

**DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2014**

WEDNESDAY, APRIL 24, 2013

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 9:35 a.m., in room SD-124, Dirksen Senate Office Building, Hon. Jack Reed (chairman) presiding.

Present: Senators Reed, Udall, Begich, Murkowski, Cochran, Blunt, and Johanns.

**ENVIRONMENTAL PROTECTION AGENCY**

**STATEMENT OF BOB PERCIASEPE, ACTING ADMINISTRATOR AND DEPUTY ADMINISTRATOR**

**OPENING STATEMENT OF SENATOR JACK REED**

Senator REED. I would like to call the hearing to order and welcome everyone. Good morning. On behalf of the Interior, Environment, and Related Agencies Appropriations Subcommittee, welcome.

This is our first budget hearing this year. It will be a hearing on the fiscal year 2014 budget request for the Environmental Protection Agency (EPA). I am very pleased to welcome Acting Administrator Bob Perciasepe to testify before the subcommittee. Mr. Administrator, thank you. And also, we are grateful that Acting Chief Financial Officer Maryann Froehlich is also with you. Thank you, Maryann.

Let me make a few acknowledgments before we begin. First, I would like to thank and recognize my ranking member, Senator Murkowski, not only for joining us this morning, but for her great efforts over the last several years to work collaboratively and effectively to craft these budgets, which are very challenging.

I simply could not have a better colleague and partner in these endeavors than Senator Murkowski. And I want to personally thank her for these efforts, and also for her very talented staff. Thank you, Senator.

I would also like to acknowledge that we have added four new members to the subcommittee this Congress: Senators Udall, Merkley, Begich, and Johanns. I welcome each of these Senators and look forward to their contributions.

At some point this morning, the Chairwoman, Chairwoman Mikulski might arrive. When she does, I will at that point, at the ap-

propriate moment, suspend and give her an opportunity to make any statement that she might want.

But we are very gratified to have Senator Mikulski as the chairwoman of the full committee. She served many years on this subcommittee, and she has a particular appreciation and regard for the efforts of the EPA. So we are multiply fortunate in that regard.

Now, turning to the budget, the President's fiscal year 2014 budget request includes \$8.15 billion for EPA. That amount is \$173 million or 2 percent less than the fiscal year 2013 enacted level of \$8.32 billion.

Unfortunately, there is not a lot of good news to discuss in this reduced budget request, but there are a few items that I wanted to highlight as we begin this conversation, including a 6-percent increase to EPA's operating programs above the fiscal year 2013 level.

Within that amount, I am pleased that the administration proposes \$2 million for a geographic program to restore southern New England watersheds. I worked closely with the EPA for several years on this effort. It is extremely important, not just to Narragansett Bay, but to the surrounding waters in Massachusetts and Connecticut. So I am grateful that the EPA leadership has moved forward on this initiative.

The budget request also provides \$73 million for the Chesapeake Bay Program and flat funds the National Estuary Program at \$27 million. It includes a new \$60 million E-Enterprise Initiative to improve electronic data collection and sharing to ease the reporting burdens on regulated entities, and we may get into that in the questioning.

And finally, it is worth noting that the request also includes a nearly 5-percent increase in grants that help States and tribes run their environmental permitting and monitoring programs, including increases in safe air and water pollution control grants.

Of course, despite these good investments, I am disappointed with the overall budget level. This is the fourth year in a row that EPA's budget request has contracted, which makes it difficult for this subcommittee to hold the line on the EPA budget when our final bill is enacted.

And I am particularly concerned about the specific areas in this budget that were identified for cuts. I am most disappointed that the largest reductions, again, were made to clean water and drinking water State Revolving Funds (SRF) which are cut by 19 percent less than fiscal year 2013 levels.

I really find it hard to understand how these proposed cuts square with the President's focus on job creation and infrastructure development. You know, we have discussed these statistics before in this subcommittee, but they are worth repeating. Just take my home State, and we could take the State of any of my colleagues at this dais.

In Rhode Island alone, we need \$1.5 billion in identified needs for clean and drinking water projects; that is \$1.5 billion in the smallest State in the country. Yet, the State is only slated to receive \$15 million in water infrastructure grants in this budget request, which is about \$3 million less than what I expect them to receive in fiscal year 2013.

Mr. Perciasepe, I know EPA faced tough decisions when you put this budget together, but it just does not make sense why we should focus such large cuts in programs that create jobs and help meet an enormous public health need, infrastructure need, economic productivity need in every State in this country.

And since every \$1 we spend for the SRF generates more than \$2 in projects on the ground, that means we are walking away from opportunities to further leverage Federal investments with local funds and other funds.

I am also concerned about a number of other reductions to the budget, including your proposal to eliminate \$10 million in BEACH Act grants that help Rhode Island and other coastal States. And I do not understand why your budget, again, proposes to eliminate nearly \$10 million in funding for a centralized environmental education program.

We have just been through two major hurricanes in the last several years, Irene and Sandy, and the expectation is that we will have more hurricanes. That means our beach erosion is going to be exacerbated. And unless we take steps to just try to modify these beaches and protect them, we are going to lose not only beaches, we are going to lose communities, and we are going to tear up the social fabric of States up and down the east coast, and I would expect this and similar comments could be made by my colleagues on their coast.

There is another area, funding for the Diesel Emission Reduction Act grants is cut by 70 percent, for a total of \$6 million cut. And it is also worth noting that your request trims 10 percent from the Brownfields Program, even though these grants fund local clean-up and job training efforts that redevelop communities and put people to work.

Mr. Perciasepe, I remain concerned about all these reductions, and I look forward to having a chance to discuss them further with you and to work on restoring these cuts through the appropriations process.

And now, let me turn to my ranking member, Senator Murkowski, for any comments she might have.

STATEMENT OF SENATOR LISA MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

And I appreciate your kind remarks about our ability to be working together on this very important budget, and the work that both of our staffs do. As you have indicated, I think it is a great working relationship. We have been able to do some good things in the past, and I look forward to doing so this session as well.

I would like to welcome our Deputy Administrator, Mr. Perciasepe and Chief Financial Officer Froehlich to the subcommittee. Good morning to you.

Most of my questions for you this morning will involve policy issues but first, I want to applaud and recognize the effort to maintain the Alaska Native Villages Program at \$10 million within the budget request. Rural Alaska, as you know, faces some very, very serious challenges in meeting the need for wastewater improvement. So I appreciate that you have included these funds at a time,

as the chairman has noted, of very, very tight budgets. I hope that we can do more, but we will be working with you in that regard.

I also want to thank you personally for meeting with my staff following last year's budget hearing. There were about a dozen different EPA issues that were noted at that hearing. The commitment was made that we would work together, follow through with some, and you have helped us in that regard.

Now, some of these issues are very specific to the unique circumstances of my State, but in fairness, most of them reflect the same problems that communities around the Nation are facing with EPA's regulatory actions.

I do have some concerns over a number of rulemakings that the EPA is working on, and their impact on the national economy, as well as their impact on Alaska. I hope that you and your staff will continue to meet with us, dialogue with us on this again this year. And I look forward to discussing that, among other things, when we meet later this week.

When Administrator Jackson appeared before this subcommittee last year, I told her at that time that I hear more complaints from the people of Alaska about the EPA than any other Agency out there. And I can assure you that even given the passage of time and the work that has gone on, those complaints remain the same. EPA, unfortunately, is still number one in the views of many Alaskans as not necessarily a good thing.

The sheer number of rulemakings the EPA is currently proposing, the cost of compliance with the vast array of regulations already on the books and what, at times, are the unreasonable consequences of their enforcement. It is very frustrating to the public.

In the past month alone, the EPA indicated its plans to not only finalize regulations for greenhouse gases on new powerplants this year, but also to get a significant start on rules for existing powerplants in fiscal year 2014. EPA also unveiled new draft rules concerning the sulfur content in gasoline. And last Friday, it announced new rules for concerning water discharges from powerplants.

And putting aside the merits of these various proposals, no one can dispute their far-reaching impacts, from effectively barring the construction of new coal-fired plants, to raising the cost of gasoline by as much as 10 cents per gallon for the average consumer, even though our economy continues to sputter and unemployment remains high.

What I have done is I have asked my staff to keep a list of the current rulemakings that are affecting Alaska, our energy supply, or both that the EPA is working on. Our list, at this point in time, is up to about 60 different rulemakings; not 16, but 60 current rulemakings, and there is a fair chance that we may have missed one or two. So you can understand how the public feels when they just feel that there is this barrage of regulations coming at them.

I would like to leave the subcommittee, my colleagues, with one example here this morning, and I think it is a pretty vivid example that demonstrates this point. This comes from constituents in Soldotna, Alaska down on the Kenai Peninsula, a small, little community. It is a husband and wife. They are both veterinarians.

They own a veterinary clinic, and one of the services that they provide for the community is cremation of animals.

When “Fluffy” decides that it is time to give up the ghost, this veterinary clinic provides for cremation for the family pets. And more often than not, it is used during the wintertime when you cannot bury your animals because the ground is frozen and burial is not possible.

Now, as I understand it, EPA sent them a notice after the comment period had closed. So this small veterinary clinic gets a notice from EPA about proposed changes in the rules for commercial and industrial solid waste incineration units. And when they called to learn more, even though the comment period was closed, the EPA official said that all incinerators, even the small ones like this very small animal incinerator in Soldotna, Alaska would have to undergo what is called “annual source testing”. And this testing, which is designed for larger commercial facilities, exceeds a cost of \$50,000 annually. That is more revenue than the clinic generates in a year from operating any incinerator.

According to the veterinarians, the EPA official said that the Agency had no leeway in allowing exemptions, even for low levels of emissions, and that essentially its hands are tied. Now, we are still looking into this. We are still gathering the facts. I do have a copy of that letter.

And Mr. Chairman, I have actually asked that the letter be included as part of the record.

Senator REED. Without objection.

[The information follows:]

TWIN CITIES VETERINARY CLINIC,  
*Soldotna, AK.*

DEAR SENATOR MURKOWSKI: My wife and I are veterinarians and the owners of Twin Cities Veterinary Clinic in Soldotna. As part of our veterinary service we provide pet cremations for clients who desire an alternative to burial (or quite frankly landfill disposal) as a respectful means to care for the remains of their deceased family pet. I am writing to you as a constituent and small business owner who is concerned about significant burdens that will soon be imposed on small businesses like mine by recent regulations adopted by the Environmental Protection Agency. The recently passed Clean Air Act included regulations for commercial incinerators and combustion units. Some of the changes were announced in March 2011 for CISWI (Commercial and Industrial Solid Waste Incineration) units. Apparently the “new and improved” testing standards were written with large scale commercial incinerators in mind, but these standards failed to make any reasonable exceptions for small, low-volume units such as mine (a small animal pet cremation unit).

Let me give you a bit of history as to how I was alerted of these proposed changes. I received a letter on February 22, 2012, notifying me that the EPA had proposed CISWI changes on December 12, 2011. Any interested parties could submit comments up until the closure of the “public comment period” which ended February 21, 2012. Naturally one would ask, “How am I to provide comment on something I was made aware of one day after the closure of the open comment period?” I called the EPA office number provided and left a voice mail with Heather Valdez (Seattle, Washington). Heather was kind enough to return my call the next business day and she answered some questions about how this change will impact me in the next 3–5 years. You may want to research the details to confirm the facts, but below is what gathered from my conversation with Ms. Valdez:

My business would fall under the Clean Air Act “section 129 CAA requirements.” These OSWI (Other Solid Waste Incinerator) regulations are proposed to take effect in 3–5 years. Under these regulations all incinerators are required to perform “Annual Source Testing” to determine if the unit is meeting EPA output and emissions standards. When I inquired what source testing entails, Heather noted that this testing, which is typically designed for larger commercial facilities (i.e. units that burn 250 tons/day), often exceeds \$50,000 per annual test—and it is charged to the

owner. She admitted that this testing is not really reasonable or likely affordable for small units like mine (especially given that some provide less than \$50,000 in gross cremation services per year). But based on the current regulations the EPA is given “no leeway” in the enforcement of this testing regulation and there are “no exemptions” allowed. In her defense, Heather was quite honest and forthcoming about the impacts of the regulation on small businesses like mine. She suggested I contact any cremation trade organizations to garner their support. She also recommended I contact my representatives in Washington to encourage a legislative remedy as the EPA’s hands are essentially “tied” to enforce the regulation at this time.

As you can imagine I am somewhat irritated by the timing of this announcement in relation to the comment period. Having received this notice 1 day after the public comment period is ludicrous! How can a Government agency (that my tax dollars support) propose and enact regulations, without proper notification, and without allowing time for those affected a chance to comment on the impact of these measures? This type of activity leads me to believe the EPA is not accountable to anyone, and therefore makes decisions irrespective of how it may harm the individuals they are hired to serve.

In addition, I don’t see the need to further regulate small incinerators like mine that provide such a small output of emissions. Presently we voluntarily contract Periodic Maintenance Inspections (PMIs) from the manufacturer of our cremation unit. These inspections ensure the safety and efficiency of our cremation unit. The more efficient our unit burns, the less gas we use, and the less emissions we produce. It is in my best interest for both the business and the environment to keep my unit running efficiently and maintained at factory standards.

Senator Murkowski, I hope that you or your staff will have the time to look into this regulation. I’m sure that other veterinary hospitals, pet cremation providers, and even human cremation providers will be significantly impacted by this change. If the projected costs for Annual Source Testing are anywhere near those noted by Ms. Valdez, my business and likely many others like it will not be able to feasibly absorb this fee. The likely end result is that we would not be able to provide this valuable service to our clients. I hope you can help find a solution to this issue for myself and other small businesses like ours across the country. Please review the enclosed copies of correspondence I had received from the EPA. I appreciate your consideration and would be eager to assist with any follow-up on this matter.

Regards,

JAMES DELKER, D.V.M.,  
*Twin Cities Veterinary Clinic, Soldotna, Alaska.*

Senator MURKOWSKI. But we want to work with your staff to see if this is the final answer. But I think you can see the problem here.

It would be outrageous, really, if this small family-run business has to stop providing a service for local families with pets because the cost of compliance with the regulations, of dubious environmental benefit at least in this instance, is just too high. But it is also emblematic of what many feel about the EPA that it is a vast bureaucracy issuing a dizzying number of rules that have enormous impact on their lives, while conversely, they may have very little input into EPA’s decisions. And I share these concerns.

So I look forward this morning, Mr. Chairman, to being able to ask questions of the Acting Administrator to understand a little bit more of the budget and the priorities. But I think this is an agency where, again, the impact on so many across our country, our families, our businesses, this is seen very much throughout what comes out of EPA. So very important this morning, and I appreciate your leadership in this oversight role.

Senator REED. Thank you very much, Senator Murkowski.

Just to establish our routine, we will use our normal procedures, recognizing Senators based on their arrival, alternating from side to side. And before I ask Mr. Perciasepe for his statement, is there

any of my colleagues that would to make very brief opening remarks or comments?

If that is not the case, then Mr. Perciasepe, your statement will be made part of the record, without objection. Feel free to summarize your comments.

Mr. Administrator, please.

SUMMARY STATEMENT OF BOB PERCIASEPE

Mr. PERCIASEPE. Thank you Mr. Chairman and Ranking Member Murkowski.

I appreciate the opportunity to be before you today and all the members of the subcommittee, to talk about our proposed fiscal year 2014 budget.

EPA's budget request of \$8.153 billion for 2014 fiscal year reflects our ongoing efforts to change the way EPA does business. To invest in more efficient ways for the agency to operate and to further reduce costs wherever possible, while preserving and enhancing our ability to carry out EPA's core mission to protect human health and the environment. It is the product of many internal discussions in the administration, and tough choices that you have already identified, in some cases.

In the end, we believe this budget will enable us to work toward the goals that the Congress has established for EPA to effectively and efficiently implement the laws.

Let me run by a few of the key highlights, and I will try to be quick.

Despite these fiscal challenges, supporting State and tribal partners, they are our key partners in implementing the Federal environmental statutes that have been enacted, remains a priority for EPA. And the State and tribal assistance grants account for nearly 40 percent of our entire budget for fiscal year 2014. I want to point out that it includes a \$57 million increase more than the fiscal year 2012 enacted amount for specific grants to help States, tribes, and operations.

You have already mentioned, and I want to emphasize again, that we have done some disinvesting and reinvesting in the budget including a \$60 million project that we are beginning that we are calling E-Enterprise. It may sound a little bit esoteric, but really, what we are trying to do is move EPA and working with States and tribes into the 21st century in how you transact business with the rest of the world.

And we are learning from the States. Many States are starting to move in this direction. And what we are really looking at is something that is going to reduce regulatory paperwork, reduce our regulatory reporting burden, but at the same time make some of the work that we do together with States and tribes to be more transparent. We see this as an investment in the future of a more efficient operating EPA.

We also have, in fiscal year 2014, a request for \$176.5 million to support a variety of partners and stakeholders, and our own work on greenhouse gas emissions. It is important to note that this funding also includes support for successful programs like ENERGY STAR, the Global Methane Initiative that we work on, greenhouse gas reporting programs, SmartWay, which is a program we work

on with the trucking industry, and several others. It also includes \$20 million on research of some of the impacts of climate change as we start to look at mitigation.

Nutrient pollution is a pretty important problem throughout the country in our waterways, and we have requested in this budget a \$15 million increase in State grants to help the State agencies begin that process of putting plans together that more specifically coordinate for nutrient reductions.

You mentioned the SRF, again, a number of painful choices here, but we continue to fund these SRF at \$1.1 billion for clean water and \$817 million for drinking water. We have been capitalizing these funds, the clean water one, since 1987 and the drinking water one since 1996 when the Safe Drinking Water Act Revolving Fund was created. And when we get into the Q&A, we could talk about how they are currently operating.

But we are also—I think this is pretty important—working with the Conference of Mayors, the Association of Water Quality Agencies, and the National Association of Counties on, what we call, an integrated planning, or really, basically, it is trying to get ahead of the curve on trying to deal with the issues that we have at the municipal level. Look for lower cost ways to solve some of the problems.

And I am sure most of you have heard of the concept of green infrastructure, which is very helpful in some parts of the country that will allow us to find more cost-effective ways and a better life-cycle cost for some of the infrastructure.

So even though the annual capitalization of the SRF has declined through the years, in addition to the amount that is already there, plus looking at new, more cost effective ways to solve the problems, we are hoping that we can continue to make the progress we need to make.

We also have \$1.3 billion for land cleanup. This is Superfund. This is emergency response. This also includes funding for Brownfields Programs as well, and some of those are included in our State grants.

We have \$686 million for chemical safety. This includes both pesticides and other chemicals in commerce, and looking at how we can make sure—well, first of all, we want to make sure we are processing and working through the risk assessments that we have to do for pesticides in a timely fashion, and appreciated the support from the Congress last year on the Pesticide Registration Improvement Act.

Finally, we are looking at some of these hard choices you mentioned. Our budget includes \$54 million in savings, some of which is reinvested in programs that, we think, other people can carry on or that their level of effort has declined and we need to shift the funds to other activities.

And then you noted a number of programs have received a larger than the rest reduction as we look to build some of these other programs.

Finally, I will just say in addition to looking at how we operate with things like E-Enterprise and doing that we have a governance system with the States that we are using to move in that direction together.



We are also looking at our own infrastructure, how many buildings EPA occupies. How many labs do we have? How do we consolidate and modernize where necessary to shrink the space and/or improve the energy profile? And we continue to save money.

PREPARED STATEMENT

We have moved away from more than 400,000 square feet of rented space in the last number of years, and we also continue to save money on some of our operating costs. So we are very excited about some of that work in terms of our own improvements.

So I will stop there with that very brief summary, Mr. Chairman and Ranking Member Murkowski, and we will get onto the questions.

[The statement follows:]

PREPARED STATEMENT OF BOB PERCIASEPE

Chairman Reed, Ranking Member Murkowski, and members of the subcommittee, thank you once again for the opportunity to appear before you to discuss the Environmental Protection Agency's (EPA's) proposed fiscal year 2014 budget. I'm joined by the Agency's Acting Chief Financial Officer, Maryann Froehlich.

The President's fiscal year 2014 budget demonstrates that we can make critical investments to strengthen the middle class, create jobs, and grow the economy while continuing to cut the deficit in a balanced way. The budget also incorporates the President's compromise offer to House Speaker Boehner to achieve another \$1.8 trillion in deficit reduction in a balanced way. By including this compromise proposal in the budget, the President is demonstrating his willingness to make tough choices. EPA's budget request of \$8.153 billion for fiscal year 2014 starting October 1, 2013, reflects our ongoing efforts to change the way EPA does business—to invest in more efficient ways for the EPA to operate, to further reduce costs wherever possible all while we preserve and enhance our ability to carry out the EPA's core mission to protect human health and the environment.

The President's budget reinforces our firm commitment to keeping American communities clean and healthy, while also taking into consideration the difficult fiscal situation and the declining resources of State, local, and tribal programs.

EPA's requested budget will allow us to continue making progress toward cleaner air, addressing climate change, protecting the Nation's waters, supporting sustainable water infrastructure and protecting lands and assuring the safety of chemicals.

It is the product of long discussions and difficult choices. In the end, we believe this budget will enable us to work toward EPA's goals as effectively and efficiently as possible.

Let me run through a few highlights from the President's fiscal year 2014 budget request.

Despite the fiscal challenges we face, supporting our State and tribal partners, the primary implementers of environmental programs, remains a priority of the EPA. Funding for States and tribes through the State and Tribal Assistance Grants account is once again the largest percentage of the EPA's budget request—at nearly 40 percent in fiscal year 2014. The fiscal year 2014 budget includes a total of \$1.14 billion in categorical grants.

We have requested a \$60 million investment in an EPA-wide initiative to develop new tools and expand systems designed to reduce the regulatory reporting burden on regulated entities, and provide EPA, States, and the public with easier access to environmental data for compliance monitoring and other purposes. This new initiative is fully paid for, so does not add a single dime to the deficit.

This project—what we call "E-Enterprise"—would enable businesses to conduct environmental business transactions with regulators electronically through a single interactive portal, similar to online banking. The paperwork and regulatory reporting burden would be reduced thanks to more efficient collection, reporting, and use of data, in addition to regulatory revisions to eliminate redundant or obsolete information requests. The initiative will encourage greater transparency and compliance.

The result will be widespread savings—for industry and for the States and tribes. For example, E-Enterprise builds on efforts such as the e-manifest system which is projected to reduce reporting costs for regulated businesses by up to a range of \$77

million to \$126 million annually, because it replaces the millions of paper manifests for hazardous waste shipments with a modern tracking and reporting system.

The fiscal year 2014 request also includes \$176.5 million to support the agency's work with partners and stakeholders to address greenhouse gas emissions and its impacts. These funds will help reduce emissions—both domestically and internationally—through careful, cost-effective rulemaking and voluntary programs that focus on the largest entities and encourage businesses and consumers to limit unnecessary greenhouse gas emissions.

Some of this funding will support existing, successful approaches like ENERGY STAR, the Global Methane Initiative, the GHG Reporting Rule, and State and local technical assistance and partnership programs, such as SmartWay. Approximately \$20 million will go toward research, so we can better understand the impacts of climate change on human health and vulnerable ecosystems. Our requested budget contains \$175 million to support our Clean Air Act-mandated work to develop, implement and review air quality standards and guidance. This funding will also allow EPA to enhance our support to our State, local, and tribal partners to implement the programs.

Nutrient pollution is one of the Nation's most widespread and challenging environmental problems. To assist in tackling this challenge, EPA is requesting an increase of \$15 million in Clean Water Act section 106 Water Pollution Control grant funding to support States, interstate agencies and tribes that commit to strengthening their nutrient management efforts.

Ensuring that Federal dollars provided through the State Revolving Funds support effective and efficient systemwide planning remains a priority for EPA. The fiscal year 2014 budget request includes \$1.1 billion for the Clean Water State Revolving Fund (SRF) and \$817 million for the Drinking Water SRF. This money will also assist EPA efforts to expand and institutionalize the use of up-front planning that considers a full range of infrastructure alternatives like "green" infrastructure, so that the right investments are made at the right time, and at the lowest life-cycle cost. This budget request will allow the SRFs to finance approximately \$6 billion in wastewater and drinking water infrastructure projects annually.

In fiscal year 2014, EPA is requesting more than \$1.34 billion for its land cleanup programs to continue to apply the most effective approaches to preserve and restore our country's land. This money will go toward developing and implementing prevention programs, improving response capabilities, and maximizing the effectiveness of response and cleanup actions. EPA is also renewing its request to reinstate the Superfund tax in order to provide a stable, dedicated source of revenue for the Superfund Trust Fund and to restore the historic nexus that parties who benefit from the manufacture or sale of substances that commonly contaminate hazardous waste sites should bear the cost of cleanup when viable potentially responsible parties cannot be identified.

Ensuring the safety of new or existing chemicals in commerce to protect the American people is another top priority. Chemicals are used in the production of everything from our homes and cars to the cell phones we carry and the food we eat. The \$686.2 million requested in fiscal year 2014 will allow EPA to continue managing the potential risks of new chemicals entering commerce, without impacting progress in assessing and ensuring the safety of existing chemicals. These resources encompass all efforts across the agency associated specifically with ensuring chemical safety and pollution prevention, including research and enforcement.

EPA's research budget provides \$554 million to support critical research in key areas, ranging from chemical safety to water sustainability to climate and energy to human health. This research will help advance the administration's commitment to healthy communities and a clean energy future.

Finally, let me discuss some steps we are taking to ensure taxpayer dollars are going as far as they possibly can.

The budget includes \$54 million in savings by eliminating several EPA programs that have either completed their goals or can be implemented through other Federal or State efforts. Adding to these savings and demonstrating a willingness to make tough choices, more than 20 EPA programs, are being reduced by 10 percent or more in fiscal year 2014.

EPA has also been laying the groundwork to ensure the best use of human resources, which will continue in fiscal year 2014. We will continue to analyze our workforce needs to achieve EPA's mission effectively and efficiently. This is reflected in our full-time equivalent request for fiscal year 2014, which is our lowest in 20 years.

We also continue to look for opportunities to consolidate physical space and reduce operating costs at our facilities nationwide. Ongoing improvements in operating effi-

ciency, combined with the use of advanced technologies and energy sources, have reduced energy utilization and saved nearly \$6 million annually.

In fiscal year 2014, we are requesting \$17 million in the building and facilities appropriation to accelerate space consolidation efforts, which will result in long-term savings in rent and operating costs. By consolidating space, we have, since 2006 released approximately 417,000 square feet of space at headquarters and facilities nationwide, resulting in a cumulative annual rent avoidance of more than \$14.2 million.

Mr. Chairman, thank you for the opportunity to testify today. While my testimony reflects only some of the highlights of EPA's budget request, I look forward answering your questions.

Senator REED. Thank you very much, Mr. Administrator.

We are going to do 6-minute rounds. I anticipate at least two rounds, and let me begin.

#### STATE REVOLVING FUNDS

No surprise, let's talk about the SRF. First, your own estimate suggests that in the next 20 years, we are going to have to spend, as a Nation, about \$633 billion on infrastructure: clean water and other water projects. The American Society of Civil Engineers has given our clean water structure a "D" grade. So there is no question about the need to do this.

And then the other aspect of this which, I think, you have to consider—and certainly the President does—is that these jobs put people to work at a time when we desperately need to do that.

So how do you justify the discrepancy between the huge cuts in this program and the huge needs, obvious needs, for infrastructure investment and also need for jobs?

Mr. PERCIASEPE. I have to sort of couch many of these questions as painful as they are with the painful choices that we have to make in the budget. And I actually was involved with setting up a SRF when I was the secretary of environment in the State of Maryland. And so, I have been at the very beginning of this program and recognize the real advantages of having it.

But we have also had appropriations and capitalization to this fund for the years since 1987, and in the last 5 years, we have put nearly \$20 billion into this program, including appropriations that were included in the American Recovery and Reinvestment Act. So the fund has a significant amount of capitalization, much more than the Congress originally envisioned.

So when I look at what actually happened in 2012 between the capitalization grants that EPA gave, the reuse of the repayments that come back in from loans that are already outstanding, and the leveraging of those loans, the SRF programs together, both water and drinking water, clean water and drinking water, funded almost \$7.7 billion of infrastructure improvements.

So when we look at that landscape and have to make these hard choices, we are trying to look at how we can make sure we keep capitalizing that fund so it keeps growing, but also working with the States and local governments on more efficient ways to use the fund and, perhaps, reduce the impact of what the Society of Civil Engineers were looking at in the long haul.

But there is no doubt about it that the country has a significant gap in funding of water infrastructure. And I think the challenge for us together is how much of that gets funded by the Federal Government versus local funds versus State funds.

But this was a tough choice we made. I am giving you some background as to what we think, how we continue to carry forward.

Senator REED. Just to elaborate. Even at the \$7.7 billion level times 20, and I am always suspicious of my math, roughly \$150 billion. Your 20-year projection is \$633 billion of work. So we are at a \$500 billion gap between what you need you have to do and what we are doing.

So even if that \$7 billion total is consistent with prior years or maybe a little up, it is greatly lacking the demand. So for the record, let's make sure we make that point.

#### HURRICANE SANDY SUPPLEMENTAL

Let me shift to a more detailed issue with respect. EPA receives \$600 million in mitigation, the recent Hurricane Sandy supplemental going to try to affect some of these water problems, both drinking water and other water projects. Many States, even adjacent States, did not get direct access to it.

But how are you using these funds to help out today? And what about those States that suffered in Sandy, but did not get direct access to funds like Rhode Island?

Mr. PERCIASEPE. Well, let me talk about the law as enacted and what we are doing.

We are working with New York and New Jersey, obviously, to allocate the funds that were developed for water and wastewater systems, and identify the priority facilities to receive that funding, to improve their resilience.

And I actually had the pleasure of being at a sewage treatment plant with you, Senator, after the floods in Rhode Island a couple of years ago where we did not move the plant but, working with our regional office, we actually looked at a way to make the plant more resilient for the next time it floods. Sewage plants are often located at the low point in town. And so, rather than move them and have the expense of pumping wastewater uphill, we want to make them more resilient, recognizing that they may be flooded.

And so, we are looking at places like that where we have found ways to do that, so that we can work with the two States to improve the resilience of some of those plants.

Now, in the Sandy instance, there are other funds that are involved. Federal Emergency Management Agency (FEMA) has funds, and part of that was appropriated plus their existing funding, to restore what was there, and there was also funding in the Community Development Block Grant program that the Department of Housing and Urban Development (HUD) has. So what we are trying to do in an interagency taskforce level, is to look at all those fundings together and how they would be impacted—how they can be impactful together.

So if you have funding from the SRF into the actual sewage treatment plant, can we use Community Development Block Grant funds to look at some of the conveyance system issues that may be in place, and look at techniques like green infrastructure, reduce the amount of runoff that gets to the sewage treatment plant during these high rain events.

So we are looking at how to integrate all that together and I guess that is a tail into the second part of your question about

what about the other States. I think that to the extent that they were in an area that is covered by the Stafford Act, we would be able to do, I hope, similar things like we did in Rhode Island to some of those plants in terms of using funds from FEMA and other sources to try to improve resiliency so that we reduce the impact of future events, which I think we have to predict will occur.

Senator REED. Thank you very much.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

#### BRISTOL BAY WATERSHED ASSESSMENT

Mr. Perciasepe, let's talk for a moment here about the Bristol Bay Watershed assessment that EPA is conducting.

I understand that we anticipate an announcement on this relatively shortly, is what I am told. But when EPA undertook this assessment after being petitioned to preemptively veto development within the area, EPA moves forward. The assessment is based on this hypothetical mine plan to predict impacts from mineral development. Obviously, this assessment is being watched very, very carefully by many Alaskans and, actually, many folks outside of the State.

I was just visited yesterday by individuals who live within the region or work within the Bristol Bay region, and we had a discussion about this assessment, whether or not EPA has sufficient funding to do a thorough assessment to really collect the massive data that will be required for study of a watershed area of this size.

We have asked, my staff asked numerous times, about how much is being spent on the watershed assessment. We still have not been able to receive an accounting of that and this is exactly what we try to do here in this subcommittee.

Can you tell me why we have not been able to receive this information up to this point in time? And then also in this same area is: when might we expect to see the announcement from EPA on the watershed assessment?

Mr. PERCIASEPE. I will get used to this in a second, the button. Thank you, Senator.

There are a couple of questions in there, but they are all related to the same point.

One of the—let me—the first part of it is when can we expect—we are hoping shortly to be—we are cognizant—

Senator MURKOWSKI. "Shortly" is an ill-defined term in the Congress. Can you give me anything better?

Mr. PERCIASEPE. Well, let me try, that we are very cognizant of the fishing season demands on people and we want to make sure that whatever we do is going to accommodate folks in the region to be able to have the time to be able to look at this report.

So I cannot say it is going to be next week, but it's, you know, we are within weeks of doing this so that we can have it out there during the May time period, so that people will be able to look at it. And then, let me work backward just a little bit to the other parts of the question.

One of the things that has created some complexity in analyzing all the full costs of this is how we responded to the peer reviewers on the first draft. And so, we had to see what they said, and then

figure out how we reconstruct it or responded to the advice we got from them, which is what we have now done, and now we are putting out this report.

So I think we will be, again, using a word that I can tell you are not completely comfortable with, we should be able to soon be able to tell you what those costs are now that we have put this final, another final draft together to put out for peer review again.

So I can tell you that I am going to try to make sure that we get that answer to you with the knowledge of what we have just done now on this other one.

In terms of adequate resources, again, it is related and so, you've got all this correctly connected. And that is when we got the peer review comments from the first draft and we had to pull different parts of EPA together to make sure we responded appropriately, that work was to make sure that we have the adequate resources to put to it. So we will now, once we get this next report out for public and peer review—and we are going to peer review it again, I think you know that—we will be in a position to be able to analyze what all the costs were that went into it.

Senator MURKOWSKI. Well, if you can encourage that shortly is sooner rather than later, as you know, fishing season is coming fast upon us. And again, we want to make sure that if the study is out there, that it is complete and it is thorough, but it seems to me that we ought to be able to get a better accounting.

#### AUTHORITY UNDER CWA SECTION 404

Let me ask you about a decision that came out of the D.C. Circuit Court yesterday. This was the decision concerning the Agency's retroactive veto of dredge and field permits that are issued by the Army Corps of Engineers. This is the *Mingo Logan Coal Company v. EPA*.

I have to tell you, I am concerned about what we have seen coming out of the Circuit Court here. If the EPA can withdraw, in effect, the Army Corps' permit at any point, how can you ever give the assurance that any permit is ever final if you have got this dangling out there that it can be removed almost unilaterally by the EPA?

And a couple of follow-ons to that is whether or not within EPA, how you are going to proceed with this authority, whether or not the EPA will use this authority preemptively.

What are the consequences of this court decision yesterday?

Mr. PERCIASEPE. I know that—I heard that the court decision was made, but I have not really had time to look at, nor have I gotten a summary, in the last 12 hours, of what exactly the court said.

But I can point out at a very high level, Senator, that the authority is in the Clean Water Act under section 404, since 1972, has been used 13 times in the history of the law. So it is not something that EPA takes very frivolously through all the different administrations that have used it. And that authority has been used in both Democrat and Republican administrations. So it is a very rarely used authority.

I do not have a good handle right now, in front of you, but maybe we might be able to talk about it later this week when we get together exactly what this does to that authority.

Senator MURKOWSKI. Well, I would appreciate the opportunity for that discussion. I know that this is going to be on the minds of many, many Members because, again, even though it has not been used on a very frequent basis. If you are looking to develop anything and the threat exists that your permit that has been issued could be retroactively pulled from underneath you, it injects a level of uncertainty in just about anything going forward, whether it is the coal mining or whatever the activity might be.

So I think we are all going to have to get up to speed on this a little bit more.

Mr. Chairman, I have exceeded my time, and I apologize.

Senator REED. Thank you very much, Senator Murkowski.

Senator Udall.

Senator UDALL. Thank you, Mr. Chairman.

#### URANIUM POLLUTION—INDIAN RESERVATIONS

And Mr. Perciasepe, thank you very much for your service. I am going to focus a couple of questions on the uranium pollution that has occurred on the Navajo Reservation and the Hopi Reservation, and this is a legacy issue that has been going on for many years. And I believe the EPA has been very active in this.

In fact, the EPA Region 9 recently concluded a 5-year plan to address uranium contamination on the Navajo Nation, and coordination with several other agencies including the Bureau of Indian Affairs, the Department of Energy, the Nuclear Regulatory Commission, and others, EPA Region 9 was able to take significant steps towards addressing uranium legacy issues on the Navajo Nation and the Hopi Nations.

It is my understanding that EPA is coordinating with other agencies to identify next steps in clean up of uranium contamination and expects to have a new 5-year plan for this region put together by this coming fall.

Additionally, EPA Region 6, which covers the rest of New Mexico, is currently carrying out a similar 5-year plan to address legacy uranium in my home State. I appreciate the Agency for taking these deliberate steps to address this important public health and environmental issue.

And my question is will Region 6 and Region 9 have adequate resources under this budget to continue these long overdue cleanup projects to address this toxic cold war legacy?

Mr. PERCIASEPE. The short answer is "Yes." The little bit of context is we are very proud of how we have moved forward on these legacy issues in the last 5 years, and we think that they are important and must be dealt with. And I am very happy with the coordination between the State, the tribe, Bureau of Indian Affairs, the other agencies, as you have pointed out, as well as between the EPA regions.

The only asterisk that I have to put on that, and I am not trying to make a statement here, I am just telling you, it is a real asterisk that you and the Appropriations Committee have to think of. If there is a sequestration, depending on how that falls down, there

could be some impact on some cleanup projects. We have already had impact on cleanup projects this year because everything was cut by 5 percent.

But with that asterisk, we expect to have the funding in this budget to be able to move forward on the first part of that 5-year plan.

Senator UDALL. Great. Thank you.

And I think your answer emphasizes the fact that sequestration really hits some long-term projects in a significant way. I do not want to see that happen because I believe that this is a project, as I said, long overdue, that has to be completed, and it is on a good track now, and we should not have to see it setback.

#### BROWNFIELDS

A question on Brownfields. Last month, I joined Senator Lautenberg, Senator Crapo and Senator Inhofe, to introduce the Brownfields Utilization Investment and Local Development Act. We call it the BUILD Act. This legislation would modernize and improve key elements of the EPA's Brownfields Program.

Since 2002, the successful program has funded the rehabilitation of abandoned and polluted properties to increase safety and attract new businesses to communities. In New Mexico, we have great success stories like the Santa Fe Rail Yard and the old Albuquerque High School. Two areas were revitalized from hazardous areas to become economically productive and important cultural spots.

I am concerned about the cuts to the Brownfields Program. This program leverages valuable private investment and pays dividends to economic prosperity.

Do you agree that there are more productive projects out there than this funding level will support? And if so, does EPA see any ways to help these limited dollars go farther?

Mr. PERCIASEPE. First of all, being a former city planner earlier in my career, this is one of my favorite little programs at EPA, and I think it has done more than many to enhance the quality of life in communities across the country.

In fact, I think there isn't an area, a place in the country that hasn't had some project along the lines that you have just mentioned where they can point to the fact that the flexibilities afforded in cleanups to get these properties to beneficial use and community-focused use faster. I just have to say it is oversubscribed.

One of the things that we have been doing in the last several years through an agreement with the Department of Transportation and the Department of Housing and Urban Development, is a sustainable communities memorandum of understanding (MOU) among the three agencies so we can look at how we can pool our resources in some of these communities.

So we may take a little longer to, perhaps, do a Brownfields Project, although we are working on it. That does not mean that we cannot be in that community doing some of the other preparatory work with Community Development Block Grant funds or some Transportation funds.

And I was just recently in Cincinnati where we are looking at additional Brownfields redevelopment sites along the route of their



light rail or trolley system that they are building through the Over-the-Rhine neighborhood. And at the same time, we are using HUD funds to do housing stabilization projects in that community.

So one part of that is the tri-party effort is to really work in those communities to get properties back into use, productive use, and to get the communities revitalized. We are looking at ways to be efficient with all the funds.

That is not the best answer, I just want to say, but it is something we should do regardless. And if we all had more money, we would go faster in more communities, there is no doubt about it.

Senator UDALL. Thank you very much.

Mr. Chairman, I have exhausted my time. Thank you.

Senator REED. Thank you.

Senator Blunt.

#### STATEMENT OF SENATOR ROY BLUNT

Senator BLUNT. Thank you, Mr. Chairman.

I have a statement for the record, and I will submit that.

[The statement follows:]

#### PREPARED STATEMENT OF SENATOR ROY BLUNT

Thank you, Chairman Reed and Ranking Member Murkowski, for holding this hearing today. I welcome this opportunity to examine the budgetary needs of the Environmental Protection Agency.

I would also like to thank Acting Administrator Robert Perciasepe for being here today.

EPA is requesting \$8.153 billion, which is \$296 million (3.5 percent) below fiscal year 2012 enacted levels. While this is a step in the right direction, I have serious concerns with the way the EPA is prioritizing spending.

For instance, the agency very clearly admits in its budget justification that as a result of fiscal cuts, EPA must make “difficult decisions resulting in reductions to support for water infrastructure.” State Revolving Funds, which provide critical support to how municipalities finance water infrastructure projects, will be cut by almost a half-billion dollars from fiscal year 2012 enacted levels. This continues the pattern of the continual cutting of Federal money for water systems over the past decade.

Yet your own agency has conducted studies finding that 30 percent of pipes in systems that deliver water to more than 100,000 people are between 40 and 80 years old. Further the EPA 2009 Drinking Water Infrastructure Needs Survey and Assessment found that our Nation’s community water systems will need to invest an estimated \$334.8 billion between 2007 and 2027.

In contrast, the EPA has requested \$176.5 million for climate change efforts, which is \$8.1 million above fiscal year 2012 enacted levels. The agency plans to use this funding to advance the pending proposal to set New Source Performance Standards (NSPS) for carbon dioxide emissions from new powerplants.

The proposed NSPS rule will set unprecedented standards under the Clean Air Act, harm our economy, and endanger electricity supply—which is almost 50 percent coal fired. Missouri is 82 percent coal fired. The proposed NSPS rule would effectively ban these new coal plants from being built.

This on top of the fact that many existing EPA regulations seek to prevent existing coal sources from making upgrades to improve efficiency and allow for more electricity generation with less fuel and less emissions.

Spending our Federal dollars to kill the use of coal in this country but not improve our Nation’s water infrastructure is a far cry from a common sense approach to protecting the environment.

EPA needs to expend Federal taxpayer dollars in a way which takes into account the cumulative way in which each agency regulation affects ratepayers. One such way is to let communities develop local plans that achieve the “biggest bang for the buck” toward environmental protection and keep rates affordable.

The agency should not spend taxpayer dollars on massive, burdensome regulations that hamstring the economy, kill jobs, and hike up electricity prices. This is not the right path forward for our country.

Thank you, and I look forward to your testimony.

Senator BLUNT. And I have some questions.

Mr. Perciasepe, you are the Acting Administrator, and I actually have a hold on the nominated Administrator. Based on a commitment from the administration that they made in February to Senator McCaskill and me that they would just agree, they would see that the organizations involved in coming up with the environmental impact study for a project in southeast Missouri would agree to the facts by March 15.

They set the deadline. We did not ask for the deadline. The call on March 15 was, "Well, we cannot get this done by the day we said we would get it done." And we have had no outreach from EPA in our office at all. I do not know how many Senators have holds on the nominee, but it must be so many that there is no interest in doing anything about the holds that are out there.

#### WETLANDS

Principally, there are a couple of concerns on this topic. One is the estimate of wetlands that your organization came up with originally was 118,000 acres.

The USDA said it was 500 acres. The Fish and Wildlife Service said it was somewhere in between. You said 118,000 acres. And I think the last estimate that you all have made is 5,000 acres, which is an interesting, the difference in 118,000 and 5,000—your own estimate—is intriguing to me.

And then you created a new category of wetlands that is not defined anywhere else in Federal law, which is, "wetlands in agricultural areas". I have two or three questions on this.

One, why do you think the wetlands determinations from your Agency have been so different on this one project?

Mr. PERCIASEPE. I have not looked at those particular numbers. But when you just mentioned agriculture, there are prior converted wetlands that are not covered under certain—they are not covered under the Clean Water Act. Somebody could have been adding those in, in the original one, and now they are looking at different ones. I—

Senator BLUNT. Do you know if the Agency has provided any recent information to the Corps on this topic or not?

Mr. PERCIASEPE. We have on—going back to the original part of your question—

Senator BLUNT. Yes.

Mr. PERCIASEPE. We have ongoing conversations with the Corps, and what I think I can commit to you, Senator, is that the next critical step in this, in addition to the information, is that the Corps of Engineers needs to be put together the EIS document—

Senator BLUNT. Right, right.

Mr. PERCIASEPE. And I think what we are all working on very hard is to get the Corps to get whatever information they need so they can get that document done. And then we will respond as quickly as—we will respond right away. Our Regional Administrator is prepared to do that and we want to move quickly once we get that document.

So people are working on this, and I can provide more information—

Senator BLUNT. Yes. I want you and my colleagues to both understand that this is not about trying to force a project to be built or anything else. It is just trying to get the Government to quit arguing with the Government.

This is trying to get the Government to agree on the facts, which does not seem—actually, it seems that the administration is simple enough project that they thought it could be done well over a month ago. And this is after a couple of years of, “Why is this not getting done?” “Well, we don’t agree on the facts.” We would just like the Government to agree on the facts of whatever you can do—

Mr. PERCIASEPE. I will.

Senator BLUNT [continuing]. Of course, if this was left up to me on this issue, you could be the Acting Administrator forever. Maybe you are very popular at the Agency and they just do not want to respond to these pretty simple questions.

Mr. PERCIASEPE. Well, our role in this is to review the work that the Corps of Engineers does. We are not the one doing the environmental impact statement (EIS).

But I—we will help them get it done. As soon as they get it done, we will do the comments on it. That is the normal way we reconcile things is get that EIS process going. So I think that is the key here.

#### WETLANDS—VETO AUTHORITY

Senator BLUNT. And you would have ultimate authority on the wetlands question based on this veto potential that you always have on an issue like this? Is that right?

Mr. PERCIASEPE. Yes, under the Clean Water Act, the EPA writes the guidelines, which we have done many years ago on how to make the wetlands determinations. And so, the Corps uses those guidelines to do it. And there are some agricultural converted wetlands that are not part of that process. They may be something that somebody will analyze in an environmental impact study, but they are not part of the Clean Water Act process.

Senator BLUNT. But you can veto these projects even while they are going on based on what I think I just heard you say to Senator Murkowski?

Mr. PERCIASEPE. I think that that is an untested—what she was—what the Senator was referring to was a court decision yesterday that was related to a veto after a project had already been permitted, not in advance of it.

Senator BLUNT. So you have no question you could veto it before.

What is the open question, whether you could veto it after or not?

Mr. PERCIASEPE. All the times that we have used the veto authority that is under—and really it is—the authority is actually to remove a section of water from being able to have fill materials discharged into it. But we use the common word of “veto”, which I do not think is actually in the act.

But all the times it has been used, to my memory, and I could double check this for the record, has been after the Corps project review process has begun.

Senator BLUNT. And before work has begun or do you know?

Mr. PERCIASEPE. If you want detail on all the times it has been used, I will have to get it for the record.

Senator BLUNT. I do. I want—

Mr. PERCIASEPE. I don't have that.

Senator BLUNT. I want detail on all the times it has been used and look forward to you providing that.

[The information follows:]

TIMING OF EPA ACTION UNDER SECTION 404(c) OF THE CLEAN WATER ACT

EPA uses its authority under section 404(c) of the Clean Water Act judiciously and sparingly. In the over 40 year history of the Clean Water Act section 404 program, EPA has used its authority under section 404(c) a total of 13 times. This is a particularly small number in light of the tens of thousands of projects that the U.S. Army Corps of Engineers authorizes in the Nation's wetlands, streams and other waters each year. EPA can exercise its authority under section 404(c) before a section 404 permit application has been submitted, while a permit application is under review, after a permit has been issued or in instances where a regulated discharge does not require a section 404 permit (e.g., Corps Civil Works projects). EPA has exercised its authority in the following contexts:

Project Name	Initiation and Final Determination Dates	Location		
		EPA Region	State	Corps District
Spruce No. 1 Surface Mine ..... Surface Coal Mine	Initiated October 16, 2009 ..... Final Determination issued January 13, 2011	3	WV	Huntington
Yazoo Pumps ..... Flood Control Project	Initiated February 1, 2008 ..... Final Determination issued August 31, 2008	4	MS	Vicksburg
Two Forks ..... Water Supply Impoundment	Initiated March 24, 1989 ..... Final Determination issued November 23, 1990	8	CO	Omaha
Big River ..... Water Supply Impoundment	Initiated August 24, 1988 ..... Final Determination issued March 1, 1990	1	RI	New England
Ware Creek ..... Water Supply Impoundment	Initiated August 4, 1988 ..... Final Determination issued July 10, 1989	3	VA	Norfolk
Lake Alma ..... Dam and Recreational Impoundment	Initiated June 8, 1988 ..... Final Determination issued December 16, 1988	4	GA	Savannah
Henry Rem Estates ..... Agricultural Conversion— Rockplowing	Initiated April 22, 1987 ..... Final Determination issued June 15, 1988	4	FL	Jacksonville
Russo Development Corps ..... Warehouse Development (After-the- fact permit)	Initiated May 26, 1987 ..... Final Determination issued March 21, 1988	2	NJ	New York
Attleboro Mall ..... Shopping Mall	Initiated July 23, 1985 ..... Final Determination issued May 13, 1986	1	MA	New England
Bayou Aux Carpes ..... Flood Control Project	Initiated December 17, 1984 ..... Final Determination issued October 16, 1985	6	LA	New Orleans
Jack Maybank Site ..... Duck Hunting/Aquaculture Impound- ment	Initiated April 15, 1984 ..... Final Determination issued April 5, 1985	4	SC	Charleston
Norden Co. .... Waste Storage/Recycling Plant	Initiated September 30, 1983 ..... Final Determination issued June 15, 1984	4	AL	Mobile

Project Name	Initiation and Final Determination Dates	Location		
		EPA Region	State	Corps District
North Miami ..... Landfill/Municipal Recreational Facility	Initiated June 25, 1980 ..... Final Determination issued January 19, 1981	4	FL	Jacksonville

For more information please visit: [http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/404c\\_index.cfm](http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/404c_index.cfm).

Senator BLUNT. I think we are going to have a second round of questions later, chairman? Thank you.

Senator REED. Thank you, Senator Blunt.

Senator Cochran.

Senator COCHRAN. Mr. Chairman, I am pleased to join you and the other members of the subcommittee in welcoming our distinguished witnesses to the hearing today.

#### GULF OF MEXICO

It occurs to me that one of the most riveting events that threaten the environment of the Gulf of Mexico has been the oil experience and the blowout down there of a well. And the effort to which we have gone to marshal our resources and to figure out exactly how we protect ourselves from adverse environmental consequences from that experience.

And I just wonder, what is your observation about whether or not what we have been doing is working? Are we restoring the good environmental health to the Gulf of Mexico and related areas like the Mississippi River, the lower parts of the river?

Mr. PERCIASEPE. I appreciate that question and how important that is. Obviously, I think we all remember that, those 3 months of our lives in not the most favorable ways, but I am very optimistic.

We put a taskforce together after the event. There was a separate review commission that had recommendations, but the President put together a taskforce which Lisa Jackson chaired that brought together the States around the gulf.

And the States and the different Federal agencies all agreed to a general approach in consensus, which I was extremely pleased to see, which gave me a lot of optimism that when funding became available, either through congressional appropriations, or coordinating the funding we all get with our existing programs, or any penalties or payments from any responsible party would get put to a good plan.

So I am confident that as those settlements occur and as we look at coordinating our existing funds, that we will be putting it to a plan that is pretty well coordinated because we have that work together. And obviously, your State was involved as well, and we think that that plan is actually pretty solid. It is the first time, to my knowledge, all the gulf States and the Federal Government came together on what needed to be done.

Senator COCHRAN. Well, the Congress certainly acted quickly in response to the request from the administration to provide earmarked funds, excuse the expression, oh, my goodness.

But that is part of our job to designate Federal funds to help deal with emergencies that threaten the environmental safety and security of our country, and particularly the economic investment that we have in the Gulf of Mexico, the fisheries. And the efforts we make to keep the Mississippi River from destroying all of the rich farmland that is important to our State's economy and many others as well. So we want to be sure we bring a balance to these competing challenges sometimes.

And I would just close by asking you if you are satisfied that the administration, and the Congress, are constructively working together to help ensure that these goals are reached?

Mr. PERCIASEPE. Senator, actually I am more confident than I would have imagined, to be honest with you, given the damage the nature of that event.

I think we see an industry response, which is starting to get some marks in their preparedness. We went through a painful part of getting preparedness to be ready in case it ever happens again. But on the other side of repairing the damage, and even going further to the extent we can to restoring—because as you know, some of the ecosystems there were not in the best shape even before the event.

So I think we have a once in a lifetime opportunity here, and the fact that the Congress and the administration have worked together as well as they have, I think, bodes very well for success, and the fact that the States are onboard with the basic plan.

So it won't be without challenges, but I think the foundation is there for success.

Senator COCHRAN. But your assessment is that it is safe to swim in the Gulf of Mexico again, isn't it?

Mr. PERCIASEPE. Well, I believe people are doing that every day.

Senator COCHRAN. Thank you.

Senator REED. Thank you, Senator Cochran.

Given our procedures, in order of arrival and going back and forth, Senator Begich.

#### BRISTOL BAY WATERSHED ASSESSMENT

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

I just want to reconfirm. I know my colleague asked this question when I was not here. I just want to hear it again for my own sake here on the Bristol Bay Watershed assessment issue.

You indicated that you do have enough money to finish the assessment, and that you will get it out and soon; "soon" defined as potentially in fill-in-the-blank. That is your cue.

Mr. PERCIASEPE. Fill in the blank. Well, what I said to—I said "soon" but that did not—

Senator BEGICH. That does not work.

Mr. PERCIASEPE. I want the record to show "soon" doesn't work.

But I wanted you to know, and I mentioned this to Senator Murkowski that we completely understand that we need to get it out in time for people to be able to look at it and participate in the public process. This is the revised analysis after we got the comments from the peer reviewers.

Senator BEGICH. Correct.

Mr. PERCIASEPE. Which is one of the reasons, as I mentioned, that we have been a little bit floating on how much we are spending on this because we needed to pull together the resources in the Agency to make sure we responded, and modified, and improved the assessment based on the comment we got. So we will also shortly be in a position to be able to layout some of those funding components of it.

But we are working to get this out so that a substantial part of the month of May is available for people to respond to it before the fishing season really kicks in.

Senator BEGICH. And then let me understand also the timing, then. Let's assume you hit that target. It comes out in May, then the public can review and comment on it.

Is there a time limitation or is it an open-ended? Help me understand that.

Mr. PERCIASEPE. Well, we certainly want it to be the time period that the public will have the most ability to do it. The peer reviewers will also be reviewing it at the same time. I cannot—I don't know right now what the time limit would be, but we have some flexibility there, and we will see how it goes once we have people commenting on it in May.

Senator BEGICH. And then, once they comment on it, what is next?

Mr. PERCIASEPE. Well, we wait to get the—in addition to public comment, we are going to wait to get the science review of it and that we put the same peer review panel we had the last time. We were able to get every member of that panel to agree to do it again so that we have good continuity on the scientific review.

We wait to see what comments we get from that peer review, and may, depending on that view, have to make some additional modifications, but I think I can't predict because I don't know what they are going to say. And I think anything we do here because while this is not a regulatory action this study.

Senator BEGICH. Right.

Mr. PERCIASEPE. This is something that will inform everybody. We want to make sure that it has the best scientific foundation in it. So that is going to be our number one priority as we go through this next peer review process.

Senator BEGICH. And let me just push you one more point on this. And that is, so you have the public commentary and other review commentary. You review that, then at some point, you will have a final assessment document.

Mr. PERCIASEPE. Yes, that would be available for whatever processes go on after that.

#### BRISTOL BAY WATERSHED ASSESSMENT COMPLETION

Senator BEGICH. Okay. Can you give me—and I know it is hard without knowing some of the comments that come in, how technical they might be, or how simplistic they might be, whatever the range is—can you give an understanding to me that, “By this range of dates, we think we will be completed with the assessment,” with some caveats. I am going to give you some hold harmless here—

Mr. PERCIASEPE. Okay.

Senator BEGICH [continuing]. And that is recognize there may be some peer review issues or other things that are more technical and that may require a little more work, because I hear what you are saying right now, but then it goes back into your guys' lap, and then what happens?

Mr. PERCIASEPE. Well—

Senator BEGICH. I mean, is it a fall completion? Is it a summer?

Mr. PERCIASEPE. You know, if I think the work is—if the work we have to do following this next round of comment is pretty straightforward and ready for us to do, I can see us getting it done by the fall.

Senator BEGICH. By the fall. "Fall" meaning Alaska fall or District of Columbia fall? Let's use the solar.

Mr. PERCIASEPE. Okay.

Senator BEGICH. The vernal—

Mr. PERCIASEPE. The autumnal equinox. Okay, which I think is the same in Alaska.

Senator BEGICH. Okay. I am just checking. I appreciate it. It is important as you get a sense from both.

Mr. PERCIASEPE. We know that—

Senator BEGICH. I apologize. I was not here earlier to hear more explanation.

Mr. PERCIASEPE. It should not be, to the two Senators from Alaska, it should not be—you should not think we don't know how important it is that—keep this from not lingering forever, but at the same time, it is equally important that we do the best job we can.

Senator BEGICH. Get the science right.

Mr. PERCIASEPE. So the science has to be right because we know that this is going to inform all the going forward work.

Senator BEGICH. Very good. Thank you very much.

Thank you, Mr. Chairman.

Senator REED. Thank you, Senator Begich.

Senator Johanns, please.

#### AERIAL FIGHTS OVER FEEDLOTS

Senator JOHANNNS. Thank you, Mr. Chairman.

Mr. Perciasepe, more than a year ago now, I was in my Senate office, and I had a group of family cattle feeders, ranchers that I was sitting down with. And in the midst of the conversation, one of them said to me, "Mike, what do you know about aerial flights by EPA over our feedlot?" There was an uncomfortable silence because I did not know anything about it.

I certainly could not recall that EPA had made me aware of that. I could not remember my then colleague, Ben Nelson, or any of my House colleagues, had made me aware of that.

So I wrote a letter to Lisa Jackson. The essence of that letter was, number one, I am interested in what you are doing in Nebraska. And number two, is this a national program and are you doing aerial surveillance in other parts of the country?

For whatever reason, she felt that my letter was not important enough to warrant a response from her. It was bounced to the Regional Administrator, whom I met with. He seems like a nice enough guy, but I do not think he speaks for the entire Agency.



So let me ask—oh, and one other point I wanted to add to this. In the, I believe it was the farm bill discussion some months ago, I put in an amendment that basically would have said, “Hey, you cannot use any funding we give you for these kinds of aerial surveillance missions.” And I got 56 votes on that; pretty bipartisan, and I am guessing we could have gotten over 60, but there was a lot of pressure when we got that many votes to quit voting yes on this thing.

So let me just ask you today a very simple question. Are you doing aerial flights over whatever, feedlots, pork production in Nebraska or, for that matter, in any other State in the United States currently, or do you have plans to do that in the future?

Mr. PERCIASEPE. We are not doing anything right now. We are in the process for the springtime here of looking at what kind of a notification system or other kinds of information we would make available before we actually did any of these flights.

The flights are quite simple. They are fixed wing aircraft like a Piper Cub, or a Cessna, or something like that and basically designed to help find priority areas to look at for people who would be on the ground in the field.

We don’t do any enforcement work, or compliance work, or anything based on this reconnaissance. It’s simply to help guide where we would send actual infield inspectors who would actually interact with the landowner.

Senator JOHANNNS. But it can lead to compliance, and enforcement, and fines, and penalties.

Mr. PERCIASEPE. Depending on what they see on the ground when they get there, but it won’t be from, only from what happens in the air. The air just simply helps figure out where the folks on the ground who talk directly to the landowners go.

But we are—we have done this in different parts of the country, not just in Nebraska and we are evaluating how we would—how do we go about our annual notification processes on this.

Senator JOHANNNS. Mr. Perciasepe, I have got two observations about this.

Observation number one is this: why is it so hard for EPA to just write me a letter, write my colleagues a letter, and say, “This is what we’re doing”? Why is that so difficult that my letter would be ignored for a year? I mean, we are literally coming up on the first anniversary.

The second observation I’ve got is this, as you know, I have been around the block a few times. I was the Governor of my State. I had a Nebraska Department of Environmental Quality. I was the Secretary of Agriculture. I worked with EPA on a regular basis. I think I am a pretty well known person out here. Why, I can’t imagine why you would do this?

I have always preached that we should work with people. You know, if you’ve got a bad actor, bring the hammer down; no-brainer. But why would you just go out and fly feedlots? I mean, that’s just, to me and I think to the average American out there, this sounds kind of wacky. It kind of sounds like this is a Federal Agency that is completely and totally out of control.

And when I can’t get answers to my questions, it feeds into that. People have this notion that the EPA is kind of a rogue group out

there, doing whatever they want to do because the United States Senator can't get a simple letter answered. Do you see what I'm saying?

Mr. PERCIASEPE. Well, when I get back to the office today, I will find out what is going on with the answer to your letter and make sure you get one.

But I do have to respectfully disagree with the rogue agency characterization. We are trying to actually do exactly what you just said: find bad actors in the most efficient way by trying to narrow where we would send people to go talk to the landowner. That's all we are doing with the aerial flights.

Senator JOHANNIS. But this is so indiscriminate. When you are out there just flying eastern Nebraska, this is so indiscriminate. You are flying at low altitudes. You are flying over law-abiding people who are trying to do everything they can to honor your rules and regulations. And you are not coming down on the bad actors. You are checking on everybody and it feels terrible.

It feels like there is a Federal agency out there spying on American citizens, and no matter how much I try to convince people otherwise or you do, it is still going to feel that way, especially when you are lacking so much in transparency when you don't respond to letters. When I find I have to show up at a hearing and get on a subcommittee so I can ask you question as to what is going on because my letters are ignored.

Mr. PERCIASEPE. I am concerned about the feelings that you are relating in terms of how people feel about it. That's, I think, an important thing for us to take into account in terms of how we develop a communications effort here. So I will make sure that we will get information to you and take these concerns back to whatever we are doing.

[The information follows:]

On behalf of Administrator Jackson, EPA's Region VII Administrator, Karl Brooks, sent a letter to the Honorable Mike Johannis, dated June 11, 2012, in response to Senator Johannis's letter dated May 29, 2012. Enclosed with the letter were more detailed responses to the questions in the Nebraska delegation's May 29 letter.

Mr. PERCIASEPE. But I want to assure you, the idea here is not to spy on law-abiding citizens. We want to make sure that like everyone else, they want to make sure that their law—law abiding is on a level playing field. And that is, this is a very efficient way for us to narrow where we go to on the ground to talk to landowners about what they are doing. If they are doing everything right, they are not going to—there's going to be no consequences from this at all.

So I understand the perception issue that you are bringing up. It is helpful for me to hear the intensity of it and I will bring that back.

Senator JOHANNIS. I am out of time, Mr. Chairman.

Senator REED. Thank you very much, Senator Johannis.

Let me just make one point is that letters from my colleagues should be responded to promptly, particularly members of the subcommittee who have a detailed interest and knowledge of the issues before the Agency. I would hope that that would be the norm and that you would take that message back too.

Mr. PERCIASEPE. Thank you very much.

STATE REVOLVING FUNDS

Senator REED. I spent my opening comments, I think rightfully, raising serious questions about the SRF, but let me point to one area where you are providing some, I think, necessary relief and that is in the State Categorical Grants program.

My home State, I think, is not a lot different than other States that our DEM, our department of environmental management, has shrunk from 500 to 390. That is 110 jobs in a tough economy. But more than that, it strains the capacity to do many of the things that you have delegated the Agency to do.

Can you comment on the fiscal situation throughout the States that, I believe, is one of the motivations for the increased funding of State categorical grants? And further, perhaps, indicate if sequestration takes place, what further impact that could have.

Mr. PERCIASEPE. Yes, it is one of the prime motivators of that, I point out in addition of the request to the Congress to increase those grants. And it is, I have to admit, it is a modest amount, but one of the things that I have been working on with the environmental commissioners in my double job here, my other job is the Deputy Administrator EPA, I have been spending a lot of time directly with State environmental commissioners through their organization, the Environmental Council of the States, which all the States are a member of.

And we have been working on how to improve—given the fact that all of us are constrained and we have the laws to implement together, how do we look at this as a holistic team, so to speak? You know, using that enterprise word again, I say the environmental protection enterprise of the United States is really the tribes, the States, and EPA together.

So how do we make that partnership work? And we are very keen on improving their, by a relatively small amount, their financial situation, but also on how we share the work.

So when I mentioned E-Enterprise earlier, a number of the States, due to the necessity that you've pointed out have turned to using a more electronic transactional process with the world. Similar like what any of us might do with an airline. You know, how do we get our tickets? How do we book a hotel room these days? Many of us, and I don't want to speak for everyone, but many of us will just go online and do it.

Our transaction with our banks are getting more online and the security systems that have been put in place, you know, we've never translated them over to, you know, in how you can do that in the public forum.

So some States have started to look into how to do this. Some of them have convinced their general assemblies to provide capital funds. You know, the Federal Government doesn't have a capital and operating budget. I'm used to that in my State and local experience. But the idea is you can capitalize some of these investments over time because they pay for themselves in efficiency.

So just a neighboring State of yours, Connecticut, I think, is one of the ones that has been doing that and we have been working closely with them to see how they're going about doing that.

So we are not looking just at increasing the funds, which is very important. But we are looking at how we work together and share work. Can we change that dynamic? Can we improve priority setting between the States and EPA so that we are not chasing everything all the time? And can we come to a point where the information flow is not redundant?

So if I am a holder of a permit, I don't have to send my stuff to the State and send my stuff to different parts of the State, different parts of EPA. They can go to one place where they do their transaction. So much of the world has achieved this and many States are thinking this is a way to deal with some of the constraints that they have.

And the Congress, last session, approved the E-Manifest System for tracking the transport of hazardous waste. I mean, we were still using pink, blue, and yellow carbon copy paper, or actually we still are, because we are required by law to be using paper copies. And so all the hazardous waste that is moving around the country has got paper following it around; millions and millions of pieces of paper at great expense.

And so if you have ever purchased anything from virtually any online system, you could actually, and if you use FedEx to—I am not advertising here. I want to show that—

Senator REED. UPS.

Mr. PERCIASEPE [continuing]. As an example of many. L.L. Bean does the same thing. So you can track where your package is down to which post office it's in.

In fact, with some company, I should stop naming them, but I recently ordered a vest from, I got an email that they had put the package in my backyard. So, these systems exist, but we don't have them for tracking hazardous waste.

So you passed that legislation last year and that's part of the kind of concept that we're talking about here. Get to the point where we're using these modern technologies.

I go on a little about that, because I feel pretty passionately about the relatively modest investment we're asking by moving funds around, because this will let us link up with the States to be more efficient. And then the modest increase in the State funding will also help.

I should point out that the \$60 million your staffs have identified and that we've identified to you, also include some startup design money for some States who don't have, may not have the ability to get started.

So I'm sorry for that long answer, but this is one of my highest priorities, figuring out how we improve our working relationships with States. The money is a piece of that, but not the only one.

Senator REED. Thank you very much.

Let me recognize Senator Murkowski.

PM<sub>2.5</sub>

Senator MURKOWSKI. I would like to pick up a subject that we have had a lot of discussion on here in this Appropriations subcommittee with our colleagues from the EPA, and that is the situation in the community of Fairbanks, Alaska with the particulate

matter, the tightened standards for small, particular matter the  $PM_{2.5}$ .

I know that it is a subject that you are prepared on because we talk about it all the time. The problem for the people of Fairbanks is we have not been able to gain any flexibility from the EPA on this issue, and it becomes more and more serious.

This is the second largest community in the State of Alaska. It is probably the coldest city in America for its size. They are trying to meet these new standards. They are working to provide some incentives for the residents to change out their older furnaces and their older stoves and boilers for more efficient pieces of equipment.

We have asked the EPA to work with us in terms of timeline. We have asked whether there might be grants available for doing the change out.

Right now, what the Fairbanks North Star Borough is proposing is a research program where they are looking to define whether or not emission reductions can be achieved by doing a switch out and effectively moving to more efficient means of heating their homes. When it is 40–50 below zero in Fairbanks, not heating your home is not an option.

And unfortunately, their options are really very limited. It is either coal, it is wood, it is home heating fuel. We do not have natural gas into the community. We are trying to get there. And we have asked EPA for leeway on this.

So the question to you this morning is whether or not you have identified any areas where there might be some level of assistance that the Agency can provide with the—it is about a \$4.5 million cost to the study, or the funding that we have asked for to help the residents move from one technology to another? Whether there is anything that can be done to provide for this.

We are now trying a firewood exchange program where homeowners are swapping out wet wood for dry wood. You are talking about technologies here with the chairman that leads us to greater efficiencies.

We are going back into the Stone Age practically and telling the people of Fairbanks, “Well, the way that you’re going to deal with your emissions is you’re not going to burn wet wood. You’re going to burn dry wood.” Well, the fact of the matter is we are burning wood to keep warm.

So if there are no areas given the tight budget that we are dealing with, you can help us with in terms of assistance.

Is the Agency looking at an extension to give the community more time to meet the new standards before this penalty phase begins in 2016? The community is working aggressively on alternate plans, whether it is trucking natural gas from the North Slope. We are looking at alternatives to bring gas up from the South. But we all know that you cannot flip a switch and make it happen between now and then. Assessing penalties on top of a community that is already socked with high, high, high, exorbitantly high energy costs is really not the way to go.

So what can you offer the residents of Fairbanks in terms of some level of assurance that you are willing to work with us?

Mr. PERCIASEPE. Well, I think that’s the key right there is to keep working on this together. I don’t know that we have the right

solution yet, so I can and will offer to do the continued effort to try to see if we can get through this period.

I think, obviously, you've mentioned a couple of ideas in your comments there in the long haul about natural gas and other things like that. And I'm sure if Fairbanks wants to get to that point.

I am not inexperienced with this issue. I heated my own home in upstate New York with wood for 5 years with my father and that was my job was to cut the trees. And I know that they are wet most of the time in the winter.

So I am painfully familiar with this particular issue and want to offer that we'll continue working on it with you and with the State of Alaska to see if we can come to the right place.

Senator MURKOWSKI. Well, Mr. Perciasepe, I appreciate that. It doesn't necessarily comfort me because I have received the same assurances from Administrator Jackson. The people of Fairbanks, it is not a short winter up there. It is a long, cold, dark, winter and, again, when you don't have many alternatives, you are looking for some assistance.

I will ask then, the same thing I asked the Administrator. Sit down with us and let's go through some of these areas where we don't feel that the Agency is working with the residents. Whether it is the issue that I raised with Fairbanks in PM<sub>2.5</sub> or what I raised in my opening statement with the solid waste incinerator rule, and the impact that it has on a small husband-wife veterinary clinic in Soldotna.

It seems to me in that particular instance, and I will let you address that, but it seems to me that there should be a way to address this administratively rather than having to assess this veterinary clinic \$50,000 to do an annual test to make sure that they meet the compliance.

So I would like your assurance that you will work with us on issues that may not be that big in terms of your Agency's perspective, but for this community and for this small business, it is everything because it is this regulation that could shut this business down.

Mr. PERCIASEPE. I do know that we have discussions going on, on that particular rule that you are expressing the concerns that the vet has.

I believe some of the folks from Alaska are visiting our North Carolina office this week to talk through some of these issues, and later, in a couple more weeks in May, we're going to get a bunch of other people down.

So I will make sure that the people at EPA who are doing that work and that group of incinerator operators and some of the others that are involved from Alaska, know that you and I have talked about this. We would be able to talk about it a little bit more perhaps tomorrow.

But I want to make sure that you know that we have that little process going on. That we are going to be meeting with those folks, and we are going to be looking under every stone to see how we can build a path forward there, so.

Senator MURKOWSKI. Well, maybe we can look at our list tomorrow then.

Mr. PERCIASEPE. Yeah. I know that both of these answers are more process than absolute answers, but part of our work, I think, together is to get a process to make sure that we get to the answer.

Senator MURKOWSKI. Mr. Chairman.

Senator REED. Thank you. Senator Begich.

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

I just have a couple of quick questions. One is on the general issue of resource development within Alaska, maybe mining, oil and gas, and so forth.

#### SEQUESTER AND PERMITTING PROCESS

But regarding the sequester and also your budget into the future, can you give me a feeling on the impacts that you would see in regards to the permitting process as well as how long it takes with regards to these two types of impacts you have it on the budget? And especially around these issues, as you know, our seasons are very unique. They are not year round, in some cases of how the developments have to be set up and proposed.

Mr. PERCIASEPE. Well, I think the—as a general matter, the way the sequestration happened in this particular budget year is it was spread out, you know, around. There was very little ability and we can—I'm not trying to say one thing or another about that, to say, "Well, we'll do much less of that and only a little bit of this."

Senator BEGICH. Right. You have the flexibility—

Mr. PERCIASEPE. Oh, right.

Senator BEGICH [continuing]. By division within the Agency essentially.

Mr. PERCIASEPE. So what we—what we've done is tried to mitigate that as much as possible, but the inevitable effect of everything being a little bit less is that there will be some delays or some choices that have to be made a little bit more than they were without it.

So I would expect that there will be fewer inspections; that some permits will take longer. This is the kind of stuff that—and the reviews, and the processing of grants, and things of that nature are all going to take a little bit longer. If you want to cumulatively say they will all take 5 percent longer, you know, that's one way to think about it.

On the other side of the coin, when you don't have enough flexibility between the personnel budgets and the non-personnel budgets, you end up with a situation where some of the people are going to be not working full time. So we have a—well, they'll be full time employees, but they won't hit every day because we have to furlough some of them.

And at EPA, we've tried to minimize that. We've got it less than 5 percent because we were able to do some things where there was some flexibility. So we're now no more than 10 days of all our employees will be furloughed.

But I think that that is—we might be able to reduce that a little bit more. We're going to look in June one more time to see if we're able to make any savings. But I think the simple answer is there'll be some slowing across the board.

But on issues in Alaska, I personally participate with David Hayes, the Deputy Secretary of the Interior, who I know you guys

are all familiar with particularly in Alaska, who's chairing our interagency group, and we meet frequently. We have phone calls frequently to make sure we're keeping our eye on the ball with the critical and often difficult issues in Alaska—

Senator BEGICH. Right, the timetables, the seasons, and so forth, right?

Mr. PERCIASEPE. Yes.

Senator BEGICH. Well, I think that—I know Senator Blunt has a piece of legislation that I signed on to regards to flexibility with essential employees. So I don't know how that plays with EPA, but I know it's an important aspect that you have as much flexibility as possible. Because those permits, if they're delayed by a month or two, it could cause, as you know, a whole season missed in development. But I thank you for that comment.

But also I appreciate your end comment there that you're working with Under Secretary Hayes regarding the coordinating effort. That, to me, has been a huge plus for us in Alaska and it's had some ability to move some things that may be not as fast in the past because of different agencies having debate and so forth. So I appreciate that.

Mr. PERCIASEPE. I agree that that has enabled us to resolve issues more quickly and, you know, between all the different agencies, and it's been a very helpful process.

Senator BEGICH. Very good. Let me, if I can add one other thing, and I was listening to your comments on kind of the E-Government component of what you're trying to do. And it actually surprised me a little bit, while nothing surprises me around here anymore, but that a law requires you to keep the paper, and you had to get the law changed in order for you to come into the 21st century.

#### E-GOVERNMENT

I would ask you this, and I would be very interested in working with you on this. Sometimes I think legislative bodies have a bad habit of wanting to legislate down to what pencil and size of pencil you buy, and the grade, and everything. And I want to, I guess, not just you, but other agencies, give you the flexibility especially in order to get into the E-Government ability because without that, you are way behind in a lot of areas.

So I would be very interested in: are there things within the legislative arena that we have hamstrung you in the ability to move into this 21st century technology? You don't have to tell me now, but if you could prepare something that says, you know, "Here's some laws that prevent us from going to electronic because we have these three things that are in the law that requires to have things in triplicate, and we have to have them in paper, and we have to have certain files."

I would be very interested in that because part of the budget process, that's what we're here to do, is find ways to make you more efficient. But if we have created some legislation that requires you to—you know, like I always have this argument. This black suitcase or briefcase I carry around, my view is always if it's more than what fits in there, I've got too much to file and I honestly believe that. It is what I carry. That's my file. That's my in-



formation. Anything more than that is way too much. So when I'm not using technology properly.

So I would be very interested in any of that kind of issue that you could bring forward to us.

Mr. PERCIASEPE. We will follow up on that. I know it's not just the legislation. It's also some of the regulations that we've done in the past. Many of these laws were passed 20 years ago before people visualized the kind of world we're currently in.

Senator BEGICH. Right.

Mr. PERCIASEPE. I don't think it was anybody's fault, but they wanted to make sure that they could keep track of these things, and so did some of the regulations EPA and other agencies did back then.

So it requires a combination of looking to make sure there are no legislative barriers, and I think we've got one of the big ones, because I think we'll save over \$100 million a year for the regulated industry when we get that implemented.

Senator BEGICH. That's great.

Mr. PERCIASEPE. But I think it's going to be a joint effort, I think, between the Congress and the executive branch to look at how we've constructed the systems we have, you know, maybe even from a lean analysis look.

Senator BEGICH. Okay.

Mr. PERCIASEPE. To find those—where those sore spots would be. So I will look at that.

Senator BEGICH. We would be very happy. I did a lot of that when I was mayor of Anchorage where we really, you know, implemented a lot of E-Government and it changed the whole way we did business. And the customer's much happier because the timetable has changed in a positive way. So I'd be very anxious to work with you. Thank you.

Thank you, Mr. Chairman.

[The information follows:]

INFORMATION ON LAWS THAT PREVENT THE EPA FROM GOING ELECTRONIC  
(ELECTRONIC FILING) IN CERTAIN CASES

Many of EPA's statutes were enacted in the 1970s and 1980s when electronic communications were much less common and submissions of all types were typically done on paper. EPA has made great progress in moving our programs toward more efficient and less wasteful electronic systems. For example, the vast majority of Toxic Release Inventory reporting is now done electronically. The Agency is currently engaged in a number of rulemakings to increase electronic reporting, which will continue to move the Agency away from systems that rely on paper submissions.

Senator REED. Senator Blunt.

Senator BLUNT. Thanks, Mr. Chairman.

NEW SOURCE REVIEW

I want to get to New Source Review in a minute. I did not intend to talk about this, but Senator Johanns's questions were particularly—the answers were particularly troubling to me.

Where do you think you have the authority to fly over people's property and see if they are doing anything wrong?

Mr. PERCIASEPE. I'm not really prepared to do some kind of legal analysis here, Senator, but I would say that that there—the gen-

eral authority that EPA has to inspect, to implement the laws that the Congress has passed, and we're also trying to be efficient. We're trying to only, you know, use our scarce resources in places where there appears to be some problem. And I don't know why that concept is difficult. I think we can understand that concept.

I think the issue which I think the Senator made it more clear to me than I've heard before is that people who feel like they are—they are not a problem, why are they having a, you know, something fly over their house. And so I mean I think I will—

Senator BLUNT. I would think a guy from upstate New York would understand that if you thought about it for very long.

Mr. PERCIASEPE. Dairy, I lived in the dairy country.

Senator BLUNT. Exactly. My mom and dad were dairy farmers. I understand that whole concept of the Government and you.

But now, you can't just walk onto somebody's property, can you, because you think they might be doing something wrong or can you?

Mr. PERCIASEPE. I don't know the answer to that.

Senator BLUNT. And you said it's not like you were spying on people.

What term would you use?

Mr. PERCIASEPE. We were looking for where there may be animals and their waste in the water. So we're not looking at people at all.

Senator BLUNT. So you're spying on animals.

Mr. PERCIASEPE. Well, we're looking to see where we would send inspectors to see if there was a problem of water pollution. So I don't know that animals are what we're spying on. We're looking at the conditions that could be creating water quality violations.

Senator BLUNT. You know, I work for almost 6 million people. I am trying to figure out how many more than 5 million of them would be concerned by this. But I think at least 5 million of them would say, "I really don't like the sense of that." That the EPA can do things that, I don't know that law enforcement without any reason can just fly around. Maybe they can.

It is troublesome to me and I do not want to use all my time on this, but I think you should say, if I was going to sequester something at the EPA, I think I would sequester this surveillance flying around at the top of the list. I wouldn't want to be trying to justify that if I couldn't get a permit issued for somebody to do something that creates private sector jobs, for instance. That would be my sense.

I saw a report, just came out, from George Washington University that the regulatory rules from the Federal Government in 2012, by their own estimate, exceeded the cost of the entire first term of the two preceding Presidents. That the regulatory rules in 2012, by the administration's estimate, exceeded the cost of the first terms of President Bush and President Clinton.

And one of those rules, this New Source Review standard. It looks like—I don't know how you could possibly build a coal plant. Our State, I think we are number six in the country. We are 82 percent-or-so dependent on coal. I guess you can't build a plant without carbon capture storage.

Do you believe that that is commercially feasible today, carbon capture storage?

Mr. PERCIASEPE. Let me make sure I know which rule you're talking about.

NEW SOURCE PERFORMANCE STANDARDS

Senator BLUNT. I'm talking about the New Source Performance Standards.

Mr. PERCIASEPE. Standards for electric generating.

Senator BLUNT. Right. Exactly.

Mr. PERCIASEPE. Well, I was actually co-chair with the Department of Energy on the carbon capture and storage report that we did for the President.

Senator BLUNT. Oh, good. Well, you are a good guy to ask this question.

Mr. PERCIASEPE. The simple answer is that all the pieces of that technology exist. People use it now. People use it now for enhanced oil recovery projects and things of that nature. But having it altogether in a package has not been constructed except in demonstration projects.

We received a lot of comments on that proposal, I think 2.7 million comments on that proposal, and that's why we're taking our time to look at that, and we haven't finalized that rule yet. We have to continue to look at those comments and figure out some of the issues that you're bringing up.

But one of the things we did in that proposal is provide a long averaging period, like 30 years, so taking into account the potential of that type of evolution of technology.

However, we did get a lot of comment on that as well, Senator, and I think that's what, you know, that's among many things that we're looking at before we would finalize that.

Senator BLUNT. Well, it—one of the things I am sure you have been asked to study is just the overall question of this rule that, if the rule is promulgated it absolutely prohibits future activity in this area?

And if carbon capture is not commercially realistic, what you are really saying if you move forward with this rule that you have had lots of other people comment on already, is can't build a coal-fired plant in the country.

Mr. PERCIASEPE. I wouldn't make that complete conclusion because of the averaging concept that we put in there. What we have to determine is whether or not that is a feasible approach to dealing with the diversity of fuels that are out there.

So I recognize that some people view it the way you've recognized it and we certainly got tons of comment on that. So we have to look at the idea that if the technology's not available now when would it be available and how do you build that into the future? We have to continue to work on that.

Senator BLUNT. Thank you.

Thank you, Mr. Chairman.

Senator REED. Thank you, Senator Blunt.

Let me recognize Senator Murkowski for any comments she has in conclusion.

Senator MURKOWSKI. Thank you, Mr. Chairman.

And Mr. Perciasepe, thank you for being here this morning, trying to work through some of our questions.

I do have a host of other questions that I will be submitting for the record, everything from Keystone Pipeline, hydraulic fracturing, forest roads, sulfur content, greenhouse gas, powerplant rulemaking, commercial fishing sector. I think I could probably spend the rest of the afternoon with you, but unfortunately we do not have the time allowed.

But one thing that I would like to just leave with you, not necessarily in a question format for you this morning, but just something that I would like you and those in the Agency to consider.

#### COST BENEFIT ANALYSIS

We talk a lot around here about cost benefit analysis at times of declining budget. It is important. We are making sure that we get good value for the dollar. And the President has asked, he says we want to, again, make sure that we are doing things in the right areas.

And it was just, well, it was this month that the U.S. Chamber of Commerce came out with a study regarding the impacts of EPA regulations on employment within the United States. And in that study, they found that the EPA is using what they consider to be some overly optimistic forecasts that overstate the benefits of regulation and understates their cost.

And they go through their assessment in terms of how they reached this conclusion. They went on further to provide that the correct approach for assessment of the overall impacts of rules with large economy-wide costs is to calculate the impact of regulation compliance costs through a whole economy model.

And it is something that, I think, many of us are talking about is how do we accurately reflect the costs and the benefits?

There was an opinion piece recently in *The Hill*, which referred to this. This is a gentleman, Jeff Rosen, who is the former general counsel over at the Office of Management and Budget (OMB). And he cites a rule that was proposed by the EPA back in 2011 that relates to equipment that powerplants and manufacturing facilities use to draw in water to prevent overheating.

EPA gets concerned about the impact of these water intake systems on larva or fish. So they do an assessment, EPA does an assessment. They find that the rule would impose \$466 million in annual costs on powerplants and consumers, while the benefits would be about a \$16 million benefit. So in other words, you've got \$1 of cost for every 3 cents in fish benefits.

So then what EPA does is after they do this assessment, they chose to mail out a survey to several thousand households asking them to place a value on how fish and other aquatic organisms make them feel. Now, I don't know how you define how a fish makes me feel, but the survey asked how much people would be willing to save 600 million fish.

And then last summer, EPA published a notice based, in part, on this fish survey showing that the fish benefits are now \$2.2 billion per year. This is a 14,000-percent increase over the initial estimate.

So it kind of speaks to the point that I have made that when we talk about costs benefit and the analysis, I think it is important to

really understand in fairness how we have arrived at these analyses because it is important as we, as policymakers, make determinations, try to figure out how we advance legislation that is good, sound policy, good for the economy, good for jobs.

And so when we see things like this where it would appear that you are truly overstating benefits based on what most of us would suggest is a pretty flimsy survey, it casts doubt on whether or not there is any credibility to the analysis.

So rather than putting you on the spot and saying, "Is this fair? Should we restructure it?" I think it is something that I would ask the Agency to look at critically. Take, not necessarily that the U.S. Chamber of Commerce has all the answers, but again, for us in policymaking positions, you as the agencies working to move through regulations, we want to make sure that there is good value to taxpayers throughout all of this.

So how we do these analyses fairly, I think, is something we should all be focused on, and I would welcome your input and that of others within the Agency as we kind of move forward on this. But I do appreciate you being here.

And again, I appreciate the chairman, the thoughtful way that you not only conduct the hearings, but in getting us to the point where we have good, thoughtful, constructive hearings.

Senator REED. Thank you very much, Senator Murkowski.

I think she makes an excellent point. These cost benefit analyses are critical and there are some things you can measure easily, you know, the cost to put a boiler in. There are costs and benefits that are hard to measure because there are social costs or social benefits. So I think her point is well taken as your analysis has to be very nuanced, sophisticated, and factually based on both the cost side and the benefit side. So I will echo that thought.

#### ADDITIONAL COMMITTEE QUESTIONS

I thank you very much, Mr. Administrator. I am sure there are many questions that will be forthcoming. I will ask that all questions be submitted by May 1, next Wednesday, and then ask you to respond as promptly as possible to the questions.

[The following questions were not asked at the hearing, but were submitted to the agency for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR JACK REED

##### FERTILIZER PLANT EXPLOSION IN WEST, TEXAS

*Question.* What was EPA's role in assuring safe handling and storage of the chemicals at the facility in West, Texas that exploded on April 17, 2013?

*Answer.* EPA is responsible for implementing regulations and policies both under the Clean Air Act and under the Emergency Planning and Community Right to Know Act (EPCRA). The regulations under these laws required West Fertilizer to prepare a Risk Management Plan (RMP) under section 112(r) of the Clean Air Act (the Risk Management Program) and EPA regulations at 40 CFR part 68. West Fertilizer was also required to report their chemical inventory to local and State officials under EPCRA sections 311 and 312. West Fertilizer did submit an RMP in June 2011 as well as a chemical inventory form for calendar year 2012.

Under the Risk Management Program, a covered facility is required to conduct a review of the hazards associated with covered substances, processes and procedures, and then develop a prevention program and an emergency response program addressing those hazards. The "regulated substances" are chemicals which, by virtue of an accidental release to the ambient air, have the potential to cause serious adverse effects to human health and the environment. The Risk Management Pro-

gram is not an “all hazards” regulation. It is aimed specifically at risks arising from the accidental release of a covered substance to the ambient air. Accordingly, ammonium nitrate is not a covered substance under the Risk Management Program. West Fertilizer did submit an RMP to EPA for the anhydrous ammonia at its facility. This is the only chemical present at the facility for which an RMP was required.

The “Hazard Review” conducted under this process must identify opportunities for equipment malfunction or human error (such as flood or fire), that could in turn cause the accidental release of covered substances, as well as safeguards to prevent the potential release, and steps to detect and monitor for a release. These requirements are documented in the RMP that is submitted to the EPA. A covered facility must implement the RMP and update it every 5 years or when certain changes occur. The EPA is responsible for implementing and overseeing this program which includes the development and implementation of regulations and policy, providing technical assistance, carrying out inspections and conducting enforcement at covered facilities.

The EPA Region 6 conducted an RMP inspection at the West Chemical & Fertilizer Co. on March 16, 2006. The inspector observed the processes and the equipment at the facility, and reviewed the facility’s RMP and associated records. The inspector identified the several violations, including:

- failure to update the RMP (the update due in 2004 had not been submitted), including updating the Hazard Assessment and Hazard Review and consequences of deviation in operating procedures,
- failure to properly document new operator training,
- failure to develop a formal mechanical integrity program, and
- failure to conduct compliance audits.

In accordance with the EPA approved penalty policy in place in 2006, on June 5, 2006, the Region issued a proposed Expedited Settlement Agreement (ESA) which assessed a penalty of \$2,300 to West Chemical & Fertilizer Company. The company submitted its updated RMP on July 7, 2006 and paid the penalty. As a condition of the ESA, the company was required to correct all deficiencies identified during the inspection. The Agency issued the final ESA on August 14, 2006.

Sections 311 and 312 of EPCRA require facilities to submit to State and local emergency planning authorities (but not to EPA) information on hazardous chemicals on-site in order to help communities prepare for and respond to chemical accidents. Ammonium nitrate is reportable (in quantities above 10,000 lbs) under this regulation and it appears at this time that West Fertilizer had reported as required.

For each extremely hazardous chemical as listed under section 302 of EPCRA, or each hazardous chemical (including explosives) as defined by the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard at a facility in excess of established threshold amounts, the facility must annually submit a Material Safety Data Sheet (MSDS) and a Hazardous Chemical Inventory Form (Tier II form) to their State Emergency Response Commission (SERC), their Local Emergency Planning Committee (LEPC) and their local fire department. The MSDS contains information on chemical identification, health and physical hazard, necessary personal protective equipment and emergency response procedures. The Tier II form contains facility identification, chemical identification, the form of chemical present, the amount of chemical on-site and days per year on-site, the location of the chemical at the facility and the type of storage used.

As noted above, West Chemical and Fertilizer submitted Tier II forms in 2012 for seven chemicals, including ammonium nitrate and anhydrous ammonia. This information is designed to be used by State and local authorities for preparing for and responding to potential accidents. Fire departments may use the information to help them in addressing issues or compliance with fire codes and safe storage of chemicals under applicable State or local laws.

*Question.* What regulatory authority does EPA have to limit the types or amounts of chemicals at a facility for safety concerns compared to its Federal and State partners? Please provide a detailed explanation that explains the agency’s roles and responsibilities compared to its partners.

*Answer.* Under the current Clean Air Act (CAA) section 112(r) Risk Management Plan regulations at 40 CFR part 68, the EPA does not have authority to limit the types or amounts of chemicals at a regulated facility for safety concerns.

The CAA section 112(r)(1) General Duty Clause (GDC) can require facilities to take steps to ensure compliance with the general duty. The GDC requires facilities to identify hazards which may result from releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Such steps could include limiting the type or amount of chemical

to address unsafe conditions or hazard present at the source. The EPA's GDC is similar to that of OSHA in the Occupational Safety and Health Act.

CAA section 112(r)(9) authorizes the EPA to take actions to abate any "imminent and substantial endangerment to human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance." In such cases where such a danger exists, EPA can require facilities to limit a chemical's presence in order to address the threat.

The EPA does not have sufficient familiarity with the regulatory authority of its partner agencies to provide the comparative analysis requested. We respectfully defer to our partners agencies to explain the nature of the regulatory authority that they implement.

*Question.* How does EPA coordinate with other Federal agencies such as the Department of Homeland Security to ensure chemical facility safety and security?

Answer. On a Federal level, the EPA has an effective working relationship with key Federal agencies involved in chemical safety, including OSHA, the Department of Homeland Security (DHS), the Chemical Safety Board (CSB), and the U.S. Department of Transportation (DOT). As part of our collaboration and coordination with these agencies, we meet regularly or as issues arise to discuss areas of interest in our programs and how to work together to better implement our respective programs and promote chemical safety. An example of such cooperation is the ongoing sharing of information between the EPA and DHS and OSHA. Since the EPA completed building the RMP database, it has been available to OSHA, and they have used it to (in part) prioritize their inspections. Since the advent of the Chemical Facility Anti-Terrorism Standard (CFATS), the EPA has made our RMP facility database available to DHS, and continues to do so.

In addition, on August, 1, 2013, the President issued Executive Order (EO) 13650 establishing a Chemical Facility Safety and Security Working Group and setting forth additional actions to be taken by the Federal Government in an effort to further improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to workers and communities. The Executive Order calls upon Federal agencies to initiate innovative approaches for working together on a broad range of activities, such as identification of high-risk facilities, inspections, enforcement, and incident investigation and follow up. Additionally, Federal agencies are specifically directed to modernize the collection and sharing of chemical facility information to maximize the effectiveness of risk reduction efforts and reduce duplicative efforts. EPA will co-chair the working group and has taken steps toward compliance with the EO. For example, EPA, OSHA, and DHS have deployed the regional pilot program that will validate best practices and test innovative new methods for Federal interagency collaboration on information collection and utilization, inspection planning, and stakeholder outreach.

*Question.* Risk management plans describe the ways in which a facility reduces the likelihood of accidental releases of extremely hazardous substances and their plans for dealing with any accidental releases which may occur. Please describe the enforcement responsibilities of the agency's Risk Management Plan.

Answer. The RMP is a summary of the facility's risk management program and is to be submitted to the EPA. In general, the RMP submitted by most facilities includes the following: executive summary; registration information; off-site consequence analysis; 5-year accident history; prevention program; and emergency response program.

Owners or operators of a facility with more than a threshold quantity of a regulated substance in a process, as determined under 40 CFR section 68.115, must submit an RMP no later than the latest of the following dates: 3 years after the date on which a substance is first listed under 40 CFR section 68.130; or the date on which a regulated substance is first present in a process above a threshold quantity. The RMP must be reviewed and updated at least once every 5 years from the date of a facility's latest submission.

RMP inspections ensure compliance with the Risk Management Program, and these inspections can lead directly to enforcement actions for regulatory violations as they involve on-site verification activities. Most EPA oversight and enforcement of CAA section 112(r) and 40 CFR part 68 involve inspections.

EPA takes enforcement actions against facilities that fail to submit an RMP and those that fail to comply with the other part 68 requirements. For example, if there is evidence of a facility's failure to perform an initial process hazard analysis on covered processes (40 CFR section 68.67) and failure to train an employee involved in operating a covered process (40 CFR section 68.71) then EPA could (and does) take an enforcement action to assess penalties and obtain compliance for both violations. If a facility has not submitted an RMP but has a chemical accident prevention program in place which satisfies the specific part 68 requirements, a single count for

failing to file an RMP may be appropriate. See Combined Enforcement Policy for Clean Air Act 112(r)(1), 112(r)(7), and 40 CFR part 68, dated June 2012. (<http://www.epa.gov/enforcement/air/documents/policies/gdc/112rcep062012.pdf>)

*Question.* How much funding has been provided for the Risk Management program in fiscal year 2013, and how much funding is requested in the fiscal year 2014 budget request?

*Answer.* The agency Risk Management program resource level in the fiscal year 2013 Enacted Operating Plan is \$12.2 million (including a \$655,000 reduction for sequester) and \$14.1 million in the fiscal year 2014 President's budget request. This includes a \$0.8 million increase to support additional high-risk chemical facility inspections. The request will enable EPA to conduct 460 RMP inspections in fiscal year 2014. Of these inspections, 34 percent will be conducted at high-risk facilities.

#### ENVIRONMENTAL EDUCATION

*Question.* What is the rationale behind eliminating a centralized environmental education program, and what benefit does the administration expect to achieve? Please explain how EPA plans to effectively manage environmental education grants if they are spread across EPA programs rather than centrally coordinated.

*Answer.* Eliminating the centralized Environmental Education (EE) program allows the Agency to better integrate environmental education activities into existing Agency programs under a streamlined and coordinated approach. The EPA remains committed to environmental education and outreach and will continue to ensure that all of the EPA's content and information is available to students, educators and communities.

In fiscal year 2014, the EPA will employ an intra-agency approach to environmental education grant making which will allow the Agency to leverage existing full-time equivalent (FTE) and grant management resources. This intra-agency coordination will maximize reduced resources and afford additional programming that has a greater impact on 21st century EE needs. By integrating EE into all of our program offices via funds and support from the Office of External Affairs, we are confident that the EPA's work in educating the American public will continue in a more effective way than previously structured.

For the past 3 fiscal years the EPA's EE grant program has been aligned with the agency priorities in air, water, solid waste, toxic substances and expanding the conversation on environmentalism. These are many of the same programs that have existing EPA authorities that enable the EPA to perform the new environmental grant and outreach approach. These authorities include: Clean Air Act; Clean Water Act; Solid Waste Disposal Act; Safe Drinking Water Act; Toxic Substances Control Act; Federal Insecticide, Fungicide, and Rodenticide Act.

#### SOUTHEAST NEW ENGLAND COASTAL WATERSHED RESTORATION PROGRAM

*Question.* What progress does EPA expect to make on the Southeast New England Coastal Watershed Restoration initiative in the current fiscal year?

*Answer.* In fiscal year 2013, the EPA expects to build on the progress made over the past year, bringing together a variety of stakeholders for the restoration of coastal southeast New England waters. The EPA has met extensively with Federal and State agencies as well as key stakeholders and the two local National Estuary Programs (Narragansett and Buzzards Bay) across Rhode Island and Massachusetts. Response has been positive, with a specific desire to devise a collective approach to advance key habitat and water quality restoration priorities, particularly in work that helps achieve both objectives. Key progress and activities to date are summarized below.

The EPA facilitated sessions of a broadly composed working group drawn from Partnership members to: Develop a vision statement, draft restoration framework, and explore organizational options for sustaining implementation over the long-term; analyze approaches to regional-scale restoration that merges both habitat and water quality objectives, with a specific focus initially on nutrients; and identify gaps in existing programs and highlight potential opportunities for on-the-ground restoration projects.

The EPA provided staff analytical support to: Inventory and assess existing restoration efforts; analyze and present models of other successful regional programs as possible frameworks/strategies for regional restoration; begin development of restoration metrics; and partner with the Massachusetts Clean Energy Foundation to support an RFP element seeking innovative solutions for cheaper and more effective denitrifying septic systems.

*Question.* How much funding does EPA expect the program to receive in fiscal year 2013, and how will these funds specifically be used to support the program?



Answer. The EPA proposes to formalize the establishment of the Southeast New England Coastal Watershed Restoration Program in fiscal year 2014 by including a \$2 million budget request. In fiscal year 2013, the EPA is preparing for this new program through the Surface Water Protection and National Estuary Program budgets, but has not dedicated additional funding for activities beyond those conducted under the NEP and for other watershed efforts. These activities include: hosting Southeast New England Coastal Watershed Restoration Partnership meetings; development of a restoration framework and criteria as well as organizational and communication materials in preparation for the initiative.

*Question.* What activities does EPA plan to carry out with the \$2 million included for this initiative in the fiscal year 2014 budget request?

Answer. The EPA plans to work with the newly formed Southeast New England Coastal Watershed Restoration Partnership to restore the ecological health of southeast New England's estuaries, watersheds, and coastal waters by funding large projects to restore physical processes, improve water quality, and restore key habitat. The initial focus will be on nutrients and habitat, as well as nonpoint source and stormwater pollution. This initiative will adopt a holistic, systems-based approach to restoration by incorporating a variety of integrated management approaches that address the region's broad set of stressors and disturbances. We will work closely with the Narragansett Bay and Buzzards Bay National Estuary Programs as well as active groups on Cape Cod.

#### BEACHES PROTECTION CATEGORICAL GRANTS

*Question.* What is the justification for eliminating the Beaches Protection Categorical grant program?

Answer. EPA's proposal to eliminate the Beach Grant Program is a product of the hard choices the agency had to make in light of the difficult fiscal situation we face. This is especially acute in light of the significant cuts imposed on the agency by sequestration. In fiscal year 2013, EPA reviewed its programs for areas where any potential efficiencies and streamlining can yield savings. The Agency is proposing to eliminate certain mature program activities that are well established, well understood, and where there is the possibility of maintaining some of the human health benefits through implementation at the State and local levels. EPA's beach program has provided important guidance and significant funding to successfully support State and local governments in establishing their own programs. However, States (including territories and tribes) and local governments now have the technical expertise to continue beach monitoring as a result of the technical guidance and more than \$110 million in financial support the EPA has provided over the last decade through the beach program.

*Question.* What assurance does the Committee have that these programs will be maintained by other funding sources if Federal grants are eliminated?

Answer. Beach monitoring continues to be important to protect human health. States will determine, based on resources and priorities, whether and to what extent to continue beach monitoring within the context of their broader water quality monitoring program. Under Clean Water Act section 106, grant-eligible States are expected to have a monitoring program consistent with EPA's guidance on elements of a monitoring program. Recreational uses are included in the guidance.

#### E-ENTERPRISE INITIATIVE

*Question.* The budget requests \$60 million for E-Enterprise. Is the proposed E-Enterprise initiative a one-time investment, or a multi-year investment?

Answer. E-Enterprise for the Environment is a major effort to transform and modernize how EPA and its partners conduct business. It is a joint initiative of States and EPA to improve environmental outcomes and dramatically enhance service to the regulated community and the public by maximizing the use of advanced monitoring and information technologies, optimizing operations, and increasing transparency. An initiative of this scale will require multiple years of planning, implementation, and investments that will allow us to reduce future costs for regulated entities and the States while giving the public access to comprehensive, timely data about the environment.

E-Enterprise includes a number of complex and simultaneous projects, including streamlining regulations, enhancing data systems, expanding public transparency, and improving collaboration among EPA and the States. For example, it will involve the creation of an electronic interactive "portal" for the regulated community to do things like apply for EPA and State permits, access information on their permit status, submit compliance information to States and EPA, and receive compliance assistance from environmental agencies. The portal will also result in greater sharing

of data on environmental conditions with the public, thereby empowering communities to help solve their own pollution problems. In addition, the initiative will explore the use of advanced monitoring technologies that could provide more accurate, timely and reliable environmental data about environmental conditions and specific pollutant discharges. Under E-Enterprise, environmental agencies will also make e-reporting the “new normal” in environmental regulations, thereby significantly reducing paper reporting and reaping major benefits in terms of cost savings for industry and for the EPA and States and the availability of timely, more accurate information. In order to achieve these benefits, significant investment will be needed in IT systems, process changes, monitoring equipment, and rule design for EPA and its State partners. If EPA receives its full request for E-Enterprise funding in fiscal year 2014, the Agency projects that funding needs would span approximately a 5-year timeframe.

*Question.* If it is a phased approach, how many years does EPA expect to request funding for this initiative and what will be the total cost of the initiative?

*Answer.* EPA will be phasing this initiative, and EPA expects to request funding over multiple years. The total cost of the initiative has not yet been determined as EPA needs to complete formal analysis of the projects and how they will be implemented over the next few years. EPA is also collaborating closely with its State partners through the Environmental Council of States (ECOS), and State input will be critical in completing a full plan for E-Enterprise phasing. EPA and ECOS expect to complete a full plan for E-Enterprise phasing in fiscal year 2014. If EPA receives its full request for E-Enterprise funding in fiscal year 2014, the Agency projects that funding needs would span approximately a 5-year timeframe.

*Question.* The budget request discusses the potential cost savings that the regulated community will realize through electronic reporting. If funded in fiscal year 2014, when will the initiative be fully operational?

*Answer.* The initiative consists of a series of interconnected projects. Some projects will be completed sooner, such as shared tools for validating electronic reporting. Other projects will take longer to be fully operational, such as NPDES electronic reporting and electronic manifests for hazardous waste. EPA has not yet projected a fixed date for when the entire initiative will be fully operational, but EPA projects that the initiative will span approximately a 5-year timeframe (depending on availability of funding) and some components should be operational in the fiscal year 2014 to fiscal year 2015 timeframe, and that initial cost savings could begin to be realized after these components are operational.

#### BROWNFIELDS PROJECTS

*Question.* EPA is proposing to reduce the brownfields projects funding by 10 percent, yet at the same time it increases the operating program for brownfields by 10 percent (\$2.4 million). What is the explanation for why EPA is cutting the brownfields projects program but at the same time increasing operating costs?

*Answer.* The Agency’s fiscal year 2014 request for brownfields program related costs provides critically needed funding to support the successful and timely selection and funding of annual brownfields grant competition awards; manage existing and future brownfields 104(k) and 128(a) grants; increase technical assistance and outreach activities for local communities, States, and other brownfield stakeholders; and improve the collection of program data to assess and identify the most efficient and effective use brownfields grant funds.

#### RADON GRANTS

*Question.* Last year, EPA, along with the American Association of Radon Scientists and Technologists and the Conference of Radon Control Program Directors conducted an assessment to determine the needs of State radon programs if State Indoor Radon Grants were eliminated. Twenty-three States reported that they will have to eliminate their radon programs. Based on these results, why did EPA decide to eliminate this important grant program?

*Answer.* The State Indoor Radon Grants (SIRG) program was established by Congress to fund the development of States’ capacity to raise awareness about radon risks and promote public health protection by reducing exposure to indoor radon gas. After 23 years in existence, the radon grant program has succeeded in establishing States’ capacity to raise awareness about radon risks and promote public health protection by reducing exposure to indoor radon gas. Also, given the current budget climate, eliminating the SIRG program is an example of the hard choices the Agency has had to make. The elimination of SIRG funding in fiscal year 2014 will mean that EPA will no longer subsidize State radon programs (and local programs with whom they collaborate) as they continue their efforts to reduce the public

health risks of radon. Instead, the States will need to target their remaining resources to continue radon-related activities, such as training real estate and construction professionals; adopting building codes; and conducting outreach and education programs. To better target resources at the Federal level, EPA will implement the Federal Radon Action Plan, a multi-year, multi-agency strategy for reducing the risk from radon exposure by leveraging existing Federal housing programs and more efficiently implementing radon-related activities to have a greater impact on public health.

#### SEQUESTRATION

*Question.* Thirteen percent of EPA's budget is grants that go to the States so that they can implement their pollution control programs, and sequestration impacts those programs too. What effect will a 5 percent cut to the categorical grants have on the State agencies?

*Answer.* It should be noted that approximately 43 percent of the EPA budget is appropriated as grants to States and tribes (STAG); categorical grants comprise approximately 13 percent of the EPA budget.

With that said, sequestration will reduce funding for activities that positively impact our communities, the health of our families, and the economic vitality of key industries by reducing categorical grant funding by \$54.6 million from fiscal year 2012. For example:

*STAG.*—The STAG appropriation funds States directly for environmental initiatives and programs. The reductions due to sequestration will impact States' ability to perform technical assistance to small systems in need, conduct sanitary surveys, achieve drinking water compliance targets and short-term annual numerical goals for reducing nitrogen, phosphorus, and sediment loads.

*PWSS.*—This grant funding enables States to target and support small systems that pursue effective compliance strategies, including identifying appropriate treatment technologies, alternative sources of water, consolidation options, and sources of funding. A cut of this magnitude will impact the States' ability to oversee and ensure that public water systems, especially small systems, provide safe, reliable drinking water to their customers. Small systems alone account for over 9,000 health based violations which have nearly doubled since 2002.

*Section 319 Grants.*—This funding helps States meet Clean Water Act requirements for nonpoint source pollution. This reduction would eliminate approximately 45 nonpoint source projects throughout the United States. The reduced funding for projects will impact States' ability to achieve goals for reducing nitrogen, phosphorus, and sediment loads.

*State and Local Air Quality.*—States depend on EPA funding for air monitoring sites that provide vital information to citizens with respiratory and cardiac diseases trying to avoid the harmful impacts of air pollution. In considering where to take the reductions, EPA has been looking at several different options to minimize the impact on States. Among these options, EPA is looking at potential flexibilities across its suite of monitoring programs. For example, with Phase I of the NO<sub>2</sub> near-road monitoring rollout now complete, EPA is exploring extending the implementation of Phase 2. Additionally, EPA is considering deferring spending on replacement of monitoring equipment, data analysis, and methods development.

*Categorical Grant Brownfields.*—States utilize EPA funding to establish core capabilities and enhance their brownfields response programs which include activities such as oversight of site cleanups. This reduction will result in existing grantees experiencing reductions in their fiscal year 2012 allocation in order to accommodate new applicants (on average, EPA receives seven new requests a year from eligible tribes and/or territories). The reduction will also result in State and local staff reductions that would decrease the number of properties that could be overseen by Voluntary Cleanup Programs by nearly 600 properties a year.

*Lead Program.*—Lead-Based Paint STAG funds support authorized States and tribes in their ability to implement training and certification programs for lead-based paint abatement and renovation, which are key efforts in the goal of reducing the prevalence of childhood lead poisoning. Impacts caused by sequestration could include a decrease in the ability to perform compliance assistance to the regulated community as well as certification of firms and accreditation of training providers. Reductions could also impact EPA's ability to implement the program in the 37 States where EPA operates the renovation program and in the 11 States where EPA operates the abatement program.

*Pesticides Program Implementation.*—This funding helps States and tribes ensure that pesticide regulatory decisions made at the national level are translated into results at the local level; since responsibility for ensuring proper pesticide use is in

large part delegated to States and tribes, this funding is critical. Reduced funding will result in a proportional reduction of activities by State and tribal program staff. For example, funding reductions will cause reduced worker protection training; reduced monitoring, evaluation, and response for pesticides in local water resources; fewer programs to help identify, respond to, and prevent pesticide poisoning; and reduced outreach on the safe handling and use of pesticides.

#### HYDRAULIC FRACTURING

*Question.* In 2010, Congress directed EPA to initiate a multi-year study on potential impacts of hydraulic fracturing on drinking water resources. Where is EPA in this process?

*Answer.* In 2011, EPA released the Final Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources. The study plan reflects extensive input from the EPA's Science Advisory Board (SAB); industry; environmental and public health groups; States; tribes; and communities. EPA released a Progress Report in December 2012 that provides an update of the ongoing research.

In March 2013, the EPA's independent SAB announced the formation of its Hydraulic Fracturing Research Advisory panel. In May, EPA received input from individual panel members on EPA's ongoing research to inform the report of results. EPA expects to release the draft report of results of the Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources for external peer review in late calendar year 2014.

*Question.* Is the Agency on track to issue a final report next year?

*Answer.* The EPA expects to release the draft report of results of the Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources for external peer review in late calendar year 2014.

*Question.* Last year, EPA signed an MOU with the Department of Energy and the U.S. Geological Survey to coordinate and align current and future hydraulic fracturing research. What progress and coordination have been made since then?

*Answer.* The Tri-Agency Research Plan is still under development. The work to date to develop the plan has been very helpful in both coordinating the research efforts of the three agencies and developing the President's fiscal year 2014 budget request.

The EPA, the Department of Energy (DOE), and the U.S. Geological Survey (USGS) routinely exchange information regarding ongoing research, including plans and progress. Exchanges among the principal investigators, in addition to high level discussions, help to assure that scientific details about the work is shared and can be used to help inform work underway by others.

DOE's National Energy Technology Laboratory recently briefed the EPA on the progress of their work in hydraulic fracturing. Reciprocal meetings will be held soon. USGS briefed the EPA on their work in seismicity. DOE and USGS are among those participating in the EPA's technical workshops, in which they engage in information exchange regarding research both with the EPA and the other participants.

*Question.* EPA is also proposing to do more hydraulic fracturing research in the area of air and water quality. What additional information does EPA hope to learn from this research and what is the timeline to complete this research?

*Answer.* The EPA will study air emissions from Unconventional Oil and Gas (UOG) operations, including hydraulic fracturing, particularly the composition and rates of emissions from key sources (e.g., wastewater handling operations, and emissions during completion and production from wells that have been hydraulically fractured) and possible preliminary dispersion modeling and/or ambient measurements to verify source emissions data.

Building upon knowledge obtained from the Drinking Water Study, the EPA will work to better characterize the composition of wastewater and wastewater treatment residuals, including solids, as well as develop an approach to define and evaluate the potential area of impact around horizontal wells from UOG operations, including hydraulic fracturing, across the United States.

At this time, we do not expect that the air and water quality research will culminate in a report like the multi-year study on potential impacts of hydraulic fracturing on drinking water resources. There is not a specific deadline when the research will be completed.

## QUESTIONS SUBMITTED BY SENATOR TOM UDALL

## STATE REVOLVING FUNDS

*Question.* I heard Senator Reed comment on the disappointment in cuts to the Clean Water and Drinking Water State Revolving Funds. I'd like to echo that disappointment.

This program provides critical funding to States to invest in water infrastructure and protect clean water. In New Mexico we are looking at cuts of over 50 percent in terms from 2012 to 2014.

I won't reiterate many of the concerns that have already been raised, but I'd like to point out a related problem that is brewing for New Mexico . . . flooding and polluted stormwater.

We are experiencing record droughts in New Mexico, but when the rain comes, it can come in the form of heavy floods and monsoons. Stormwater is a major water quality problem, especially when the water flows over burned areas or overwhelms treatment plants.

I'm currently circulating a discussion draft of legislation to spur innovative stormwater solutions—sometimes called “green infrastructure” since it minimizes the use of expensive steel and concrete. This bill supports cost-effective approaches that many communities are already integrating into their water management plans such as porous pavement, flood detention areas, and other designs that can help recharge aquifers, rather than just send floods downstream.

Does EPA believe that States like New Mexico need more help with water treatment infrastructure to meet Federal standards—and are these innovations a way to reduce costs?

*Answer.* EPA understands that many State and local governments face challenges improving their water infrastructure to meet water quality objectives. The Agency supports green infrastructure as a cost-effective solution to reduce stormwater pollution and help control the impacts of localized flooding. Many communities have already demonstrated that by using green infrastructure to reduce the stormwater flows going into their sewer systems or further downstream, they can avoid more costly gray infrastructure investments and save money. Communities have also recognized that green infrastructure can provide multiple environmental and community benefits, making it an attractive investment option.

## MINE SCREENING

*Question.* I understand from the budget justifications that the EPA has a goal of completing 93,400 assessments by 2015 at potential hazardous waste sites to determine if they warrant more analysis and remediation. It is also my understanding that in recent years much of this screening was uranium mine assessments, including surveys of 521 mines in the Navajo Nation.

Additionally, EPA Region 6 continues to conduct screenings of mines throughout New Mexico. According to the EPA budget justification, the President's budget could fund 700 new screenings.

Do you expect a portion of these will be carried out in New Mexico and the Navajo Nation?

*Answer.* About 20 percent of the remedial assessments in fiscal year 2011 and fiscal year 2012 took place at abandoned uranium mines (AUM). Most of these AUM assessments were conducted as part of EPA Region 9's initial Five Year Plan to address uranium contamination on the Navajo Nation that ended in 2012. EPA's estimate of 700 total remedial assessments in fiscal year 2014 applies to all site types and includes 3 assessments at non-Navajo Nation sites in New Mexico (two of the three are AUM sites) and 2 assessments at Navajo Nation AUM sites. EPA is currently working with DOI and DOE and the Navajo Nation to develop a second 5-year plan to address impacts from abandoned uranium mines. This plan will set goals for additional, more detailed assessments of uranium mines on the Navajo Reservation.

*Question.* Does the EPA have a clear picture of the number of abandoned mine sites that continue to need screening throughout New Mexico and the Navajo Nation?

*Answer.* EPA estimates about 60 AUMs in New Mexico and two AUMs on the Navajo Nation still require further Superfund remedial assessment. EPA expects to determine if additional AUMs on the Navajo Nation require more detailed assessment as part of the 5-year plan currently under development.

*Question.* Given the President's fiscal year 2014 budget trajectory, would EPA be able to meet its goal of completing 93,400 assessments at potential hazardous waste sites by 2015?

Answer. EPA expects to meet its goal of completing 93,400 assessments at potential hazardous waste sites by 2015 based on completed assessments and planned future assessments.

*Question.* Could you estimate what percentage of the abandoned uranium mine sites throughout the country will be screened when the EPA completes 93,400 assessments?

Answer. EPA's Strategic Plan includes a goal of completing a total of 93,400 remedial assessments at potential hazardous waste sites by 2015 since the inception of Superfund. While a portion of these assessments were at abandoned uranium mine sites, EPA has not determined the total number of abandoned uranium mines that need to be screened by the Superfund program. EPA expects the inventory of AUMs being developed by the DOE in coordination with EPA and Federal land management agencies may provide useful information in this regard. The inventory is planned for completion in July 2014.

#### SUPERFUND BUDGET

*Question.* There are several Superfund sites in New Mexico and the Navajo Nation that I am very concerned about, including the North East Churchrock site and associated United Nuclear Corporation Superfund Site, and the Jackpile Mine located on the Pueblo of Laguna to name a few. It is my understanding that the President has proposed a \$33 million cut from fiscal year 2012 enacted levels for the overall Superfund budget, and it appears that this cut is specifically being taken out of the cleanup account which was enacted in fiscal year 2012 at \$796 million, but the President is now proposing \$762 million.

Could you explain for the committee this reduction in Superfund cleanup funds?

Answer. The Superfund program's top priority remains protecting the American public by reducing risk to human health and the environment. While continuing to rely on the Agency's Enforcement First approach to encourage potentially responsible parties to conduct and/or pay for cleanups, the Remedial program will continue to focus on completing ongoing projects and maximizing the use of site-specific special account resources. The Agency will also continue to place a priority on achieving its goals for the two key environmental indicators, Human Exposure Under Control (HEUC) and Groundwater Migration Under Control (GMUC).

Many Federal programs have undergone substantial reductions in the past few years to help address national budget deficits. The President has had to make difficult choices with regard to funding EPA programs, including the Superfund cleanup program. The fiscal year 2014 President's budget request for the Superfund Remedial program represents a \$26 million reduction from the fiscal year 2012 enacted level. Primarily because of a fiscal year 2013 sequestration reduction of \$22 million, the fiscal year 2014 President's budget request for the Superfund Remedial program would represent a \$32 million increase from the fiscal year 2013 enacted level. The scope of the reductions to the program is having effects on program performance throughout the cleanup pipeline leading to a reduction in EPA's ability to fund remedial investigation/feasibility studies (RI/FSSs), remedial designs (RDs), remedial actions (RAs) and ongoing long-term response actions. Based on current planning data the number of EPA-financed construction (remedial action) projects that will not be funded could be as high as 40–45 by the end of fiscal year 2014.

*Question.* Has the need for cleanup dollars decreased?

Answer. No. The need for the cleanup dollars has not decreased as the program continues to address a large ongoing project workload and has unfunded projects ready to start. As referenced in the answer to the question above, the President's budget reflects difficult choices with regard to funding EPA programs, including the Superfund cleanup program.

*Question.* How will these cuts impact efforts to complete Superfund cleanup throughout New Mexico?

Answer. New Mexico currently has 14 sites on the final NPL, 4 sites deleted from the NPL, and 1 site (Jackpile-Paguete Uranium Mine) proposed for listing on the NPL. EPA is currently responding to extensive comments on the proposed rule to add Jackpile-Paguete Uranium Mine to the NPL with a final listing decision anticipated in fiscal year 2014.

Of the 14 final NPL sites, 11 sites are designated as construction complete. The three sites that are not "construction complete" include MolyCorp, Inc., Eagle Picher Carefree Battery, and McGaffey and Main Groundwater Plume. The McGaffey and Main site has ongoing EPA-funded remedial action work occurring. A new EPA-funded remedial action construction project at the site that is anticipated to be ready for funding this fiscal year may not be able to start work given the limited resources available for new construction projects nationwide. There is anticipated to

be as many as 25 unfunded construction projects by the end of fiscal year 2013 and as many as 40 to 45 unfunded construction projects by the end of fiscal year 2014. Although Agency funding may not be available in fiscal year 2013 to start a new construction project at the site, all current human exposures are under control. EPA continues to seek out all available funds for construction projects ready to start work and a final decision on any funding available for new construction projects will be made later in the fiscal year. Cleanup at the MolyCorp, Inc. and Eagle Picher Carefree Battery sites are being conducted by potentially responsible parties with EPA enforcement oversight. Similarly, the work at the North East Church Rock site and the related United Nuclear Corporation NPL site is being conducted by a potentially responsible party with EPA oversight.

RESPONSIBLE PARTIES

*Question.* Perhaps the most cost effective way of addressing funding of cleanup of mine, mill, and other contaminated sites is by identifying responsible parties. In considering mine and mill sites in the Navajo Nation alone, it is my understanding that principal responsible parties have been found for 74 mine sites, but that no responsible party has been identified for approximately 450 other sites.

Could you share with the committee what the EPA is doing to identify responsible parties, and the potential impact identification of such parties would have on budgets and the EPA's ability to complete remediation of sites?

*Answer. Actions taken to identify responsible parties.*—Since all of the contaminated mining sites on the Navajo Reservation are abandoned, EPA conducted investigations to try to identify the parties that owned or operated those sites in the past. EPA is committed to an “enforcement first” approach that maximizes the participation of liable and viable parties in performing and paying for Superfund cleanups. As an initial step in our investigation, the EPA sent CERCLA 104(e) letters requesting information about potential liability to 10 companies that had been previously identified as having mined uranium on the Navajo Nation. The EPA used the information provided to identify Potentially Responsible Parties (PRPs) for mines posing the highest risks. Prior to initiating extensive research, the EPA and Navajo Nation EPA (NNEPA) worked together to identify mines that both agencies agreed posed the greatest risk to human health and the environment.

To date, EPA has notified potentially responsible parties of liability for 74 mines on the Navajo Reservation, including:

IDENTIFIED PRPS

Potentially Responsible Party	No. Mine Claims
Tronox Incorporated .....	49
KinderMorgan, Inc. (El Paso Natural Gas Company) .....	20
Western Nuclear, Inc./Freeport-McMoRan Copper and Gold, Inc .....	2
United Nuclear Corporation/General Electric .....	1
Chevron U.S.A. Inc .....	1
Rio Algom Mining LLC .....	1
Total Number of Mine Claims With Identified PRP .....	74

The other 449 mine sites are being evaluated for human health risk, and EPA is conducting searches for PRPs at mine sites as we determine that they require CERCLA response actions.

*Potential impact identification of such parties would have on budgets and the EPA's ability to complete remediation of sites.*—The EPA is continuing to pursue an enforcement-first policy, and will continue to conduct searches for PRPs at abandoned uranium mines on the Navajo Reservation. Identification of PRPs for abandoned mines on the Navajo Reservation is essential in order to provide additional resources for EPA to conduct further investigations and clean up at mines.

Impacts on EPA's budget and ability to complete remediation of sites cannot be reasonably estimated at this time as much of this work is dependent upon ongoing studies and assessments. However, in general, uranium mining site cleanup costs have historically been very expensive, in the range of tens of millions of dollars or more per mine. To date, PRPs have spent over \$17 million to carry out site-specific CERCLA response actions at abandoned mines on the Navajo Reservation. In addition, EPA has collected more than \$11 million pursuant to settlements with PRPs. The use of these resources is taken into consideration during the annual budget for-

mulation process. Both Superfund special account resources and appropriated resources are critical to the Superfund program, and the Agency will continue to submit resource requirements on an annual basis through the budget formulation process for congressional consideration. Congressionally appropriated resources will then be allocated by the Agency to projects and activities based upon future project plans and program funding prioritization guidelines, including available resources from settlements with PRPs.

EPA maintains a strong partnership with the Navajo Nation and, since 1994, the Superfund program has provided technical assistance and funding to assess potentially contaminated sites and develop a response. EPA is currently working with the Department of Energy, other Federal agencies, and the Navajo Nation to develop a second 5-year plan to address impacts from abandoned uranium mines. This plan will continue to build on our efforts of conducting associated responsible party enforcement and set goals for additional CERCLA response actions. EPA is committed to continue working with the Navajo Nation to reduce the health and environmental risks and to finding long-term solutions to address the remaining issues related to contamination due to abandoned mines on the Navajo Reservation.

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QUESTIONS SUBMITTED BY SENATOR LISA MURKOWSKI

KEYSTONE PIPELINE

*Question.* On Monday, the last day for public comment, EPA concluded that the State Department's latest review of the Keystone pipeline project contains "insufficient information" on several fronts, including greenhouse gas emissions, alternative routes and the consequences of a potential spill of diluted bitumen. In 2010 and 2011, the EPA criticized the State Department's first two environmental reviews of the project on similar grounds. Now you've found a problem with the most recent Supplemental EIS.

Can you explain what additional information needs to be collected at this point? The State Department received very similar criticisms from you before and you say they still didn't get it right.

Answer. The Environmental Protection Agency's (EPA's) comment letter outlines a number of areas where we believe additional information will improve the analysis, including: pipeline safety, alternatives, and community impacts. The EPA also recommended strengthening the economic market analysis given that its findings are key to the Supplemental EIS's conclusions regarding the project's potential greenhouse gas emissions impacts.

*Question.* Is this simply just a pretext for more delay?

Answer. No, we do not believe that collecting the additional information will be time consuming, and the additional information will be important to inform Federal decision makers and the public about the potential environmental impacts of the project.

*Question.* Can you explain what the process is going forward with respect to review of public comments and the timeline for a final decision on the pipeline?

Answer. The Department of State (DOS) is currently reviewing public comments received on the Supplemental Draft Environmental Impact Statement (EIS) and is working to address those comments in the Final EIS. As a cooperating agency, the EPA is working with the DOS to address comments in the Final EIS; DOS is responsible for the Final EIS's preparation schedule. Once the Final EIS is issued, the DOS will begin its 90-day National Interest Determination process, which will weigh factors such as economics and energy security in addition to environmental impacts, and make a decision on whether to issue a permit for Keystone XL's boundary crossing.

*Question.* Does the EPA have any plans to invoke its authority under the National Environmental Policy Act to object to the project and elevate an interagency dispute to the White House Council on Environmental Quality?

Answer. The EPA is a cooperating agency in the development of the EIS, and we are committed to working with the DOS to prepare a document that informs decision makers and the public.

HYDRAULIC FRACTURING

*Question.* Your budget requests \$8 million to continue work on the hydraulic fracturing study that was requested by Congress in fiscal year 2010. However, there are a number of issues being raised with the methodology that the EPA is using to conduct the nationwide study. For example, my understanding is that the agency is starting its analysis with "retrospective" sites. These are locations where fracking



has already occurred for years, potentially along with many other activities. “Prospective” sites, where fracking will be studied from its beginning won’t occur until later and therefore those results won’t be out until 2014 when the study is completed.

Why did EPA decide to test retrospective sites to start the study? As we have seen with the Pavillion site in Wyoming, going back in time where hydraulic fracturing has occurred for years makes it very difficult to have a baseline and also complicates the assessment of the effects of the fracking process. Why did the agency not start with prospective sites, and test the technology in “real time”?

Answer. In developing its draft study plan, the EPA received input from a wide variety of stakeholders. Stakeholders from many points of view urged the EPA to include both prospective and retrospective case studies as part of the overall effort, and the Science Advisory Board also supported both types of case studies. Given this input, the EPA decided to conduct both types of case studies.

The EPA began developing both the prospective and retrospective case studies at the same time. Retrospective case study locations were nominated by stakeholders. The EPA evaluated the nominated locations, identified five suitable locations for retrospective case studies, and started on them in a timely manner. The EPA continues to work with oil and gas well owner/operator companies to develop prospective case studies and intends to begin them expeditiously when suitable locations are identified.

Late last month, the EPA announced the formation of the Hydraulic Fracturing Research Advisory panel made up of 31 individuals from academia, industry, and the environmental community. Some have criticized the composition of the panel as not having a sufficient number of experts with industry experience in hydraulic fracturing. Apparently, a number of Panel nominees were disqualified from serving because the EPA determined that they had a “disqualifying financial interest.” The American Petroleum Institute sent you a letter concerning this issue on March 22.

*Question.* How would you respond to the criticism that the Research Advisory panel lacks “real world” industry experience?

Answer. The Panel does not lack “real world” industry experience. The SAB panel is comprised of current employees of companies and consulting firms; government employees; and academics/university professors (including some previously employed in industry). It has at least three experts in each of the following nine areas of expertise that were sought for the panel: Petroleum/Natural Gas Engineering; Petroleum/Natural Gas Well Drilling; Hydrology/Hydrogeology; Geology/Geophysics; Groundwater Chemistry/Geochemistry; Toxicology/Biology; Statistics; Civil Engineering; and Waste Water and Drinking Water Treatment.

“Real world” industry experience includes working for private industry or in consulting. Eight panel members are current industry employees, or are currently working in consulting. These eight members have a collective total of 218 years working in industry or consulting (average of 27 years’ experience each). Ten other panel members have significant industry experience (i.e., at least 2 or more years working as industry employees or as full-time consultants). These 10 members have a collective total of 61 years working in industry or consulting (i.e., an average of 6 years’ experience each).

*Question.* Out of the 31 members of the Panel, how many come from industry?

Answer. Eight members of the Panel are current industry employees, or are currently working in consulting. Ten other members have significant industry experience (i.e., at least 2 or more years working as industry employees or as full-time consultants).

*Question.* Did the EPA apply the rules concerning financial interests too narrowly when it came to industry experts? For example, I’m told that there are members of academia on the panel who have received grants from the EPA and other Government agencies or their universities do. Is that true? If so, how was that factored in their selection? Does that pose a potential conflict of interest?

Answer. Members of Science Advisory Board (SAB) panels serve as Special Government Employees (SGE) or non-EPA regular Government employees and are subject to ethics rules and conflict of interest regulations that apply to executive branch employees. Rules defining financial conflicts of interest and appearance of a loss of impartiality are applied to all prospective panelists, regardless of their work affiliation or experience.

With regard to financial conflicts of interest, 18 U.S.C. section 208 prohibits the participation of panel members in particular matters in which the member (or his/her spouse or minor child) has a financial interest, if the matter will have a direct and predictable effect on that interest. For example, panel members and their immediate family are restricted from owning more than a certain de minimus dollar amount in a sector mutual fund or securities issued by one or more entities directly

and predictably affected by the particular matter under consideration by the Panel. One remedy for an otherwise disqualifying financial interest is for the potential panelist to divest from the portion of holdings above the de minimus threshold. Several panelists did adjust their holdings in order to serve on the SAB Hydraulic Fracturing Research Advisory Panel.

Ethics regulations issued by the Office of Government Ethics also provide for an exemption for SGEs serving on Federal advisory committee panels where the disqualifying financial conflict arises from their non-Federal employment or prospective employment when the particular matter under consideration is a matter of general applicability (see 5 CFR 2640.203(g)). No candidate for the panel was excluded solely on the basis of his or her employment.

Twenty-one members of the panel are current academic employees. All but one of these members either receive current research funding or have received recent research funding from the EPA or other Federal Government agencies. All of the institutions for which these members work receive current recent research funding from the EPA or other Federal Government agencies.

In evaluating research funding, the SAB Staff Office follows the approach identified in the 2004 OMB Bulletin on peer review: "Research grants that were awarded to the scientist based on investigator-initiated, competitive, peer-reviewed proposals do not generally raise issues of independence. However, significant consulting and contractual relationships with the agency may raise issues of independence or conflict, depending upon the situation." The SAB Staff Office reviews the totality of the information for each prospective panelist, including the nature of grant support from the EPA and other entities, as it relates to the specific advisory activity being considered. The SAB Staff Office examines the funding sources indicated in the Confidential Financial Disclosure Form (EPA Form 3110-48) for the nexus between these sources and the work to be performed by the SAB as well as the nature of the source (e.g., grant or contract).

In that context, the SAB Staff Office does not consider the current or past receipt of EPA or other Federal grants generally to be, by definition, a conflict of interest under 18 U.S.C. 208. Rather, the SAB Staff Office considers information about EPA (or other Federal) grants and other information as they relate to the context of the specific advisory activity. Furthermore, EPA generally does not consider research grants (whether current or past), if they are unrelated to the work being performed by the SGE on an SAB panel and are investigator-initiated, competitive and peer-reviewed, to give rise to questions concerning the independence of a current or potential SGE.

For future reviews by this Panel, if additional expertise is needed, the SAB Staff Office will augment the Panel to ensure that all necessary scientific expertise is present. In addition, the SAB Staff Office recognizes the need to keep the Panel as informed as possible with new and emerging information related to hydraulic fracturing. There will be periodic opportunities for the public to provide new and emerging information to the Panel. The SAB Staff Office will provide notice in the Federal Register and on our SAB website on the logistics venue for doing that.

#### FOREST ROADS/SILVICULTURAL EXEMPTION FROM CWA

*Question.* Section 429 of the fiscal year 2012 Interior bill codified for 1 year the 37-year-old EPA policy that forest roads associated with logging activities are not "point sources" requiring permits under the Clean Water Act. Under the terms of the fiscal year 2013 continuing resolution, Congress barred EPA from beginning any new programs, and we understand that EPA has interpreted this language as barring the agency from initiating a permit program for forest roads.

On March 20, 2013 in *NEDC v. Decker*, the Supreme Court reversed the Ninth Circuit court ruling that would have required mandatory permits. However, the Supreme Court did not address the Ninth Circuit Court's other ruling that forest roads are point sources subject to a permit or other Federal regulation by EPA under its discretionary authority within point source rules.

I understand that EPA has sought public input and has said it is considering regulating a subset of forest roads as point sources through its flexible authority, though not via point source permits in response to a 2003 Ninth Circuit ruling regarding forest roads. I am concerned that this regulation will expose Federal, State, municipal, private and Alaska Native forestland owners to citizen lawsuits. Is the agency undertaking such a review pursuant to this litigation? If so, when will this review be complete?

*Answer.* No. The Agency has made no decision at this time to develop a new rule requiring permits for stormwater discharges from forest roads.

## SULFUR CONTENT RULE FOR GASOLINE

*Question.* On March 29, EPA announced draft rules for automobiles designed to lower emissions by requiring the use of lower sulfur gasoline. According to the EPA, these new rules will cost refiners only 1 cent per gallon while the refiners claim that this change will increase the cost of gasoline by 9 cents per gallon with very little environmental benefit.

Can you explain how the agency determined its cost estimates for implementation of the rule?

*Answer.* As in our past ultra-low sulfur diesel and gasoline benzene rules, the Agency performed a detailed refinery-by-refinery cost analysis of each refinery in the country. We established the baseline conditions for each refinery based on publicly available information as well as confidential information from our own databases and those of the Energy Information Administration. We then estimated what actions would be the least cost for each refinery to comply with the proposed Tier 3 standards, using the latest cost information provided by various technology vendors and engineering firms whose equipment is already being used by refineries to comply with the Tier 2 gasoline sulfur standards. Our cost analysis was independently peer reviewed by knowledgeable experts in the field, and the feedback from the peer review, along with EPA's response, can be found in the rulemaking docket on [www.regulations.gov](http://www.regulations.gov).

*Question.* Why do they vary so widely from industry projections?

*Answer.* There are four main reasons for the apparent differences between EPA's projections and the industry reported projections. First is that EPA's cost estimate is an average cost while the industry reports out only the costs for the highest cost refineries. Expressed on an apples to apples basis, EPA's average cost estimate of about 1 cent per gallon should be compared to the average cost that can be calculated from the industry study of 2.1 cents per gallon. Alternatively, if focusing on the highest cost refineries, EPA's modeling projects the marginal compliance cost for the highest cost refineries to be between 4.5–6.5 cents per gallon while the industry has reported the marginal cost for the highest cost refineries of 6–9 cents per gallon. Second, the industry did not analyze the program we have proposed, which provides considerable flexibility. The proposed averaging, banking, and trading program would allow those few high cost refiners to comply through averaging with or purchasing credits from other refineries, which would lower not only the average cost, but especially the marginal costs. Third, the industry study's capital cost assumptions for Tier 3 are high. The industry study used reported Tier 2 compliance costs for five selected refineries and then doubled them, rather than estimating the capital costs needed to comply with the much smaller increment of sulfur control required for Tier 3. Simply correcting their capital costs to reflect Tier 3 rather than Tier 2 reduces their average cost to 1.6 cents per gallon. Fourth, the assumed rate of return on investment is higher in the industry analysis than the rate of return in the EPA analysis. Simple adjustments to the industry study to reflect plausible capital costs and accepted rates of return on investment bring their average costs in line with those of EPA and actually support EPA's cost estimate of about a penny per gallon. The reasonableness of EPA's cost estimate is further bolstered by the feedback received from our independent peer reviewers, a 2011 study conducted by Mathpro for the International Council for Clean Transportation and a 2012 study conducted by Navigant for the Emission Control Technology Association. Furthermore, Valero, one of the Nation's largest refiners, recently announced its expected Tier 3 compliance costs, and they indicated that their compliance costs would be lower than those reported by industry.

*Question.* Do you believe that there is a more transparent way that the agency could calculate its cost/benefit data that would lead to greater consensus on what the right projections are?

*Answer.* The Agency has been very transparent in how we performed our cost estimate and is updating the cost/benefit analysis for the final rule. The Draft Regulatory Impact Analysis fully details the analysis performed and the assumptions made. The only thing we are unable to share publicly is our specific cost projections for each refinery, as doing so may directly or indirectly divulge confidential business information for specific refineries. We have followed this same approach in several past rulemakings, which has allowed stakeholders to fully assess the reasonableness of our cost estimates and comment on them, while still preserving confidentiality. The industry's recent study of Tier 3 costs followed a very similar approach.

## GHG POWERPLANT RULEMAKINGS

*Question.* Mr. Perciasepe, when the fiscal year 2014 budget was released, you were quoted as saying that you expected to complete the new source performance

standard for future powerplants this year and that you expected that the rules for existing powerplants “would be on the table for fiscal year 2014.”

Can you tell us what actions or work you have performed thus far on the rule for existing powerplants, if any?

Answer. EPA is not currently developing any existing source GHG regulations for powerplants. The office’s current work is focused on reviewing the comments submitted in response to the proposed carbon pollution standard for new powerplants under section 111(b).

*Question.* What is your best estimate with respect to the schedule and process that you will use for writing the rule for existing powerplants? For example, how long do you expect it to take to complete and when will the first draft be made public?

Answer. EPA is not currently developing any existing source GHG regulations for powerplants. In the event that EPA does undertake action to address GHG emissions from existing powerplants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public, and stakeholders to offer meaningful input on potential approaches.

#### COMMERCIAL FISHING SECTOR NPDES PROBLEM

*Question.* Beginning in 2010, EPA issued regulations requiring NPDES permits for commercial fishing vessels engaged in catcher processing activities in Federal waters off the coast of Alaska. The Effluent Limitation Guideline (ELG) standard applied by EPA is based on criteria for shore-based facilities, and compliance with this standard has been virtually impossible for vessels at sea to meet. At issue is the requirement that all seafood waste be ground to “0.5 inch or smaller in any dimension.” While offshore vessels are able to achieve the 0.5-inch standard, they cannot achieve it for any dimension. That is, either the length or width or height exceeds 0.5 inches. This is a particular problem with respect to fish skin strands, where it is impossible to achieve this standard 100 percent of the time.

The shore-based ELG standards were developed with the understanding that the shore plant effluents would be deposited in harbors where the lack of flushing might cause negative impacts to the near shore marine environment. Those standards were applied to the offshore sector without any rationale or testing to determine whether discharges from a mobile vessel at sea would cause negative impacts to the environment.

Will EPA agree to work with the offshore catcher processor sector to produce a more workable standard, and if necessary, suspend the current 0.5 inch or smaller in any dimension grind standard?

Answer. Yes, the EPA is prepared to work with the offshore catcher processor industry on this important issue. The agency has advised industry representatives of our willingness to work with them during meetings on this concern. As we have discussed, if offshore catcher processors would like to pursue a change in the Effluent Limitation Guideline (ELG), we urge them to engage in the Effluent Guidelines Planning process. EPA may not change an ELG requirement through a letter or a permit. Any change to the Permit or any subsequent permits requires a change to the national ELG.

EPA expects to publish for public notice and comment the next iteration of its proposed ELG Plan in the Federal Register shortly, and EPA encourages offshore catcher processors to submit comments to that plan.

More information on the Effluent Guidelines Planning Process can be found at: <http://water.epa.gov/lawsregs/lawguidance/cwa/304m/>.

#### REGIONAL HAZE RULE

*Question.* In February the Environmental Protection Agency (EPA) proposed a regional haze rule for the Navajo Generating Station (NGS) in northern Arizona. That proposal would require the plant owners, which includes the Bureau of Reclamation, to install Selective Catalytic Reduction (SCR) technology. There is some debate as to whether baghouses would also be required. Regardless, the minimum estimated cost is \$540 million—with a potential price tag of \$1.1 billion. How does EPA’s budget account for the increased Federal capital costs that would be imposed by SCR (and possibly baghouses)?

Answer. EPA is not an owner of NGS; therefore, EPA’s budget would not be a source of funding for new controls at NGS. As stated in our February proposal, EPA understands that past pollution control investments at this facility have made use of alternative financing methods and that a report from the National Renewable Energy Laboratory (NREL) indicated that mechanisms may exist to help avoid or mitigate the estimated level of impact on water rates resulting from the Federal portion

of the cost of new pollution controls. The proposal sets limits consistent with levels achieved by SCR, but it does not in fact require SCR. EPA, DOI, and DOE have committed to work together on several short- and long-term goals, including innovative clean energy options for electricity generation and seeking funding to cover expenses for the Federal portion of pollution controls at NGS.

*Question.* In February a landslide destroyed portions of highway 89 in Arizona causing three car accidents and closing the highway indefinitely—this is the primary roadway used to travel between Flagstaff and Page. Geotechnical experts and engineers are reviewing the damage to determine the cause of the landslide and whether it is safe to reconstruct the roadway. The current detour adds approximately 50 miles to the trip from Flagstaff to Page, diverting traffic through highly populated areas on the Navajo and Hopi reservations in and around Tuba City and Moenkopi. EPA's regional haze proposal would require daily truck deliveries of hazardous anhydrous ammonia from Flagstaff to NGS near Page. EPA initially "determined that the increase in daily tanker truck traffic to transport anhydrous ammonia to and from NGS for SCR will not result in a significant health risk." Has EPA performed an analysis of the geologic event along highway 89 in northern Arizona and the health risks posed by approximately 728 tanker truck deliveries of hazardous anhydrous ammonia traveling through highly populated portions of the Navajo and Hopi reservations?

*Answer.* EPA's analysis of air quality impacts associated with increased truck traffic was conducted prior to the landslide affecting portions of Highway 89 in Arizona and therefore did not examine potential impacts associated with a different route to Page. EPA notes, however, that deliveries of anhydrous ammonia would not occur until after SCR is installed and operational. The earliest that would be is 2018 and EPA's proposal includes several alternatives with longer deadlines. Our proposal included a BART alternative that required installation and operation of SCR in 2021–2023. Although EPA anticipates that Highway 89 will be reopened by the time SCR is installed and operational, EPA will continue to monitor the status of the plans for this highway during our extended comment period, which closes on August 5, 2013.

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#### QUESTIONS SUBMITTED BY SENATOR THAD COCHRAN

##### STATE REVOLVING FUNDS

*Question.* The administration's fiscal year 2014 budget includes a reduction of \$328 million for the Clean Water and Drinking Water State Revolving Funds (SRFs). Communities in my State are coming under increasing pressure to upgrade their wastewater treatment facilities in order to comply with more stringent water regulations. This seems to me to be an unfunded Federal mandate. Do you have any advice for communities and municipalities that do not have the revenue base to finance the multi-million dollar upgrades needed to comply with these increasingly stringent water regulations?

*Answer.* EPA has been working with States and municipalities to meet their CWA obligations in a flexible and environmentally responsible approach called integrated planning. The Integrated Planning approach allows municipalities to balance CWA requirements in a manner that addresses the most pressing health and environmental protection issues first. Our work with States and municipalities also can lead to more sustainable and comprehensive solutions, such as green infrastructure, that improves water quality as well as supports other quality of life attributes that enhance the vitality of communities.

The budget requests a combined \$1.9 billion for the SRFs, a level that will still allow the SRFs to finance approximately \$6 billion in wastewater and drinking water infrastructure projects annually. The administration has strongly supported the SRFs, having received and/or requested a total of approximately \$20 billion in funds for the SRFs since 2009. Since their inception, the SRFs have been provided over \$55 billion.

##### RURAL WATER SYSTEMS

*Question.* Your agency has been providing communities with much needed training and technical assistance to comply with complex EPA regulations. It appears to me that the administration's budget does not explicitly include any funding to assist small rural water system operators to comply with EPA rules and regulations.

Do these communities have the ability or resources to navigate toward compliance without your help? Other than set-asides from the revolving funds what assistance

does your budget provide to communities to comply with your agency's complex regulations?

Answer. Small and rural communities receive training and technical assistance directly from EPA and State agency staff, as well as from nonprofit organizations funded by EPA, State environmental and health departments, and the United States Department of Agriculture/Rural Utilities Service. EPA's Public Water System Supervision (PWSS) grant and Drinking Water State Revolving Fund (DWSRF) enable States to develop technical assistance plans for their water systems, especially rural water systems and small systems serving fewer than 10,000 people.

PWSS grants help States, territories, and tribes develop and implement a PWSS program to ensure that all water systems comply with the National Primary Drinking Water Regulations. States use the grant funding to develop and maintain State drinking water regulations; develop and maintain an inventory of public water systems throughout the State; track compliance information on public water systems; conduct sanitary surveys of public water systems; review public water system plans and specifications; provide technical assistance to managers and operators of public water systems; carry out a program to ensure that the public water systems regularly inform their consumers about the quality of the water that they are providing; certify laboratories that can perform the analysis of drinking water that will be used to determine compliance with the regulations; and carry out an enforcement program to ensure that the public water systems comply with all of the State's requirements.

Besides set-asides provided by the DWSRF program, the DWSRF itself makes funds available to drinking water systems, including small and rural systems, to finance infrastructure improvements. The program also emphasizes providing funds to small and disadvantaged communities and to programs that encourage pollution prevention as a tool for ensuring safe drinking water. In fact, under the DWSRF program, States are required to provide a minimum of 15 percent of the funds available for loan assistance to small systems to help address infrastructure needs.

In addition, EPA provides direct technical support and training to States so they can assist small systems in building the capacity they need to comply with current and future drinking water rules, and has made strengthening the technical, managerial, and financial capacity of small systems an Agency priority goal. For example, EPA implements the Area-Wide Optimization Program (AWOP) which is often directed towards small systems. This program provides compliance assistance and teaches problem solving skills to improve operations at drinking water systems rather than focusing on costly capital improvements. The agency is developing a new online training system to provide basic training on all of the National Primary Drinking Water Regulations. EPA also provides training to States, tribes, and water systems through periodic webinars on various compliance issues. For example, there are webinars in fiscal year 2013 on the monitoring requirements for the Stage 2 Disinfection/Disinfection Byproducts Rule and microbial inactivation. EPA's website contains resources for systems challenged with compliance with arsenic and radionuclides, and work is underway to develop a compliance assistance tool for small water systems facing nitrate noncompliance.

To assist small systems to improve their managerial and financial capacity, the Agency has also developed CUPSS (Check-up for Small Systems), a free, easy-to-use, asset management tool for small drinking water and wastewater utilities. Small systems can use CUPSS to develop a record of assets, a schedule of required tasks, an understanding of finances; a tailored asset management plan. The agency also developed the Energy Use Assessment Tool for small drinking water and wastewater utilities to help them understand their current energy use and better enable them to identify opportunities for reducing energy costs.

EPA's Safe Drinking Water Hotline also is available to help the public, drinking water suppliers, and State and local officials understand the regulations and programs developed in accordance with the Safe Drinking Water Act. This includes information about drinking water requirements, source water protection programs, underground injection control programs, guidance, and public education materials. The Hotline also provides contact information for resources such as State-certified labs and EPA regional offices.

#### DESOTO COUNTY ATTAINMENT

*Question.* Was DeSoto County, Mississippi, in non-attainment status in 2004?

Answer. No, DeSoto County was not in non-attainment status in 2004.

*Question.* Did DeSoto County enter non-attainment based on 2008 standards?

Answer. For the 2008 Ozone NAAQS, EPA included the northern portion of DeSoto County, Mississippi, in the Memphis Nonattainment Area. Shelby County,

Tennessee, and Crittendon County, Arkansas, make up the rest of the area. This is the first time DeSoto County has been designated as nonattainment for ozone. EPA determined that DeSoto County should be part of this nonattainment area based on an analysis of the technical factors, including information submitted by Mississippi, and concluded that emissions from the county contribute to the monitored violations in the area.

*Question.* Did ozone concentrations in DeSoto County increase or decrease from 2004 through present?

*Answer.* The ozone air quality monitor located in central DeSoto County indicates that ozone concentrations have decreased since 2004. The EPA evaluates air quality status in terms of a 3-year average. For DeSoto County, the 3-year average ozone levels decreased 11.2 percent from 0.084 ppm (2002–2004) to 0.074 ppm (2010–2012). (Note that in 2008, the standard was revised from .085 ppm to .075 ppm).

*Question.* What portion of the Memphis area non-attainment status is attributable to DeSoto County sources?

*Answer.* It makes sense to include DeSoto County in the nonattainment area because analysis shows mobile source and area source emissions are significant contributors to ozone formation in the Memphis area. Population has grown steadily and the county has the second highest Vehicle Miles Traveled in the area. From 2000–2010, population in DeSoto County increased 48 percent. Much of this growth has been in the northern portion of the county that is adjacent to Tennessee.

The county has the second highest Vehicle Miles Traveled in the Memphis area. More than 30 percent of the county's ozone-forming emissions of NO<sub>x</sub> and VOC are from mobile sources and over 40 percent are from area sources. In addition, EPA's analysis of meteorology and the conceptual model for high ozone events in the Memphis area supports a conclusion that DeSoto County is contributing to high ozone levels in the Memphis area. In 2008, sources in DeSoto County emitted approximately 5,100 tpy NO<sub>x</sub> (9 percent of CSA total) and 5,200 tpy VOC (12 percent of CSA total).

*Question.* Does non-attainment status limit certain types of activities in DeSoto County?

*Answer.* The Memphis nonattainment area is classified as a Marginal Nonattainment Area for ozone which specifies an attainment deadline of 2015. Marginal areas do not need to submit an attainment demonstration or a Reasonable Further Progress Plan. DeSoto County does need to participate in the Memphis metropolitan area's transportation conformity planning to ensure emissions associated with certain transportation-related projects are consistent with achieving clean air standards. Also, new or modified major stationary sources in the area are subject to the Clean Air Act's nonattainment area new source review preconstruction permitting requirements. Inclusion in this area also makes DeSoto County eligible for Congestion Mitigation and Air Quality (CMAQ) funds.

*Question.* Is DeSoto County's non-attainment status consistent with Executive Order 13563, aimed at improving regulations and regulatory review, in which President Obama stated that "Our regulatory system must protect health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation."?

*Answer.* As indicated in the Federal Register notice announcing the final designations for the 2008 ozone standards, area designations actions are a mandatory duty under the Clean Air Act. The EPA shares the responsibility with the States and tribes for reducing ozone air pollution to protect public health. Working closely with the States and tribes, the EPA is implementing the 2008 ozone standards using a common sense approach that improves air quality, maximizes flexibilities, and minimizes burden on State and local governments. Current and upcoming Federal standards and safeguards, including pollution reduction rules for powerplants, industry, vehicles and fuels, will assure steady progress to reduce smog-forming pollution and will protect public health in communities across the country. EPA will assist States as much as possible with any additional measures so that they can return to attainment status as soon as possible.

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QUESTIONS SUBMITTED BY SENATOR JOHN HOEVEN

REGIONAL HAZE PROGRAM

*Question.* EPA's Regional Haze program is designed to protect visibility in national parks and wilderness areas. I am concerned that, in its implementation of the program, EPA is using outdated regulatory tools to assess projected visibility improvements and compliance costs when making Regional Haze decisions.

The Air Pollution Cost Manual currently used by EPA in estimating costs for regional haze and other best available retrofit technology (BART) determinations was published in 2002. Costs for designing, engineering and installing controls obviously have increased significantly since then. Given that the current cost manual was published over a decade ago, is it out of date? What steps are being taken by EPA to update it? Doesn't the use of an outdated cost manual increase the likelihood that EPA is underestimating regional haze compliance costs?

Answer. One important aspect of the Control Cost Manual (CCM) is that it sets forth one well recognized control cost methodology that provides consistency for all air agencies in preparing and reviewing cost estimates for BART and other programs, thereby providing a foundation for the comparison of cost estimates prepared by different sources in different locales. This methodology is still well recognized and valuable today and includes equations and data to generate cost estimates for engineering and installing control technology. Through a notice-and-comment rule-making, the EPA has required that BART analyses for certain powerplants (based on size) follow this methodology.<sup>1</sup> It should be noted that a major reason for EPA disapproval of cost estimates included in Regional Haze SIPs has been the failure to follow the methodology for cost estimation provided in the CCM for some of these powerplants by either including items that are not part of this methodology or not including all cost items. While EPA has no reason to believe that the methodology for cost estimation is out of date, the Agency will review the methodology provided in the CCM in light of the concerns outlined and update the methodology if necessary.

The CCM also contains cost estimates for particular types of emission control systems, based on then-current information from actual installations of particular controls at particular sources. These historically based estimates may become outdated. However, the CCM itself specifically allows and encourages users of the Manual to develop and use alternative cost estimates based on more recent or more directly relevant installation experiences, provided such alternative estimates are well justified and documented. In fact, EPA has never disapproved a State BART determination based only on the State having used cost estimates based on such more recent or more directly relevant experiences.

*Question.* EPA uses an air dispersion model, called CALPUFF Version 5.8, to assess projected improvements in visibility from proposed NO<sub>x</sub> retrofit technologies. How does EPA respond to scholarly, peer-reviewed studies asserting that CALPUFF Version 5.8 overestimates visibility improvements? What does EPA need to do to update CALPUFF Version 5.8? Is this underway? Why is EPA not allowing the use of more recent versions of CALPUFF, such as Version 6.4?

Answer. EPA, States, and industry work collaboratively to ensure that dispersion models are continually improved and updated to ensure the most accurate predictions of visibility impacts. While the studies have been described as having been through peer review, they are largely papers included as part of general proceedings at conferences, as opposed to a formal peer review associated with submission to scientific journals. Therefore, we do not consider these references suitable for establishing the validity of a model or demonstrating that a model has undergone independent scientific peer review in accordance with Appendix W.<sup>2</sup>

CALPUFF Version 5.8 is the most recent version of the model that meets the criteria in Appendix W. The newer version(s) of the CALPUFF dispersion model have not received the level of review required for use in a regulatory context. Based on EPA's review of the available evidence, the models have not been shown to be sufficiently documented, technically valid, and reliable for use in a BART decision-making process.

In the BART guidelines, EPA acknowledged that the regulatory version of the CALPUFF model (Version 5.8) could lead to modeled over predictions. The over predictions could overestimate the visibility impairment that a source causes on the day when weather conditions make the source have its maximum impact on a Class I area.<sup>3</sup> Therefore, in the final version of the BART guidelines, EPA recommended that the CALPUFF model be used to estimate the 98th percentile visibility impairment rather than the highest daily impact value as proposed. If updated versions

<sup>1</sup> 40 CFR 51.308(e)(1)(ii)(B) and section IV.D.4.a.5 of appendix Y of 40 CFR part 51 require that cost estimates used in BART analyses for powerplants having a generating capacity greater than 750 megawatts must be based on the OAQPS Control Cost Manual, where possible.

<sup>2</sup> Section 3.2.2(e)(i) of EPA's Guideline on Air Quality Models (published as Appendix W of 40 CFR part 51).

<sup>3</sup> "Most important, the simplified chemistry in the model tends to magnify the actual visibility effects of that source. Because of these features and the uncertainties associated with the model, we believe it is appropriate to use the 98th percentile—a more robust approach that does not give undue weight to the extreme tail of the distribution." 70 FR 39104, 39121.



of CALPUFF can be shown to meet the criteria of Appendix W, it would likely be appropriate for the EPA to recommend that States switch to use the highest daily impact given that the updated chemistry of the CALPUFF model would result in more accurate results on such days than does Version 5.8.<sup>4</sup>

In coordination with the Federal Land Managers, EPA has already updated the current regulatory version of CALPUFF (Version 5.8) to address known “bugs” and expects to release the updated version later this summer. At the AWMA Specialty Conference in March 2013 and Annual Regional/State/Local Modelers workshop in April 2013, EPA provided information on the process and plans for updating Appendix W to address chemistry for individual source impacts on ozone, secondary PM<sub>2.5</sub> and regional haze/visibility impairment. EPA and Federal Land Managers have formed an interagency workgroup to review all available models to determine their suitability for these analyses, including updated versions of the CALPUFF modeling system. EPA also interacts with industry and other stakeholders. The information provided to EPA by WEST Associates and the model developer indicates that the new science updates include changes to incorporate atmospheric chemistry. These changes would require a notice and comment rulemaking in order for CALPUFF to be approved for analysis of atmospheric chemistry under Appendix W. Therefore, EPA will be considering this updated version of CALPUFF along with other models and techniques in its current review and planned regulatory update to Appendix W.

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QUESTIONS SUBMITTED BY SENATOR MIKE JOHANNIS

CITIZEN-SUIT TRANSPARENCY

*Question.* With respect to public transparency where a citizen’s suit has been brought against the Agency alleging a failure to undertake a nondiscretionary duty and where a third party has been granted status as an intervenor:

Does the Agency believe there is any legal bar to notifying the public (including intervenors) in a timely manner of the EPA’s intent to enter into settlement negotiations with the plaintiff?

*Answer.* EPA fully appreciates the importance of public involvement in its rulemaking and other decisions. Most of EPA’s defensive environmental cases are under the Clean Air Act, which provides the public notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. EPA does not commit in settlement to any final, substantive outcome of a prospective rulemaking or other decisionmaking process. The rulemaking process offers ample opportunity for the public, including regulated entities, to provide meaningful comment on any proposed regulation.

*Question.* Does the Agency believe there is any legal bar to including intervenors in any settlement negotiations?

*Answer.* The conduct of litigation involving the United States, including settlement negotiation, is the primary responsibility of the Department of Justice. EPA notes that there are existing opportunities under the Federal civil rules of procedure for interested parties to intervene in litigation, and settlements requiring court approval of consent decrees provide opportunities for interested parties to present their views. The involvement of third parties in settlement negotiations may constrain the ability of the Federal Government to reach an appropriate settlement, however, and the Department of Justice needs to retain the discretion to determine when involvement of third parties serves the interests of the United States.

FOIA DISCLOSURE

*Question.* In early February, your agency released personal information on 80,000 livestock operations across the United States. In Nebraska, personal information on over 3,500 operations was released.

Did EPA conduct an independent evaluation of the data States submitted to EPA and redact any such personal information the Privacy Act, Freedom of Information Act, or EPA’s own policies required it to before the Agency made its first release of the data?

*Answer.* In recognition of the concerns raised by the animal agricultural industry, the EPA engaged in a review of its FOIA response to determine whether the infor-

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<sup>4</sup>In past agreements in using the CAMx photochemical model, which has a robust chemistry module, EPA has recommended the use of the 1st High value when sources were being screened out of a full BART analysis based on the CAMx results. See Comment Letter from EPA Region 6 to TCEQ dated February 13, 2007 regarding TCEQ Final Report “Screening Analysis of Potential BART-Eligible Sources in Texas,” December 2006.

mation released is publicly available, and whether any revisions to the agency's determination to release the information is warranted under the privacy exemption (Exemption 6) of the FOIA.

As a result of this review, we have determined that, of the 29 States<sup>5</sup> for which the EPA released information, all of the information from 19 of the States is either available to the public on the EPA's or States' websites, is subject to mandatory disclosure under State or Federal law, or does not contain data that implicated a privacy interest. The data from these 19 States is therefore not subject to withholding under the privacy protections of FOIA Exemption 6. The EPA has determined that some personal information received from the 10 remaining States<sup>6</sup> is subject to Exemption 6.

The EPA has thoroughly evaluated every data element from each of these 10 States and concluded that personal information—i.e., personal names, phone numbers, email addresses, individual mailing addresses (as opposed to business addresses) and some notes related to personal matters—implicates a privacy interest that outweighs any public interest in disclosure.

We amended our FOIA response to redact portions of the data provided by these 10 States. The redacted portions include telephone numbers, email addresses, and notations that relate to personal matters. They also include the names and addresses of individuals (as opposed to business facility names and locations, though facility names that include individuals' names have also been redacted). We believe that this amended FOIA response continues to serve its intended purpose to provide basic location and other information about animal feeding operations in order to serve the public interest of ensuring that the EPA effectively implements its programs to protect water quality, while addressing the privacy interests of the agricultural community.

*Question.* I am told the original release contained no redactions based on FOIA Exemptions or the Privacy Act. Is this accurate?

*Answer.* Our initial FOIA response was released in the same condition as it was received by EPA from the States.

*Question.* EPA has now reportedly agreed that in the case of data from 10 States EPA should have redacted information. Is this an accurate rendering?

*Answer.* After a comprehensive review, the EPA determined that some personal information received from 10 States is subject to FOIA exemption 6 and took action to redact that information.

*Question.* Does EPA believe that the release of unredacted data in early February is consistent with applicable FOIA and Privacy Act law?

*Answer.* It was EPA's understanding, based on our communication with States, that the information received, and subsequently released, was all publicly available, either through an online database or through a public records request to each State. EPA requested only publicly available information from States. EPA believes that its response to the FOIA requesters was consistent with its obligations under the Privacy Act.

*Question.* With respect to the redactions that EPA now acknowledges should have occurred before any FOIA release occurred, has EPA asked for a list of entities and individuals who received (or viewed) the unredacted data?

For those individuals and entities, has EPA asked for affidavits certifying that those individuals and entities have not kept copies or otherwise released or inappropriately recorded the data that was subsequently redacted?

*Answer.* The EPA requested that all copies of the original response be returned from all the requesters. The EPA also requested that the requesters confirm that all copies of the information were destroyed. The FOIA requesters subsequently complied. The EPA will work together with our Federal partners, industry, and other stakeholders to ensure the agency continues to address the privacy interests of farmers.

*Question.* Is it EPA's goal to establish and publish a national livestock database to be published on EPA's website?

*Answer.* EPA has made no decision about establishing such a database and is coordinating with stakeholders and other Federal agencies to determine how data EPA has gathered about Concentrated Animal Feeding Operations (CAFOs) will be used.

<sup>5</sup>The 29 States are: Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Iowa, Illinois, Indiana, Louisiana, Maryland, Maine, Michigan, Missouri, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Wisconsin, and Wyoming.

<sup>6</sup>The 10 remaining States are: Arizona, Colorado, Georgia, Indiana, Illinois, Michigan, Montana, Nebraska, Ohio, and Utah.

*Question.* Does the Agency believe that publishing a national livestock database will make our food supply less secure?

*Answer.* As noted above, EPA has made no decision about establishing such a database. I can assure you that the agency's future actions to protect water quality will be done in coordination with industry, other Federal agencies, and other stakeholders to ensure the privacy interests of farmers and the integrity of our Nation's food supply.

COOLING WATER INTAKE STRUCTURES—CWA 316(b)

*Question.* With respect to EPA regulations addressing the systems and equipment that powerplants and manufacturing facilities use to pump water into a facility to manage heat:

Is EPA considering an impingement proposal that will consider each site on an individual basis, taking into account fish-protection measures in place, and consider the costs and benefits of mandating additional measures intended to address impingement?

*Answer.* The EPA proposed a regulation that would allow application of "best professional judgement" on how most effectively to address fish impingement for cooling water users who intake under 50 million gallons/day (MGD). A number of States expressed concern during the public comment period about the costs of implementing a site-specific approach to permitting. In a subsequent Notice of Data Availability, EPA also requested comment on adopting a site-specific approach to address impingement for all facilities. EPA received numerous comments on this issue. EPA is carefully considering these comments, in crafting the final rule consistent with the Clean Water Act.

*Question.* With respect to the requirements addressing the selection of and installation of entrainment and impingement technology, is the Agency considering making congruent the deadlines applicable to entrainment and impingement requirements?

*Answer.* Yes, EPA is considering including provisions in the final rule to align the deadlines for impingement and entrainment, so that facility compliance would be less costly and more efficient.

*Question.* I have constituents who are very concerned with the sheer volume of information that may be required to be submitted within 6 months of the final rule, (the (r)(2) through (r)(9) report submittals) which EPA has already collected through previous information requests. If this information has already been submitted, is the Agency considering writing the final rule such that facilities would be permitted to exclude previously submitted information from this list of requirements?

*Answer.* Yes, the EPA is considering how its final rule can limit information burden on facilities. For example, the EPA is considering provisions in its final rule that would reduce or eliminate information collection requirements when the permitting authority does not need the additional information.

*Question.* Will the Agency consider extending the deadline for submittal from 6 months to 1 year?

*Answer.* Yes, the Agency is considering this and other suggestions the Agency has received that would help minimize reporting requirements.

*Question.* The proposed rule, under (r)(9) Entrainment Characterization Study Plan, requires a peer review process that some consider undefined and unreasonable compared to any other rules EPA has promulgated. Is this requirement unlike a public comment period that would already be required by the facility's NPDES Permit, and if so, how?

*Answer.* In devising the proposed rule, EPA was concerned about the burden associated with site-specific decisionmaking that States would bear. EPA was sensitive to the fact that States may lack staff with economics expertise necessary to review benefit/cost analyses as part of NPDES permitting. EPA viewed peer review as a close substitute for State burden. EPA received public comments on the peer review requirements consistent with this question. In the final rule, EPA expects to address the burden of peer review and is considering altering the requirements to reduce peer review burden.

SUBCOMMITTEE RECESS

Senator REED. And if there is no further business before the subcommittee, the hearing is concluded.

[Whereupon, at 11:19 a.m., Wednesday, April 24, the subcommittee was recessed, to reconvene subject to the call of the Chair.]