the reason for that, Senator, is because of the concerns that we have and the complications and the desire to try to figure out exactly what the Supreme Court was saying when they limited our ability to use what had been the standard method of getting at those waters.

We can't just ignore the Supreme Court. They made a decision. They said the tool that we had used the most in reaching isolated waters was no longer the valid tool. We want to make sure that we can be as protective as possible of these isolated waters, and we are trying to get from people who comment on this Advance Notice

of Proposed Rulemaking as much information as possible to allow us to continue to be protective.

But at this point in time, since it is only an Advance Notice of Proposed Rulemaking, we don't have anything to indicate yet what we can do, but we have sent out a guidance to the field to try to encourage our regional offices to be as protective as possible.

Senator INHOFE. We have been joined by Senator Carper, and we would like to ask him if he has an opening statement or if he would prefer just to question the witness.

Senator CARPER. I know these people have been waiting to hear my statement, Mr. Chairman, but I am going to disappoint them and ask unanimous consent that my statement be entered in the record and we will move right to the questions.

Senator INHOFE. Without objection.

Senator CARPER. Thanks, Mr. Chairman.

Governor, welcome. How are you?

Ms. WHITMAN. Very good.

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

Senator CARPER. We are delighted that you are here. We have got Chairman Greenspan and a lot of our financial industry regulators over in the Banking Committee talking just about the deposit insurance changes. So I apologize for being delayed.

I understand you have been talking a little bit about clean air in my absence, and I would like to explore some items there. But before I do, let me just ask, if I could, a budgetary issue, since I think that is the reason why you are here, to talk about your budget.

In my State, and I know in your State, and perhaps in the States of my two colleagues, we have a problem with combined sewer overflows, and it is a real challenge, especially in a city like Wilmington that has been around for a while, and I am sure you have it in Trenton and New York and other places.

We use State money. We use city money, the city of Wilmington's money, New Castle County funds from the northern part of our State. We use Federal moneys to try to address these combined sewer overflow needs that we have. There is not nearly enough money to meet the need. When I talk with other colleagues, especially from the Eastern Seaboard and from the Midwest and places where they have cities that have been around for 100 or 200 years, I hear repeatedly how this is a great need in their own communities.

With that evidence as sort of the backdrop, my understanding is the budget that has been submitted to us, it includes funding to help our States with combined sewer overflow needs. But that money has actually diminished rather than enhanced, is that true?

Ms. WHITMAN. The amount of money, the $850 million requested in this budget is less than last year's request, but we did two things. Well, one major thing is to carry that fund out, make a commitment to carry it out to 2011, which is beyond what was initially anticipated, 6 years beyond the original commitment that was made for the SRF.

This would mean that the long-term level of the revolving nature of the fund would be at about $2.8 billion, which is a 40 percent increase over what had been made, the commitment of the $2 billion made by the previous Administration.

While we understand the challenges that we all face with these issues, we believe that this kind of commitment by the Federal Government represents a substantial portion of what is going to need to be done to address them, and we are going to have to work with the other stakeholders to try to close the gap.

Senator CARPER. All right. Just to put it in perspective, in the city of Wilmington, the estimate for meeting our combined sewer overflow needs is about from all sources $250 million. It is roughly $250 million. The amount of money that I think you have mentioned, roughly $2.5 billion, that is what Delaware could use for one city, Wilmington. It is about one-tenth of that entire amount forecast for the next 7 or 8 years.

We are a tiny, little State, as you know, and our needs are dwarfed by those of bigger States like New Jersey or even bigger States like Vermont.

We are not at all unprepared to spend our own money. We ought to. States ought to have to have some "skin" in this game, State moneys and local moneys as well. But I would just say for the record that, while I appreciate the points you made, it doesn't begin to meet the need that is out there.

Let me also pick up the issue, if I could, of clean air. I understand there has been some discussion already. Riding down on the train today, I noticed in the newspaper there was some reference to I think it was the statement or views of the National Academy of Sciences with respect to their views on a 10-year delay. It was just a little snippet in the paper, but my recollection is that they are saying that maybe we have delayed this enough and it is time to get on with addressing global warming and taking up seriously the carbon issues.

I have had the privilege of discussing with you my own views. Senator Jeffords has, as you know, been a champion on this front in saying it is not enough to address sulfur oxide, nitrogen oxide, and mercury emissions, but we also need to address carbon as a concern for global warming and greenhouse gas.

Senator Chafee and myself, and actually joined by Senator Baucus and Senator Breaux last fall introduced legislation that tries to find a middle ground between Senator Jeffords' approach and the Administration's approach, which I think Senator Inhofe is going to introduce the Clear Skies Initiative.

We do say carbon is a problem and we do call for addressing it in a way not as aggressively as Senator Jeffords has proposed, but we do call for addressing it. We have a cap-and-trade system that is in our legislation to try to harness market forces and we make some changes in resource review. We don't get rid of it, but we amend it, not end it.

I very much would hope that as we go forward this year that Senator Inhofe and Senator Jeffords and you and those who support this centrist approach that we have tried to clear up will enter into a good dialog, and that maybe out of these different ap-

proaches we can find one that we can agree on that will actually make a difference in the quality of our lives.

Mr. Chairman, 10 years ago I didn't put much in credence in this issue of global warming. I went to Ohio State as an undergraduate. A couple of nationally renown scientists, a husband and wife team, and I think their last name is Thompson, Dr. and Dr. Thompson, have done a fair amount of research around the world measuring the disappearance of snowcaps in some of the tallest mountains in the world over the last 20 years.

I have listened to them, talked with them, to hear what they have said. I have come from one who was pretty much a skeptic 10 years ago to the belief that this is an issue that we need to address. My hope is that we can come into it with good faith and manage to find a middle ground. But we need your help on this as well.

Senator INHOFE. Thank you, Senator Carper.

We are joined by two of our colleagues, and if it is all right, Senator Cornyn, we would defer to our ranking member here, Senator Warner, for any comments he wants to make.

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. Thank you very much. I welcome the opportunity to see you again before this committee. I think you have discharged your responsibilities to the President and the Nation very commendably. I am delighted that you are going to, hopefully, continue in this position.

Two subjects of great interest to me: First, the military implications of the ranges that we have, the training ranges and other operational areas with our military, and particularly at this time, Madam Administrator, when we are at an absolute peak OPTEMPO of training and preparing our people to take on some possibly extraordinary missions. They are taking them on now, but others are looming in the future.

Somehow we have got to resolve how these ranges can be operated 24 hours a day, 365 days a year, and none of it is incompatible with the environment. I hope perhaps you did it by exception, maybe naming a range here and there. Because it has taken this Nation so long to put the body of environmental laws in place, I am reluctant to try to change them just to protect the military and its operation of bases.

I don't have any specific plan at this time, but working with my colleague who, fortunately, also serves the Committee on the Armed Services, we will approach the President and the Administration with what we feel is a solution. Hopefully, the Department of Defense will either join or have a better idea. But we've got to move out on that, and we've got to move out swiftly because, otherwise, we are not being fair to these young men and women in uniform who have to go out and accept the risk of military service. So that is coming down the pike, so to speak.

Do you have a comment on it?

Ms. WHITMAN. I would be delighted to comment on it, Senator. We have been working very closely with the Department of Defense, and I don't believe that there is a training mission anywhere

in the country that is being held up or not taking place because of an environmental protection regulation.

I know there have been some concerns on endangered species, and not from EPA's perspective, but the Department of the Interior's perspective on invasive species. I know the Department of the Interior is working very closely with the Department of Defense also to ensure that they work out something that recognizes the need that we have to provide adequate training to the men and women in our Armed Forces, so that we never put them in jeopardy.

I believe firmly that we can move forward in a way that is also protective of the environment. Where we will get into more of an involvement with the Department of Defense is the cleanup after they have used a range.

We do need to be protective of the communities around. We need to be protective of the waterways and of the air, and we continue to work closely with them, and we believe that those protections are important protections. But at this point in time I am not aware of any particular area where environmental protection regulations are preventing desired training.

Senator WARNER. We will be interested in the functions of the oversight of Interior and the oversight of your Administration. So we will work in this area.

Second, the reserve fleet or the ships anchored, particularly in my State and in one or two areas of the country, I really worked hard to get the $20 million. I hope that you will begin to contract that money out in this cycle. Others helped, of course, on it but this took a strong effort on behalf of the Virginia congressional delegation. I received strong help from my colleagues.

Because these ships are at anchor. They are utterly useless for any purpose whatsoever, but they sit there as timebombs against the environment, should a natural disaster of a hurricane or something dislodge them from their moorings and crash them into the adjoining shores. You are aware of this.

We are also mindful of the environmental laws that have been put in place by the Executive Order that we can no longer ship these ships overseas and just literally give them away, if someone will take them, and scrap them, because we feel that we shouldn't transport some of the environmental hazards that they have in their old hulls to other nations. That has been settled. It is settled policy. I know of no thought in this Administration to reverse that. Am I correct in that?

Ms. WHITMAN. Well, Senator, we have been working very closely with the Maritime Administration and looking for appropriate disposal sites. In fact, there was a joint mission that went to Mexico to look at a potential agreement there. They are in Scotland this week.

Senator WARNER. China? I beg your pardon. China?

Ms. WHITMAN. There is a potential visit to China as well.

So we are working very closely with the Maritime Administration to find areas that would welcome the disposal of these ships and in an environmentally sensitive way for reefs or other purposes. As I say, I know there is one this week in Scotland. They have had one, the trip to Mexico. They have been meeting, and we anticipate

going to China, but it has not been scheduled yet. They are in the process of scheduling that to visit the shipyards.

Senator WARNER. My staff advises me we lost Mexico when we couldn't make a decision. Are you familiar with that, what happened?

Ms. WHITMAN. I don't at this point believe that anything has been actually ruled out. The Mexican Government officials expressed a strong interest in this program, and we are going to be following up with further contacts. So I am not aware. If there is something, a decision that they have taken recently, that indicates they are unable to accept the ships, we will certainly get to you.

[Ms. Whitman confers with her staff.]

OK, I am informed that in Mexico there was one company that we were working with that went ahead and made a contract with someone else, and so we are now looking for other companies in Mexico. But I don't understand it to be a governmentwide prohibition.

Senator WARNER. I am not here to fault the Administration.

Ms. WHITMAN. No, no, no.

Senator WARNER. I am encouraged that you are reaching out because we simply have to address this problem. Congress faced up to it by finding the money in a tough time to locate those dollars.

So I thank you very much. The $20 million that we've got, especially on this side with the help of our good friend, the chairman of the Appropriations Committee, has to be obligated this year. Are you aware of that?

Ms. WHITMAN. Yes.

Senator WARNER. The other money from the Commerce, $11 million, is the money which you can over a period of years obligate. But as long as you recognize fully the potential disaster——

Ms. WHITMAN. I believe that money went to the Department of Defense, and they need to allocate it to the Maritime Administration for the scrapping of these ships. We are certainly working very closely with everyone to make sure that we carry out your desires.

Senator WARNER. That has been done. So it is clear to go.

All right, you are in charge and you've got your money. Good luck.

[Laughter.]

Senator INHOFE. Thank you, Senator Warner. Senator Cornyn?

OPENING STATEMENT OF HON. JOHN CORNYN, U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Mr. Chairman. I am sorry I was delayed a little bit. I was with Chairman Warner in an Armed Services briefing earlier, but I am glad to be here and glad to have a chance just to ask a couple of questions of Administrator Whitman, who has, I think we all know, a very challenging job.

I, obviously, am new to this committee and the Senate, but strongly believe that having a sound economy and good job creation is not inconsistent with having common-sense environmental rules. But I do believe strongly that they need to be based on sound science and established technology. If we have certain goals that exist in our environmental laws, there ought to be a way for people in practice actually to accomplish that.

So I wanted to ask really just two questions. One has to do with, and I understand that there has been some discussion of mercury and lignite, and forgive me if I am repeating a question that has already been asked. But lignite coal is of particular concern in my part of the country, in Texas, and the Clear Skies Act of 2002 would require lignite-fueled units to reduce mercury emissions by 40 percent in phase 1 and 69 percent in phase 2.

My question is simply this: Does the technology currently exist to accomplish this goal, in your opinion?

Ms. WHITMAN. We believe that under the timeframe, having done the modeling that we have done and knowing as much as we do about the industries, the power industry in particular, that coal will continue to grow as a source of energy, as a base of energy. It will grow in the West as well as the East.

The utilities will be able to reach these goals; they are achievable. The cap-and-trade approach that has worked so successfully in the Acid Rain Program, would allow utilities enough flexibility to reach these goals in a way that makes economic sense for them.

Although I will hasten to add that the Clean Air Act standards do not go away in that we will not allow for increases in depositions. So that populations near and around these facilities do not have to fear that they are going to be at any kind of added health risk.

Senator CORNYN. I certainly support the cap-and-trade approach and believe that is a reasonable way to approach it. But you are satisfied that the technology actually exists in order to accomplish these goals within——

Ms. WHITMAN. We believe within this timeframe that the industry will be able to make these goals without forcing any kind of a shift in fuel away from coal or away from any current source of fossil fuel.

Senator CORNYN. Forgive me for pressing the point, but my question really had to do with technology. Do you know whether the technology currently exists to accomplish that?

Ms. WHITMAN. Some technologies do exist today to be able to get us there. Also part of the analysis is it will be a byproduct benefit of the technologies that we know exist to remove the SO_2 and the nitrogen oxides.

Senator CORNYN. The other question I had has to do with the voluntary reduction of greenhouse gas emissions. I know the President, of course, has set a goal of an 18 percent reduction by 2012. Some have advocated, contrary to the President's proposal of voluntary emissions reductions, a mandatory program. I am inclined certainly to support a voluntary program if, in fact, it will work.

Could you comment briefly on the workability of a voluntary emissions reduction program?

Ms. WHITMAN. Certainly, Senator. We held an event, actually, 2 weeks ago with the Departments of the Interior, Agriculture, Transportation, and Energy to highlight the various successes of the voluntary programs.

To just talk about the ones that the Environmental Protection Agency oversees, our Energy Star Program, as I indicated before, is a voluntary, consumer-driven or focused program giving the consumer the information they need to make intelligent choices. In

2001 the program resulted in purchases that saved enough power to fuel 10 million home, reduced the carbon equivalent of 12 million cars, and saved energy costs of $6 billion.

We have a new program called the Climate Leaders Program, which was announced at the same time that the President announced his new climate program. That started with nine companies that were involved. It is now up to 37. We have companies that range from General Motors to Miller Brewing Company, to Alcoa, and all the major industry sectors. Those that have set their targets—and there are nine of them that have set the targets—have set very aggressive goals for reducing their greenhouse gas emissions.

As part of this program, they come to us. They agree to measure, to benchmark their greenhouse gas emissions, set targets for reductions that are well below business as usual, and then to report to us on an annual basis on how they are moving to achieve those. We are seeing some very real commitments by industry and are very pleased with what they have done and those that are coming forward.

Senator CORNYN. Are you satisfied that, as part of this program, that there will be sufficient standardized reporting systems to prevent double counting and other such problems?

Ms. WHITMAN. Part of the President's program that he announced called for an enhancement of the registry that exists over at the Department of Energy. We are working closely with the Department of Energy to establish that.

One of the concerns we have, is that the registry has to be real. Companies have to be able to go in to show their greenhouse gas emissions in order to get credit, should there be any change in the future. That will be a very stringent requirement. The system will be such that we will be able to give credit for those that take early action, and yet not allow for a double counting, as we move forward to our targets and goals.

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

Senator INHOFE. Thank you, Senator Cornyn.

Let me just share a thought with you, in response to the question that was asked to you by Senator Warner. We are both very much interested in encroachment problems on our ranges, and you are right when you say it is mostly endangered species problems.

In the case of Camp Pendleton, we are going to be down to about 30 percent use of the training area because of various endangered species. We are having the same problem in Camp Lejeune as well as Fort Bragg and many others. I could talk for a long time about that.

It is critical because we are talking about American lives. But I think there are some areas that we might want to be looking at in your purview, which would be, for example, in the Vieques Range one of the problems we had there is the losses having to do with alleged health problems from the air, which caused or were possibly responsible for closing that live range.

Then at the Adar range in Kuwait there were—and I am going from memory now—there were five deaths, four of whom were Americans, and the report shows clearly that it was because they

did not have the proper training on the ranges. So this is a life-and-death issue that is not so much having to do with you, but it is one that we need to be looking at beyond just endangered species.

I would only say to my good friend, Senator Carper, that I have enjoyed listening to this whole idea about global warming. In fact, I have found it can be kind of fascinating, going back to the 500-year period of the Little Ice Age, between 1350 and 1850, and then going back the other direction, it started swinging back and going up through 1940 with actually a different trend; then in 1940 to 1970 having a trend that defies the argument that it is caused by CO_2.

Then, also, the two different ways there are of measuring the warming trend, if the warming trends are there, the most accurate one being not on the ground, but in the air. So it is something that we are all looking at. We find it to be interesting. We find that these trends have gone back and forth for many, many centuries, and I only wish we had some global warming in my State of Oklahoma right now.

With that, I will defer to Senator Jeffords for the fourth round of questioning.

Senator JEFFORDS. Senator Warner mentioned the DOD proposal, that there are certain instances for which a waiver for DOD would be appropriate. Aren't there exemptions already contained in current law such as the Superfund for national security purposes?

Ms. WHITMAN. Yes, there are, Senator.

Senator JEFFORDS. The Advance Notice of Proposed Rulemaking for EPA and the Corps explicitly asked for comment in section 5 as to whether any revisions are needed to the existing regulations on which waters are jurisdictional under CWA. The presence of this request for information clearly expands the scope of your Advance Notice of Proposed Rulemaking to include all waters under CWA. Is this consistent with your answer to my first question related to the rulemaking then?

Ms. WHITMAN. Yes, Senator, it is. We don't believe that we are expanding—in fact, we were very clear that we wanted to limit the scope of our response in any Proposed Rulemaking to the Supreme Court's decision. But, to be intellectually honest, we would take comments on anything. I mean, that is the way the comment period works. If comments come in on something, we respond to it.

But our thrust here and our desire here is to determine how we can be as protective as possible of these isolated waters, recognizing that the main tool that we have used in the past is no longer available to us.

Senator INHOFE. Senator Carper?

Senator CARPER. Thank you.

I just want to follow up on Senator Cornyn's observation about I think the Administration's proposal to reduce, I think you said, CO_2 emissions by what, voluntarily, by 18 percent? Now my understanding, and correct me if I am wrong, Governor, but that is not an 18 percent reduction below current levels. That is an 18 percent reduction below what would otherwise be the case in the year 2012. So there is a fair amount of growth over the next 8 or 9 years, and this would be an 18 percent reduction in the growth?

Ms. WHITMAN. That is correct, 18 percent in emissions growth.

Senator CARPER. I, for a number of years, lived on the other side of the river, and when Administrator Whitman was Governor of New Jersey, I was privileged to be Governor of Delaware. We shared a lot of common issues. Pollution that might have emitted from Delaware into the water or into the air could sometimes affect our friends that across the Delaware River in New Jersey.

We have one refinery in Delaware called the Motiva Refinery. It is about ten miles south of the Delaware Memorial Bridge, and it is right on the Delaware River. Back in March of 2001, EPA entered into a consent decree with Motiva Refinery in an effort to reduce the emissions of sulfur dioxide into the air. I am not sure how familiar you are with this particular issue, but it is one that has gotten a fair amount of attention in Delaware and, as it turns out, in New Jersey as of late.

The consent decree provides for the use of technology to remove the emissions, but without increasing emissions into the Delaware River of sodium sulfate. There has been an effort by the folks who own the refinery, the Motiva people, to come back and to change the consent decree that so they would end up putting a fair amount of sodium sulfate into the Delaware, raising the salt levels, and also perhaps to include minor, but significant, other emissions into the river.

So we have been having this back and forth between our Department of Natural Resources in Delaware and Motiva. EPA has been involved in this as well. It appears to us now that the people, the environmental regulators in Delaware said to Motiva, "Live by the original consent decree. You've got to abide by that." My understanding is that EPA has said essentially the same. Yes?

Ms. WHITMAN. Yes, we have agreed to that.

Senator CARPER. That decree holds. Good. Thank you for that assurance.

My question is, do you have any idea if the proposed budget for EPA in Fiscal Year 2004 would allow the Agency to enforce the terms of the original consent decree with Motiva? I presume, based on your first comments, that you would certainly intend to enforce the original consent decree. But do you have any idea if you have the money, the financial wherewithal, to enforce it?

Ms. WHITMAN. Yes, I am assured by our Enforcement Office, yes, an unequivocal yes.

Senator CARPER. Very good.

Ms. WHITMAN. We are strong on polluter-pays here.

Senator CARPER. Good. Thank you.

I think the question was asked before I got here—it may have been asked by Senator Jeffords—if you believe that increasing greenhouse gas emissions would increase the risk of global warming and climate change. I don't know how you responded to that. I was just wondering if you would mind sharing with me what you believe.

Again, the question is, do you believe that increasing greenhouse gas emissions increases the risk of global warming and climate change? As I said earlier, 10 years ago I was not that convinced; I am today. I just would ask what your views are.

Ms. WHITMAN. I believe that science shows us that there is certainly increasing concentration of greenhouse gases in the atmosphere and that is having an impact on the climate. I don't know that we know enough to know exactly which of our behaviors are the most egregious in impacting this, that we still have work to do, or as the most recent reports have shown, we know that we can look at science and it will tell us greenhouse gases concentrations in the atmosphere will cause, and can cause, changes, but how much of that is due to human behavior—obviously, it is a part of it—and where those changes will occur are still things that need to be researched even further.

But there is certainly a recognition that global climate change is an issue of importance. Otherwise, the Administration would not be putting as much money into research and into looking at the hybrid cars and the hydrogen fuel cell, as we are doing.

Senator CARPER. Thanks. Do you believe that increasing the greenhouse gas emissions increases risk? Do you have any views on that?

Ms. WHITMAN. Risk to what?

Senator CARPER. The risk of global warming, the risk of climate change.

Ms. WHITMAN. Science at this point would certainly tell us that there is a correlation between greenhouse gas concentrations in the atmosphere and climate change. Again, there was a recent report by NASA that indicated that land use, in fact, has as great an impact, or could potentially have as great an impact on global climate change as could emissions. Those are the kinds of questions that have real significance for our commitment and our investment of dollars and research, and that is why more needs to be done.

But, certainly, I don't believe, nor does this Administration, that nothing is occurring. We do believe that there is an issue with climate change. We want to see more, but we also, and the President has made it very clear, and that is why we have our Climate Leaders Program, that is why the Administration has made the commitment to alternate technologies, renewable resources, and conservation that we would like to get through in the Energy Plan. We believe there are steps we can take now.

Senator CARPER. When I spoke earlier, I asked a question earlier, I mentioned that I had seen something in today's newspaper reported by, I think it is the National Academy of Sciences.

Ms. WHITMAN. Academy of Sciences, yes.

Senator CARPER. But it was just a very, very short article. Did you——

Ms. WHITMAN. What it was was that was a report that was requested. There is a working group putting together additional study parameters on the issues of global climate change. It is actually chaired by the Department of Commerce. We are a part of it, but it is an Administration-wide undertaking.

In the course of that, the committee asked for a National Academy of Sciences review of what they were proposing as an agenda for additional research. It came back and had several very positive things to say about the commitment to the research and the need for additional research, and then it also outlined areas that they felt the research agenda, could be strengthened. It is my under-

standing that—and this is the way we address all these kinds of things—that those will certainly be factors taken into consideration before a final plan is put into place.

Senator CARPER. All right, thanks very much. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Carper.

I just repeat—I guess I can do that now; it is my turn—that it is interesting, when you look at the whole global warming idea, and I mentioned the Little Ice Age that we went through, and then we went through a cooling-off period that went all the way up to 1940, and then it started warming. You get just the opposite.

A lot of people say, well, you have the greenhouse gases, you have CO_2, and that provides an umbrella that holds it in, and then also that provides an umbrella that would allow it to actually get warmer. You could use the argument to make it warmer or cooler.

In fact, logically, the CO_2 increased most in about 1940, but it had just the opposite effect; it started a cooling-off period. So I don't know; it is something that we do need to study.

I believe you have two more questions, Senator?

Senator JEFFORDS. Almost one.

Senator INHOFE. One? OK, you are recognized for "almost one" question.

[Laughter.]

Senator JEFFORDS. I understand correctly that there is about 12,000 or more people dying every year from power plant pollution and that the most adversely affected are the very young and the very old. I just wanted to know if you agreed with Mr. Graham over at OMB that the value of our lives declines as we get older, and should that be a factor?

[Laughter.]

Ms. WHITMAN. Senator, I would never make that kind of a statement.

[Laughter.]

Senator JEFFORDS. Thank you very much.

[Laughter.]

Senator INHOFE. All right, as usual, you are very straightforward, and I appreciate so much your tenacity and your willingness to respond to questions in a professional way.

I only wish I were as eloquent as Senator Warner, so that I could compliment you.

We are adjourned.

[Whereupon, at 11:20 a.m., the committee was adjourned, to reconvene at the call of the Chair.

[Additional statements submitted for the record follow:]

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

Thank you Mr. Chairman for calling this hearing today. Thank you, Ms. Whitman, for your time today to discuss the President's budget for the EPA. I understand the challenges you face in allocating the EPA's scarce resources, and I look forward to continue working with you in a positive fashion, to protect the health and well being of the citizens of my State and the Nation, and to protect and enhance our environment.

Over the years, EPA has done a good job of working in a positive and pro-active fashion with the people and communities in my State. Libby, Montana is an excellent example of this. Although we can probably all agree that EPA should have intervened in Libby far earlier, when your agency did act, it acted decisively in re-

sponding to the most immediate public health hazards posed by asbestos contamination. And, your agency has continued its commitment to Libby, as we look toward finishing the job and achieving a clean bill of health for the community.

Obviously, I'll have some questions for you about maintaining momentum and focus in Libby on the clean-up process, and placing more emphasis on economic development and health care needs in Libby. But, I want you to understand how much I appreciate your personal commitment to the people of Libby.

And, as I have always said, EPA's positive activities in Libby illustrate how very important the Superfund program is, in providing the resources, the authority and the expertise needed to address serious environmental and public health disasters—such as occurred in Libby—that are far beyond the ability of States and local communities to handle on their own. The Superfund program is not perfect, no program is perfect, but it is effective and it is working in Libby, Montana and across the Nation.

Although Libby stands out because people have died and are dying as a result of massive asbestos contamination there, Libby is certainly not our only Superfund site and it's not the only area of our State where EPA plays a prominent and important role. Indeed, we have the largest Superfund site in the Nation in the Clark Fort basin, in addition to the many other sites scattered across our State.

So, I share many of colleagues' concerns about the long-term viability of the Superfund program. And, although I don't doubt that you and the Administration are committed to recovering as much of the cost of cleanup from responsible parties, we all know that those efforts will never be sufficient to cover the total costs of cleaning up many of these heavily contaminated sites. The recent EPA settlement with ASARCO is a prime example, and I will have a more specific question for you about that issue. But, in general, I'd like to explore with you how the Administration plans to ensure the Superfund program is funded adequately in the foreseeable future, and how we can reduce the overall burden on the American taxpayer, rather than increase that burden, which is the direction we seem to be headed in.

I would also like to add my concerns about the Administration's proposed reductions in the Clean Water State Revolving Loan Fund. It's bad enough that you propose flat funding for the State Drinking Water Revolving Loan Fund. But, I know you are well aware of the incredible water and wastewater funding backlogs facing State and local communities as they simply try to maintain their systems, let alone update and upgrade them to comply with new mandates.

Rural Montana alone has huge infrastructure needs—I've been told that the Montana League of Cities and Towns has estimated repair and replacement costs of around $8 billion to keep these systems going. The Montana Department of Environmental Quality has estimates of infrastructure improvement needs of $1.4 billion, but the Agency believes that figure only represents a part of the picture. To put these figures in contrast C you have proposed just $850 million for the Clean Water SRF and $850 million for the Safe Drinking Water SRF.

Also, new EPA and State mandates are creating a variety of financial and technical problems particularly for small and rural systems, including a lack of tested models for meeting these new standards. The burden is on the water districts to comply with these new mandates, even though, after 4 years of drought, many of these systems do not have the resources to implement necessary changes as well as pay for ongoing operation and maintenance. Also, as you know, it is much more difficult for small systems in general to finance multi-million dollar improvements to their systems, because they have so few rate-payers to share in the cost.

Additionally, small systems under 10,000 will receive no money in the Administration's fiscal year 2004 Budget to do required vulnerability assessments. There are 35 to 39 systems of that size in Montana that will need to perform this assessment.

I'd like to explore in more detail with you how we can help these small and rural communities deal with these enormous costs and burdens—we have to work with them to find real, workable solutions to the challenges of providing clean and safe drinking water and protecting the environment, and doing it in a manner that these communities can afford.

In sum, Ms. Whitman, I want to make sure that my State continues to have a positive relationship and partnership with EPA. I look forward to working with you over the next year.

Thank you Mr. Chairman.

STATEMENT OF GOVERNOR CHRISTINE TODD WHITMAN, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and members of the committee, I am pleased to be here to discuss President Bush's Fiscal Year (FY) 2004 budget request for the Environmental Protection Agency (EPA). The President's fiscal year 2004 budget request of $7.6 billion provides funding necessary for the Agency to carry out our mission efficiently and effectively to protect human health and safeguard the natural environment. Given the competing priorities for Federal funding this year, namely the War on Terrorism and Homeland Security, I am pleased by the President's commitment to human health and environmental protection.

I would like to begin, Mr. Chairman, by emphasizing that the President's budget request for EPA reflects the Agency's commitment to cleaning, purifying, and protecting America's air, water, and land. The request promotes EPA's goals in a manner consistent with fiscal responsibility by strengthening our base environmental programs, fostering stronger partnerships, and enhancing strong science.

This Agency remains committed to working with States, tribes, and other entities to protect human health and the environment. Of the $7.6 billion budget, $3.1 billion would provide direct assistance to States, tribes, universities, local governments, and other partners. The President and I both believe that these partnerships are a vital part of effective environmental management and stewardship. Our budget request reflects that.

As EPA continues to carry out its mission, I look forward to building upon a strong base of environmental progress. This budget, Mr. Chairman, will enable us to carry out our principal objectives while allowing us to react and adapt to challenges as they arise.

Cleaner Air

The budget requests $617 million to fund our clean air programs, thereby helping to ensure that air in every American community will be clean and safe to breathe. This includes $7.7 million more for modeling and analysis to strengthen the Agency's clean air programs. Furthermore, this budget supports the President's Clear Skies initiative, an aggressive plan to cut power plant emissions by 70 percent. Clear Skies legislation would slash emissions of three power plant pollutants—nitrogen oxide, sulfur dioxide, and mercury-by 35 million tons over and above what would be obtained under current law. Such emissions cuts are an essential component of improving air quality and thus environmental and human health. The Clear Skies initiative would buildupon the 1990 Clean Air Act's acid rain program by expanding this proven, innovative market-based approach to clean air. Many counties could be brought into attainment with new ozone and particulate matter air quality standards based solely on Clear Skies. Clear Skies would significantly improve air quality conditions even in counties that would require additional emission reductions. Such a program, coupled with appropriate measures to address local concerns, would provide significant health benefits even as energy supplies are increased to meet growing demand and electricity rates remain stable. I look forward to working with you, your fellow Members of Congress, and the President on this landmark legislation.

The budget also includes $16.5 million for air toxics monitoring grants to State, Tribal, and local entities, a $7 million increase from last year, aimed at improving our understanding of air toxics exposures to help implement EPA's comprehensive air toxics strategy. The budget dedicates $23.9 million, an increase of $3 million, to the Agency's efforts combating children's asthma. The successful Tools for Schools Program, which helps schools assess and improve the quality of air students breathe, and other such efforts will benefit from the added funding.

Purer Water

EPA's budget request places a strong emphasis on core water programs to improve our water management framework, program implementation, and information sharing. The President's request boosts resources to States, tribes, and various entities to provide technical assistance, guidance, training, and additional funding. Our core water programs will increase by $55 million for a total of $470 million. This includes $20 million for Clean Water Section 106 Grants to help States improve implementation of the Clean Water Act (CWA) and $12 million aimed at enhancing State and Tribal drinking water program capacity through Public Water System Supervision (PWSS) grants. Other efforts reflected in the budget to provide clean and safe water to the American public include:

- Additional Great Lakes Funding. This budget nearly doubles the Agency's Great Lakes commitment. EPA is requesting $15 million in support of the Great Lakes Legacy Act to bolster contaminated sediment cleanup activities. In 2004 the

Agency plans to begin cleanup on two to three new sites. Some of this funding will also be used for assessment and analysis, resulting in additional cleanups.

- Extending the Federal Commitment to the Clean Water State Revolving Fund (SRF). The President's budget is committed to funding the Clean Water SRF well above the previous Administration's $2 billion average annual revolving goal. It finances the Clean Water SRF at $850 million through 2011 and increases the long-term revolving level by $800 million to $2.8 billion, a 40 percent increase over our previous goal. At present, there is $42 billion on loan or available for loans to States and tribes. The expanded commitment is projected to make $63 billion available over 20 years thus allowing States and tribes to finance an additional 15,000 projects over that period.
- Extending the Federal Commitment to the Drinking Water SRF. EPA also proposes to fund the Drinking Water SRF at $850 million through 2018 so it can revolve at $1.2 billion per year, an increase of 140 percent above and beyond our prior goal of $500 million.
- Protecting Wetlands. Due to a 2001 Supreme Court decision, tens of thousands of acres of isolated waters and wetlands may be subject to development that no longer requires a permit under the CWA. EPA's budget provides a $5 million increase for State and Tribal wetland protection grants to help them protect these waters and move the United States closer to no net loss of wetlands.
- Helping States Address Nonpoint Source Pollution. The President's budget allows EPA to work closely with State water quality agencies, USDA, conservation districts, and others to accelerate national efforts to reduce nonpoint source pollution. In light of significant increases in Farm Bill resources, EPA will shift the program's emphasis in agricultural watersheds from implementation of pollution reduction projects to planning, monitoring, and assisting in the coordination and implementation of watershed-based plans in impaired and threatened waters.
- Safer Drinking Water in Puerto Rico. To ensure public health protection, the Agency requests $8 million to design necessary infrastructure improvements to Metropolitano, Puerto Rico. When these infrastructure improvements are completed, EPA estimates that about 1.4 million more people will have access to safer and cleaner drinking water.

Better Protected Land

To immediately reduce potential human health and environmental threats, this budget continues our long-standing commitment to clean up contaminated sites. Superfund, funded at $1.39 billion, includes a $150 million increase over the President's fiscal year 2003 budget request to start an additional 10–15 construction projects at Superfund sites nationwide. By strengthening Superfund, one of our base programs, this budget will continue the progress we have made in completing cleanups at more than 800 National Priority List (NPL) sites. Cleanup has either begun or been completed at over 93 percent of Superfund NPL sites.

EPA is committed to building and enhancing effective partnerships that allow us to safeguard and restore land across America. To do so, this budget provides $210.7 million, $10 million above last year's funding request, for the Brownfields program, one of the Administration's top environmental priorities. The Brownfields program will draw on these additional resources to enhance State and Tribal response programs that restore and reclaim contaminated sites. By protecting land and revitalizing contaminated sites throughout the United States, EPA continues to expand efforts to foster healthy and economically sustainable communities and attract new investments to rejuvenated areas.

Homeland Security

EPA plays a vital role in preparing for and responding to terrorist or other intentional incidents because of our unique expertise and experience in emergency preparedness and response to hazardous material releases. To meet our obligation to protect America's homeland we are asking for $123 million and 142 FTEs. This request would allow the Agency to continue providing leadership and guidance for the protection of the nation's critical water infrastructure while upgrading and enhancing our emergency response capabilities.

The President's budget reflects EPA's role in protecting public health and critical water infrastructure in the event of terrorist or other intentional acts. To ensure the safety and integrity of America's water infrastructure, resources would be dedicated to working with States, tribes, drinking water and wastewater utilities, and other entities to assess the security of these water facilities and develop emergency response plans where appropriate.

Incorporated in this request are targeted investments to strengthen the Agency's readiness and response capabilities, including the establishment of a "decontamina-

tion team," state-of-the-art equipment, and highly specialized training for On Scene Coordinators (OCSs). Meanwhile, EPA will conduct research and provide guidance and technical support for Federal, state, and local governments, and other institutions in the areas of building contamination (chemical and biological) prevention, treatment and cleanup activities, water security, and rapid risk assessment.

This budget would also expand our radiological contamination detection ability across the country and enhance our capacity to provide near real-time biosurveillance information should a biological incident occur. In addition, this request provides resources for Antimicrobials Scientific Assessments, Acute Exposure Guideline Levels, IT management for vulnerability assessments, environmental crimes expertise, as well as resources to enhance the Agency's physical infrastructure security.

Enhancing Strong Science

Sound science is a fundamental component of EPA's work. The Agency has long relied upon science and technology to help discern and evaluate potential threats to human health and the natural environment. Much of our decisionmaking, policy, and regulatory successes stem from reliance on quality scientific research aimed at achieving our environmental goals. The budget request supports EPA's efforts to further strengthen the role of science in decisionmaking by using the best available sound scientific information and analyses to help direct policy and establish priorities. We have requested $607 million to develop and apply strong science to address both current and future environmental challenges. Our budget supports a balanced research and development program designed to address Administration and Agency priorities and meet the challenges of the Clean Air Act (CAA), Safe Drinking Water Act (SDWA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Food Quality Protection Act (FQPA), and other environmental statues.

This budget supports increases to funding for research of sensitive populations such as children and the elderly, our new Aging Initiative, programs such as Computational Toxicology research, which integrates modern computing with advances in genomics to help develop alternatives to traditional animal testing approaches, and the Agency's Integrated Risk Information System (IRIS). We propose to nearly quadruple our funding for the modernization and expansion of IRIS-an EPA data base of Agency consensus human health information on environmental contaminants.

Additionally, the Agency is taking steps to ensure a high quality scientific work force. To do so, we are requesting resources for the Science Advisory Board (SAB), the newly established Science Advisor, and the STAR Fellowship program. EPA will expand its support for the SAB, an independent council to Congress and the Administrator on scientific, engineering, and economic issues that underpin EPA policies. Like the SAB, the Science Advisor will be responsible for ensuring the availability and use of the best science to support Agency policies and decisions and advise the Administrator. To help us educate new environmental scientists we have requested $5 million for the STAR Fellowship program. This grant program has funded some of the country's best scientists and engineers. In addition, we have asked to expand our post-doc initiative which has encouraged environmental scientists and engineers to join EPA.

Enforcement

Since EPA's inception nearly 30 years ago, many environmental improvements in our country can be attributed to a strong set of environmental laws and our efforts to ensure enforcement of those laws. State, Tribal, and local governments bear much of that responsibility. EPA partners with those governments and other Federal agencies to promote environmental protection and restoration. This budget requests $503 million, the largest amount ever and a $21 million increase over last year's request, for EPA's environmental enforcement program. These additional funds, coupled with our proposed 100 Full Time Equivalent (FTE) enlargement of the Federal enforcement work force, would help the Agency maximize compliance and achieve environmental results through an integrated program of assistance and compliance assurance.

Quality Environmental Information

Information gathering, processing, and delivering are fundamental to EPA's work because of our reliance on scientific and analytical data and our close collaboration with external partners. Our goal is to provide the right information, at the right time, in the right format, to the right people. To achieve this goal, improve the Agency's information infrastructure, ensure that the American public has easy access to environmental information, and expand E-Government in support of the President's Management Agenda (PMA), we have proposed an additional $30.5 mil-

lion investment for a total investment of $202 million in EPA's Environmental Information office.

We will continue development of the National Environmental Information Exchange Network. The Exchange Network is an electronic method of sharing environmental data using secure points of exchange. The primary components of the Exchange Network are the National Environmental Information Exchange Network Grant Program and the Central Data Exchange (CDX). The grant program assists States and tribes in evaluating their readiness to participate in the Exchange Network, enhances their efforts to complete necessary changes to their information management systems to facilitate Network participation, and supports State information integration efforts. The CDX is the focal point for securely receiving, translating, and forwarding data to EPA's systems-the electronic reporting gateway to the Agency's information network. This year the CDX will service 46 States and at least 2,000 private and local government entities.

Ensuring Safe Food

The President's request includes $119.0 million to help ensure that all Americans will continue to enjoy one of the safest and most affordable food supplies in the world. To do so, EPA will continue implementation of the Food Quality Protection Act (FQPA) which focuses on new science-driven policies for pesticides review, seeks to encourage the development of reduced risk pesticides that provide alternatives to older versions, and develop and deliver information on alternative pesticides/techniques and the best pest control practices to pesticide users. The Agency is also working to help farmers transition, without disrupting production, to safer pesticide substitutes and alternative farming practices. We will reassess existing tolerances to ensure food safety, especially for infants and children, and ensure that all registered pesticides meet current health standards.

A Commitment to Reform and Results

The President's proposed EPA budget for fiscal year 2004 fully supports the Agency's work. The request demonstrates EPA's commitment to our principal objectives-safeguarding and restoring America's air, water, and land resources-by strengthening and refining our base environmental programs, fostering stronger partnerships, and enhancing strong science. As we look to the future, I am confident that this funding will ensure the Agency's fulfillment of our responsibilities to the American public.

With that, Mr. Chairman and members of the committee, my prepared statement is concluded. I would be pleased to answer any questions you may have.

RESPONSES OF ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Tar Creek Superfund Site

Question 1. The Tar Creek Superfund cleanup is a top priority for me. There are a number of Federal agencies involved, and EPA is a key agency. As chairman of this committee, I intend to do all in my power to make this cleanup work. Would you please provide an update of what's happening at this site?

Response. For many years, EPA has undertaken actions to protect public health and the environment in Ottawa County. Certain problems at and near this site cannot be addressed by EPA alone. A multi-Agency response is required. Toward that end, one key activity is a Memorandum of Understanding (MOU) between EPA, the U.S. Department of Interior and the U.S. Department of the Army. The MOU was signed on May 1, 2003. The MOU will facilitate cooperation among the signatories to work toward a coordinated response. Some other current EPA led or funded activities include:

- A water quality study by Oklahoma Department of Environmental Quality, on Tar Creek, Beaver Creek, the Neosho River, and Spring River.
- Excavation of lead contaminated residential soils. To date approximately 1,647 residential properties and eight school properties have been cleaned up and 457 residential properties, 3 daycare centers, and ten parks are being addressed.
- EPA is leading negotiations with potentially responsible parties, including the U.S. Department of Interior, to conduct a Remedial Investigation and Feasibility Study to address chat piles and tailing ponds.
- Evaluation of whether it is possible to reclaim and revegetate the mine-scarred land using various revegetation techniques.
- A study to determine the percentage of lead contaminated chat that can be safely used in surface asphalt and in courses base asphalt for paving.

• EPA funded the Quapaw Tribes to monitor the impact of wind-borne chat pile dust on homes located near the chat.

Superfund

Question 2a. There has been a lot of rhetoric about making the polluters pay for Superfund cleanups, implying that somehow this Administration is letting off the hook those who are responsible for contamination at Superfund sites. Can you identify ANY Superfund site past, present, or in the pipeline where an identifiable and viable polluter has not been held liable, consistent with the law, for their share of contamination?

Response. Since 1989, EPA has managed the Superfund Program according to the principle of "enforcement first" to secure a cleanup by responsible parties at sites where there is a viable and liable responsible party. Responsible parties cleanup approximately 70 percent of the remedial actions. In addition to securing "PRP-lead cleanups," EPA recovers the tax dollars it spends while cleaning up Superfund sites. Since the inception of the Superfund Program in 1981 through September 30, 2002, EPA has recovered over $3 billion that may be used by EPA to perform future cleanups when appropriated by Congress. The Agency assures the committee that EPA seeks to maximize the contribution of PRPs to site cleanup.

Question 2b. Isn't it also false to call the expired Superfund tax "a tax on polluters"—as it taxed many employers that have never caused contamination at any Superfund site?

Response. Yes. The Superfund taxes consisted of excise taxes on oil and certain hazardous chemical substances and a corporate environmental tax levied on a company's alternative minimum taxable income. It is true that all entities paid the tax without regard to their causing any contamination at Superfund sites.

Question 2c. Finally, is there any relation between the balance in the Superfund and the amount of dollars dedicated to cleaning up Superfund sites or the pace of cleanups?

Response. There is no relationship between the balance in the Superfund Trust Fund and the amount of dollars dedicated to cleaning up Superfund sites or the pace of cleanups. Superfund cleanup dollars are appropriated from both the general fund and the trust fund at the discretion of Congress. The Superfund program continues to provide significant results throughout the country even though the sites now left on the NPL are larger and more difficult to clean up. In fiscal year 2003, the program is expected to keep pace with the fiscal year 2002 remedial action level. I am pleased to report that the President's Budget for fiscal year 2004 includes a $150 million increase for Superfund remedial action activities, which represents a 65 percent increase over the fiscal year 2003 appropriation.

National Assessment on Climate Change

Question 3. In October 2000, I, Representatives JoAnn Emerson and Joe Knollenberg and others, filed a lawsuit against the National Assessment on Climate Change.

Ultimately, we agreed to withdraw our compliant in return for the White House guaranteeing in writing that the National Assessment does "not [reflect] policy positions or official statements of the U.S. Government."

Yet somehow EPA "revived" the National Assessment by submitting it to the United Nations, pursuant to Articles 4.2 and 12 of the United Nations Framework Convention on Climate Change, as Chapter 6 of the "Climate Action Report 2002," as a "policy position or official statements of the U.S. Government."

As you are quite aware, some State attorneys general have seized on this disavowed, yet somehow "revived", document to claim that EPA must regulate carbon dioxide under the Clean Air Act.

Will EPA cease dissemination of and withdraw the Climate Action Report because it so plainly fails statutory requirements? Please address:

A. The incomplete status of the Climate Action Report, including the unfinished, though mandatory, peer review of sectoral analyses, under the eight requirements of the United States Global Change Research Act of 1990 as well as Public Law 106–74 which states, "None of the funds made available in this Act may be used to publish of issue an assessment required under section 106 of the Global Change Research Act of 1990 unless (1) the supporting research has been subjected to peer review and, and if not otherwise publicly available, posted electronically for public comment prior to use in the assessment; and (2) the draft assessment has been published in the Federal Register for a 60 day public comment period;

B. The Federal Advisory Committee Act.

Response. This question refers to two separate reports: the National Assessment and the Climate Action Report. The two reports both deal with climate change but were developed for different purposes and by different groups. The National Assessment was produced by an independent Federal Advisory Committee Act, 5 U.S.C. App., (FACA) committee. The National Science Foundation (NSF) chartered the advisory committee that produced the National Assessment.

The Climate Action Report 2002 (CAR) is a State Department document. The CAR is the U.S. Third National Communication that was prepared and submitted by the United States pursuant to its obligations under the U.N. Framework Convention on Climate Change (UNFCCC). Since the UNFCCC was ratified by the United States in 1992, the State Department has been responsible for developing and submitting each of the U.S. National Communications under the UNFCCC (i.e., in 1994, 1997, and 2002).

In 2002, as in previous years, the State Department convened an interagency team to draft the document. This team included staff from the Office of Management and Budget, Council on Environmental Quality, Environmental Protection Agency, the Departments of State, Energy, Interior, Commerce, Defense, Transportation, the US Global Change Research Program, U.S. Agency for International Development, and other Federal agencies. The document was ultimately submitted by the State Department to the UNFCCC Secretariat on May 28, 2002.

EPA made the document available on its website because of its advanced web hosting capability, which may have been interpreted as an indication that this was an EPA report. EPA hosts the Climate Action Report on its web site solely to assist the State Department in providing public access to the Report.

Enforcement: Performance Measures

Question 4. Governor Whitman, you have said to the press that the only true measure of enforcement of our environmental laws is whether the environment is cleaner. I could not agree more. The health of our environment is the one true results-based, outcome-focused test of the effectiveness of our environmental laws.

Others may have as their actual goals:

a) miles of red tape to provide employment security for unions of bureaucrats, or
b) scare-tactic fund-raising for leftist environmental groups, or
c) lots of litigation to line the coffers of the trial lawyers.

Assuming the health of the environment as our goal, can you tell me where EPA stands in development of appropriate performance measures for enforcement?

Response. The Agency has developed several reports to describe the health of the environment, and the progress EPA's programs have made in cleaning and protecting the environment. The Agency is about to release its first "State of the Environment" report. The report will describe the status of the air, water and land in this country. Future updates to this baseline report will show the impacts of efforts made by the EPA, States, tribes and the regulated community on the health of the environment.

EPA also reports on its performance in protecting and improving the environment through an Annual Performance Report, which the Government Performance and Results Act (GPRA) requires be submitted to Congress each year. This report follows the structure of the Agency's current Strategic Plan, which has strategic goals for Clean Air, Clean and Safe Water, Waste Management, and Credible Deterrent to Pollution and Greater Compliance with the Law.

The environmental results of cleaner air, water and land are attributable to new programs, better run programs, and compliance with the regulations covering those programs. The "Credible Deterrent and Greater Compliance" Goal (i.e. the compliance goal), highlights the environmental outcomes of actions taken to bring a regulated entity back in to compliance. The goal measures the pounds of pollutants to be reduced from concluded enforcement actions, the percentage of concluded actions that require pollutant reductions and/or changes in facility management practices that will help a regulated entity remain in compliance. This goal also measures the positive behavioral changes in the regulated community resulting from compliance assistance activities provided by EPA, the States, or tribes. The compliance goal also measures key outputs, such as the monitoring EPA accomplishes through inspections, the training EPA provides its States and tribal regulatory partners, and the incentives programs made available to facilities in noncompliance. The incentives program encourages facilities to audit their activities, correct any instances of noncompliance, and disclose to EPA the actions taken. The Agency, in return, has the authority to reduce or completely eliminate any penalties associated with the discovered and corrected violations.

Safe Drinking Water SRF Funding Versus Clean Water SRF Funding

Question 5. Please explain why the budget request for the Safe Drinking Water Revolving Loan Fund is consistent with last year's request while the budget request for the Clean Water Revolving Loan fund is down.

Response. The President's 2004 budget proposal actually increases the Federal Government's investment in water and wastewater infrastructure. Previous Administrations had only committed to funding the CWSRF program at $1.212 billion in 2004 and 2005 (a total of $2.4 billion), with no funding thereafter. The President is proposing to extend Federal capitalization through 2011—an additional 6 years, at $850 million per year, for a total of $6.8 billion. Thus, the President's proposal provides $4.4 billion more than previous plans. These additional Federal funds, when combined with other CWSRF funding sources, are projected to substantially increase the amount of assistance provided by the CWSRF program in both the short-term and long-term. That has allowed the Administration to increase the CWSRF projected long-term target revolving level from $2 billion to $2.8 billion per year: a 40 percent increase.

The Administration is proposing to extend Federal support for the Drinking Water SRF so it can revolve at $1.2 billion per year, an increase of 140 percent over the previous goal of $500 million. To realize this increased revolving level, the Administration is proposing $850 million for fiscal year 2004 to fiscal year 2018. This proposal extends the commitment for the DWSRF well beyond the fiscal year 2003 authorization period.

EPA Ombudsman

Question 6a. I understand that EPA has been working on drafts of proposed Ombudsman legislation. Please provide me with copies of these drafts.

Response. EPA has been asked to provide technical assistance by both House and Senate congressional staff concerning EPA Ombudsman legislation. Upon request, the Agency would be pleased to meet with the committee to discuss EPA Ombudsman issues or provide technical assistance.

Question 6b. Do I have your commitment to continue toward enactment of legislation on the issue of an EPA Ombudsman.

Response. EPA strongly supports an independent, effective, impartial, ombudsman function in the Agency. As I stated in my letter to you on April 8, 2003, I believe that the transfer of the function to the Office of Inspector General (OIG) was a sound decision. No other office within the Agency provides the ombudsman function with the depth and breadth of independence and investigatory powers that is provided by statute to the OIG. I continue to strongly oppose any attempt to move the ombudsman function elsewhere within the Agency. However, EPA is always willing to discuss with the committee legislative efforts to improve EPA policies and programs.

Mercury

Question 7a. Governor Whitman, your Children's Health report released Monday states that there is "some increased risk of adverse effects" from mercury blood concentrations for 8 percent of women of child-bearing age, and therefore mercury is "of concern." When you say "at risk," what does that mean?

Response. "At risk" means that the women have mercury exposures higher than those considered to be without adverse effects. Approximately 8 percent of women of childbearing age representative of the United States population based on data from the National Health and Nutrition Examination Survey (published in April, 2003 in the Journal of the American Medical Association[1]) had blood mercury concentrations higher than the U.S. Environmental Protection Agency's recommended reference dose (RfD) (corresponding to blood mercury concentrations of 5.8 μg/L whole blood). Methylmercury exposures lower than the RfD are considered not to be associated with adverse effects.

The specific effects of concern are learning deficits that occur in the child following fetal exposures of the developing brain during pregnancy. The risk of adverse effects increases as methylmercury exposure to the fetus increases. Fetal risk occurs because mercury, specifically methylmercury, freely crosses the placenta resulting in transfer of methylmercury from the mother's blood to the fetal blood. In evaluating risk to the developing nervous system caused by methylmercury, blood mercury and methylmercury concentrations are used to indicate how much methylmercury the woman has been exposed to. The determination of "at risk" is

[1]Schober SE, Sinks TH, Jones RL, Bolger PM, McDowell M, Osterloh J, Garrett ES, Canady RA, Dillon CF, Sun Y, Joseph CB, and Mahaffey KR. Blood mercury levels in U.S. children and women of childbearing age, 1999–2000. JAMA 289:1667–1674, 2003.

based on analysis and identification of what are called benchmark dose, benchmark dose lower limit and reference dose values. These values are interrelated.

The National Academy of Sciences Committee on Toxicology of Methylmercury decided to use the "benchmark dose" approach to setting a level of exposure to methylmercury thought to be without adverse effects. The "benchmark dose" is a statistical method of analyzing data to determine the dose of a chemical that produces an effect in a selected percent of the population. Specific to methylmercury, the "benchmark dose" was based on blood methylmercury concentrations that increased the prevalence of children (following prenatal exposure to methylmercury from their mothers' diets) scoring in the clinically subnormal range (the lowest 5th percentile) on tests of neuropsychological function at a rate double that of the background rate. The background rate refers to the prevalence of clinically subnormal scores on these tests in a population with background exposures to methylmercury. In clinical use of these neuropsychological tests, persons who score in the lowest 5 percent of the overall population are considered to be in a clinical subnormal range. Another way of stating this is that children who function at or below approximately the 5th percentile would be considered significantly developmentally compromised for the ability that is being measured. For example, this would correspond to an IQ score of less than 75, or refer to low performance on standard tests for more specific abilities such as attention, language, or memory.

When methylmercury exposures reach the "benchmark dose" (BMD) level the prevalence of these low scores would increase from 5 percent to 10 percent. Because of statistical variability in this estimate of dose an additional value is calculated called the Benchmark Dose Lower Limit called the BMDL. The BMDL is the lower limit on the 95 percent confidence interval around the BMD.

Because the BMD and BMDL for methylmercury are associated with doubling the percentage of children functioning in the clinically subnormal range, it was judged by the Committee on Toxicology for Methylmercury that it would not be advisable to recommend that methylmercury exposures at the BMD and/or BMDL are without risk because of the increase in prevalence of adverse neurobehavioral effects. The NAS Committee recommended use of an "uncertainty" factor be used in setting an exposure considered to be without adverse effects. This "uncertainty factor" is an attempt to deal with variability in human response to a particular dose of mercury. This variability reflects person-to-person differences in the distribution of methylmercury through out body tissues (called toxicokinetic variability) and differences in the sensitivity of tissues to the adverse effects of methylmercury (called toxicodynamic variability). The NAS Committee recommended in their report that a factor of not less than 10 be applied to the BMDL to set an exposure considered to be without adverse effects. This exposure is comparable to the Reference Dose (RfD).

Following release of the NAS Committee on Toxicology of Methylmercury's report in the summer of 2000, EPA did an assessment of the NAS recommendations. This assessment is the basis for EPA's 2001 Reference Dose for Methylmercury which is described on EPA's Integrated Risk Information System (IRIS) web site (<wysiwyg://4/http://www.epa.gov/iris/subst/0073.htm>); in EPA's Office of Water's Mercury Criterion (cited in the Federal Register, Volume 66, Number 5, pages 1344–1359 dated 01/08/01; and in a publication in the peer-reviewed journal Risk Analysis.[2]

To summarize, the BMDL for methylmercury is 58 μg methylmercury /L of cord blood. The RfD is 5.8 μg methylmercury/L of cord blood. These blood mercury concentrations are associated with exposures to methylmercury of 1 μg/kg body weight/day at the BMDL and 0.1 μg/kg body weight/day at the RfD. As exposures to methylmercury increase from the RfD and rise to the BMDL, the chances of adverse effects on the developing nervous system increase. It is not known whether the increase in risk is linear with increasing exposure. Above the RfD the risk of adverse effects increases.

The reason women of childbearing age rather than only pregnant women are considered the population at risk is because mercury has a long residence time in the body. The time it takes for half of the mercury absorbed today to be removed from the body is called a "half-time". Due to the fact that body "compartments" such as kidney or brain cannot be analyzed directly, the levels measured in living people—the "half-time" measurements, are based on blood mercury concentrations. For mercury the half-time in blood is generally about 70 days but may be as long as 180 days. In other words, it takes between 2 and 6 months for half the day's mercury absorption to be removed. About half of the mercury present in blood comes from fish and shellfish that were consumed two to 3 months ago. For this reason mercury

[2]Rice DC, Schoeny R, and Mahaffey K. Methods and rationale for derivation of a reference dose for methylmercury by the U.S. EPA. Risk Analysis 5:107–115, 2003.

exposures before pregnancy must be considered, as well as mercury exposures during pregnancy, especially since methylmercury is likely to affect fetal brain development early in fetal life. Because mercury is likely to affect fetal brain development early in fetal life, it's not enough to be concerned about a woman's exposure to mercury after she becomes pregnant.

Question 7b. The study underlying your report shows that children born to women with blood levels above 58 parts per billion have statistically double the risk of decreased performance on the Boston-naming test. But the report itself states that no women in the entire Nation have been tested at levels that high. Doesn't this indicate that the high risks indicated in the report are premised entirely on the assumption one makes about the uncertainty factor that is appropriate?

Response. The linkage of 58 parts per billion mercury and statistically double the risk of decreased performance on the Boston-naming tests refers to the overall basis of the National Academy of Science's Committee on Toxicology of Methylmercury and U.S. EPA's approach to setting a mercury exposure standard. In addition, as reported in the recently published article "Blood Mercury Levels in U.S. Children and Women of Childbearing age, 1999–2000" in JAMA (cited above) the women examined in the referenced NHANES 1999–2000 NHANES study were a representative sample of the general U.S. population. The NHANES study did not seek out women because they ate fish. The range of blood mercury levels reported in NHANES 1999–2000 was in the high 30 μg/L range which is lower than the BMDL. Based on reports in the peer-reviewed medical literature there are individuals in the United States with total blood mercury levels near or above the BMDL of 58 μg/L.[3] [4] [5] [6] [7] We do not know how many there are. The NHANES survey and these studies did not include enough women to predict how many women in the United States would have blood mercury values over 58 μg/L. Regarding the size of the Uncertainty Factor used in setting the Reference.

Dose for methylmercury several separate issues need to be considered in answering this question: the impact of these deficits on child development, the blood mercury concentration and dietary exposure at which the proportion of children scoring in the clinically subnormal range doubles, and the size of the uncertainty factor in comparing the benchmark dose and the level of mercury exposure considered without adverse effects, i.e., the Reference Dose.

Turning first to the impact these developmental deficits on child development. The blood mercury concentration of 58 parts per billion refers to the mercury concentration in fetal blood at which decrements occur in performance on numerous tests of the ability to learn and process information. The Boston Naming test is among these tests, but the performance decrement is seen on five additional tests of language acquisition and the utilization of and ability to process information from the Faroe Islands study, and five endpoints including full-scale IQ from the New Zealand study. The overall analysis by the National Academy Committee included examination of results from the Seychelles Islands studies in their assessment of the impacts of methylmercury exposure on child development. To place these tests in practical perspective, the NAS concluded that "deficits of the magnitude reported in the [Faroe and New Zealand] studies are likely to be associated with increases in the number of children who have to struggle to keep up in a normal classroom or who might require remedial classes or special education."

When the U.S. EPA set the 2001 Reference Dose for methylmercury it relied on the National Academy Committee's report and on independent peer review[8] of the Agency scientists' assessment of the NAS report to develop the RfD for

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[3]Knobeloch LM, Ziarnik M, Anderson HA, and Dodson VN. 1995. Imported seabass as a source of mercury exposure: A Wisconsin case study. Environmental Health Perspectives 103:604–606.

[4]Burge P, and Evans S. 1994. Mercury contamination in Arkansas gamefish: A public health perspective. J. Arkansas Med Soc 90:542–548.

[5]Gerstenberger SL, Tarvis DR, Hansen LK, Pratt-Shelley J, and Dellinger JA. 1997. Concentrations of blood and hair mercury and serum PCBs in an Ojibwa population that consumes Great Lakes region fish. J. Toxicol. Clinical Toxicology 35: 377–386.

[6]Mahaffey KR, Mergler D. Blood levels of total and organic mercury in residents of the upper St. Lawrence River basin, Quebec: Association with age, gender, and fish consumption. Environ Res 77:104–114, 1998.

[7]Hightower JM, Moore D. Mercury levels in high-end consumers of fish. Environ Health Perspect 111:604–608, 2003.

[8]The independent peer reviewers compared and contrasted some raw data as well as summary data for over 50 studies relating to mercury and its impacts on humans. Refer to "Water Quality Criterion for the Protection of Human Health: Methylmercury"; p. 3–1 to 3–53; EPA–823-R–01–001; January 2001. EPA examined raw data for the Mercury Report to Congress, op. cit

methylmercury (see charts included in response to question 14). This assessment relied upon multiple tests that are predictive of reading and mathematics performance, overall academic performance, and antisocial behavior.

Turning to the question of what exposures produce a fetal blood mercury in the range of the high 50's μg/L or approximately 58 μg/L. This blood concentration refers to the blood mercury level reaching the fetal brain or simply fetal blood mercury. This is the blood mercury concentration that data from multiple studies indicate harms the fetal brain to the extent that the number of children scoring in a clinically subnormal range (in the lowest 5th percentile) on standard tests of ability to process information (i.e., as shown by important tasks such as ability to read and do mathematics) doubles. The committee concluded that exposures producing a doubling of children scoring in a clinically subnormal range are inadvisable. Consequently the recommendations on an exposure to methylmercury considered to be without adverse effects contain a buffer between the exposure causing effects and an acceptable exposure. This buffer is referred to as an uncertainty factor. EPA used an uncertainty factor of 10, based on its own review and the recommendation by NAS.

The uncertainty factor reflects person-to-person differences in the way mercury is distributed in the body and differences in the susceptibility of the developing brain to the effects of methylmercury. The importance of this buffer is already known only 2 years after the Reference Dose was set. For example, at the time the Reference Dose was set it was thought that there was a 1:1 ratio between the mother's blood mercury level and the fetal blood mercury level. It is now known that some fetuses concentrate mercury to levels three times higher than the maternal blood mercury concentration. On average fetal blood mercury is about 70 percent higher than the mother's blood mercury as is reported in a recently published article by Drs. Stern and Smith, "An Assessment of the cord-blood: maternal-blood ratio: Implications for risk assessment," in the journal Environmental Health Perspectives. Some of the fetuses examined in this study had three-and-a-half times higher mercury levels than their mothers. There will be other person-to-person differences in how mercury is distributed to tissues and how sensitive the developing brain is to methylmercury damage.

Question 7c. Isn't it true that other Federal agencies have used far less conservative uncertainty factors, resulting in EPA estimating a far higher number of women of child-bearing age with potentially unsafe blood levels?

Response. Two U.S. Federal agencies have recommendations on exposures to methylmercury based on human health effect data. The Food and Drug Administration's value dates from the early 1970's and bases its value of 0.4 μg/kg body weight /day on adults using a prevalence of overt neurological damage (specifically paresthesias) in 5 percent of the population as its endpoint. The FDA is no longer using this number. In developing FDA's fish advisories for the at-risk population the FDA is using on EPA's 2001 RfD for methylmercury of 0.1 μg/kg bw /day. Currently the FDA is conducting a quantitative exposure assessment for methylmercury intake from fish consumption to determine appropriate fish advisory language.

The Agency for Toxic Substances and Disease Registry (ATSDR) has a minimal risk level for methylmercury to be used in clean-up of waste sites. After consideration of available data, including the Faroese and New Zealand data, ATSDR based their study on the Seychelles Islands data only. ATSDR used an uncertainty factor of 4.5, which is an uncertainty factor smaller than that of U.S. EPA which used an uncertainty factor of 10 following the recommendation of the NAS Committee.

Most recently, the Joint Food and Agricultural Organization/World Health Organization's Expert Committee on Food Additives recommended a methylmercury intake of 1.6 μg/kg bw/week or 0.23 μg/ kg bw/day. Their analysis used both the Seychelles Islands and the Faroes Islands studies results. (ftp://ftp.fao.org/es/esn/jecfa/jecfa61sc.pdf, p. 20/22).

There are additional risk assessments for adverse effects of methylmercury based on adverse effects on the developing fetal nervous system. The most recent come from JECFA (given above), the United Kingdom (February of 2003), the European Union (October of 2001) and finally Germany (2000). All four of these risk assessments use fetal neurological development as their health endpoint and have recommended an exposure limit similar to U.S. EPA.

Question 7d. Making data available is one of the problems I'm trying to correct when I talk about sound science. Has the primary study upon which you draw your conclusions, the Faroe islands study, ever made available its raw data supporting its conclusions so that other scientists can evaluate the data?

Response. It is our understanding that the NAS Committee on the Toxicology of Methylmercury had full access to the Faroe Islands study data and conducted analyses of these data in the committee's deliberations. For specific description of how

these analyses were conducted by the NAS Committee it will be necessary to contact the National Academy of Sciences. EPA and the independent peer reviewers of EPA's RfD analysis did not evaluate the raw data from the Faroe Islands Study. It is EPA's understanding that primary analysis of data was carried out by the Committee on Toxicological Effects of Methylmercury of the National Academy of Sciences. Consequently the primary data have been made available for the expert committee's evaluation. The conclusions of the NAS committee were based on assessment data from all three cohorts: the Faroese, the Seychelles, and New Zealand. U.S. EPA's Reference Dose is based on examination of results from all three longitudinal cohort studies that were available in 2001: the Faroe Islands, New Zealand, and the Seychelles Islands.

US EPA did its own analyses to determine the size of the Uncertainty Factor that should be applied to the BMDL to determine the Reference Dose. The NAS Committee had recommended a factor of not less than 10. Based on EPA analyses and the recommendations of EPA's external peer review panel, the uncertainty factor utilized was 10.

Question 7e. Is it true that one of the two largest studies ever conducted on mercury health effects, the Seychelles Islands study, found no health effects, yet this study is not being used to set the reference dose simply because it found no health effects?

Response. In setting U.S. EPA's 2001 Reference Dose data from the Seychelles, the Faroe Islands, and New Zealand were evaluated. Benchmark Dose and Benchmark Dose Lower Limit were calculated for all three studies. The calculated Reference Doses for both the Faroe Islands and New Zealand studies are included in the following table as separate lines. However, the Seychelles Study is not presented as an individual study and is incorporated into the "integrative/all endpoints" analysis. (Refer to table in Appendix A which provides more detail on the data used for the integrative analysis). This table can be found in the EPA's Integrated Risk Information System (IRIS) file (http://www.epa.gov/iris/subst/0073.htm) and Drs. Rice, Schoeny and Mahaffey publication in Risk Analysis, 2003.[9]

Test[1]	BMDL05 ppb Mercury Cord	Ingested dose μg/kg/day[2]	RfD μg/kg/day
BNT Faroes			
Whole cohort	58	1.081	0.1
PCB-adjusted	71	1.323	0.1
Lowest PCB	40	0.745	0.1
CPT Faroes			
Whole cohort	46	0.857	0.1
PCB-adjusted	49	0.913	0.1
Lowest PCB	28	0.522	0.05
CVLT Faroes			
Whole cohort	103	1.920	0.2
PCB-adjusted	78	1.454	0.1
Lowest PCB 52 0.969 0.1.			
Finger Tap Faroes			
Whole cohort	79	1.472	0.1
PCB-adjusted	66	1.230	0.1
Lowest PCB 34 0.634 0.1.			
Geometric mean Faroes			
Whole cohort	68	1.268	0.1
PCB-adjusted	65	1.212	0.1
Lowest PCB	24	0.447	0.05
Geometric mean Faroes			
Whole cohort	68	1.268	0.1
PCB-adjusted	65	1.212	0.1
Lowest PCB	34	0.634	0.1
Smoothed values			
BNT Faroes	48	0.895	0.1
CPT Faroes	48	0.895	0.1
CVLT Faroes	60	1.118	0.1
Finger Tap Faroes	52	0.969	0.1
MCCPP New Zealand	28	0.522	0.05

[9]Rice DC, Schoeny R, and Mahaffey K. Methods and rationale for derivation of a reference dose for methylmercury by the U.S. EPA. Risk Analysis 5:107–115, 2003.

Test[1]	BMDL05 ppb Mercury Cord	Ingested dose μg/kg/day[2]	RfD μg/kg/day
MCMT New Zealand	32	0.596	0.1
Median values			
Faroes	48	0.895	0.1
New Zealand	24	0.447	0.05
Integrative**/all endpoints	32	0.596	0.1

[1]BMDLs from NRC (2000), Tables 7–4,7–5,7–6. Hair mercury was converted to blood mercury using a 250:1 ratio (WHO, 1990) and an assumption of equivalent maternal and cord levels.
[2]BNT=Boston Naming Test; CPT=Continuous Performance Test; CVLT=California Verbal Learning Test; MCCPP=McCarthy Perceived Performance; MCMT=McCarthy Motor Test.

In deriving EPA's Reference Dose the BMDLs from the endpoints from all three studies considered by the National Academy's Committee were converted using a one-compartment kinetic model to an ingested dose of methylmercury associated with a corresponding cord blood level. This resulted in a BMDL of 58 μg methylmercury/L of cord blood as a fetal mercury exposure that would result in a doubling of the prevalence of children with developmental deficits severe enough to place children in a clinically subnormal range on tests of child development. An Uncertainty Factor is then applied to the BMDL value to recommend a Reference Dose, expressed as microgram of methylmercury per kilogram of body weight per day.

Question 7f. Doesn't this selective use of available testing data produce biased results that may overstate the real risk?

Response. U.S. EPA in setting the Reference Dose for methylmercury has included in our analysis all available data from the three major cohort studies that were available in 2000 to set its Reference Dose.

APPENDIX A

Table 7–2 Benchmark Dose Calculations (ppm MeHg in maternal hair) from various Studies and for Various End Points ("Toxicological Effects of Methylmercury"; NAS; p. 284; Sep 2000)

Study	End Point	BMD[1]	BMDL
Seychelles[2]	Bender Copying Errors	3***	25
	Child Behavior Checklist	21	17
	McCarthy General Cognitive	***	23
	Preschool Language Scale	***	23
	WJ Applied Problems	***	22
	WJ Letter/Word Recognition	***	22
Faroe Islands[4]	Finger Tapping	20	12
	CPT Reaction Time	17	10
	Bender Copying Errors	28	15
	Boston Naming Test	15	10
	CVLT: Delayed Recall	27	14
New Zealand[5]	TOLD Language Development	12	6
	WISC-R:PIQ	12	6
	WISC-R:FSIQ	13	6
	McCarthy Perceptual Performance	8	4
	McCarthy Motor Test	13	6

[1]BMDs are calculated from the K-power model under the assumption that 5 percent of the responses will be abnormal in unexposed subjects (P0 = 0.05), assuming a 5 percent excess risk (BMR = 0.05)
[2]Data from Crump et al. 1998, 2000. ''Extended'' covariates
[3]***indicates value exceeds 100
[4]Data from Budtz-Jorgensen et al. 1999
[5]Data from Crump et al. 1998, 2000.

Question 7g: If power plants did not emit any mercury at all, how much would this reduce mercury exposure to women of child-bearing age?

Response. People are exposed to methylmercury mainly through eating fish contaminated with methylmercury. Mercury that ends up in fish may originate as emissions to the air. Mercury released into the atmosphere can be deposited near the source or can travel long distances on global air currents and be deposited in areas far from its original source. The largest human-generated source of mercury emissions in the United States is the burning of coal. Other sources include the combus-

tion of waste and industrial processes that use mercury. Mercury usually is released in an inorganic form and later converted into methylmercury by bacteria, primarily in the water. Methylmercury is toxic to humans. Methylmercury accumulates through the food chain: fish that eat other fish can accumulate high levels of methylmercury.

As discussed above, there is a plausible link between anthropogenic releases of mercury from industrial and combustion sources in the United States and methylmercury in fish. These fish methylmercury concentrations also result from existing background concentrations of mercury (which may consist of mercury from natural sources, as well as mercury which has been re-emitted from the oceans or soils) and deposition from the global reservoir (which includes mercury emitted by other countries). U.S. anthropogenic mercury emissions are estimated to account for roughly 3 percent of the global total, and U.S. utilities are estimated to account for roughly 1 percent of total global emissions. Given the current scientific understanding of the environmental fate and transport of this element, it is not possible to quantify with precision how much of the methylmercury in fish consumed by the U.S. population is contributed by U.S. emissions from utilities relative to other sources of mercury.

Modeling results suggest that most of the mercury emitted to the atmosphere is deposited more than 50 km away from the source, especially sources that have tall stacks. There is also wide range of predicted mercury deposition rates throughout the United States as source location, climate, and meteorology all play a role in modulating deposition. These are just some of the reasons why we have not yet been able to link specific mercury emissions to the amount of methylmercury available in the food chain.

In the last few years EPA has imposed stringent regulations on emissions from other large sources of mercury emissions including Medical Waste Incinerators and Municipal Waste Combustors, reducing their emissions by over 90 percent. In addition, Clear Skies will reduce mercury emissions from coal fired power plants by almost one-half by 2010 and will cap mercury emissions by nearly 70 percent in 2018. These three categories of sources made up nearly three-quarters of mercury emissions in the US before regulations were imposed.

TMDL Rule

Question 8a: In the 2001 appropriations bill for Military Construction, Congress prohibited the EPA from using any of its funds to implement the highly controversial and flawed Clinton Administration TMDL rule.

Consistent with these congressional concerns about the rule, the Bush Administration suspended its implementation. Communities and States are now struggling to develop TMDLs under the existing 1992 regulations, which have been interpreted differently by the courts and EPA regions.

Further, the 1992 regulations do not address emerging problems identified by the National Academy of Sciences study required by this committee.

EPA has an obligation to end the uncertainty for the States and the regulated community and publish a rule that both protects our waters but provides States with flexibility in meeting new water quality objectives.

Has the EPA has now completed the redrafting of the TMDL rule?

Response. No.

Question 8b: When will the rule be submitted for interagency review?

Response. We do not have a specific schedule at this time.

Question 8c: What is your timetable for promulgating the final TMDL rule?

Response. We do not have a specific schedule at this time.

EPA and Nuclear Regulatory Commission

Question 9. The fiscal year 2003 Omnibus Conference Report expressed concern that a recent MOU entered into between EPA and the Nuclear Regulatory Commission did not fully address jurisdictional concerns that had been raised in previous years by the Congress. Could you provide the committee an update as to the progress made on a revised MOU. Absent legislation, does the Agency have the authority to address all the jurisdictional concerns expressed by Congress?

Response. EPA and the Nuclear Regulatory Commission (NRC) developed a Memorandum of Understanding (MOU) to identify how the two agencies will work together during the decommissioning and decontamination of NRC-licensed sites. This MOU was developed in response to the direction from the House Committee on Appropriations. The committee directed EPA and NRC to work together on an MOU to address the potential for dual regulation. The committee first addressed the issue of EPA/NRC coordination at NRC licensed or decommissioned sites in the House Committee on Appropriations Report on August 3, 1999. Subsequent Reports

by the committee continued to address this issue. The fiscal year 2003 Omnibus Conference Report criticizes the MOU with the following language, "The committee's direction was for the two agencies to enter into an MOU which would clarify the circumstances for EPA's involvement at NRC sites "when requested by the NRC." This direction was not followed."

EPA and NRC are not currently working on a revision to the MOU. EPA sent letters signed on April 22, 2003 to the Senate and House Committee chairs and ranking members on this issue. These letters explain why EPA believes that monthly reports may not be appropriate and describe CERCLA legal constraints that would limit EPA's ability to follow the committee's direction. The letter also explains why EPA should not, as a matter of policy, waive the possibility of EPA involvement under CERCLA in response to releases of radioactive material from previously or currently licensed NRC facilities. The letter further states: "EPA believes the current MOU reflects the public interest in carrying out both EPA's and NRC's programs without significant threat of dual regulation. However, if the committee's concerns about this issue remain, EPA will gladly inform the committee prior to listing current or formerly NRC licensed facilities. We suggest that such notice substitute for monthly reports on the status of an effort to revise the current MOU."

EPA is looking forward to working with NRC on implementation of the MOU. EPA believes that implementation of the MOU between the two agencies should help ensure that potential confusion about dual regulation does not occur regarding the cleanup and reuse of NRC licensed sites. EPA remains unconvinced that legislative amendments to CERCLA are necessary.

CERCLA

Question 10. CERCLA (42 U.S.C. sec. 9614) provides, under certain conditions, liability relief for "service station dealers." Unfortunately, many who are eligible for this exemption may not be aware of their eligibility. What is EPA doing to ensure that these small businesses are informed of potential eligibility? Has EPA developed an application form or other means to inform those who have been identified as a PRP and may qualify for liability relief under 42 U.S.C. sec. 9614?

Response. EPA has taken numerous steps to implement the "Service Station Dealer Exemption" (SSDE) and to assure that our regional offices are aware of the exemption requirements. These efforts include the following: Issuing a memorandum to EPA regional offices on May 31, 2002, entitled "Use of CERCLA Section 114(c) Service Station Dealers Exemption", describing the provision; Discussing SSDE implementation at several Superfund National Senior Managers' meetings (most recently, Principal Deputy Assistant Administrator for the Office of Enforcement and Compliance Assurance led a discussion in March 2003, with National Superfund Division Directors); Including SSDE in CERCLA New Attorney Training (next offering May 2003) and also in the Superfund "PRP Search Manual"; Meeting with the National Small Business Ombudsman (March 5, 2003) regarding the SSDE and opportunities for educating both service station dealers and EPA about the exemption; and redistributing the May 31, 2002 memorandum to senior regional managers on March 31, 2003.

In addition, EPA met with representatives of the service station industry on February 25, 2003. During this meeting, EPA committed to continue to evaluate ways to streamline and standardize implementation of the SSDE to facilitate the goal of getting properly exempt parties out of a case as early as possible. Participants at this meeting agreed that using CERCLA 104(e) information requests would be an appropriate and efficient method of gathering the information necessary to make a determination of whether the exemption has been met. Since the time of this meeting, EPA has begun developing a draft model CERCLA 104(e) information request for the SSDE. We are also developing model language incorporating information about SSDE into general and special notice letters as part of an on-going effort to develop new model notice letters for use with small businesses.

Compliance Models

Question 11. The Data Quality requirements apply to models. When will EPA begin its review of its models for compliance, including access by the public and validation of the models?

Response. In a memorandum signed on 7 February 2003, Administrator Whitman affirmed the Agency's commitment to". . . (m)ake publicly accessible an inventory of EPA's most frequently used models, which will include information on a model's use, development, validation, and quality assessment." To follow through on this commitment, EPA—in an effort being coordinated by the cross-Agency Council for Regulatory Environmental Models (CREM)—has already begun to develop the data base infrastructure necessary to provide this information through a web-accessible

interface. The CREM is also gathering information from the various EPA program and regional offices to formulate a list of which models are most frequently used by EPA.

As the CREM develops this preliminary list of models, it is relying on the judgment of each of the program and regional offices as to which models will be included. Eventually, as this inventory of EPA models is developed further, EPA anticipates that it will contain a wide variety of models, including the most frequently used models in the Agency.

Starting with a few of the models on this preliminary list, the CREM has begun to develop content for the inventory. This content reflects the degree of transparency envisioned by the Administrator's statement by establishing substantive elements and format in a manner that both accommodates the diversity of models across the Agency and enhances cross-Agency consistency and ease of public access. The task of building the inventory presents a number of challenges and will take time, but it is a task that EPA has begun.

EPA recognizes that there are two related efforts in response to the Administrator's memorandum—the task of building this inventory of models and the task of model validation and quality assessment. The purpose of the inventory is to document whether-not ensure that-a model has been subjected to evaluation and validation. Model validation and quality assessment is primarily the responsibility of the EPA office that is the model owner. To assist the various EPA offices, the CREM is coordinating the development of Agency guidance on model evaluation, another task enumerated in the Administrator's 7 February memorandum.

Department of Defense Environmental Legislation

Question 12. Governor Whitman, you testified that, "We have been working very closely with the Department of Defense, and I don't believe that there is a training mission anywhere in the country that is being held up or not taking place because of an environmental protection regulation," and "[A]t this point in time I am not aware of any particular area where environmental protection regulations are preventing desired training."

At the same time, Assistant Administrator for Enforcement and Compliance Assurance J.P. Suarez testified that, "[T]he Administration's bill appropriately takes account of the interests of the American people in military readiness and in environmental protection. I am confident that DoD and EPA can work together within the framework of the proposed law to ensure that America's armed forces are able to train to carry out their national security mission and that the Agency is able to carry out its mission of protecting human health and the environment."

Why do you believe that the environmental legislation proposed by the Department of Defense should be enacted when you also apparently believe there is no instance where it is needed?

Response. Although the laws and regulations that EPA administers have not impeded readiness in the past, we believe the negotiated bill language appropriately addresses two equally compelling national priorities: military readiness and the protection of human health and the environment. We understand and support DoD's desire to protect against litigation EPA's longstanding, uniform regulatory policy regarding the handling of munitions.

RESPONSES OF ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

MTBE: Oxygenate Standard Petition

Question 1. In 2001, California petitioned EPA to waive the Federal oxygenate requirement for its fuels. This request, which was denied by the Agency, was made in response to an MTBE ban imposed by Governor Davis in response to concerns over groundwater contamination. The ban was originally set to eliminate all ethers including MTBE by January 1, 2003. However, the deadline has been pushed back to January 1, 2004 because of concerns that the ban will cause supply constraints and price spikes. As you may know, New York is currently scheduled to phaseout MTBE at the same time as California. Because New York imports such a high percentage of its oxygenated fuels, this ban could severely strain gasoline supply in New York and cause significant price increases. Do you anticipate that either of these States will petition EPA for a waiver of the oxygenate standard as California did in 2001, and if so, do you intend to grant or reject those waivers?

Response. In a January 6, 2003 letter to Administrator Whitman, the New York State Department of Environmental Conservation (NYSDEC) requested a waiver from the oxygen requirement for reformulated gasoline (RFG) in the New York City

area. We responded in a letter dated April 1, 2003 to NYSDEC, notifying them that "the application and supporting information fail to address the requirements specified in the statute" and that "without the necessary technical supporting documentation, we are unable to evaluate the merits of the request and can take no further action." We provided a list of questions and information needs and once we receive further information from NYSDEC, we will then continue our evaluation of New York's request.

It is not possible at this time to say whether we will grant or deny New York's request. Section 211(k)(2)(B) of the Clean Air Act establishes specific criteria that must be met before EPA may grant a waiver of the RFG oxygen content requirement. Under this section, EPA may waive the oxygen mandate, in whole or in part, "upon a determination by the Administrator that compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard [NAAQS]." We are not able to say whether or not New York will be able to meet the criteria of 211(k)(2)(B) until we receive additional technical data from them and we have conducted a rigorous substantive analysis on such data.

Wastewater Infrastructure

Question 2. What are your thoughts on establishing a long-term sustainable and reliable source of Federal funding for wastewater infrastructure, such as a trust fund?

Response. EPA has not taken a position on the creation of a "trust fund," supported by special or dedicated Federal, State and/or local fees, to finance water and wastewater infrastructure through the State Revolving Fund programs. Unfortunately, stakeholders may be uninformed about what a "trust fund" means in the context of dedicated Federal revenues. First of all, the assets of the fund would belong to the Federal Government, and as trustee, the Federal Government can make unilateral changes to the terms and conditions of the "trust." Second, a new fund for water pollution may run into budget scoring difficulties. For these reasons, we believe that reaching agreement on a dedicated funding source or sources would be difficult because of competing priorities and interests.

Clean Air Act Oxygenate Standard

Question 3. Earlier this month, I introduced, along with a number of my colleagues, legislation that will provide statutory relief for California and New York by repealing the Clean Air Act's oxygenate requirement and triple the amount of ethanol produced in this country. This legislation is identical to the fuels package included in last year's energy bill (S. 517), which was strongly supported by the Administration. Do you plan on supporting this vital legislation again during this Congress?

Response. The Bush Administration supports the fuel provisions of energy legislation that passed the Senate last year. That legislation would have maintained the environmental benefits of the Reformulated Gasoline program (RFG), prevented toxics backsliding, removed the RFG oxygen mandate, imposed a Federal phaseout of MTBE and included a national Renewable Fuels Standard. As the Assistant Administrator for the Office of Air and Radiation, Mr. Jeffrey Holmstead, stated in his testimony before the Senate Environment and Public Works Committee on March 20, 2003, the Administration reaffirms its support of your legislation, that is consistent with this approach.

Great Lakes

Question 4. The budget contains a total of $33.6 million for EPA's Great Lakes efforts. However, if the new funding for the Legacy Program is removed, we see that the budget for the Lakes has been flat over the past few years. The EPA's Great Lakes National Program Office needs more funding because, among other things, it monitors ecosystem indicators, supports local protection and restoration of important habitats, and promotes pollution prevention. What will the entire budget for the Great Lakes go toward, and how does this compare to the needs of the Lakes?

Response. The $33.6 million Great Lakes budget supports coordination by the Great Lakes National Program Office (GLNPO) of U.S. responsibilities under the Clean Water Act and the Great Lakes Water Quality Agreement with Canada. GLNPO will work to implement the Great Lakes Strategy in a community-based approach with Federal, State, Tribal, and local partners. Specific activities will include monitoring, toxics reduction, ecosystem protection and restoration, and addressing emerging or strategic issues such as invasive species and the Lake Erie dead zone.

EPA will assess and report on the state of key Great Lakes ecosystem components, including trends in toxics in air and fish; beach closings; trophic status; phosphorus; and contaminated sediment remediation. GLNPO will also continue to lead

development of management recommendations to address the inexplicably low dissolved-oxygen levels in Lake Erie, which have resulted in an increasing "dead zone," despite U.S. and Canadian success in achieving total phosphorus targets.

Through the Great Lakes Binational Toxics Strategy, EPA will continue to target persistent, toxic substances for reduction and virtual elimination. Using voluntary and regulatory tools to achieve reductions, EPA will stay on target for meeting 2006 goals for: PCBs (90 percent use reduction), Mercury (50 percent use and release reduction), and dioxins and furans (75 percent release reduction). EPA and partners will accelerate the pace at which contaminated sediments are addressed. Over the past 5 years, GLNPO and partners have remediated 100,000 to 400,000 cubic yards of contaminated sediments annually, in order that persistent toxics, which could adversely affect human health will no longer be biologically available through the food chain. With the $15 million proposed in support of the Great Lakes Legacy Act. The Agency will increase the number of new remedial action starts in the Great Lakes by all partners from three annually to five to six annually. Goals will include completing cleanup of all known sites in the Basin before 2025 and potentially accelerating the time required to de-list Areas of Concern (AOCs). EPA is working with States and local groups from the AOCs to expedite AOC de-listing. EPA, States, and local communities will strategically target reductions of critical pollutants and restoration of impaired beneficial uses through RAPs for AOCs and through LaMPs for Lakes Ontario, Michigan, Superior, and Erie.

The Agency will support the efforts of States, Tribes, and local communities to protect and restore important habitats, emphasizing habitats important for biodiversity and ecological integrity, such as those necessary for endangered and threatened species. Cooperative efforts initiated with other Great Lakes Wetland Consortium members to implement the only basin-wide monitoring of Great Lakes coastal wetlands will continue. GLNPO will contribute its share toward the Great Lakes Strategy objective of protecting/restoring 100,000 acres of coastal and inland wetlands by 2010. In support of the Strategy's Invasive Species objectives, GLNPO will work with partners to enhance and monitor the effectiveness of the Chicago River Invasive Species barrier, report on results of a joint "No Ballast on Board" study, and finalize a plan for a rapid response to the introduction of invasive species.

Question 5. As I mentioned during the hearing, funding for the Great Lakes Legacy Program in EPA's budget is well below the $54 million authorized in the Act. Last year, the General Accounting Office completed a study on the cleanup of contaminated areas in the Great Lakes and found a significant lack of funding, which is one of the contributing factors to the "slow progress of cleanup efforts." Congress passed the Legacy Act to address this funding shortfall: $50 million for cleanup, $3 million for research and development, and $1 million on public information grants. The funding in EPA's budget, while welcome, is inadequate. Can you tell me what funding is needed in the Great Lakes for remediation, what the $15 million would be spent on, and what impact increasing this amount to a total of $54 million would have on the Lakes?

Response. The $15 million requested under the Legacy Act will be used for projects. It will increase the number of new remedial action starts in the Great Lakes by all partners from three annually to five to six annually. It will advance progress under the Great Lakes Strategy by accelerating the pace of contaminated sediment remediation. Goals include completing cleanup of all known sites in the Basin before the Great Lakes Strategy goal of 2025 and potentially accelerating the time required to de-list Areas of Concern.

Question 6. As Governor in 1998, I released the State of the Lake report for Lake Erie because I was concerned that we had not established baseline information to document where we started or to track the progress we had made. Ten indicators were developed to measure environmental, economic, and recreational conditions related to the quality of life enjoyed by those living near or using the waters of Lake Erie. The Lake Erie Quality Index Report provides a baseline to measure our progress and shows the progress we have made to date, as well as the challenges for the future. Since this has proven to be invaluable to those of us concerned specifically with Lake Erie, I strongly believe it would be advantageous for the entire Great Lakes so that we can measure and track progress as well as identify areas of concern. Is the EPA currently doing or planning to do anything like this in the broader sense to measure where we have come from, where we are, and where we need to go in terms of the quality of the Great Lakes?

Response. The Indicators being developed via the biennial State of the Lakes Ecosystem Conferences (SOLEC) are intended as a comprehensive, basin-wide set of indicators that will tell us whether we are meeting the goals of the Great Lakes Water Quality Agreement". . . to restore and maintain the chemical, physical, and

biological integrity of the waters of the Great Lakes Basin Ecosystem" and provide answers to "simpler" questions such as: Can we drink the water?; Can we eat the fish?; and Can we swim in the water? Over 50 governmental and non-governmental sectors were represented in contributions to the State of the Great Lakes 2001 document. Eighty indicators have been developed, and others have been proposed. Thus far, SOLEC indicator development and reporting are voluntary efforts. SOLEC indicators do not currently identify "where we need to go."

Recognizing the need for a higher level baseline of progress on the Great Lakes and the need to identify "where we need to go", EPA has proposed a Great Lakes index as a part of GPRA reporting which is based upon SOLEC. This SOLEC-based index is in the March 5 draft of the new Agency Strategy <http://www.epa.gov/ocfopage/plan/2003sp.pdf>. Subobjective 4.3.3 on Goal 4, page 19 reads:

By 2008, prevent water pollution and protect aquatic systems so that overall ecosystem health of the Great Lakes is improved by at least 2 points. (2002 Baseline: Great Lakes rating of 22 on a 40 point scale where the rating uses select Great Lakes State of the Lakes Ecosystem indicators based on a 1 to 5 rating system for each indicator, where 1 is poor and 5 is good.).

Index components are: coastal wetlands, phosphorus concentrations, sediment contamination, benthic health, fish tissue contamination, beach closures, drinking water quality, and air toxics deposition. The Agency Strategy also includes "Strategic Targets" for toxic concentrations in fish and air, for AOC delisting, and for sediment remediation. The Strategic Targets were taken directly from or derived from the Great Lakes Strategy.

City of Akron's CSO Problems

Question 7. The city of Akron and the Ohio EPA are working out a $377 million Long Term Control Plan to fix the City's CSO problems over the next 30 years. To pay for the proposed upgrades, the City will be implementing a series of 2 to 6 percent rate increases over the next 23 years. As a result, rates will more than double. However, the City informs me that the U.S. EPA, which must also approve the Plan, is seeking to require the City to complete the work in 12 to 15 years, less than half the time. How is the City expected to comply with such a mandate if the Federal Government does not provide the funding to get the job done?

Response. Financial assistance is available under Ohio's Clean Water State Revolving Fund loan program. The fiscal year 2004 President's Budget Request extends the Clean Water State Revolving Fund through 2011 and increases the Federal commitment by $4.4 billion.

Question 8. If the Federal Government won't help provide the funding, shouldn't the Federal Government be more flexible with the deadlines?

Response. EPA is aware of the requirements for investments of time and resources for the preparation and implementation of a LTCP. In our coordination with municipalities and our State partners, EPA strives for achievement of environmental improvements as quickly as possible, while at the same time recognizing the legal, financial and administrative burden on municipalities in shouldering this responsibility. Decisions on implementation schedules are made on a case-by-case basis, and are negotiated between regulatory agencies and specific communities. We recognize that financial capability is a significant factor in determining an appropriate implementation schedule for CSO controls.

Water Infrastructure

Question 9. In December, Senator Sarbanes and I sent a letter with 37 other Senators to the President requesting a significant increase for the Clean Water and Drinking Water State Revolving Loan Fund programs. Specifically, we asked for $3.2 billion for the Clean Water SRF program and $2 billion for the Drinking Water SRF program. Given the billions of dollars in water infrastructure needs across the country, can you explain whether the EPA's budget request adequately addresses these needs?

Response. We believe EPA's budget request, in the context of the President's new Clean water SRF capitalization plan, is sufficient to address the projected infrastructure investment gap. It is important to remember that the SRF programs only provide one source of funding for water infrastructure. The primary source of funding comes from local sources in the form of user fees. In addition, there are many other Federal and State programs that help fund infrastructure costs besides the SRF programs. Finally, the estimates of future infrastructure costs do not consider the significant cost savings that could result from the use of full cost pricing and Sustainable Management Systems including environmental management systems and asset management systems. EPA will actively support the pursuit by States and systems of these cost saving opportunities.

Question 10. I was a strong supporter of the Wet Weather Quality Act of 2000 that was enacted in 2000. The bill created a 2-year, $1.5 billion grant program to States for combined sewer overflow and sanitary sewer overflow projects. Although the Administration requested funding for the program for fiscal year 2002, Congress did not appropriate any funding for the program. Last year, I offered an amendment to the Water Investment Act to extend the program for another 5 years. Do you believe there should be more grant moneys available to communities to help pay for water infrastructure projects?

Response. EPA supports the Clean Water and Drinking Water State Revolving Funds (SRFs) as the primary vehicles to direct Federal financial assistance to water infrastructure projects. The revolving nature of the funds and their ability to leverage dollars makes them a more efficient tool than grants for infrastructure assistance.

Question 11. Last year, Congress enacted legislation that requires most water systems to perform a vulnerability assessment of their water treatment and distribution systems and prepare or revise their emergency response plans. What funding has been provided to date for small, medium, and large systems to help offset the cost of these assessments and emergency response plans?

Response. EPA targeted funds to activities that apply to all water utilities as well as size of drinking water system-specific efforts. For instance:

- $5 million supported the development of a wide range of technical assistance and training tools, including models that would assist both drinking water and wastewater systems in conducting vulnerability assessments. Approximately 8,000 operators of water utilities have received training on water security issues and approaches.
- About $50 million was awarded directly to more than 400 of the largest water systems (each of which regularly supplies drinking water to over 100,000 people) to assess their vulnerabilities and to develop or revise their emergency response plans.
- $17 million was allocated to the States to support their efforts to provide technical assistance and training to medium (supplying water to more than 50,000 but less than 100,000 people) and small (serving more than 3,300 but less than 50,000 people) systems in their vulnerability assessments and emergency response plans activities.
- A total of $1.5 million to 5 non-profit organizations, each of which will receive about $300,000, has recently been awarded. These organizations will provide no-cost training to State, tribal or local agencies on such activities as vulnerability assessments and emergency response plans. The focus of this training is to support vulnerability assessments and emergency response planning by some 7,500 small systems.
- EPA staff is reviewing proposals submitted by nonprofit organizations in response to a Request for Proposal to provide training to the approximately 480 community water systems (each of which serves between 50,000 and 100,000 persons) in conducting their vulnerability assessments that are to be submitted to EPA by September 30, 2003 and in completing emergency response plans. ($1.7 million is available for award upon completion of this competitive process.)
- Nearly all of the $5 million in STAG (State and Tribal Assistance Grants) funds to help States coordinate their efforts with EPA and utilities to implement critical water infrastructure protection activities was awarded.

In sum, about $80 million, or 90 percent, of the $88.8 million in the fiscal year 2002 supplemental appropriations for water security was directed to large, medium, and small systems' vulnerability assessments and emergency response plans. The remainder supported two major activities: 1) the development and implementation of the water information sharing and analysis center (WaterISAC), a web-based, password-protected, secure site that provides threat alerts and other security-related information to drinking water and wastewater utilities; and 2) research and technology development endeavors to more fully understand and address water security issues.

Question 12. What funding is provided in the EPA's fiscal year 2004 budget for vulnerability assessments and emergency response plans?

Response. Because of the June 30, 2004 deadline for the submission of vulnerability assessments by an estimated 7,500 small drinking water systems, only 9 percent, or $2.3 million, in the fiscal year 04 President's Budget request of $24.8 million in the Science and Technology appropriations account will be targeted to support to these systems for conducting vulnerability assessments and developing or revising emergency response plans. Major financial and technical support to all drinking water systems subject to the Public Health Security and Bioterrorism Prepared-

ness and Response Act of 2002 (Bioterrorism Act) is being funded by fiscal year 02 and fiscal year 03 appropriations.

With the fiscal year 04 requested funds, EPA will be focusing on the other two major provisions of the Bioterrorism Act, i.e., contaminant prevention, detection and response and supply disruption prevention, detection and response (section 402). Almost $20 million of the request will be targeted to: 1) activities that will advance the scientific and technical knowledge of microbial, chemical, and radiological contaminants for which little or no research and occurrence data are available; and 2) the identification of methods and means by which terrorist could disrupt the supply of safe drinking water by tampering, altering, or destroying systems' infrastructure.

Question 13. What funding is currently available for physical security improvements at public water and wastewater facilities?

Response. Many of the types of infrastructure improvements a water system would need to take to ensure security are eligible activities under the Drinking Water State Revolving Fund (DWSRF). The types of measures that could be funded include fencing, security cameras, secure chemical and fuel storage, backflow prevention devices and covering finished water storage reservoirs. Protection of drinking water sources may also be funded through the DWSRF set-asides. The first step in seeking assistance is to contact the State DWSRF representative.

EPA has developed a fact sheet that identifies specific security measures that would be eligible through the DWSRF program. The fact sheet is available on our website at http://www.epa.gov/safewater/dwsrf.html.

Assistance to implement protection measures may also be available through Water and Wastewater Loan/Grant program of the U.S. Department of Agriculture's Rural Utilities Service. Water systems should contact their State SRF or Rural Development representatives to learn more about potential assistance.

CSO Long-Term Control Plan

Question 14. Does the EPA believe that performing a CSO Long-Term Control Plan in a maximum of 15 years is reasonable and affordable? How does the EPA justify such an inflexible schedule?

Response. The Wet Weather Quality Act of 2000, 33 U.S.C. § 402(q), requires EPA and the States to regulate CSOs in conformance with the EPA's 1994 Combined Sewer Overflow Control Policy (59 Fed. Reg. 18688). The CSO Policy calls for implementation of LTCPs "as soon as practicable," and the NPDES authority should require "compliance dates on the fastest practicable schedule for those activities directly related to meeting the requirements of the CWA." Decisions on implementation schedules are made on a case-by-case basis, and depend on such factors as the size of the community, the environmental impact of the CSO discharges, and the financial capability of the community.

To guide decisions on LTCP scheduling, EPA published a document entitled Combined Sewer Overflows: Guidance for Financial Capability Assessment and Schedule Development (EPA 832-B–97–004, 1997). This guidance defines criteria that can be used to assess whether a CSO control program will pose a low, medium, or high financial burden on a community. The guidance also suggests general schedules based on these levels of burden. For communities facing a "high burden" the guidance suggests that implementation schedules of up to 15 years may be appropriate, while in "unusually high burden" situations an implementation schedule of up to 20 years may be appropriate.

Water Infrastructure Gap

Question 15. Please illustrate exactly how your budget request would close the $21 billion gap between current capital funding and future capital needs.

Response. The Gap Analysis estimates that about $381 billion in capital outlays will be required between 2000–2019. At current investment levels, $259 billion o that amount be covered. Growth in local revenues (user charges) of 3 percent per year in real terms, provides $101 billion in additional spending capacity, leaving a $21 billion infrastructure gap.

By extending Federal capitalization of the CWSRF program through 2011 at $850 million per year, the President's proposal will significantly increase the CWSRF program's capability to fund projects in both the near term and in the long-run. Administration analyses using historical information indicate that, by extending Federal capitalization of the CWSRF program through 2011 at $850 million per year, the President's proposal is projected to increase SRF loan assistance by $21 billion in 20 years. By also utilizing other Federal, State and local sources of funding and improved management practices, we believe the projected infrastructure gap can be eliminated.

At the same time, EPA, States and systems will pursue approaches for efficient, effective management of water and infrastructure assets to ensure that this investment achieves sustainable systems. These same innovative management practices can achieve significant cost savings in the industry.

In addition to the Federal CWSRF program, there are a number of other Federal and State funding sources that are expected to help fund future infrastructure needs. These include USDA's Rural Utility Service (RUS) loans, HUD's Community Development Block Grant (CDBG) program, and non-Federal State clean water revolving loan fund programs.

Phase II Regulations and Local Communities

Question 16. In Ohio, there are 216 townships that must comply with the Phase II Stormwater Management Regulations. These townships are concerned about the mandate laid down by the Federal Government for local governments to comply with the Clean Water Act. How does the EPA's budget help offset the financial burden placed on local communities who must comply with Phase II regulations?

Response. Although EPA's budget request does not specifically address the Phase II Storm Water regulations, assistance can be provided through the Clean Water State Revolving Fund program. Ohio townships that must comply with the Phase II regulations can apply to the Ohio EPA for financial assistance through the State Revolving Fund loan program. The State of Ohio has also established Water Resource Restoration Sponsor Program. This program offers communities very low interest rate on loans for wastewater treatment plant improvements when communities also sponsor projects that protect or restore water resources.

Clean Water Act Compliance Costs

Question 17. What is the responsibility of the Federal Government in helping local communities pay for the high costs of complying with the Clean Water Act?

Response. The needs continue to change due to demographic pressures, aging infrastructure and new treatment requirements. Generally, it is the responsibility of local governments to pay for drinking water supply and wastewater disposal. However, Federal programs, including the Drinking Water SRF, established by the Safe Drinking Water Act (SDWA) and the Clean Water SRF established by the Clean Water Act (CWA) help local governments meet the costsof abiding by water quality standards and cleaning up waterways.

The Federal Government and States work together through these programs to encourage investment in water and wastewater infrastructure that mitigates public health threats and creates sustainable water and wastewater treatment systems. Through Federal, State and local partnerships, EPA also supports affordable, cost-based rate structures and encourages technology innovation, smart water use, and watershed-based decisionmaking. EPA is pursuing innovative ideas such as watershed-based trading and sustainable management systems. Together, these efforts will meet water and wastewater infrastructure needs and, more importantly, will help assure safe and clean water for the Nation.

Role of EPA's Science Advisor

Question 18. As I mentioned in my opening remarks, I am interested in ensuring that the Agency relies on sound science in its decisionmaking process. How will the additional funding for science in fiscal year 2004 be used to improve research management and peer review practices at EPA?

Response. The Agency has requested fiscal year 2004 resources to support the EPA Science Advisor, a function that was created in May 2002. The Science Advisor is responsible for ensuring the availability and use of the best science to support Agency policies and decisions, as well as advising the EPA Administrator on science and technology issues and their relationship to Agency policies, procedures, and decisions. The Science Advisor provides leadership in ensuring that sound science plays a prominent role in all regulatory decisions by helping to ensure that regulations are interpreted and enforced in a manner consistent with the science that informs them. This position is intended to strengthen EPA's overall scientific performance. Another, critical mechanism for ensuring sound science at EPA is the Agency's policy for peer reviewing scientific and technical work products used to inform Agency decisions. The Science Advisor, as chair of the Science Policy Council, plays a leading role in implementing EPA's peer review policy. In his March 5, 2003 testimony before the Committee on Transportation and Infrastructure, EPA's Science Advisor, Paul Gilman, stated, "nearly 90 percent of our scientific and technical work products receive internal or external peer review." EPA is currently in the process of reviewing and addressing a recent finding by the Inspector General that "[t]he critical science supporting the [agency's] rules was often not independently peer reviewed. Consequently, the quality of some science remains unknown." (EPA OIG,

Science to Support Rulemaking, at ii, November 15, 2002.) In general, the Agency believes that the IG's report is a reflection of the past, rather than current, state of peer review at EPA today. Even rules issued in the late 1990's would have used scientific products developed before EPA's peer review guidance was completed in 1998. (For additional steps the Agency has taken in the past with regard to its peer review policies and practices, please see the Attachment to this response.)

Specific responsibilities of the Science Advisor include:

- Assisting in the implementation of the recommendations of the Administrator's Regulatory Development Task Force Review as they relate to the use of science.
- Reviewing policies and procedures relating to the operation of the Science Advisory Board (SAB) and making recommendations for improvement.
- Reviewing the interactions between the Regional Laboratories and the Office of Research and Development and making recommendations for improvements to these relationships as appropriate.
- Reviewing the activities across the Agency relating to the development and use of measurement techniques and making recommendations for any improvements that may be identified.
- Ensuring consistent cross-Agency application of strategic planning for research and use of science.
- Guiding the recently enhanced efforts of the Council on Regulatory Environmental Modeling (CREM).
- Chairing the Agency's Science Policy Council.

Question 19. While visiting the Environmental Protection Agency's (EPA) newly created National Homeland Security Research Center in Cincinnati, I had the pleasure of meeting Dr. Paul Gilman, who serves as the Assistant Administrator of Research and Development and as EPA's Science Advisor. I was impressed with his credentials as a scientist. What will his role be in EPA's decision and regulatory making process?

Response. One of Dr. Gilman's key roles is to ensure that the science used in EPA policies and decisions is of the highest quality and is used in a manner appropriate to the policy or decision it informs. Upon arriving at EPA, Administrator Whitman commissioned a task force to identify ways to strengthen the scientific and economic bases of EPA's policies and decisions. In response to the task force's recommendations, the Administrator asked Dr. Gilman to increase the role of EPA's scientists in the development of Agency policies and regulations, and he has succeeded in doing so: the number of laboratory engineers and scientists actively engaged at any one time in providing scientific input into EPA's regulations has grown from about 150 in 2000 to over 300 in 2003. Dr. Gilman also played a key role in designing the Agency's Information Quality Guidelines to ensure that all scientific and technical information disseminated by EPA meets high standards for quality.

Dr. Gilman is also EPA's leader in implementing the Agency's policy on peer review of EPA's scientific and technical work products. Nearly 90 percent of EPA's scientific and technical work products receive internal or external peer review (the remaining 10 percent were products that were deemed, usually because of their repetitive or routine nature, not to be candidates for peer review), and about 80 percent of those are submitted for external review. As he testified before the House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and the Environment, on March 5 of this year, EPA's challenge for the future is to continue the significant progress it has achieved to date and, not being content with the status quo, to look for ways to enhance the use of peer review as a tool for ensuring that EPA's decisions are supported by a firm foundation of scientific and technical information. In his March 5, 2003 testimony before the Committee on Transportation and Infrastructure, EPA's Science Advisor, Paul Gilman, stated, "nearly 90 percent of our scientific and technical work products receive internal or external peer review." EPA is currently in the process of reviewing and addressing a recent finding by the Inspector General that "[t]he critical science supporting the [agency's] rules was often not independently peer reviewed. Consequently, the quality of some science remains unknown." (EPA OIG, Science to Support Rulemaking, at ii, November 15, 2002.) In general, the Agency believes that the IG's report is a reflection of the past, rather than current, state of peer review at EPA today. Even rules issued in the late 1990's would have used scientific products developed before EPA's peer review guidance was completed in 1998. (For additional steps the Agency has taken in the past with regard to its peer review policies and practices, please see the Attachment to this response.) As Science Advisor, Dr. Gilman chairs EPA's Science Policy Council (SPC), a cross-agency committee of senior managers charged with developing policies that guide Agency decisionmakers in their use of scientific and technical information. In recognition of the rapid advances in the field of

genomics since initial sequencing of the human genome, the SPC has developed an interim policy on the use of genomics data as supporting information for Agency assessment and regulatory purposes. The SPC has also reconstituted the Council on Regulatory Environmental Modeling, which among other things is developing guidance for developing and using environmental models. Because sound decisions need to be based on sound data, EPA is also establishing a Forum on Environmental Measurements to promote consistency and consensus within the Agency on measurement issues.

All of Dr. Gilman's efforts—enhancing the use of science in decisionmaking, implementing EPA's peer review policy, and developing agency-wide science policies—are crucial to making sure that the policies and regulations issued by EPA are informed by scientific information of the highest quality. Under Dr. Gilman's leadership and with the Administrator's strong support for his leadership roles, science has an increasingly prominent place in carrying out EPA's mission of protecting public health and safeguarding the natural environment.

ATTACHMENT

From "The State of Sound Science at the U.S. Environmental Protection Agency" (EPA/600/R–03/054, June 2003), (http://www.epa.gov/ord/htm/soundscience–062603.pdf) pages 4–5:

"Consistent agency-wide application of peer review has been an EPA priority for many years. Since issuing its peer review policy in 1993, EPA has taken several major steps to support and strengthen the policy. But proof of a policy's value lies in its implementation, and here also EPA has been very active to ensure that its peer review policy is not only understood across the Agency, but is applied rigorously across EPA's program and regional offices.

One example is the external peer review of EPA's research strategies and plans by the SAB and others. These reviews provide critical, early input to the Agency at the planning stage as it establishesits research priorities. A second example is the external peer review of EPA's research efforts bythe National Research Council, the EPA Office of Research and Development's Board of ScientificCounselors and others. In March 2003, the Human Studies Division of EPA's National Health andEnvironmental Effects Research Laboratory (NHEERL) underwent a 3-day peer review of itsepidemiological and clinical research. Each of NHEERL's nine divisions conducts such a detailed review every 4 years, with a mid-cycle review after 2 years. Also, all the grants awarded by the STAR program are selected through a rigorous peer review process, whereby panels of independent researchers review all the proposals for their scientific quality.

In response to the 2001 General Accounting Office (GAO) report entitled EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance, the SAB has taken several steps to address potential conflict-of-interest concerns. These include internal procedural actions within EPA's SAB Staff Office, as well as the new conflict-of-interest form developed by the SAB (and approved by the Office of Government Ethics) that is required to be submitted by all prospective panel members; this same, new conflict-of-interest form is now being used by EPA's other review bodies that utilize Special Government Employees, such as the SAP. These new conflict-of-interest procedures complement existing procedures used for all extramural peer reviews managed by contracts.

Internal conflict of interest—making sure that those EPA employees who manage the peer review process are not inappropriately influenced by Agency decisionmakers who will determine how the work product informs the decision—is also an issue EPA has considered and addressed. In its December 2000 2d edition of the Peer Review Handbook, EPA included supplemental guidance to address this issue. The revised handbook, among other things, clarifies the importance of strictly separating the management of scientific work products from the management of the peer review of those work products."

National Homeland Security Research Center

Question 20. At the EPA's new National Homeland Security Research Center in Cincinnati, I was briefed on EPA's research initiatives in support of Homeland Security. Can you share with the committee what your strategy is in support of Homeland Security, the role of research and how you are coordinating with the Department of Homeland Security?

Response. The EPA National Homeland Security Research Center (NHSRC) was formed in October 2002 to enable coordinated development of information and technologies needed to protect buildings and public water supplies from chemical and biological terrorist attacks. The Center employs some of EPA's most experienced sci-

entists and engineers from across the United States and is headquartered at the EPA's Andrew W. Breidenbach Environmental Research Center in Cincinnati.

The goal of the research is to rapidly develop tools, technologies and guidance for use by water system authorities, building owners, public officials and emergency responders to prepare for and respond to potential attacks. The research program is divided into the following areas:

- technologies to rapidly detect and warn of chemical or biological attacks;
- methods to contain contaminants following attack;
- development of cost-effective decontamination technologies;
- development of tools to enable rapid assessment of health risk resulting from attacks; and
- performance verification of commercially available homeland security technologies.

A significant portion of this research is being conducted in direct collaboration with other Federal agencies including the Department of Homeland Security (DHS), Department of Defense, Department of Energy and the Centers for Disease Control and Prevention. Six coordination meetings have been held between DHS and the NHSRC since January, including a full-day cross briefing with senior leadership of the Science and Technology Directorate of DHS. Additional briefings are scheduled to discuss progress on specific high interest research studies. As a result of the significant interaction with DHS, we are confident that EPA's research effort is appropriately focused as a unique and key component of the overall national homeland security strategy.

As part of our overall homeland security strategy, the Administrator also created a permanent EPA Office of Homeland Security (OHS) to lead and coordinate the development of homeland security activities across EPA. The Office serves as the primary liaison on matters related to homeland security between EPA and the Department of Homeland Security, other Federal agencies, and external organizations; and works with other EPA programs to develop enhanced systems for managing classified information.

Water Systems Vulnerability Assessment and Emergency Response Plans

Question 21. Has the EPA estimated how much it would cost for water systems to perform vulnerability assessments and emergency response plans?

Response. An Information Collection Request for the approximately 9,000 community water systems subject to the requirements of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. When this information has been compiled, the results will be sent to you.

Cost of Water Systems Physical Security Improvements

Question 22. Is there an estimate on how much is required to make the physical security improvements necessary to protect our water infrastructure facilities? Is the EPA's budget adequate to meet these needs?

Response. Under the 1996 Amendments to the Safe Drinking Water Act, the Agency is required to undertake an infrastructure needs survey and submit such survey to the Congress every 4 years. This survey encompasses all aspects of infrastructure and informs our calculations for determining the State allocation for the Drinking Water State Revolving Fund (DWSRF) in the annual budget process. The next survey, which is due to the Congress in February 2005, does include a component on security improvements.

EPA intends to work closely with the States and systems in using the DWSRF for such purposes.

Water Issues

Question 23. What can the EPA do in regard to the following issues? First, Wet Weather Water Quality Standards for receiving streams are needed to realistically determine the impacts of CSO issues. Current water quality standards were developed for dry weather application and were not intended to address wet weather events. Second, reasonable and sincere re-evaluations of "use designation" are not being conducted by the EPA. Third, urban stream habitat is not adequately addressed in water quality standards.

Response. EPA has developed guidance and is working with States which have combined sewer overflow (CSO) communities to integrate the development of affordable, well-designed and operated CSO control programs, implementation of high-priority controls, and water quality standards reviews. The CSO Control Policy published on April 11, 1994 (59 FR 18688) provides that "development of the long-term plan should be coordinated with the review and appropriate revision of water quality standards and implementation procedures on CSO impacted receiving waters to

ensure that the long-term controls will be sufficient to meet water quality standards." The Wet Weather Water Quality Act required, among other things, that permits, orders and decrees which address discharges from a CSO be consistent with the CSO Control Policy and that EPA publish by July 31, 2001 "Guidance: Coordinating CSO Long-term Planning With Water Quality Standards Reviews" (EPA–833-R–01–002, July 31, 2001).

The Guidance outlines processes to assist CSO communities and States integrate the development of the CSO control plans with the review and the evaluation of water quality standards, including the designated uses for the CSO receiving waters. The implementation of CSO controls developed as part of a well designated and operated long term control plan may lead to the determination that a water body has the potential of supporting improved aquatic life. Under this circumstance, States would upgrade their designated aquatic life use for the water body. Alternatively, implementation of a well-designated and operated CSO long term control program may not necessarily ensure the attainment of water quality standards within the CSO receiving waters. Where existing standards cannot be met, CSO communities, States and EPA can use a process described in the Guidance to reach early agreement on the data and analyses sufficient to support both the long term control plan and the water quality standards review. Where available information demonstrates that water quality standards revisions are appropriate, EPA expects that States will make revisions to water quality standards which maintain the highest attainable use while enabling communities to implement a cost-effective control program that complies with permit requirements providing to the attainment of water quality standards.

RESPONSES OF ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Water Infrastructure

Question 1. In your opening statement you said that "core water programs" enjoyed a budget request increase of $55 million for a total of $470 million. This characterization is not reflective of the $500 million drop in funding requests for the Clean Water SRF. Is the Clean Water SRF a "core water program"?

Response. States are currently struggling with budget pressures in their water quality and drinking water programs and are facing expanding workloads and challenges to their programs (e.g., permit backlogs, TMDL court challenges, and petitions to withdraw State program authorizations). In recognition of the impact of budget pressures on implementation of core water programs and resulting challenges States and tribes are facing, EPA is requesting a $55 million increase focused on water quality standards, water quality monitoring and assessment, total maximum daily loads (TMDLs), national pollutant discharge elimination system permits (NPDES), drinking water implementation, and oceans and coastal protection. Most of this increase ($32 million) would be provided to States and Tribes through Clean Water Act Section 106 Grants and public water systems supervision (PWSS) Grants. The remaining increase ($23 million) will help EPA provide guidance and technical assistance to States and Tribes in each of the core program areas.

In addition to the requested increase in the core water programs, the Administration plans to provide an additional $4.4 billion to the Clean Water SRF by extending funding through 2011. This increase in commitment is expected to increase the long-term target revolving level of the Clean Water SRF from $2 billion per year to $2.8 billion per year, a 40 percent increase.

Question 2. What method does EPA use to determine affordability and what is the basis for that method?

Response. EPA's national-level affordability criteria consist of two major components: an expenditure baseline and an affordability threshold. The expenditure baseline (derived from annual median household water bills) is subtracted from the affordability threshold (a share of median household income (MHI) that EPA believes to be a reasonable upper limit for these water bills) to determine the expenditure margin. The expenditure margin is the maximum increase in household water bills that can be imposed by treatment and still be considered affordable. EPA currently uses an affordability threshold of 2.5 percent of MHI. EPA compares projected compliance costs for the median household within a particular small system size category to the available expenditure margin to make the affordable technology determinations and derives available expenditure margins separately for each of the three specified small-system size categories (i.e., 25–500 served, 501–3,300 served, and 3,301–10,000 served). Under the Safe Drinking Water Act (SDWA), EPA does

not make site-specific affordability determinations for systems within a size category.

MHI was selected as the metric for the affordability criteria so that EPA could base its evaluation given a "typical" set of circumstances rather than a worst-case scenario. The value of 2.5 percent for this metric reflects a comparison of the cost of public water supplies for households given other household expenditures and risk-averting behavior. National expenditure estimates were derived to illustrate the allocation of household income across a range of general household expenditure levels. An initial range of 1.5 to 3 percent of the median household income (MHI) for the affordability threshold was based on comparative household expenditures on other utilities, such as telephone services and fuel. The selection of 2.5 percent from this range was based primarily upon the costs of risk-reduction activities. Costs were derived for risk-reduction activities that could be conducted at the household-level in lieu of treatment being performed by the water utility. These risk-reduction activities included point-of-use and point-of-entry treatment options and home delivery of bottled water. The March 2002 Report to Congress on small system arsenic implementation contains more details on the derivation and basis of the national-level affordability criteria.

Question 3. The President requested $850 million for the Safe Drinking Water State Revolving Loan Fund. Several other key drinking water programs that provide assistance to small, rural communities were cut in the President's Budget. I am aware that OMB was working on a governmentwide study of the different programs that provide drinking water system assistance to small, rural communities. To your knowledge, has that review been completed? If so, what was the result? Is that result reflected in the President's Budget?

Response. In June 2002, at OMB's request, EPA, along with the Department of Agriculture's Rural Utilities Service (RUS), the Department of the Interior's Bureau of Reclamation (BOR), and the Department of Health and Human Service's Indian Health Service (IHS), worked collectively and individually with OMB to develop and test the applicability of "common measures" of the effectiveness of Federal rural water programs.

A summary of the study results appears in the Department of the Interior's portion of the fiscal year 2004 President's Budget. In the President's Budget, OMB notes that the four agencies differ significantly in terms of how they provide rural water assistance: The BOR and IHS programs are primarily construction programs, whereas EPA and RUS focus on infrastructure finance. OMB also notes significant geographic and socio-economic differences in the four agencies' respective service areas and service populations. Given OMB's overall conclusion—that there is general overlap in the missions of the four programs—the President's Budget also describes the Administration's commitment to do additional analysis as the basis for streamlining these programs over the next year.

Question 4. One concept that has seemed to garner general support from stakeholders is the creation of a dedicated source of funding for State SRFs. This concept, provided that it included a revenue source that was agreeable to all parties involved, could have the potential to help address our current water infrastructure funding gap. What is EPA's position on a "water pollution trust fund?"

Response. EPA has not taken a position on the creation of a "trust fund," supported by special, dedicated, Federal, State and/or local fees, to finance water and wastewater infrastructure through the State Revolving Fund (SRF) programs. Unfortunately, stakeholders may be uninformed about what a "trust fund" means in the context of dedicated Federal revenues. First of all, the assets of the fund would belong to the Federal Government, and as trustee, the Federal Government can make unilateral changes to the terms and conditions of the "trust." Second, a new fund for water pollution may run into budget scoring difficulties. For these reasons, we believe that developing consensus on an effective dedicated funding source would be difficult.

Question 5. Is an integrated priority list including both point and nonpoint sources of pollution a viable tool to help States direct Clean Water SRF funds to those projects that will have the greatest impact on water quality?

Response. Integrated planning and priority systems are more effective planning mechanisms than the simple ranking of proposed projects that the Clean Water Act requires. Integrated planning and priority setting systems help States use their water quality data to inform SRF project rankings and guide funding decisions. These systems help States rank point, nonpoint source and, where applicable, estuary projects, and they help to ensure that funding goes to each State's highest environmental priority projects. EPA supports State use of CWSRF funds for high pri-

ority water quality projects, and we provide guidance and encouragement to States that voluntarily develop and use integrated planning and priority setting systems.

Question 6. I have read and heard widespread reports of a pending recommendation from the National Drinking Water Advisory Council (NDWAC) recommending an income-assistance program to address affordability issues related to rising water rates. When will this report be released?

Response. In 2002, the National Drinking Water Advisory Council (NDWAC) formed a smaller work group to respond to the charge questions on the national-level affordability criteria. This 18 member work group included representatives of small and large water utilities, small system advocacy and technical assistance organizations, academic experts and consultants, States and local governments, tribes, and environmental and consumer groups. Work group members held five meetings between September 2002 and January 2003, and recently delivered a report of their affordability recommendations to the full NDWAC.

In May 2003 the full committee of the NDWAC discussed the work group's recommendations on affordability, evaluated the final report, and considered changes. EPA anticipates receiving the final affordability report and releasing it to the public by July 2003.

Water Quality

Question 7. One of the most important components of any water quality program is water quality monitoring. What is EPA doing to improve the quality and quantity of water quality measurements?

Response. EPA is working to enhance the credibility of water quality monitoring data and information so that it drives better management decisions at all levels—nationwide, regional, State and tribal, and watershed. We want to provide to the public better information on how clean our waters are and whether the money we are spending to improve water quality is being used effectively.

The Agency is building on previous efforts, including the work of the Interagency Task Force on Monitoring; collaborating with existing monitoring efforts such as those of U.S. Geological Survey, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration; and, of course, working with State agencies in these efforts. EPA is taking into account the recommendations on water quality monitoring made in numerous program reviews done by the General Accounting Office, Inspector General, and National Research Council, etc.

Activities to improve water quality monitoring are focused in four main areas: improving monitoring designs for all geographic scales and for different water body types; improving State and tribal monitoring programs, maximizing use of all data and information; expanding accessibility and use of the data; and improving communications about the value and results of monitoring data.

The fiscal year 2003 appropriations for EPA contained $4 million for grants to interested States to establish a long-term ambient monitoring and assessment framework at relevant geographic scales. These funds will help EPA and the States to design a monitoring network that will provide credible data and information to answer the questions: how clean is our water, and is our being money being spent in the most effective manner.

SWANCC Decision

Question 8. How much in funding has EPA allocated for the rulemaking related to the definition of waters of the United States?

Response. Agency program offices have only recently received their budget figures and we are still making intra-agency allocation of funds for particular projects. Additionally, the comment period for the ANPRM did not close until April 16, and we are just now getting underway with the process of summarizing and analyzing the comments. That process will help inform us as to what issues may need to be addressed through proposed rulemaking, which in turn will affect how much funding would be needed.

Question 9. In the Advanced Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States, EPA and the Corps explicitly ask for comment in section five "as to whether any other revisions are needed to the existing regulations on which waters are jurisdictional under the CWA." The presence of this request for information clearly expands the scope of your Advanced Notice of Proposed Rulemaking to include all waters under the CWA. The reason stated for this additional solicitation was that is was "boilerplate" language included in ANPRMs and that the Agency would receive comments outside the scope of the solicitation, therefore justifying the expanded request. In order to verify that this expanded solicitation is standard for your agency's ANPRMs, could you please

provide copies of EPA-issued ANPRMs from the last 5 years with examples of this language noted in each.

Response. ANPRMs are an extra step, not required by the Administrative Procedure Act, to identify key issues and obtain early public input. They often cast a broad net to ensure all relevant issues are identified early on for agency consideration. As was the case with the "Waters of the United States" notice, ANPRMs are frequently drafted so as to solicit public input not just on some specifically identified core issues, but also explicitly invite comments more generally on any other related issues the public wishes to call to our attention. Set out below are some examples from EPA's most recent Regulatory Agenda:

MTBE ANPRM—65 FR 16093 (3/24/00), Pg 16096

"The remainder of this ANPRM outlines the major elements of the problem and its potential solution. EPA invites comment from all interested parties *on these and any other matters relevant* to addressing the risk of MTBE to the nation's drinking water resources." Pg 16106

"VI. Specific Requests for Comment, Data, and Information

Interested persons are invited to comment on any issue raised in this ANPRM. The Agency is particularly interested in receiving additional information and/or comments addressing the following issues:"

Mercury bearing waste ANPRM—64 FR 28949 (5/28/99), Pg 28962

"D. Request for Comment

The Agency seeks comments on the viability and parameters of these alternative technologies and any other technologies not specifically mentioned in this ANPRM."

Water Quality Standards ANPRM—63 FR 36741 (7/7/98), Pg 36742

"This ANPRM identifies specific issues on which EPA solicits comment. In addition to the specific issues on which EPA solicits comments, EPA is interested in comments on any other aspects of the program." Pg 36748

"While the following discussion describes specific areas and issues for public review, the public is welcome to comment on any aspect of the water quality standards program."

Question 10. The joint EPA and Corps guidance regarding the Supreme Court's decision in the SWANCC case has raised concerns. The guidance states that where the sole basis for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross State lines in their migration, the EPA and the Corps are precluded from asserting CWA jurisdiction. However, the guidance states that neither agency will assert jurisdiction over isolated wetlands that are both intrastate and non-navigable where the sole basis available for asserting CWA jurisdiction rests on any of the factors listed in the "Migratory Bird Rule".

The "Migratory Bird Rule" contains four factors to consider when asserting jurisdiction over intrastate waters:

"a. Which are or would be used as habitat by birds protected by Migratory Bird Treaties; or

"b. Which are or would be used as habitat by other migratory birds which cross State lines; or

"c. Which are or would be used as habitat for endangered species; or

"d. Used to irrigate crops sold in interstate commerce."

Could you please provide the Agencies' rationale for taking the entire "Migratory Bird Rule" out of the Agencies' jurisdictions and why the ANPRM did not solicit comments on the scope of the "Migratory Bird Rule".

Response. At the outset, we wish to note that the so-called "Migratory Bird Rule" is actually preamble language setting out some illustrative examples of interstate commerce factors rather than being an actual rule itself. See, 51 Fed. Reg. 41217 (Nov. 13, 1986); 53 Fed. Reg. 20765 (June 6, 1988). The January 2003 guidance provides that neither agency will assert Clean Water Act jurisdiction over isolated intrastate nonnavigable waters solely on the basis of the factors listed in that preamble language. The January 2003 guidance sets out the rationale for this. It first discusses at some length the logic and reasoning of SWANCC and then explains: "SWANCC calls into question whether CWA jurisdiction could now be predicated on the other factors of the Migratory Bird Rule." 68 Fed.Reg. 1991, 1995–1996 (January 15, 2003). We also wish to note the ANPRM encompasses comment on the relevance of factors such as those listed in the "Migratory Bird Rule." The very first question posed by the ANPRM asks not just about the jurisdictional factors contained in the actual "(a)(3)" regulations, but also specifically asks whether "any other factors provide a basis for determining CWA jurisdiction over isolated, intra-

state, non-navigable waters." The factors in the "Migratory Bird Rule" are embraced by that language; in addition, as your earlier question indicates, the agencies also sought comment ore generally on other relevant jurisdictional issues, which again would include "Migratory Bird Rule" factors.

Question 11. In addition, the guidance directs field staff to seek formal project-specific Headquarters approval prior to asserting jurisdiction over isolated waters that are both intrastate and non-navigable, including permitting and enforcement actions. This direction is troubling because; (1) it gives complete discretion to the field staff to decide whether or not to regulate any isolated, intrastate non-navigable water; and (2) creates an additional step that could add unnecessary delay in permitting and enforcement.

Could you please provide information on the number of permits that will be effected by this guidance, an estimate of the number of future permits that will be effected during the rulemaking process, and the estimated time it will take for a permitting or enforcement action subject to the new Headquarters approval, to go through the process, and a description of the procedures that field staff will use when seeking Headquarters approval?

Response. It is not feasible at this point to accurately predict the number of permits affected by the guidance provisions for project-specific Headquarters approval. While no formal procedures have been separately issued, the field may raise issues consistent with existing practices for jurisdictional matters. We believe the number will be low, however, for at least two reasons. First, the process involves only those waters that are intrastate, and isolated, and non-navigable. Actions on waters that do not meet all three of these criteria do not require Headquarters approval. Second, based on our experience during the 2 years between the SWANCC decision and issuance of the guidance, we do not anticipate any future volume to be such that Headquarters review and approval would result in undue delays.

We also note that this guidance provision does not give discretion to field staff to decide whether or not to regulate any isolated, intrastate non-navigable water. Rather, it is intended to ensure that field staff make such decisions in a consistent manner across districts, as well as to provide valuable information to headquarters about real world situations involving such waters, whose jurisdictional status has been called into question by the Court's decision.

Question 12. In your opening statement, you stated that "tens of thousands of acres" of wetlands could potentially fall outside the protection of the Clean Water Act. EPA has not to date formally produced any information quantifying how many acres of wetlands would fall outside of Clean Water Act jurisdiction as a result of the SWANCC decision. What is EPA's estimate on the number of acres that will fall out of the Clean Water Act's jurisdiction and what information did EPA use to calculate this number?

Response. At present, there is no definitive national estimate quantifying wetland acreage potentially no longer jurisdictional under the CWA in light of SWANCC. One of the purposes of the ANPRM was to help us in our estimations by soliciting information, data, or studies from the public, scientific community, and Federal and State agencies on the extent of potential SWANCC-related impacts to aquatic resources. One existing government estimate of geographically isolated wetlands may be found in the U.S. Fish and Wildlife Report titled "Isolated Wetlands: A Preliminary Assessment of Their Status and Characteristics in Selected Areas of the United States." That study, in essence, identifies for the selected sites those wetlands which appear to be geographically isolated. However, not all of these would necessarily be non-jurisdictional under SWANCC, nor are they necessarily subject to conversion even if non-jurisdictional. One way of looking at the issue using presently available information is to consider Corps of Engineers data for the section 404 permitting program. That data indicates that before SWANCC, wetlands losses prior to mitigation under individual and general permits were in the range of 12,000 to 39,000 acres per year for fiscal year 1998 through fiscal year 2000. (See e.g., U.S. Army Corps of Engineers July 2001 Draft nationwide Permit Programmatic Environmental Impact Statement, pg. 4–10, Figure 4.2–1). Only some percentage of those permitted losses would now be non-jurisdictional in light of SWANCC. We are working to develop more refined estimates and anticipate the information gained from public responses to the ANPRM will help us in these efforts.

Stormwater Phase II

Question 13. On December 30, 2002, more than 3 years after the final storm water phase II rule was published, the EPA proposed the extension of the deadline for compliance with this regulation by the oil and gas industry. Your proposal cites new information from DOE as the impetus for this new review. The Department of En-

ergy has collected this data since 1978. Please explain your characterization of this information as new.

Response. When EPA developed the Economic Analysis for the Phase II rule, the information obtained for the analysis showed that most sites were either over five acres, and therefore already regulated, or less than one acre, and therefore would not be covered by the construction permitting requirements of the rule. As the time for permit applications for construction disturbing one to five acres drew nearer, we started receiving letters from associations representing the independent drillers. We also met with members of these groups. They were unanimous in telling us that most of their drill sites disturb between one and five acres. EPA talked to several States and looked for information to verify what we were hearing from the industry. The States with oil and gas activity and the Energy Information Administration (EIA) confirmed what we were being told. We referred to this information as new because it was new to EPA.

Question 14. Your proposal cites 30,000 oil and gas starts per year as the new information requiring an impact evaluation. Why did you choose to use an average of the number of oil and gas starts in 2000 through 2002 as the number of oil and gas starts per year?

Response. We actually took several different averages. Depending on which years are averaged, the number of drill sites varies. Averaging all the years of data available results in an average of over 40,000 sites per year. Our decision did not depend on the specific number of 30,000, but rather on the fact that the number of sites was significantly more than what we had assumed during development of the original Phase II rule (12/8/1999). EPA simply used 30,000 as a number that was illustrative of the potential impact. This was also the number of sites mentioned by industry and States as the expected number of new sites for the next few years.

Question 15. Has EPA reviewed the EIA data collection and analysis procedures to determine if the data you have chosen to use to justify your extension of the applicability of the storm water phase II regulations for the oil and gas industry is valid? If so, what did you conclude? If not, why not?

Response. No, we did not believe this was necessary. As noted above, the figures generated by the EIA data collection and analysis were used to demonstrate the potential impact. Since the quality of the data was commensurate with our use, the data was deemed appropriate.

Question 16. This data also includes both onshore and offshore wells. Please explain why you have included offshore wells as part of justification for changes to a regulation dealing with storm water runoff?

Response. We were not originally aware that off-shore sites were included, since the EIA data does not make this distinction. When we checked on this issue, we found that offshore wells are included, but they are a very small part of the total. In the past decade, 400 to 900 wells per year were completed in Federal offshore waters. The Minerals Management Services (MMS) of the U. S. Department of Interior is responsible for leasing development blocks and managing petroleum royalty revenues derived from oil & gas production on the U.S. offshore waters. The MMS reports that a total of 904 oil & gas development wells were drilled on Federal offshore leases in 2000. Based upon historical data, 95 percent of all oil and gas wells drilled each year in the United States are located onshore.

Question 17. In its Information Quality Guidelines, EPA states that "There are many tools that the Agency uses such as the Quality System, review by senior management, peer review process, communications product review process, the web guide, and the error correction process." EPA also indicates that it seeks input from experts and the general public, and that it consults with groups such as the Science Advisory Board and the Science Advisory Panel. Which of these tools were used in preparing the December 20, 2002 proposed regulation regarding the extension of the deadline for the phase II storm water program for the oil and gas industry?

Response. As with all our rules, the December 20, 2002 proposed regulation was available for public comment and we did not receive any comments questioning the 30,000 number. As mentioned above, we sought input from the experts, the States that regulate the oil and gas industry, various groups that represent the industry, and the branch of the US government that collects data about the industry. The rule was also reviewed by senior management. EPA does not believe that consulting with the Science Advisory Board or the Science Advisory Panel would have been appropriate for this type of regulation.

Question 18. The EPA Information Quality Guidelines contain a section entitled, "Does EPA Ensure and Maximize the Quality of Information from External Sources?" It indicates that since 1998, the use of environmental data collected by others or for other purposes has been within the scope of the Agency's Quality Sys-

tem. Please explain how the data used by EPA to justify the December 20, 2002 proposed regulation regarding storm water phase II met the standards of this system before being published in the Federal Register.

Response. The information used in this rulemaking was a count of an expected number of oil and gas starts. As explained above, EPA made an assumption in 1999 that was later called into question by States and the oil and gas industry. This new information was validated by data from DOE and was not challenged during the rule's public comment period. Consistent with EPA's Quality system, the quality of the data was deemed appropriate for its use in this rulemaking.

Question 19. On November 14, 2002 I sent you a letter with 30 of my colleagues urging a quick resolution to the question of whether or not communities covered by the storm water phase II regulation can continue to use Clean Water Act section 319 funds. The 107th Congress passed legislation allowing these communities to use section 319 funds for fiscal year 2003. Should this change be made permanent?

Response. We are still reviewing this issue and have no recommendation at this time.

Question 20. On January 23, 2003, you sent us a letter indicating that you are continuing your review of this issue. How long has this review been underway?

No response.

Question 21. The storm water phase II regulations went into effect on March 10, 2003. They have been in place since 1999. Do you plan to complete your review before the regulations go into effect? Do you anticipate completing it before the end of fiscal year 2004?

Response. We anticipate completing our review in the near future.

Water Quality Trading Policy

Question 22. This past January, EPA released its final Water Quality Trading Policy Statement outlining how trading might occur. The Policy states that, "EPA believes that the Clean Water Act provides authority for EPA, States, and tribes to develop a variety of activities to control pollution, including trading programs" without articulating where the Act authorizes such activity. In a letter from Deputy Assistant Administrator Ben Grumbles to Congressman Peter Defazio on the question of legal analysis done to ensure the legality of water trading as it relates to authorized activities under the Clean Water Act, the EPA states that, "the Office of General Counsel . . . has not prepared any formal opinion or written analysis regarding the legality of water quality trading." No provision of the Clean Water Act mentions water quality trading as a means to comply with NPDES permits, water quality standards, or TMDLs. In issuing the policy EPA's Office of General Counsel would have analyzed the policy as it relates to the Clean Water Act before signing the policy. I must assume that OGC had some rationale for approving the policy. What specific provisions of the Clean Water Act and its regulations specifically provide EPA with the authority to develop trading programs to meet the requirements of the Clean Water Act? If there is no explicit authority to do so, what authority did EPA use to assert that EPA is authorized to use water quality trading under the Clean Water Act (1) in unimpaired waters, (2) in impaired waters prior to the development of a TMDL, and (3) under an approved TMDL?

Response. The Clean Water Act, 33 U.S.C. § 1251, et seq. (CWA) and its implementing regulations establish a legal basis and authority for trading to achieve and maintain water quality standards. EPA's Water Quality Trading Policy provides States with guidance on how trading may occur consistent with the CWA and its implementing regulations. EPA notes that the policy does not contemplate that EPA will develop a trading program.

To understand the legal basis for trading in unimpaired waters, in impaired waters prior to the development of a total maximum daily loads (TMDL), and under an approved TMDL, it is necessary to understand how water quality standards establish the foundation for water quality trading to occur. Section 303(c) requires States and tribes to adopt water quality standards for waters within their boundaries. The level of water quality that must be attained and protected is established by these standards. Water quality standards are composed of three parts: (1) designated uses, e.g., protection of fish and wildlife, recreation and drinking water supply (40 C.F.R. 131.10); (2) numeric or narrative water quality criteria to protect those uses (40 C.F.R. 131.11); and (3) an antidegradation policy (40 C.F.R. 131.12). When a water quality standard is approved or promulgated by EPA it becomes the basis for establishing TMDLs and water quality-based effluent limitations in National Pollutant Discharge Elimination (NPDES) permits (40 C.F.R. 131.21).

The second critical concept and foundation for water quality trading is the requirement under the CWA that NPDES permits contain water quality-based efflu-

ent limits as stringent as necessary to meet water quality standards (CWA Section 301(b)(1)(C)). These water quality-based effluent limitations provide the baselines for point sources to trade. A baseline is the level below which a reduction is made to create a pollutant reduction credit. The Water Quality Trading Policy (Section III.D.) encourages sources to create pollutant reduction credits by making reductions greater than required to meet a regulatory requirement. A point source may do so by reducing its discharge below the level necessary to comply with a water quality-based effluent limit based on a TMDL or other analysis. The policy encourages reductions greater than would otherwise be achieved.

All water quality-based effluent limitations, including alternate or variable limits that may apply where trading occurs, are subject to CWA section 301(b)(1)(C). EPA has promulgated regulations specifying when such water quality-based effluent limitations are necessary and how such limitations are to be derived. Among other things, EPA's regulations require the permitting authority to ensure that:

> (A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and
>
> (B) Effluent limitations developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7. (40 C.F.R. § 122.44(d)(1)(vii) (emphasis supplied)).

If a water quality-based effluent limitation is consistent with the requirements of CWA section 301(b)(1)(C) and EPA's regulations at 40 C.F.R. § 122.44(d)(1), then the limitation is lawful. Nothing in the CWA prohibits the issuance of a water quality-based effluent limitation that meets the requirements of CWA section 301(b)(1)(C) and EPA's implementing regulations simply because the limitation is based on a trade. By the same token, if a trade-based effluent limitation does not comply with the requirements of CWA section 301(b)(1)(C) and 40 C.F.R. § 122.44(d)(1), then it would be unlawful and it cannot be contained in an NPDES permit. See Section 402(a)(1). Nothing in the Trading Policy changes this.

Under EPA's Water Quality Trading Policy, water quality standards established to protect designated uses are the baseline for generating pollution reduction credits. (See Section III.D). EPA's Water Quality Trading Policy does not support trading that would cause an impairment of designated uses, adversely affect a drinking water supply or exceed a cap established by a TMDL (Section III. F.5.). The policy encourages sources to create a pollution reduction credit by making reductions greater than those required to meet water quality-based effluent limitations. These "surplus" reductions could then form the basis of a trade. For example, where a TMDL has been established the point source effluent limitation based on the waste load allocation, and nonpoint source load allocation, would establish the baselines for generating a pollution reduction credit. In order to generate a credit, a source would not only need to reduce loadings to the allocation set by the TMDL (or resulting effluent limitation) but must surpass that level before a tradable credit could be created. A source buying a credit would then be able to increase its discharge only in the amount of the "surplus" generated by the other source. The result would be that, at a minimum, the post-trade loadings from the two sources would be equal to or, depending on the cap and trading program design, could be less than the total loadings that would have been discharged by the two sources in the absence of a trade. It is important to emphasize that a use of credits that would result in any impairment of a designated use would not assure the attainment of water quality standards and, therefore, would not be authorized under CWA Section 303(d)(4)(A) even if the cumulative load from the trading partners is equal to or less than it would have been without the trade.

Trading In Unimpaired Waters. For waters where the level of water quality equals or exceeds the level necessary to protect designated uses, a water quality-based effluent limitation can be developed to reflect the purchase of a credit only if such revision is consistent with the applicable antidegradation policy (CWA Section 303(d)(4)(B)).

The Water Quality Trading Policy supports trading for the purposes of maintaining levels of water quality higher than necessary to protect and support designated uses consistent with Federal antidegradation policy (Section III.E.1.) For example, subject to a State's antidegradation policy, trading could potentially be used to offset new or increased discharges through actual pollutant reductions obtained from other sources—so that no lowering of water quality occurs.

Trading In Impaired Waters. Where water quality standards have not been attained, water quality-based effluent limitations based on a waste load allocation con-

tained in a TMDL or other wasteload allocation may be revised if the cumulative effect of all such revised limitations will assure attainment of water quality standards (CWA Section 303(d)(4)(A)). This provision assumes that the limitations being revised to reflect a trade were written in compliance with the requirements of CWA Section 301(b)(1)(C). As such, the pre-trade effluent limitations would be calculated at levels as stringent as necessary to achieve water quality standards. It follows, therefore, that revisions to those original limitations also will assure the attainment of water quality standards. Once again, however, it is important to emphasize that a use of credits that would result in the impairment of a designated use would not assure the attainment of water quality standards and, therefore, would not be authorized under CWA Section 303(d)(4)(A) even if the cumulative load from the trading partners is equal to or less than it would have been without the trade.

The policy (Section III.E.2.) supports pre-TMDL trading in impaired waters to achieve progress toward or the attainment of water quality standards. For example, EPA supports individual trades that achieve a net reduction of the pollutant traded or watershed-scale trading programs that reduce loadings to a specified cap supported by baseline information on pollutant sources and loadings.

Trading Where There is a TMDL. CWA Section 303(d)(4)(A) specifically contemplates the adjustment of water quality-based effluent limitations based on a TMDL even where the adjustment might make one set of limitations less stringent than it otherwise might have been, see CWA 402(o)(1), as long as the cumulative effect of the revisions assures the attainment of water quality standards. For impaired waters for which a TMDL has been approved or established by EPA, a cap on the pollutant causing impairment is included in the TMDL, which under CWA Section 303(d)(1)(C), must be established at a level necessary to meet water quality standards. The trading policy (Section III.E.3.) supports trading that is consistent with the assumptions and requirements upon which the TMDL is established. (That test is derived from EPA's regulations at 40 CFR 122.44(d)(1)(vii)(B)). Under those circumstances EPA expects that the cumulative effect of the revised water quality-based effluent limitations will continue to assure the attainment of water quality standards. The policy does not support any trading activity that would delay implementation of a TMDL, that would cause the combined point source and nonpoint source loadings to exceed the cap included in the TMDL, or that would cause an exceedance of water quality standards (e.g., impairing designated uses).

Question 23. The Water Trading Policy also states that EPA, "does not currently support trading of pollutants considered by EPA to be persistent bio-accumulative toxics (PBTs)". However, because EPA chose to issue this document as a policy statement rather than a regulation, it does not have any legal enforceability. Isn't it true, then, that EPA could not prevent a watershed from initiating a trading program of PBTs or other toxics such as mercury even though the policy states that EPA does not support such programs?

Response. The CWA and its implementing regulations establish a legal basis for establishing water quality standards, issuing NPDES permits and developing and implementing TMDLs that would form the framework for water quality trading. Therefore, it is possible that trading of PBTs or other toxics may occur but only if the trade is consistent with all applicable provisions of the CWA and Federal regulations.

Question 24. Late this past year, EPA staff informed my staff that the then forthcoming water quality trading policy would include limits on the portion of pollutant load reductions a permit holder could meet through trading in order to minimize hotspots. In addition, the proposed water quality trading policy statement included a provision that explicitly addressed the risk of pollution hotspots stating, "Any use of pollutant reduction credits or allowances that would cause a localized impairment of existing or designated uses at the point of use, or that would exceed an in-stream target established under a TMDL is not acceptable."

However, this policy includes no mention of trade limitations on individual permit or any other conditions to mitigate the risk of localized impairments of water quality. An e-mail from EPA staff to my staff states that the deletion of those provisions was not intentional and must therefore have been an unintended by-product of the extensive editing done between the proposed and final policies. If the deletion of the phrase was not intentional, will EPA put back into the policy conditions that would prevent the development of a trading programs that cause localized impairments of water designated uses and water quality standards?

Response. The provision "Any use of pollutant reduction credits or allowances that would cause a localized impairment of existing or designated uses at the point of use, or that would exceed an in-stream target established under a TMDL is not acceptable" was revised in response to comments received during the public comment

period. Several comments pointed to the fact that the term "localized impairment" was not defined in either the proposed policy or EPA's regulations and therefore was unclear. To address this and other comments, a number of changes were made throughout the policy. A decision was made not to retain or introduce undefined terms. This led to deleting the words "localized impairment" and "in-stream target." A number of other edits were made to emphasize the need for consistency with water quality standards. Other edits included writing a specific section on protecting designated uses (Section III.F.5.) and adding language on mixing zones (See Section III.C.). In any case, the policy's repeated emphasis on the need to protect water quality standards is intended to indicate that the policy does not support any trading that would cause localized impairment.

EPA's trading policy contains numerous provisions emphasizing that trading should maintain water quality standards (including designated/existing uses) throughout the trading area. The clear implication of this is that trading activity must avoid locally high pollutant concentrations that would cause an adverse impact. Although the phrase "adverse localized impacts" does not appear, the intent of the policy is clear that trading may not cause high localized concentrations of pollutants that would exceed standards. The relevant provisions are given below with emphasis provided in bold. In addition to these numerous references in the trading policy, EPA's' implementing guidance for watershed-based permits and TMDLs will stress that re-allocations must not create locally high pollutant concentrations.

- p. 4 Establishing defined trading areas that coincide with a watershed or TMDL boundary results in trades that affect the same water body or stream segment and helps ensure that water quality standards are maintained or achieved throughout the trading area and contiguous waters.
- p. 4 EPA believes that such trades may pose a higher level of risk and should receive a higher level of scrutiny to ensure that they are consistent with water quality standards.
- p. 4 Where State or tribal water quality standards allow for mixing zones, EPA does not support any trading activity that would exceed an acute aquatic life criteria within a mixing zone or a chronic aquatic life or human health criteria at the edge of a mixing zone using design flows specified in the water quality standards.
- p. 7 Protecting Designated Uses. EPA does not support any use of credits or trading activity that would cause an impairment of existing or designated uses, adversely affect water quality at an intake for drinking water supply or that would exceed a cap established under a TMDL.
- p. 7 Public Notice, Comment and Opportunity For Hearing. Notice, comment and opportunity for hearing must be provided for all NPDES permits (40 CFR 124). NPDES permits and fact sheets should describe how baselines and conditions or limits for trading have been established and how they are consistent with water quality standards.
- p. 7–8 Antidegradation. Trading should be consistent with applicable water quality standards, including a State's and tribe's antidegradation policy established to maintain and protect existing instream water uses and the level of water quality necessary to support them, as well as high quality waters and outstanding national resource waters.
- p. 8 EPA does not believe that trades and trading programs will result in "lower water quality" as that term is used in 40 CFR 131.12(a)(2), or that antidegradation review would be required under EPA's regulations when the trades or trading programs achieve a no net increase of the pollutant traded and do not result in any impairment of designated uses.
- p. 11 Environmental evaluations should include ambient monitoring to ensure impairments of designated uses (including existing uses) do not occur and to document water quality conditions.
- p. 11 The results of program evaluations should be made available to the public. An opportunity for comment should also be provided on changes to the program as necessary to ensure that water quality objectives and economic efficiencies are achieved, and that trading does not result in an impairment of designated uses (including existing uses).

Question 25. The Policy states that "EPA does not support any trading activity that would cause a toxic effect, exceed a human health criterion or cause an impairment of water quality . . . [and that] EPA does not support trading of persistent bio-accumulative toxic pollutants at this time." Does EPA plan to support trading of PBTs in the future? If so, what is the timeline for the development of that policy? Does EPA plan to initiate pilot programs or any other program to pursue trading programs for persistent bio-accumulative toxics? If so, what are they?

Response. At this time EPA has no plans to develop a policy to support trading of PBTs nor does EPA plan to initiate any pilot programs to pursue trading of PBTs.

The only PBT trading pilot we are aware of is a project to consider whether trading could be used to offset a discharge of mercury from the Sacramento Regional Wastewater Treatment Plant (SRWTP). The plant's NPDES permit, issued by the State of California, requires the plant to identify possible sources of mercury offsets if the plant discharges more than 5.1 pounds per year of mercury. The pilot project was funded by EPA in 2002 and will consider possible approaches to and sources of mercury offsets that could potentially fulfill the requirements of the NPDES permit.

Question 26. The Policy states that EPA, "would support trades that involve pollutants other than nutrients and sediments on a case-by-case basis." What will be the EPA's process for evaluating these cases? Will these examinations take into account localized concentrations of pollutants as a result of pollutant trading? Will they examine the effect of trading toxic pollutants on the public and wildlife? Does EPA have requests pending to approve a trading program for substances other than nutrients or sediments? If so, would you identify them? Does EPA anticipate receiving requests for approval for a trading program for substances other than nutrients and sediments in the near future? If so, can you identify any specific requests that will come?

Response. The CWA and its implementing regulations provide the legal basis for evaluating any potential trade. These evaluations will, among other things, consider whether trading would result in any impairment to designated uses (e.g., impacts on aquatic life or people) or localized violations of water quality standards. In terms of process EPA expects that, as has been the case with virtually all trading programs, EPA regional offices will be consulted in the development of future trading programs. In addition, EPA will continue to exercise review and oversight authorities via NPDES permit oversight and TMDL approvals.

EPA anticipates that the greatest opportunities for trading will occur in the context of TMDLs. EPA will review TMDLs and exercise its oversight authority to ensure that any TMDLs that include provisions for trading are consistent with the CWA and all applicable Federal regulations.

Currently, we are not aware of any requests for EPA to approve a trading program that involves substances other than nutrients or sediments.

Question 27. The Policy states that, "EPA supports trading that involves nutrients or sediment loads. In addition, EPA recognizes that trading of pollutants other than nutrients and sediments has the potential to improve water quality . . . if trades and trading programs are properly designed." What conditions and requirements will EPA implement when evaluating whether a trading substances other than sediments and nutrients (such as toxics)?

Response. The CWA and its implementing regulations provide the legal basis for evaluating any potential trade. These evaluations will, among other things, consider whether trading would result in any impairment to designated uses (e.g., impacts on aquatic life or people) or localized violations of water quality standards.

Question 28. The Policy states that, "trading may be used to preserve good water quality by offsetting new or increased discharges of pollutants." If a new source of pollution were to begin discharging pollutants to an unimpaired water body, would other dischargers of pollution need to reduce their aggregate discharge in order to offset the new polluter or would the existence of a trading program allow the new polluter to discharge a level of pollutants that would increase the aggregate pollutant load in the water body but not cause the water body to become impaired?

Response. Federal regulations require States to develop and adopt an antidegradation policy. State antidegradation policies are to be consistent with the Federal policy which requires that, where the quality of waters exceeds levels necessary to support designated uses, that quality must be maintained and protected unless the State finds that allowing lower water quality is necessary to accommodate important development. (See 40 CFR 131.12). EPA's policy (See Section III.E.1.) supports trading to maintain high water quality when trading is used to compensate for new or increased discharges. Thus the trading policy supports reductions of existing pollutant loadings to offset the new or increased load, so that the result is "no lowering of water quality." Nothing in the trading policy changes State antidegradation policies. Thus a State, in applying its antidegradation policy, may decide to authorize a new or increased discharge to a high quality water. However EPA's trading policy encourages States to use trading to offset that increased load. By providing an additional option for protecting high quality waters, while still accommodating important development, the policy may result in fewer State decisions to allow a lowering of water quality.

Question 29. The Policy states that, "EPA does not currently support trading of pollutants considered by EPA to be persistent bio-accumulative toxics (PBTs). EPA would consider a limited number of pilot projects over the next two to 3 years to

obtain more information regarding trading of PBTs." Does EPA have in mind which regions, watersheds, localities, or projects might be candidates for pilot projects under this policy? If so, would you identify them?

Response. With the exception below, EPA is unaware of particular regions, watersheds, localities or projects that might be candidates for PBT trading pilots. EPA is only aware of one PBT pilot trading project: a project to consider whether trading could be used to offset a discharge of mercury from the Sacramento Regional Wastewater Treatment Plant (SRWTP). The plant's NPDES permit, issued by the State of California, requires the plant to identify possible sources of mercury offsets if the plant discharges more than 5.1 pounds per year of mercury. The pilot project was funded by EPA in 2002 and will consider possible approaches to and sources of mercury offsets that could potentially fulfill the requirements of the NPDES permit.

Question 30. The Policy states that, "[The pilot trading projects] initiatives illustrate the importance of voluntary watershed-based partnerships, inter-agency cooperation, and *public participation* in implementation of trading programs" (emphasis added). The Policy does not articulate any requirement or mechanism for public participation during the consideration of a water quality-trading program. What requirements will EPA put in place to ensure public participation in water trading programs?

Response. Requirements for public notice, comment and opportunity for hearing on all NPDES permits and TMDLs, including those that have provisions for trading, are established by the CWA and its implementing regulations. In addition to the opportunity for public participation in trading already provided through NPDES permits and TMDLs, the trading policy (Section III.G.6.) encourages States and tribes to involve the public at the earliest stages of trading program development and to provide easy and timely public access to trading information. As a practical matter, States wishing to develop a trading program will probably need to do so through legislation or rulemaking or by incorporating provisions for trading into core water quality management programs. This mechanism a State uses is a question of State law and policy. EPA's trading policy does not specify which approach a State must use; rather it provides flexibility for States to develop trading programs that include provisions for public participation that the State will choose depending on how it goes about developing a trading program within its jurisdiction.

Question 31. The Policy states that, "EPA will consider including provisions for trading in the development of new and revised technology-based effluent guidelines and other regulations to achieve technology based requirements, reduce implementation costs and increase environmental benefits." Where in the Clean Water Act does EPA have the authority to develop trading programs to meet technology based-standards?

Response. Since 1984, EPA has used trading as a basis for establishing alternative technology-based effluent limitations—known as the "water bubble"—in connection with the Iron and Steel effluent guideline. 40 C.F.R. Part 420. EPA developed effluent limitations for the Iron & Steel point source category based on what it determined to be the best available technology economically achievable (BAT) for particular types of processes and operations. In determining BAT, EPA is authorized to consider a variety of factors, including the cost of achieving the effluent reductions achievable through various technology options. See CWA 304(b)(2)(B). Facilities are required to achieve the BAT effluent limitations applicable to their processes and operations, but they are not required to implement the underlying technology bases at any place in their facilities. See CWA 301(b)(2)(A). Indeed, facilities are allowed under the CWA to achieve their technology-based limitations using technologies that are less expensive than those EPA identified as its BAT basis. The Clean Water Act does not specify the point of compliance monitoring; rather, it leaves that decision to EPA.

In the case of the Iron & Steel regulation, EPA allows each facility with multiple outfalls to apportion (or trade) pollutant loadings among the various outfalls of the facility that are subject to Part 420. This intra-plant trading is authorized under 40 C.F.R. 420.03, commonly referred to as the "water bubble." Under the "water bubble" provision, each eligible facility must continue to achieve the same total mass limitations required by the baseline regulation for a particular pollutant (for example, the regulation authorizes trading zinc for zinc, but not zinc for lead), but has the flexibility to do so through a redistribution of the outfall-specific mass loadings among a combination of outfalls at the facility. There are a number of pollutant-and subcategory-specific restrictions on the use of the "water bubble." These are described in 40 C.F.R 420.03. In addition, the regulation specifically provides that a discharger cannot qualify for alternative effluent limitations if the application of such alternative effluent limitations would cause or contribute to an exceedance of

any applicable water quality standard. See 40 C.F.R. 420.03(d). Note however that the policy is not intended to authorize or encourage trading to meet technology-based standards. On the contrary, the statement from the policy referenced in the question reiterates EPA's position that trading to achieve technology-based standards may only be used when explicitly authorized by regulation, as in the Iron and Steel water bubble provisions, and not based on the more general guidance provided in the policy.

Question 32. How does the option to do water quality trading affect the obligation under the Clean Water Act to develop a TMDL?

Response. Water quality trading does not affect the obligation under the CWA to develop a TMDL for impaired waters. Section 303(d)(1)(C) requires that TMDLs be developed for waters for which technology-based limitations and other required controls are not stringent enough to achieve applicable water quality standards. (See also 40 CFR 130.7(b)(1)). Nothing in the trading policy changes this obligation. Where pre-TMDL trading occurs and achieves a level of reduction necessary to restore impaired uses, then the water body need not be listed as provided under 40 CFR 130.7(b)(1). In addition the policy indicates that EPA does not support any trading activity that would delay implementation of a TMDL.

Question 33. In the Policy, EPA states that trading programs under a TMDL "should be consistent with the assumptions and requirements upon which the TMDL is established." Could you please articulate which specific assumptions and requirements for TMDLs to which the policy is referring?

Response. As a matter of policy EPA believes that trading should be consistent with TMDLs to ensure that water quality standards are achieved. The assumptions and requirements of a TMDL include: 1) the pollutant load (cap) at a level such that the water body can achieve water quality standards, 2) allocations of the cap among sources and/or source categories, and 3) a margin of safety including seasonal variations. TMDLs providing for trading may specify minimum allocations for point and nonpoint sources, trading margins that define the proportion of point source load reductions that is achievable through nonpoint source actions, and/or trading ratios to address uncertainty or equivalence between trades. The trading policy language indicates that trading activity should occur consistent with these and any other TMDL provisions. Finally, EPA notes that all water quality-based effluent limits—including those based on trades—must be "consistent with the assumptions and requirements" of TMDLs. See 40 CFR 122.44(d)(1)(vii)(B).

Watershed Rule

Question 34. Despite the progress of the development of TMDLs under the current rules in a stable regulatory climate, I understand that you are planning to issue a new rule to replace the TMDL currently in place. While we do not have a specific proposal, I understand that the new "Watershed rule" would drop the requirement for States to include an implementation plan, provide States with greater leverage to remove waters from their list of impaired waters, and rescind EPA's current mandatory authority to develop a TMDL when a State fails to do so. How can such a plan make our nation's waters cleaner?

Response. The requirement for an implementation plan in the TMDL was contained in the July 2000 rule, which has never gone into effect and was withdrawn by EPA on March 19, 2003. This requirement never had an impact on the currently in-place TMDL program. Further, EPA's mandatory duty under Sec 303(d)(2) to establish a TMDL if it disapproves a State submission would remain in effect under any revised regulations. As we agree that the program has made progress under the current requirements, we are carefully reviewing whether or not we need to go forward with proposal of the watershed rule.

We believe that the proposal currently under informal inter-agency review would help States address their clean water needs by improving monitoring and increasing scientific rigor of water quality standards attainment determination. It would also enhance tracking and public accountability by providing for a comprehensive listing of all State waters, according to attainment and monitoring status. The requirements for removing a water from the impaired category would be essentially the same as those currently in effect, but in addition, the State would be required to place the water in some other category of the comprehensive list and document its basis for doing so. The proposal would also improve and streamline State water quality management planning processes to ensure that TMDLs are integrated with other all water program activities and result in water quality improvement. Finally the proposal would encourage planning and implementation on a watershed basis.

We are currently consulting with other agencies and are still considering whether to proceed with a rulemaking or to rely on guidance to achieve additional improvement in TMDL program implementation.

Water Security

Question 35. The Bioterrorism Act required that drinking water utilities submit confidential vulnerability assessments to the EPA for safekeeping and examination. What role will DHS play in the examination and storage of those documents currently in EPA's possession and those security documents that will be submitted in the future?

Response. EPA's information protocol was developed prior to the establishment of the Department of Homeland Security (DHS). Experts in the Office of Homeland Security reviewed and commented on this protocol required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act). Because DHS has statutory authority to receive vulnerability assessments, EPA and DHS are in discussions on how to best use DHS's expertise within the limits imposed by the Bioterrorism Act.

Question 36. The strategy for Homeland Security that was published by the Administration last year placed EPA in the lead for water treatment facilities and critical infrastructure. This makes some sense to me because EPA has expertise in the operation of these facilities and now of the dangers involved with some of the chemicals these facilities store, manufacture, or handle. Yet there are some dissenters who have expressed doubt that EPA can appropriately secure any information it obtains. These organizations advocate cutting EPA out of the receipt or review of information pertaining to the security of these facilities. I assume your agency has the ability to secure information, and in fact, I am aware that EPA has received trade secret and confidential information for years and has secured it? Are my assumptions correct?

Response. Yes, your assumptions are accurate with respect to EPA's ability to receive and store confidential information. In fact, a staff member from the Office of Pollution Prevention and Toxic Substances, who is on detail to the Water Protection Task Force and has extensive knowledge and experience in dealing with confidential information, had lead responsibility for developing the protocol for ensuring the confidentiality of data contained in the water systems' vulnerability assessments. In October 2002, a draft protocol was presented to a wide range of stakeholders, including representatives from large, medium, and small drinking water systems, and their concerns were addressed to their satisfaction. The final protocol contains an appendix that describes in detail the Agency's experience in securing such sensitive and confidential information as grand jury deliberations, national security data, and confidential business information submitted by regulated industries.

Question 37. One of the requirements of the Drinking Water security provisions of the Bio-terrorism Preparedness and Response Act requires that water facilities serving over 3,300 people submit vulnerability assessments of their treatment facilities. What does EPA plan to do with these vulnerability assessments? Will they be shared with the Department of Homeland Security for use in its infrastructure protection activities?

Response. Currently, EPA and DHS are discussing formal processes to share information contained in vulnerability assessments. EPA's review of vulnerability assessments and the certification of their completion will focus on compliance with pertinent provisions of the Bioterrorism Act. In addition, we may analyze a subset of these assessments to assist in the future development of additional tools, training, and guidance for water systems in protecting their infrastructure. An appropriate mechanism for DHS involvement needs to be implemented to ensure consistency with statutory requirements. For instance, DHS staff would have to be designated by EPA's Administrator pursuant to the Bioterrorism Act.

Question 38. Can the nation's vulnerabilities to terrorist threat be mapped without inputs such as a vulnerability assessment from key infrastructure sectors such as the water and wastewater sectors?

Response. Given the variety in size and complexity of water and wastewater utilities, vulnerability to terrorist threats for these systems is very site-specific. It is important for the water sector to assess its particular vulnerabilities and work with local governments to ensure that they can both protect the systems within their jurisdiction and respond effectively in case of terrorist or other intentional acts.

Question 39. We understand from some in the drinking water community that some water utilities have objected to the requirement of the Bioterrorism Preparedness and Response Act to submit their vulnerability assessment to EPA. Is EPA aware of any utilities that do not plan to submit vulnerability assessments?

Response. Last summer organizations representing water utilities expressed concern on behalf of some water utilities about the Agency's ability to protect and secure confidential and sensitive data included in vulnerability assessments. EPA's information protocol addressed these issues and these organizations withdrew their

request that vulnerability assessments be sent to the DHS instead of EPA. At this time, EPA has not been informed of any utility that is not planning to send its completed vulnerability assessment to the Agency as required by the Bioterrorism Act.

Question 40. If a water utility refuses to submit their vulnerability assessment to EPA, what enforcement actions does EPA have at its disposal to enforce that provision of law? If a utility fails to submit its vulnerability assessment, will EPA file enforcement actions against those utilities?

Response. Enforcement action is authorized through the Safe Drinking Water Act and enforcement response guidelines have been developed for this purpose. Before such authority is used, EPA intends to send letters to systems that do not submit their vulnerability assessments on or near the statutory deadline that was established according to the size of the population served by each community water system. We expect that such communication will encourage systems to comply expeditiously with the law.

Endangered Species Act

Question 41. EPA and the Services have issued an Advance Notice of Proposed Rulemaking to promulgate counterpart regulations under the Endangered Species Act regarding EPA action in its pesticide regulatory program. Could you provide the fiscal year 2003 amount and the fiscal year 2004 budget request for the ESA part of the pesticide program and any projected cost increases or cost savings as a result of the ANPRM?

Response. Endangered Species consultation is part of the process of registering or reregistering a pesticide, and consequently no separate activity budget is tracked for endangered species; resources are included in the allocation for registration and reregistration. EPA is using existing resources and expertise in ecological risk assessment within the pesticide program and elsewhere here in the Agency to address its pesticide obligations under the Endangered Species Act (ESA).

Through ANPRM the Agency is seeking comments and suggestions for ways to improve the process. The EPA does not have a sense at this time what resources will be needed or changes will take place. One of the priority activities, as announced in the ANPRM, is to work with the Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Department of Agriculture to develop approaches to pesticide endangered species protection that will better integrate existing pesticide endangered species processes.

We expect these efforts to improve the efficiency and effectiveness of consultations on pesticide actions to enhance protection of species that are threatened or endangered and their proposed or designated critical habitat. At the same time, it must be noted that the task confronting the Agency and the Services is large and complex. There are many thousands of combinations of pesticide uses and species that may occur in many different parts of the country. All of these actions require appropriate assessment to assure compliance with requirements of the ESA while minimizing impacts to agriculture.

Air Quality

Question 42. When asked if increasing greenhouse gas emissions will increase the risks of global warming and climate change, you said there is a correlation between atmospheric concentrations and climate change. What is the correlation?

Response. The 2001 National Academy of Sciences Report on climate change stated that: "Reducing the wide range of uncertainty inherent in current model predictions of global climate change will require major advances in understanding and modeling of both (1) the factors that determine atmospheric concentrations of greenhouse gases and aerosols, and (2) the so-called "feedbacks" that determine the sensitivity of the climate system to a prescribed increase in greenhouse gases (Summary). . . . A major limitation of these model forecasts for use around the world is the paucity of data available to evaluate the ability of coupled models to simulate important aspects of past climate. In addition, the observing system available today is a composite of observations that neither provide the information nor the continuity in the data needed to support measurements of climate variables. Therefore, above all, it is essential to ensure the existence of a long-term observing system that provides a more definitive observational foundation to evaluate decadal-to century-scale variability and change (p.24).

Thus, the President has challenged the scientific community to improve our understanding of a number of important uncertainties regarding climate change, including the effect of natural variations in climate, the actual degree and rate of warming, and how some of our actions could impact it.

Some of these uncertainties were listed in testimony before the Senate Commerce Committee last year by Dr. James Mahoney, the Director of the Climate Change

Science Program of the Department of Commerce. He noted that: "Much has been learned about greenhouse gas emissions, abundance in the atmosphere, radiative properties, reaction rates and removal rates; and global climate models have developed to the point of moderate utility as analysis tools for application on a global scale and over long time averaged conditions. However, significant uncertainties remain regarding several issues that are critically important for defining optimal strategies for the management of global change. Among several key uncertainties, the following are illustrative of the continuing need for improved scientific understanding:

- The significant differences in long-term global average temperature changes projected by various well-recognized climate models.
- The relative importance of: (1) carbon-based (black carbon) aerosols; (2) sulfate-based aerosols; and, (3) CO_2 and other greenhouse gases in influencing climate change—each related to differing control strategies.
- The uncertainties in understanding the dynamics of marine ecosystems in the carbon cycle. Typical ocean uptake of CO_2 by biological productivity is many times larger than total global fossil fuel CO_2 emissions. Enhancement of this biological productivity could affect future atmospheric CO_2 levels.
- Major uncertainties in climate-ecosystems interactions, and land use/land cover influences on climate.
- Uncertainties in understanding global water cycles, including the current inability of general circulation models to successfully represent water vapor transport in the equatorial regions.
- The poor regional performance of current general circulation models, which severely restricts the examination of potential global change influences on key regional ecosystems such as bays, estuaries, and inland watersheds."

The Administration, through its climate change research plan, is working to reduce some of these uncertainties in the relationship between increasing atmospheric concentrations of greenhouse gases and climate change.

Question 43. What implications does this correlation you have referenced between greenhouse gas emissions and the risks of global warming and climate change have for your responsibility as EPA Administrator for protecting public health and the environment?

Response. EPA and all of the other executive branch agencies involved in climate change science, technology development, and voluntary emissions mitigation efforts are working together on the President's effective and science-based climate change strategy. This strategy establishes environmentally and economically sensible goals, concrete steps to meet the goals, and a balanced portfolio of research, emission reductions, and international cooperation. The U.S. strategy has three-prongs: slowing the growth of net greenhouse gas (GHG) emissions; laying important technological and scientific groundwork for both current and future action; and, working with other nations to develop an efficient and effective global response. This strategy builds on the Administration's June 2001 commitment to improve our understanding of the causes and potential harms posed by climate change, and to develop technologies that offer promise to significantly slow the growth of emissions. It is also the first step in a long-term commitment to slow and, if the science justifies, stop and then reverse the growth of GHG emissions. Importantly, it takes advantage of our growing experience with building better and more flexible institutions to address environmental problems.

The first element of the United States climate strategy is slowing the growth of our GHG emissions. The President set a national goal of reducing U.S. greenhouse gas intensity (GHG emissions per dollar of GDP) by 18 percent over the next 10 years. Like an absolute emissions target, an intensity reduction of this magnitude requires real effort. Unlike an absolute emission target, an intensity target will not inadvertently hurt our economy. EPA's Climate Leaders program, the DOE-EPA Energy Star program, and other EPA voluntary greenhouse gas programs are working to assist the Nation reach the President's intensity goals.

The second element focuses on creating a solid foundation for current and future policies-investments in science, technology, and institutions. Better science promotes better decisionmaking. Better technology offers the promise to slow emissions growth significantly and more cost effectively. Better institutions enable us to pursue the lowest-cost emissions reduction opportunities, whatever they may be, whenever they arise over time, and wherever they occur both within and across nations. Improvements in the existing voluntary registry of greenhouse gas emissions, along with registered reductions for real emission reductions, are an important part of this institutional foundation. The process for improving the registry involves DOE, EPA, USDA, Commerce, and other Federal agencies working collaboratively in creating

better measurement methods and verification of the different greenhouse gases emitted by a wide variety of sources and activities, providing greater confidence in the reported results, and encouraging firms to take account of their emissions. Registering real emission reductions provides a mechanism that allows firms to avoid being penalized under any future climate policy or be rewarded under any future incentive policy; provide tangible evidence of the impacts of voluntarily adopting advanced technologies; and provide incentives to curb future emissions.

The final element of the President's approach incorporates international efforts, recognizing the critical importance of developing-country participation in any effective international response to climate change. Again, EPA is assisting in a number of bilateral and multilateral efforts that include both near-term efforts to slow the growth in emissions and longer-term efforts to build capacity for future cooperation.

Clear Skies Act

Question 44. You indicated that if Clear Skies is implemented, there will be a reduction over the next 10 years of 12,000 fewer premature deaths than will occur under the current Clean Air Act. Please provide an estimate of the number of people that are dying prematurely every year because of power plant pollution now.

Response. EPA's analyses of the effect of power plant emissions on premature deaths have focused on the incremental benefits of future additional controls on this sector. EPA has not estimated the total number of premature deaths associated with current power plant emissions. Based on analyses by others as well as EPA's incremental analyses to date, the impact from this sector may be in excess of 20,000 premature deaths per year. The research upon which EPA's estimates are based show a rate of change rather than an absolute number.

Question 45. How many of those dying prematurely every year (as estimated in the previous question) from plant pollution will be saved by final regulations the Bush Administration has promulgated under authority of the existing Clean Air Act to date?

Response. Based on available research on ambient air pollution, EPA estimates that premature deaths associated with power plant emissions are overwhelmingly due to fine particle pollution. EPA's first ambient $PM_{2.5}$ standard was adopted in July 1997 and did not clear its final legal hurdle allowing it to be implemented until 2002. Since that time, the Bush Administration has moved aggressively under the existing Clean Air Act to reduce emissions that contribute to fine particle pollution. For example, the Act authorizes EPA to set standards for diesel powered engines, which contribute significantly to fine particle pollution in many parts of the country. The Bush Administration has moved forward to implement very stringent new fuel and engine standards for diesel trucks and buses. In addition, the Administration recently proposed similar standards for non-road diesel fuel and engines that will come into effect in 2007. EPA estimates that, when these standards for on-road and non-road diesel engines and fuels are fully implemented, they will prevent approximately 17,900 premature deaths every year.

The Bush Administration also recognizes that, in order to address the problem of fine particles, power plant emissions of SO_2 and NOx will need to be reduced substantially. This is why the President has proposed the Clear Skies Act, which would reduce these emissions by approximately 70 percent from today's levels. Congressional action on Clear Skies is needed because, under the existing Clean Air Act, EPA has limited authority to regulate existing power plants. In order to reduce power plant emissions of SO_2 or NOx under current law, the Agency would need to go through a long and cumbersome process. Among other things, EPA would need to conduct extensive additional analysis, conduct public hearings and take public comment, and then finalize a rule. This rule would then be subject to litigation, which often delays actual emissions reductions. Even after litigation, States would need to take additional action to decide how specific power plants would be affected by EPA's rule. The only time that the Agency has undertaken such an effort began in the mid–1990's. After almost a decade of rulemaking and litigation, this effort will finally begin to achieve significant emissions reductions in May of 2004, assuming the last round of legal challenges is resolved in EPA's favor, as we expect. The major steps in this process are shown on the attached chart.

The Agency is moving as quickly as possible to develop a regulatory approach for reducing power plant emissions. Although this approach could provide substantial public health benefits, it will fall far short of the benefits that would be achieved under Clear Skies for at least the next decade. [LLA1] In contrast to the lengthy process provided under the current Clean Air Act, the emissions reductions under Clear Skies would start almost immediately upon enactment.

Question 46. How many tons of pollution will not be emitted from power plants over the next 10 years due to regulations promulgated by the Bush Administration under the authority of the existing Clean Air Act?

Response. One of the main reasons we need Clear Skies to pass this year is that, over the next decade, we can get much greater SO_2 and NOx emission reductions from power plants under Clear Skies than we expect under the current Act. EPA has limited statutory authority to reduce power plant SO_2 and NOx emissions over the next decade. Under the current Act, new limits on power plant SO_2 and NOx emissions will be driven in large part by the need to attain the fine particle standards adopted in 1997 and, to a lesser extent, by the need to attain the 1997 8-hour ozone standards. Under current requirements States must establish a monitoring system, collect and quality assure 3 years of data, and recommend to EPA whether areas should be designated attainment or non-attainment for the fine particle standard. By 2004, EPA then must designate areas as in or out of attainment.

To help bring into attainment those areas that will be designated non-attainment, we will need additional limits on SO_2 and NOx emissions. We expect that these limits will be imposed as a result of EPA and State rulemakings to address pollution transport. The most likely model is the NOx SIP Call, in which EPA set statewide budgets for NOx emissions for certain States and then required those States to adopt regulations to meet those budgets. After spending several years working with States to develop a rule, the NOx SIP Call was proposed by EPA in 1997 and finalized in 1998. The rule was challenged and the court stayed the September 1999 deadline for State plan submission. The court upheld the SIP Call in early 2000, and EPA subsequently requested the court to lift the stay of the States' obligation to submit the plans. After the court lifted the stay—which had resulted in a 1-year delay in SIP submission—EPA provided the States with a similar 1-year extension to implement the rule. The rule requires most affected sources to begin reducing emissions in 2004.

To reduce power plant emissions of hazardous air pollutants (principally mercury), EPA is also working on the utility Maximum Achievable Control Technology (MACT) standards, which is currently under discussion by a work group under the Federal Advisory Committee Act (FACA), and is scheduled for proposal in December of 2003 with anticipated promulgation in December 2004. Under this schedule and absent litigation delays, the initial compliance date for the standard would be December 2007 with a possible 1-year extension. At this pre-proposal stage, it is not yet possible to provide a quantitative estimate of the tons of pollution that would be reduced by this standard.

Question 47. In September 2001, EPA told the electric industry that the impending regulatory schedule could include a requirement for States to revise their implementation plans to dramatically reduce sulfur dioxide emissions in 2005 or 2006 (e.g. SOx SIP Call). This would be necessary to achieve timely attainment with the fine particulate standard and to avoid thousands of premature deaths annually. What progress has the Agency made on promulgating this rule?

Response. Whether through legislation or regulation, we will need to reduce SO_2 emissions to bring areas into attainment with the fine particle standard. EPA supports Clear Skies because it would provide greater progress through 2010 in reducing power plant emissions than would the regulatory processes under the current Clean Air Act. Clear Skies would provide cost-effective controls, coordinated fashion, no litigation delay, and certainty to industry. But, since we cannot guarantee that legislation will be enacted, or that the legislation will address all sources of interstate pollution, we are working on a PM Transport Rule. Last fall we established an intra-Agency work group, and have begun planning and conducting various technical analyses that are necessary for such a rule. We are also meeting regularly with State, local, and Tribal government stakeholders to discuss the plans for and results of various technical products. However, this is a long and cumbersome process and will most certainly be litigated. Although this approach could provide substantial public health benefits, it will fall far short of the benefits that could be achieved under Clear Skies through 2010 and cost much more.

Climate Change Research

Question 48. You said that more needs to be done in climate research. The National Academy of Sciences has found that the Administration's draft climate research plan "lacks a guiding vision, clear goals and explicit priorities." The Academy recommended that the plan be substantially revised to enhance efforts to support decisionmaking and set the stage for implementation. However, the fiscal year 2004 budget request includes a zero percent increase for climate change research. How much more should we be spending?

Response. EPA believes that the level of resources in our fiscal year 2004 President's Budget Request for research on global change ($21.5 million) is appropriate. EPA's Global Change Research Program is closely coordinated with the Climate Change Science Program (CCSP), which was created under the auspices of the cabinet-level Committee on Climate Change Science and Technology Integration (CCCSTI).

Question 49. What provisions in the Clear Skies proposal will ensure that toxic hot spots do not result from using a cap-and-trade system for mercury emissions?

Response. When Clear Skies is fully implemented, mercury emissions will be reduced 69 percent from 1999 emission levels—from 48 tons to 15 tons. This cap would limit any possible increases of mercury emissions for the power sector. A national cap for mercury would cap the total emissions of mercury nationwide, unlike the existing act which could result in incremental increases in mercury over time.

Seven years of experience with the Acid Rain Program has clearly demonstrated that market-based cap and trade programs achieve substantial emissions reductions, which significantly and efficiently improve air quality. Analysis of Acid Rain Program results by EPA and independent analysts (Environmental Law Institute, Environmental Defense, and Resources for the Future) have found that these emissions reductions have been achieved without creating hot spots.

EPA's analyses of Clear Skies do not show significant geographic shifts in emissions for any of the three pollutants. EPA intends to undertake additional assessments to further investigate potential local impacts of Clear Skies. Finally, under Clear Skies, States could impose their own more stringent requirements.

Question 50. You testified that the Clear Skies proposal will provide a 70 percent reduction in emissions of sulfur dioxides, nitrogen oxides, and mercury over the next 10 years. Please provide the initial and final years and emission levels which you are using to arrive at this reduction.

Response. When fully implemented, Clear Skies will cap power sector emissions of SO_2 (3 million tons/year), NOx (1.7 million tons/year), and mercury (15 tons/year) at levels that constitute an approximate 70 percent reduction of each pollutant from year 2000 levels. While the final caps for each pollutant are established in 2018, it is projected to take slightly longer to achieve the full emission reductions for these pollutants due to the early reductions and banking provisions included in Clear Skies. According to Clear Skies modeling completed in 2002, Clear Skies will reduce power sector emissions of SO_2 from approximately 11 million tons/year in 2000 to 6.6 million tons/year in 2010 and 3.9 million tons/year in 2020; NOx emissions from 5 million tons/year in 2000 to 2.1 million tons/year in 2010 and 1.7 million tons/year in 2020; and mercury from 48 tons/year in 2000 to 25.8 tons/year in 2010 and 18.2 tons/year in 2020.

Greenhouse Gas Intensity

Question 51. In the budget hearing, and recently, on CNN's "Inside Politics", you characterized the President's global warming policy goal as an 18 percent reduction in greenhouse gas emissions. Please clarify how the voluntary "emissions intensity" approach will result in any real reductions in total emissions.

Response. The Administration's plans for addressing climate change calls for an 18 percent reduction in the greenhouse gas (GHG) intensity of the U.S. economy over the next 10 years. Greenhouse gas intensity measures the ratio of GHG emissions to economic output. This approach focuses on reducing the growth of GHG emissions while sustaining economic growth. It sets America on a path to slow the growth of greenhouse gas emissions, and as the science justifies, to stop and then reverse that growth.

In efficiency terms, the 183 metric tons of emissions per million dollars of GDP that we emit today will be lowered to 151 metric tons per million dollars GDP in 2012. Existing trends and efforts in technology improvement will play a significant role. The President's commitment will thus achieve 100 million metric tons of reduced emissions in 2012 alone, with more than 500 million metric tons in cumulative savings over the entire decade. This goal is comparable to the average progress that nations participating in the Kyoto Protocol are required to achieve.

Mobile Source Toxics Funding

Question 52. Has the Agency requested funds in the fiscal year 2004 budget to conform to its announced schedule of issuing a final rule to reduce emissions of hazardous air pollutants from mobile sources in July 2004, as provided for in section 80.1045 of title 40, CFR?

Response. On April 15, 2003, EPA proposed standards for nonroad diesel engines and fuel. Issuing these standards is likely to be one of the most important actions we can undertake to reduce the risks from mobile sources of hazardous air pollut-

ants (air toxics). We have accelerated our consideration of this issue ahead of a more general mobile source air toxics rule.

EPA did also commit to a new rule by July 2004 that would evaluate the need for and feasibility of additional controls of mobile source air toxics. This rulemaking was to be informed by additional research on "hot spots," as well as the full range of exposure. Although we are making progress on this research and other work to support a new toxics rule, results from two key exposure studies will not be available until December 2003. It will then take about 1 year to develop a proposal informed by these studies. Therefore, our current plan is to propose the new rule in December 2004 and finalize as soon as possible after that date.

Question 53. What steps, on the international level, has the Administration taken to reduce mercury emissions globally?

Response. EPA has been proactive in supporting mercury research on a global scale, and in shaping international mercury policy issues to reduce emissions and uses of mercury.

An important recent activity has been EPA(s leadership in the development of a Global Assessment of Mercury report for the United Nations Environment Programme (UNEP). Based on a suggestion from EPA and the Department of State, the UNEP Governing Council decided in February 2001 to conduct a global assessment of mercury. The assessment, with strong U.S. input, was completed in collaboration with governments, intergovernmental and non-governmental organizations, and the private sector in late 2002, and addressed the following:

- Sources, emissions inventories, long-range transport, chemical transformations, and fate of:
- mercury;
- Production and use patterns of mercury as a global commodity;
- Prevention and control technologies and practices, with associated costs and effectiveness;
- Exposures and effects on humans and ecosystems;
- Ongoing actions and plans for controlling releases and limiting use and exposures; and
- Options for international action.

In February 2003, the UNEP Governing Council accepted the key findings of the Global Mercury Assessment and agreed on a program for international action on mercury. This decision was the result of multi-national negotiations that were led by EPA with support from the U.S. Department of State. The new UNEP mercury program will result in significant action to address mercury releases into the environment, including capacity building activities to characterize mercury pollution sources and to develop appropriate strategies to mitigate them.

The State Department has the lead for organizing followup actions by the U.S. Government in support of the new UNEP mercury program. We anticipate that EPA will have an important technical role in helping other countries to reduce releases of mercury to the environment (primarily air emissions), and also to reduce the demand for, and uses of, mercury that impact human health and the environment.

In addition, the United States has been working with various regional organizations and fora on mercury, including:

- The U.S./Canada Great Lakes Bi-national Toxics Strategy;
- The North American Regional Action Plan for Mercury under the North American Commission for Environmental Cooperation (Mexico, Canada, U.S.);
- The Arctic Environmental Protection Strategy under the Arctic Council;
- The Long Range Transport of Atmospheric Pollutants Heavy Metals Protocol under the U.N. Economic Commission for Europe; and
- The Northeast Mercury Study (Framework for Action) with the Conference of New England Governors and Eastern Canadian Premiers.

EPA is at the forefront of atmospheric mercury research into transformation and fate of mercury to better understand processes for global cycling. This research, in collaboration with other agencies and countries, is being undertaken at Ny Alesund, Norway, Mauna Loa, Hawaii and Cheeka Peak, Washington.

EPA is funding and participating in an Arctic Council project to develop an Arctic inventory for mercury, with a focus on Russia. A pilot co-benefit emissions reduction research project is ongoing in Russia, as is a coal mercury inventory project.

EPA is collaborating with the Department of Energy, under their Memorandum of Understanding with China, to shape an improved emissions inventory and understanding of emission sources for mercury and their characteristics in China. A model is being developed for the Chinese emissions sources and emissions control data, complemented by training on co-benefit emissions reduction approaches. An evaluation of mercury in coal is also ongoing, with USGS partnering on coal testing.

Additionally, a number of emissions reductions, pollution prevention and capacity building projects are in the developmental stage. One of these is international outreach on best practices for the chloralkali sector, in conjunction with international partners in public and private sectors. Another is collaboration with UNIDO, through which EPA has been invited to serve on the Advisory Board, for artisanal mining practices that utilize mercury and contribute mercury emissions globally. Through a Letter of Understanding with Italy, EPA will advance a number of international mercury activities, initially through hosting international workshops on atmospheric transport and fate, including atmospheric transport modeling, and on human health toxicology.

EPA looks forward to shaping and supporting the new UNEP Mercury Program, and will continue to seek partnerships in the public and private sectors to fill important data gaps in our understanding, as well as proactively engage in further pollution prevention, technical assistance and capacity building activities.

Question 54. The section 812 study of the costs and benefits of the Clean Air Act estimates that 6.3 million lives will be saved by Title VI implementation, largely through reductions in skin cancer. This Title protects the stratospheric ozone layer from depletion and implements our compliance with the Montreal Protocol. Recently, you decided that it would be reasonable for the United States to continue consuming about 30 million pounds of ozone-depleting methyl bromide in 2005 and 2006 and perhaps onward. Our treaty commitment says that number should be zero, not 30 percent of our 1991 baseline. What effect would this continued use of methyl bromide have on the number of lives estimated to be saved by Title VI?

Response. I would like to clarify something that seems implicit in your question, which appears to suggest that the U.S. request for a critical use exemption is inconsistent with our treaty obligation under the Montreal Protocol and/or our obligations under the Clean Air Act.

The Montreal Protocol's 2005 phaseout provision for methyl bromide included a specific allowance for the continued use of that substance after 2005 for uses agreed by the Protocol Parties to be "critical uses". The 1998 amendment to the Clean Air Act also changed the absolute 2001 phaseout of methyl bromide, stating that "the Administrator shall not terminate production of methyl bromide prior to January 1, 2005." Further, the Act states that the Administrator shall follow a schedule for reduction and termination that is in accordance with, but not more stringent than, the phaseout schedule to the Montreal Protocol Treaty (CAA 604 (h)). Accordingly, our request to the Parties for a critical use exemption is fully consistent with both our treaty commitment and the Clean Air Act.

Your question also cited the section 812 study relative to the number of lives saved from the implementation of the ozone protection provisions of the Clean Air Act. We are indeed very proud of the enormous health related benefits that have ensued from the implementation of Title VI of the Clean Air Act. As noted, modeled calculations have estimated that full implementation of the Montreal Protocol would save 6.3 million lives. However, since the time of that analysis, a great deal has changed. First, as noted above, the 1998 amendments to the Clean Air Act allowed for exemptions for the production, importation, and consumption of methyl bromide for critical uses in Section 604(b)(6). In addition, it changed the phaseout of methyl bromide from 2001 to 2005 in Section 604(h) of the CAA and provided for exemption for quarantine and preshipment uses of methyl bromide as in Section 604(d)(5) in accordance with the Montreal Protocol. This quarantine and preshipment exemption allows methyl bromide to continue to be used to protect the United States from invasive species that are not found within our borders, such as the Mediterranean Fruit Fly. Also, since the original section 812 analysis was done, the Agency has promulgated rules virtually phasing out certain HCFCs and HBFCs and allowing the continued use of CFCs for metered dose inhalers (as used by asthmatics) until alternatives can be commercialized. We are unable at this time to determine the changes to the calculations of lives saved that would result from the United States receiving a methyl bromide critical use exemption at the level now being requested.

Montreal Protocol: Public Comment on Critical Use Exemptions

Question 55. Will fiscal year 2003 or fiscal year 2004 funds be used so that the public will be able to comment on the "critical use" exemptions that you have applied for to the international body that oversees the Montreal Protocol, before you finalize those uses by rule later this calendar year?

Response. Consistent with our obligation under section 604 of the Clean Air Act, EPA will provide an opportunity for the public to comment on the proposed 2005 distribution of methyl bromide that is exempted by the Protocol Parties on the basis of our 2003 request. Over the coming months, we will conduct outreach to understand the public's views on a potential distribution framework, and we will draft a

proposed framework to facilitate the distribution consistent with any directives of the Parties. We anticipate that most of this initial work will be done with fiscal year 2003 funding. The subsequent work of developing and publishing the specific allocation is likely to be done using fiscal year 2004 funding. However, because the Parties' decisions will not be final before the end of November 2003, this last step is not likely to take place until early 2004.

New Source Review

Question 56. How many Agency FTE's were working on enforcement and compliance with New Source Review requirements in each of fiscal years 2002 and 2003, and how many will be working on it if the President's budget for fiscal year 2004 is approved by Congress?

Response. EPA does not prepare budgets by media. Since the inception of the Government Performance Results Act (GPRA), the Agency has aligned its budget with our strategic Goals and Objectives. Accordingly, EPA does not separately track enforcement of NSR as a budget element. (The New Source Review Program falls under the Agency's Goal 9, "A Credible Deterrent to Pollution," Objective 1, "Increase Compliance Through Enforcement.") Nevertheless, in response to a question raised by Senator Jeffords last summer, Governor Whitman estimated that the Agency had invested more than 200 full-time equivalents (FTEs) in NSR enforcement since 1999, for an average of about 67 FTEs per year. This time period included the discovery process for a number of trials, and the Agency devoted a large portion of its available air enforcement resources toward that effort. Having fulfilled these discovery obligations, personnel have been redirected toward investigating and prosecuting new NSR cases. The number of FTEs currently dedicated to NSR enforcement in the Agency remains consistent with the Governor's original estimate. No change in the overall level of enforcement FTEs is contemplated in the President's fiscal year 2004 budget request.

Question 57. How many cases of non-compliance with the New Source Review program's requirements has the Agency referred to the Department of Justice for prosecution in the last 12 months?

Response. Since April of 2002, EPA has referred twenty-six cases of non-compliance with the New Source Review program's requirements to the Department of Justice for prosecution.

Diesel Retrofit Funding

Question 58. The Administration has requested only a small amount for the heavy duty diesel retrofit program and the clean fuel vehicle procurement program. Wouldn't a larger request be warranted given the health benefits from such conversions and buying cleaner vehicles, especially at the local level and schools?

Response. In fiscal year 2004, projects will continue to focus on reducing PM from older, high-polluting trucks and buses, with a particular emphasis on raising awareness of the problems of children riding to school in older, high-emitting diesel vehicles.

EPA has required the production of low-sulfur diesel fuel that will allow newer control technologies to more effectively reduce harmful diesel particulate emissions. Further, EPA encourages areas to improve school bus emissions by giving credit for such programs in State Implementation Plans.

Also, EPA has established an initiative called Clean School Bus USA: Tomorrow's Buses for Today's Children. This effort seeks to reduce children's exposure to diesel exhaust across the country by: 1) encouraging schools to implement practical policies and practices to eliminate unnecessary school bus idling; 2) installing effective emission control systems on newer buses; and 3) replacing the oldest buses in the fleet with new one.

MACT

Question 59. Will all the final MACT rules be promulgated in this calendar year?

Response. No, there are four remaining MACT rules that are scheduled to be promulgated February 28, 2004. They are:

- Plywood and Composite Wood Products
- Auto & Light Duty Truck Manufacturing (Surface Coating)
- Reciprocating Internal Combustion Engines (RICE)
- Industrial, Commercial, and Institutional Boilers & Process Heaters

Question 60. Recently, there was an article in the Los Angeles Times suggesting that the Agency might not follow the Act's directions to complete the MACT rules, but might instead rely on some type of risk analysis to avoid implementation. What would the legal basis for not completing these MACT rules on schedule?

Response. The article was incorrect. The Agency will issue all statutorily mandated standards. We have proposals that would allow individual sources to comply with these standards by demonstrating that they already pose insignificant risks, rather than simply installing pollution controls. We took comment on those proposals, we are reviewing comments on them, and we look forward to a vigorous discussion. These rules include the Combustion Turbines MACT rule, to be promulgated August 2003, and four other MACT rules to be promulgated February 2004 as follows: Plywood & Composite Wood Products; Auto & Light Duty Truck Manufacturing (Surface Coating); Reciprocating Internal Combustion Engines (RICE); and Industrial, Commercial, and Institutional Boilers & Process Heaters.

Particulate Matter Research

Question 61. Why is there a small cut ($1.5 million) in the research program looking at particulate matter exposure measurement and health effects research which, according to the fiscal year 2004 budget documentation, "will delay long-term epidemiological studies to resolve uncertainties related to PM health effects" and will "reduce the scope of human exposure measurements . . . ?"

Response. EPA decided to delay selected particulate matter (PM) health and exposure research in order to accelerate research necessary to support implementation of the PM NAAQS. In the fiscal year 2003–2004 timeframe, States will begin preparing State Implementation Plans to meet the PM NAAQS. The increase in implementation-related work is to meet the immediate air quality modeling and emission inventory needs of States, Regional Planning Organizations, and EPA's Office of Air and Radiation. The redirection reflects the Agency's commitment to conduct research that addresses priority science needs supporting the Agency's mission.

This shift represents a delay, not elimination, of PM health effects research that is still expected to provide valuable scientific data for future NAAQS decisions. The redirection will not impact planned funding to support long-term epidemiological studies beginning in fiscal year 2004. The delay will not impair EPA's ability to provide meaningful data on long-term epidemiology and human exposure to PM in time for the next revision of the NAAQS.

NAAQS Implementation: Key Milestones

Question 62. Please provide for the record the expected dates and times of key milestones for implementation of the 8-hour and fine particulate matter standards.

Response. Key milestone in the implementation of the 8-hour standard are:

May 2003	EPA proposes implementation rule
July 2003	States/Tribes recommend designations
December 2003	EPA finalizes implementation rule
April 2004	EPA finalizes designations
April 2007	State/Tribal plans due
2007–2021	Range of attainment dates

Key milestones for implementation of the fine particulate matter standard are:

September 2003	EPA proposes implementation rule
February 2004	States/Tribes recommend designations
September 2004	1EPA finalizes implementation rule
December 2004	EPA finalizes designations
December 2007	State/Tribal plans due
2009–2014	Range of attainment dates

Question 63. Please describe the resources, guidance, and funds that EPA will use and provide to the States and communities in FY04 for ensuring that they will be prepared to demonstrate transportation conformity in the event of probable new nonattainment designations under the 8-hour ozone and fine particulate matter standards.

Response. EPA is committed to working with DOT to provide timely guidance to new nonattainment areas before and as they implement the conformity program to avoid any unnecessary delays in transportation projects. We recognize that States and local areas will likely need assistance in understanding and implementing the new guidance and standards and we are prepared to provide help with this transition.

Implementation of the new air quality standards for ozone and particulate matter will necessitate changes in the existing conformity regulation. EPA is currently working on conformity guidance and a rulemaking to address the new standards. The issues addressed in this upcoming guidance and rulemaking include:

- Determining what conformity tests apply before an area submits an air quality plan that includes transportation conformity budgets;
- Addressing $PM_{2.5}$ as a criteria pollutant for conformity; and
- Providing flexibility in implementing conformity under the new standards, as appropriate.

EPA plans to issue this guidance and rulemaking prior to designating areas so that the conformity requirements will be known prior to areas being subject to them. EPA and DOT, as well as stakeholders across the U.S., have a wealth of experience in implementing conformity.

There are also a number of existing training courses that areas may find beneficial as they prepare to address conformity requirements. These courses include:

NTI Conformity Course: The National Transit Institute has been offering a course called, "Introduction to Transportation/Air Quality Conformity" in locations across the country. This is a 21/2 day course designed for staff members of agencies involved in the conformity process and is offered free of charge. To date, this course has been offered 15 times, and attended by approximately 35 people per course. The next scheduled course offering is in May in Charlotte, NC.

MOBILE6 Training: EPA and DOT jointly sponsored 8 MOBILE6 hands-on training courses across the country in 2002, attended by approximately 25 people each. These courses were open to the public and offered free of charge. The training materials for these courses are on the MOBILE6 website and can be downloaded at any time. Other training materials prepared by EPA are also available.

Cooperative Agreement with NARC: EPA and DOT are jointly funding a cooperative agreement with the National Association of Regional Councils (NARC) to provide transportation and air quality planning information to their member organizations and to foster information-sharing between organizations. In addition to providing web-based information and peer-to-peer technical support, workshops have been held specifically for areas experiencing air quality planning requirements for the first time. Workshops included sessions on the air quality planning process, best practices for determining conformity, smart-growth and air quality, using performance measures and project selection criteria, the implementation of the new 8-hour ozone NAAQS, and the health effects of $PM_{2.5}$.

NHI Air Quality Course: EPA and DOT are jointly funding a National Highway Institute course entitled," The Implications of Air Quality Planning for Transportation". This course, recently piloted in San Antonio, is aimed at giving State and local transportation planning professionals a thorough overview of the air quality planning requirements of the Clean Air Act. The course also provides information on the State and local air quality planning processes that should be considered and integrated into the transportation planning process. The course includes modules on air quality standards, stationary and mobile source emissions, emissions inventories, SIP development, transportation and general conformity, transportation control measures, and the linkages between statewide and metropolitan planning and air quality planning.

NHI Estimating Regional Mobile Source Emissions Course: EPA participated on the technical review committee for a new NHI course called Estimating Regional Mobile Source Emissions. The class is aimed at State and local transportation and air quality staff and will cover all aspects of estimating motor vehicle emissions at the local and regional level for SIP and conformity purposes. It is the first course to cover comprehensively all aspects of motor vehicle inventory preparation, from travel demand modeling to emission factor modeling, and should prove useful for staff in new nonattainment areas who have never had to do motor vehicle inventories before.

NHI CMAQ Course: EPA and DOT are jointly funding a NHI course on the Congestion Mitigation and Air Quality Improvement (CMAQ) program. The CMAQ program is important to nonattainment areas because its purpose is to fund air quality beneficial projects that may assist them in demonstrating conformity.

For the two previous significant conformity rulemakings, the initial 1993 and the 1997 amendments, EPA conformity staff held a "roadshow" to explain the requirements of the rulemaking. Each Region invited the transportation and air quality agencies in their jurisdiction for these presentations and in some cases, these sessions were attended by well over 100 people. EPA is considering holding a similar roadshow to explain the conformity requirements to newly designated areas.

Superfund

Question 64a. Administrator Whitman, you were quoted as saying at a January 31, 2003, appearance that "the Administration has taken no position on reinstatement of the [Superfund] tax." Nevertheless, the President's fiscal year 04 budget proposal would replace funds typically generated by the Superfund fees with $1.1 billion from the general treasury.

Does the Administration continue to oppose reinstatement of the Superfund fees?

Response. This Administration is not in favor of creating new taxes. The Superfund tax has now been expired for 7 years and Superfund has continued to operate effectively. EPA continues to aggressively pursue responsible parties to conduct response actions at Superfund sites. It is expected that polluters will continue to pay for approximately 70 percent of the work at new Superfund construction starts.

Question 64b. If so, am I correct that an increasing amount of money would need to come from the general treasury to preserve the level of funding of the Superfund program?

Response. congressional appropriations that fund the Superfund program have historically included General Revenue. Since the tax expired in 1995, Superfund has had to rely more heavily on general revenues to finance the cost of cleanup. It is likely that the trend will continue in the future.

Question 64c. In light of the competing budgetary priorities, what assurances can you provide that Superfund will receive adequate funding from the general treasury in future years to protect public health and the environment?

Response. EPA cannot presuppose funding from Congress. I can assure you, however, that we will work with our Appropriations Committee to help secure appropriate funding in future years. Superfund remains a high environmental priority of this Administration.

Question 65. You testified that one reason the pace of Superfund cleanups has dramatically slowed is that the remaining sites are "larger and more complex than sites we have had to deal with in the past." Given the increased complexity, does the program require increased resources to meet these needs?

Response. The Superfund program is facing a need for additional resources to fund the construction phase of cleanup projects. For this reason, the President's budget requests an additional $150 million for Superfund remedial action activities. These resources will allow the Agency to begin work on 10 to 15 additional new construction projects during fiscal year 2004. and to have a similar number of additional completions in the following 2 years. EPA also anticipates that construction completion accomplishments will increase by approximately 5 per year in fiscal year 2005 and fiscal year 2006 for a 2-year total of 90 (45 per year).

Question 66. In a 2001 report to Congress by Resources for the Future, entitled Superfund's Future: What Will It Cost?, the Superfund program was estimated to need $1.748 billion in fiscal year 04, which is $358 million more than the President's fiscal year 04 proposal. Based on your testimony that increasing remedial action funding by $150 million enables EPA to start 10–15 new construction projects, am I correct that funding Superfund at $1.748 billion would enable EPA to start construction or otherwise accelerate cleanup at 24–35 additional communities across the nation?

Response. The RFF study was designed to estimate the costs of the Superfund program between fiscal year 2000 and fiscal year 2009 based on fiscal year 1999 data and assumptions. The projections are not designed to, nor should they be used to, to make funding decisions.

The $150 million requested for long-term cleanup represents a 65 percent increase over last year. The request is reasonable given the need for resources in other program areas and other national priorities. EPA will continue to evaluate resource needs for Superfund construction and request appropriate funding levels in subsequent years.

Enforcement

Question 67. Could you please provide me with the number of actual enforcement personnel employed by EPA in fiscal years 2001, 2002, 2003, and the requested level in fiscal year 2004. The data should indicated how many persons employed by the Office of Regulatory Enforcement and the Office of Compliance Assurance.

Response. The employee levels for the Office of Enforcement and Compliance Assurance, the Office of Regulatory Enforcement (ORE), and the Office of Compliance (OC) are provided below. OECA's numbers include all headquarters, field, and regional personnel. ORE and OC are two of OECA's headquarters offices and these numbers are separately identified as well as being included in the total OECA numbers.

Program	Fiscal Year 2001 FTE Actuals	Fiscal Year 2002 FTE Actuals	Fiscal Year 2003 Projected FTE Actuals**	Fiscal Year 2004 Request***
Office of Enforcement & Compliance Assurance (OECA)	3,408.4	3,371.4	3,360.0	3,411.3
Office of Regulatory Enforcement*	146	144	159	127.8
Office of Compliance*	148	153	149	135.5

*The on-boards and FTE identified for ORE and OC are also included in the total numbers for OECA.

**Fiscal year 2003 congressional appropriations report language directed EPA to provide $15.2 million to fund additional FTE in the compliance monitoring, civil enforcement, and compliance assistance programs. The earmark funded an increase of 154 FTE for OECA. OECA received the increased FTE in late March 2003 and is in the process of aggressively hiring up to the authorized fiscal year 2003 FTE ceiling.

***The fiscal year 2004 request includes an increase of 100 FTE above the fiscal year 2003 request. The additional FTE will be used for compliance monitoring and civil enforcement activities. These resources will be distributed to individual headquarters and regional offices during the Agency's fiscal year 2004 operating plan process.

Question 68. EPA's report on the fiscal year 2002 Enforcement and Compliance Program raises concerns about the Administration's commitment to enforcing the nation's environmental statutes. Could you please explain why the data reveals substantial declines over the last 5 years in the following ten categories: EPA inspections; Civil referrals to the Department of Justice; Civil Judicial Settlements; Judicial Penalties; Value of supplemental environmental projects; Administrative compliance orders; Estimated pounds of pollutants to be reduced; Pounds of contaminates soil to be treated; Superfund private party commitments; and Superfund orphan share compensation offers.

Response. EPA's fiscal year 2002 accomplishments reflect a vigorous and effective enforcement program, capturing nearly $4 million in injunctive relief through settlements that will go toward the cleanup of polluted sites and protection against further environmental harm; achieving a 26 percent increase in the number of companies self-disclosing environmental violations; treating 2.8 billion gallons of contaminated groundwater, bringing drinking water systems that serve over three million Americans into compliance; and providing assistance to more than one-half million businesses and individuals to help them comply with environmental laws.

Along with normal fluctuations in numbers over time, there have also been changes in the focus of the program that has led to changes in individual output numbers, but not to the Agency's continued commitment to enforcing our nation's environmental laws. Specifically, with regard to the areas mentioned above:

INSPECTIONS

- Fiscal year 1998 was the most active inspection year in EPA history. While the number has declined since then, using 1998 as a baseline is not representative.
- In fiscal year 2002, the policy defining and directing Clean Air Act (CAA) stationary source and CFC inspections changed, and regions/States were credited differently, to provide a one for one count for a Full Compliance Evaluation per facility, which is different from earlier practice where a facility inspection would provide credit for each program covered by an inspection per facility.
- Over the past few years, the Agency has been shifting its focus away from inspecting large numbers of regulated entities—many of which are small businesses with equally small potential to harm to the environment and public health—to instead focus on more complex cases with bigger environmental impacts.

CIVIL REFERRALS

- The gradual drop in the number of cases referred to the Department of Justice over the past 5 years is the result of the Agency's increasing focus on larger, more complex cases. This is evidenced by looking at the value of injunctive relief obtained by the Department of Justice and the Agency over the same period: the highest amounts were collected in fiscal year 2001 and fiscal year 2002. Injunctive relief is often a crucial part of multi-media and multi-facility cases, to correct the identified environmental violations and achieve meaningful results. This demonstrates that in this case, fewer civil referrals does not equate to fewer environmental results.

• The gradual decline in these numbers is also the result of the Agency's increased focus on larger, more complex cases.

• fiscal year 2000 stands out as an anomaly. In that year, EPA first enforced a new requirement for the submission of "Consumer Confidence Reports" under the Safe Drinking Water Act.

Civil Judicial Settlements, Penalties, Value of SEPs, and Estimated Pounds of Pollutants Reduced

• For the most part, each of these categories of numbers is cyclical and there is no pattern to be discerned from the last 5 years. For years during which large, complex cases are settled, the numbers can shoot way up, and when the opposite is true, the numbers are down.

• For pounds of pollutants reduced, fiscal year 1999 was anomalous because that was the year in which EPA reached settlement with seven major diesel engine manufacturers to resolve claims that they installed illegal computer software on heavy duty diesel engines. The action resulted in the reduction of millions of tons of NOx emissions from the nation's mobile sources.

• In the value of SEPs category, SEPs must be voluntarily undertaken by companies and must meet conditions to be approved as part of an enforcement settlement. The Agency cannot force companies to undertake these projects. 1999 was an anomalous year for the value of SEPs as a result of very large settlements, including FMC Corp. (responsible for $63 million in SEPs) and the aforementioned diesel settlements with seven diesel engine manufacturers ($109.5 million).

• There are three categories for which EPA started tracking data in fiscal year 2002 and which are therefore not comparable over the past 5 years: gallons of contaminated groundwater to be treated; acres of wetland to be restored; and individuals served by newly compliant drinking water systems. As you can see from the fiscal year 2002 numbers, the Agency has had success in all three areas.

• Fiscal year 2003 will be a high-water mark in each of these categories thanks to a number of very large settlements announced within the last few months. These settlements are the result of complex negotiations spanning a number of years (again demonstrating the cyclical nature of this data). The following are just a few of the largest settlements:

Colonial Pipeline—To resolve charges that the company violated the Clean Water Act on seven occasions by spilling 1.45 million gallons of oil from its 5,500 mile pipeline in five States, the company will pay a $34 million civil penalty, the largest penalty paid by a company in EPA history. Colonial will also provide injunctive relief valued at approximately $30 million to upgrade environmental protection on the pipeline and prevent future spills.

Alcoa—Pursuant to a settlement resolving Alcoa's violations of the New Source Review (NSR) provisions of the Clean Air Act, the company will likely spend over $330 million to install state-of-the-art pollution controls to eliminate the vast majority of sulfur dioxide and nitrogen oxide emissions from the power plant at Alcoa's aluminum production facility in Rockdale, Texas. The combined effect of the pollution controls mandated by the settlement will be to reduce the company's emissions of sulfur dioxide (SO_2) by 52,000 tons and nitrogen oxides (NOx) by 15,000 tons each year. Alcoa will also pay a civil penalty of $1.5 million and spend at least $2.5 million on two additional projects that will partially offset the impact of past emissions.

Virginia Electric Power Company (VEPCO)—Pursuant to a settlement resolving VEPCO's NSR violations, the company will spend $1.2 billion between now and 2013 to eliminate 237,000 tons of sulfur dioxide and nitrogen oxides emissions each year from eight coal-fired electricity generating plants in Virginia and West Virginia. VEPCO agreed to pay a $5.3 million civil penalty and spend at least $13.9 million for projects in each of the five States that participated in the case and its settlement to offset the impact of past emissions.

Wisconsin Electric Power Company (WEPCO)—Worth $600 million, this settlement will resolve WEPCO's NSR violations by eliminating more than 105,000 tons of harmful air pollutants annually. The company will spend the $600 million to reduce 72,300 tons per year of SO_2 and 32,600 tons per year of NOx and improve its control of particulate matter (PM) from each of the plants included in the settlement. The company also will pay a $3.2 million civil penalty and spend at least $20 million to finance an environmental mitigation project demonstrating a new technology to significantly reduce mercury emissions from coal-fired power plants.

Archer Daniels Midland (ADM)—This settlement will reduce 63,000 tons of air pollution a year from fifty-two plants in 16 States. Among other things, ADM will install state-of-the art controls on a large number of units, shut down some of the oldest, dirtiest units, and take restrictive emission limits on others. EPA estimates

that ADM will spend $340 million over a 10-year period to implement the entire injunctive relief package, which includes $213 million on capital improvements such as air pollution control equipment. ADM will also fund extensive environmental audits at all facilities, continuous emission monitoring, operation and maintenance, and an environmental management system that will assist the company and regulators in tracking compliance with the consent decree. In addition, ADM will pay a civil penalty of $4.6 million that will be shared with the co-plaintiffs, and will spend $6.3 million on supplemental environmental projects.

SUPERFUND PRIVATE PARTY COMMITMENTS

- In fiscal year 2002, EPA secured private party commitments for cleanup and cost recovery that exceeded $627 million. This dollar value is lower than in the two prior fiscal years; however, this value varies from year to year based on the sites that are in the Superfund pipeline at any given time. Some years there are high dollar value settlements at sites and other years low dollar value settlements. For instance over the past 10 years, the dollar value varied from a low in fiscal year 1997 of $609 million to a high of over $1.7 billion in fiscal year 2001.
- In the past 2 years, there were a small number of cases with high dollar values that increased the dollar value significantly. In fiscal year 2000, the Agency secured private party commitment for cleanup at G.E. Housatonic River site in Massachusetts for $700 million; in fiscal year 2001 at CIBA-Geigy Corporationsite in New Jersey for $90 million and at Iron Mountain Mine in California for approximately $822 million. In addition in fiscal year 2001, the Agency secured private party commitments for cost recovery at Stringfellow in California for over $99.4 million. In fact the number of settlements for cleanup increased slightly in fiscal year 2002 over fiscal year 2001 even though the total dollar value for cleanup significantly decreased.

SUPERFUND ORPHAN SHARE COMPENSATION OFFERS

- EPA has met its GPRA target of making orphan share compensation offers at 100 percent of eligible work sites for each year the reform has been implemented. The number of orphan share compensation offers has varied from year to year, depending on the number of negotiations started that year, and how many of those negotiations pertain to sites that are eligible for the reform (e.g., if a site does not have an orphan share, PRPs performing work at that site are not eligible for orphan share compensation). In addition, the amount of orphan share compensation has varied from year to year, depending on the number of offers made and the dollar value of each settlement.

EPSCOR

Question 69. In formulating the Agency's budgetary and programmatic plan for the EPSCoR program, how much consultation with EPSCoR States did EPA do to assess research infrastructure needs?

Response. After careful consideration, EPA has decided to follow the lead of the National Science Foundation and the Department of Agriculture to fund proposals from EPSCoR States that are in response to EPA Science to Achieve Results (STAR) solicitations, pass peer review, and fall near the cutoff for funding by the reviewing program. This mechanism operates internally within EPA and does not require any action on the part of the applicant. The goal of the EPA EPSCoR program is to fund high quality research while allowing investigators to gain experience in the competitive grants process and to become familiar with the EPA STAR program. EPA plans to use its limited EPSCoR resources through the STAR process and will no longer issue separate EPSCoR solicitations.

This decision was made with input from members of the EPSCoR community, including several State EPSCoR directors, and after considering a number of options. In the end, EPA selected this approach as the most effective and efficient method for EPA to partner with EPSCoR States to enhance the quality and competitive capability of their environmental research.

RESPONSES OF ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

ASARCO

Question 1. Describe what benefits will accrue to Environmental Protection Agency (EPA) as a result of the recent ASARCO settlement, including what sites EPA estimates it will be able to clean-up with funds from that settlement and how that estimate compares with EPA's estimates of the total cost to clean-up all of

ASARCO's sites nation-wide. I am particularly interested in what sites in Montana will be addressed with these settlement funds—it's my understanding that clean-up of the East Helena site alone will cost more than $100 million.

Response. The settlement with Asarco, approved on February 3, 2003, by the U.S. District Court for the District of Arizona, resolved claims filed by the United States under the Federal Debt Collection Procedures Act and the Federal Priorities Statute relating to Asarco's proposed sale of its majority stock interest in Southern Peru Copper Corporation to its immediate parent company, Americas Mining Corporation ("AMC"). Under the consent decree, Asarco and AMC were allowed to complete the transaction but AMC payed a significantly higher price than originally proposed. In addition, the consent decree required Asarco to create an independent Environmental Trust funded by a $100 million note from AMC, payable with interest over 8 years and guaranteed by AMC's parent company, Grupo Mexico S.A. The consent decree establishes a process for the development of annual plans, subject to approval by the United States, to allocate money in the Environmental Trust to pay the costs of work at certain sites where Asarco has signed a consent decree, administrative order on consent, or other legal commitment with the United States or a State, or has been identified as a potentially responsible party under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA) or other Federal or State law.

It is important to note that because the purpose of this litigation was not to address ASARCO's environmental liabilities directly but to ensure that ASARCO received appropriate value from the sale of this important asset, this settlement does not relieve Asarco of any legal obligation it may have to perform clean-up work at any site, under either Federal or State law. In fact, the settlement works to ensure that substantial funds will be available to fulfill Asarco's environmental cleanup obligations, despite Asarco's current financial difficulties. The components laid out in the Consent Decree create the opportunity for a stronger and more stable company to more effectively address current and future environmental liabilities at sites across the country and deal with its significant financial problems.

The Environmental Trust will be funded by a note from AMC, guaranteed by Grupo Mexico that will provide more than $126 million (including interest) over the next 8 years. In return for this dedicated cleanup fund, the United States will forego collection of some EPA past costs and penalties and will cap Asarco's Federal clean-up responsibilities for the next 3 years. However, the United States retains all claims it may have to require Asarco to perform or pay for future clean-ups. Moreover, the settlement does not affect any potential environmental claims by States against the company. Nonetheless, States with major Asarco sites—including Montana—were consulted concerning the settlement before it was signed and have been and will continue to be consulted on the use and distribution of the Environmental Trust funds.

We recognize that the $126 million available from the Environmental Trust under this settlement will be insufficient to pay for all of Asarco's environmental liabilities. The hard truth is that Asarco is in real financial distress and, unless the market conditions that effect its performance improve substantially, will be incapable of paying all its environmental debts and Asarco may not survive as a going concern. Nonetheless, the aggressive enforcement actions taken by the Environmental Protection Agency and the Department of Justice and the resulting favorable settlement substantially increase the likelihood that Asarco will fund a major part of its cleanup obligations.

To establish the budget for 2003, EPA worked closely with other impacted parties such as States, Tribes, the Department of the Interior, the U.S. Department of Agriculture, and ASARCO to maximize the efficiency of response activities at the ASARCO sites. EPA Regions worked closely with their State and other Federal Agency counterparts to prioritize sites and submitted a Regional / State list of sites ranked by risk posed to human health and the environment to EPA Headquarters and the Department of Justice (DOJ). Other factors, such as the ongoing operation of water treatment plants and work needed to stabilize sites were also considered in setting the priorities.

EPA and DOJ have proposed that the Environmental Trust provide funds to 25 of the highest priority sites this year. This included funding for 10 EPA-lead sites, 13 State-lead and 2 Department of Agriculture lead sites. The proposal allocated funds to 12 of 17 States with Asarco sites.

The East Helena Site in Montana was identified as the highest priority by EPA's Region 8 office in Denver and proposed that the Environmental Trust allocate more than $1 Million this year to address human health and environmental concerns at this site. This is about 8 percent of the total funds available from the ASARCO Environmental Trust Fund for this year. EPA realizes that significant funds are need-

ed to address the East Helena site, but as the funding needs exceed the amount of funds available from ASARCO's Environmental Trust, funding will need to be spread out over a number of years at the East Helena site as well as other ASARCO sites across the country.

Question 1a. Please also describe how this settlement will impact cleanup activities that require funding that ASARCO would have provided, but which now must come from somewhere else as a result of the settlement, including from State and local governments, the Federal taxpayer, and what may remain of the Superfund Trust Fund.

Response. As you are aware, the Superfund program currently uses an existing EPA National Risk-Based Priority Panel to evaluate funding decisions at Fund lead sites across the country. Given that all of the Asarco sites could not be funded at the requested levels, we employed the Priority Panel's criteria to assist us in making funding decisions from the Asarco Environmental Trust Fund (Environmental Trust). The sites with the greatest human health risks or with the greatest site stability issues and sites with ongoing activities such as operation and maintenance of water treatment plants and operation and maintenance of remedies in-place will receive some level of funding from the Environmental Trust. Some sites not funded under these criteria will be addressed by other PRPs present at these sites or the Superfund and other resources (State funds, or other financial resources such as bonds or trusts).

Some sites being funded by the Environmental Trust have been submitted to the National Priority Panel and are already receiving funds from the Superfund Trust Fund. Some ASARCO sites are currently being considered for funds from Superfund funding while other sites may be considered for Superfund funding in the future.

Question 2. Ms. Whitman, you indicated in your response to a question posed by the Chairman, Senator Inhofe, that you can't think of a single instance where a viable, responsible party has not been held liable for its share of the costs of cleaning up contaminated sites, and that this fact demonstrates the Administration's commitment to the "polluter pays" principal, a cornerstone of the Superfund program. How does your response to my first question about the ASARCO settlement color the response you gave to Senator Inhofe? I pose this question, because it appears to me that in the case of ASARCO, a viable responsible party was, in a sense, let off the hook for the full cost of clean-up.

Response. The settlement with ASARCO, approved on February 3, 2003 by the U.S. District Court for the District of Arizona, resolved claims filed by the United States under the Federal Debt Collection Procedures Act and the Federal Priorities Statute relating to ASARCO's proposed sale of its majority stock interest in Southern Peru Copper Corporation (SPCC) to its immediate parent company, Americas Mining Corporation ("AMC"). Under the consent decree, ASARCO and AMC were allowed to complete the transaction but AMC payed a significantly higher price than originally proposed. In addition, the consent decree required ASARCO to create an independent Environmental Trust funded by a $100 million note from AMC, payable with interest over 8 years and guaranteed by AMC's parent company, Grupo Mexico S.A. The consent decree establishes a process for the development of annual plans, subject to approval by the United States, to allocate money in the Environmental Trust to pay the costs of work at certain sites where ASARCO has signed a consent decree, administrative order on consent, or other legal commitment with the United States or a State, or has been identified as a potentially responsible party under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA) or other Federal or State law.

It is important to note that this settlement does not relieve ASARCO of any legal obligation it may have to perform clean-up work at any site, under either Federal or State law. In fact, the settlement works to ensure that substantial funds will be available to fulfill ASARCO's environmental clean-up obligations, despite ASARCO's current financial difficulties.

A short history of events leading up to the settlement may help put the settlement terms in perspective. By 2002, it had become clear that, due to low prices for ASARCO's primary product, copper, and the company's heavy debt burden, ASARCO was in financial distress. During 2002, claiming inability to pay for the work, the company stopped paying for certain clean-up work that was required under Federal consent decrees or orders. In July 2002, ASARCO proposed to sell its largest asset, a majority stock interest in SPCC, to AMC. In August 2002, at the request of the Environmental Protection Agency, the Department of Justice took the aggressive step of filing suit in the Western District of Washington (later transferred to the District Court in Phoenix, AZ) to block the stock sale, alleging that

the proposed sale price was less than "reasonably equivalent value" and would illegally reduce ASARCO's ability to fulfill its environmental obligations to the United States.

Once that sale was temporarily blocked, the United States began negotiations with ASARCO and its parent companies to assure there was a substantial increase in the consideration paid for the stock by AMC and to obtain adequate assurances that important clean-up work would be performed, despite ASARCO's precarious financial situation. After extensive negotiations, including many with the AMC's parent company, Grupo Mexico S.A. of Mexico City, the United States was able to meet both goals. First, the United States was able to ensure that more money goes to ASARCO from the parent company to assist ASARCO in continuing to survive as a viable entity, thus protecting jobs and preserving ASARCO's ability to continue performing clean-up work. Second, the United States was able to have a significant part of the increased price paid by the parent company dedicated to a secure trust fund for environmental clean-up, with a financial guarantee by the parent company (which was not involved in the litigation and was not liable to the United States for clean-up costs).

As noted, the Environmental Trust will be funded by a note from AMC, guaranteed by Grupo Mexico that will provide more than $126 million (including interest) over the next 8 years. In return for this dedicated clean-up fund, the United States will forego collection of some EPA past costs and penalties and will cap ASARCO's Federal cleanup responsibilities for the next 3 years. However, the United States retains all claims it may have to require ASARCO to perform or pay for future clean-ups. Moreover, the settlement does not affect any potential environmental claims by States against the company. Nonetheless, States with major ASARCO sites—including Montana—were consulted concerning the settlement before it was signed and have been and will continue to be consulted on the use and distribution of the Environmental Trust funds.

We recognize that the $126 million available from the Environmental Trust under this settlement will be insufficient to pay for all of ASARCO's environmental liabilities. The hard truth is that ASARCO is in real financial distress and, unless the market conditions that effect its performance improve substantially, will be incapable of paying all its environmental debts and ASARCO may not survive as a going concern. Nonetheless, the aggressive enforcement actions taken by the Environmental Protection Agency and the Department of Justice and the resulting favorable settlement substantially increase the likelihood that ASARCO will fund a major part of its clean-up obligations. While other legal alternatives to this settlement were available, the EPA determined that secure funds for environmental response actions were the primary objective and the other options would be less productive.

Superfund

Question 3. In general, how does the EPA and the Administration plan to maintain the integrity of the Superfund trust fund over the long-term, without a means to replenish the Superfund trust fund?

Response. The Superfund Trust Fund is maintained by revenues from several sources including annual appropriations from General Revenue, interest on the "unexpended" balance remaining in the Trust Fund, and collections from enforcement actions with responsible parties:

- Resources appropriated by Congress for the Superfund program from General Revenues are placed in the Superfund Trust Fund along with funds from other sources. Funds appropriated for Superfund remain in the Trust Fund until expended.
- Due to the historical lag time in government outlays or actual payment of bills, unexpended funds will remain in the Trust Fund for many years. The unexpended balance projected in the fiscal year 2004 President's Budget for the end of fiscal year 2003 exceeds $2.9 billion. Interest accrues on the unexpended balance revenue for the Trust Fund. Interest on the unexpended principal balance in the Trust Fund has ranged from $110 to $350 million annually for the past 10 years.
- Responsible Parties continue to provide funds to the Trust Fund through cost recovery payments, fines and penalties.

Question 3a. Does the EPA have a long-term plan to replenish the Superfund trust fund that is faithful to the principal that the polluter should pay?

Response. Viable polluters cleanup or pay for the cleanup of their sites. This accounts for approximately 70 percent of total Superfund site cleanups. EPA cleans up "orphan sites" where there is no viable polluter who can be forced to do the work or pay. If EPA cleans up a site when a polluter refuses to, then EPA sues the polluter for triple the cost of cleanup. Funding for EPA's Superfund program is provided by congressional appropriation. The Trust Fund is replenished from several

sources. Congress appropriates General Revenues to the Trust Fund. Also, the Trust Fund receives interest revenue on the unexpended balance and the Trust Fund is the ongoing depository of funds derived from responsible parties. Each year, the Trust Fund is credited with revenue generated from (1) enforcement actions which recover prior Trust Fund expenditures (i.e., "cost recoveries") ($181 to $320 million annually for the past 10 years), (2) fines and penalties paid by responsible parties ($0.6 to $5.0 million annually for the past 10 years), and (3) the amount of corporate environmental taxes collected by the Treasury ($2.6 to $320 million annually after the taxing authority expired in fiscal year 1996). In addition to these sources of revenue, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (CERCLA) (§122(b)(3)) authorizes the Treasury to maintain a separate account in the Trust Fund for amounts collected through settlements and retained by EPA to carry out such settlement agreements ("Special Accounts"). By the end of fiscal year 2002, EPA had created 255 Special Accounts, collected over $1 billion for cleanup work from responsible parties, accrued over $158 million in site-specific interest, and disbursed, obligated or promised almost $600 million for cleanup work.

Question 3b. If the Superfund Trust Fund completely dries up, how will the EPA ensure that contaminated sites are cleaned-up, in a reasonable amount of time, without letting that burden fall on the average taxpayer or the local community?

Response. As a technical matter, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, provides that the Trust Fund shall receive such amounts appropriated or transferred for the purposes provided in the statute. As a result, each year, Congress appropriates resources from the general fund into the Trust Fund. As long as the Congress continues to appropriate funds to the Trust Fund, it will not "dry up".

Approximately 5 percent of Superfund's annual appropriation is allocated to the enforcement function. EPA, using these resources, achieved 71 percent of new remedial action starts at non-Federal facility Superfund sites through private parties during fiscal year 2002. Looking at the enforcement program since the inception of Superfund, EPA has achieved more than $8 in private party cleanup commitments and cost recovery, for every $1 spent on Superfund civil enforcement.

EPA has implemented the Superfund program to identify immediate risk and take appropriate actions, assess sites and plan response actions where such immediate actions are not required, and manage ongoing cleanups with the goal of completing such sites as soon as possible. Where it is unrealistic to complete site cleanups in the year in which they are initiated, EPA has effectively and efficiently managed these projects to avoid shut-downs and restarts, and plans and schedules very large site projects (i.e., mega sites) based on realistic financing and contracting capacities. EPA believes that this methodical process best supports its responsibility to protect public health, welfare and the environment.

Question 3c. How does the President's fiscal year 2004 budget request bear on this issue?

Response. The President's fiscal year 2004 budget increases funding for cleanup construction by $150 million (a 65 percent increase over fiscal year 2003), which will allow the Agency to begin construction at an additional 10 to 15 sites. The President's fiscal year 2004 budget request reflects the funding level needed to maintain program progress in protecting human health and the environment. The request proposes apportioning the funding from the Trust Fund ($290 million) and from General Revenue ($1,100 million). EPA will continue to aggressively pursue viable responsible parties to conduct cleanups at Superfund sites consistent with the polluter pays principle, and ensure that funds made available to EPA through congressional appropriation are used to support activities at sites where responsible parties have not been identified or are not viable.

Libby, Montana

Question 4. Ms. Whitman, recent press reports have indicated that EPA either did not know of, or ignored, studies that indicated disturbing Zonolite could release high concentrations of asbestos fibers. Other press reports have indicated that there is a link between EPA's actions in Libby to remove contaminated insulation and other fill material in Libby homes, and EPA's failures to warn the public about any risks associated with Zonolite insulation.

Therefore, I am interested in any information the EPA may have regarding the relationship between the removal of contaminated materials from homes in Libby, and EPA's scientific understanding of the health risks posed by Zonolite insulation, or other vermiculite insulation manufactured from ore mined in Libby, Montana.

Response. The Agency for Toxic Substances and Disease Registry (ATSDR) identified many different routes of asbestos exposure for the residents of Libby. Insulation was one of the 16 pathways ATSDR considered in its study. The ATSDR report

found that four factors were highly associated with the likelihood of having asbestos-related health impacts, including working for the mine/processor, living in the same house with a worker, playing on vermiculite or waste piles, and having multiple exposure pathways. The study did not show that insulation, by itself, could be linked with the health impacts found in Libby.

Question 5. Please tell me why the Agency has decided to leave contaminated insulation in many homes in Libby, rather than remove it?

Response. EPA is working to remove contaminated vermiculite insulation from many of the homes, businesses and public buildings in Libby, Montana. The Agency is taking this unusual action due to the unique nature of public health impacts exhibited in Libby, the historical and widespread exposures by multiple pathways, the presence of the mine and processor, and the unique fact that asbestos-contaminated materials that came to be in Libby homes and yards may not have been sold, packaged, labeled, inspected or warranted as a "product."

It is important to note that EPA did not decide to remove all contaminated insulation from every home in Libby. For instance, in some homes there is no access to the attic space for residents, and the insulation is well-contained in sealed areas, which do not exhibit any signs of deterioration or release of material. Similarly, contaminated insulation in the wall spaces in many homes will probably remain in place, when the walls are clearly intact and do not suffer obvious signs of deterioration or release. Under such conditions, where the likelihood of release or exposure is low, EPA may find that removal of the material is not warranted.

Question 6. As you are aware, Ms. Whitman, there remains a lot of work to be done in Libby to ensure that the community finally gets the clean bill of health it so desperately needs. Working with Libby and our Federal partners to see that the community gets all the needed resources to achieve a clean bill of health remains my highest priority as a Montanan and a Member of Congress. Please outline for me how your agency plans to maintain momentum and focus in Libby, and what resources you understand will be available to continue clean-up activities in Libby over the next year.

Response. The Libby asbestos site has been, and will likely remain, a top priority cleanup for EPA. To date, EPA has spent in excess of $75 million in Libby to address contaminated properties and to evaluate the extent of human health impacts in the community. EPA is on track to spend as much as $17 million in fiscal year 2003 to continue these projects.

Question 6a. Please also indicate whether these resources will allow you to meet established deadlines and targets for specific clean-up activities.

Response. The funding and personnel which EPA has devoted to the Libby cleanup have allowed us to maintain our momentum in identifying and addressing contaminated residential properties, businesses and public buildings associated with the Libby site. Our work plans include completing cleanups at more than 200 residential properties and businesses this year alone. EPA expects to maintain this pace of site cleanup. However, the Agency cannot predict whether we will discover additional contaminated properties which would extend the timeframe of our cleanup.

Question 6b. If for any reason the EPA is falling behind on its commitments in Libby, for whatever reason, I want to know why and how I can help your agency get back on track.

Response. Thank you for your offer of assistance with this project. EPA has accelerated the pace of site cleanups and is on track to complete 200 properties per year. The Agency expects to maintain this pace of work until we have completed addressing all contaminated properties in Libby.

Question 7. During a hearing I held in June 2002, I challenged Ms. Horinko to leave no stone unturned as we seek to provide opportunities to Libby, Montana to recover from the devastating effects of the asbestos contamination tragedy, and to specifically seek opportunities to support the full recovery of the community. What resources does EPA plan to make available to the community of Libby to assist in economic development?

Response. The Environmental Protection Agency does not have authority toward providing direct economic assistance. EPA's contribution is to see that Libby is cleaned of asbestos contamination such that properties can be returned to suitable use and the population is protected, that is, to provide any economic recovery a safe foundation to buildupon.

In addition, EPA has worked at length with the community to explore options for economic redevelopment, land reuse, and worker job retraining in order to assist with the economic hardships faced by residents of Libby. In support of these efforts, the Agency has pursued the Superfund Job Training initiative, local contract re-

sources and hiring, and the potential for economic redevelopment pilots to assist in bringing work and businesses to the local area.

EPA also sponsored a workshop on economic revitalization for South Lincoln County. The workshop was held on April 24–26, 2003, and included participants from Lincoln County, the Town of Troy, the city of Libby, local economic redevelopment agencies and staff from Senator Baucus' office. The focus of this workshop was to facilitate partnerships among local, State, Federal and private agencies with economic revitalization interest, expertise and/or resources in order to foster economic development efforts. The workshop included Stimson Lumber Property revitalization, the Asbestos Research Center, recreational uses (aquatic center, biking, hiking, parks), cultural resources, and telecommunications. The outcome of these breakout sessions were implementation strategies for the specific revitalization goals. In addition to EPA, many Federal agencies which can provide assistance toward the revitalization goals participated in the workshop. The workshop was well received by the community, and will provide a starting point for local leaders to pursue economic revitalization.

Question 7a. As you may recall, I discussed with Ms. Horinko, and my staff has had conversations with her office, about leveraging Brownfield funds for this purpose. Where are we on this initiative?

Response. Although sites on the National Priorities List such as Libby are not eligible for EPA brownfields grants, EPA has been working closely with the communities to foster economic revitalization in other ways. The workshop held on April 24–26 is an example of how the brownfields model uses partnerships, incentives and technical assistance to assist communities in reaching their revitalization goals. Other Federal agencies may be able to offer more direct assistance, such as through HUD's Community Development Block Grants Program.

Question 8. Please discuss EPA's understanding of the differences between tremolite asbestos and chrysotile asbestos in terms of the relative toxicity of each form of asbestos, and in terms of the unique health risks posed by tremolite asbestos as compared to chrysotile asbestos.

Response. The differences between health risks posed by various forms of asbestos are important to EPA. This includes the potential for differences between chrysotile asbestos (from the serpentine family) and tremolite asbestos (one of the forms from the amphibole family). Fundamentally, mineralogical type, as well as fiber size, may influence the toxicity of asbestos fibers (e.g., data suggest that longer, thinner, fibers are generally more toxic than shorter, thicker, fibers). In EPA's earlier asbestos assessments, sufficient data were not identified to support different risk estimates for the different types of asbestos fibers. Consequently, EPA's current IRIS assessment (completed in 1986) does not provide different cancer risk estimates for different forms of asbestos. The Agency is currently re-evaluating the health effects of asbestos. One aspect of the evaluation will examine the question of different risk estimates for different forms of asbestos. There will be two different health profiles developed (one for noncancer and one for cancer). The noncancer profile is expected to be ready for external review in 1–2 years and the cancer profile will follow. The total effort is expected to take about 3–4 years.

Both chrysotile and amphibole (including tremolite) fibers have been found to be causally associated with asbestosis (a non-cancerous fibrotic disease), pleural plaques, lung cancer, and mesothelioma. Based on our current knowledge of the literature, no apparent differences in toxicity of chrysotile versus amphibole (including tremolite) have been reported for the non-cancer diseases (i.e., asbestosis and pleural plaques). Current data do suggest a need to reexamine quantitative differences in cancer health risks from chrysotile and amphibole asbestos (including tremolite). In terms of unique health risks posed by the different forms of asbestos, a number of researchers have reported that amphibole asbestos is substantially more potent than chrysotile asbestos in causing mesothelioma, but this pattern may not hold for induction of lung cancer. Tremolite asbestos has previously been recognized as a contaminant present in vermiculite from Libby, MT. Current information indicates that fibers of the amphibole minerals, winchite and richterite, may also be important contaminants vermiculite whose toxicity needs evaluation.

Question 8a. Please discuss in detail any studies conducted by, currently being conducted by, or planned by EPA, or by any other Federal agency working with EPA, to study tremolite asbestos and/or "Libby fiber."

Response. EPA has begun an update of its Integrated Risk Information System (IRIS) file for asbestos as a result of the activities occurring in Libby. This includes a complete update of the scientific literature for asbestos, the carcinogenic and noncarcinogenic effects, exposure pathways, and risk assessment methodology. It is normally a three to 5-year process to complete this type of review. However, EPA is

expediting the process as much as possible. EPA is able to expedite this process, in part, because of ATSDR's work related to Libby and vermiculite processor sites around the country, which has added significantly to our understanding of the unique situation in Libby and has improved our understanding of asbestos exposure and toxicity. In addition, EPA is regularly consulting with ATSDR on other initiatives relating to asbestos sampling, analysis and risk assessment. EPA has also actively met and communicated with multiple Federal agencies on these issues, including USGS, MSHA, CDC, NIST, NIOSH, and CPSC. These meetings should ensure better coordination and understanding of our goals and needs regarding asbestos and human health issues.

As part of this update and the establishment of differences between tremolite asbestos and chrysotile asbestos, in May 2001, EPA sponsored a Public Forum on asbestos minerals. Expert scientists, with years of research experience, discussed the current literature base for asbestos exposure, toxicity, and risk assessment. Additionally, EPA hosted a Peer Consultation meeting on February 25–27, 2003, for a panel of experts to discuss a revised risk assessment methodology for distinguishing the risks of exposure to amphibole asbestos fibers (Libby tremolite asbestos) and serpentine asbestos fibers. This methodology uses the differences in fiber sizes and shape to distinguish toxicologic hazards between the fiber types and provides a differential in the slope factor for risk assessment between the fiber types.

Question 8b. Please indicate how the presence of tremolite asbestos and/or "Libby fiber" is a factor in the unique situation in Libby, Montana.

Response. EPA funded ATSDR to review the health statistics for Libby residents. This review found that the rate of asbestos-related mortality in the community is 40 times higher than the average in Montana and 80 times higher than the national average. ATSDR also conducted an evaluation of the health of Libby residents, providing chest X-rays, breathing tests, and interviews to characterize the potential exposures and health of the population. The ATSDR study concluded that a substantial segment of the population has asbestos-related scarring, lung abnormalities or impaired breathing. Five percent of these impacted residents could identify no potential route of exposure, other than having lived in the Libby Valley.

In addition to these health impacts, Libby differs from other sites with amphibole asbestos contamination for other reasons. The Libby mine was the first and, for many years, the world's largest producer of vermiculite ore. EPA estimates that vermiculite production may have exceeded 6 million tons during the years that W.R. Grace owned the mine. This ore was milled and processed in Libby, which means much of the asbestos was removed from the product, and stayed in Libby. This waste found its way into homes, school yards, gardens, road beds and many other places in the community, where people continued to be exposed for decades.

As a point of clarification, contrary to recent press reports, EPA has gathered a large amount of information from W.R. Grace and other sources in order to identify potential risks related to vermiculite insulation. The Agency has used this data to pursue the cleanup work underway at Libby and 22 contaminated processor sites which used Libby ore.

Question 9. Please also discuss EPA's previous experience using a declaration of a public health emergency as a means to garner specific health care resources for a community like Libby, if such a declaration has ever been made.

Response. The EPA has no experience in using the public health emergency determination under Superfund. The Agency determined that the multiple sources of potential asbestos exposure in Libby could all be addressed under the single Superfund response authority, and that there was no need or reason to use this approach, when the authority for quick response action was so clear.

Question 9a. Please indicate the process for requesting that a second declaration be declared in Libby for the separate purpose of garnering health care resources in Montana.

Response. Declaration of such an emergency by EPA would not increase available health care resources in Montana. Similarly, EPA is not aware of other agencies having authorities under which added resources would become available through the declaration of an emergency of this type. For example, when the Secretary of Health and Human Services declared a public health emergency after 9/11, that declaration provided added flexibility in the use of funds Congress appropriated specifically for the 9/11 response. The emergency authorities did not, however, increase the amount of funding available for response efforts. (In the case of HHS, Congress has authorized but not funded an account to be used in public health emergencies.)

Question 9b. Please detail any communications EPA has had with Agency for Toxic Substances and Disease Registry (ATSDR) regarding the impacts of declaring

a public health emergency on the provision of health care resources to the residents of Libby, Montana.

Response. In the 23-year history of the provision, EPA has never made a determination that a public health or environmental emergency exists to invoke CERCLA's exception to the general "product" rule, CERCLA Sec. 104 (a)(1)(4). In the part of the statute establishing ATSDR, CERCLA separately provides that ATSDR may, "in cases of public health emergencies . . . provide medical care and testing to individuals. . . .", CERCLA Sec 104 (i)(1)(D).

EPA has worked closely with ATSDR and other parts of the Department of Health and Human Services (HHS) regarding the health of Libby residents, and has consulted with them on several occasions regarding this particular provision of CERCLA. EPA and ATSDR agree that EPA's decision to invoke the "emergency" provision of 104(a)(1)(4) to support a removal action, would not pre-determine the exercise of other CERCLA authorities related to public health emergencies under section 104(i)(1)(D) and (E). At the time the Action Memorandum Amendment was signed in May 2002, ATSDR advised EPA, for reasons unrelated to any perceived nexus between these two provisions, that the substantial health screening and monitoring services being provided the residents of Libby would not be affected by whether EPA invoked the emergency removal authority. ATSDR already has the necessary authority to conduct medical monitoring and the range of other activities it has been undertaking in Libby.

Question 9c. Please discuss what EPA's understanding is of the real resources that are available to a community like Libby, if such a declaration could be granted.

Response. A declaration of an emergency by EPA would not increase the amount of funding available from EPA, over and above the significant amounts now dedicated to clean up in Libby. Similarly, EPA is not aware of other agencies having authorities under which added resources would become available through the declaration of an emergency of this type. For example, when the Secretary of Health and Human Services declared a public health emergency after 9/11, that declaration provided added flexibility in the use of funds Congress appropriated specifically for the 9/11 response. The emergency authorities did not, however, increase the amount of funding available for response efforts. (In the case of HHS, Congress has authorized but not funded an account to be used in public health emergencies).

Tenmile, Montana, Cleanup

Question 10. Please give me an update on the status and progress of the EPA's clean-up efforts at Tenmile, near Helena, Montana. In your response, please indicate whether your the Agency has and/or will receive adequate resources for this project?

Response. EPA Region 8 is making steady progress at the Upper Tenmile Creek NPL Site. The Project Manager finalized the Record of Decision for the site on June 28, 2002. EPA plans to remove and dispose of contaminated soils, and conduct repair/reclamation work in 2003 at the following locations: 8 residential properties in Lower Tenmile Creek; Tenmile Road; Little Lilly and Lee Mountain Mines; and residential properties in Rimini.

In support of these activities, EPA HQ has provided the Region with $3.7 million for fiscal year 2003. EPA expects all work to proceed on time, and within budget.

Clean Water and Safe Drinking Water SRF

Question 11. I am really trying to get my head around where and how the EPA is proposing to fund water and wastewater projects in 2004, or how they are planning to assist States and local communities with these types of projects, particularly small, rural communities. I am very concerned about the Administration's proposed cuts to the Clean Water SRF program, and the Administration's proposed flat funding for the Safe Drinking Water SRF program. Why did your agency propose this?

Response. The President's 2004 budget proposal actually increases the Federal Government's investment in water and wastewater infrastructure. Previous Administrations had only committed to funding the CWSRF program at $1.212 billion in 2004 and 2005 (a total of $2.4 billion), with no funding thereafter. The President is proposing to extend Federal capitalization through 2011—an additional 6 years, at $850 million per year, for a total of $6.8 billion. Thus, the President's proposal provides $4.4 billion more than previous plans. These additional Federal funds, when combined with other CWSRF funding sources, are projected to substantially increase the amount of assistance provided by the CWSRF program in both the short-term and long-term. That has allowed the Administration to increase the CWSRF projected long-term target revolving level from $2 billion to $2.8 billion per year: a 40 percent increase.

The Administration is proposing to extend Federal support for the Drinking Water SRF so it can revolve at $1.2 billion per year, an increase of 140 percent over the

previous goal of $500 million. To realize this increased revolving level, the Administration is proposing $850 million for fiscal year 2004 to fiscal year 2018. This proposal extends the commitment for the DWSRF well beyond the fiscal year 2003 authorization period.

Question 11a. How can cuts and flat funding this year result in a greater commitment from the Federal Government to the States over the next several years? We should, at a minimum, maintain current funding, and moving toward allocating more Federal funding to assist States and local communities comply with Federal health, safety and security requirements.

Response. By extending Federal capitalization of the CWSRF and DWSRF programs through 2011 and 2018, respectively, at $850 million per year, the President's 2004 budget proposal will significantly increase the SRF programs' ability to help States and local communities to comply with Federal health, safety and security requirements. The budget proposal for extending Federal capitalization of the SRF program recognizes that replacing the Nation's aging infrastructure requires a long-term, sensible approach.

RESPONSES OF ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Climate Change Program

Question 1. The fiscal year 2004 EPA budget provides $15 million to fund a new climate change program. Please describe EPA's plans for this program.

Response. In total, the Environmental Protection Agency is requesting $130 million for the Climate Change program in the fiscal year 2004 President's Budget request—an increase of $5 million over the fiscal year 2003 enacted level. No increase of $15 million is requested to fund new climate change programs.

The President's Climate Change program reflects a new approach to global climate change designed to harness the power of the markets and technological innovation. The President has committed America to cut greenhouse gas intensity by 18 percent over the next decade. This approach supports vital climate change research and ensures that America's workers are not unfairly impacted by climate change strategies. As we learn more about the science of climate change and develop new technologies to mitigate emissions, this annual decline can be accelerated. Focusing on greenhouse gas intensity sets America on a path to slow the growth of greenhouse gas emissions, and—as the science justifies—to stop and then to reverse that growth.

New Source Review

Question 2. Please provide an update on the status of pending New Source Review power plant litigation (on a case-by-case basis). Please indicate what new actions have been filed in the past year.

Response. The chart below provides an update of pending and settled New Source Review power plant litigation. In the past year, new actions have been filed and settled for the United States vs. PSEG Fossil LLC, United States vs. Virginia Electric and Power Company, United States vs. Wisconsin Electric Power Company, and the United States vs. ALCOA, Incorporated.

Status of Coal-fired Power Plants Judicial Cases

May 6, 2003

Case	Court	Status
United States v. Illinois Power Company, and Dynergy Midwest Generation, Inc..	Southern District of Illinois	Case pending—Trial scheduled June 2003.
United States v. Southern Indiana Gas and Electric Co..	Southern District of Indiana	Case pending—Trial scheduled June 2003.
United States v. AEP	Southern District of Ohio	Case pending—Currently in Discovery
United States v. Ohio Edison	Southern District of Ohio	Case pending—Trial concluded in March 2003 and parties are awaiting a decision
TVA v. EPA	11th Cir. Court of Appeals	Oral Arguments concluded in May 2002 and parties are awaiting a decision
United States v. Duke Energy Corp.	Middle District of North Carolina	Case pending—Currently in Discovery and trial is scheduled for September 2003

Status of Coal-fired Power Plants Judicial Cases—Continued

May 6, 2003

Case	Court	Status
United States v. Georgia Power		Litigation Stayed by Court pending TVA decision
United States v. Alabama Power		Litigation Stayed by Court pending TVA decision
United States v. Tampa Electric Company.	Middle District of Florida	Settled (February 2000)
United States v. PSEG Fossil LLC	District of New Jersey	Settled upon filing of complaint (January 2002)
United States v. Cinergy Corp.	Southern District of Indiana	Currently in discovery and trial is scheduled for April 2004
United States v. Virginia Electric and Power Company.	Eastern District of Virginia	Settled upon filing of complaint (April 2003)
United States v. Wisconsin Electric Power Company.	Eastern District of Wisconsin	Settled upon filing of complaint (April 2003)
United States v. ALCOA, Inc	Western District of Texas	Settled upon filing of complaint (March 2003)

Water Trading Policy

Question 3. In February, EPA finalized its water trading policy. Does EPA plan to issue guidance implementing the policy? If so, how will EPA involve the public and interested community groups in guidance development?

Response. At this time EPA has no plans to develop a water quality trading guidance document. We intend to support implementation of trading programs through continued outreach and education, facilitating information-sharing among trading programs, and working on technical issues such as estimation of nonpoint source pollution reductions.

Mountain Top Mining

Question 4. What is the status of Federal Government development of the Environmental Impact Statement (EIS) addressing mountain top mining? When will the EIS be issued in final?

Response. A general notice was placed in the Federal Registry that the Draft Environmental Impact Statement (DEIS) would be available and posted on the web on May 30, 2003. Hard copies and CDs were mailed out on May 29, May 30, and June, 2, 2003. However, the Notice of Availability (NOA) for DEIS in OECA's Office of Federal Activities Weekly Federal Registry notice, which starts the official NEPA comment period should go out in late June 2003.

There is no lead agency, rather the five co-leads include EPA, Army Corps of Engineers, Fish and Wildlife Service, Office of Surface and Mining, and the State of West Virginia. However, EPA and the Corps of Engineers—with the assistance of all the co-leads—took the lead role overseeing the print job, preparing the Federal Registry Notices and in actually distributing the document.

Chemical Site Security

Question 5. We understand that in the last month EPA has completed a review of whether more than 30 high-risk chemical facilities have adopted adequate security measures. We also understand that EPA Regional officials have conducted their own reviews at additional chemical facilities. Please provide us with a copy of any reports or summaries of the results of these reviews. Please describe EPA's current program to ensure the security of chemical facilities from terrorist attack.

Response. EPA visited a number of chemical facilities to learn more about what is being done to protect such facilities against attack or sabotage by terrorists or other criminals. The purpose of these visits was not to judge the comprehensiveness, effectiveness or adequacy of security assessments or upgrades at these facilities. Nor was it to enforce EPA regulations or direct facilities to take particular actions, such as resolving particular security vulnerabilities. Instead, we discussed with facility representatives their ongoing and post-9–11 efforts to secure hazardous substances, observed security and hazard reduction measures in place to the extent practicable, and discussed the available tools and measures for assessing and addressing any vulnerabilities that may exist. In many cases, EPA Regional staff have, and will continue to discuss chemical site security with other facilities as part of their routine course of business.

It is important to emphasize that the facilities visited represent only a very small fraction of the hazardous chemical facilities in the United States. As such, EPA has been very cautious in any attempt to extrapolate to broad conclusions about all U.S. chemical facilities based on our brief discussions and observations. Further, the sites visited voluntarily allowed our visit but requested that all information be kept confidential. Consequently, no report or summaries of these visits were prepared.

EPA's responsibilities are "safety" related and are designed to prevent an accidental release of chemicals, not security measures intended to prevent or deter a terrorist attack. The Office of Homeland Security is the lead on security measures intended to prevent or deter a terrorist attack. However, where appropriate EPA has undertaken several activities with respect to chemical site security, including:

- Collaboration with chemical trade associations on the development of site security guidelines;
- Support of the development and enhancement of the Sandia Vulnerability Assessment Methodology;
- Participation with the Center for Chemical Process Safety (CCPS) in the development of their Security Vulnerability Assessment Methodology and guidebook; we purchased and distributed this guidebook to Local Emergency Planners and small and medium businesses throughout the United States;
- Initiated and sponsored several training sessions on the Sandia VAM and CCPS SVA for State representatives, and small and medium businesses; and
- Development of an email outreach system to transmit threat level and security advisory information directly to chemical facilities.

Enforcement

Question 6. EPA's fiscal year 2004 budget proposes an increase of about 100 positions for the enforcement program to the Administration's fiscal year 2003 request. Doesn't this still translate into a reduction of nearly 100 positions from fiscal year 2001 levels?

Response. The Agency's fiscal year 2004 Request includes 1,593.6 FTE for the enforcement program in the EPM appropriation. The fiscal year 2004 Request reflects a reduction of 67.7 FTE from fiscal year 2001 enacted operating plan levels but includes an overall increase of 100 FTE over the fiscal year 2003 President's Budget Request.

Program	FY 2001 Enacted	FY 2003 Request	FY 2003 Proposed Enacted	FY 2004 Request
Compliance Monitoring	510.0	419.3	487.7	464.4
Civil Enforcement	954.8	848.2	930.6	915.1
Criminal Enforcement	196.5	190.9	190.0	190.1
Homeland Security	0.0	24.0	24.0	24.0
TOTAL	1,661.3 FTE	1,482.4 FTE	1,632.3 FTE	1,593.6 FTE

Question 7. How does EPA plan to deploy the 100 positions mentioned in the previous question?

Response. The requested increase of 100 FTE will be used to enhance inspection and enforcement coverage to better identify and address persistent noncompliance in an expanding regulated universe.

The Office of Enforcement and Compliance Assurance is currently conducting an analysis of work force-related challenges. OECA's Assistant Administrator has appointed a Workforce Deployment Executive Steering Committee, consisting of both OECA Headquarters and Regional senior managers, to examine and provide specific recommendations regarding the effective deployment of enforcement and compliance resources. Based on recommendations from this committee, due out by October 2003, OECA plans to target deployment of these resources to ensure a holistic and integrated approach to compliance, serving as a powerful deterrent to would-be violators.

Question 8. We understand that EPA is considering bolstering State enforcement operations with Federal employees. Please comment on whether EPA is considering this action and why. Please describe the planned program. How will EPA ensure that the Federal enforcement role is not further diminished by this program.

Response. Though EPA has discussed the possibility of making Federal enforcement resources available to the States in the past, there is currently no plan to do so in any systematic way. Through existing mechanisms such as short-term assign-

ments and Intergovernmental Personnel Agreements (IPA), the Agency is able to provide assistance to States that want and need it. The Agency will address State requests for assistance on a case-by-case basis; ensuring that Federal resources go to address significant environmental problems or patterns of noncompliance, and that assistance provided to States does not compromise EPA's ability to fulfill the Federal enforcement role. EPA proposed in the fiscal year 02 and fiscal year 03 budgets a State enforcement grant program to assist the States in their enforcement efforts.

Question 9. A 2001 General Accounting Office report found that EPA's work force deployment does not ensure consistent enforcement of environmental requirements across regions. What steps has the Agency taken to respond to this report?

Response. The Office of Enforcement and Compliance Assurance is currently conducting an analysis of work force-related challenges as a result of GAO's recommendation. OECA's Assistant Administrator has appointed a Workforce Deployment Executive Steering Committee, consisting of both OECA Headquarters and Regional senior managers, to examine and provide specific recommendations regarding the effective deployment of enforcement and compliance resources. The analysis, due out by October 2003, will address GAO's concerns and other work force deployment challenges.

RESPONSES OF ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. Ms. Whitman, in your testimony before this committee on February 26, 2003, and in the press you have stated that Environmental Protection Agency's (EPA's) America's Children and the Environment report is the first about mercury. This was alarming to me as there have been numerous reports, studies and publications on mercury over the last two decades, reports of which I was shocked to learn that the EPA and its Administrator may be unaware. It was also alarming in that it seemed to imply that until EPA did a report on the issue, there was no good, scientific information on the issue.

Response. I did not mean to imply that there was no good scientific information available or that we were unaware of such information. As I said in my testimony and in the press, U.S. EPA's report on America's Children and the Environment is the first such annual report from this Agency's Office of Children's Health Protection that includes data on exposure of children in the United States to mercury. I am aware of CDC's reports, and EPA is pleased to be able to publicly highlight in our report the most recent available national data from CDC on human exposure to mercury in the United States.

Prior to the Children's Health report, EPA had issued a number of documents including its Mercury Study Report to Congress, a comprehensive investigation of various aspects of the mercury problem. The Report concluded that a plausible link exists between human activities that release mercury from industrial and combustion sources in the United States and methylmercury concentrations in fish and wildlife. The report also provided a quantitative risk assessment of women of childbearing age (i.e., between the ages of 15 and 44 years). The Report also concluded that mercury poses risks to wildlife, including some birds and fur bearing animals such as loons, mink and otters. This assessment reflected the Reference Dose evaluation available at that time and was based on the older Iraqi dataset. Since the Mercury Study Report to Congress, EPA has updated the Reference Dose evaluation using three prospective cohort studies (Seychelles, Faroes, and New Zealand). Although EPA is now basing its evaluation on these newer studies, the Reference Dose has remained at 0.1 µg/kg-day.

Since the publication of EPA's Mercury Study Report to Congress, the Agency has continued its efforts to better understand the significance of methylmercury as a public health threat, as well as to communicate the results of its assessments.

Issue 1: Centers for Disease Control, Second National Report on Human Exposure to Environmental Chemicals, January 2003.

Question 2. Ms. Whitman, are you aware that the Centers for Disease Control and Prevention has published two National Reports on Human Exposure to Environmental Chemicals?

Question 3. Are you aware that the January 2003 report by the Centers for Disease Control and Prevention that found that mercury exposure during pregnancy results in over 300,000 babies born each year at risk of neurological effects?

Question 4. Where you aware that this January 2003 report found that 1 in 12 women of childbearing age has mercury levels above the EPA safe health threshold (i.e., above 5.8 part per billion in blood)?

Question 5. Are you aware that, nationally, this translates into nearly 4.9 million women of childbearing age with elevated levels of mercury from eating contaminated fish, and approximately 320,000 newborns at risk of neurological effects from being exposed in utero? (Number of newborns at risk derived by the Clean Air Task Force from 2000 census data and fertility data from the National Center for Health Statistics.)

Question 6. If you are aware of these reports, why are you making misleading statements that your study is the first on mercury and that pathways of exposure are unknown? If you are not aware of these studies, why not?

Response to Questions 2–6. We are aware of this report. As stated above, EPA's report on America's Children and the Environment is the first report from the Agency's own Office of Children's Health Protection to include data on exposure of children in the United States to mercury. This new CDC data on national exposure to mercury in the United States was not available in prior years. As for pathways of exposure, EPA has discussed publicly for many years that the primary pathway of human and wildlife exposure to methylmercury in the United States is through consumption of methylmercury-contaminated fish and marine mammals.

Issue 2: Holloway, C., J.B. Adams, M. Margolis, X. Liu, "Mercury exposure and autism: a case-control study," 2001, presented at International Meeting for Autism Research, November 2001, San Diego, California.

Question 7. Ms. Whitman, are you aware of the 2001 San Diego study of 50 autistic children primarily between the ages of 3 and 10, which found that maternal consumption of seafood over 2 servings per month led to a 3.5fold increased risk of having a child with autism?

Question 8. Are you aware that, in addition, researchers found that in the first 3 years of life, children with autism had significantly more ear infections (eight times more often than the control group), likely due to weakened immune systems?

Question 9. If you are familiar with this study, what is this Administration doing to publicize the risks from mercury consumption and exposure to pregnant women and their developing infants? If you are not taking any action to publicize this threat, why not? If you are not aware of this study, why not?

Response to Questions 7–9. I am familiar with this study. EPA's activities include significant efforts to communicate the risks of methylmercury to those people most at risk, i.e., women of childbearing age and their developing fetus, as well as infants and young children. In addition, the Agency is providing information to other environmental and health professionals who advise women of childbearing age. These ongoing actions include:

(1) Support for State agencies and Tribes in their development of fish consumption advisories for sports and subsistence anglers. EPA also works with the public to help address the problem of methylmercury-contaminated fish. The U.S. EPA has distributed outreach materials to the U.S. medical community in multiple languages about reducing exposure to contaminants in sport and subsistence caught fish. The EPA has also maintained the National Listing of Fish and Wildlife Advisories, which includes information on fish consumption advisories in waters fished by sport and subsistence populations.

(2) Development of the Agency's new mercury web site as a major resource for the lay public, as well as State and local professionals, to use as a source of information on levels of mercury contamination in fish.

(3) Presentations at numerous meetings of State and local environmental and public health professionals on the significance of mercury contamination and means to reduce mercury contamination and exposure.

(4) Sponsoring national meetings in conjunction with the American Fisheries Society hat have described the nature, extent and distribution of mercury contamination in fish.

(5) Sponsoring a national meeting for representatives from States and tribes to identify effective risk communication strategies to alert people, especially women of childbearing age, to the risks posed by consumption of methylmercury in excess of U.S. EPA's Reference Dose.

(6) Providing leadership in development of the scientific evaluation and framework for the global mercury study conducted by the United Nations Environment Programme (UNEP) during the past year. EPA expects to continue working with UNEP as that organization develops risk communication materials pursuant to the new global mercury program it initiated in February 2003.

Issue 3: National Academy of Sciences, Committee on the Toxicological Effects of Methylmercury, Toxicological Effects of Methylmercury, National Academy Press, Washington, DC, 2000.

Question 10. Ms. Whitman, are you aware that the National Research Council reaffirmed the risk of mercury exposure *in utero* to the developing nervous system in 2000?

Question 11. Are you aware that in its study, the National Research Council Committee on the Toxicological Effects of Methlymercury reviewed the epidemiological and toxicology literature up to 2000?

Question 12. Are you aware that the committee estimated 60,000 newborns annually are at risk for neurodevelopment effects due to *in utero* mercury exposure in the United States?

Question 13. Did you know that one potential effect noted by the researchers included learning difficulties once the children reached school age?

Question 14. Did you know that the report also reviewed evidence of associations between dietary exposure to methylmercury and abnormal cardiac function in both children and adults?

Question 15. If you are not aware of this study, why not?

Response to Questions 10–15. I am aware of the National Research Council's work and the results.

Issue 4: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services, "Toxicological profile for mercury," Atlanta, GA, 1999.

Question 16. Are you aware that in 1999, the Agency for Toxic Substance and Disease Registry (ATSDR) reaffirmed the neurotoxic properties of methylmercury, confirming that children exposed *in utero* are at greatest risk of neurological damage?

Question 17. Are you aware that in its Toxicological Profile for Mercury, the ATSDR reported that mercury is a developmental toxicant, with symptoms observed in offspring exposed *in utero* ranging from delays in motor and verbal development to severe brain damage?

Question 18. Are you aware that the ATSDR found that while the infant may be born apparently normal, the child later shows effects that may range from being slower to reach developmental milestones, such as first walking and talking, to more severe effects including brain damage with mental retardation, incoordination, and inability to move?

Question 19. Are you aware that the severity of these effects depends upon the level of mercury exposure and the time of dose?

Question 20. Are you aware of this Federal Government analysis? If you are not aware of the information being published by the Federal Government on the effects of mercury on children's environmental health, why not? If you are aware of these studies, why have you chosen to downplay them and ignore them in your public comments?

Response to Questions 16–20. Yes, I am aware of ATSDR's activities on mercury. EPA has never downplayed scientifically sound information on the effects of mercury on children's health. As mentioned above, EPA is pleased to be able to publicly highlight in our most recent America's Children and the Environment report the best available national data from the Centers for Disease Control on human exposure (including children) to mercury in the United States.

Issue 5: Grandjean, P., et. al, Cognitive deficit in 7-year-old children with prenatal exposure to methylmercury, Neurotoxicology and Teratology 19(6) 1997: pp. 417–428.

Question 21. Ms. Whitman, are you aware of the 1997 epidemiological study that found cognitive deficits in children with prenatal exposure to methylmercury?

Question 22. Are you aware that in a large study of 1022 children exposed to mercury via maternal consumption of pilot whale meat and fish in the Faroe Islands in the North Atlantic, researchers observed a number of neuropsychological deficits?

Question 23. Did you know that these mercury-related dysfunctions were in the areas of language, attention, and memory, and to a lesser extent in visual and/or spatial and motor functions?

Question 24. Did you know that the authors noted that these deficits appear widespread, and are seen at mercury exposure levels previously considered to be safe?

Question 25. If you are aware of this information, why is the Bush Administration EPA stating that we need further study before we can act to warn people of the risks from mercury emissions and exposure?

Response to Questions 21–25. I am aware of the study. As noted above, EPA is, and has been, taking many actions to alert people of the risks from methlymercury exposure, especially regarding the prenatal exposures discussed in this specific report.

Issue 6: (Kjellstrom, T.P., et al., 1986, Physical and mental development of children with prenatal exposure to mercury from fish. Stage I: Preliminary tests at age 4; Kjellstrom, T.P., et al., "Physical and mental development of children with prenatal exposure to mercury from fish," National Swedish Environmental Protection Board Reports, Nos. 3080, 3642, 1989. Cited in Committee on the Toxicological Effects of Methylmercury, Toxicological Effects of Methylmercury, National Academy Press, Washington, DC, 2000.

Question 26. Ms. Whitman, are you aware of the 1986 epidemiological study from New Zealand that found developmental delays in children exposed to mercury?

Question 27. Did you know that researchers studied a population of 935 New Zealand women who reported higher fish consumption during pregnancy?

Question 28. Did you know that when comparing scores on a development test at 4 years of age, 52 percent of children born to a subgroup of women with the highest mercury exposures had abnormal or questionable results, compared with 17 percent of control group children?

Question 29. Did you know that in followup evaluations at 6 years of age, the researchers found that maternal hair mercury was associated with lower scores on full-scale IQ, language development, visual-spatial skills, and gross motor skills?

Question 30. If you and the EPA are aware of this information, how can you assert that an issue that we have been studying for two decades is an "emerging" issue? If you are not aware of this information, why not?

Response to Questions 26–30. I am aware of the study. In terms of developing sound scientific information, two decades is a relatively short period of time, and in that context mercury is still an emerging scientific issue. Every year we continue to develop better data and analysis on critical aspects of the problem, such as the extent and effects of human exposure, especially low level exposure; and the fate and transport of mercury pollution at every level, including locally, regionally, nationally and globally.

Issue 7: Hightower, JM, "Mercury Levels in High-End Consumers of Fish," Environmental Health Perspectives doi:10.1289/ehp.5837, 2002. Online November 1, 2002.

Question 31. Ms. Whitman, are you familiar with the San Francisco Bay area study that found mercury exposures high among health-conscious urban residents?

Question 32. Did you know that a small-scale study of residents in the San Francisco Bay Area found that people with high fish diets had significantly elevated mercury levels?

Question 33. Did you know that of the 123 people tested (a mix of physicians, Chief Executive Officers, internet executives, lawyers, bankers and others), 89 percent had mercury levels exceeding the level recognized as safe by the U.S. EPA and the National Academy of Sciences?

Question 34. Were you aware that 63 had blood-mercury levels nearly twice the recommended level, and 19 had blood-mercury levels nearly four times the level considered safe?

Question 35. Did you know that 4 people had levels 10 times greater than EPA's safe level? Patients who had high fish diets or who were exhibiting symptoms of mercury exposure, including fatigue, headache, joint pain, and reduced memory and concentration, were selected to participate in the study?

Question 36. Did you know that mercury levels fell dramatically in 67 patients that were being followed closely after recommendations to eliminate or greatly reduce their fish intake, with a particularly significant drop in the first 3 weeks?

Question 37. Were you aware that some patients were still above the EPA safe level 20 weeks and more after curtailing their fish consumption?

Question 38. If you were aware of this study, why has this Administration been downplaying the effects and threats of eating mercury-contaminated fish? If you were not aware of this and other studies demonstrating the elevated levels of mercury in people with high fish diets, why not?

Issue 8: Choy, CM, et. al, BJOG: an International Journal of Obstetrics and Gynecology. 109, 2002: pp. 1121–5.

Question 39. Ms. Whitman, are you aware of the 2002 study that shows high mercury levels measured in infertile men and women?

Question 40. Did you know that the study of 157 infertile couples and 26 fertile couples in Hong Kong compared blood mercury levels and evaluated possible sources of mercury exposure in couples with high levels?

Question 41. Did you know that researchers found that infertile couples had higher mercury levels than fertile couples; infertile males with abnormal semen and infertile females with unexplained infertility also had higher blood mercury levels than their fertile counterparts?

Question 42. Did you know that blood mercury concentrations in infertile couples also increased with seafood consumption?

Question 43. If you were aware of this study, why has this Administration been downplaying the effects and threats of eating mercury-contaminated fish? If you were not aware of this and other studies demonstrating the elevated levels of mercury in people with high fish diets, why not?

Response to Questions 30–43. I am familiar with these studies. EPA has recognized that adults consuming high intakes of fish may have excessive exposure to methylmercury. The Agency has sponsored studies among high-fish consuming populations along a number of coasts in America to identify sources of pollution, to document the extent of mercury contamination of fish and shellfish, and to assist State and local government in communicating the dangers posed by excessive exposures to methylmercury. EPA scientists have also been highlighting the results of the Hightower study in recent conferences of health professionals. In January 2001, EPA published a new methylmercury water quality criterion that describes the concentration of methylmercury in fish that should not be exceeded to protect consumers of fish and shellfish among the general population. This is the first time EPA has used this approach, a direct result of the scientific consensus that consumption of contaminated fish and shellfish is the primary route of exposure to methylmercury.

Superfund

Question 44. Ms. Whitman, the Administration's fiscal year budget for Superfund proposes increasing funding to $1.39 billion, a $117 million increase over fiscal year 2003 when inflation is not included. Of this, EPA asserts that $150 million in additional funds will go to remedial action. It is unclear from where within the Superfund program the additional moneys will come.

Ms. Whitman, could you please detail for us from what other Superfund activities this money will come. Investigations? Clean up design? Removal actions? Long-term operation and maintenance?

Response. The President's budget request for Superfund for fiscal year 2004 is $1.39 billion, an increase of $117 million over the fiscal year 2003 request. This increase will provide $150 million in additional funding for Superfund cleanup construction projects. The President's fiscal year 2003 request included a one-time $75 million add for building decontamination research related to homeland security that is not being requested in fiscal year 2004. The fiscal year 2004 request slightly increases investigations, cleanup design, removal actions, or long-term operation and maintenance.

Question 45. According to a Resources for the Future Report to Congress, funding Superfund at 1.39 billion will result in a short fall of $200 million. Likewise, an October 2002 IG report documented that EPA did not fund approximately $200 million of Regional requests. Seven sites EPA identified as high priority by EPA because of the risks to human health and the environment received no funds, while 48 others were underfunded. Ms. Whitman, what is EPA doing to ensure that communities get the money they need to clean up these toxic sites?

Response. For fiscal year 2004, the Administration has requested an increase to the Superfund budget that would provide an additional $150 million for Superfund construction funding. In addition to simply requesting more money, EPA continues to:

- Pursue responsible parties to conduct the cleanup work;
- Manage all available Superfund resources by deobligating resources from prior years that are not being put to use;
- Prioritize funding to clean up construction projects that are currently underway and need additional resources to complete work to ensure that contamination is not left exposed and to avoid unnecessary shut-down and startup costs;

• Review sites with the EPA National Risk-based Priority Panel to assess their relative risk and establish priorities for allocating resources. Priority is given to sites that present the highest risk to human health and to those sites that are nearing completion; and,
• Use emergency response or removal actions to mitigate the immediate threats to people if we identify immediate threats to people living near a site.

Question 45a. Ms. Whitman, what is EPA doing to ensure that communities get the money they need to clean up these toxic sites? If EPA no longer designates these seven sites as high priority, please explain the rationale for the changed designation and summarize the information that EPA received in support of, and in opposition to, this change.

Response. EPA established the National Risk-based Priority Panel in 1995 to review and evaluate Superfund cleanup construction projects that are expected to be ready to proceed during a given fiscal year. The Panel evaluates projects based on their relative risk to human health and the environment, and other factors including the site schedule for achieving construction completion and the potential that the work could be accomplished by responsible parties. Sites are selected for funding based on their actual readiness to proceed to construction, their relative risk to human health, the site completion schedule, and the results of the enforcement screening process.

The seven projects that were not funded during fiscal year 2002 while remaining a priority were not among the highest priority sites considered for funding during fiscal year 2002 and they were not near-term candidates for construction completion. These sites remain on the Superfund National Priorities List and EPA will continue to assess their relative risk along with cleanup construction projects at other sites that are expected to be ready to proceed in subsequent fiscal years.

Question 45b: If they are still listed as high priority sites, please explain why they received no funding from EPA in fiscal year 2002.

Response. EPA used the results of the National Risk-based Priority Panel to identify the sites that posed the highest risk to human health and those sites that were nearing completion, and selected those sites for funding. The seven sites that were not funded ranked lower in terms of their relative risk to human health when compare to sites selected for funding and they were not near term completion candidates. These sites remain a priority for EPA and we will continue to assess their relative risk along with cleanup construction projects at other sites that are expected to be ready to proceed in subsequent fiscal years until they receive the required resources for construction.

Question 46. Ms. Whitman, in your opening statement you state that the Administration has a "long-standing commitment to clean-up contaminated sites." However, your budget proposes to flat line cleanups at 40 per year, down significantly from your estimate of 75 for 2001, and less than half the average of 87 cleanups completed per year in the last 2 years of the Clinton Administration.

Ms. Whitman, can you please explain to us how cutting in half the number of clean-ups completed translates into a commitment to cleaning up contaminated sites?

Response. EPA remains committed to completing cleanups at Superfund sites. As of October 1, 2002, EPA has achieved construction completion at 846 of 1498 NPL sites (56 percent) and had taken substantial cleanup action at over 90 percent of NPL sites.

In the early years of Superfund, it was difficult to show cleanup progress and the program had to respond to legitimate complaints that the program did not seem to be working. To show outputs, EPA developed and put a premium on achieving "Construction Completions". This has been a very beneficial metric of forward progress.

The NPL sites that are currently not construction complete are typically larger, more complex and more time consuming than the ones that have been cleaned up in the past. Many more of the sites on the National Priorities List that are not construction complete are "megasites". In short, there are few low hanging fruit left.

The Administration is concerned about the declining number of sites that are finishing construction and has requested an additional $150 million in fiscal year 2004 targeted toward an additional 10–15 construction starts, with a projected 7 to 10 additional completions during the 2-year period of fiscal year 2005/6.

EPA has begun to develop measures that may lead to a better understanding of the actual benefits to human health and the environment from cleanups. For instance, EPA's new metric for sites where EPA has eliminated exposure pathways (human exposures and migration of contaminated groundwater under control) will show that people are not being exposed to site contaminants from certain sites. Exposure reduction has a strong intuitive link to better health outcomes. EPA con-

tinues to explore ways to link construction progress outputs (e.g., construction completion) to human health and environmental protection outcomes to help focus our resource allocation decisions. EPA is sponsoring the National Advisory Council on Environmental Policy and Technology (NACEPT) that is having a public dialog on, among other things, measuring program performance that will have outcome elements.

Question 47. Ms. Whitman, the Administration frequently asserts that site cleanups underway are more complex sites than previous site cleanups. However, EPA has been cleaning up extremely complex sites for decades and I am unaware of any evidence indicating that the complexity of sites has changed radically over the last 2 years.

Please provide a detailed explanation of what constitutes a more complex site. In addition, please summarize the information that your Agency has received that indicates such a radical change in site characteristics has occurred over the last 2 years and provide such information to this committee.

Response. Many factors are included in complexity, which affect the duration and cost of cleanups. Examples of some such factors include: contaminant characteristics, presence of multiple contaminants, area and volume of contamination, multimedia contamination, ecological issues, groundwater issues, remedial technology(ies) necessary, site location, proximity to populations, PRP cooperation, presence of multiple PRPs, and other stakeholder interests (States, Tribes, communities, natural resource trustees). While we have not attempted to assess all the interrelated characteristics that describe complexity on a site-specific basis, we have a few surrogate measures that demonstrate how the current universe of non-construction complete NPL sites is more complex than NPL sites that are construction complete.

For example, at the end of fiscal year 2001, 21 percent of the remaining non-construction completed universe of final NPL sites were Federal facility sites. The nature of contamination at these sites and their vastness defines these sites as complex. At the end of fiscal year 2001, only 4 percent of construction completed sites were Federal facilities. Second, we observed that, of 124 sites identified as mega-sites in fiscal year 2001, 75 percent were not construction complete. Mega-sites are non-Federal facility sites with total cleanup costs estimated at $50 million or more. Finally, we noted in fiscal year 2001 that the number of operable units per non-construction complete site was more than 1 to more than 2 times greater than at sites that had achieved construction completion. An operable unit is a means by which EPA may divide a site into smaller scale components to address the multiple aspects of site cleanup.

Question 49. Ms. Whitman, in April 2002, Marianne Horinko, Assistant Administrator for the Office of Solid Waste and Emergency Response, testified before this committee under oath. During that testimony she indicated that if the Fund were not "robust", the Administration would revisit reinstating the polluter fees. Her exact quote was:

"I'm certainly not ruling out the tax. The Administration this fiscal year felt that in the 2003 budget we still had a relatively robust funding source in the remaining trust funds, that we did not have to propose the Superfund tax, but we will look at that again in 2004 and see if we need to revisit that position."

As we can see from your own budget documents, there is so little money left in the Trust Fund that taxpayers would be picking up more than 79 percent of cleanup costs, while polluters only pay 21 percent, in fiscal year 2004. As you know, this was exactly the reverse in 1995, when taxpayers paid 18 percent of the costs and polluters 82 percent.

Ms. Whitman, as the Trust Fund clearly is no longer "robust," did the Administration reconsidered reinstating the polluter fees? If not, can you please explain Ms. Horinko's comments? If reinstating the fees was considered, why was it not included in the President's budget request?

Ms. Whitman, does EPA support reinstating the polluter fees or do you support shifting the full burden of the federally funded portion of the program to the general taxpayer?

Response. Viable polluters pay for their share of Superfund cleanup, either through cost recovery or by cleaning up the sites themselves. This results in responsible parties cleaning up approximately 70 percent of Superfund sites. Private party settlement commitments typically range more than $1 billion annually for Superfund cleanup. EPA cleans up the remaining 30 percent of sites, which are "orphan sites' where the polluter is no longer in existence or unable to pay for cleanup.

As you know, the President's Fiscal Year 2004 Budget Request includes an increase of $150 million in construction cleanup funding, and does not recommend imposing new taxes. As in past years, we are confident that Congress will appropriate

the correct mix of trust fund and general fund resources that will ensure adequate funding for this vital program.

EPA strongly supports the polluter pays principle and continues to make all viable polluters pay for or perform the cleanup of their sites. Approximately 70 percent of Superfund cleanups are performed by the parties responsible for hazardous waste sites. The remaining sites either have no identified parties responsible for the cleanup, or the parties responsible for the cleanup are bankrupt or otherwise financially unable to contribute to the cost of cleanup. Decisions on whether to fund the Superfund program from Trust Fund or General revenues are made by Congress in the annual congressional appropriations process.

Historically, there is no relationship whatsoever between the balance in the Superfund Trust Fund and the level of congressional appropriations. For the past 5 years, Congress has provided relatively steady appropriations at $1.3 to $1.5 billion for the program. In fact the U.S. Senate, under both Republican and Democratic leadership in the last session of Congress, funded Superfund at approximately the same level and largely out of general revenues. The President's Budget anticipated that Congress would continue to provide appropriate funding for the Superfund Program.

Children's Environmental Health

Question 50. Ms. Whitman, one of my greatest concerns is ensuring that we protect children's environmental health. Information on the state of children's health and the threats they face is critical to protecting them and determining our funding priorities. As you know, I have been trying to get EPA to release their report on the state of children's health since June 2002, when OMB asked to review it. We were happy to see EPA finally release the report on Monday after the media leaked a portion of it. My office has been told repeatedly that the reason the report was delayed was that it had to undergo an interagency review that went beyond OMB.

Ms. Whitman, please explain the review process the report underwent from June 2002 until its release on February 24, 2003, including the agencies that reviewed the report.

Was the interagency review part of the peer review? If so, why aren't the additional reviewers listed in the report? If not, was there any external, independent peer review of the final report?

Question 51. Although we were glad to see the America's Children and the Environment report, we were disturbed by the information in it. The statistics on the state of children's health are alarming. Here are a few of the facts:

- Childhood asthma has doubled since 1980.
- Children's cancer incidence has increased more than 20 percent since 1975.
- Nearly one million children live within one mile of a Superfund toxic waste site.
- Kids' risk of cancer from hazardous air pollutants is 1-in–100,000, 10 times higher than EPA's benchmark cancer rate of 1-in–1,000,000.
- Eighteen percent of children, more than 1.3 million children, live in counties where their risk of cancer from hazardous air pollutants in greater than 1-in–10,000.
- EPA believes that there is "essentially no 'safe' level of lead."
- In 1999–2000 the median concentration of concentration of lead in blood was 2.2 micrograms per deciliter.
- There is no safe level of mercury in the blood.
- About 50 percent of women of childbearing age in the United States have at least 1 part per billion of mercury of in their blood.
- In 2001, 44 States issued one or more advisories to warn people about elevated concentrations of mercury in noncommercial fish.
- 6 out of every 1000 children have been diagnosed with mental retardation.

Please detail the actions the Administration is taking to decrease children's exposure to pollution in each of these areas?

Response. The Administration is involved in a number of activities to protect children from environmental health risks. Children's environmental health is a priority of this Administration. The President has a task force that focuses solely on environmental health risks and safety risks to children. The task force provides the President with recommendations on Federal policy based on an interagency collaborative process. Examples of such activities supported by the Administration include:

ASTHMA

The U.S. Environmental Protection Agency (EPA) and the Centers for Disease Control (CDC) co-chair the Asthma Workgroup of the President's Task Force on En-

vironmental Health Risks and Safety Risks to Children. In 1999, the Task Force issued Asthma and the Environment: A Strategy to Protect Children to develop further understanding of how environmental factors relate to the onset of asthma and exacerbation of asthma symptoms. This report serves as the framework for collaboration among the Department of Health and Human Services (HHS), EPA and other Federal agencies.

The report made four recommendations for action:

1. Strengthen and accelerate focused research into the environmental factors that cause or worsen childhood asthma.

2. Implement public health programs that improve use of scientific knowledge to prevent and reduce the severity of asthma symptoms by reducing environmental exposures.

3. Establish a coordinated nationwide asthma surveillance system for collecting, analyzing, and disseminating health outcome and risk factor data at the State, regional and local levels.

4. Identify the reasons for and eliminate the disproportionate burden of asthma among different racial and ethnic groups and those living in poverty.

The Administration is addressing these recommendations through a variety of activities:

EPA funds intramural and extramural research into the environmental factors that cause or worsen asthma.

In addition to funding independent investigators, EPA and the National Institute of Environmental Health Sciences (NIEHS) established 12 Centers for Children's Environmental Health and Disease Prevention Research dedicated solely to the study of children's environmental health hazards. Several of the Centers are looking at the relationship between environmental contaminants and asthma. The Centers translate scientific findings into effective intervention and prevention strategies for communities to reduce the burden of asthma in disproportionately impacted populations.

• EPA commissioned the National Academy of Sciences to convene an expert panel to assess the state of the science surrounding the relationship of indoor environments to the development and exacerbation of asthma. The panel's report, Clearing the Air: Asthma and Indoor Air Exposures, issued in 2000 has informed the scientific basis for the Agency's public heath outreach and education program.

In response to the growing asthma problem, EPA created a national, multi-faceted asthma education and outreach program. This comprehensive program stresses the importance of incorporating environmental management into asthma education, outreach and management strategies with special emphasis on disproportionately impacted audiences. EPA implements comprehensive asthma management programs through partnerships with national organizations and in collaboration with the National Asthma Education and Prevention Program (NAEPP), the primary vehicle for coordinating asthma activities across the Federal Government.

The components of EPA's national asthma education and outreach program to fight childhood asthma include:

• Through a national awareness campaign, EPA is working to raise awareness and prompt community action about asthma through a comprehensive, research-based, public service, media campaign launched in collaboration with the Ad Council in March 2001. The campaign seeks to raise public awareness about asthma and encourage parents of children with asthma to take steps to prevent asthma attacks EPA is developing an assessment of the media campaign to measure its effects on the frequency of asthma attacks. EPA launched the second wave of the campaign in June 2003.

• EPA provides funds to national organizations in the health care community to raise awareness of environmental asthma management and incorporate environmental controls into clinical practice and standards of care. Activities to date include:

• American Respiratory Care Foundation educated 600 pediatric patients and their families and trained 2,400 respiratory therapists, ultimately educating up to 15,000 asthma patients.

• Bureau of Primary Healthcare trained over 150 health care providers in health clinics nation-wide, reaching approximately 25,000 asthma patients.

• Asthma and Allergy Foundation of America trained 360 health care professionals to provide integrated environmental trigger control and asthma management education to patients.

EPA provides funds to national organizations to support school and daycare programs that teach children, staff, and parents about asthma management, including the control of indoor environmental triggers.

• EPA's Indoor Air Quality Tools for Schools program aims to improve indoor air quality and asthma education in the nation's schools. The program helps school personnel assess, resolve, and prevent indoor air quality problems and reduce exposure to asthma triggers in schools.

• New guidance on school design has been developed and will soon be available to the public. The IAQ Design Tools for Schools web resource complements the existing program, encouraging schools to use high performance building goals, and addresses the importance of healthy school environments.

To educate families about how to control indoor environmental triggers including allergens and secondhand smoke in their homes, EPA manages a national competitive grants program for community based in-home asthma education. In addition, EPA developed a national Smoke-Free Home Campaign to educate and motivate parents to make their homes and cars smoke-fre Data from the CDC indicate that cotinine values at the 90th percentile, representing the most highly exposed 10 percent of children, declined by 18 percent between 1988–1991 and 1999–2000. Continine blood levels are a measure of exposure to second-hand smoke.

• EPA continues to promote Air Quality Index (AQI) forecasting by State and local air agencies as a way to help people with asthma plan their outdoor activities to reduce exposure to air pollution, which can be a significant asthma trigger. AQI forecasts are carried on the AIRNOW Web site (http://www.epa.gov/airnow), and in USA Today and on The Weather Channel, as well as, local media across the country.

• EPA, in collaboration with other Federal Agencies, is supporting the Environmental Council of States (ECOS) and the Association of State and Territorial Health Officials (ASTHO) to develop and implement with State health and environmental agencies a national asthma action agenda to reduce environmental triggers of childhood asthma. Forty-one States have participated in the process.

• In 2003, EPA plans to request proposals from State health and environmental agencies to support demonstration projects that will use existing asthma surveillance data to design and implement strategies and actions to minimize environmental factors that contribute to asthma in children.

In addition, HUD's Healthy Homes program is conducting research to uncover the conditions in housing that may contribute to childhood asthma.

By integrating sound science, effective public health education and outreach programs, and better measurement of health outcomes, the Administration is committed to improving the quality of life for children with asthma.

CHILDHOOD CANCER

The President's Task Force on Environmental Health Risks and Safety Risks to Children has been involved in a number of successful projects related to childhood cancer:

• The National Cancer Institute is the lead agency for developing the Childhood Cancer Research Network. The proposed network will establish a national cohort of children with cancer in order to study the etiology of cancers in children and participate in childhood cancer research projects.

EPA proposed Supplemental Guidance for Assessing Cancer Susceptibility Resulting from Early Life Exposure to Carcinogens to the Draft Guidelines for Carcinogen Risk Assessment describing possible approaches that could be used to assess risks resulting from early life exposure to potential carcinogens. Public comment on the draft Supplemental Guidance and the draft Guidelines for Carcinogen Risk Assessment ended on June 2, 2003.

SUPERFUND

The Superfund program is making significant progress at protecting children by:

• routinely identifying immediate threats to people living near a site.

• conducting emergency response or removal action (such as removing containers of hazardous waste or providing safe drinking water) to address immediate threats, and

• relocating people, if necessary.

Significant progress has been made in cleaning up sites, and today 57 percent of the sites on the National Priorities List (NPL) are construction complete. Over 90 percent of the NPL sites have already had significant cleanup work completed.

Children are always considered a separate, sensitive population for risk assessments conducted at sites and for determining site cleanup levels. If the most significant risks are determined to be those risks posed to children, the site remedies are designed to protect those children. As part of the risk assessment process, we ensure the toxicity values used are protective of children's increased sensitivity.

If children are present near a site, extra efforts at community outreach and education are taken. These efforts often involve visiting schools to inform children of ways to reduce exposures and distributing informational fact sheets to the community on ways to protect children's health.

In addition, EPA, the Agency for Toxic Substances and Disease Registry (ATSDR), and the Association of Occupational and Environmental Clinics worked together to develop the Pediatric Environmental Health Specialty Unit (PEHSU) Program, which is a national resource for pediatricians, other health care providers, Federal staff, and the public to reduce environmental health threats to children, improve access to expertise in pediatric environmental medicine, and strengthen public health prevention capacity. The key focus areas of the PEHSUs are medical education and training, telephone consultation, and clinical specialty referral for children who may have been exposed to environmental hazards. Eleven of these units are operating in the United States.

An example of Superfund's work are the significant reductions in children's blood lead levels resulting from the cleanup of the Oronogo/Duenweg Mining Belt Site. In 1991, the Missouri State Health Department and ATSDR determined that over 14 percent of children in the area had blood lead levels greater than or equal to 10 μg/dL. After cleanup at over 2,500 homes, blood lead levels in children living in the same area that were greater than or equal to 10 μg/dL had declined to 2 percent in 2000.

HAZARDOUS AIR POLLUTANTS

According to the 1996 National Air Toxics Assessment (NATA), 6 percent of children or 2.4 million children live in counties where the risk of cancer from hazardous air pollutants is one in 10,000. The risk to the average child nationally is 53 in a million. People exposed to hazardous air pollutants at sufficient concentrations and durations may have an increased chance of getting cancer or experiencing other serious health effects. These health effects can include damage to the immune system, as well as neurological, reproductive (e.g., reduced fertility), developmental, respiratory and other health problems. Children and the elderly are especially susceptible to many of these health effects.

Under the Clean Air Act (CAA) the Agency is involved in a number of activities to reduce the potential exposure of children to hazardous air pollutants. These activities include:

1. Issuing regulations that impose source-specific standards limiting emissions of hazardous air pollutants. Existing source-specific standards that have been promulgated to date have reduced air toxic emissions by nearly 2.1 million tons—a reduction of nearly 35 percent from pre-clean air act estimates.

2. National, regional, and community-based initiatives that are multi-media and that focus on areas where people are at the greatest risk. These activities support State, local and tribal activities and include:

- Encouraging and supporting area-wide strategies developed by the State, tribal or local air pollution control agencies.
- Support local and State activities consistent with the Integrated Urban Air Toxics Strategy.
- Addressing multi-media aspects of air toxics exposure (e.g., the Great Waters program).

3. The NATA is helping the Agency identify areas of concern, characterize risks, and track progress toward meeting the air toxics program goals. The NATA activities include:

- developing and expanding air toxics monitoring,
- improving and periodically updating emissions inventories,
- multi-media and exposure modeling,
- continuing research on health effects,
- determining exposure to both ambient and indoor air toxics, and
- improving exposure and risk assessment tools.

4. Education and outreach activities. In light of the scientific complexity inherent in air toxics issues, the Agency recognizes that the success of the overall air toxics program depends, in part, on the Agency's ability to communicate effectively with the public about air toxics risks and activities necessary to reduce those risks. Much of EPA's outreach material can be found on the Agency's Air toxic website (http://www.epa.gov/ttn/atw/)

LEAD POISONING

The Administration's efforts to reduce lead hazards include collaboration and coordination among Federal agencies (EPA, HUD, HHS, and DOJ), development of

regulations when necessary, and public education. Such collaborative efforts have resulted in a great success in this area. Recent estimates by CDC show that the number of children with blood lead levels of 10 μg/dL or greater declined from 890,000 in 1991–1994 to 434,000 in 1999–2000 (please refer to the Second National Report on Human Exposure to Environmental Chemicals (CDC), National Health and Nutrition Examination Survey (1999–2000), and www.cdc.gov/nceh/lead/research/kidsBLL.htm.)

In January 2002, EPA and Department of Housing and Urban Development (HUD) announced the broadest lead disclosure settlement ever with one of the nation's largest property management firms, the Denver-based Apartment Investment and Management Co. (AIMCO). AIMCO agreed to test and cleanup lead-based paint hazards in more than 130,000 apartments in 47 States and Washington, DC.

The President's Task Force on Environmental Health Risks and Safety Risks to Children, co-chaired by EPA and HHS, published Eliminating Childhood Lead Poisoning, A Federal Strategy Targeting Lead Paint Hazards in 2000. Its recommendations include 1) target grants for low income housing and leverage the private sector to control lead paint hazards; 2) improve early intervention by expanded blood screening; 3) conduct research to improve prevention and promote innovative ways to bring down lead hazard control costs; 4) implement monitoring programs.

The Administration has requested increased funding for lead hazard control programs at HUD, now at its highest level ever, which will protect more children than ever before. The Administration has also proposed a new $25 million Innovative Lead Hazard Reduction Grant program in 2004 for HUD. In addition, the Administration has proposed an additional $10 million for HUD's regular lead hazard control grant program in 2004, which is $10 million more than requested in 2003.

Operation Lead Elimination Action Program (LEAP), developed by HUD and consistent with the President's Task Force's strategy, leverages additional private sector resource for local lead hazard control activities. In 2002, Congress appropriated $7 million for this program, which will leverage an additional $17 million in private sector funding for local lead hazard control programs. In 2004 the Administration has requested an additional $4 million for a total of $10 million for this program.

In October 2002, HUD awarded $94.7 million in grants to State and local governments and others to fund programs to eliminate lead-based paint hazards and other health threats in low-income housing. The grants will also be used to leverage additional private sector resources, promote educational and training programs and conduct research on innovative methods of lead hazard identification and control.

Most recently, EPA launched a Lead Poisoning Awareness Campaign along with the National Council of La Raza (NCLR) to raise awareness among Latino parents of the importance of routine lead screenings for their children.

MERCURY

U.S. EPA is concerned about the seriousness of the threat of mercury pollution to the environment, and the seriousness of health damage resulting from human exposure to mercury. Under the Clear Skies proposal, mercury emissions from coal-fired power plants would be capped by almost 50 percent by 2010 and by nearly 70 percent in 2018. The Agency has also modified water quality criterion to incorporate new scientific information about mercury. EPA has been in the forefront of establishing health-protective recommendations based on the most recent scientific evaluations of the toxicity of methylmercury to the developing brain, as well as evaluations of other adverse effects on both children and adults.

EPA is currently regulating mercury emissions from municipal waste and medical waste incinerators. EPA regulations require that these two types of sources reduce their emissions by over 90 percent. These two sources were once the largest sources in the United States after coal fired electric utility boilers.

MENTAL RETARDATION

EPA and the National Institute of Environmental Health Sciences established 12 Centers for Children's Environmental Health and Disease Prevention Research dedicated solely to the study of children's environmental health hazards. These unique centers perform targeted research in children's environmental health and translate scientific findings into intervention and prevention strategies by working with communities. Several of the Centers are looking at the relationship between environmental contaminants and developmental disabilities.

Question 52. I was particularly shocked to see language in the report America's Children and the Environment that appeared to backtrack on the accepted fact that children are especially vulnerable to the effects of environmental contaminants due to children's behaviour and their developing physiology. Your report, America's Chil-

dren and the Environment, states that children "may be more vulnerable to the effects of contaminants". Of course, in many other places in the report, EPA acknowledges that children are particularly vulnerable to these threats.

Ms. Whitman, does this EPA accept that children are especially vulnerable to the effects of contaminants, or has its position on this changed?

If EPA's position has changed, when was this decision made and with what input? Did you consult with physicians, scientists, industry, environmental and public health organizations? Please provide the committee with a list of the parties with which EPA consulted.

If EPA's position has changed, please provide us with the scientific evidence that supports EPA's new position.

ENFORCEMENT

Question 53. Ms. Whitman, I understand that because of the recent passage of the Omnibus Appropriations bill that EPA has not had a chance to detail how it will spend those funds, so it is difficult to pin down many funding issues. One that I am particularly concerned about is Enforcement. The fiscal year 2004 request cut a total of 71 positions in the enforcement program, from 3482 FTE in fiscal year 2002 to 3411 FTE in fiscal year 2004. However, it is unclear how these resources will be distributed within the Agency for enforcement activities, such as inspections, compliance monitoring, investigations, and pollution control. It is also unclear how these figures relate to fiscal year 2003 funding levels.

Please provide the committee with a detailed break down of enacted fiscal year 2003 enforcement funding activities.

Department of Defense Request for Exemptions from Environmental Laws

Question 54. Recently, the Department of Defense proposed numerous exemptions from environmental laws—including RCRA, the Clean Air Act and the Clean Water Act—to facilitate training activities. Our environmental laws have been on the books for many years—unfortunately during these same years we have faced military conflict. Yet, I am not aware of proposals in the past to exempt military training activities from our environmental laws. The need for exemptions is not clear to me.

One proposal is to exempt used or fired munitions on operational ranges from the definition of solid waste in RCRA. Ms. Whitman, would you support eliminating the authority of your Agency, as well as that of the States, to order the abatement of an imminent and substantial endangerment of health or the environment caused by the handling of these munitions?

Question 55. Do you believe that the defense agencies should be exempt from current requirements to obtain Clean Water Act permits before they discharge pollutants into waters of the United States as part of military training and testing exercises?

Response. No, I do not believe such an exemption is warranted at this time.

Question 56. Another proposal would exempt military activities from clean air act requirements despite the fact that there are currently several exemptions for the military. Do you believe that defense agencies should not be required to do their share to clean up our air?

No response.

Question 57. If there are certain instances for which a waiver would be appropriate, why aren't the exemptions contained in current law for national security purposes sufficient? Have they been used in the past?

No response.

RESPONSES OF ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1. Administrator Whitman, I was very pleased that EPA released its report last month on children's environmental health. This is an area that we must focus on if we want to improve our nation's health overall, because an ounce of prevention can mean the difference between a long healthy life and one that is filled with chronic health problems and diseases.

In the report, EPA states that "at present, available data do not allow scientists to determine the role that environmental contaminants play in the prevalence of some childhood diseases." I find that statement very troubling.

We need to be doing more to educate ourselves about the environment's impact on children's health, which will ultimately help us raise healthier children and re-

duce health care costs. According to a recent Mount Sinai School of Medicine study, childhood diseases of environmental origin cost Americans nearly $54.9 billion annually.

One way to do this is through continued support for the EPA/NIEHS Centers for Children's Environmental Health and Disease Prevention Research, which you mention in the forward to the report. These Centers are addressing environmental factors that may cause or contribute to childhood illnesses such as asthma, or that can interfere in the proper growth and development of our nation's children. We have two such Centers in New York—one at Columbia and one at Mount Sinai—and they are doing great work.

Can you tell us what the Administration has proposed in terms of funding for these Centers in FY04 and how it compares to current funding levels for the Centers? If the funding for these Centers is going down as we have heard that it is, I strongly urge the Administration to rethink these proposed cuts in funding for the Centers.

Response. In 1998, EPA and the National Institute for Environmental Health Sciences (NIEHS) established eight Centers of Excellence for Children's Health and Disease Prevention Research. In 2001, EPA and NIEHS expanded the Children's Centers program to twelve.

The centers established in 1998 were funded for 5 years with the expectation that in 2002 they would re-compete for continued funding. The re-competition would be open to the existing eight centers, whose funding is due to expire in 2003, and new institutions and consortia wishing to establish new Centers. Both agencies are currently collaborating on administering the re-competition.

The EPA's Science Advisory Board (SAB) recommended in 2002 that the Agency achieve a balance between center-based research and solicitations for individual grants. In response to this recommendation, EPA will maintain a consistent level of funding for children's environmental health research, and redirect some funds from the centers to other funding mechanisms that effectively address high-priority children's health issues. The redirected resources will be used to support EPA solicitations for individual Science to Achieve Results (STAR) grants related to children's health. Topics under consideration for these solicitations include childhood cancer, genetic markers of environmentally induced childhood illness, and dose-response assessment methods for developing organisms.

The proposed funding levels are shown below:

Fiscal Year	Children's Research Centers	Children's Research Grant Solicitations	Total
2002	$ 9.0 million	$ 0.0 million	$ 9.0 million
2003	$ 7.5 million	$ 1.5 million	$ 9.0 million
2004	$ 6.0 million	$ 3.0 million	$ 9.0 million

The centers focus on research to elucidate the role of environmental exposures in asthma and developmental disorders among children and provide scientists with an opportunity for collaboration on research programs addressing environmental contributions to children's health and illness. They also facilitate the translation of basic scientific knowledge into strategies that are aimed at reducing the incidence of environmentally related childhood illness. The intent of these centers is to establish a national network that fosters communication, innovation, and research excellence with the ultimate goal of reducing the burden of morbidity among children as a result of exposure to harmful environmental agents.

Individual grants are another highly effective mechanism to pursue research into children's health. Grant awards can be made to a larger number of scientists from across a broader number of institutions, all of whom are working in a variety of ways toward addressing specific uncertainties related to children's exposures to environmental contaminants. Research from individual grant awards usually allows greater depth of investigation in a particular area instead of the highly complex, multi-disciplinary, but less in depth, research associated with centers. The key is to have a diverse research portfolio—some research conducted via centers and other research conducted via individual grants—to ensure that the widest expertise of investigators are contributing to the children's health research program and to provide opportunities for collaboration among centers and other individual investigators.

For example, through our solicitations for individual grants, we have funded scientists who are providing detailed, valuable information on targeted key areas of

uncertainty, including understanding the extent of children's exposures to pesticides and possible associated health effects; finding innovative, non-invasive ways to measure levels of toxic substances in children; and understanding how chemical exposures interact with children's genetic make-up to possibly produce adverse health outcomes.

Long Island Sound Funding

Question 2. Administrator Whitman, in addition to the concerns raised by Senator Jeffords with respect to funding for Lake Champlain, which I would like to echo, I am very concerned about the Administration's request for the Long Island Sound—which once again has been reduced to less than half a million dollars in the Administration's fiscal year 2004 budget.

Where as funding requests for other geographic initiatives such as the Gulf of Mexico, the Great Lakes, Chesapeake Bay, and the Florida Everglades all have gone up from last year's request, the request for the Long Island Sound remains flat and terribly low—substantially lower than what is currently authorized and what has traditionally been appropriated by Congress.

I know my colleague on the committee, Senator Lieberman, shares my concerns on this issue.

The Long Island Sound is a tremendous natural resource that is also under tremendous strain—and it needs our help. Like other estuaries, Long Island Sound abounds in fish, shellfish, and waterfowl. It provides feeding, breeding, nesting, and nursery areas for diverse animal and plant life. And there are more than 8 million people living within the Sound's watershed as well.

As a result, like many other estuaries, the Long Island Sound is plagued by low dissolved oxygen levels and high nitrogen loads. Over a billion gallons of treated effluent are discharged each day from sewage treatment plants into the Long Island Sound—contributing over 150,000 pounds of nitrogen per day into the Sound.

This is a costly problem in many ways—costly to the environment, costly to the economy, and frankly, costly to solve. The $477,000 included in the Administration's fiscal year 2004 budget would not even make the smallest dent in the needs of the Long Island Sound.

Will you commit to work with my colleagues and me to find ways to direct much needed Federal resources to the Long Island Sound in fiscal year 2004?

Response. I share your views regarding the importance of the Sound and want you to know that it continues to be a priority for this Administration. In addition to the $477,000 requested explicitly for the Long Island Sound, our request also includes $310,000 for the Long Island Sound through our Coastal Watersheds/National Estuary Program.

Preparedness and Response to Disasters

Question 3. Administrator Whitman, the draft report, "Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster," released by the Agency acknowledges that:

"(1) Persons exposed to the extremely high levels of ambient particulate matter and its components during the collapse of the World Trade Center towers and for several hours afterwards were likely to be at risk for immediate acute (and possibly chronic) respiratory and other types of symptoms."; and

"(2) The first measurements of some of the contaminants were on September 14, while other contaminants were not measured until September 23. . . . . Because there are only limited data on these critical few days, exposures and potential health impacts cannot be evaluated with certainty for this time period."

The New York Daily News also pointed to findings in the report regarding very high levels of dioxin.

What is the EPA doing to ensure our ability to properly respond to disasters of this size and scope in a way that is protective of human health, should they unfortunately occur again in the future? How is this reflected in the Agency's budget for fiscal year 2004?

Response. Over the past year and a half EPA has made considerable progress toward building the capacity to respond to large-scale incidents; however, we have not achieved the capacity to respond to five simultaneous large-scale incidents. The fiscal year 2002 homeland security supplemental resources provided a significant boost to the Agency's emergency preparedness and response program. These funds permitted the program to hire additional response personnel (On-Scene Coordinators (OSCs)) and provide them and existing OSCs with specialized equipment and basic training necessary to respond to chemical and biological agents. During this period the program also established the Environmental Response Team West (ERT-W), which complements the ERT East, to provide technical expertise to our field re-

sponse personnel for incidents that may occur in the western part of the country. Recently enacted fiscal year 2003 congressionally directed funds enable the Agency to continue these efforts.

In addition to response activities, EPA is also taking actions that will reduce casualties and property damage through simple yet effective preparedness actions. In the past year, as Executive Secretariat of the Office of Homeland Security Building Air Protection workgroup, EPA developed guidance for release by DHS on how the public can reduce their exposure during an attack (Protect Your Family), and assisted with the development of two documents that reduce the vulnerability of buildings (Protecting Buildings from Airborne Chemical, Biological, and Radiological Attacks and Improved Building Air Filtration).

EPA is working with the Department of Homeland Security to implement a biological contaminant monitoring network. This work is funded by the Department of Homeland Security. We are now exploring potential additional work on biological monitoring in fiscal year 2004.

EPA requested $123.1 million in the fiscal year 2004 budget for Homeland Security responsibilities. This request includes resources to establish a National Decontamination Team and to provide immediate response capabilities to safely and effectively support decontamination activities related to chemical, biological, and radiological events. The request also includes funding for equipment and training of our OSCs, which will continue to advance EPA's capacity to respond to multiple large-scale events. EPA's fiscal year 2004 budget request also includes an increase to the Environmental Radiation Ambient Monitoring System (ERAMS) that will provide system improvements to expand and upgrade the system by increasing reliability and population coverage.

Question 4. Administrator Whitman, I was very pleased that EPA released its report last month on children's environmental health. This is an area that we must focus on if we want to improve our nation's health overall, because an ounce of prevention can mean the difference between a long healthy life and one that is filled with chronic health problems and diseases.

In the report, EPA states that "at present, available data do not allow scientists to determine the role that environmental contaminants play in the prevalence of some childhood diseases." I find that statement very troubling.

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Question 5. Administrator Whitman, the Consumer Product Safety Commission recently released a report documenting the increased risk of bladder and lung cancer for children who play on playground equipment made from arsenic-treated wood. Recently, EPA announced an agreement with manufacturers to phaseout consumer use of arsenic treated wood by the end of this year. Can you update the committee on the progress being made under this voluntary phaseout? I understand that EPA is in the process of conducting a risk assessment for arsenic treated wood. Can you tell us when this risk assessment will be completed?

Response. Registrants of the pesticide requested voluntary cancellation of most residential uses of chromated copper arsenate (CCA) in February 2002. The Agency requested public comment on these requests and after evaluating nearly 7000 comments, the Agency issued final cancellation orders on March 17, 2003. Product labels must be amended which will state that treatment of wood for virtually all residential uses of wood must stop after December 30, 2003, i.e., it will be illegal to treat wood for these residential uses after this date.

Even though the Agency reached an agreement with industry to phaseout the uses of CCA for treating wood used in residential settings, we are continuing the children's risk assessment process as well as our review of those remaining uses that are not part of the voluntary cancellation/use termination. It is important to note also that EPA has not concluded that CCA-treated wood poses unreasonable risks to the public for existing structures made with CCA-treated wood. We are continuing to evaluate potential risks from structures already in place and will continue to evaluate those remaining uses that are not included in the voluntary actions.

We are moving forward with our probabilistic assessment of potential cancer risks to children from exposure to CCA in residential settings and we are enhancing the information upon which we will base our decision about such risks. In particular,

just recently three studies have been completed that will greatly benefit our understanding of the levels of exposure that may be possible from treated wood. The first study, a "surface residue bioavailability study," examined the surface residues of arsenic on wood and estimated how much of that residue can be absorbed by the body from the wood surface. The second study is a "soil residue bioavailability study," which estimates the potential arsenic dose absorbed from soil contact and incidental ingestion through the mouth by children. Those results are being evaluated. The third study of importance is a "hand wipe study" which estimates the potential exposure to arsenic when the hand comes in contact with treated wood and correlates this physical activity with potential exposure to arsenic. Results from these studies have been submitted to the Agency. These data will be fully evaluated in developing a draft children's risk assessment which we intend to take to our Scientific Advisory Panel (SAP) for comment in December. We expect to release the draft children's risk assessment publicly several weeks prior to the SAP meeting. We intend to fully consider any recommendations made by the SAP in finalizing the risk assessment. An additional study that we are collaborating on with the Commission and our Office of Research and Development is to develop data on the effectiveness of sealants in preventing exposure to residues of CCA on treated wood.

EPA expects to evaluate those uses that are not part of the voluntary cancellation through the standard 6-phase public participation process established for pesticide reregistration. This public process ensures active stakeholder participation throughout and the Agency intends to include the Commission in our evaluation process.