

**ENVIRONMENTAL PROTECTION AGENCY'S  
FISCAL YEAR 2000 BUDGET REQUEST**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
**ONE HUNDRED SIXTH CONGRESS**  
FIRST SESSION  
\_\_\_\_\_  
FEBRUARY 24, 1999  
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## **ENVIRONMENTAL PROTECTION AGENCY'S FISCAL YEAR 2000 BUDGET REQUEST**

**WEDNESDAY, FEBRUARY 24, 1999**

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

The committee met, pursuant to notice, at 9:03 a.m. in room 406, Senate Dirksen Building, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senators Chafee, Baucus, Lautenberg, Inhofe, Thomas, Voinovich, Wyden, Crapo, Hutchison, and Boxer.

### **OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. We want to welcome everyone here this morning. The purpose of today's hearing is to receive testimony from the Administrator of the Environmental Protection Agency, Ms. Carol Browner, on the President's Fiscal Year 2000 budget request for EPA.

First of all, I'd like to welcome Administrator Browner and the other EPA officials who are here and thank you for coming before this committee.

I will say that it's my understanding that at 9:45 a.m., we're going to have two votes, so we want to accomplish what we can prior to those.

For the upcoming fiscal year, the President has requested \$7.2 billion in discretionary spending for the Agency. This represents a \$383 million reduction from the fiscal year 1999 enacted amount. I have a number of concerns with EPA's fiscal year 2000 budget. One concern in particular is the 23 percent cut in funding for the Clean Water Act.

As one of its 10 goals, EPA lists the effective protection of America's rivers, lakes, wetlands, aquifers and coastal and ocean waters. The budget document contains these facts: 16 percent of assessed rivers and streams and 35 percent of assessed lake acres are not safe for fish consumption; 20 percent of assessed rivers and streams and 25 percent of lake acres are not safe for recreational activities such as swimming; 16 percent of assessed rivers and streams and 8 percent of lake acres are not meeting drinking water uses. If these are facts, I don't see how a substantial reduction in clean water funding can be justified. This is but one example of the issues we need to explore, both in today's hearing and in oversight hearings I plan to hold later in the spring.

Just under the wire, we welcome Senator Baucus.

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

Senator BAUCUS. Thank you, Mr. Chairman.

Ms. Browner, I commend you and note that you've been Administrator now more than 6 years and as you know better than I, that's longer than anyone else in EPA history.

I'd also note that during that time you have testified before this committee 19 times.

Ms. BROWNER. Oh really?

Senator BAUCUS. Yes. It may be a record of some sort. It's still a big number.

I also commend you because I think during your tenure you've made a lot of progress. You've done a lot that is positive and constructive for the EPA, not only in improving the environment, all the work you've done there, but also improving the administration of environmental programs.

I think probably the best example is Superfund. In 1993, again as you know better than most anybody else in this room, the program was struggling, clean-ups were very expensive, lots of paperwork and there was precious little cleanup. Today, it's different.

The Administration has made a series of reforms and sure some of these reforms may have occurred because of the prodding of this committee, some of them, but still, on the other hand, a good number of them have been made by you on your own initiative. I believe credit is deserved all the way around—you, Senator Lautenberg, Senator Smith, the chairman. There are many people who have worked very hard to make this happen but a large share of the credit goes to you.

As a result, while not perfect, the program is vastly improved. For example, GAO estimates that by the end of next year, the remedy selection process will have been completed at 95 percent of the non-Federal sites on the NPL list. In other words, the decisions will have been made and the cleanups will be underway.

EPA has also made progress in other areas, in the new ozone and particulate standards to implementing the provisions of the 1996 Safe Drinking Water Act, to the new rules for handling of hazardous waste at clean-up sites.

I want to commend you and I commend you wholeheartedly for your work.

At the same time, a lot of work needs to be done. That's no surprise to you. In some cases, this may require a creative new approach. For this reason, I'm particularly interested in the Administration's proposal to create Better America bonds to help communities preserve open space, redevelop land and control water pollution from runoff.

I believe this proposal has promise. We all talk about using fewer sticks and more carrots. By creating incentives for environmental protection, this bond proposal gives us a chance to put our money where our mouth is.

I also have questions. For example, what experience do we have to show that the tax credit device will actually attract investors? What type of projects qualify? How will we assure that all regions and States are treated fairly, not just the more populous but some

of the less populous parts of our country? How will we assure that the program will supplement, not displace local decisions?

At the beginning of a new Congress, as we look for win-win solutions that benefit our environment and our economy, I look forward to working on this and other important issues with our Administrator and with members of our committee.

One last point, we recently learned that the distinguished ranking member of the Superfund Committee, the distinguished gentleman to my left, Senator Lautenberg, will be retiring at the end of the Congress. I hope this decision is not caused by the prospect of another round of Superfund negotiations.

In any event, we on the committee will be losing a very good friend, a strong leader and a dedicated environmental advocate. I know of no one who has worked harder for the environment than the Senator from New Jersey. Frank Lautenberg was one of the pioneers on Superfund. He wrote the community right to know law and I know he's very proud of that and well he should be because I believe that statute, probably more than any other, has helped more efficiently put people on notice and caused people to clean up faster than they otherwise might, certainly much faster than a command and control regime. So I commend the Senator for that.

He worked tirelessly to protect our air, water and land for future generations for many, many years and he will for many years more in whatever capacity he serves. I know he will be sorely missed.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you. I join in that praise of Senator Lautenberg who has been on this committee I believe since he came to the Senate. He's a survivor of the Superfund efforts and I hate to think of the suggestion that is driven from the Senate, but in any event, we appreciate all he's done here.

I share your thoughts on the Better America bonds. One of the questions obviously we will have is why are we going this route when we already have the other vehicles which I'm not sure why we're not using them while they are there.

On my early bird list, I have Senator Wyden next.

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

Senator WYDEN. Mr. Chairman, thank you, but I'd be happy to defer to Senator Lautenberg.

Senator CHAFEE. I think you can take your own time and we can move through the list.

Senator WYDEN. OK. Thank you, Mr. Chairman. I'll be very brief.

I share your views and Max's views about the good work that Ms. Browner's doing. There are really two areas that I'd like to work on with the Administration.

The first is I think you all are aware that with the help of Chairman Chafee and Senator Baucus, I authored the first transportation program that uses Federal funding as an incentive to promote smart local growth management. Given the critical Federal role, and particularly the role EPA plays in developing sewage treatment systems, and given the impact that sewers have on local growth, I'm particularly interested in examining with EPA the role

of the sewage systems and the grant funding that you all provide can assist in promoting good, local growth management.

This committee took the first step with respect to ISTEA and the way we use transportation dollars to promote smart local growth management and I would hope in this session as we look at the clean water funds that we could pursue the same sort of approach with sewage grants and use them to address smart growth as well.

The other area I'd like to examine with you, Ms. Browner, is, as you know I've introduced the Water Conservation and Quality Incentives Act which we think can save millions and millions of gallons of water across this country in irrigation systems. We've been able to get the Farm Bureau and the Environmental Defense Fund, a coalition that doesn't come together every single day, to support this legislation. I think this is an ideal opportunity to look at some of the most wasteful practices in America.

Senator Baucus knows as well that we have irrigation systems in the West that are basically just ditches and if you were to do nothing other than install some modern piping, we could save millions and millions of gallons of water in irrigation for fish and conservation, as well as for agriculture. That's why we've been able to bring together the Farm Bureau and the environmental community. We'd like to work on that with you as well.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you.

Next in order of arrival was Senator Lautenberg. Before the Senator goes, I just want to say one thing about New Jersey. All of us who are interested in open space preservation have to tip our hats to New Jersey for what they did in this recent election. In effect, it's a billion dollars, \$980 million, that New Jersey is putting up of its own money. I understand that was passed by the voters of New Jersey 2 to 1, 66 to 33. It's an incredible tribute to the leadership of everyone—the Governor, the Senators and the legislature and to the voters and people of New Jersey because it's their money they are spending, not Federal money. It's their money and they are going to have to pay for it and they willingly went ahead with this massive bond issue that to my understanding is 10 years at \$98 million a year.

Senator Lautenberg.

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thanks very much, Mr. Chairman.

I want to thank Senator Baucus with whom I've worked here since I joined the committee. The funny thing is I actually wound up with Scoop Jackson's seat on this committee. He unfortunately passed away and I filled that spot at that time.

Senator CHAFEE. I don't think so. He wasn't on this committee. We can figure out who it was.<sup>1</sup>

<sup>1</sup> Senator Lautenberg joined the Committee on Environment and Public Work during the 98th Congress, when the committee membership was increased from 16 to 18 members. Senators Lautenberg and Daniel J. Evans, of Washington, were added to the committee. Senator Evans was appointed by the Governor of Washington upon the death of Senator Henry M. Jackson, who died on September 1, 1983. Senator Jackson was not a member of the Committee on Environment and Public Works.



Senator LAUTENBERG. He enabled me to move—well, I didn't take Scoop Jackson's seat.

[Laughter.]

Senator LAUTENBERG. But he had a strong environmental view.

Senator BAUCUS. Energy and Natural Resources Committee.

Senator LAUTENBERG. OK. Well, we've settled that so let me go on further and say that now that our work is done with all of our environmental problems, I kind of felt I could leave it to the hands of those who will continue to be of service.

I will miss my position on this committee and the chance to do things for the environment. As Senator Chafee notes, New Jersey has been very aggressive in terms of trying to provide open space funding. When you live in the most densely populated State in the Union, you take advantage of whatever opportunities you have. People are very determined in my home State to provide places that people can visit, youngsters can see and we protect them very aggressively. So we're looking forward to implementing the programs and the Federal commitment to more open spaces.

I'm delighted to be here with—I could say—the “Mark Maguire of EPA.” You have a longstanding record of service and you don't look any worse for wear, Ms. Browner. You've done an excellent. You've brought great leadership and vision to the task.

While it is hard to name an area of EPA's work that hasn't been improved dramatically under the Clinton administration, more Superfund sites have been cleaned up during the Administration's 6 years than in the prior 12 years of the Superfund program.

Many of the necessary reforms of the remediation waste cleanup programs that we discussed in the last Congress have been implemented by EPA with the issuance of the regulation the Agency finalized in 1998.

The Agency has expanded the right-to-know program designed to further reduce harmful emissions and citizens now have greater access to all environmental data. So it's been a great opportunity.

I will be here for 2 years and let it be known across this Senate that Lautenberg intends to keep working just as aggressively as he has before. I cannot relent because I see what happens when progress is made. We have cleaner oceans, including Long Island Sound that floats by Rhode Island. The air is cleaner. The right-to-know law that Senator Baucus mentioned was I think one of the most significant pieces of legislation we passed.

We had companies volunteering to reduce their emissions. They weren't being pursued by a huge bureaucracy and some companies reduced their toxic or contaminant emissions by 90 percent. That was quite a discovery for them, they actually made money from the material they captured.

So it's been a good service. Again, I intend to be here and to finish some of the work we've done. I'd particularly like to get brownfields in the law and get that positive program underway.

Senator Baucus mentioned the President's Better America bonds initiative and I'm anxious to see how that's going to work as well.

I thank you.

Senator CHAFEE. Thank you, Senator.

Senator Voinovich.

Senator VOINOVICH. Mr. Chairman, Senator Inhofe as a chairman, has to chair a meeting in 10 minutes and asked if I would allow him to just take a minute to make his remarks so he can scoot out?

Senator CHAFEE. OK. I didn't do it for Wyden, but I'll do it for you. Go ahead.

[Laughter.]

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

Senator INHOFE. Thank you.

In spite of accusations to the opposite, I'll now say you're partisan and I appreciate that very much.

I did have the committee, as you well know, scheduled some time ago before this committee meeting was scheduled, on Y2K, the two committees. It was going to be a joint hearing at first between Senate Armed Services' Readiness Subcommittee and the subcommittee I chair here, so I've got to be there in time to do that.

I'd like to say since Senator Lautenberg is retiring that I'd associate myself with his remarks, but I won't. I think you get a pretty good indication of the direction the committee is going or that the EPA is going by the budget request. When I read this, I was disturbed with some of the increases and some of the decreases.

I think particularly when you are looking at goal one and goal six, goal one being clean air increasing by 35 percent and goal six, the global and cross border risks, I come to the conclusion that there's going to be an effort to implement a treaty that we are not going to ratify.

I get into a concern I have for the domestic oil industry right now. This is a crisis, it is something that is a national security crisis, in my opinion. I'm going to be making some requests which I have made of you by letter and will continue to do that.

I will submit the entire statement for the record.

[The prepared statement of Senator Inhofe follows:]

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

Mr. Chairman, thank you for holding this important hearing today. I am sorry that I will not be able to stay long. As the chairman probably knows, I am holding a hearing at the Armed Services Readiness Subcommittee on the Y2K issue this morning and continuing that hearing in the Clean Air Subcommittee this afternoon. I also want to thank Ms. Browner for coming this morning and explaining the budget request the EPA has proposed. I will be submitting questions for the record and look forward to the responses.

Ms. Browner, after reviewing your budget request for next year, I can not help but think that it is more of a political document than an outline for protecting the environment. You have underfunded the Clean Water State Revolving Fund, the Air Toxics Program, PM research and the Safe Drinking Water Research funds. Yet, you have chosen to request \$200 million for a Clean Air Partnership Fund which appears to be more of a Gore Campaign plank than a well thought out environmental program.

In reviewing the President's environmental goals I noticed that Goal 1, Clean Air, received a funding increase of 35 percent (from \$536 million to \$722 million) and Goal 6, Global and Cross Border Risks or Global Climate Change, increased by 78 percent (from \$229 million to \$407.5 million). At the same time, Goal 2, Clean and Safe Water, decreased by 25 percent (from \$3.4 billion to \$2.5 billion) and Goal 8, Sound Science, decreased by 7 percent (from \$347 million to \$321.7 million).

It seems to me that you are sacrificing sound science and clean water for a new, unauthorized, ill conceived and largely undefined clean air initiative and implemen-

tation of an unratified global climate treaty. As the chairman of the authorizing Clean Air Subcommittee, I hope the Appropriations Committee transfers the entire \$200 million from the Clean Air Partnership Fund to the Clean Water State Revolving Fund, the money would be better spent by the States than by the EPA on so-called demonstration projects.

Your agency has also decided that Superfund does not need the additional appropriation of \$650 million that you have requested in the past. While I am pleased to see that you are not requesting the additional money, this can only lead me to believe that you were being disingenuous in past years. What has changed in the program that now makes it more solid? I am curious how your new financial views will affect the re-authorization efforts of this committee.

I believe the current Superfund program does not work and substantial effort will be required to fix it. With over 90 percent of the NPL sites either cleaned up or in some stage of clean up, reforms could make the system more cost-beneficial and the clean-ups more scientifically sound, in fact, we need to phaseout the program. Last congress, we made significant progress on reforming the program and, while you may not have been happy with the product, I hope you will continue to work with us to make the necessary changes. It is my sincere hope that you are not using Superfund as a political wedge in the upcoming Presidential elections.

As I'm sure you're aware, the oil patch is experiencing a crisis. The price of a barrel of oil has fallen to record lows and many small companies are closing their doors. The added burden the EPA has placed on these companies over the last 6 years is simply accelerating the closings. In essence, we are witnessing the death of our domestic petroleum industry.

In December, I sent you a letter regarding this crisis and the impact your Agency has on it. I requested that you carefully consider the effect on our oil supply before you issue any new regulations. I received a response from Bob Perciasepe, which I appreciated. However, I sent you the letter because I am concerned not just about the pending sulfur rule, but about all pending regulations across the entire Agency, including TRI and RCRA.

I'm sure that you would agree, Ms. Browner, that this is a National Security issue; we are becoming more dependent on foreign oil everyday. As a Subcommittee chair on the Armed Services and a member of the Intelligence Committee, I will be monitoring the actions of your agency and the impact on our National Security. However, as a Subcommittee chair on this committee, I hope that you and I can work together and provide some regulatory relief to an ailing industry.

Thank you Mr. Chairman. I'm sorry I must leave but I look forward to reading the answers to my submitted questions.

Senator INHOFE. I get into a concern I have for the domestic oil industry right now. This is a crisis, it is something that is a national security crisis, in my opinion. I'm going to be making some requests which I have made of you by letter and will continue to do that.

I thank the Senator from Ohio for yielding for that purpose.

Senator CHAFFEE. Now we go back to Senator Voinovich.

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

Senator VOINOVICH. Thank you, Mr. Chairman.

I was just thinking as Senator Lautenberg was talking about what an exciting honor it is for me to be a member of this committee. I look back from my days when I first came to the State Legislature and worked with Bill Ruckelshaus and Don Mossman when they were setting up the Agency and traveled out to Cheyenne, WY to talk to Rocky Mountain legislators about the importance of clean air and water, and got involved with saving Lake Erie and the Ohio House, kind of expert on the environment and helped create our Environmental Protection Agency, and then set up a committee in the Ohio legislature on the environment. Here I am sitting here as a member of the U.S. Senate on this committee.

I look at this as a way of continuing my interest in the environment. One of the things I feel very good about is, that while I was chairman of the Council of Great Lakes Governors, that we created a \$100 million fund in six States to use the interest to do research work on Lake Erie in terms of cleaning it up. Today, what was once a dead lake that was touted all over the world as being dead is one of the finest fisheries in the world in terms of walleye and bass fishing.

In regard to our State, the Administrator knows that when I came in as Governor, almost all of our areas were nonattainment in terms of ozone and we brought them all up to attainment, including increasing spending for the environment by 60 percent to try and make an effort.

So I'm looking forward as a member of this committee to working with you. Administrator, you and I have had some interesting conversations over the years.

Senator CHAFEE. That's a curious way of labeling it, interesting conversations.

Senator VOINOVICH. As well as with the chairman of this committee over the last several years, as Governor of the State of Ohio.

I really believe that our challenge is to determine how best to protect the environment and the health of our citizens using the limited resources that we have. I really think we need to do a better job of setting environmental priorities and spending our resources wisely.

We should not do things simply because some group out there says this is it. We did a study in Ohio, for example, and the public's opinion about doing certain things that looked like they were really important, when you looked at them from an environmental point of view, so often what really needed to be done and the public's impression of what needed to be done, they were a lot different.

In addition, we need to ensure that effective programs are not being undercut by well-intentioned policies and regulations that will lack scientific backing. Quite frankly, I believe that the USEPA's policies often run counter to the efforts, even the mission of other Federal agencies.

For example, the Federal Government has a number of effective programs to promote education, safety, economic development such as HUD's empowerment zones, welfare reform, urban school programs and transportation projects. However, at the same time, those agencies are spending this money to really make a difference in our urban areas of this country, many times the EPA through policy decisions I think so often are not based on good science, and undermine the efforts of some of this revitalization in other departments.

I think there needs to be a coordinated effort among agencies, in fact, even within EPA itself, to ensure that a program's successes is not being undercut by unnecessarily restrictive regulations that do not increase protection of public health and the environment.

For instance, one of the Administration's key initiatives in fiscal year 2000 is Better America Bonds, which is aimed at preventing urban sprawl and cleaning up brownfield sites, but at the same time, in my opinion, Administrator, EPA has set inflexible, one-

size-fits-all air standards through its NO<sub>x</sub> SIP call and NO<sub>x</sub> standards and in many areas of the country, we're not going to be able to obtain those.

Hence, while we're providing an incentive to reuse abandoned industrial sites, many industries are going to bypass areas that you'd like to use those because of the standards that have been set by the Agency. In order to improve the quality of life in our central cities, we need to have jobs in our cities. That's what the HUD empowerment zones are trying to achieve.

I think we can achieve both environmental and public health safety and increase jobs in our urban areas if we base regulations on sound science and cost-benefit analysis.

When I met with the Administrator prior to the final enacted standards, she told me that her hands were tied, that statutorily she could not use risk assessment and cost-benefit analysis in her consideration for final regulation. I strongly believe that what we need to do is to do a laser-like amendment to the Clean Air Act and add the same risk assessment and cost-benefit analysis provisions that we added in the Safe Drinking Water Act in 1996. If they were good enough for water, safe drinking water, they're good enough I think for our Clean Air Act.

I think this country will not be well served by policies and regulations that are implemented not to improve the protection of public health and the environment. I think we need to carefully review where taxpayer money is being spent on programs that negate each other.

The point I'm making Mr. Chairman is this, that we have all these agencies that are trying to reestablish our urban areas and so often the policies of the Environmental Protection Agency are adverse to those. You're talking about these bonds and it seems to me that if you don't look at what you're doing in these other areas—we'd like to clean up a lot more brownfield sites. In fact, the States have done a much better job of cleaning up brownfield sites but our hands, in so many instances, have been tied by the EPA because we're considered to be micromanaging.

Mr. Chairman, I know we're taking the Administrator's time and she wants to talk about what she wants to do, but I think it is important when we have these oversight committees that we get into some of those things.

I talked to Secretary Cuomo about what he's trying to get done and it seems there ought to be a better coordination of what agencies are doing so that the left and right hands know what they are doing.

[The prepared statement of Senator Voinovich follows:]

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

I thank the chairman for conducting this hearing on EPA's fiscal year 2000 budget. I want to start off by saying that this Nation has come a long way under environmental programs and we have seen dramatic improvements in environmental quality.

Mr. Chairman, I consider myself an environmentalist. In Ohio, I sponsored legislation to create the Ohio Environmental Protection Agency when I served in the State legislature, and I fought to end oil and gas drilling in the Lake Erie bed. As Governor, I increased funding for environmental protection by over 60 percent and implemented an innovative voluntary brownfields program to clean up hazardous

waste sites. When I first entered office as Governor, most of our urban areas were not attaining the 1-hour ozone standard, but by the time I left, all cities had attained the standard and we had a request into U.S. EPA to recognize the last city as being in attainment.

I strongly believe our challenge is to determine how best to protect the environment and the health of our citizens using limited resources. We need to do a better job of setting environmental priorities and spending our resources wisely. We should not do things simply because of appearances.

In addition, we need to ensure that effective programs are not being undercut by well-intentioned policies and regulations that lack scientific backing. Quite frankly, I believe that U.S. EPA's policies often run counter to the efforts, and even the mission, of other Federal agencies. For example, the Federal Government has a number of effective programs that promote education, safety and economic development, such as HUD's empowerment zones, welfare reform, urban schools programs and transportation projects.

However, at the same time EPA is thwarting these efforts through policy decisions that are not always based on sound science and that undermine efforts to revitalize our urban areas. There needs to be a coordinated effort among agencies, in fact even within EPA itself, to ensure that a program's success is not being undercut by unnecessarily restrictive regulations that do not increase protection of public health or the environment.

For instance, one of the Administration's key initiatives in its fiscal year 2000 budget is Better America Bonds, which is aimed at preventing urban sprawl and cleaning up brownfields sites. At the same time, however, EPA has set inflexible, one-size-fits-all air standards through its NO<sub>x</sub> SIP call and NAAQS standards that many areas of the country will be unable to attain. Hence, there will be no incentive to re-use abandoned industrial sites and industry will look toward our greenspaces.

In order to improve the quality of life in our central cities, we need to have jobs in our cities. That's what the HUD empowerment zones are trying to achieve. I think we can achieve both environmental and public health safety and increase jobs in our urban areas if we base regulations on sound science and cost-benefit analysis.

When I met with Administrator Browner prior to the final NAAQS standards, she told me that her hands were tied, that statutorily she could not use risk assessment and cost-benefit analysis in her consideration for final regulation.

I strongly believe that we need to go in with a laser-like focus and amend the Clean Air Act to add the same risk assessment and cost-benefit analysis provisions that we added to the Safe Drinking Water Act in 1996—the same provisions that the Administration supported. This will help ensure that reasonable and cost-effective rules are being set that have scientific backing. I intend to introduce such legislation.

This country will not be well served by policies and regulations that are implemented but do not improve the protection of public health and the environment. And I think we need to carefully review where taxpayer money is being spent on programs that negate each other. I look forward to exploring these issues during today's hearing and in future oversight hearings. Thank you, Mr. Chairman.

Senator CHAFEE. OK.

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

Senator THOMAS. Thank you, Mr. Chairman, and thank you for holding the hearing today. I'm pleased the committee intends this year to have a renewed emphasis on oversight and implementation. It seems to me that the thing we ought to do and before passing new laws, we need to make sure the current regimes are working.

Welcome to you, Administrator. It's not been quite as much of a love-in as you heard earlier. My last few trips to Wyoming I've heard nothing but concerns about some of the water suggestions that are being made in rural Wyoming. In fact, I hope to suggest to the chairman that we have an oversight hearing on the clean water action plan. I would hope very much we could do that because I have to tell you that there's a lot of concern about it. There are lots of things being said and they are not nearly as complimentary as the things you've heard this morning so far and you ought

to also hear some of that. I look forward to your discussion today a little bit today about that portion of it.

We thank you for being here and really want to examine some of these things that are happening that people think are going to be very detrimental to agriculture in my State.

Senator CHAFEE. Thank you.

First, I want to say I welcome all the new members to the committee. I think this is the first time we've met as a full committee and we're delighted that each of you are here, Senators Crapo, Voinovich, and Hutchison.

Senator Crapo.

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

Senator CRAPO. Thank you, Mr. Chairman.

Administrator Browner, it's good to see you over on this side.

Since this is a budget hearing, the questions I want to focus on today will probably relate primarily to concerns I have about the levels of budget request relating to rural water technical assistance and the programs that are very important to our rural communities and the levels of commitment to Superfund in terms of a number of the issues you and I have discussed on a number of other occasions.

I do associate with the comments that have been made about concerns with regard to rigid and unyielding approaches, whether it be to Superfund cleanup or to clean water or clean air standards and the like. We'll discuss those with you at another time in more detail. I think it's very critical that the budget that we work with has the necessary resources to address some of these issues.

In closing, I do want to say that I encourage you to increase the dedication and commitment of the EPA to work with local and State communities and letting them have as much supervisory and management authority as possible under the law.

We are facing that out in Idaho right now with regard to the cleanup in the Coeur d'Alene Basin. I think it's very critical that the EPA recognize the need to allow the State in particular and the local communities to have a strong voice in the management options that are evaluated there. I'm not sure that we've reached that there.

We've talked about this before but I just want to restate my concerns about that and we will visit about that further.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you.

Senator Hutchison, we welcome you and are glad you're here.

**OPENING STATEMENT OF HON. KAY BAILEY HUTCHISON,  
U.S. SENATOR FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you, Senator Chafee.

Thank you for holding this hearing and giving us the opportunity to talk about some of the priorities.

First, I want to say that we are making great strides in cleaning our air and water and soil in our country. I think in the last 30 years, we have done a wonderful job.

I also want to say that I'm concerned that as we move along and as we learn more, that we be very careful to use sound science as the basis for the regulations that are coming forward. I think in some instances we are not doing that and we are causing great hardships, particularly in smaller communities with some of the new regulations that are coming forward.

Let me mention a couple key points that concern me with your proposed budget. One is the hefty decline of funds in the Clean Water State Revolving Fund. This has been very important for States to be able to have a certainty so they can plan and carry out their clean water projects. I'm very concerned with the \$600 million decline in the funds for that priority at the same time when you're adding funds to what I consider to be less certain results in the Climate Change Technology Fund.

I would reverse those priorities because we have actual successes and a good record with the Clean Water Fund and that has really been shown to make a difference.

Second, I have to be a little parochial and say that I'm concerned at an ear mark in the last year's budget was air monitoring in Big Ben National Park. This is one of the ways we get the scientific data to be able to make good, clean air regulations. I am concerned that is not being funded, even though it was earmarked. I hope you will be able to address that issue.

I want to work with you and I will have a question I hope I will be able to propose later on some of the new regulations coming forward but I realize you need to be able to speak. I hope I'll be able to get back.

Thank you.

Senator CHAFEE. I certainly hope you will be able to get back.

Madam Administrator, why don't you proceed with your statement. What I'd like to do is get your statement completed before we have those votes which apparently are scheduled at 9:45 a.m.

We welcome you. Why don't you proceed?

**STATEMENT OF HON. CAROL BROWNER, ADMINISTRATOR,  
ENVIRONMENTAL PROTECTION AGENCY**

Ms. BROWNER. Thank you, Mr. Chairman, Senator Baucus and members of the committee for the opportunity to be here today to present the President's budget request for the Environmental Protection Agency for fiscal year 2000.

If at the beginning I might just take a brief moment to join in the comments with respect to Senator Lautenberg and the service that he has provided. I will tell you that I was obviously surprised but also saddened. Senator Lautenberg has been a great friend of the Environmental Protection Agency.

Senator I would say to you that you leave quite a legacy. The programs that you have been a party to creating at EPA are some of the most important programs that we have in terms of engaging and involving the public, most particularly, the right-to-know programs which you certainly are the father of.

I would also just like to say as a parent and as a woman, I really appreciate your leadership on a number of issues, including the national drinking age and the work you did to raise that. As a trav-



eler, I appreciate your efforts to ban cigarettes on airplanes. Certainly it has made my travel days much more pleasant.

If I might also say welcome to the new members of this committee and say that you raise issues that we look forward to working with each of you on. I hope in some instances where there is confusion we can resolve that and in other instances, we can find ways to move forward. We may have to find at the end of the day occasionally we do disagree, but I think many of the issues I've heard today are issues where we would like to work with you to find common ground and to move forward with a common agenda.

Accompanying me today are the senior officials from the Environmental Protection Agency: Peter Robertson is the Acting Assistant Administrator, Sallyanne Harper is the Agency's Chief Financial Officer.

Mr. Chairman, if I might just share with the committee members, there is a very prestigious award that is given for financial management. One recipient in the Federal Government, one at the State level and one at the local level. It's the Donald L. Scattleberry Award which recognizes senior financial managers for their good job.

This year's Federal Government winner is Sallyanne Harper.

Senator CHAFEE. Congratulations, well done.

Ms. BROWNER. We're very proud.

Senator CHAFEE. You should be. That's wonderful.

Ms. BROWNER. She does a great job for us and for the people of this country.

One more sort of internal matter I might share with the committee in case they are not aware. On Y2K, an issue of great importance to all of us, Congressman Horn recently issued another report card and we got an "A." EPA is one of the agencies with an "A" and we have worked incredibly hard to get all of our mission critical systems compliant. We are essentially in that place now and we can move on to smaller, less important things. We are one of the first agencies to be done and to receive that grade.

Senator CHAFEE. Congratulations on that also.

Ms. BROWNER. Thank you.

I want to thank you, Mr. Chairman, this committee, and the members of this committee for all of the support that you have offered me and the Environmental Protection Agency over the last 6 years. I think together we have done an awful lot to move toward a shared goal and mutual goal of protecting public health in the environment, to do it in a way that is common sense and that is cost effective.

I think if you look over the last several years of our work together, there really are some pretty amazing things that have been accomplished. Thanks to this committee, thanks to your Governor, Governor Kempthorne's good work, and others, we have a new Safe Drinking Water Act.

I want to inform the committee that as of this date, EPA has not missed a single deadline that you placed in that new law. We are taking our responsibility very seriously and we are moving forward and honoring both your desires and the needs of the American people.

Because of this committee's efforts, because of our work, 86 percent of the American population receives drinking water that meets all health-based standards that have been on the books since 1994, 86 percent. We certainly should be proud as a country that we have the safest drinking water in the world.

We must remain vigilant. This budget honors that, commitment, but I think we should be extremely proud of where we find ourselves.

I'd also like to mention the President's Clean Water Action Plan. I did want to thank Senator Bond who is the chairman of the EPA Appropriations Subcommittee and Barbara Mikulski, who have worked with us to provide the funding so that we can continue our commitment under that plan.

We have now successfully addressed 50 percent of the 111 key action items included in that plan and we are continuing to work in partnership at the State and local level with other Federal departments and agencies. For example, together with the Department of Agriculture, we will shortly announce a joint strategy to protect waterways from polluted runoff.

With respect to the Superfund Cleanup Program, 585 Superfund toxic waste sites have been cleaned up as of the end of 1998. We will complete an additional 85 cleanups this year; 227 communities are now benefiting from our brownfields program, with grants to revitalize, to clean up, and to redevelop their brownfields. These communities, when you look at all of the activities going on, taken together they are leveraging over a billion dollars in private investments.

I want to thank the committee for its support in what I think is an incredibly important program. This budget does carry forward our commitment to brownfields, \$92 million, so that we can continue to provide grants to local communities and so that we can provide additional revolving loan funds.

I might note, Mr. Chairman, many of the members, and certainly I, agree with the need to be flexible. We're working in 227 communities today. Not a single Federal regulation has ever been adopted to run this program. I'll tell you why.

We didn't need to because it's bottoms up. This is about communities coming to EPA and saying, "This brownfield site is where we want to work." It is a competitive process. Unfortunately, we get far more applications than we can honor but we don't tell the community which site; we simply evaluate them on a competitive basis and we award them the funds. We provide them the assistance they need to do what is right for their community.

No two sites, no two plans are the same. It is a bottoms up program, it is an incredibly successful program. It has been done without a single Federal regulation.

I also want to thank the committee for the work that you have done to ensure clean air for the people of this country and to Senator Baucus for your leadership and your support as we sought to implement the public health protections of this very, very important law.

We estimate that 164 million Americans are breathing cleaner air today because of the Clean Air Act, because of the work we

have done with so many of you in our efforts to implement that law.

If I might just also note and perhaps ask for a favor of sorts, we do have two nominees that are pending before this committee. Both gentlemen I think are well known to members of the committee—Tim Fields for our Superfund Program and Gary Guzzy for our General Counsel. We just want to work with the members to ensure an expeditious confirmation process.

Senator CHAFEE. We will do that quickly.

Ms. BROWNER. Thank you.

Senator CHAFEE. We process your nominees and I believe our record is pretty darned good in moving along and I want to keep that up. I don't want these nominees hanging out there in limbo, so we will move rapidly with that.

Ms. BROWNER. We do appreciate that.

The budget the President has presented for EPA, \$7.2 billion, is designed to allow us to build strong, healthy communities for the 21st century by protecting public health and the environment in a common sense, cost-effective manner. This budget really is based on our belief, which I believe we have demonstrated time and time again that a healthy environment, a healthy economy actually go hand in hand.

Under the President's leadership over the last 6 years, the Vice President's work, we have set some of the toughest public health and environmental standards in the history of the United States. We have achieved the single largest reduction in toxic air emissions in the history of the United States.

At the same time, the economy is literally soaring. We have a record high budget surplus. I think this is a clear testament to the fact that we don't have to choose as a country between a healthy environment and a healthy economy.

There are environmental challenges. Senator Hutchison made reference to this. Despite all of the good work that all of us have done, there are problems that remain; there are new challenges. This budget is designed to allow us to meet those challenges, to prevent problems and to do what we think needs to be done in terms of protecting the health of the American citizens and their environment.

This budget recognizes that protecting our environment is about more than protecting simply a beautiful vista or scenic river. Those are important efforts, but our job is simply much, much more than that. It is about protecting our health, our air, our water, our land, our food, our children.

This budget is about neighborhoods, it is about protecting where we live as Americans, it is about protecting how we live, it is about what we do in everyday life, it is about communities, it is about keeping them healthy, strong and prosperous.

I'll just briefly highlight three important initiatives included in the President's budget. They are efforts to provide more tools to local communities, more options should they choose—they are not required—but should they choose, more tools, more options so they can do what they want to do to help protect their environment.

The President and the Vice President announced a new livability agenda to help communities grow in ways that ensure a high quality of life and a strong, sustainable economy.

A key element of the livability agenda, it is a broad agenda, and I want to speak to one section, is the innovative financing tools. Several of you have mentioned it, Better America Bonds. It is carried within the Department of Treasury's budget as an amendment to the Tax Code; it is not reflected in the EPA budget, but it is a program that is in the tradition of our brownfields urban revitalization program.

It is about allowing communities who make their own decision to protect an open space, a green space, to enhance water quality through those protections, to convert a brownfield to a green field. It is about providing some financial assistance.

It is not about telling them what to do. No community is required to participate, nor will EPA at the end of the day or any other Federal agency own 1 inch of this land. It will all be in the hands of the local community if they make this decision.

Several members spoke to the fact and Mr. Chairman you referenced New Jersey and the ballot initiative in New Jersey. This is a story that can be told across the country. In my home State of Florida, more than 72 percent of the voters went to the polls and said we want to protect green spaces. Community by community, it will vary dramatically.

All the Administration is doing is providing a financial assistance in the form of a tax credit bond for those communities that make this decision.

EPA would work with other agencies to award the tax credit. It would be a competitive process. The Administration is proposing \$9.5 billion in bond authority over 5 years for investments by State, local, tribal governments, of public, private, land trusts may become involved in this.

For fiscal year 2000, we are requesting \$1.9 billion in bond authority. We would allocate up to \$1.9 billion in bonding authority. All of the bonding requirements would be pursuant to existing State and local requirements. They would manage this under their own laws but simply a tax credit up to the amount of the interest payment over the 15 years of the bond would be available. In other words, the local community's money could go that much further.

A second initiative I would like to call to your attention is the President's Clean Air Partnership Fund, \$200 million, another new tool to help communities get the job done. This is to promote cost effective, innovative technology to help communities reduce ozone, fine particles, soot, smog, toxic air pollution and greenhouse gases that contribute to climate change.

There is no requirement to participate, in this grant program to help finance public-private partnerships that are locally managed and self supporting. We recognize there are a lot of good ideas outside of Washington in local communities. We simply want to facilitate those in the same way we have done in brownfields—make the money available, award it through a grant process, and good solutions will emerge.

Things that none of us can imagine today will come forward. We want to be a part of these local efforts. We want to provide finan-

cial assistance and that is what the Clean Air Partnership Fund is all about.

Finally, I want to call attention to a very important Administrationwide program and that is the President and Vice President's commitment to fight the growing problem of childhood asthma. EPA will take the lead in this effort. Five million children today suffer from this debilitating disease. Unfortunately the incidence of this disease is continuing to rise.

This budget includes \$22.2 million for education, for outreach, for monitoring to reduce children's exposure to those environmental factors, pollutants, toxins, that can make an asthma attack worse.

Senator CHAFEE. Madam Administrator, let me just announce what I'd like to do here. There is a vote on now. I was going to ask you to continue until we get to the 7½ minutes which should be just a couple of minutes from now. Then we'll go over and have not one but two votes, so this will take some time. I would urge everyone to please come back as soon as we finish the second vote.

If you could just stand by now and we'll recess and come back as soon as we can.

Senator LAUTENBERG. Are we going to let the Administrator finish, Mr. Chairman?

Senator CHAFEE. No, we haven't got time now. Let's go on over and vote. We'll go vote and we'll be back and finish. Then there will be questions.

Thank you.

[Recess.]

Senator CHAFEE. All right, Madam Administrator, if you'd like to continue where you were, we'd appreciate it.

Ms. BROWNER. Thank you, Mr. Chairman.

I will be brief. I just wanted to note some existing programs that we carry forward in this budget including the President's Clean Water Action Plan, \$651 million, to continue our progress in restoring our rivers, lakes and coastal waters; for drinking water, wastewater treatment facilities, \$1.6 billion for State Revolving Fund.

We are asking for a change if you will in the Clean Water SRF. We believe it is in keeping with the needs of the States as they begin their focus on polluted runoff. We are requesting that you give us the authority or quite frankly, the States the authority to take 20 percent of their clean water SRF money and set it aside for grants to local communities for nonpoint source projects, for estuary management and other innovative water quality projects.

It would be up to the State, but if we're going to give them this flexibility, this additional tool, we will need an adjustment. We will need the authority to allow them to set aside up to 20 percent of their SRF money to take it out of the revolving loan and turn it into a State-managed grant program to local governments.

We do seek \$1.5 billion for Superfund. As I mentioned earlier, we continue our request, our program funding level of \$92 million for brownfields.

To help reduce pollution that causes global warming, the President's budget requests \$216 million for EPA. This would allow us to build on our extremely successful voluntary programs and en-

ergy use to provide efforts and partnerships for energy efficient technologies.

You may be aware that just this past year we completed a very successful partnership with very large buildings in terms of energy efficiency including the Empire State Building, the World Trade Center and the Sears Tower. That was an initial investment in more efficient technologies, lights, windows, heating and cooling. Not only could they do their part to reduce greenhouse gas pollutants, but they would also save money ultimately, there was a business interest in this.

Of special significance, and this is the last issue I wanted to raise with the committee and I think it is of particular importance to you and is certainly of importance to us. That is the Agency's operating programs.

The easiest way to think about the EPA budget is there are three big pots of money—what we give to the States, a big, big chunk; what goes into Superfund; and then everything else we do—drinking water, RCRA, standards, asthma, everything else is in our operating program.

We are requesting an increase in that program, a 5 percent increase over the levels enacted in fiscal year 1999. It really is the backbone of our work to protect public health and the environment. It's where we do our science, our standards, where we run our enforcement programs, our right-to-know programs.

We have been concerned, Mr. Chairman. Last year we did experience earmarks in that account which caused us to have to take program reductions. There was also an across-the-board cut. We have managed this but it has been extremely difficult.

I think if we were to face the same kind of levels of earmarks into the heart of these programs and a general reduction next year, our ability to manage it would not be as great as it was this year. We are sort of slicing back to the bone right now within the core agency programs. We would like to work with this committee to really make sure we have our operating program resources in place.

In closing, Mr. Chairman, I hope and I know that we all share a common vision of strong public health environmental protections, a strong economy. That is our commitment to work with all of the members of this committee, to work with your States, with local governments, to build the partnerships that will allow us to honor the needs of the American people to protect their health, their communities and to continue to ensure a strong economy.

I appreciate the opportunity to be here today and look forward to answering questions.

Senator CHAFEE. Thank you very much.

What we will do is have 5 minutes allotted to each Senator and come in the order of arrival. The lights will be right here. If Senators could pay attention to these lights, that would be very helpful.

Madam Administrator, I'd like to ask you about these Better America bonds. On the face of it, it's something that I would be highly enthusiastic about. Indeed, when the President originally mentioned it, I thought it sounded great.

I'm confused though as to why you've launched into this when with the Land and Water Conservation Fund we don't presently fund that to its fullest extent. It seems to me that to embark on this new proposal, which as I understand it, these are zero interest bonds and if I buy a bond for \$1,000, one of these, I presume there is a formula somewhere that says I'm meant to get 5 percent so I get 5 percent of \$50 credit that I take on my income tax return. Is that the way the thing works?

Ms. BROWNER. Exactly. You would take it against your Federal income tax liability.

Senator CHAFEE. The cost of this program is very substantial in the research we've done but again, why don't we use the program we have there now? I'm not knocking the Better America bonds but it certainly comes to mind that the Land and Water Conservation Fund isn't currently being funded to the extent it should be. Why do we embark on this new program?

Also, you're not involved with any of this currently; it's a big new undertaking for your agency, but go to it.

Ms. BROWNER. First of all, with respect to the Land and Water Conservation Fund, the President's livability agenda does request congressional funding for the Land and Water Conservation Fund. I believe it is \$1 billion. That is one of the components of the livability agenda.

As I think all of the members know, that program does something very and has a different focus than an open, green space, preservation effort. That program has largely focused on our national parks and enhancing protections in our national parks. The Administration has put forward a proposal to fully fund that program.

Better America Bonds is not in any way I would suggest to you the Land and Water Conservation Fund. For example, under Better America Bonds, the Federal Government will not own one inch of the property, it will all be owned, rather managed by the local community pursuant to their needs.

Better America Bonds is designed to assist those communities who make these voluntary decisions—with a targeted tax credit so they can see their citizens' money go further.

You asked about the cost of the program. The Treasury Department has scored this at \$700 million over a 5-year period. They are carrying that as part of their Greenbook presentation to the tax committees. This amount represents the cost to the Federal Government from the general revenues by providing the tax credit on the interest payment.

I would suggest to you that an investment of \$700 million over the 5 years for \$9.5 billion in bonding authority is a pretty good investment. We've already seen tremendous interest in this from local communities and Governors across the country.

Finally, you asked why EPA? EPA would chair an interagency committee made up of HUD, Transportation and others. You do need someone to manage the program and I think the thinking is that EPA, first of all, has run a very successful, similar program which is brownfields, the bottoms up program.

Second, we do see that for many communities, green space preservation not only brings with it an enhancement to quality of life,

it also brings improvement in air quality. It brings enhanced water quality and we are increasingly of the mind that we are now willing to give communities SIP credits, State Implementation Plan credits for brownfields redevelopment because we've been able to demonstrate with communities that when you redevelop a brownfield you are taking some cars off the road, you are reducing the air pollution burden.

Similarly, with green space preservation, you preserve an acre in the community. I was just down in Tampa, FL where they want to buy an acre total along their Hillsborough River. One acre of green space along a river in the country is far, far better and a more natural way to protect water quality if that is what they decide rather than other mechanisms.

So this is simply a way of saying to a community, if you want to make that kind of decision, then there is a program available to help you to provide a targeted resource.

Senator CHAFEE. I tapped into a vein there apparently and my 5 minutes is gone.

[Laughter.]

Senator CHAFEE. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

I'd just note that the Community Empowerment Board includes a lot of people. Basically, the chair is the vice president and Bruce Reid is the vice chair, and Gean Sperling and then basically Cabinet secretaries.

Ms. BROWNER. Yes, including EPA.

Senator BAUCUS. Including the EPA, so it seems huge, it seems large.

I'm with the chairman and basically I think it's a good idea on the surface. I just want to think this through a bit.

Senator CHAFEE. You're talking about the Better American bond?

Senator BAUCUS. That's right. For example, what are the criteria going to be in selecting which projects are available and which are not?

Ms. BROWNER. The Administration and the Department of Treasury's budget submission has essentially suggested three categories of projects, but again, we want to broadly define these because the best answers will come at the local or State level. They will know best.

The three categories are: open space or green space preservation; the second is water quality enhancements. As I said previously, frequently green space preservation will bring with it water quality enhancement. Finally, brownfields that would become green spaces or in the instance where a brownfield has come onto the city's tax rolls because of a default in taxes, then they could use the tax credit bond for the cleanup of the brownfield, not for the redevelopment but for the cleanup.

There are really three. One is open space preservation; two is water quality enhancements and finally, brownfields into greenfields.

Senator BAUCUS. What is your basis for concluding what the demand will be?

Ms. BROWNER. I visited with a number of mayors, over 100 mayors, and a number of Governors across the country and received a



lot of enthusiasm. We do expect it will be oversubscribed. It is structured that the EPA and the board would award \$1.9 billion in bonding authority for each of 5 years. We do anticipate we would receive more applications than there are resources. It is designed to be a competitive process, to bring forward the best ideas as we do in the brownfields program.

We funded 227 brownfields projects. We've had over 700 applications.

Senator BAUCUS. But competitive in what way? How are you going to allocate? If it's not to be competitive in dollar terms, what is it?

Ms. BROWNER. Correct, but competitive in terms of the benefits that the particular project—how many benefits are served, how many issues are addressed, recognizing issues in your State would vary dramatically from the issues in the chairman's or Senator Lautenberg's State, in the same way we tried to do with brownfields.

Senator BAUCUS. If it's a selection committee, why doesn't the committee include more local people, State and local people? This is all Federal. Right now the list is all Washington, DC people.

Ms. BROWNER. It could.

Senator BAUCUS. It's all inside the Beltway.

Ms. BROWNER. For example in the empowerment zones and in brownfields, you have had a Federal committee making the determinations and the allocations, but I'm certainly not adverse to expanding the review committee.

I do think it's important to note, for example, in the brownfields showcase communities, it's all been handled by career staff across an array of Federal agencies. They reviewed these. These are people with long service.

Senator BAUCUS. What about populous areas versus less populous areas? How are the less populous areas going to feel they're getting a square deal here? I mention this in part because proximity is power and right now decisions are made in Washington. People closer to Washington, closer proximity generally have more power. They are there, they can beat on the doors, make telephone calls and so forth.

I can just tell you from very deep experience that the farther one lives from Washington, DC, particularly if one lives in a rural area, the more one feels unempowered. So how can we give these people a fair deal so they feel they have a fair shot compared to the people who have lobbyists and that kind of thing and are just a few steps away?

Ms. BROWNER. It's extremely important and one of the reasons I think the mayors like the program is that local communities can apply directly. They don't have to come up through their State and compete at the State level. They can come straight into the application process. It's not cumbersome to the local community.

Again, no one is required to do this so if a local, rural community wants to do this, they come straight into the process and they don't have to weave their way around.

Senator BAUCUS. You know we have industrial development bonds which is somewhat similar. What if there is an allocation, as I think there is in the law, with respect to industrial development

bonds and then caps. Why does EPA need to be making the decision? That's my question.

Ms. BROWNER. Because the Administration does believe that there will be more applications than there are resources available. I think that is good because it allows more people to come forward with locally driven, creative proposals. Then when you have more than there are resources available, you will have to run a competitive process.

Senator BAUCUS. As I said, I think on the surface that is very interesting, very intriguing. I have a lot of questions.

Ms. BROWNER. It's a new idea.

Senator BAUCUS. Thank you very much.

Senator CHAFEE. I think if your answers could be a little briefer, then they'd be able to get in more than one question.

Next is Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Ms. Browner, you heard me talk about smart growth in transportation. The committee had I think a big victory, TEA-21. Let me ask you about how we do that now with clean water and try to relate particularly the sewage issue to this.

You all recognize the value that open space protection plays in the context of the Safe Drinking Water Act by allowing drinking water funds to be used to protect drinking water sources from encroaching development.

Why not extend this approach to help rivers, streams and lakes meet the Clean Water Act standards? You could again have another kind of approach which wouldn't be either or, but you could have watershed protection and conventional treatment work together to meet clean water goals simply by doing the same sort of thing for clean water that we're doing with the Safe Drinking Water Act.

Ms. BROWNER. I think we agree that as you look at the current water pollution challenges, polluted runoff is perhaps the most significant. The more we can provide assistance to local communities, an array of tools to address polluted runoff, the better off we will all be.

I think everything from our Nonpoint Source Program, 319, which we do request funding for, the set aside, the 20 percent clean water SRF set asides, those are grants. Communities would not have to pay them back like the Revolving Loan Fund they use to build their sewer plants.

Better America bonds, the set aside in the Drinking Water Program, we agree that more flexibility is needed.

Senator WYDEN. We'll follow up with you, but the point is, and you heard the question about the bonds, that's a new program. Why not use existing authority, particularly where you have the Safe Drinking Water Act model? I'll follow up with you but it seems to me we could take the next step of the smart growth fight in the clean water bill simply by taking the model from safe drinking water.

My other question, given time constraints, I think you all are aware I've introduced S. 188, the Water Conservation and Quality Incentives Act. This is an opportunity to save millions and millions of gallons of water. We brought together the Environmental De-

fense Fund and the Farm Bureau for it simply by saying that when they have a project that can meet tough conservation standards, they could tap the Clean Water Revolving Funds.

What does the Administration think of this?

Ms. BROWNER. We think quite frankly that a number of the kind of projects you're talking about, if States would certify them, they could do it right now. I think what's happened is many of the States and keepers of the SRF State by State, the Clean Water Revolving Fund, have traditionally been on the bricks and mortar side.

We agree right now that the Clean Water Act does allow States flexibility to address some of the projects you're raising and we want to work with the States so they understand that flexibility.

Senator WYDEN. Let us work with you on it because our understanding is the reason there have been only a handful of these projects approved is because it's still a pretty unwieldy kind of structure. That's what I think the Environmental Defense Fund and the Farm Bureau were concerned about—that we could do a whole lot more. This is something that is pro-fish. You save water on these kinds of irrigation systems, you're doing something for fish, you're doing something for farmers and something for conservation.

The time is short and I just wanted to make it clear that I wanted to pursue both smart growth issues and the question of conservation with you as we go to markup.

I thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator.

Senator Lautenberg.

Senator LAUTENBERG. Ms. Browner, I think the skeptics in particular but even those who support the Superfund Program generally are pretty much surprised and pleased by the progress that has been made in the cleanups.

As I read your statement, by September of this year, I think you said all cleanup remedies will be selected for 95 percent of all the non-Federal sites that are on the NPL. In light of this progress, the improvements you've made in the way the program is being administered, do we still need a comprehensive Superfund reauthorization bill?

Ms. BROWNER. Senator, as you are well aware, having been engaged in this process with us for 6 years, it has always been our desire to see comprehensive reform. Having said that, I would say after 6 years, I am increasingly of the mind—that is unlikely. I would simply suggest that the Administration would be willing to work with you and others on those areas where there is broad agreement to fashion a bill that would allow us to at least address those areas.

It would not be everything I think all of us had hoped for but quite frankly, we never seem to get past some of the old arguments. We seem to spend a lot of time debating issues that I think were relevant 7 or 8 years ago.

Senator LAUTENBERG. Many of these have been settled in the courtroom, et cetera?

Ms. BROWNER. Exactly, but I think at this point I would be more than happy to work in any way the committee wants to work. From

our perspective, we think there is a lot of agreement on things like prospective purchaser, innocent landowner, contiguous property owner, perhaps municipal waste, generators, transporters. Obviously we are very concerned about replenishing the trust fund. Those are areas where we've had a lot of agreement and maybe we should just do that so we can incorporate it.

Senator LAUTENBERG. What happens if we don't replenish the trust fund? We're now missing \$600 or \$700 million a year?

Ms. BROWNER. Yes. The fee collection is now in the third year but we are not collecting the fees. At some point, we will encounter a problem in terms of our ability.

The good news is we are doing a much better job at EPA in recovering spent monies from responsible parties that we keep bringing money into the fund. The list of those parties we are collecting from is a diminishing list. We won't get all of it. At some point, we will be done with this process.

At some point, the Congress is going to have to look seriously at how they intend to fund this program as we really sort of bring it into its conclusion. We're out there, at these sites. The end of sort of the original Superfund effort in this country is coming. It's not going to happen tomorrow but it's certainly coming, not to say we won't always need a law and problems won't arise that we haven't anticipated. In terms of the large volume of these very big sites, we're well down the road and we can see the end.

Senator LAUTENBERG. I want to take another look at it to see if there is something we can do. Have you noticed that industry generally has become more resigned to the fact that they're going to have to help clean up the mess they've left behind, the polluters and there is a more cooperative spirit out there?

Ms. BROWNER. I think there is a more cooperative spirit. In having talked to a number of industry groups and potentially responsible parties, I would suggest to you that it is in part because we were responsive to their legitimate complaints. There were problems, it was slow, it was costly. We changed that and I think there are many trade, associations and groups that have actually put out very favorable reports in terms of our administrative performance, which this committee was instrumental in assisting us.

Senator LAUTENBERG. Very quickly because the chairman has a quick hammer here, on the Better America bond, they are particularly well suited to the brownfields program which has been very successful and the facts bear you out.

I produced a bill earlier this month, S. 20, and I assume you've had a chance to look at it. Do the goals we've outlined there support what you think would be a good way to get the brownfields program moving along at a better pace?

Ms. BROWNER. I think it's very much in keeping with our vision of this program and the future of the brownfields.

Senator LAUTENBERG. Any particular changes there that you would recommend?

Ms. BROWNER. No, I think it's something that is very much in keeping with what we have recommended to Congress previously. I think we would be very inclined to support it.

Senator CHAFEE. Before Senator Voinovich goes, and we're not deducting it from his time, I think it would be helpful to the com-

mittee Ms. Browner, I see you have some of your assistant administrators. If you could identify who they are, then we become more familiar with them. Just briefly.

Ms. BROWNER. Beginning on my left is Diane Thompson, associate administrator for Legislative and Intergovernmental Affairs; Bob Perciasepe, who was previously the assistant administrator for Water who is now the assistant administrator for the Office of Air and Radiation; Tim Fields is a career employee of the Agency whose nomination is now pending before this committee to be the assistant administrator for the Office of Solid Waste and Emergency Response; Mike Ryan, comptroller; Nanci Gelb, budget director; Chuck Fox who is the assistant administrator for Water; Susan Wayland is the acting assistant administrator for the Office of Pesticides and Pollution Prevention and Toxic Substances; Norine Noonan who has recently been confirmed as the assistant administrator for the Office of Research and Development.

Senator CHAFEE. OK. Senator Voinovich.

Senator VOINOVICH. Administrator, you don't need to give me this now but I would be real interested in knowing the increase in your budget over what it was last year, taking into consideration additional money that you're asking for and also anticipating tax expenditures, money we'd lose to the Treasury if people took full advantage of the Better America bonds and other things that are out there?

Ms. BROWNER. I'd be happy to answer that. I can answer for the record if that's better.

Senator VOINOVICH. Second, Senator Wyden made a point, there are a lot of programs you're into right now that could use additional money. For example, when we worked with you on the Safe Drinking Water Act, we put in a loan fund for communities to enhance their local water systems.

Ohio has been accessing that program, but I can tell you we could use a lot more. As a matter of fact, we're using our Small City Block grant money for the more rural areas of the State to put money into those programs. I'm just looking at priorities.

I don't know exactly what Senator Wyden was talking about but I'm sure he's got some good ideas before you go off on a new program.

The other point I'd like to make is this. New Jersey just passed their bond issue. As Governor of Ohio in 1993, we went to the voters and we were spending \$250 million, 25 percent of that for the locals, to do about the same thing you're talking about doing with the Federal program.

One of my concerns has always been what is the role of the Federal Government, what's the role of the local government and is it fair if you really get at it for the taxpayers of Ohio or New Jersey or other States where they step to the plate and provide money for open space and doing some of the things that this would work to say we're going to make you pay to the Federal Government your taxes to fund the national program for a lot of people out there when you're already taking care of it on the local level.

In spite of the fact that we're talking about the fact we have a surplus, the truth of the matter is we don't have a surplus but for

social security. In fact, we're going to be at a deficit this year and maybe we'll have a little on budget surplus in 2001.

It seems to me that one of the jobs of all agencies would be to work harder and smarter and try to do more with less. I would rather have you, instead of going with the new program, go back over and look at areas where we really need help and if you're going to put more money into it, assuming we've got the money to give you, to maybe put it there where we're going to get a better return on our investment than going forward with a brand new program.

Senator BAUCUS talked about how do you administer it? I'm a former mayor and anytime I can grab some more money, it's like revenue sharing, I'm going to go after it. It seems to me that if this ever did go forward, there ought to be some look at what the States are doing and whether States have an agency in terms of allocating it so that you get the biggest return for your investment.

I really say to you, if you're going to get some more money, why don't you look at the programs you're already into that I think you're going to get a much better return on your investment than going forward with a new program.

Senator CHAFEE. Specifically addressing the Better America Bonds?

Senator VOINOVICH. Right.

Ms. BROWNER. First of all, I agree with a number of points you made. I certainly think what States and local communities are doing in terms of their bonding programs has been incredibly successful and incredibly innovative.

All we are suggesting in Better America Bonds is not a Federal decision, not Federal ownership, but some financial assistance. I think there is a long history of very successful programs, particularly at EPA through the Clean Water SRF, the Drinking Water SRF that you were very instrumental in helping us create, providing to local communities, in some instances through the States, sometimes directly, some financial assistance, not decisionmaking, financial assistance. That's really what Better America Bonds is all about, helping local communities take their dollars a little bit further.

I'm sure you know this but for the record, Better America Bonds and all of the other programs we are discussing in the EPA budget request are within the balanced budget. They are not about the surplus; they are all contained within the balanced budget.

Senator VOINOVICH. Could you just tell me how you intend to fund it, fund the additional dollars?

Ms. BROWNER. Better America bonds are costed within the balanced budget. Obviously the Administration made choices across the full array of Federal programs and it is carried as an adjustment to the Tax Code. It is scored within the Department of Treasury's Green Book at \$700 million over a 5-year period. That, the bond market experts tell us equates to \$9.5 billion in bonding authority for local communities.

I did want to come back to the Drinking Water SRF. The budget request before the Congress is, No. 1, an increase over last year.

Senator VOINOVICH. Are those bonds going to be included within the State caps on tax exempt financing?

Senator CHAFEE. I don't think they're affected by that.

Ms. BROWNER. No, they are not affected. I should correct myself on how it is scored within Treasury. It is taxes foregone because of the credit. It is managed as a credit; it is not affected as the chairman points out.

Very quickly on the drinking water, we are asking Congress for an increase in the Drinking Water SRF. That keeps us on track with what this committee authorized to fully fund the program. We all may agree at the end of that authorization that full funding, we need more. We see a large need out there in the States but we are on track and we do seek an increase for the Drinking Water Program.

Senator CHAFEE. Senator Thomas.

Senator THOMAS. I will ask quickly if you can answer quickly.

I want to go back to the Clean Water Action Plan, specifically the animal feedlot operations which I'm told are fairly well spelled out in current law and regulations. Many believe what you're talking about now goes far beyond that.

I guess my question is, if you were going to change the rules and do something quite different, why don't you do it under the Clean Water Act rather than by regulation? Two horses in a corral I understand.

Ms. BROWNER. Senator, we have been working with the Department of Agriculture. We have issued a proposed strategy pursuant to our authority under the Clean Water Act. We are relying on that.

Senator THOMAS. You'll have a lawsuit because a lot of people don't believe you have the authority to do that. You talk about partnerships all the time and my second thought is this really was very little notice. I was out in Wyoming for a week and I heard about this more than anything else. In terms of the amount of notice and public comment periods on this, I think there are some groups prepared to sue.

Ms. BROWNER. We did have a public comment period. It began in September. It was not closed until January 19. I will be honest with you, that is much longer than many of our public comment periods and certainly longer than we are required by law to provide.

Senator we have worked with a number of the farm groups, the producer groups. For example, the pork producers, we have worked very closely with them to design a program to address the animal feeding operations issues within that industry. I think they would attest to the partnership that we have developed with them as an example of how we're trying to do this.

Senator THOMAS. I don't agree with you. You can say that if you like but that isn't what I find at all. You always talk about partnerships but it's kind of one horse and one dog sort of an arrangement. I really must say I disagree with you thoroughly on that and I wish we had a chance to talk a little more in detail about it because I didn't make up that. That's people's thinking about that.

You talked about the economy being so great, I can tell you in agriculture and in mineral oil and gas, it's not great. So I think when you impose considerable costs on these folks at this point, it's a difficult thing. You need to understand that.

I understand with respect to the funding for Superfund tax that GAO said last year only about 46 percent of the money goes into actual cleanups, and the rest is in administrative costs. How do you react to that?

Ms. BROWNER. I'm more than happy to explain it to you. We don't agree with that. It is a long answer. If you'd like me to take the time, I'm more than happy to do so.

Senator THOMAS. No, probably not, but I would like to know. GAO usually does pretty good work. You don't agree with their work?

Ms. BROWNER. Not in this case and we've made them aware of that. We think the appropriate allocation of resources is reflected in how we manage the program, 69.5 percent goes to cleanup.

Senator THOMAS. You don't need to go into it right now.

[Additional information supplied for the record follows:]

AGENCY PERSPECTIVE ON GAO'S REPORT "ANALYSIS OF CONTRACTOR  
CLEANUP SPENDING"

The Agency uses a different and more meaningful measure of what constitutes cleanup spending than the General Accounting Office (GAO) uses in their August 1998, report: *Analysis of Contractor Spending*. EPA's definition of cleanup spending includes all necessary program cost in the response/cleanup portion of the budget. This funds most, but not all, elements of the cost of cleaning up a Superfund site. Using this definition, EPA focuses resources on those activities that yield the greatest environmental results. Effective use of enforcement authorities and oversight along with strong partnerships with States tribes and other Federal agencies result in more cleanups each year than the narrow band of predominately Fund-lead work GAO focuses on.

GAO's definition of cleanup is so narrow that many sites that have reach construction completion would be deemed to have had little or no spending on cleanup. GAO does not include many key components of the cleanup process. GAO omitted functions such as lab analysis, engineering and technical analyses, project manager salaries, state/tribal activities, community involvement activities, and oversight of responsible parties and many other activities necessary to achieve cleanups. GAO's contractor cost computation also fails to recognize the \$175 million in annual Superfund appropriations used by other Federal agencies (e.g., ATSDR, USCG, NIEHS, FEMA, NOAA) for cleanup, testing and assessment, and the approximately \$30 million in annual appropriations to DOJ which has resulted in settlements with private parties for more than \$15 billion in cleanup or reimbursements to the Federal government. Without these resources, the response cleanup process could not proceed.

Ms. BROWNER. They defined it in a way that ignored a lot of the work we do across the country to clean up toxics and that's why they came with their number.

Senator THOMAS. They stated nevertheless that only 46 percent goes into cleanups.

Ms. BROWNER. We disagree.

Senator THOMAS. I understand and I disagree with you on the other, so please let's talk a little more about that because I certainly find a lot of evidence that there wasn't notice, that there are a lot of concerns about it.

Wyoming is the only State that doesn't have a unified assessment. The incremental funds are tied to the completion and approval of a unified watershed assessment, correct?

Ms. BROWNER. That's correct. Forty-nine States have applied; Wyoming has chosen not to apply. We are processing all of the other 49 State applications and we will be making those grant awards.



It has been explained to me why Wyoming chose not to apply. I think your Governor has taken a position that our work under the Clean Water Action Plan is illegal and therefore, he will not apply.

Senator THOMAS. I think they have applied. It wasn't approved.

Ms. BROWNER. If I stand corrected, I stand corrected.

Senator THOMAS. We have a lot of confusion in my State and we need to get together because all the great things you're talking about, all this working together and so on, I can tell you just doesn't reflect. These people are saying we're being ordered around so we can't do it here but I would like to talk about it some more because it isn't a happy situation.

Ms. BROWNER. We're more than happy to work with you. If I stand corrected, I stand corrected, but as of yesterday, I'm under the impression that Wyoming chose not to apply. We would love to work with them to get an application so that they too can participate in the program.

Senator THOMAS. The conditions under which you can participate has something to do with it also.

Ms. BROWNER. Well, 49 other States did participate.

Senator THOMAS. At any rate, I would like very much to talk about some of these specific things. If you or someone who works with this region could come see me, I would be very grateful.

Ms. BROWNER. We'd be more than happy. We'll set up a meeting here and we'd also be happy to set up a meeting back in the State.

Senator THOMAS. Thank you very much.

Senator CHAFEE. I think that is a good idea. Obviously the Senator has a serious situation in his State. If you could make yourself available, whoever it might be, but I think probably you would be the one.

Ms. BROWNER. I will do it. I think we have a meeting scheduled or we were trying to schedule one.

Senator CHAFEE. Get together with Senator Thomas and then we can see how you come out with that.

Senator CRAPO.

Senator CRAPO. I want to follow up briefly on the difference of opinion which you have with GAO on the amount of money that goes into cleanup only to ask if you would provide the documentation to me with your perspective on that.

Ms. BROWNER. Yes.

Senator CRAPO. I would like to review that at another time.

I understand while I was out of the room for a minute, the question of Superfund reform came up. What's been relayed to me is that you responded that you do support comprehensive Superfund reform. Is that correct?

Ms. BROWNER. No, I don't think that fully characterizes my answer.

Senator CRAPO. Tell me how you would respond?

Ms. BROWNER. I said we have worked 6 years to achieve comprehensive reform but I'm a realist, I'm a pragmatist, it hasn't happened and at this point, we would be happy to work in a bipartisan manner with any member who would like to advance a bill that covers the areas where I do think there is broad agreement, for example, contiguous landowners, innocent purchasers. No one has

any disagreement on these issues. It seems we're sort of holding resolution of those hostage to issues where we continue to have some disagreement.

We've done this in RCRA, we've taken the things we all agree on and we've gotten it done to great success for both the States, industry, and the environmentalists. We should do the same with Superfund. I would still like comprehensive reform but I've been up here for 6 years and it hasn't happened.

Senator CRAPO. You're not saying that you do not support comprehensive reform, you're saying you think we ought to move ahead to where we have agreement?

Ms. BROWNER. I think after 6 years, it might be the best avenue to travel. We haven't been able to find agreement on all of the issues. If we could find agreement, I would be for comprehensive reform tomorrow. I've probably spent more time testifying and meeting with members on Superfund comprehensive reform than any other issue.

Senator CRAPO. That we could agree on.

You stated earlier that 585 sites have been cleaned up?

Ms. BROWNER. Yes.

Senator CRAPO. When you say cleaned up, does that mean those sites have been delisted?

Ms. BROWNER. No. A large number of sites involve the ongoing treatment of water contamination. It's called a pump and treat. What we mean is the facilities are up, they're running, they're being managed. No other activity is going on. 181 have now been delisted and are completely done but for pump and treat situations, which is a large amount, there are no bulldozers out there. There's a little box generally sitting on the ground which have the treatment.

Senator CRAPO. So construction has been completed in those sites?

Ms. BROWNER. Yes and we're out of there.

Senator CRAPO. You're out and operation and maintenance is underway?

Ms. BROWNER. Exactly.

Senator CRAPO. I take that means an ROD has been signed.

Ms. BROWNER. That's the first step in the process, that's an early step in the process. A record of decision gives you the plan for what the cleanup will be.

Senator CRAPO. But 181 of those 585 have been delisted?

Ms. BROWNER. Yes.

Senator CRAPO. When you say you're out of there on the others, that means it's operational?

Ms. BROWNER. It's what we would refer to as O&M, correct.

Senator CRAPO. How many are not?

Ms. BROWNER. There are about 1,300 sites on the master list. We have added a few over the last several years, sites we've worked with Governors to add to the list and in some instances were requested by the Governors and in some instances, we reach an agreement.

Of the approximately 1,300, as many have pointed out, we are active at almost all of the non-Federal sites, over 95 percent, but

181 have been delisted, 585 we have completed cleanups on. We are in the process of concluding—995 have RODs.

Senator CRAPO. Does all of this activity include the activity that will be undertaken with regard to natural resource damages or section 106 orders or the like?

Ms. BROWNER. With respect to natural resource damages, I think as you're aware, we're not a trustee; EPA is not one of the trustees. The trustees are the Department of Interior and others. At sites where there are natural resource damages, those are handled by the trustees.

Senator CRAPO. The point is all of that activity under Superfund is still outstanding and when you're talking about 585 sites being cleaned up, that has nothing to do with the NRD or the 106 activity?

Ms. BROWNER. Only a few of the 585 do the trustees have an interest in.

Senator CRAPO. What I'm talking about is all of the other sites in America, all the other locations in America where there are NRD concerns and potential NRD activity, that's not included in your description of the winding down of Superfund?

Ms. BROWNER. No. In the 1,300-plus sites, we'd be more than happy to give you a list of those sites which are not all of them by any stretch of the imagination, where the trustees have raised a potential NRD claim.

Senator CRAPO. At this point in time?

Ms. BROWNER. Yes. We can provide that.

[Additional information supplied for the record follows:]

LIST OF SITES IN WHICH THE TRUSTEES HAVE RAISED POTENTIAL NRD CLAIMS

The agency is working with the Department of Justice to compile a list of Superfund National Priorities List sites where the Natural Resource Trustees have raised a possible Natural Resource Damage Claim. This information will be provided to the member and the committee as soon as it is compiled.

Senator CRAPO. Nothing prohibits that from being done in the future?

Ms. BROWNER. We can provide that to you. Again, we are not a trustee, so I don't know the answer to your question about what timeframes they operate under but we could get that for you.

Senator CRAPO. All right. Thank you.

Senator CHAFEE. Senator Boxer.

Senator BOXER. Thanks, Mr. Chairman.

I'm going to have to rush right off after I ask my questions due to a conflicting hearing.

Thank you for being here. I'm glad I'm here because I've seen kind of an attack on the work you do. I want to say I want to bring those fights to the floor of the Senate because if there's any issue that brings America together, it's the environment. It's cleaning up these Superfund sites, it's continuing to make progress. Yes, it's even Better America bonds although it is a new idea, it's a very old idea in some way because the local communities are going out with initiatives.

I'm a former county supervisor so I come from the same perspective as Senator Voinovich who talked about being there. I started as a county supervisor, passing open space initiatives. What a joy

it would have been to leverage those monies. We could have done so much more and now we're struggling to do everything we want.

We've got parks that are closed up in San Francisco where kids are looking from the street to a closed up park. We've got to do more and I want to bring these issues, these debates to the Senate floor. Maybe we won't have the votes but we'll have the people and I'm going to be there.

I want to say that I was very proud yesterday to introduce a piece of legislation I talked with the chairman about called Resources 2000 which goes beyond what we're talking about here and would fully fund about eight trust funds for the environment and make it mandatory to do that.

As we look at saving social security's trust fund and saving the Medicare Trust Fund and the Highway Trust Fund. What about these environmental trust funds like Land and Water Conservation and Historic Preservation? It is pathetic to see the neglect of our environment.

What you are trying to do within the context of the balanced budget is to bring some new, fresh ideas to the table. I, for one, if maybe the only one in this room, want to say thank you for being visionary. I'll tell you, every time there was a new idea, Teddy Roosevelt just looked up and said, oh, it's a new idea. Who would ever have been able to have the progress that we have made so far.

Maybe this is part of this whole impeachment deal—opening up. We ought to open up to new ideas and take new steps and think big and yes, to leverage \$9 billion won't even meet the shortfall. My State has 33 million people. We're going to have, Mr. Chairman, 50 million people in the year 2020. If we don't move forward and leverage some of these dollars and do what we can, we're not going to be able to breathe. If we keep losing the trees and the wetlands, these people are going to have a very low quality of life and it's just not right.

In closing, so I leave some time for you, in California, 76 percent of Superfund sites have final decisions in place. We are very pleased. As much as I would like to do reform because with the chairman's help, I got an amendment passed to Superfund reauthorization that I love. It says you've got to clean it up to protect the kids and I don't think we do that.

I would love to see Superfund reform but at the same time, I don't want to stop the program when we're making progress. So I want to be pragmatic about it. I will work with my chairman to see what he thinks about it and of course, Senator Lautenberg.

Can you tell me a little bit about what you're doing on this very important program called the Food Quality Protection Act that's supposed to protect kids? I love what you're doing on the asthma front, it is a huge problem all over the country with so many kids. The increase in asthma is up I think 160 percent among kids, it's horrible. But I have reports that the EPA is not consistently following the mandate in the Food Quality Protection Act to set pesticide tolerances in a way that protects kids. I would love to have your response.

Also, last, MTBE, I know the chairman is concerned, how are you doing on your panel? We've got to get rid of it. It is terrible, it is

ruining our water supply, we don't know how to clean it up. So how are you doing on your timetable?

Ms. BROWNER. We do have a blue ribbon panel on MTBE. I think you're well aware of the membership and it is truly blue ribbon. We do anticipate that they will be able to respond to our questions within the allotted timeframes. I think by June we expect a set of recommendations. It is an extremely difficult issue, Mr. Chairman, and we will want to work with the committee as we receive those recommendations.

Senator BOXER. Will you supply that to the chairman and to those of us who are interested?

Ms. BROWNER. Yes, absolutely.

If I might quickly respond on our Food Quality Protection Act work. As you well know, Senator Boxer—you were instrumental in passing this new and very comprehensive legislation—it is really I think a watershed of change in terms of how we as a Nation address these issues while providing a level of important child protections and continuing to feed the people of this country.

We are on track. It is not easy. It has not been easy. It will not be easy but in terms of what Congress asked us to do—for example, we were told by Congress to go back and review all of the existing tolerances. There are 9,000 tolerances—in other words, how much of this pesticide can be used on this food product. There are 9,000 on the book. We have to have one-third of them done by August of this year and we will make it.

What is happening thus far is of the ones we have reviewed, we've completed about 2,300 of the 3,000 we will need to have done. Approximately one-third of them have been revoked. We have worked with the manufacturers, we have worked with the grower groups and we have reached a decision that particular use on that particular crop was not within the risk range and they have been revoked.

Senator BOXER. Will you keep me informed because I don't want to overdo the patience of my leader.

Ms. BROWNER. Yes.

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

Senator CHAFEE. Thank you, Senator.

We've got a difference in the cost of the Better American bonds. It's my understanding from the Treasury Department and CRS that you gave us a figure of up to 5 years or something, whatever it was?

Ms. BROWNER. Right.

Senator CHAFEE. It's my understanding the total cost is \$6 billion for this program. That's a Treasury figure and we can tell you where we got it from and then you can tell us where you think it's different.

Ms. BROWNER. As I understand, Mr. Chairman, we did get this number from Treasury, it is carried in their budget documents, the scored figure for the 5 years that we all score our numbers over in the budget, it is \$700 million over the 5 years.

You are correct, and I don't know what the number is, that these are 15-year bonds and the interest, the tax credit remains available obviously for the life of the bond. So there are costs beyond the

fifth year, but in terms of the 5-year scoring, this has been scored by Treasury at \$700 million over the first 5 years.

Senator CHAFEE. I don't want to beat this to death but it seems to me that many won't even be issued in the first 5 years?

Ms. BROWNER. In fact, we worked with Treasury because of our concern with respect to that and while they do cap it at \$1.9 billion in bonding authority a year, if we do not issue all of the tax credits for the \$1.9 billion in the first year, we can move them into the second and third year, so there is a mechanism precisely because of that concern.

Senator CHAFEE. As I mentioned in the start of this, the mere idea of my questioning this is unusual because it's the kind of program—when I was Governor, we started a green acres program and at that time, we did receive some Federal funds—I've forgotten where the source was. It might have been the Land and Water Conservation Fund. Whether it goes back that far, I don't know.

In any event, this is a subject that's dear to my heart but I must say three things do bother me—No. 1, the cost of it; No. 2, if we're not just duplicating another program; and No. 3, you've made quite a point about this is local, there are no Federal requirements here, but it's EPA that approves the projects, as I understand it. So that's a pretty big power right there. In other words, it's not a local decision whether we'll get Better America bonds, it's you that will decide it.

Ms. BROWNER. But it's a local decision whether or not to apply, no one is required.

Senator CHAFEE. That's right but the decision of whether Sacramento or Pawtucket, RI or Greenville, NC gets it is determined by you folks?

Ms. BROWNER. I'll be honest with you.

Senator CHAFEE. I hope you'll always be honest with me.

[Laughter.]

Ms. BROWNER. I'm going to get in trouble for this, I am sure, but I would obviously like a program that could service the needs of every community who made this choice. Within a balanced budget, caps are put on programs and when you do that, you do need to run a competitive process.

My sense is there are lots and lots of communities out there that the benefit of that interest, not having to make that interest payment is a lot to them. They're stretching every penny to make these programs work and that's quite important to them.

Senator CHAFEE. Now, let's shift gears here and you might want Mr. Perciasepe's assist but you call on anyone you want.

This is a chart that's provided during the recent briefings on the Clean Water Act. It's an EPA chart. It shows the permit backlog under the Clean Water Act. Can you see it?

Ms. BROWNER. Yes.

Senator CHAFEE. Some of these permits are issued by EPA and when they expire, there is a new application and either the State or EPA reissues the permit, quite often with tighter allowable discharges than previously.

What this chart does is show the percentage of permits that have been reissued. We've divided it into two groups, the minor being

the green and the major being the brown. Can you designate which is green and which is brown?

Ms. BROWNER. Yes.

Senator CHAFEE. This shows the percentage that have expired and not been reissued. So the States are doing a pretty good job, but fully 85 percent of the EPA-issued permits have expired and are waiting renewal. This is a serious problem. What do you have to say about that?

Ms. BROWNER. Let's make sure we all agree. This chart reflects water permits, the NPDES permits that are issued under the Clean Water Act.

Senator CHAFEE. Correct.

Ms. BROWNER. We have recognized this as a major weakness under the Federal Management and Financial Integrity Act in FEAA.

It's by no means an excuse but one of the things I have worked really hard to do in 6 years is to get the States to run this permitting program. We are now up to 42 States who are actually running this program as opposed to EPA running the permitting side of it.

When I came from Florida, we didn't have it. We had not yet taken steps as a State to take control of this program at the State level, so we're doing much, much better.

As you can see, EPA is still responsible for more of the permits than the States and if we could get to all 50 States, assuming day-to-day permitting authority, that I think would help to deal with the backlog but we do recognize and we are seeking increased funding, \$10 million in the fiscal year 2000 budget, to help address this problem. We agree it's a problem.

Senator CHAFEE. What strikes me as odd is that you've come in with a 23 percent reduction in your funding request for the water program and then we've got problems like this. I just have trouble understanding why you're requesting less money when you've got these problems out there.

Ms. BROWNER. It's two different programs, Senator. This is a permit program, this is not the revolving fund program within the permit program. Within the clean water, day-to-day work not the revolving loan fund, we are requesting an increase, \$11 million specifically, to address this problem.

The fund that you're speaking to is the State Revolving Fund and it's come up several times, but we made a commitment to fully fund a \$2 billion revolving amount in the 50 States by the year 2002. We will hit that now because of our funding increases over the last several years this year. We will be revolving at \$2 billion. States will be loaning out \$2 billion. That is why you see that adjustment in that account, because we are honoring a very significant commitment and we are doing it earlier.

Senator CHAFEE. All right. Again, I'd like to echo the point made here about the Better America Bonds. It seems to me you've got to establish some kind of criteria, some kind of formula to determine why you send the money or why you give approval to Idaho versus Florida or wherever it might be. So I would urge you to try to get some criteria organized for this program.

I don't know how the program will fare. I suppose others will have concerns that I have that we're not using the Land and Water Conservation Fund, but maybe there's an explanation that I haven't yet become convinced of.

Thank you for coming and we'll be in touch with you. If you can work with Senator Thomas, I'd appreciate it.

Ms. BROWNER. We will certainly do that. If I might say, Mr. Chairman, Better America Bonds is a new idea, it is a new tool for local governments and States. We want to work with you. We want to design something that really does make sense. You, coming from State government, probably know far better than we. Each of the States have adopted different programs. We don't want to micro-manage, we don't want to judge that. We simply want to provide some resources and we would like to work with you to structure something.

Senator CHAFEE. I like the concept. As I said, for me to even be questioning it is odd because it espouses the kind of program that I've been for and have spent a lot of time on over the years in our State, not only in the city I come from where my son happens to be the mayor, where they came up with a bond issue for open space, the State had a bond issue for open space and both passed by 70 percent. It's very, very popular. It isn't elitist—the inner city votes for it just as strongly as the suburban areas but it does bear examination as to whether we're getting into something that is duplicative.

Thank you very much.

[Whereupon, at 11:29 a.m., the committee was adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF  
NEW HAMPSHIRE

Thank you Mr. Chairman and welcome, Administrator Browner. I will be brief. I'm pleased to see Ms. Browner and her team here this morning. We have several unfinished pieces of business left over from the last Congress, and I am looking forward to making progress on those fronts.

I have also been interested to see press reports indicating that EPA views the Superfund program as in a "ramp down" mode. That view is also reflected in the budget request for the Superfund program, which is some 30 percent less than the fiscal year 1999 budget request.

I will be exploring these issues further in my questioning, and look forward to Ms. Browner's testimony.

Thank you.

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

I am very pleased to welcome you Administrator Browner to the committee today, and look forward to hearing your testimony on the President's proposed \$7.2 billion budget for the Environmental Protection Agency (EPA). Balancing the financial demands of bringing Americans cleaner air, cleaner water, a safer food supply, and stronger environmental protection for our children, is a difficult task. This budget reflects a good balance among these competing demands, and I thank you for your work to achieve that balance.

I am particularly pleased to see reflected in this budget the recognition that many of the best ideas about how to protect the environment are formed in local communities throughout the Nation.

In so many parts of the country, local communities have identified lands they would like to preserve, parks they want to expand, and suburban development they



want to control. The record number of ballot initiatives directed to these purposes throughout the Nation in this last election is a strong expression of the importance of these issues in people's everyday lives. In Ventura County, California, for example, citizens overwhelmingly supported a ballot initiative providing that agricultural and rural lands outside the city boundaries could not be developed until the year 2020. Development after that point may only take place if approved directly by voters.

As I understand it, the Administration's proposed Better America Bonds program would help our communities finance the open space preservation, wetland restoration, park expansion and other related projects that are often the subject of these initiatives.

That is a great idea.

As work on the proposal moves forward and authorizing legislation is prepared, I will be particularly interested in finding a mechanism that would ensure that Better America Bonds program funding would be directed to the most environmentally beneficially projects.

I was also pleased to see the Administration provide for a \$17.4 million increase in funding to tackle childhood asthma. The dramatic increase in asthma rates among children is staggering. The incidence of asthma in children under the age of five has increased 160 percent from 1980 to 1994. Approximately 150,000 children are hospitalized each year from asthma, making it the leading cause of hospitalization of children due to chronic illness. The Administration's increase in funding for asthma programs is desperately needed to help us gain control over a problem that affects so many of our children.

As you move forward to implement new programs to protect children from pollution, however, I am concerned that EPA may not be fully implementing existing authority in this area.

In particular, many constituents have told me that EPA is not consistently following the mandate in the Food Quality Protection Act (FQPA) to set pesticide tolerances in a way which protects children. The recent study by Consumer's Union indicating that fruits and vegetables often contain pesticide residues that are unsafe for children would seem to confirm this concern.

I was a strong supporter of the FQPA children's health provision when the bill moved through the Senate. And, as you know, my own Children's Environmental Protection Act (CEPA), which I will reintroduce shortly, would expand the application of that provision to require that all standards EPA establishes under our environmental laws protect children. EPA's implementation of the FQPA children's health provision, as one of the first of its kind, may well set the standard for how a broader standard such as the one embodied in CEPA would be implemented.

Given that, I am keenly interested to learn how the Agency has been implementing this FQPA provision. I have questions on this subject I will submit for the record.

Finally, I once again urge you to craft a national solution that will protect our drinking water from contamination by the fuel additive methyl tertiary butyl ether (MTBE). As you know, MTBE contamination of drinking water continues to be a serious problem in California. Just last month, Lake Tahoe closed its 13th drinking water well due to MTBE contamination.

Due to the drinking water threats posed by MTBE, California has been actively pursuing a solution to the MTBE problem. I would like to call to your attention a number of recent California studies addressing this problem.

First, in November 1998, the University of California released a study evaluating the health and environmental effects of MTBE. It concluded that MTBE should be phased-out of use. Second, in October 1998, the California Energy Commission released a study evaluating the economic and gasoline supply effects of a 3- to 6-year phaseout of MTBE. It concluded that a 3- to 6-year phaseout would be feasible.

I understand that you have established a panel of experts that will report to you by July 31, 1999, whether MTBE use should continue. I thank you for that action. I hope the panel will evaluate these two recent California MTBE studies. I also understand that your Office of Research and Development (ORD) will establish a pilot program in California to identify new treatment technologies to clean up drinking water contaminated with MTBE.

I am particularly interested to learn from the panel and from your ORD whether a drinking water standard for MTBE, combined with a cost-effective treatment technology, together could effectively protect our drinking water supplies from MTBE.

Once again, thank you for presenting the Administration's budget request today. As always, I look forward to working with you in the year ahead to bring Americans a cleaner, safer environment.

PREPARED STATEMENT OF HON. CAROL M. BROWNER, ADMINISTRATOR,  
ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and members of the committee, I am very pleased to be here today to present the President's Fiscal Year 2000 Budget Request for the Environmental Protection Agency. Our \$7.2 billion request continues the President's efforts to protect public health and the environment and provides States and communities with new, innovative funding tools to help build strong, healthy communities for the 21st century.

I would like to begin by thanking you, Mr. Chairman, and all the members of this distinguished committee for your support over these past few years. You have done a great deal to create a productive working relationship with the Environmental Protection Agency. With your leadership, we have been able to work together toward our mutual goal of protecting public health and the environment. And our achievements are truly impressive. To cite just a few examples:

This year, as a result of your work on the Safe Drinking Water Amendments of 1996, we estimate that 88 percent of the American population will receive drinking water from community water systems that meet all health-based standards in effect since 1994.

Because of the support of this committee, and particularly the actions of Senator Bond, we have made significant progress on many of the 111 key action items in the Clean Water Action Plan and will soon announce a joint strategy with USDA to protect waterways from non-point source pollution from animal feeding operations.

Today, because of the Clean Water State Revolving Fund and Construction Grants programs authorized by this committee, more than 176 million Americans receive the benefit of at least secondary treatment of wastewater, keeping pollution out of our rivers, lakes and coastlines.

585 Superfund toxic waste sites have been cleaned up, as of the end of 1998, and an additional 85 construction completions will occur in 1999. Two-hundred twenty-seven communities have benefited from more than \$44 million in grants to revitalize Brownfields—again, thanks to this committee.

Approximately 164 million Americans are breathing cleaner air today, because of the work and wisdom of this committee when it passed the Clean Air Act.

I also want to acknowledge the committee for your continued efforts to forestall attempts to limit our ability to do our job. I look forward to what we can achieve with your continued cooperation.

Our Fiscal Year 2000 Budget, in the tradition of every previous budget submitted by this Administration, is based on what the President and Vice President have proven time and time again—the environment and the economy go hand in hand. They are inextricably linked.

Today, we have some of the toughest environmental and public health protections in the world, and our economy is not only strong, it is soaring. In 1992, this Nation had a record high \$290 billion deficit. This year, we expect a \$79 billion budget surplus. That's progress.

Building on this record of success, the Clinton-Gore 2000 budget charts a new course to meet the environmental challenges of the coming century. This budget recognizes that protecting our environment is about more than beautiful vistas and scenic rivers, and it's about more than passing new environmental and public health laws.

This budget reflects a new American ideal. It's about neighborhoods, protecting where we live and how we live, and what we do in the everyday life. It's about communities—and how we keep them healthy, strong, and prosperous. It's about improving the quality of our lives.

Three new landmark initiatives in this budget reflect President Clinton's and Vice President Gore's commitment to America's communities. These initiatives provide significant new, innovative financial tools to give communities the flexibility they need to address their most pressing environmental and public health needs. They tap into our nation's greatest resources—our ingenuity and spirit of collaboration. They protect our most precious resource first—our children.

The Better America Bonds program puts the Agency in the forefront of support for the President's and the Vice President's creative initiative to build livable American communities. This new, innovative, financial tool is aimed at helping communities address problems associated with urban sprawl—such as, traffic congestion, lost farmland, threatened water quality, shrinking parkland and abandoned industrial sites, or Brownfields. This is about flexibility. Communities can decide for themselves how they will preserve their open spaces, protect their water, revitalize their blighted urban areas, and improve their quality of life. The Administration

proposes Federal tax credits that will support \$9.5 billion in bond authority over 5 years for investments by state, local and tribal governments. I urge you to give local communities this flexibility to address their most urgent environmental needs.

The President's budget includes \$200 million for a new Clean Air Partnership Fund—an initiative that is part of the Administration's efforts to clean the Nation's air and meet the challenge of global warming. The Clean Air Partnership Fund will promote innovative technology demonstrations to help communities nationwide reduce harmful air pollution and greenhouse gases. The Fund finances, through grants, the creation of partnerships among local communities, States and tribes and the private sector and the Federal Government. These partnerships are designed to finance projects that are locally managed and self-supporting and enable communities to achieve their clean air goals sooner. The Fund will stimulate cost-effective pollution control strategies, spur technological innovation, and leverage substantial non-Federal investment in improved air quality.

The Agency will take a leadership role as part of an Administration-wide effort to fight childhood asthma and address this growing problem. President Clinton has provided an additional \$17 million, for a total of \$22 million, to reduce children's exposure to toxins in our environment that can exacerbate asthma. The money will implement an inter-agency initiative for education, outreach and air monitoring. An additional \$12 million, for a total of \$40 million, focuses on other chronic childhood afflictions, such as cancer and developmental disorders. EPA's investment to protect children from environmental threats totals \$62 million.

In addition to these three new initiatives, the President's budget also continues our work on the Nation's other environmental and public health priorities.

Last year, the President announced a national blueprint to restore and protect our nation's rivers, lakes, and coastal waters—and we made great progress. The President's budget allocates \$651 million for the Clean Water Action Plan, and related activities, to continue our efforts to restore and protect watersheds across the country.

Because polluted runoff is one of the most serious problems facing communities, the President proposes another important flexible funding mechanism—this one designed to help communities provide clean water. The President's proposal will allow States greater flexibility to address their most pressing water quality problems—polluted runoff from city streets, suburban lawns and rural areas. The proposal will give States for the first time the option to set aside up to 20 percent (or as much as \$160 million) of their fiscal year 2000 Clean Water State Revolving Fund allotment for grants to implement non-point source pollution and estuary management projects. I look forward to working with Congress to implement this important, new funding mechanism.

In addition, the President's budget provides a combined \$1.625 billion for the State revolving funds (SRF), of which \$800 million funds the Clean Water SRF and \$825 million funds the Drinking Water SRF. The Drinking Water SRF increases from last year, and will help achieve the Administration's goal of capitalizing the Drinking Water SRF until States can provide an average of \$500 million in annual financial assistance for drinking water projects. The Clean Water SRF request is part of the Administration's overall capitalization plan to ensure States can provide an average of \$2 billion a year in financial assistance for water quality projects. We plan to continue capitalization of the Clean Water SRF until this goal is met, and I would like to note that almost \$16 billion in Federal capitalization grants have been provided so far to the Clean Water SRF, or almost 90 percent more than originally authorized.

The President's budget invests approximately \$216 million at EPA, and \$1.8 billion governmentwide, to help reduce the pollution that causes global warming. This program will continue the Administration's efforts to address the challenge of climate change through innovative, cost-effective partnerships with businesses, schools, States and local governments that voluntarily lower energy use—and energy bills, for everyone. The Climate Change Technology Initiative proposed by the President this year also offers tax credits for consumers who purchase fuel efficient cars, homes, appliances and other energy-efficient products. It also includes increased spending on research to develop new, cleaner technologies in areas like the Partnership for a New Generation of Vehicles and the Partnership for Advancing Technology in Housing.

The President's budget invests \$1.5 billion in Superfund to continue cleanup of toxic waste sites. The Agency plans to complete clean up construction at 85 sites for a total of 755 construction completions by the end of 2000, with a target of 925 through 2002. The Budget also invests approximately \$92 million in the clean up and redevelopment of abandoned industrial sites through our Brownfields Program, including \$35 million for the Brownfields Revolving Loan Fund which helps commu-

nities leverage funds for actual cleanup of Brownfield sites. Through 2000, the Agency will have funded Brownfields site assessment pilots in 350 communities across our great nation.

Of special importance in this budget proposal is our request to increase the Agency's Operating Programs by 5 percent over the fiscal year 1999 Enacted level. This budget provides \$3.7 billion for the Operating Programs, which include most of the Agency's research, regulatory and enforcement programs and funds our partnership programs with states, tribes, and local governments. The Operating Programs, which have grown 33 percent during this Administration, represent the backbone of the nation's efforts to protect public health and the environment through sound science, standard setting, and enforcement. It is through these programs that the Agency works to ensure that our water is pure, our air is clean and our food is safe. I cannot emphasize enough the important contribution the Operating Programs make to the Agency's ability to meet the expectations of the American public for a safe, healthy environment.

As part of these important Operating Programs, the President requests \$19 million for the Chemical Right-To-Know Program. This includes \$14.4 million to focus on accelerating the screening and testing of the 2,800 highest production volume chemicals used in the United States. We will conduct this initiative through a voluntary industry challenge program and a series of test rules for those data not obtained through the voluntary program. Information on these chemicals, many that we use daily in virtually every aspect of our lives, will be broadly disseminated to the public. The President's budget also provides \$18 million for Environmental Monitoring for Public Access and Community Tracking (EMPACT) to provide citizens with access to real-time information about the health of the air, land and water in their communities.

The President's budget supports sound science with \$681 million for developing and applying the best available science for addressing current and future environmental hazards, as well as new approaches toward improving environmental protection. The Agency will focus its research efforts on areas such as Particulate Matter, Global Change, Mercury and the Coastal Research Initiative.

The Air Toxics program increases by almost \$18 million in new funding, for a total of approximately \$109 million. This program will focus on urban air toxics to develop tools and data that will move the air toxics program from an almost exclusively technology-based program to a risk-based program. The program is geared to reduce risks for poor and minority groups, who are more prevalent in urban areas, and will increase protection to a larger number of more sensitive populations, such as children and the elderly.

The budget request for the Mexican Border is \$100 million, a \$50 million increase, for projects there. The Agency will use these resources for direct grant assistance intended to address the environmental and public health problems associated with untreated industrial and municipal sewage on the border.

These are the highlights of our Fiscal Year 2000 Request. I look forward to discussing with you, as the year progresses, these initiatives and innovative financing mechanisms. I would be happy to answer your questions at this time.

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RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM  
SENATOR JOHN H. CHAFEE  
SAFE DRINKING WATER ACT

*Question 1a.* Do you disagree with the National Drinking Water Advisory Council assessment and recommendation to request the full authorized amount for the research program? Considering that the Safe Drinking Water Act requires the issuance of new standards for a substantial number of contaminants within the next several years, what is your justification for the proposed reduction in funding?

Response. EPA's investment in drinking water research, which has grown from a level of \$20.8 million in fiscal year 1995 to \$41.5 million in fiscal year 2000, has enabled the Agency to improve the science and provide new data in support of all priority Safe Drinking Water Act rulemakings and risk management decisions required to date. The discontinuation of funding for fiscal year 1999 Congressional earmarks in the fiscal year 2000 request accounts for a decrease of \$7.6 million from the fiscal year 1999 enacted level. When this is taken into account, the fiscal year 2000 budget request for drinking water research actually shows an increase of \$1.4 million over the fiscal year 1999 enacted level. In the process of planning research activities and identifying resource needs for fiscal year 2000 during the planning cycle, EPA determined that the funding level reflected in the fiscal year 2000 Presi-

dent’s request would allow the Agency to continue to provide the necessary scientific data and technologies required to meet future sound science requirements of the Safe Drinking Water Act. EPA is now conducting an intensive, comprehensive evaluation of research needed to support the wide range of regulatory activities facing the Agency over the next 5 years (e.g., Stage 2 Disinfection By-Product Rule, Long-Term Enhanced Surface Water Treatment rule, Contaminant Candidate List, and the reevaluation of existing national primary drinking water standards). This comprehensive evaluation will inform the Agency’s future budget requests.

*Question 1b.* If Congress were to fund drinking water research at the level recommended by the President, how would you address the concerns raised by the National Drinking Water Advisory Council?

Response. As indicated above, EPA is committed to ensuring that all upcoming drinking water regulations and risk management decisions are based on sound science. We believe that if Congress funds drinking water research at the level recommended by the President, we will be able to continue to develop the research products needed to meet this sound science requirement without missing statutory deadlines.

*Question 1c.* What process is used to determine where the Office of Research and Development (ORD) places its resources within the drinking water portion of its budget? To what extent does the Office of Water determine the research priorities?

Response. As part of the Agency’s annual planning and budgeting process, ORD works with EPA’s program and regional offices to allocate funds across various research programs. For example, ORD works with the Office of Water (OW) to help determine drinking (and other) water research priorities.

The starting point in this process is input from many sources including:

- EPA’s Strategic Plan
- ORD’s Strategic Planning—ORD’s Strategic Plan and peer-reviewed Research Plans
- Customer and User Needs—Input from EPA’s Program and Regional Offices and Federal research partners
- Outside Peer Advice—e.g., the NAS National Research Council, the EPA Science Advisory Board.

This information is then used to develop annual research priorities.

Research priorities are first set by media-specific Research Coordination Teams (RCTs), which include ORD and Program and Regional Office staff. For example, there is a Water RCT, which includes OW and ORD staff. The RCT recommendations are then reviewed and modified as appropriate by ORD’s Executive Council and EPA’s Research Coordinating Council (RCC) of Deputy Assistant Administrators from across the Agency. This review ensures that the media specific recommendations are adjusted as needed to address the highest research priorities across the Agency. The recommendations of the RCC then go to the Assistant Administrator for Research and Development who works to resolve any differences. These recommendations are subject to EPA-wide review during the Agency’s planning and budgeting process, are submitted to OMB for review, and inform the Agency’s request to Congress.

*Question 1d.* If Congress enacts the research funding contained in the President’s budget, spending on drinking water research only would be 7.8 percent of the total ORD budget. How does this compare with other areas of research such as air, pesticides, water, hazardous wastes, toxic substances, etc. for fiscal year 2000? How does this compare with previous budget spending from fiscal year 1997 to fiscal year 1999?

Response. Please see the attached tables.

EPA’s Office of Research and Development Budget <sup>1</sup>	99 Pending Enacted [in percent]	2000 PB <sup>2</sup> [in percent]
Goal 1 Clean Air (PM, Air Toxics, and Trop. Ozone):		
Goal 1 compared to Total ORD Resources .....	17.0%	16.8%
Goal 2 Clean Water (Water Quality):		
Goal 2 compared to Total ORD Resources .....	13.5	13.1
Goal 2 Drinking Water Research compared to Total ORD Research: .....	8.5	7.8
Goal 3 Safe Food:		
Goal 3 compared to Total ORD Resources .....	1.1	1.2

EPA's Office of Research and Development Budget <sup>1</sup>	99 Pending Enacted [in percent]	2000 PB <sup>2</sup> [in percent]
Goal 4 Safe Communities:		
Goal 4 compared to Total ORD Resources .....	2.5	2.1
Goal 5 Waste (Includes Superfund Research):		
Goal 5 compared to Total ORD Resources .....	9.8	9.1
Goal 6 Global Change:		
Goal 6 compared to Total ORD Resources .....	3.0	4.3
Goal 7 Empowering People:		
Goal 7 compared to Total ORD Resources .....	2.0	2.4
Goal 8 Sound Science <sup>3</sup> :		
8.1. Ecosystem Research compared to Total ORD Resources .....	19.8	22.2
8.2. Human Health Research compared to Total ORD Resources .....	9.0	10.5
8.3. Emerging Risks Research compared to Total ORD Resources .....	8.8	7.9
8.4. P2 and New Technology for Environment Protection compared to Total ORD Resources .....	13.5	10.4
<b>Total ORD Resources .....</b>	<b>\$562</b>	<b>\$535</b>

<sup>1</sup> Beginning in 1999, EPA began operating under its new budget structure designed along GPRA principles.

<sup>2</sup> Funding for fiscal year 1999 Congressional earmarks is not continued in the fiscal year 2000 President's Budget.

<sup>3</sup> Resources in Goal 8 directly and indirectly support other goals.

EPA's Office of Research and Development Budget <sup>1</sup>	95 Enacted [in percent]	96 Enacted [in dollars]	96 Enacted [in percent]	97 Enacted [in percent]	98 Enacted [in percent]
Drinking Water Research .....	3.9%	\$23.2	5.0%	7.9	7.0%
Air Quality Research .....	14.4	72.5	15.6	13.8	16.8
Acid Deposition Research .....	0.4	0.0	0.0	0.0	0.0
Water Quality Research .....	4.2	21.3	4.6	4.9	6.0
Hazardous Waste Research .....	4.9	21.2	4.6	3.0	2.6
Toxic Substance Research .....	3.3	14.4	3.1	2.3	2.2
Pesticides Research .....	2.5	12.1	2.6	3.8	5.6
Multimedia Research .....	37.7	186.1	40.0	36.7	35.4
Global Change Research .....	4.3	21.0	4.5	2.8	2.5
Oil Spills .....	0.3	1.3	0.3	0.2	0.2
Lust Trust Fund .....	0.1	0.6	0.1	0.1	0.1
Superfund .....	12.2	28.2	6.1	6.9	6.8
Hazardous Spill & Site Remediation .....	0.0	7.0	1.5	0.0	0.0
Lab, Field, & HQ expenses and some payroll .....	11.8	56.6	12.2	17.6	14.8
<b>Total ORD Resources (In million)<sup>2</sup> .....</b>	<b>\$538.8</b>	<b>\$465.5</b>	<b>\$465.5</b>	<b>\$503.9</b>	<b>\$574.5</b>

<sup>1</sup> This table represents EPA's program element budget structure. Beginning in fiscal year 1999, EPA began operating under its new budget structure designed along GPRA principles.

<sup>2</sup> These totals include funding for Congressional earmarks at the following levels: fiscal year 1995: \$27.4 million; fiscal year 1996: \$27.8 million; fiscal year 1997: \$20.7 million; and fiscal year 1998: \$72.1M

**Question 2.** The Drinking Water Strategic Needs Assessment Project developed by EPA's Office of Water provides an analysis of statutory requirements and the resources needed to meet priority Safe Drinking Water Act mandates. Most importantly, it identifies shortfalls in the program's funding and research to support the basic public health objectives in the Safe Drinking Water Act. Will you please identify the funding shortfalls identified by the Office of Water in the area of research and explain what EPA has done to address those areas?

Response. [No response to question 2 was provided by EPA].

**Question 3.** The Safe Drinking Water Act Amendments of 1996 require EPA to make a determination of whether or not to regulate at least 5 contaminants from the contaminant candidate list in August 2001. I am concerned that without an adequate level of research the contaminants selected for regulation will not be regulated at an appropriate level to protect public health or even be the contaminants considered most harmful to the public. What is the level of research funding that has been attributed to those contaminants included on the contaminant candidate list since fiscal year 1997?

Response. The final contaminant candidate list (CCL), published in the Federal Register in March 1998, divides the contaminants into three main categories: (1) regulatory determination priorities; (2) research priorities; and (3) occurrence priorities. The first set of five or more contaminants to be considered for regulation in August 2001 will be selected from the regulatory determination category. The contaminants in this category are considered to have sufficient data to evaluate the extent of exposure and risk to public health. This will enable EPA to make regulatory determinations in 2001 that are protective of public health and based on the best available scientific information.

EPA began developing a comprehensive strategic research plan to address critical needs for chemical and microbial contaminants on the CCL after the publication of the list in 1998. Research on the health effects, treatment and analytical methods for CCL contaminants has not been delayed while the comprehensive plan is being developed. A number of priority CCL contaminants (e.g., MTBE, perchlorate, Norwalk virus) have been under investigation for several years, and general solicitations have been made under the Agency's external grants program. The fiscal year 2000 funding level of \$6.0 million for CCL contaminants research represents the first major transition of resources within the drinking water research budget to address CCL research needs. This funding request will allow us to meet our August 2001 requirements and to initiate some research projects that will be helpful for the August 2006 regulatory decisions.

#### CLIMATE CHANGE

*Question 1. CARBON SEQUESTRATION.*—Of the \$242.8 million requested for EPA's climate change activities in fiscal year 2000, \$3.4 million is requested for "carbon removal" or carbon sequestration activities. This \$3.4 million represents 1.4 percent of the overall request for climate activities at EPA in fiscal year 2000.

A. Is this rather modest request truly representative of the importance of sequestration in the overall effort to address this potential climate change threat?

B. Your budget justification indicates that this funding "will allow EPA to develop incentives to increase carbon storage on agricultural and forest lands. . ." Does this mean that EPA believes that we know enough scientifically about sequestration to go forward with additional projects?

C. How is EPA coordinating this initiative with the Departments of Agriculture, Interior, and Commerce?

D. The justification also states that, "EPA will continue efforts to fully account for carbon sequestration in the U.S. greenhouse gas inventory to enable these activities to receive credit internationally. . ." Specifically, what EPA activities will help to enable international crediting of domestic sequestration?

[No responses to Questions 1a-1d were provided by EPA.]

*Question 2a. POTENTIAL CLIMATE CHANGE IMPACTS.*—ASSESSING THE CONSEQUENCES OF GLOBAL CHANGE AND CLIMATE VARIABILITY AT A REGIONAL SCALE IS IDENTIFIED IN THE BUDGET JUSTIFICATION AS A TOP OBJECTIVE FOR THE YEAR 2000. HOW WILL EPA'S ASSESSMENT OF POTENTIAL CLIMATE CHANGE IMPACTS BE COORDINATED OR CONSISTENT WITH THE NEXT REPORT BY THE INTERNATIONAL PANEL ON CLIMATE CHANGE (IPCC)?

Response. As part of the U.S. Global Change Research Program (USGCRP), EPA is making significant contributions to the ongoing U.S. National Assessment Process which is evaluating "The Potential Consequences of Climate Change and Variability to the United States." (Section 106 of the Global Change Research Act of 1990 requires that assessments be conducted "not less frequently than every 4 years.") EPA is sponsoring the Mid-Atlantic Regional Assessment, the Great Lakes Regional Assessment, the Gulf Coast Regional Assessment, and the Health Sector Assessment. These assessments are being conducted through a public-private partnership that actively engages researchers from the academic community, decisionmakers, resource managers, and other affected stakeholders in the assessment process. The first National Assessment Report will be delivered to Congress in January 2000.

The National Assessment is being timed to provide input into the Third Assessment Report of the IPCC which will be completed in 2001. The IPCC itself has been developing a regional focus and published a Special Report on regional impacts of climate change in 1997. This report, "The Regional Impacts of Climate Change," contained a North American Regional Assessment. It is expected that the IPCC Third Assessment Report will also contain a North American Regional Assessment, and the first U.S. National Assessment Report will contribute significantly to the North American Regional Assessment in the IPCC Third Assessment Report. It is noteworthy that the U.S. National Assessment will provide extensive region-specific information on climate change impacts in the United States. In the National Assess-

ment, the United States has been divided into 20 regions, in order to capture the "regional texture" and specificity of the potential consequences of climate change and climate variability. This regional detail for the United States may be reflected in the IPCC Third Assessment Report.

In addition to its participation in the National Assessment process, EPA's Global Change Research Program is an assessment-oriented program, with primary emphasis on understanding the potential consequences of climate variability and change on human health, ecosystems, and socioeconomic systems in the United States. Assessments are also being made of potential opportunities to adapt to climate change in order to reduce the risks, or take advantage of the opportunities, presented by climate variability and change. EPA assessments are often consistent with IPCC assessments because climate models and scenarios that are reviewed by the IPCC are often used in EPA assessment activities. Also, EPA assessment activities are generally consistent with IPCC guidelines for conducting assessments. EPA researchers who are involved in this activity will actively participate as authors and reviewers of the IPCC Third Assessment Report.

*Question 2b.* Will EPA's impacts assessment be peer reviewed by scientific experts from within and outside the government?

Response. Both the USGCRP's National Assessment Process and EPA's research and assessment activities are founded on the principles of scientific excellence and openness. EPA and its Office of Research and Development (which includes the Global Change Research Program) both have written Standard Operating Procedures for peer review of all research and assessment products. All of EPA's impacts assessments undergo peer-review by scientific experts from within and outside the government. In addition, peer review comments on studies produced by EPA's Global Change Research Program, along with the responses to the peer review comments, are carefully documented.

*Question 3.* IMPEDIMENTS TO VOLUNTARY ACTION.—The budget justification indicates that, "EPA's climate change programs have reduced U.S. greenhouse gas emissions by 260 million tons of carbon dioxide equivalent and that for every dollar spent by EPA, we have received 2.5 tons of CO<sub>2</sub> reduced." If accurate, these are fairly encouraging numbers for a voluntary program. You will agree, however, that we must do better. What do you see as the largest impediments to additional voluntary actions by business, states, and localities?

Response. EPA's technology deployment programs have demonstrated great cost-effectiveness. For every dollar spent by EPA, the deployment programs have reduced greenhouse gas emissions by 2.5 tons of carbon dioxide equivalent and delivered \$70 in energy bill savings to consumers and organizations.

These results demonstrate that climate protection and economic growth can go hand-in-hand. Overall program effectiveness is expected to improve over the next several years as well, because much of EPA's work to date has been devoted to program design and startup. EPA will be delivering more and more greenhouse gas reductions over the next several years. By the end of the year 2000, EPA's climate change programs are expected to have reduced U.S. greenhouse gas emissions by 58 million metric tons of carbon dioxide equivalent.

EPA's voluntary programs effectively help reshape the way energy-using products are purchased and the way energy is managed in buildings and facilities by removing market barriers that impede organizations, businesses, governments and consumers from investing in "energy-efficient" technology. With the additional \$107 million over fiscal year 1999 funding requested in the fiscal year 2000 budget, these programs could deliver even greater results, helping more businesses, schools, hospitals, localities, and consumers make smart energy decisions (without the use of financial subsidies). Over 60 percent of this country's carbon emissions in the year 2010 will come from products purchased between now and then. EPA's programs help these equipment buyers choose the energy efficient solution, providing energy savings and pollution prevention.

EPA's voluntary programs work to remove several of the most significant impediments to actions that increase the efficiency of energy use. One of the biggest barriers is lack of clear information about the value of energy-efficiency and the performance of products. Decisionmakers in the public and private sector as well as consumers do not have the information and tools that they need to make the smartest investments. For example, consumers often do not consider the savings from lower energy bills associated with buying more energy-efficient products. EPA's voluntary programs are providing clear, unbiased technical information to all sectors of the economy on the value of energy-efficient products and practices.

Another very important impediment is limited access to capital, as financial lenders generally do not recognize the "soundness" of energy-efficiency. EPA's voluntary



programs work with financial institutions to demonstrate the higher value and lower risks of energy-efficient product purchases, and encourage lending institutions to offer more attractive financing packages for purchasing these products.

Finally, a variety of "split incentives" exist between landlords and tenants as well as builders and buyers that limit the accessibility of energy-efficiency products to certain buyers. Split incentives are present where one party has an opportunity to make an investment to produce net savings through energy efficiency, but such savings would be realized by another party, which removes the incentive for the first party to act. EPA's voluntary programs attempt to remove this barrier to action by providing opportunities for the same party to make the efficiency investment and reap the associated financial rewards of lower energy costs.

EPA's voluntary programs will continue to focus on addressing these market impediments including the commercial real estate market and the new homes market. With the additional funding requested in the fiscal year 2000 Budget, these programs can deliver even greater environmental and financial benefits by focusing in areas such as the home improvement market, the industrial sector, as well as increasing penetration of combined heat and power systems in commercial, industrial, and institutional buildings.

#### CLEAN WATER ACT

*Question 1a. STATE REVOLVING FUND CUT.*—EPA estimates that the country faces \$139 billion in infrastructure needs over the next 20 years. According to the Association of Metropolitan Sewerage Agencies, 90 percent of the funding burden for compliance with the Clean Water Act falls on local governments. Between 1986 and 1994, wastewater sewer rates increased 71.4 percent, more than double the rate of inflation. Despite substantial need and strong State support for the Clean Water State Revolving Loan Fund, EPA's budget proposal cuts SRF funding by \$550 million, a 40 percent decrease from last year's enacted amount. What does EPA propose to do with the money it is diverting away from clean water SRF?

Response. The Administration has submitted a budget for EPA that is consistent with the balanced budget agreement and that honors its long-standing commitment to capitalize the Clean Water SRF at a level that will allow it to generate at least \$2 billion in annual infrastructure assistance over the long-term. This substantial Agency investment, along with funding from other Federal sources such as the Department of Agriculture's Rural Utility Service and the Department of Housing and Urban Development, represents a significant complement to the annual clean water infrastructure investments being made by State and local governments.

*Question 1b. Does EPA feel that water quality has improved to such a degree that current commitments to clean and safe water are no longer warranted?*

Response. While significant improvements in water quality have been achieved, the Agency agrees that additional Federal investment is necessary to achieve clean and safe water for all Americans. Toward that end, the Agency, through its fiscal year 2000 budget request, is continuing to meet its long-standing commitment to capitalize the Clean Water State Revolving fund at a level that will allow it to provide at least \$2 billion in annual financial assistance over the long-term. In addition, the Administration is proposing new flexibility that would allow States to better target SRF dollars to those projects that address their most significant sources of water quality impairment.

It is also important to remember that while the State Revolving Fund is providing a substantial source of infrastructure investment over the long-term, it was always intended to be part of a broader package of investment that included funding from other Federal agencies (such as through the Department of Housing and Urban Development and the Department of Agriculture's Rural Utility Service) and State and local government investments.

*Question 2a. 20 percent SRF set-aside for non-point source grants.*—In recognition of the need for greater effort in addressing nonpoint source pollution, EPA plans to withhold full section 319 grant funding from those States that fail to incorporate nine key elements into an approved section 319 nonpoint source management plan. EPA also has proposed to allow States to reserve up to 20 percent of their Federal capitalization grants to provide grants for nonpoint source and estuary restoration projects. Could you please assess the progress made under the section 319 program since the creation of the program in 1987?

*Question 2b. Has there been a measurable improvement in terms of water quality and the number of water bodies coming into compliance with water quality standards due to section 319?*

Response. States have made significant progress since the creation of the Section 319 nonpoint source program in 1987. First, States have successfully demonstrated

the effectiveness of a large number of technologies and approaches to solving nonpoint source problems. Second, they have solved nonpoint source problems and either achieved water quality standards or measurably improved water quality in a variety of settings. Third, they have improved public knowledge of nonpoint pollution and its solutions and involved numerous members of the public in volunteer monitoring and citizen restoration efforts. These and other successes are outlined in *Section 319 Success Stories: Volume II* (EPA, October 1997—copy attached).

Despite this progress, nonpoint source pollution remains a significant contributor to water quality impairment. For this reason, EPA has been working with State water quality agencies to upgrade their nonpoint source programs to meet the key elements of effective programs. These elements include such critical steps as establishing clear long-term and short-term goals; engaging a broad set of public and private-sector partners to assist the State in implementing its program; and using an iterative approach with a mix of water-quality and technology-based approaches to achieve the State's program goals. In 1999, EPA asked and Congress provided increased Section 319 grant dollars to assist States in implementing their upgraded nonpoint source programs. EPA stated in the Clean Water Action Plan that increased Section 319 funds (all funding over \$100 million) will only be provided to those States that have approved upgraded Section 319 programs starting in 2000. The Agency believes this will provide an incentive for States to upgrade their programs to include the nine key elements recommended by an advisory committee. In 2000, the Agency is also proposing to allow States to reserve up to 20 percent of their State Revolving Fund capitalization grants to implement their programs. These steps will increase the extent to which nonpoint source funding directly contributes to attainment of water quality standards.

*Question 3. USE OF SRF FOR PROVIDING GRANTS.*—There are currently multiple programs which provide grants to address problems associated with nonpoint source pollution. Section 319 of the Clean Water Act, and the Department of Agriculture's Environmental Quality Incentives Program (EQIP) are examples of such programs. The intent of Congress in enacting the State Revolving Loan program under Title VI of the Clean Water Act was to create a self-perpetuating source of funding to ensure future resources for clean and safe water. Rather than attempting to implement a nonpoint source grant program through the State Revolving Loan Fund, would it not be simpler and more effective to increase funding to existing programs?

Response. Rather than earmarking funds for nonpoint source projects, the Agency is advocating an approach that allows State Governors the flexibility to determine the appropriate mix of point and nonpoint source project funding. This proposal, which would allow a State to use up to 20 percent of their Clean Water SRF capitalization grant allotment to make grants for nonpoint source and estuary management projects, will allow substantial resources to be dedicated to these types of projects without requiring an increase in Agency budget authority. This approach recognizes that the relative need for different types of clean water projects varies from State to State. The proposal will also allow States to package grants and loans together for communities that might otherwise find a loan program unaffordable or inappropriate for the type of project being financed (e.g., one that does not generate a stream of revenue that could be used for loan repayment). Finally, the Agency believes that providing this type of flexibility within the SRF will promote a more integrated priority setting process in the State between point and nonpoint source candidate projects that will result in projects being financed that provide the greatest environmental benefit.

#### CLEAN AIR

*Question 1a. CLEAN AIR PARTNERSHIP FUND.*—The President has proposed the "Clean Air Partnership Fund," a \$200 million grant program divided between two EPA objectives: \$66.7 million to "reduce emissions of air toxics" and \$133.3 million to "attain the NAAQS for ozone and particulate matter."

The Agency has stated that the money from the fund will be targeted toward "multipollutant control strategies." But, since we do not know how the grants will be administered, the environmental benefits are not clear. For example, the EPA is planning to use the Fund to help achieve its air toxic reduction goals. But, if States do not submit projects that target toxics, then the air toxics program is adversely impacted. What is the money in this Fund going to be used for?

Response. The Clean Air Partnership Fund will be used to provide grants to local and State governments, tribes and multi-state organizations to demonstrate ways to reduce pollution. The Clean Air Partnership Fund will support research, development and demonstration projects that: (1) control multiple air pollution problems simultaneously; (2) leverage the original Federal funds; (3) facilitate meaningful pub-

lic involvement; and (4) provide innovative approaches to air pollution control that could be replicated in other cities and states. For example, grants could be awarded for demonstration projects in the following areas:

- Partnership funds could help provide startup capital for municipalities to establish programs to convert existing diesel fleets of school and transport buses to cleaner fuels.

- Partnership funds could help local entities establish home energy efficiency investment loan funds. Cost savings could allow borrowers to repay loans and provide an ongoing source for future demonstrations. Reducing energy use in homes will demonstrate simultaneous reductions in local soot, smog and air toxics and greenhouse gas emissions.

- Partnership funds could be used to demonstrate incentives for utilities to generate cleaner electricity. Increased use of combined heat and power and natural gas combined-cycle electricity generation will yield criteria pollutant, air toxic and greenhouse gas emission reductions.

- Partnership funds could support local revolving loan funds to finance the demonstration of energy efficient retrofits for local and State agency buildings, public schools, hospitals and private industry. Energy efficient retrofits could provide integrated early reductions of air pollution. The cost savings realized from lower energy bills would allow borrowers to repay the loans and provide an ongoing source of funding for future innovative investments.

- Partnership funds could help States and municipalities develop in demonstrating the use of tax credits for innovative air pollution control technology investments.

- Partnership funds could be used to help stimulate demand for renewable sources of energy. Certain renewable energy sources such as fuel cells, photovoltaics, wind and geothermal provide ideal integrated air pollution control technologies.

*Question 1b.* Please define “innovative” and “optimal, multi-pollutant control strategies.”

Response. In the context of the Clean Air Partnership Fund, “innovative” can generally be defined to refer to a new or different way to address air pollution control and prevention. The innovation may come in a variety of ways: the financial mechanisms used, the institutional or organizational arrangements established, or the technology developed or applied.

In the context of the Clean Air Partnership Fund, “optimal, multi-pollutant control strategies” can generally be defined as air pollution control and prevention strategies that address more than one air pollution problem simultaneously. To the degree that an air pollution control and prevention strategy is more successful than other strategies in addressing more than one air pollution problem simultaneously, then it is optimal.

*Question 1c.* Why is it more prudent to spend \$66 million on these grants rather than completing the Maximum Achievable Control Technology (MACT) regulations?

Response. EPA is not planning on spending \$66 million on the Partnership Fund instead of completing the MACT regulations. EPA intends to meet its statutory obligations and is exploring options to complete the MACT regulations by the MACT “hammer date” of May 15, 2002.

Our budget request for the Clean Air Partnership Fund represents EPA’s and the Administration’s judgment that there are critical State and local air quality protection programs that need funding at this level. Similarly, our air toxics budget request represents EPA’s and the Administration’s judgment on the appropriate level of funding for air toxics control that most effectively protects public health. For a discussion of EPA’s air toxics budget request, please refer to our answer to Question 2 below.

The Clean Air Partnership Fund will fund demonstrations that will result in reductions in all categories of air pollution, including air toxics. EPA is well aware of the significant needs on the local level to implement successful urban air toxics programs. New air toxic resources, including additional monitoring and more comprehensive modeling, will provide more information to local areas about the importance of developing strategies to reduce air toxics. We agree that the MACT program has been successful; the program remains a critical part of our national air toxics program. In fact, we are increasing our overall funding for air toxics and will continue to fund development of MACT regulations. We also believe that there is a need to develop and implement innovative local solutions to local urban air toxics issues. The Clean Air Partnership Fund provides such a mechanism.

*Question 1d.* Will priority be given to nonattainment areas or specific geographic regions?

Response. After the appropriation is enacted, EPA will develop and issue a Solicitation for Proposals and appropriate guidance containing all criteria by which grants under the Fund will be made. Certainly, a demonstration of air quality need will be one of those criteria and priority will be given to those proposals demonstrating specific needs. Attainment of the ambient air quality standards is certainly an important air quality goal and it is expected that this will be reflected in a meaningful way in the final selection criteria. At this time EPA does not intend to prioritize one specific geographic region over another independent of a consideration of a specific geographic region's needs.

*Question 2a.* AIR TOXICS.—The overall funding for the toxics program is increasing but most of that increase is the \$66 million in the proposed Clean Air Partnership Fund—a program that we know very little about. At the same time, funds for toxic emissions standards—the MACT program—are being cut. The MACT program has been very successful. Toxic emissions have been cut by a million tons per year, and there has been excellent cooperation between Federal and State officials, industry representatives and environmentalists. So, it is unclear why the Administration wants to cut the MACT program when EPA is only about halfway through writing the rules required by the Clean Air Act, while also putting \$200 million into the Clean Air Partnership Fund. When and how do you expect to complete the Clean Air Act-mandated MACT program to reduce toxic air pollution?

Response. The MACT program, authorized by section 112(d) of the Clean Air Act, entails regulating approximately 174 different industry source categories split into 4 different "bins" over a 10-year time span. We are currently completing the 7-year bin of standards. The 10-year or final bin contains 50 percent of all the source categories to be regulated under section 112(d), or as many as were required in the 2-, 4- and 7-year bins combined. Our goal has been to complete all standards by November of 2000, the statutorily-mandated requirement. However, due to the sheer number of 10-year standards required, the remaining work to finalize some of the 7-year standards, and other statutorily-required air toxics activities, we recognize that we will not be able to finish all of these standards by 2000. We do intend to complete all 10-year standards by May 15, 2002, informally known as, the "MACT hammer" date. The hammer date refers to the requirement for a case-by-case technology standard for individual facilities if EPA does not set a standard within 18 months of the statutory date (see section 112(j) of the Act).

*Question 2b.* Despite a 93 percent increase in the line-item for "reducing emissions of air toxics," why are funds for the MACT program being cut when the Agency has completed barely half of the mandated standards?

Response. The President's fiscal year 2000 budget request does not reflect a cut in the MACT program. Total funding for the MACT program (covering standard development and implementation activities) was \$20,610,000 for fiscal year 1999 and \$20,660,000 is requested for fiscal year 2000.

The President's budget request would increase funding for the air toxics program (apart from the Partnership Fund) by \$18 million—from \$91 to \$109 million. The budget request reflects the large number of air toxics activities, including MACT standards, required by the Clean Air Act. These include: mobile source air toxics, the Great Waters program, the Urban Air Toxics program, the residual risk program, the Utility Air Toxics program, section 129 combustion standards and others. Fiscal year 2000 is a pivotal year in which a number of these activities are being completed under court-ordered deadlines. Many of these requirements are studies or strategies that will require further regulatory action.

In order to adequately fund these programs and provide the appropriate regulatory tools to make decisions on these essentially risk-oriented requirements, we prioritized the MACT standards to focus our resources on the highest priorities and, as a consequence, defer action on less critical source categories. We plan to continue work on some of the deferred standards and to explore options to complete all standards by the hammer date.

*Question 2c.* If we spend about \$5 million over the budget request during the next 2 or 3 years, the remaining MACT work could be completed on time. Why couldn't we cut the Clean Air Partnership back to \$195 million so EPA could meet its obligations under the law and complete a program that has worked quite well?

Response. EPA intends to meet its statutory obligations and is exploring options to complete the MACT standards by the MACT "hammer date" of May 15, 2002. We believe our budget submission provides a balanced approach to moving toward completing the MACT standards, addressing our other statutory requirements such as the urban air toxics strategy, and achieving the goals of the Clean Air Partnership fund, which we have addressed in our response to your first question. Completing the MACT standards is not simply a matter of additional funding. We are in the

process of collecting data necessary to develop many of these standards, and will not have sufficient information to finalize certain rules before the end of next year. We intend to request adequate resources to ensure that we have sufficient information to propose and finalize these standards by 2002.

Reducing air toxics emissions and public exposure is an important priority for the Agency. The President's budget request would increase funding for the air toxics program (apart from the Partnership Fund) by \$18 million—from \$91 to \$109 million.

MACT is an important method to reduce air toxics emissions. In addition to reducing emissions, we are very concerned about reducing the public health risks associated with increased exposure to toxic air pollutants—particularly in urban areas. As Congress required, we continue to reduce the emission of air toxics through the MACT program. We are on a parallel track to reduce exposure and associated risk, including focusing on reducing emissions of toxic air pollutants in urban areas.

*Question 3a. PARTICULATE MATTER MONITORING NETWORK.*—In 1997, when testifying in favor of EPA's proposed revision to the Particulate Matter air quality standards, Ms. Browner assured Congress that the EPA would bear the full cost of the new monitoring network needed to implement the regulation. In the subsequent budget, a portion of the monitoring grant money came from other State grant funds. States have asked EPA repeatedly to replace that money in order to make good on the Administrator's promise for full funding. The Administration claims that this budget restores the money taken from State grant funds and provides the final installment of funding for the new monitors. How much new money was added for monitors and how much money was restored to the State grant fund?

Response. Our budget request for fiscal year 2000 includes \$42.5 million to complete the equipment purchase for the nationwide particulate monitoring network and pay the annual State and local costs for operating and maintaining the network. EPA provided State and local agencies with a total of \$86.3 million for the particulate matter monitoring network in fiscal year 1998 and fiscal year 1999; of this total, \$72.6 million was in "new" funds. We awarded all the funds for the particulate network using the authority of section 103 of the Clean Air Act. In addition to the \$42.5 million for particulate matter monitoring, our fiscal year 2000 request also includes \$13.7 million to address previous decreases in grant funds for continuing air programs and \$3 million in new funds to purchase air toxics monitoring equipment. We will award these funds using the authority of section 105 of the Act.

*Question 3b.* Why has the section 105 funding only increased by \$11.2 million if \$13.7 million needs to be added to fully restore the money that was transferred from State programs?

Response. In the fiscal year 2000 budget request, EPA restored the full \$13.7 million to the section 105 grant program for continuing State and local air programs and added an additional \$3 million for air toxics monitoring equipment. We did not, however, carry forward a one-time Congressional earmark of \$5.3 million, consistent with our general policy on Congressional earmarks. Therefore, the total net increase in 105 grant funds from fiscal year 1999 to fiscal year 2000 is \$11.4 million. The funding changes between the fiscal year 1999 enacted budget and the fiscal year 2000 budget request are detailed below (dollars in 1000's):

	S. 103 Fund	S. 105 Fund	Total Grants
Fiscal year 1999 enacted level .....	\$50,700.0	\$144,833.0	\$195,533.0
Minus Congressional earmark .....		-\$5,343.0	-\$5,343.0
Minus S. 103 funding to reflect anticipated completion of monitor purchases ..	-\$8,200.0		-\$8,200.0
New funds for toxics monitors .....		+\$3,000.0	+\$3,000.0
New funds for restoring S. 105 .....		+\$13,700.0	+\$13,700.0
Fiscal year 2000 grant funding .....	\$42,500.0	\$156,190.0	\$198,690.0

*Question 3c.* Will this be enough money to ensure that the monitoring network is fully installed and operational by the end of this year as scheduled?

Response. Yes. The funding in this budget is sufficient to provide for completing the instrumentation of the network, as well as the annual operation and maintenance costs for the network. The network will be fully sited by the end of this fiscal year and, with the funding requested in this budget, will be fully instrumented in the first quarter of fiscal year 2000, allowing for the network to be completely operational at the beginning of calendar 2000.

*Question 4. REGIONAL HAZE.*—When the committee held a hearing on the proposed regional haze rule last year, one of the concerns expressed by States was about multi-state planning organizations. States sought assurance that they would receive technical and financial assistance similar to the assistance EPA provided Western States in planning how to meet the requirements of the regional haze (visibility) rule. EPA assured Members that multi-state planning was essential to the success of the regional haze rule and that such assistance would be made available. The EPA budget states that EPA will “ensure that air quality planning and related Federal, tribal, State and local planning are coordinated.” Does this refer to EPA’s commitment to assist multi-state visibility planning organizations?

Response. Yes, in fact EPA has recently initiated discussions with State Environmental Commissioners about the establishment of Regional Planning Organizations (RPOs). The EPA envisions these organizations as providing a forum for the multi-state planning that EPA believes is necessary to successfully implement a regional haze program. EPA expects that these organizations also will provide a forum for the integration of the planning for the implementation of the PM-fine NAAQS with planning for the implementation of a regional haze program. The initial phase of this discussion will focus on the geographic scope of the RPOs as well as the organizational aspects of establishing a regional planning organization.

In asking for State input, EPA provided five criteria to assist States in formulating their recommendations. These include: (1) the extent of commissioner support for the establishment of RPOs; (2) the best way to ensure adequate protection of Class I areas, including consideration of the source and receptor areas, and transport patterns; (3) the means to ensure appropriate tribal involvement; (4) provision for balanced stakeholder involvement which includes states, tribes, industry, environmental and public interest groups, land managers, transportation and local planning organizations; and (5) any plans/activities that States now have to support the integration of the fine particle standards and the regional haze rule.

Following receipt of State input, EPA expects to work with States to establish mutually acceptable RPOs and to work with the RPOs to develop work plans which identify RPO outputs and schedules for delivery. Finally, EPA also intends to play an active role in each of these RPOs by participating in meetings and providing early and active feedback on the acceptability of technical and policy proposals under consideration by RPO.

*Question 4b.* How much money is allocated in the budget to the support of such multi-state groups?

Response. EPA currently provides direct funding to two multi-state groups, the Northeast Ozone Transport Commission (\$350,000) and the Western Regional Air Partnership (\$150,000). States also use Federal grant funds, as well as their own funds, to support several other multi-state groups.

*Question 4c.* Why has nearly \$9 million been cut from efforts to study regional approaches to haze?

Response. In response to Congressional recommendations EPA targeted approximately \$9 million in fiscal year 1999 to two regional haze efforts, (1) a one-time study of the Big Bend National Park and (2) State development of organizations and comprehensive work plans to address regional haze. The status of these two efforts is summarized below:

- EPA provided the Big Bend Regional Aerosol and Visibility Observational (BRAVO) study \$4 million for a 1999 summer study. Preliminary field work has already begun and the study will be completed in 1999.
- The Agency also has made funding available in fiscal year 1999 for the formation and implementation of regional planning organizations to address regional haze. Recently, EPA sent letters to all 50 State Environmental Commissioners asking for their input regarding the formation of such planning organizations, the States to be included in such regional groupings and points of contact. Upon the identification of these planning organizations, the Agency will provide initial funding to these groups for the development of work plans. Following review of the work plans, the Agency will award the remaining fiscal year 1999 funds to these organizations to commence regional planning activities. It is envisioned that the schedule of activities is such that the initial awards for work plan development will occur in the spring of 1999, with final awards occurring in the June–July timeframe. Fiscal year 1999 funds will carry these organizations through fiscal year 2000. The Agency will prepare a request for additional funding in fiscal year 2001 for the support of the regional planning organizations, based upon the funding needs identified through their work plans.

## RESOURCE CONSERVATION RECOVERY ACT (RCRA)

*Question 1a.* LEAKING UNDERGROUND STORAGE TANK PROGRAM.—EPA's fiscal year 1999 Annual Plan Summary requested over \$69 million to assist, among other things, in the cleanup of 22,000 leaking underground storage tanks. What were the total Federal expenditures for cleaning up underground storage tanks in fiscal year 1999?

Response. The total LUST appropriation for EPA in fiscal year 1998 was \$65 million. The total obligated by the Agency in fiscal year 1998 was \$65 million. The total expenditures were \$62 million.

*Question 1b.* How many underground storage tanks were addressed (cleaned up, replaced, or closed)?

Response. In fiscal year 1998, 24,950 cleanups were completed. As of December 22, 1998, EPA estimated that 65 percent of 850,000 (i.e., about 552,000) active tanks were in compliance with the 1998 deadline for upgrading, replacing, or closing tanks.

*Question 1c.* EPA's fiscal year 2000 Budget request indicates that the Agency intends to assist in the cleanup of an additional 21,000 leaking underground storage tanks and that, by the end of the year, 90 percent of existing tanks will be in compliance with the requirements of RCRA Subtitle I. Even if EPA achieves its goal of remediating 21,000 tanks this year, what is the basis for the Agency's assumption that 90 percent of the existing leaking underground storage tanks will be in compliance?

Response. The Agency's Underground Storage Tank Program is comprised of two parts: the Underground Storage Tank (UST) Program and the Leaking Underground Storage Tank (LUST) Program. The UST Program focuses primarily on preventing leaks from USTs by ensuring that USTs are managed properly and meet appropriate technical requirements. The LUST Program generally focuses on cleaning up leaks from tanks.

The 90 percent compliance rates apply to the UST or prevention side of the program. It means that the Agency expects 90 percent of substandard *tanks* to be upgraded, replaced or closed to help prevent leaks. The goal of completing 21,000 cleanups refers to the LUST side of the Program and refers to cleaning up *releases* from tanks. Therefore, EPA does not have a goal of "remediating 21,000 *tanks*" but of remediating 21,000 *releases* from USTs.

The UST program prevents, detects, and corrects leaks from USTs containing petroleum and hazardous substances. In fiscal year 2000, the Agency's goal is to promote and enforce compliance with the regulatory requirements aimed at preventing and detecting UST releases.

The States are considered to be the primary enforcers of the UST program requirements. The Agency's assumption that 90 percent of the existing underground storage tanks will be in compliance by the end of fiscal year 2000 is based, in part, on the fact that many States have laws and enforcement tools that go well beyond those available to EPA. This includes the "red tag" laws in 19 States (see list below) which allow them to prevent delivery of fuel to noncompliant facilities. In addition, distributors in many other States have decided not to deliver fuel to non-complying facilities for liability reasons. These State enforcement tools will force increased compliance.

## STATES WITH DELIVERY PROHIBITION PROGRAMS

Alaska	Montana
California	North Carolina
Georgia	Oklahoma
Illinois	Oregon
Iowa	South Carolina
Kansas	Utah
Louisiana	Vermont
Massachusetts	Washington
Michigan	Wisconsin
Minnesota	

While EPA expects that as more tanks are upgraded, replaced or closed, there will be fewer leaks, there are still approximately 168,000 cleanups from historical releases that have yet to be completed. The goal of 21,000 completed cleanups refers to EPA's desire to assist States in completing cleanups for historical releases and new releases that will be discovered when owners and operators upgrade, replace or close their tanks as required by the 1998 regulatory deadline.

*Question 1d.* What is EPA's current estimate of the number of underground storage tanks that have not complied with the December deadline? This summer, EPA estimated that there were at least 221,000 underground storage tanks that would not comply with the December 22 deadline. Other EPA estimates have been as high as 370,000 tanks. The fiscal year 2000 budget request, however, States that there is a backlog of 168,000 noncomplying tanks requiring cleanup. Even assuming that this lowest figure is accurate, and that EPA, with its State and Tribal partners, achieves its goal of cleaning up 21,000 tanks this year, won't the compliance rate fall far short of 90 percent?

Response. As of December 22, 1998, EPA estimated that while 65 percent of underground storage tanks were in compliance, 35 percent of the 850,000 (i.e., about 298,000) active tanks were not in compliance with the December 1998 deadline for upgrading, replacing, or closing underground storage tanks. The 221,000 figure mentioned in part D was estimated by EPA in 1997. The 298,000 figure was based on more current estimates from State UST programs. As stated in the answer to Part C above, the backlog of 168,000 refers to historical releases for which cleanups have not yet been completed and not to the number of tanks that have been upgraded, replaced or closed.

*Question 1e.* How does EPA plan to address the remaining backlog after this year? Using the most favorable estimates, there will still be over 147,000 leaking underground storage tanks to be cleaned up. At EPA's current pace of cleanup, it will take over 7 years to complete the cleanup process and comply with the law. What additional resources would be needed to accelerate the pace of cleanup of USTs?

Response. EPA, with very few exceptions, does not perform the cleanups of the leaking underground storage tanks. States and Territories use the Leaking Underground Storage Tanks (LUST) Trust funds to administer their corrective action programs, oversee cleanups by responsible parties, undertake necessary enforcement actions, and pay for cleanups in cases where a responsible party cannot be found or is unwilling or unable to pay for a cleanup. Most States have cleanup funds that cover the majority of owners and operators' cleanup costs. These State funds are separate from the LUST Trust Fund. Collectively, the States have and spend about \$1 billion annually to pay for cleanup of releases from underground storage tanks.

The President's fiscal year 2000 budget request provides sufficient resources to meet the goal of 21,000 cleanups in fiscal year 2000.

*Question 1f.* The fiscal year 2000 Budget Request and Congressional Justification identifies as one of the Agency's highest priorities the approval of States to operate their own UST/LUST programs. Yet, in fiscal year 1999, EPA approved only 2 State programs for a total of 26. EPA's goal for fiscal year 2000 is to approve an additional four states, for a total of 30. If approval of State programs is a high priority, why did the Agency request \$162,000 less than was appropriated in fiscal year 1999 for UST State program approval?

Response. In fiscal year 2000, the Agency will still be working with the States to promote and enforce compliance with the December 1998 upgrading, replacing or closing tank requirements. The shift from State program approval was in part to ensure adequate resources for promoting compliance with the December 1998 tank requirements. Furthermore, fewer States are requesting technical assistance for developing their State program approval applications.

State Program Approval (SPA) remains one of EPA's top priorities because obtaining SPA benefits both States and the regulated community. States run their UST programs under separate State authorities until they obtain State Program Approval (SPA), at which point they run the Federal Program in lieu of the Federal Government. Until States obtain SPA, owners and operators are subject to both Federal and State UST/LUST Program laws and regulations. Therefore, it is much easier for owners and operators to know which laws to comply with when States have SPA.

*Question 1g.* The Budget Request and Congressional Justification states that the reduction "is being made because of the moderate success States have had in achieving SPA." Is the Agency satisfied with its progress in approving State programs? Does the Agency feel that having only 30 approved UST programs reflects "success?" Is the Agency satisfied with its approval of only two State programs in fiscal year 1999?

Response. The Agency wants to have as many States approved as possible. Therefore, the Agency is working closely with a number of states, both encouraging them and pushing them toward State program approval. Furthermore, in fiscal year 1998, the Agency has built in incentives and rewards into its formula for allocating LUST Trust funding to the Regions. Regions are allocated additional funds for States that have achieved SPA or incremental steps toward SPA. Thus far in fiscal year 1999,



one State has been approved for a total of 27 States, plus the District of Columbia and Puerto Rico. The Agency is hopeful that the target of two State programs for fiscal year 1999 will be exceeded.

The Agency cannot force States to apply for State program approval, nor can the Agency approve States that do not meet the minimum requirements for State program approval. The remaining 23 States that do not have State program approval have statutory or regulatory inadequacies that do not allow them to meet the State program approval requirements. Many of these States have decided that it is not in their interest to seek approval at this time. They have decided to apply their staff's limited time to carrying out the preventive and corrective action sides of the program rather than divert them to do the necessary paperwork required for program approval.

*Question 1h.* What level of resources would be required to complete the State program approval process?

Response. The main issues are that the remaining 23 States either have statutory or regulatory inadequacies that do not allow them to meet SPA requirements or their legislatures are unwilling or unable to allocate sufficient resources to provide the staff necessary to work on the State program approval effort. There is no guarantee that additional funding will help because there are other impediments to SPA other than resource levels.

*Question 1i.* How does the Agency intend to proceed with approving qualified Indian Tribe programs.

Response. The Agency does not intend to approve such programs. This is because the Agency lacks authority to treat Indian Tribes like States for purposes of approving UST programs under Subtitle I of RCRA. However, the Agency does have the primary responsibility for implementing the UST program in Indian country. In carrying out this responsibility, the Agency's regional offices conduct a range of activities including educating owners and operators about the UST requirements, conducting inspection and enforcement activities, maintaining a data base of information on USTs located in Indian country, and overseeing cleanups of releases from USTs. The Agency provides assistance to help Tribes to develop the capability to help administer the UST program and develop their own programs under tribal law.

The fiscal year 2000 budget increases State and Tribal Assistance Grant (STAG) funding for tribes from \$450,000 to \$1,850,000. Underground storage tanks are found on about 175 Indian Reservations. These USTs are owned and operated by a wide variety of individuals, corporations, and governments including tribes, tribal members, non-tribal members, oil companies including major oil, the Bureau of Indian Affairs and the Indian Health Service. Tribes are increasingly interested in having an underground storage tank program to regulate USTs (or to help EPA regulate USTs in Indian Country). In the past few years, EPA has provided approximately a dozen grants per year to tribes to help them develop an underground storage tank program. The fiscal year 2000 President's budget will allow the Agency to provide 24 grants averaging \$75,000. Larger tribes, such as the Navajo Nation, would receive over \$100,000. Tribal consortia may also receive larger amounts than average grants. Tribes with smaller numbers of USTs would receive smaller grants in the \$25,000–\$50,000 range.

There are a few tribes including the Navajo Nation that have their own UST regulations. Even when tribes do not have their own rules and regulations, they play a vital role in helping us implement the Federal program by providing outreach to owners and operators, helping to oversee corrective actions and attending tank closures to determine if releases have occurred.

In the fiscal year 2000 budget, the Administration is requesting an increase of \$300,000 in LUST funding for work in Indian Country. In fiscal year 1999, the Administration requested and received an increase of \$2,300,000 for LUST work in Indian Country. These funds were requested to deal with the increasing LUST workload—site assessments and cleanups—in Indian Country and the projected workload that would result from compliance with the 1998 requirements. As owners and operators upgrade, close or replace USTs to meet the deadline, additional releases have been and will be discovered. When owners and operators are unable or unwilling to pay for corrective action, EPA may use the LUST Trust Fund.

It is still too early to judge the impact of the 1998 deadline on the number of reported releases in Indian Country. This is due in part because owners and operators can choose to permanently close or temporarily close their tanks to come into compliance with the requirements. Site assessments are not yet completed on tanks that were permanently closed around the time of the deadline. Tanks can be closed temporarily for 12 months before a site assessment is required. However, in the latest report for the period April 1–October 31, 1998, there was an increase of 5.2 percent

in the number of confirmed releases in Indian Country. (In contrast, the increase nationwide was 3.6 percent.)

*Question 2a.* ADDRESSING RISK IN THE RCRA PROGRAM.—EPA’s Annual Performance Plan and Congressional Justification singles out as one of its highlights to better address risk in the RCRA program, a “proposed Hazardous Waste Identification Rule to regulate lower risk wastes, such as those that have already undergone treatment, under alternative State non-hazardous waste regulation programs.” What specific rulemaking does this statement refer to?

Response. This rulemaking is referenced in the most recent Agency regulatory agenda (63 FR 62455) as the Hazardous Waste Identification Rule (HWIR): Identification and Listing of Hazardous Wastes (Sequence number 3737). This rulemaking is commonly referred to as HWIR-Waste (as compared to the regulation on contaminated soil and other media which is commonly referred to as “HWIR-Media”).

HWIR-Waste seeks to revise how and when the hazardous waste regulations apply to residues from the treatment of hazardous wastes and mixtures of hazardous and non-hazardous waste. HWIR seeks to develop a set of chemical concentration levels (“exit levels”) such that wastes that contain hazardous chemicals at concentrations below those levels would no longer be regulated as a hazardous waste.

*Question 2b.* What was EPA’s estimated cost for completing work on this proposed rule?

Response. The estimates below reflect the Agency’s work on this rule through fiscal year 2000.

(\$ in thousands)	Fiscal year 1999 Operat- ing Plan	Fiscal year 2000 Request	Total Esti- mated Cost
Program Dollars .....	\$1,965.0	\$2,112.3	\$4,077.3
FTE .....	8.9	8.9	17.8

*Question 2c.* Considering EPA recently withdrew its proposal to distinguish between lower and higher-risk contaminated media and exempt lower-risk media from regulation under Subtitle C, does EPA still plan to proceed with a rulemaking exempting lower-risk wastes (as opposed to contaminated media) from Subtitle C?

Response. Yes, EPA fully expects to proceed with the “HWIR-Waste” rule on lower-risk wastes. EPA is currently under a court-ordered schedule for the development of this rulemaking, and is required to have a proposed rule by October 31, 1999 and a final rule by April 30, 2001.

*Question 2d.* If so, why isn’t the Agency proceeding with a similar effort with respect to lower-risk contaminated media?

Response. In its final rule for HWIR-Media, the Agency discusses historic attempts to distinguish between lower and higher-risk contaminated media, a proposal known as the “bright line” (63 FR 65878). The “bright line” option got its name from a “line” dividing more highly contaminated media from less contaminated media and this differentiation was to be based on risk.

In considering the “bright line” option for the final rulemaking, the Agency agreed with the concerns expressed by commentators that the bright line approach would be too difficult to implement. Most fundamentally, a bright line that would satisfy those who sought conservative levels would not sufficiently reform the system to remove the existing barriers to efficient, protective remediation waste management (63 FR 66102). The Agency went on to discuss the time- and resource-intensive process that would most likely result. Such a process would, in addition, provoke litigation and uncertainty, which would in the mean time have a detrimental effect to ongoing and future cleanups.

*Question 2e.* If not, how does EPA plan to reallocate the funds that would have gone to completing the rulemaking?

Response. As discussed above, the Agency plans to pursue the HWIR-Waste rulemaking.

*Question 2f.* What other efforts does the Agency have underway “to better address risk in the RCRA program.” This, too, is identified as a highlight of the RCRA budget.

Response. There are many ongoing activities at the Agency concerned with the consideration of risk in the regulation of waste under RCRA. Improved risk evaluation models and approaches have been used in several recent activities:

AGENCY’S AIR TOXICS MULTI-MEDIA INITIATIVE.—EPA will evaluate the relative contribution air pathway risks to human health and the environment from

wastewater treatment tanks, surface impoundments, and landfills. The results of this evaluation should be available in June 1999.

**RISKS FROM SURFACE IMPOUNDMENTS.**—The Agency is currently conducting a study of risks from management in-surface impoundments, including a national survey of such units. This effort expects to use the risk assessment tool currently being developed under HWIR-Waste. The results of this study should be available in March 2001. The Agency is conducting critical surveys and sampling to provide data for the statutorily mandated 5-year surface impoundment study, which will improve our understanding of risk, exposure and potential ecosystem stressors associated with waste waters and surface impoundments.

**TOXIC CONSTITUENT LEACHING PROCEDURE (TCLP).**—The RCRA risk analysis program is supporting a review of the TCLP procedure and other leach testing protocols and their applicability to various wastes and waste management conditions at land disposal sites.

**HAZARDOUS WASTE MINIMIZATION AND COMBUSTION STRATEGY.**—Addresses the risks posed by indirect exposure (through the food chain, primarily) to the dioxins, furans and toxic metal emitted by hazardous waste combustion in incinerators and boilers and industrial furnaces.

**HAZARDOUS WASTE LISTING DETERMINATIONS.**—EPA's improved groundwater fate and transport model (Composite Model for Leachate Migration and Transformation Products (CMPT)) was the basis for recent final hazardous waste listings for the petroleum refining industry.

**INDUSTRIAL NON-HAZARDOUS WASTE.**—Draft guidance to States is being developed to ensure that non-hazardous industrial waste is managed in accordance with any risks it may pose. Such examination also uses the EPA CMTP model and considers engineered controls at waste Agency is heavily involved in the development of risk assessment tools to be used management units (e.g., liners at landfills).

The Agency is heavily involved in the development of risk assessment tools to be used for present and future regulatory needs. The HWIR risk assessment tool, in particular, is expected to be used in future risk examinations. Other analyses of chemicals in waste and their ability to leach into the environment are underway.

Finally, across many of these risk assessment efforts, the Agency is seeking ways to improve our ability to represent the complexity of chemical contamination in the environment and to understand risks posed to different members of the population. Most specifically, the Agency has recently focused its risk assessment efforts to consider risk exposures to children.

*Question 2g.* Does EPA intend to proceed with this as a rulemaking or will it instead simply issue "guidance?"

Response. As discussed above, the Agency plans to pursue a rulemaking for HWIR-Waste.

*Question 3a.* **CORRECTIVE ACTION PROGRAM.**—In the fiscal year 1999 Annual Plan Summary, EPA states that it "will focus on controlling human exposure and groundwater releases at RCRA facilities designated as high priorities." This same general goal is reiterated in the fiscal year 2000 Annual Plan Summary. How does EPA define "high priority" sites?

Response. EPA has identified 1700 high priority facilities in its "Government Performance and Results Act (GPRA) Baseline." This baseline is used to measure progress toward attaining the corrective action goals established for the GPRA. High priority facilities in this baseline are composed of facilities that score as "High" on the National Corrective Action Prioritization System (NCAPS), as well as up to 15 percent of the total facilities that scored as "Medium" or "Low" on the NCAPS, but are of high priority for the cleanup program due to other factors, such as environmental justice concerns or brownfields interests. NCAPS sets the environmental priority of a corrective action facility through consideration of several factors, including nature of contaminant sources, waste management history and practices, site hydrogeology, contaminant migration pathways and likelihood of human and environmental exposure.

*Question 3b.* How many "high priority" sites has EPA identified? Are there additional or alternative sites that the States have identified as high priority sites?

Response. There are 1700 facilities on the GPRA baseline (see answer to A) which were identified by both EPA and the States. When States identified high priority RCRA corrective action facilities, they were added to the baseline. Due to the substantial efforts EPA Regional Offices have made to work with them, the Agency believes there is general agreement among States that the 1,700 facilities have been correctly identified as the primary focus for RCRA corrective action.

*Question 3c.* What were the total expenditures to address these sites in fiscal year 1999?

## Response. (Total Federal Dollars in thousands—Office of Solid Waste and Emergency Response Corrective Action Program)

Fiscal Year 1999 Enacted

	Dollars	FTE
Headquarters .....	\$2,025.9	17.5
Regions .....	16,141.5	125.5
States Grants .....	24,808.8	N/A
Total .....	\$42,976.2	143.0

The resources listed above include salary, travel, and contract dollars for the Corrective Action program. Regional resources support a variety of corrective action activities including program implementation in States that are not authorized, State oversight, workload sharing in those States that are partially authorized, and program implementation training. Headquarter resources for the Corrective Action Program nationally encompass regulation reform, streamlining and reinvention projects that will improve the program's implementation. State and Tribal Grants (STAG) are awarded to States and tribes to support corrective action program implementation. Grants are awarded only to States that are authorized or partially authorized and they become the primary implementors of the Corrective Action program. STAG resources are allocated according to the State's workplan submitted to EPA regional grants coordinators.

It should be noted that authorized States are required to match 25 percent of the RCRA Program grant and that many States provide additional funding to provide oversight of owner/operator cleanups at RCRA facilities.

*Question 3d.* How many of these sites were actually addressed by EPA in fiscal year 1999?

Response. Information for the first part of fiscal year 1999 is incomplete, in large part because EPA has been developing nationwide guidelines for EPA Regions and States to use when determining that human exposures and groundwater releases have been controlled. EPA Regions and States have been waiting to enter new data pending issuance of these guidelines which were issued in February 1999. The Agency expects that entry of the new data will show significant progress beyond the current levels (299 with human exposure controlled and 244 with groundwater migration controlled). However, we can provide the cumulative number of determinations of human exposures controlled and groundwater migration controlled achieved through the first quarter of fiscal year 1999. The two measures, (also known as "environmental indicators") comprise the fiscal year 2005 GPRA measures for the corrective action program and are its primary short term goals for stemming risk. The measures reflect whether cessation (or absence) of actual human exposures has occurred and whether groundwater contamination is under control at each facility. The long term goal for the program continues to be final cleanup of RCRA facilities with an implementation focus on risks from highest priority facilities first. As discussed in the response to part F below, final cleanup is in progress or being addressed at many of the 1,700 high priority RCRA facilities.

Facilities are not "actually addressed" by EPA or the States in the RCRA corrective action program, in that EPA and the States neither finance nor conduct cleanups. The EPA and State role is to oversee actions taken by the facility owner or operator. As of January 1999, EPA and the States have made the following "controlled" determinations: 299 facilities (18 percent of 1700) with human exposures controlled, and 244 (14 percent) with groundwater migration controlled.

*Question 3e.* What types of activities did EPA undertake at these sites?

Response. EPA and the States issue orders and permits to compel owners or operators to begin corrective action then oversee the facility cleanups. EPA and State oversight is focused on directing the cleanup toward the greatest risks and assuring the appropriateness of remedial actions and making sure the public is involved in key decisions. The cleanup activities undertaken by owners and operators are a wide range of actions that primarily address contaminant source control and groundwater plume migration (e.g., "hot spot" removal, groundwater withdrawal systems to pull back plumes) and human exposure through all pathways of exposure (e.g., removal actions, capping, restricting access, providing alternate water supply). EPA is evaluating owner or operator's activities using EPA's guidelines on controlling human exposures and groundwater migration. These guidelines focus on systematically documenting that all routes of contaminant migration and exposure

pathways have been assessed and addressed such that a determination can be made that the two facility-wide measures are achieved. Although EPA is focusing on elimination of risk from human exposures and groundwater releases as its short-term programmatic goal, many of the high priority facilities are concurrently engaged in final cleanup activities such as characterizing facility-wide contamination, selecting remedies and constructing or installing equipment for the final cleanup. In fact, at many facilities, EPA believes that eliminating human exposures and controlling groundwater releases will support the final cleanup objectives. Further, although final cleanup will ultimately be required by EPA and the States at all 1,700, some facilities are moving ahead on their own for reasons such as reducing liability, desire to sell portions of a facility or because of strong public interest in the facility.

*Question 3f.* Did EPA complete remediation or cleanup at any of these sites, or did it focus instead on "controlling human exposures" and/or "controlling groundwater releases?"

Response. The Agency's short-term focus is on controlling human exposures and groundwater contamination at its highest priority facilities. The Agency's long term goal is to achieve final cleanup of all facilities under the corrective action program, with an implementation focus on the 1,700 highest priority facilities first. Many of the activities that are undertaken to meet the short-term goals are consistent with final cleanup. Final cleanup activities also contribute to the maintenance of controls on human exposures and groundwater contamination. Most cleanups in the RCRA program are phased, rather than addressing all problems at the facility at one time. For example, companies may address certain portions of the facility first, or address a contaminated medium, such as groundwater, prior to moving to the next most pressing environmental problem. The flexibility to phase in cleanups reflects the realities of the RCRA corrective action program in that many of these companies continue to be active, some have limited resources and, each has unique concerns. Oversight agencies must work with companies over the long-term to address cleanup problems. As a result, oversight of these facilities is site-specific, and facilities are in different stages of investigation, stabilization and final cleanup activities. Regardless of the specific path that each facility is taking, and its focus on final cleanup or attainment of the agencies short-term goals, EPA can measure the facilities progress against its environmental indicators determination guidance.

*Question 3g.* How much additional funding would be needed to complete remediation or cleanup at the 170 sites that EPA proposes to "control" next year?

Response. While complete remediation or cleanup is, of course, the end requirement at all RCRA facilities undergoing corrective action, the Agency has established a nearer-term objective of seeing that facility owner or operators take actions at their facilities now, to eliminate unacceptable human exposures and further spread of contaminated groundwater. As the committee notes, the Agency has established the control of human exposures and groundwater releases at 170 of the 1,700 worst facilities as its fiscal year 2000 milestone toward the fiscal year 2005 GPRA goals. Current data shows that as of January 1999, 299 facilities (18 percent of 1,700) have human exposures controlled, and 244 (14 percent of 1,700) have groundwater releases controlled. Based on current progress, the Agency believes that the funding requested in fiscal year 2000 for EPA and the States to oversee the work on controls at the 170 facilities will be sufficient. Control of exposures and groundwater releases is an important step in the ongoing process of a complete cleanup. In fact, actions taken by facilities to control human exposures and groundwater releases often involve significant treatment or removal of contamination that contributes to the final facility cleanup. EPA's current focus on risk reduction through control of human exposures and groundwater should not be taken by the committee to mean that companies are not also proceeding with the complete facility cleanup required under RCRA.

*Question 3h.* How does EPA plan to proceed to complete cleanup at these high priority sites where initial action is taken to control human exposures?

Response. Please see response to part F. above.

*Question 3i.* At how many sites did EPA complete remediation or cleanup?

Response. Please see answer to part F. Data as of January 1999, indicates the completion of the corrective action process, or that active remedial measures as specified in the RCRA permit or enforcement order have been completed (for the entire facility or for areas of the facility) at 61 facilities.

*Question 3j.* What were the total expenditures associated respectively with controlling human exposures, controlling groundwater releases, and completing cleanup?

Response. Actual RCRA cleanup expenditures are borne by facility owners/operators, not EPA or the States. The Agency has chosen not to burden industry with

requirements to report their expenditures for cleanup and therefore is unable to provide this number. The Agency has estimated the economic impact of the RCRA cleanup program which has been included in the Regulatory Impact Analyses (RIAs) of individual proposed or final rules. EPA and authorized State oversight of corrective action cleanups by owner/operators is funded under the RCRA Corrective Action budget, and by a portion of the Section 3011 RCRA program grants to the States. These amounts are provided in the answer to question C. It should be noted that authorized States are required to match 25 percent of the RCRA Program grant and that many States provide additional funding to provide oversight of owner/operator cleanups at RCRA facilities. EPA does not require States to report these expenditures over and above that provided through the RCRA Program grant.

*Question 3k.* Of these costs, what amount was borne by EPA (as opposed to the States or responsible parties)?

Response. Please see response to question J. above. As noted, actual cleanup costs at RCRA facilities are borne by the owner or operator, not EPA or States.

*Question 3l.* The Annual Performance Plan and Congressional Justification states that "the RCRA Corrective Action Program will actively implement the RCRA Cleanup Initiative." Has the Agency in fact developed a formal RCRA Cleanup Initiative?

Response. The details of the *RCRA Cleanup Initiative*, which will formally introduce a number of administrative reforms, are currently in draft and under discussion with stakeholders. The initiative will highlight both new and current flexibility in the program and encourage innovative, practical approaches to cleaning up facilities. Please see part M. below for additional detail on the RCRA Cleanup Initiative.

*Question 3m.* What specifically are the projects "intended to reduce impediments to achieving the Agency's Objective?"

Response. The *RCRA Cleanup Initiative* is the Agency's primary initiative in identifying and reducing impediments in the corrective action program. It will feature a formal, ongoing process for stakeholder involvement to identify additional changes needed to improve the cleanup program. A specific discussion of the projects appears below.

**CORRECTIVE ACTION TRAINING WORKSHOP.**—EPA will focus a major training initiative on effective oversight of cleanups by EPA and State project managers. This comprehensive 3-day workshop stressing Results-Based Corrective Action will be offered in all ten EPA Regions beginning in spring 1999 through 2000. An Internet version of this training is also being developed for release.

**CORRECTIVE ACTION POLICY CLARIFICATION.**—Through an upcoming Federal Register notice, the Agency will withdraw those provisions of the July 27, 1990 proposed Subpart S rule that have not been promulgated to date. Provisions of Subpart S which have been finalized (e.g., Corrective Action Management Unit—CAMU) will remain in effect. This notice will greatly reduce uncertainty for States and owner/operators over the applicability of proposed versus final regulations, and allow EPA to establish flexible approaches for the Corrective Action program.

The notice will describe the goals and current direction of the Corrective Action program and publicly confirm that the 1996 Advanced Notice of Proposed Rule-making (ANPR) remains the primary Corrective Action guidance. EPA will rely on existing regulations, current & future guidance, and training to implement a results-based corrective action program rather than promulgate additional regulations at this time.

**NEW CORRECTIVE ACTION GUIDANCE.**—Guidelines for determining that human exposures and groundwater releases are under control.

- Human Exposures Under Control and Migration of Contaminated Groundwater Under Control—are the short term measures of program progress and are being used to meet the requirements of the Government Performance & Result Act. These guidelines, issued February 5, 1999, describe how to determine if these measures have been met.

- A series of Corrective Action Training Workshops, conference calls, meetings with State and Regional regulators, and the regulated community, will help ensure consistency in the application of these important measures.

**RESULTS-BASED APPROACHES FOR RCRA CORRECTIVE ACTION.**—This guidance, which should be issued in summer 1999, will stress that Results-Based approaches, which emphasize outcomes, not process, should be a significant part of State/Regional Corrective Action programs. These results-based approaches should be used at many Corrective Action facilities, including certain high-priority facilities, to meet the GPRA goals and to move facilities toward the longer-term goal of final facility cleanup.

**CORRECTIVE ACTION COMPLETION.**—This guidance, planned for issuance in late 1999, will show how to document completion of corrective action at facilities. It will include direction on: termination of permits where Corrective Action is complete; how to determine that Corrective Action is complete at part of a facility; and the importance of public involvement in Corrective Action.

**THE ROLE OF GROUNDWATER USE IN RCRA CORRECTIVE ACTION.**—This guidance, which is expected to be issued in mid-1999, will show how to account for current and reasonably expected uses of groundwater when implementing interim and final RCRA Corrective Action remedies. It will convey that groundwater-use decisions should be based on EPA-endorsed Comprehensive State Groundwater Protection Programs (CSGWPP). In the absence of CSGWPPs, groundwater-use decisions can be based on other EPA-endorsed State classification or use designations.

**AGGRESSIVE OUTREACH TO EPA REGIONS AND STATES.**—In addition to emphasizing the importance of environmental results, this outreach includes getting additional States authorized to implement the Corrective Action program. EPA will also be strongly encouraging the States to incorporate the Hazardous Remediation Waste Management Requirements (HWIR-Media) Regulation and Post-Closure Regulation into their programs. This outreach will also place a renewed emphasis on the importance of early and meaningful public involvement.

**PUBLICLY ACCESSIBLE INFORMATION ON CLEANUP PROGRESS.**—Detailed progress information such as the human exposures or groundwater releases controlled results for individual facilities will be posted on the Corrective Action Website. This will allow stakeholders, including affected community, to monitor progress at facilities in their area as well as the overall Corrective Action Program progress. Until this more detailed information is available, the website will show progress for each EPA Region and state.

*Question 3n.* What specifically are the projects to “enhance State and stakeholder involvement?”

Response. Please see response to question M. Detailed progress information such as the human exposures or groundwater releases controlled results for individual facilities will be posted on an Agency website. This will allow stakeholders, including the affected community, to monitor progress at facilities in their area as well as the overall Corrective Action Program progress. Until this more detailed information is available, the website will show progress for each EPA Region and state. By providing cleanup progress information for individual facilities, the Agency will make information on facility cleanup more readily available to communities. It is hoped that this additional availability of information will generate greater public interest and awareness in Corrective Action at individual facilities, thereby enhancing the ability of the community to become more involved in decisions about the cleanup.

*Question 3o.* What specifically are the projects intended to “promote innovative approaches to cleanup actions?”

Response. The two primary approaches EPA currently plans for promoting innovative approaches are the Corrective Action Training Workshop and the Results-Based Approaches for Corrective Action Guidance. Details on how they will promote innovative approaches is provided in the response to the previous question.

*Question 3p.* What other “long term efforts to enhance the program” does EPA intend to undertake?

Response. Please see responses to parts L, M, and N.

**Question 4a. RCRA PERMITTING PROCESS.**—EPA’s fiscal year 1999 budget request States that the Agency will approve 153 permits or other controls “to prevent dangerous releases to air, soil, and groundwater” for a cumulative total of 62 percent of hazardous waste management facilities in the United States. How many permits were actually issued in fiscal year 1999 to hazardous waste management facilities?

Response. In fiscal year 1999, EPA estimates that 116 more facilities will have approved controls to prevent dangerous releases to air, soil and groundwater. The 116 estimate is based on information submitted by regional RCRA permitting programs and relies on information that States supply to the regions.

In fiscal year 2000, EPA indicates that an additional 146 facilities will have approved controls in place to prevent dangerous releases to air, soil and groundwater for a cumulative total of 65 percent of all the roughly 3,400 hazardous waste management facilities.

*Question 4b.* Does this goal include facilities in States that have approved RCRA programs?

Response. The RCRA permitting program is a State delegated program. Since almost all of the States are authorized to issue RCRA permits, most RCRA permits are issued by them; therefore, the accomplishments that are projected for fiscal year 2000 include permitting activities that are being carried out by EPA’s partners. As

a point of clarification, EPA expects that in fiscal year 2000, 65 percent of the GPRAs baseline facilities will be under approved controls. The Agency's best estimate of number of GPRAs baseline facilities was about 3,400 facilities at the time of the fiscal year 2000 budget submittal. Therefore, in fiscal year 2000 EPA expects to have 65 percent of the 3,400 facilities under approved controls.

*Question 4c.* EPA's own numbers suggest that there are a total of 5,200 facilities that manage hazardous waste and that even if the fiscal year 2000 goals are met, there will be 1,820 existing hazardous waste management facilities that do not have final permits or approved controls in place. At EPA's current pace of an average of 150 facilities approved per year, it would take over 12 years to complete the process of approving final permits or controls for existing hazardous waste management facilities. Given those figures, why hasn't EPA dedicated more resources to addressing this backlog?

Response. As discussed in the previous response, there appears to be confusion regarding the fiscal year 2000 goal for hazardous waste management facilities "under approved controls." EPA expects to have 65 percent of the GPRAs baseline facilities under approved controls. This is estimated to be about 65 percent of the total baseline of roughly 3,400 facilities. If EPA and the States continue to bring 150 facilities under approved controls per year, Men entire group of 3,400 hazardous waste management facilities should be under approved controls by fiscal year 2008. Based on current levels of progress the Agency believes the fiscal year 2000 President's Budget provides EPA, Regions, and States with sufficient funding to keep the Permit Program on track to meet the fiscal year 2000 GPRAs goal.

*Question 4d.* What were the total expenditures for fiscal year 1999 for approving permits or other controls at hazardous waste management facilities?

Response. (Total Federal Dollars in thousands—Office of Solid Waste and Emergency Response Permitting Program)

Fiscal Year 1999 Enacted

	Dollars	FTE
Headquarters .....	\$1,330.9	12.0
Regions .....	14,057.7	155.9
States Grants .....	22,852.9	N/A
Total .....	\$38,241.5	167.9

*Question 4e.* What are the total expected expenditures to achieve the goal for fiscal year 2000 of approving permits or other controls at an additional 146 facilities?

Response. (Total Federal Dollars in thousands—Office of Solid Waste and Emergency Response Permitting Program)

Fiscal Year 2000 Requested

	Dollars	FTE
Headquarters .....	\$1,872.1	12.0
Regions .....	14,900.9	155.9
States Grants .....	22,852.9	N/A
Total .....	\$39,625.9	167.9

SUPERFUND

*Question 1.* There is accumulating evidence that the Superfund National Priority List cleanup program is "ramping down," or will do so soon. For example, the General Accounting Office reported in November that there were 232 sites nationwide that either EPA, the States or both believed would eventually be listed on the National Priority List. Over the last 6 years, EPA has added an average of 26 sites per year to the List. Do you concur that the scope of future additions to the Superfund NPL is likely to be closer to the 232 new additional site level projected in the November GAO report or will be much larger than that?

Response. Although the Superfund program has made substantial progress in the last 6 years, significant work remains at current and proposed NPL sites. At the end of fiscal year 1999, the Agency will still be performing work at over 700 sites currently on the final NPL (an estimated 470 sites will have construction underway). We expect to complete construction at most of these sites by 2005. Additionally, EPA will need to invest resources in post-construction activities to ensure that



remedies remain protective into the future. EPA also expects to continue to have an important role in conducting removal actions to protect communities across the country.

While we do not know now how many more sites will need to be added to the NPL, there will be new listings. We list sites on the NPL only after considering a number of factors. For example, when the sites present a serious threat to human health and the environment, when a State asks us to list a site, or when a State is unable or unwilling to conduct the cleanup. Using these factors and working with State officials the Agency has listed about 26 sites a year over the past several years. EPA will continue to use these factors and work with the States to guide our listing decisions in the future. This year the Agency expects to list no more than 40 sites on the NPL. Thus we expect to continue to conduct significant work during the next 5 years at current and future sites.

*Question 2a.* If you believe that the new NPL listings are likely to be closer to the GAO report level, what implications does this raise for the funding of the Superfund program? In particular, can you provide an estimate of what you expect the Superfund program will look like in 5 years? How many sites will be construction complete?

Response. The Agency's Government Performance and Results Act (GPRA) goal projects the rate of Superfund site construction completions through 2005. Assuming a steady budget through the next seven fiscal years (Fiscal Year 1999—Fiscal Year 2005), and assuming, on average, 85 construction completions per year, we should achieve by the end of fiscal year 2005 about 1,180 construction completions.

*Question 2b.* How many sites will be on the NPL but not yet construction complete?

Response. As of January 1999, there were 1446 total NPL sites. Assuming that EPA will achieve 85 construction completions through 2005, over 400 sites currently on the NPL will be in remediation in 2003. This estimate does not include any additional sites that may be added to the NPL during this or subsequent years.

*Question 2c.* What level of funding and staffing will be needed to execute Superfund's projected mission in fiscal year 2004 and beyond?

Response. Although the Superfund program has made substantial progress in the last 6 years, significant work remains at current and proposed NPL sites. At the end of fiscal year 1999, the Agency will still be performing work at over 700 sites currently on the final NPL (an estimated 470 sites will have construction underway). We also expect to list 40 sites this year on the NPL. Additionally, EPA will need to invest resources in post-construction activities to ensure that remedies remain protective into the future. Finally, EPA expects to continue to have an important role in conducting removal actions to protect communities across the country.

Although our need for future resources is clear, the Agency has not completed development of the Superfund budget request for fiscal years 2001 and beyond. However, to continue our current pace of cleanup, including removals, cleanups of new NPL additions, and post-construction work, our GPRA goal currently assumes a steady State budget into the future.

*Question 3.* Again, assuming that there will be a relatively small number of new sites added to the Superfund NPL, what do you foresee as the role and resource requirements of the Superfund program at sites that will necessarily fall to State cleanup programs for action?

Response. Historically, we have listed an average of 26 sites per year on the NPL. This year we expect to list roughly 40 sites on the NPL. We do not know now how many more sites will ultimately need to be added to the NPL, but we will continue to list sites on the NPL *only* if the site presents a serious threat, when a State requests a listing, or when the State is unable or unwilling to conduct the cleanup. We have been using and will continue to use these considerations to guide our listing decisions. States are supporting our NPL listing activities at this level through our State concurrence policy.

States play a key role, and will continue to play a key role, in site assessment and site cleanups. State cleanup programs play a vital role for both NPL and non-NPL sites and it is EPA's hope that this successful partnership continues within the Superfund program. In fact, Superfund funding has been a key factor in the growth of State Superfund programs. EPA's Superfund program has provided major funding to the States. This past year, 1998, Superfund provided over \$140 million to the States. Of that total, approximately \$25 million went toward State voluntary cleanup programs and Core program funding to States. Another \$17 million was provided to States in the form of cooperative agreements for funding site assessment work (PA/SI funding), \$32 million for NPL site studies, planning, design, and PRP oversight, and \$69 million for Fund-financed NPL remedial actions managed by States.

Further, EPA plays a significant role in non-NPL cleanups by conducting removal actions. EPA has also performed approximately 5,500 removals since the beginning of Superfund at a rate of 200–300 per year. These activities will not decrease if the number of NPL sites decreases. As a result of these factors, EPA does not foresee a sharp decline in its need to maintain its current role or resource requirements through 2005.

*Question 4.* EPA's fiscal year 2000 budget projects completion of all remedial construction at 925 sites by the end of fiscal year 2002, maintaining the pace of 85 construction completions per year attained in 1997. How long beyond 2002 will EPA maintain an 85 construction cleanup per year pace before the program starts to run out of non-Federal sites ready for cleanup.

Response. Due to the success of our Administrative Reforms, we project that we will achieve, on average, 85 construction completions through 2005. Projections beyond this year cannot be made with any certainty due to the changing demands of site-specific work, such as new information regarding types or amounts of contamination present, shifts in construction schedules, or PRP takeovers.

*Question 5.* Over the past 6 years, EPA has added approximately 155 sites to the NPL, an average of 26 per year. GAO says it takes about 10.6 years from site listing to cleanup; EPA would probably say that administrative reforms have reduced this length of time. Assume that the true length of time to clean up a site is 8 years. Setting aside the sites deemed "construction complete," doesn't that imply a steady-state NPL size of approximately 208 sites—eight times twenty-six? If you disagree with this analysis, is there some other set of assumptions that the committee should use for the annual rate of additions to the NPL, or expectations about the ultimate size of the Superfund program?

Response. By 2005, EPA will have cleaned up the vast majority of the sites currently listed on the NPL. However, we expect that more than 250 of the current NPL sites will be in active remediation at that time. We do not know now how many more sites will need to be added to the NPL, but we will focus our NPL listing activities on those sites that States agree should be added to the NPL and those sites where States are unable or unwilling to clean up the site. We have been using and will continue to use these considerations to guide our listing decisions. This year we expect to list roughly 40 sites on the NPL.

In addition to remedial action costs, the EPA Superfund budget would need to include site assessment activities, removal program needs, post-construction activities, other Federal agency costs, and the other categories displayed, for example, in EPA Superfund appropriation requests. We will continue to give all these factors careful consideration as we prepare our budgets in future years.

*Question 6.* It usually takes a considerable period of time from when a site is listed until it is ready for the actual cleanup. It is conceivable that there will be much work for Superfund NPL cleanup program at a later time because of an unforeseen acceleration in the rate of NPL additions. However, will not the cleanup program face a dramatically decreased demand for work in the next few years as work is completed on sites listed prior to 1993, as there are only 155 or so sites moving through the pipeline from the listing years of 1993 through 1998? How do you manage a Superfund system staffed to complete 85 sites a year when past listing decisions will only present it with 26 sites for cleanup to begin in any particular year?

Response. The Superfund program has made substantial progress in the last 6 years, and approximately 89 percent of the NPL sites have had cleanup activities, are construction complete, or have cleanup underway. However, these accomplishments cannot overshadow the significant work remaining at current and proposed NPL sites. At the end of fiscal year 1999, the Agency will still be working to complete construction at over 700 sites currently on the final NPL.

We also need resources to clean up newly listed sites as quickly as possible. We do not know now how many more sites will need to be added to the NPL, but we will focus our NPL listing activities on those sites that States agree should be added to the NPL and sites where a State is unable or unwilling to conduct the cleanup. We have been using and will continue to use these considerations to guide our listing decisions. This year we expect to list roughly 40 sites on the NPL.

Furthermore, even as cleanup activities are completed at sites, EPA will need to invest resources in ensuring that remedies remain protective into the future. EPA will have responsibilities to conduct oversight of continuing operations, to review periodically remedies at which waste remains in place, and to take response actions at sites at which remedies do not remain protective. Finally, EPA expects to continue to have an important role in conducting removal actions to protect communities across the country. The need for EPA involvement in removals is unlikely to

decline, and, as fewer sites are added to the NPL in the future, removal actions may be more widely used to achieve necessary cleanups.

*Question 7a.* Less than 10 months ago, on April 30, 1998, you testified before Senator Bond's Appropriations Subcommittee that the Administration needed an extra \$1.3 billion, spread over 2 years, to meet certain objectives. In justifying the request for \$2.1 billion in 1999, you stated that the requested funding level would "ensure" that we meet the Administration's commitment to clean up 900 of the nation's worst toxic waste sites by the end of the year 2001." Your fiscal year 2000 budget submission States the Administration plans to complete 925 cleanups by the end of 2002. That will be accomplished while holding Superfund funding flat at approximately \$1.5 billion per year. Based on your fiscal year 2000 budget, your year end goal for fiscal year 2001 is 840 construction completions. Can I assume that the infusion of an added \$1.3 billion that the Administration requested 10 months ago would merely have resulted in accelerating the Superfund program by a net of 60 sites completed 1 year early—the difference between the 900 sites projected for completion by the end of 2001 in last year's budget request, versus the 840 projected in this year's budget request?

*Response.* The Superfund program has made substantial progress in completing construction at NPL sites. EPA expects to achieve completing construction at 840 sites by the end of 2001. The Administration's request for additional funding for fiscal year 1998 and fiscal year 1999 provided a window of opportunity to achieve more construction completions and increase the pace of cleanup through 2001 and beyond, while permitting the Superfund program to continue critical site assessment functions and initiate cleanups at other sites. The additional \$1.3 billion requested by the President would have enabled EPA to complete the construction of cleanup activities in 60 additional communities by December 2000. With the lack of this funding, nearly 2 additional years will have passed before EPA achieves construction completions in 925 communities. In addition, the additional funding would have enabled EPA to initiate cleanups in far more than the 60 communities and achieve construction completions far earlier in many of these communities than is possible without this infusion of cleanup funds.

*Question 7b.* There is no doubt that one reason for the change in Superfund budget requests is due to administrative improvements which lower the cost of cleanups. However, based on previous Administration statements regarding the success of the reforms, it is unlikely that the cost savings attributable to administrative improvements have only come to light in the last 10 months. Can you provide the committee with a detailed analysis of the assumptions on which your 1998 testimony regarding the fiscal year 1999 budget was based, and further demonstrate the areas which have improved or changed and form the basis for your dramatically lower fiscal year 2000 request?

*Response.* In 1997 as EPA was developing the fiscal year 1999 budget request, we used site-specific project schedules and budgets based on the best professional judgment of regional project managers who are responsible for managing or overseeing site-specific cleanup actions. However, as investigations and cleanups proceed, time and budget requirements change, and the Regions change their projections to reflect such changes. At the time of our budget request in fiscal year 1999, we relied on the best information available. Likewise, our fiscal year 2000 budget also reflects the best planning projections available to us at the time we formulated the request.

*Question 7c.* As you know, I opposed the requested increases as unjustified. I felt that the request was not based on any firm data or prioritization of resources. In hindsight, given other priorities for EPA funds, that was the right course. Can you assure me that this request will not return in the fiscal year 2001 budget?

*Response.* The Agency has not yet completed development of its budget and targets for fiscal year 2001. The budget request will reflect project needs, and will continue to reflect EPA's commitment to our "enforcement first" policy, support a strong State role in cleanups, and remain diligent in our efforts to control and reduce cleanup costs.

*Question 8a.* The Balanced Budget Act of 1997 included a Brownfields Tax Incentive that allowed immediate expensing, for tax purposes, of environmental cleanup costs at certain sites. Normally, the cleanup costs would be added to a property's basis then depreciated over the life of the property. This tax incentive has been available since August 1997. Although the Administration had great hopes for it, anecdotal reports indicate use has not been as great as expected. Do you have any information—qualitative or quantitative—on the use of this incentive? Do you expect Better America Bonds to fare better?

*Response.* The Brownfields Tax Incentive was signed into law on August 5, 1997. The first filing deadline for corporate returns under this incentive was September

15, 1998; thus providing a very short window of 6 months for actual usage of the incentive. Additionally, the complexity of the projects considered under the incentive and the geographic eligibility requirements have reduced the active usage of the incentive in this first year. EPA and its Federal and private partners are working diligently to provide tools to taxpayers to facilitate the use of the incentive. In discussions with private sector developers and legal and financial experts, we have learned that usage has been further reduced by the inclusion in the legislation of a sunset date, which removes some certainty that cleanup costs will be eligible for deduction. Despite these challenges, extensive outreach and networking on the incentive have been accomplished in order to increase usage of the incentive.

The Brownfields Tax Incentive did not contain any requirements for States to report on usage of the incentive. However, as part of EPA's outreach efforts, case studies were developed to demonstrate the successful use of the Tax Incentive at two ongoing brownfields projects.

The Better America Bonds proposal has been received with considerable enthusiasm by communities and organizations interested in Brownfields cleanup, green space preservation and water quality protection. Over the past year, communities across the country signaled a strong desire for more livable communities in more than 240 State and local measures on land conservation and growth initiatives. Better America Bonds would provide the financing necessary to enable communities to move forward with many of their Brownfields and Greenspace plans.

*Question 8b.* Please explain the relationship between Better America Bonds and the tax incentive—as they appear to be mutually exclusive. If both are available, please provide the committee with hypothetical scenarios that demonstrate which incentive would be a “better deal” at a typical Brownfields site.

Response. Better America Bonds will further the Brownfields Initiative by providing much needed flexible funding that communities can use for Brownfields activities. A recent report by the U.S. Conference of Mayors pointed to a lack of capital for local governments as the leading barrier to the cleanup and reuse of Brownfields. Brownfields cleanup is one of the qualifying purposes for Better America Bonds. Communities that would like to issue bonds to overcome the financing gap for Brownfields cleanup would be able to apply for Better America Bonds issuance authority. The Bonds proposal will enable states, tribes and local governments to generate \$9.5 billion in bonds over 5 years.

The Better America Bonds proposal will work in conjunction with other existing tools such as the Brownfields Tax Incentive. It will supplement, not replace, existing Brownfields funding, thus increasing the range of tools and funds available for Brownfields cleanup. The Tax Incentive, for example, is targeted at privately-financed Brownfields cleanups; the Bonds proposal, in contrast, supports publicly-financed Brownfields activities.

*Question 9a.* The Administration Budget assumes reimposition of the Superfund taxes. Since the taxes expired at the end of 1995, there have been changes that lower the Alternative Minimum Tax. This is the basis on which the corporate environmental tax was computed. Does the President's budget use the reinstated Superfund taxes to offset new, non-Superfund spending?

Response. The Budget proposes to reinstate the Superfund excise taxes and corporate environmental income (CEI) tax. The revenues from this proposal would continue to be fully dedicated to the Superfund Trust Fund for the exclusive purposes of Superfund cleanup activities. In addition to raising revenues, the proposal to reinstate the Superfund taxes would generate roughly \$1.2 billion per year in PAYGO credits. The Budget proposes to use these PAYGO credits, but not the tax revenue, as an offset to increase discretionary spending. Even though the Superfund PAYGO credits would offset increased non-Superfund spending for scoring purposes, no funds would be diverted from the Superfund Trust Fund.

*Question 9b.* Must the Superfund taxes be reinstated in order for the Congress to continue funding Superfund at its current requested level of \$1.5 billion per year, as the 1997 Balanced Budget Act assumes?

Response. The 1997 Balance Budget Act assumes the reinstatement of Superfund taxes. Superfund taxes support national program priorities such as construction completions. Without the reinstatement of Superfund taxes, the trust fund unappropriated balance will be depleted before the end of fiscal year 2001. Superfund tax revenue replenishes the trust fund balance and provide funds for the program. A lack of funding will disable the program in achieving its goal of 925 completions by fiscal year 2002.

*Question 9c.* Is it the Administration's view that reimposition of its proposed mix of Superfund taxes fairly apportions financial responsibility for Superfund cleanup activities among the various categories?

Response. The existing tax structure base is generally realistic and equitable on the basis that it is aimed at those at the producer/manufacturer/owner level using the substances found at Superfund sites. The Superfund tax structure adheres to the "polluter pays" principle, a cornerstone of the Superfund program—that those who are responsible for the contamination must pay for the cleanup. This tax is imposed on those hazardous substances most frequently found at Superfund sites and collected to pay for their clean up and prevention, response, and reduction of the health and environmental risks posed by them.

The economic impact of Superfund environmental taxes is minimal, both at the producer/manufacturer/owner level and at the consumer level. In an analysis completed in 1994 for the Agency, it was found that the chemical excise tax was generally less than 2 percent of the chemical prices and likely to be passed through to consumers in the form of higher prices. The impact of petroleum taxes on petroleum prices was less than 1 percent. Finally, the environmental tax fell primarily on larger firms. Eighty-nine percent of the corporate environmental tax was paid by firms with assets exceeding \$250 million. In essence, the analysis suggested that the amount of taxes relative to prices was small enough to avoid significant economic impacts (*Economic Impact of Superfund Taxes* report to EPA. Prepared by Industrial Economics, Inc., 1994)

*Question 9d.* Does the Administration's proposal for the corporate tax take into account the 1997 reduction in the alternative minimum tax, or would the environmental tax be a proportionately lower percentage of the overall mix of Superfund taxes, including excise taxes, that it was prior to its expiration in 1995?

Response. The Administration proposes the reinstatement of the Superfund taxes, excise and environmental taxes. The Administration's estimates take into account the change in the alternative minimum tax "AMT" according to the Taxpayer Relief Act of 1997 (Public Law 105-34). According to the Congressional Joint Committee on Taxation, "Congress believed that the alternative minimum tax inhibits capital formation and business enterprise. Therefore, the Act modified the depreciation adjustment of the alternative minimum tax (the most significant business-related adjustment of the alternative minimum tax) with respect to new investments. In addition, the Congress believed that the alternative minimum tax is administratively complex. Therefore, the Act repealed the alternative minimum tax for small corporations" by essentially redefining the AMT. For example, a corporation that had average gross receipts of less than \$5 million for the 3-year period beginning after December 31, 1993 is exempt from the alternative minimum tax.

The Administration's estimates effectively maintain the excise tax mix and corporate environmental tax rates at the same levels prior to 1995. This will sustain each tax's percentage of the total tax revenue to approximately equal to prior 1995 percentages. The corporate environmental tax will only be affected by the fundamental re-definition of the AMT on which it is based. Under the new AMT definition small businesses are excluded, so one might expect the revenue stream to decrease from the corporate environmental tax. If the economy were held constant to 1995 conditions and the two tax rates were applied, there would be a difference in revenue streams. However, given the excellent economic conditions of recent years, projections show that the alternative minimum tax and, as a result, the derivative corporate environmental tax receipts would be relatively higher than those prior to 1995.

*Question 10a.* In February 1998, EPA issued guidance regarding settlements with parties at so-called municipal co-disposal sites. It appears that the guidance is based on EPA's experience at many such sites, and assumes that EPA can use formulas and percentages as a method to accurately estimate the share of liability attributable to municipal solid waste activity. If that liability can be accurately approximated, then EPA can quickly settle liability with these parties. Is it fair to State that EPA issued the guidance because it was necessary to deal with parties whose liability at Superfund sites is based on conduct associated with Municipal solid waste (MSW) disposal at co-disposal sites differently from other parties?

Response. The February 5, 1998 "Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites" (Policy) is intended to reduce the transaction and litigation costs of contribution claims among responsible parties at co-disposal sites, by giving guidance on resolving such contribution claims. The Policy represents an exercise of the Agency's enforcement discretion to enter into settlements to resolve a party's liability at a Superfund site and, thereby, provide a settling party with contribution protection for matters addressed in the settlement pursuant to CERCLA section 113(f)(2). Although MSW may contain hazardous substances, such substances are generally present in only small concentrations. MSW-only landfills rarely become Superfund sites, and the cost of remediating

MSW is typically lower than the cost of remediating hazardous waste. Therefore, EPA has had a long-standing policy of not identifying an MSW generator/transporter as a potentially liable party unless there is site-specific evidence that the MSW the party disposed of contained hazardous substances derived from a commercial, institutional or industrial process or activity. Despite this long standing policy, the potential presence of small concentrations of hazardous substances in MSW has resulted in contribution claims by private parties against MSW generators and transporters. Although EPA will continue its policy of not generally identifying MSW generators/transporters as PRPs, the 1998 Policy recognizes the strong public interest in reducing the burden of contribution litigation at co-disposal landfills and provides for settlements with the MSW parties. EPA was not required, nor was it otherwise "necessary" for EPA, to issue the Policy.

*Question 10b.* There were changes to the formulas between the July 1997 proposal and final February 1998 guidance. Do you believe that the formulas and percentages in the final municipal settlement guidance accurately approximates the share of liability attributable to solid waste activities at a co-disposal Superfund site?

Response. The formulas and percentages in the Policy that provide guidance on settlement terms with MSW parties represent the Agency's best approximation of fair settlement terms based on its experience in implementing and enforcing both the Superfund and RCRA programs. For settlements with MSW generators and transporters, EPA estimated the cost of remediating MSW at a representative RCRA Subtitle D landfill. This cost estimate is based on the costs of closure/post closure activities at such landfills, and is derived from the cost model used in EPA's "Regulatory Impact Analysis for the Final Criteria for Municipal Solid Waste Landfills" (PB-92-100-841, September 1991). For municipal owners and operators of co-disposal sites, the presumptive settlement percentage was based on several factors, including the average historical settlement percentages paid by such municipalities at sites with multiple, viable, non-*de minimis*, non-MSW generator or transporter PRPs. The Policy provides that such settlement terms should be adjusted based on-site-specific factors. EPA believes that the Policy's settlement formula and percentage for MSW generators and transporters and municipal owners and operators of co-disposal sites provides a fair and efficient means by which EPA may settle with such parties.

*Question 10c.* Between July 1997 and February 1998 there were changes in the guidance regarding the treatment of owners and operators. The changes make it explicit that the guidance should be applied to municipal owners and operators when there are viable, non-*de minimis*, non-MSW transporters and generators. Assuming that there are two different municipal owners at identical sites, and at one site DuPont is also a PRP, while at the other all of the non-MSW PRPs are now defunct or bankrupt, the municipal owner at the former can get relief under the policy, the municipal owner at the latter probably cannot. Why is the viability of other parties even relevant? Is not the purpose of the policy to offer a fair settlement to parties that engaged in a specific type of conduct?

Response. The Policy was always intended to apply to co-disposal landfills where there are contribution claims between industrial parties and MSW generators and transporters, and municipal owners and operators of such sites, and is meant to provide guidance for resolving contribution claims among those potentially responsible parties. In the first example, therefore, the Policy would apply if DuPont brought a claim for contribution against the municipal owner. In the second example, the Policy would not apply. Also, the Agency may not exercise its enforcement discretion as contemplated under the Policy if doing so would leave only the United States to conduct the cleanup of a site with little or no possibility of recovering its response costs.

As explained in the Policy, the presumptive settlement percentage for municipal owners or operators of co-disposal sites was based on several factors, including the average historical settlement percentages paid by such municipalities at sites with multiple, viable, non-*de minimis*, non-MSW generator or transporter PRPs. If EPA had included sites where the municipality was the only viable PRP in reviewing these past settlements, the average settlement amount would have been a great deal higher because it would have accounted for a number of settlements where the municipality paid 100 percent of the cleanup costs. This consideration was present both at the time the policy was first published for comment and at the time that it was issued in revised form.

As always, EPA intends to continue to take site specific factors into account to reach a settlement that is in the public interest.

*Question 10d.* One reason for differential treatment in the scenarios noted above could be to protect Superfund from large cleanup expenditures for orphan shares.

Can you estimate how much it would cost to implement the reform in the same manner for all municipal owners irrespective of the viability of other responsible parties?

Response. EPA is performing the analysis you have requested and will provide you with the results as soon as they are available.

*Question 11.* You have requested \$89 million in the fiscal year 2000 budget for a line described as "Maximizing PRP Involvement (including reforms)." Please inform the committee how much is budgeted in fiscal year 2000 to pay for reimbursement of orphan shares under section 122(b)(1) or any other provisions of CERCLA. Please provide the same information for fiscal years 1993 through 1998, along with projections for fiscal year 1999.

Response. As a matter of policy, the Agency has been providing compensation to settling parties who agree to perform cleanup work by forgiving portions of past recoverable EPA costs and future oversight costs pursuant to EPA's June 1996 orphan share policy. Historically, the Superfund budget has not requested discretionary resources to compensate PRPs for orphan shares. In recent years and in the fiscal year 2000 President's Budget, however, the Agency has requested \$200 million in mandatory orphan share spending.

*Question 12a.* EPA's GPRA goal for the RCRA Corrective Action Program is to control human exposures at 95 percent of the high priority corrective action sites and control groundwater releases at 70 percent of the high priority corrective action sites by 2005. To meet that goal, EPA will have to address 1620 high priority sites over the next 6 years. EPA has requested \$22.7 million for fiscal year 2000 for the RCRA corrective action program to address 170 high priority sites. Even assuming that many cleanups will be conducted by responsible parties, in some cases under State supervision, how will this amount be sufficient to meet the Agency's stated goal of addressing 170 high priority sites in fiscal year 2000?

Response. Please see response to question 3-G. above. With respect to the number of facility cleanups under State supervision, 33 States are authorized for the RCRA Corrective Action Program and a number of others oversee facility cleanup work under work sharing arrangements with EPA Regions. The Agency believes that the majority of the cleanups taking place or planned at the 1,700 high priority facilities are, or will be, under State supervision.

*Question 12b.* It appears that even if EPA achieves its exposure control goals at 170 sites in fiscal year 2000, it will still fall short of the target number of 242 sites needed to stay on track to meet the overall GPRA goal by 2005. Is this true? If true, why didn't EPA request additional funds to address a larger number of high priority sites, or to complete cleanup at these sites?

Response. The committee's reference to the "target number of 242 sites needed to stay on track to meet the overall GPRA goal by 2005" appears to straight line the 1,207 facilities remaining after the fiscal year 2000 over 5 years assuming an annual target of 242 in each remaining year to reach the goals by the fiscal year 2005. In fact, EPA has set yearly goals that vary over the fiscal year 2001-2005 period. Each EPA region is currently working with its States to develop a plan for meeting the fiscal year 2005 goal. The agency expects these plans will reflect increased progress in the later years as the effects of the many reforms being put into place are felt throughout the program. As previously discussed the Agency believes the program to be "on track" to meet its annual targets through the fiscal year 2000 and has not requested funds beyond those in the President's Budget.

*Question 12c.* How much additional funding would be needed to address 242 sites in fiscal year 2000?

Response. Please see answer to previous part.

*Question 13.* OSWER Acting Assistant Administrator Timothy Fields recently promised in a national RCRA conference that he would work to "get the regional corrective action budget restored in fiscal year 2000 and hopefully increased in subsequent years." What additional funding would be required to "restore" the annual corrective action budget? What actions, if any, did EPA take to restore the corrective action budget?

Response 13. The Agency restored resources for the corrective action program in the fiscal year 2000 request (Fiscal Year 1999 = \$18,167.4; Fiscal Year 2000 = \$22,755.5). As already mentioned, current progress toward the fiscal year 2005 goals does not indicate a need for additional resources through the year 2000.

*Question 14a.* The RCRA Corrective Action Program request is for \$22.7 million in order to control human exposures at 170 high priority sites. This represents <sup>3</sup>/<sub>10</sub> of 1 percent of your budget request. Superfund, by contrast, receives 20 percent of your budget for 1,260 listed sites, plus removal actions and other activities. There are over 1,700 high priority RCRA sites, the vast majority of which have had nei-

ther human exposures nor groundwater releases controlled. Is it your view that RCRA Corrective Action is relatively under-funded as compared to Superfund?

Response. The Agency believes there are fundamental differences between the RCRA Corrective Action and Superfund programs that do not support resource comparisons. Unlike Superfund where roughly 25 percent of cleanups are funded through the Trust Fund, RCRA cleanups are 100 percent owner/operator funded. EPA and State RCRA Program grant resources fund oversight by EPA and State regulators but no actual cleanup. In addition, while Superfund is primarily a Federal program wherein EPA maintains overall responsibility for cleanups (even where States manage cleanups under cooperative agreements with EPA), the RCRA cleanup program is formally delegated to, and run by 33 of the States in lieu of EPA. In fact, it is likely that the majority of both short and long-term cleanup work at the 1,700 high priority facilities will be overseen by State, rather than EPA project managers.

*Question 14b.* How many more RCRA Corrective Action sites could have their human health or groundwater releases controlled if you shifted just 1 or 2 percent of your Superfund request—an additional \$15 or \$30 million—into RCRA Corrective Action?

Response. The Agency believes that resources requested for EPA and State oversight in the fiscal year 2000 President's Budget are adequate to keep the program on track to meet the fiscal year 2005 goals. Such a shift would, however impact the Superfund Program causing a significant decrease in cleanups conducted by that program.

#### NATIONAL ENVIRONMENTAL PERFORMANCE PARTNERSHIP SYSTEM

*Question 1a.* EPA, in collaboration with the states, began implementing the National Environmental Performance Partnership System (NEPPS) in fiscal year 1997. As articulated by EPA, this policy is intended to give States a stronger role in priority setting, focusing scarce resources on the highest priorities, and tailoring the amount and type of EPA oversight to an individual State's performance. To implement this policy, EPA stated that it would negotiate performance partnership agreements with States to define the respective roles and responsibilities of EPA and the states. How many of these performance partnership agreements did EPA negotiate with the States in fiscal year 1997, 1998, and 1999?

Response. In fiscal year 1997, EPA's Regional Offices negotiated 33 Performance Partnership Agreements (PPAs) in 30 states. As illustrated in Attachment 1, "Summary of Participating States, Final fiscal year 1997 Report," some States choose to set up more than one agreement when more than one State agency implements environmental programs.

In fiscal year 1998, 39 PPAs were negotiated in 33 States. These agreements are listed by State and agency in Attachment 2.

The current count, as of February 1999, is that 39 PPAs are in place in 33 States (no change from fiscal year 1998). These agreements are listed by State and agency in Attachment 3.

*Question 1b.* What criteria does EPA use to approve performance partnership agreements?

Response. The objective of the May 17, 1995 agreement was to strive for joint State/EPA priority-setting, increased use of environmental indicators and other outcome data, use of this data in State self-assessments, and development of strategies which made best use of available resources to meet State and Federal objectives. State participation in NEPPS is voluntary. Once a State expresses an interest in developing a Performance Partnership Agreement, EPA works with that State to establish a process and an agreement appropriate to the scope and depth of the specific State's interest.

The principal components of the May 17 Agreement suggest that a strong agreement would involve a State's environmental and programmatic self-assessment, a joint EPA/state priority-setting process, the use of environmental and program outcome measures, public involvement, and a clear statement of the oversight process to be used between EPA and the State. Whenever a PPA serves as the workplan for a Performance Partnership Grant, the agreement must meet the requirements for Parts 31 and 35 of the U.S. Code of Regulations, showing how Federal grant funds will be used and accounted for, and how program progress will be measured.

Regional Administrators have the authority to approve PPAs with their respective states. The Regions typically work together with any State wishing to develop a PPA, even if it falls short on some of the objectives in the May 1995 agreement, as long as they believe that the State will strive to meet those goals over the longer term. The RA's decision is based initially on a judgment of whether the agreement



ensures that statutory requirements, commitments in delegation agreements, the spirit of the May 17 NEPPS Agreement, and basic accountability requirements will be met.

Other than baseline statutory requirements, delegation agreements, basic accountability requirements, and the May 17, 1995 Agreement, there are no hard and fast criteria for approval of Performance Partnership Agreements. This is based on a joint EPA/state decision to not specify what Performance Partnership agreements should contain, or how they should be organized, at least until we had more experience with this new system.

During the early phases of NEPPS implementation, the EPA Office of the Inspector General (OIG) reviewed each PPA and commented on how well it appeared to meet the basic expectations in the May 1995 Agreement. These OIG comments were conveyed by letter to the respective Regional Administrators and State Environmental Officials and are published on the EPA website.

*Question 1c.* How long does the negotiation and approval process take?

Response. There is no set schedule for negotiation and approval, other than the objective of having the agreement ready at the beginning of the fiscal year. EPA Regions work with each individual State's fiscal and planning needs to set up an appropriate process. On average, it is very common for these agreements to take 4–6 months (elapsed time) to bring to closure. This allows the necessary collaboration across program lines within the State and EPA.

Some of the first Performance Partnership Agreements took longer (up to 10 months), in part because there were no models or guidelines to follow. The negotiation time tends to decrease as staff gain experience with this new approach. In some cases, only 2–3 months are needed. Several regions assert that PPAs take about as much time as traditional grant agreements took, even though the new process and outcome is more complex. Some regions note that the new process is more integrated and streamlined than before.

*Question 2a.* In EPA's September 1997 Strategic Plan, the Agency commits to evaluating and reporting nationally on progress in meeting the goals and objectives of performance partnerships. Has EPA issued such an evaluation or report?

Response. EPA has not issued a formal evaluation or report on performance partnerships at this time. Our commitment in the Agency Strategic Plan refers to our intention to evaluate and report on NEPPS over the longer term. EPA sponsors and conducts studies and workshops designed to identify components of PPAs or approaches which are successful, and might have relevance in another State or region. Examples can be found in recent publications of the Environmental Law Institute and the National Academy of Public Administration. EPA is currently working with the Environmental Council of the States to initiate the Joint System Review envisioned in the May 1995 agreement.

In addition to the evaluation efforts sponsored by EPA, several other government agencies are currently studying different aspects of Performance Partnerships. A partial list includes a new study by the National Academy of Public Administration (NAPA), a series of management system reviews and audits conducted by the Office of the Inspector General, and the U.S. General Accounting Office. The NAPA report is scheduled to be completed in May 2000.

*Question 2b.* How would EPA evaluate the progress to date of the performance partnership agreements?

Response. The NEPPS process is showing signs of meaningful progress in improving the management of environmental programs by EPA and the States, such as:

- Improved focus on long-term outcomes;
- Agreement on, and early use of, Core Performance Measures which emphasize environmental and programmatic outcomes;
- Clear articulation of the level and type of oversight to be expected during the life of the agreement;
- Enabling States to use the same document for their state-specific program plan, grant agreement with EPA, and work-sharing agreement with EPA;
- Producing agreements which are more streamlined and integrated than the grant agreements and State/EPA agreements of the past.
- More openness of the process and the agreements to public scrutiny and involvement;
- High-level negotiations which have helped resolve several EPA/State issues—including enforcement issues;

The OIG report on Colorado and Texas showed greater focus on environmental outcomes, use of resources for complementary, cross-program objectives; and some evidence of burden reduction.

Several States have used funding flexibility to support cross-media initiatives such as pollution prevention and compliance assistance; to emphasize particular problem areas, and to reduce the administrative costs of managing multiple EPA grants.

*Question 2c.* What criteria will EPA use to evaluate the success of performance partnership agreements?

Response. The formal criteria for the EPA/State Joint System Evaluation will be developed jointly by EPA and State representatives, but they will consider criteria such as:

- Whether environmental conditions and trends are being assessed, and this information is actively used as part of the program planning and priority-setting process;
- Whether basic program objectives are being met or exceeded;
- Whether the programmatic and funding flexibility provided through PPAs and PPGs is increasing the use of new approaches to solving environmental problems;
- Whether adequate levels of program accountability are maintained; and
- Whether the process clarifies EPA and State expectations as to resources, oversight, and the relative State and Federal roles in carrying out environmental programs.

We will avoid using the numbers of States or numbers of agreements as a measure of success in NEPPS, since they don't show the quality of thinking and joint effort embodied in an agreement.

*Question 3.* What level of resources has EPA dedicated to the negotiation, approval, and oversight of performance partnership agreements?

Response. The level of resources dedicated to PPAs varies from region to region and across HQ program offices. Headquarters dedicates approximately 10–12 FTE across all of the National Program Offices and the Office of the Administrator to developing policy and coordinating implementation of NEPPS agencywide.

The Regional Offices average about 4 FTE dedicated to negotiation and approval of performance partnership agreements. Thus the total estimate for the Regional investment is about 40 FTE. There is considerable variation across Regions, since the number of participating States varies widely, and agreements with States spanning more programs or multiple agencies tend to require a bigger investment.

The reference to "oversight of Performance Partnership Agreements" in the question requires clarification. The Regions develop these agreements in a collaborative mode with the States. The negotiation process is built upon a foundation of self-assessment, joint priority-setting, and routine State/EPA interactions during program implementation. There is no distinct "oversight" process for PPAs other than the normal mid-year and end of year reviews, and the policy coordination and monitoring functions in Headquarters. At the Regional level, oversight activities are conducted as appropriate within each program area. The resource estimate provided above does not include the time invested in program implementation or oversight across all the relevant programs.

#### Performance Partnerships for Fiscal Year 1997.—Summary of Participating States

[Final Fiscal Year 1997 Report]

Region	States with Signed Fiscal Year 1997 Performance Partnership Agreements (PPAs)	States with Signed Fiscal Year 1997 Performance Partnership Grants (PPGs)
1 .....	CT/e, MA/e, ME/e, NH/e, RI/eh, VT/e .....	CT/e, MA/e, ME/e, NH/e, RI/e, VT/e
2 .....	NJ/e, NY/eh .....	NJ/e, NY/e, VI/e
3 .....	DE/e .....	DE/ea, DC/e, MD/a, PA/a, WV/a
4 .....	FL/e, GA/e, NC/e .....	AL/a, FL/a, GA/ea, KY/a, MS/a, NC/a, SC/a, TN/a
5 .....	IL/e, IN/e, MN/e, OH/e, WI/e .....	IL/e, IN/e
6 .....	OK/e, TX/e .....	OK/e, TX/e
7 .....	IA/a, KS/a, MO/e, NB/a .....	IA/a, KS/a, MO/e, NB/ea
8 .....	CO/e, ND/h, UT/ea .....	CO/e, MT/e, ND/h, SD/e, UT/ea, WV/e
9 .....	(none)	(none)
10 .....	ID/e, OR/e, WA/e .....	(none)

Agency/Department Key: e=environmental; h=health; a=agriculture.

*Fiscal Year Performance Partnership Agreements (PPAs):* Number of States with signed Fiscal Year 1997 PPAs: 29; Total number of PPAs: 32.

*Number of Individual State agencies with signed Fiscal Year 1998 PPAs:* Environmental: 25; Health: 3; Agriculture: 1.

*Fiscal Year 1997 Performance Partnership Grants (PPGs):* Number of States with signed Fiscal Year 1997 PPGs: 36; Number of individual State agencies with signed Fiscal Year 1997 PPGs: 40; Environmental: 23; Health: 1; Agriculture: 16.

Performance Partnerships.—Summary of Participating States\*

[Status as of 7/1/98]

Region	PPAs Currently in Effect (includes continuing and new PPAs)	State agencies expected to sign first PPA in Fiscal Year 1998	No PPA	PPGs Currently in Effect (includes continuing and new PPGs)	State agencies expected to receive first PPG in Fiscal Year 1998	No PPG
1	CT/eh, MA/e, ME/e, NH/e, RI/eh, VT/e.			CT/e, MA/e, ME/e, NH/e, RI/e, VT/e.		
2	NJ/e, NY/eh		PR, VI	NJ/e, NY/e, VI/e		PR
3	MD/e, DE/e	WV/e	DC, PA, VA,	DE/ea, DC/h, MD/a, PA/a, VA/a, WV/a.		
4	FL/e, GA/e, NC/e		AL, KY, MS, SC, TN.	AL/a, FL/a, GA/ea, KY/a, MS/ea, NC/a, SC/ea, TN/a.		
5	IL/e, IN/e MN/e, OH/e, WI/e.		MI	IL/e, IN/e, MN/e, OH/e.	MI/a	WI
6	OK/e, TX/e	AR/e, LA/e	NM	OK/e, TX/e		AR, LA, NM
7	IA/a, KS/ea, MO/ea, NE/ea.			IA/a, KS/a, MO/ea, NE/ea.	KS/e	
8	CO/e, MT/e, ND/e, SD/e, UT/e.		WY	CO/eh, MT/e, ND/e, SD/ea, UT/ea, WY/e.		
9			AZ, CA, HI, NV	AZ/e, HI/e		CA, NV
10	AK/e, ID/e, OR/e, WA/e.			AK/e, WA/e		ID, OR

*Performance Partnership Agreements (PPAs):* Current PPAs: 33 States (39 PPAs); First PPA in Fiscal Year 1998: 3 additional States (3 PPAs); No. PPA: 17 States.

*Performance Partnership Grants (PPGs):* Current PPGs: 43 States (52 PPGs); First PPG in Fiscal Year 1998: 2 additional States (2 PPGs); No PPG: 9 States.

Key: e=environmental agency; a=agriculture department; h=health agency.

\*Includes DC, PR, and VI

Performance Partnership—Summary of Participating States\* (Status as of 2/1/99)

Region	PPAs Currently in Effect (includes continuing and new PPAs)	State agencies expected to sign first PPA in fiscal year 1999	No PPA	PPGs Currently in Effect (includes continuing and new PPGs)	State agencies expected to receive first PPG in fiscal year 1999	No PPG
1	CT/eh, MA/e, ME/e, NH/e, RI/eh, VT/e.			CT/e, MA/e, ME/e, NH/e, RI/e, VT/e.		
2	NJ/e, NY/eh		PR, VI	NJ/e, NY/e, VI/e		PR
3	MD/e, DE/e	WV/e	DC, PA, VA,	DE/ea, DC/h, MD/a, PA/a, VA/a, WV/a.		
4	FL/e, GA/e, NC/e		AL, KY, MS, SC, TN.	AL/a, FL/a, GA/ea, KY/a, MS/ea, NC/a, SC/ea, TN/a.		
5	IL/e, IN/e MN/e, OH/e, WI/e.		MI	IL/e, IN/e, MN/e, OH/ea.	MI/a	WI/a
6	OK/e, TX/e	AR/e, LA/e	NM	OK/e, TX/e		AR, LA, NM
7	IA/a, KS/a, MO/ea, NB/ea NE/ea.			IA/a, KS/ea, MO/ea, NE/ea.	KS/e	
8	CO/e, MT/e, ND/e, SD/e, UT/e.		WY	CO/eh, MT/e, ND/e, SD/ea, UT/ea, WY/e.		
9			AZ, CA, HI, NV	AZ/e, HI/e		CA, NV
10	AK/e, ID/e, OR/e, WA/e.			AK/e, WA/e		ID, OR

*Performance Partnership Agreements (PPAs):* Current PPAs: 33 States (39 PPAs); First PPA in Fiscal Year 1998: 3 additional States (3 PPAs); No. PPA: 17 States.

*Performance Partnership Grants (PPGs):* Current PPGs: 45 States (54 PPGs); First PPG in Fiscal Year 1998: 2 additional States (2 PPGs); No PPG: 9 States.

Key: e=environmental agency; a=agriculture department; h=health agency.

\*Includes DC, PR, and VI

#### PESTICIDES/TOXIC SUBSTANCES

*Question 1.* As you know, the Food Quality Protection Act (FQPA) and the Safe Drinking Water Act (SDWA) of 1996 established a set of deadlines for implementation of the Endocrine Disrupter Screening Program. By August 1998, EPA was to have developed the screening program, followed by program implementation in August 1999 and a report to Congress by August 2000. Is EPA going to implement the screening program recommended by the Endocrine Disrupter Screening and Testing Advisory Committee (EDSTAC) by August 1999, thus meeting the statutory deadline set by FQPA and SDWA?

Response. EPA is already implementing aspects of the Endocrine Disrupter Screening Program in anticipation of its 1999 and 2000 deadline dates. Implementation is focused in developing, standardizing and validating methods and procedures for sorting, prioritizing, screening and testing endocrine disruptors. The Agency anticipates that it will conduct initial rapid screens on up to 5,000 pesticides and commodity chemicals by 2000. Additional screens and tests will be phased in as the methods are validated.

*Question 2.* Is the amount of money requested for fiscal year 2000 sufficient to meet the August 1999 deadline for implementation of the EDSTAC report and the August 2000 deadline for reporting to Congress?

Response. Current funds will allow implementation of the FQPA mandated screening assays for estrogenic effects on humans. We have increased our budgeted level for endocrine disruptors Agency-wide by over \$4 million in fiscal year 2000. Costs in 2001 and beyond will increase as we complete the development of screening and testing methods and procedures, develop and begin androgen and thyroid hormone screening, and as the actual testing of chemicals accelerates.

*Question 3.* Might there be other obstacles to meeting the statutory deadline?

Response. We are employing a phased implementation strategy that emphasizes the development and use of automated robotic screening assays, followed by conventional screens and tests. The automated assays represent a new application of an emerging technology. Initial demonstration efforts are promising, but require more development than originally anticipated. Should the automated assays prove to be an untenable option, we will be forced to rely on conventional methods which will increase the time necessary to screen large numbers of pesticides and chemicals.

*Question 4.* What specific deadline has the Agency set for itself in order to ensure compliance with the statutory deadline?

Response. To ensure the Agency meets its deadline we are entering final development of tests, testing protocols, validation trials, and hazard assessment methods in fiscal year fiscal year 1999 in anticipation of screening 5,000 chemicals in Fe to determine their endocrine disrupting potential.

*Question 5.* If the Agency is not going to meet these deadlines, can you demonstrate how EPA intends to move progress forward in implementation of the Endocrine Disrupter Screening Program as soon as possible?

Response. The Agency anticipates meeting the statutory deadlines. We have increased our budgeted level for endocrine disruptors Agency-wide by over \$4 million in fiscal year 2000. Current funds will allow implementation of the FQPA mandated screening assays for estrogenic effects on humans.

*Question 6.* What portion of the money EPA spends on endocrine disruptor research in OPPTS, ORD, and the Office of Water is spent on implementation of the EDSTAC protocol?

Response. EPA has a total Endocrine Disruptor budget of \$16.6 million in fiscal year 1999 and is requesting \$21.4 million in the fiscal year 2000 President's Budget. From these respective totals, EPA plans to expend 32 percent (\$5.3 million) and 47 percent (\$10 million) in direct support of implementing the EDSTAC protocol. These funds will be used to help determine estrogenic effects on humans, to support a workshop and produce a report on the EDSTAC screening process for endocrine disruptors, and determine application of the EDSTAC testing program for chemical hazard and risk assessment.

*Question 7.* What additional money will be needed to implement the EDSTAC protocol in upcoming years and to which divisions will the money be allocated?

Response. The Agency estimates fiscal year 1999 spending of \$5.3 million (OPPTS \$4.1 million, ORD \$1.2 million, and OW \$0.0 million), and fiscal year 2000 spending of \$10 million (OPPTS \$7.7 million, ORD \$1.3 million and OW \$1.0 million), in di-

rect support of the EDSTAC protocol. Out-year estimates at the requested level of organizational detail will depend on the Agency's future capacity to research and screen suspected endocrine disruptors and will be fully addressed during the Agency's annual planning and budgeting processes for 2001, and beyond.

COMMUTER CHOICE

*Question 1.* I understand EPA's Office of Mobile Sources has taken Federal leadership in educating the public about Commuter Choice programs that rely on recently enacted Federal tax incentives for commute alternatives. I commend EPA for its leadership role in supporting Commuter Choice because I believe it can make a significant impact on reducing pollution, congestion, and lowering the public tax burden. What specifically is EPA spending in fiscal year 1999 to support this effort for Commuter Choice?

*Response.* In fiscal year 1999 the Agency is targeting roughly a half million dollars toward Commuter Choice programs. The bulk of the resources will go toward cooperative agreements with business and environmental groups to develop public/private partnerships to deliver public education materials and establish a national coalition of organizations to educate and promote commuter choice. In addition, funds would go to the development of emission benefit quantification tools for Commuter Choice programs.

*Question 2.* What amount of funding does EPA think is necessary to conduct a successful public education commuter Choice program in fiscal year 2000 and subsequent years?

*Response.* A multi-agency, public/private partnership to deliver a national education program will require substantial financial resources. In fiscal year 1999 EPA is developing the infrastructure that will make a multi-year national program possible. We believe a national level campaign will require at least \$5 million in fiscal year 2000 from all funding sources including those outside of EPA; we expect similar funding levels would need to be sustained for several additional years. The goal of this effort is to make Commuter Choice benefits a standard benefits package available to employees just like 401 K plans and health care benefits.

*Question 3.* Does the President's budget include funding for this effort?

*Response.* We expect that through the recently enacted Transportation Equity Act for the 21st Century, States and localities will provide funding for many projects related to commuter choice. Also, part of EPA's portion of the Climate Change Technology Initiative in the President's Budget includes \$3.7 million targeted for transportation programs focused on reducing vehicle miles traveled (VMT). The Commuter Choice program is one element of the VMT reduction strategy and funding for the program is \$500,000. The money will provide continued support for the multi-year partnerships which we began in fiscal year 1999.

RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM SENATOR BOB SMITH

*Question 1. GENERAL.*—The Administration has proposed a number of new initiatives and modifications to existing programs in this year's budget request. Could you tell us which items will require new statutory authority to implement and which ones will not (i.e., proposals that you intend to implement administratively)?

*Response.* New initiatives and their statutory authorities are listed in the table below.

Initiative	Statutory Authority
Initiatives with existing statutory authority:	
Clean Air Partnership Fund .....	Section 103 of the Clean Air Act.
Childhood Asthma Initiative .....	Title IV (relating to indoor air quality) of the Superfund Amendments and Reauthorization Act of 1986 (SARA); Monitoring: Section 103 of the Clean Air Act.
Initiatives requiring new statutory authority:	
Better America Bonds .....	Amendments through the Ways and Means and Finance Committees; no further EPA authority needed.

Initiative	Statutory Authority
Clean Water State Revolving Fund 20 percent Set Aside to provides States with flexibility to address nonpoint source pollution.	Proposed language is included in the State and Tribal Assistance Grants Account in the fiscal year 2000 President's Budget.
Raise cap on tribal 319 grants to better address nonpoint source pollution on tribal lands.	Proposed language is included in the State and Tribal Assistance Grants Account in the fiscal year 2000 President's Budget.

## SUPERFUND

*Question 2a.* PAST REQUESTS FOR AN ADDITIONAL \$1.3 BILLION FOR SUPERFUND.—Less than 10 months ago, on April 30, 1998, Administrator Browner testified before Senator Bond's Appropriations Subcommittee that the Administration needed an extra \$1.3 billion, spread over 2 years, to keep Superfund on track. In justifying the request for \$2.1 billion in 1999, Ms. Browner stated that the requested funding level would "ensure that we meet the Administration's commitment to clean up 900 of the nation's worst toxic waste sites by the end of the year 2001."

EPA's fiscal year 2000 budget submission states the Administration plans to complete 925 cleanups by the end of 2002. Yet the request represents a 30 percent reduction from the fiscal year 1999 budget request and would hold Superfund funding flat at approximately \$1.5 billion per year. Based on the fiscal year 2000 budget, EPA's year end goal for fiscal year 2001 is 840 construction completions. It therefore stands to reason that the infusion of an added \$1.3 billion that the Administration requested 10 months ago would merely have resulted in a net of 60 sites completed 1 year early—the difference between the 900 sites projected for completion by the end of 2001 in last year's budget request, versus the 840 projected in this year's budget. Is that correct? If not, why not?

Response. The Superfund program has made substantial progress in completing construction at NPL sites. EPA expects to achieve completing construction at 840 sites by the end of 2001. The Administration's request for additional funding for fiscal year 1998 and fiscal year 1999 provided a window of opportunity to achieve more construction completions and increase the pace of cleanup through 2001 and beyond, while permitting the Superfund program to continue critical site assessment functions and initiate cleanups at other sites. The additional \$1.3 billion requested by the President would have enabled EPA to complete the construction of cleanup activities in 60 additional communities by December 2000. With the lack of this funding, nearly 2 additional years will have passed before EPA achieves construction completions in 925 communities. In addition, the additional funding would have enabled EPA to initiate cleanups in many more than communities and achieve construction completions far earlier in many of these communities than is possible without this infusion of cleanup funds.

*Question 2b.* Please provide the committee with a detailed analysis of the assumptions on which EPA's 1998 testimony regarding the fiscal year 1999 budget was based, and further demonstrate the areas which have improved and form the basis for your dramatically lower fiscal year 2000 request?

Response. In 1997 as EPA was developing the fiscal year 1999 budget request, we used site-specific project schedules and budgets based on the best professional judgment of regional project managers who are responsible for managing or overseeing site-specific cleanup actions. However, as investigations and cleanups proceed, time and budget requirements change, and the Regions change their projections to reflect such changes. At the time of our budget request in fiscal year 1999, we relied on the best information available. Likewise, our fiscal year 2000 budget also reflects the best planning projections available to us at the time we formulated the request.

*Question 2c.* Several Senators opposed the requested increases as unjustified, believing that the request was politically motivated, not based on any firm data or prioritization of resources. I and many of my colleagues were harshly criticized for opposing the requested increases. In hindsight, given other priorities for EPA funds, our opposition was the right course. Can you assure me that this issue will not return in the fiscal year 2001 budget?

Response. The Agency has not yet completed development of its budget and targets for fiscal year 2001. The budget request will reflect project needs, and will continue to reflect EPA's commitment to our "enforcement first" policy, support a strong State role in cleanups, and remain diligent in our efforts to control and reduce cleanup costs.

*Question 3a.* FATE OF THE SUPERFUND PROGRAM.—Administrator Browner has recently been quoted in the press acknowledging that the part of the Superfund program that addresses National Priority List sites is “ramping down.” There is much evidence to support this premise.

- The General Accounting Office reported in November that there were only about 232 sites remaining nationwide that either EPA, the States or both believed would eventually be listed on the National Priority List. EPA agreed “with the basic findings” of this report.

- Over the last 6 years, EPA has added an average of 26 sites per year to the List.

- Superfund site assessments, the first screening activity at the beginning of the process that may end in listing, decreased from an annual average of 1,768 from 1990 to 1992 to an average of 318 in the last 3 years.

Since EPA concurs that the new NPL listings are likely to be close to the GAO report level of 232, this raises significant implications for funding the program in future years. In particular, please provide an estimate of what EPA expects the Superfund program to look like in 5 years.

- How many sites will be construction complete?

Response. The Agency’s Government Performance and Results Act (GPRA) goal projects the rate of Superfund site construction completions through 2005. Assuming a steady budget through the next seven fiscal years (Fiscal Year 1999—Fiscal Year 2005), and assuming, on average, 85 construction completions per year, we should achieve by the end of fiscal year 2005 about 1,180 construction completions.

- How many sites will be on the NPL but not yet construction complete?

As of January 1999, there were 1446 total NPL sites. Assuming that EPA will achieve 85 construction completions through 2005, over 400 sites currently on the NPL will be in remediation in 2003. This estimate does not include any additional sites that may be added to the NPL during this or subsequent years.

- What level of funding and staffing will be needed to execute Superfund’s remaining mission in fiscal year 2004 and beyond?

Although the Superfund program has made substantial progress in the last 6 years, significant work remains at current and proposed NPL sites. At the end of fiscal year 1999, the Agency will still be working to complete construction at over 700 sites currently on the final NPL. We also expect to list 40 sites this year on the NPL. Additionally, EPA will need to invest resources in post-construction activities to ensure that remedies remain protective into the future. Finally, EPA expects to continue to have an important role in conducting removal actions to protect communities across the country.

Although our need for future resources is clear, the Agency has not completed development of the Superfund budget request for fiscal years and beyond. However, to continue our current pace of cleanup, including removals, cleanups of new NPL additions, and post-construction work, our GPRA goal currently assume a steady State budget into the future.

*Question 3b.* Again, assuming that there will be a relatively small number of new sites added to the Superfund NPL, what does EPA foresee as the role and resource requirements of the Superfund program at sites that will necessarily fall to State cleanup programs for action?

Response. Historically, we have listed an average of 26 sites per year on the NPL. This year we expect to list roughly 40 sites on the NPL. We do not know now how many more sites will ultimately need to be added to the NPL, but we will focus our NPL listing activities on those sites that States agree should be added to the NPL and those sites where States are unable or unwilling to clean up the site. We have been using and will continue to use these considerations to guide our listing decisions. States are supporting our NPL listing activities at this level through our State concurrence policy.

States play a key role, and will continue to play a key role, in site assessment and site cleanups. State cleanup programs play a vital role for both NPL and non-NPL sites and it is EPA’s hope that this successful partnership continues within the Superfund program. In fact, Superfund funding has been a key factor in the growth of State Superfund programs. EPA’s Superfund program has provided major funding to the States. This past year, 1998, Superfund provided over \$140 million to the States. Of that total, approximately \$25 million went toward State voluntary cleanup programs and Core program funding to States. Another \$17 million was provided to States in the form of cooperative agreements for funding site assessment work (PA/SI funding), \$32 million for NPL site studies, planning, design, and PRP oversight, and \$69 million for Fund-financed NPL remedial actions managed by States.

Further, EPA plays a significant role in non-NPL cleanups by conducting removal actions. EPA has also performed approximately 5,500 removals since the beginning

of Superfund at a rate of 200–300 per year. These activities will not decrease if the number of NPL sites decreases. As a result of these factors, EPA does not foresee a sharp decline in its need to maintain its current role or resource requirements through 2005.

*Question 4a.* Many observers believe the Superfund program is ramping down now, and we need to start planning for the post-Superfund world right now. These next questions are based on EPA data from your fiscal year 1999 and 2000 budget submittals, and EPA data provided to GAO and CRS. The fiscal year 2000 budget projects that all remedial construction will be completed at 925 sites by the end of 2002, maintaining the pace of 85 construction completions per year attained in 1997. How long beyond 2002 will EPA maintain an 85 construction cleanup per year pace before the program starts to run out of non-Federal sites ready for cleanup?

Response. Due to the success of our Administrative Reforms, we project that we will achieve, on average, 85 construction completions through 2005. Projections beyond this year cannot be made with any certainty due to the changing demands of site-specific work, such as new information regarding types or amounts of contamination present, shifts in construction schedules, or PRP takeovers.

*Question 4b.* Over the past 6 years, EPA has added approximately 155 sites to the NPL, an average of 26 per year. GAO says it takes about 10.6 years from site listing to cleanup; EPA's position is that administrative reforms have reduced this length of time. Using the figure of 8 years and setting aside the sites deemed "construction complete," doesn't that imply that we are headed towards a steady-state NPL size of approximately 208 sites—eight times twenty-six?

Response. By 2005, EPA will have cleaned up the vast majority of the sites currently listed on the NPL. However, we expect that more than 250 of the current NPL sites will be in active remediation at that time. We do not know now how many more sites will need to be added to the NPL, but we will focus our NPL listing activities on those sites that States agree should be added to the NPL and those sites where States are unable or unwilling to clean up the site. We have been using and will continue to use these considerations to guide our listing decisions. This year we expect to list roughly 40 sites on the NPL.

*Question 4c.* If the fiscal year 2004 NPL list is then roughly one-sixth the size of the current NPL, that leads to the conclusion that the 2004 budgetary requirements for the program would be roughly \$250 million per year. Do you agree? If not, why not?

Response. Historically, we have listed an average of 26 sites per year on the NPL. We do not know now how many more sites will need to be added to the NPL, but we will focus our NPL listing activities on those sites that States agree should be added to the NPL and those sites where States are unable or unwilling to clean up the site. We have been using and will continue to use these considerations to guide our listing decisions. This year we expect to list roughly 40 sites on the NPL.

A budget of \$250 million per year would appear to be far too small to address this current and any future additions to the NPL remediation workload as well as the rest of the Superfund program funding needs. In addition to remedial action costs, the EPA Superfund budget would need to include site assessment activities, removal program needs, post-construction activities, other Federal agency costs, and the other categories displayed, for example, in EPA Superfund appropriation requests. We will continue to give all these factors careful consideration as we prepare our budgets in future years.

*Question 4d.* If you disagree with this analysis, is there some other set of assumptions that the committee should be using for the annual rate of additions to the NPL, or expectations about the ultimate size of the Superfund program?

Response. As described previously, we do not know now how many more sites will need to be added to the NPL, but we will focus our NPL listing activities on those sites that States agree should be added to the NPL—sites such as those that have recalcitrant PRPs or where cleanup is needed and is not occurring. This year we expect to list roughly 40 sites on the NPL.

A budget of \$250 million per year would appear to be far too small to address this current and any future additions to the NPL remediation workload as well as the rest of the Superfund program funding needs. In addition to remedial action costs, the EPA Superfund budget would need to include site assessment activities, removal program needs, post-construction activities, other Federal agency costs, and the other categories displayed, for example, in EPA Superfund appropriation requests. We will continue to give all these factors careful consideration as we prepare our budgets in future years.



*Question 4e.* It takes considerable time from when a site is listed until it is ready for the actual cleanup. Even if you listed 500 sites today they would not be ready for cleanup for some time.

Will not the cleanup program face a dramatically decreased demand for work in the next few years as work is completed on older sites, as there are only 155 or so sites moving through the pipeline from the listing years of 1993 through 1998?

How do you manage a system staffed to complete 85 sites a year when past listing decisions will only present it with 26 sites ripe for cleanup to begin in any particular year?

Response. The Superfund program has made substantial progress in the last 7 years, and approximately 89 percent of the NPL sites have had cleanup activities, are construction complete, or have cleanup underway. However, these accomplishments cannot overshadow the significant work remaining at current and proposed NPL sites. At the end of fiscal year 1999, the Agency will still be performing work at over 700 sites currently on the final NPL (an estimated 470 sites will have construction underway).

We also need resources to clean up newly listed sites as quickly as possible. We do not know now how many more sites will need to be added to the NPL, but we will focus our NPL listing activities on those sites that States agree should be added to the NPL and sites where States are unable or unwilling to clean up the site. We have been using and will continue to use these considerations to guide our listing decisions. This year we expect to list roughly 40 sites on the NPL.

Furthermore, even as cleanup activities are completed at sites, EPA will need to invest resources in ensuring that remedies remain protective into the future. EPA will have responsibilities to conduct oversight of continuing operations, to review periodically remedies at which waste remains in place, and to take response actions at sites at which remedies do not remain protective. Finally, EPA expects to continue to have an important role in conducting removal actions to protect communities across the country. The need for EPA involvement in removals is unlikely to decline, and, as fewer sites are added to the NPL in the future, removal actions may be more widely used to achieve necessary cleanups.

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RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM  
SENATOR JIM INHOFE

SULFUR

*Question 1.* In February 1993, and subsequently in December 1995, the State of Alaska petitioned the EPA for an exemption from the sulfur requirements of the Clean Air Act that apply to diesel fuel used for transportation. During that time, the Agency provided a temporary exemption to give time for a task force to thoroughly study the low-sulfur diesel issue. That task force recommended that the State seek a permanent exemption, and on April 28 of last year, the EPA agreed and proposed to grant the request, characterizing compliance in Alaska as "unreasonable." What action does the EPA plan to take when the current temporary exemption expires?

Response. We intend to publish a final rule prior to July, when the current exemption expires. Although no decisions have been made, our current thinking is that an appropriate course of action would be to grant Alaska another temporary exemption, most likely through 2003.

The Agency received significant adverse comments on its proposal of a permanent exemption for Alaska from the Engine Manufacturer's Association (EMA) and from environmental groups in Alaska. The EMA is very concerned about the impact of high sulfur levels on new heavy-duty diesel technology (referred to as "2004 technology") that will be introduced as early as 2002. The Alaska environmental groups are concerned about the health effects of particulate matter and toxic emissions from trucks fueled with high sulfur diesel fuel.

Upon considering these issues, we now believe that a permanent exemption for Alaska may not be appropriate.

*Question 2a.* Regarding the Tier Two Automotive standards which are expected to be proposed shortly: How will EPA accommodate the special supply and air quality concerns of westerns and rural areas?

Response. EPA understands that the oil supply in certain western areas depends to some degree on gasoline from small refiners and EPA has worked closely with refiners located in western States to understand the capabilities and limitations of these refineries. Many refiners in the West and across the country meet the Small Business Administration's definition of a small gasoline producer. The Agency con-

vened a Small Business Advocacy panel to collect information about these companies and has taken the panel's recommendations into consideration in its proposal. In addition, EPA is taking comment on the appropriate criteria for determining whether a refinery would qualify for small refinery provisions. The Agency is considering the air quality needs of areas projected to be out of compliance with the ozone and PM NAAQS, as well as those areas which need visibility improvements.

*Question 2b.* How would a national rule, modeled on the California standard be justified, on a public health, environmental, and/or cost basis?

Response. The overall level of the Tier 2 vehicle standards in the United States will be based on air quality need, technical feasibility and cost, and cost effectiveness, and may not necessarily be the same as those recently adopted in California. The Agency is evaluating program design options where there would be some overlap between the programs applicable in California and the rest of the U.S. These options would reduce design and certification costs for manufacturers, as much as possible, by harmonizing test procedures and allowing vehicles certified in California to be directly certifiable in the rest of the U.S. The gasoline sulfur levels for the Federal program will be based on the air quality impacts of sulfur in gasoline and on the technological needs anticipated for Tier 2 vehicles, and the combined costs of the vehicle standards and gasoline sulfur requirements will be used to assess the cost-effectiveness of the proposal.

*Question 2c.* If new standards are proposed for sulfur, what are the Agency's long term resource plans to handle the surge in permit applications to comply with the new requirements?

Response. EPA intends to take comment on various approaches to streamline the permitting process to address issues raised by the refinery industry regarding the Tier 2 rule. EPA will solicit input from the oil industry and State and local permitting authorities on these issues.

#### NAAQS

*Question 1.* Please provide a detailed breakdown on the PM<sub>2.5</sub> research plan, including the research topics recommended by the National Academy of Sciences. Please include for each research topic a breakdown on: (1) How much NAS recommends to complete the topic, (2) How long NAS believes the research will take, (3) The amount of resources EPA proposes to spend on each research topic by fiscal year, (4) The EPA projected completion date for each research topic, and (5) Identify which research topics will be completed in time for use in the next 5-year review period. In addition please include the major milestones for the next 5-year review (including the Clean Air Scientific Advisory Committee of EPA's Science Advisory (CASAC) Board reviews and the timing for the EPA staff work).

Response. In their March 1998 report, the National Academy of Sciences (NAS) Committee on Research Priorities for Airborne Particulate Matter provided initial recommendations for particulate matter (PM) research activities spanning the period from 1998 through 2010. Ten research topics were identified as highest priority. The NAS also commented that other important research, such as emissions characterization and other research affecting standards implementation, should be supported but did not provide a resource estimate for these additional topics. The second NAS report on research priorities is imminent (now expected to be received in March or April, 1999). During a public presentation in January, 1999, NAS staff indicated that while this second report will clarify and elaborate on the March 1998 report (particularly regarding atmospheric sciences research), and describe the NAS plans for monitoring implementation of the PM research program, substantial changes are not expected to the research priorities presented in the first NAS report.

*Question 1a.* How much NAS recommends to complete the topic?

Response. The ten research topics identified in the March 1998 report, the amount and duration of funding recommended by NAS for each topic, and the estimated EPA fiscal year 1998 through fiscal year 2000 funding levels are shown in the table attached. Although funding levels for fiscal year 2001 and beyond have not been determined, EPA will continue to incorporate the NAS recommendations into our PM research program.

*Question 1b.* How long NAS believes the research will take?

Response. The ten research topics identified in the March 1998 report, the amount and duration of funding recommended by NAS for each topic, and the estimated EPA fiscal year 1998 through fiscal year 2000 funding levels are shown in the table attached. Although funding levels for fiscal year 2001 and beyond have not been de-

terminated, EPA will continue to incorporate the NAS recommendations into our PM research program.

*Question 1c.* The amount of resources EPA proposes to spend on each research topic by fiscal year?

Response. The ten research topics identified in the March 1998 report, the amount and duration of funding recommended by NAS for each topic, and the estimated EPA fiscal year 1998 through fiscal year 2000 funding levels are shown in the table attached. Although funding levels for fiscal year 2001 and beyond have not been determined, EPA will continue to incorporate the NAS recommendations into our PM research program.

*Question 1d.* The EPA projected completion date for each research topic?

Response. The research topics recommended by the NAS represent research directions that are in most cases closely related. Thus, there is an evolution of research activities such that as knowledge is gained in one topic area it helps inform research directions and activities conducted under other topics. For example, results of studies on factors affecting the relationship of PM levels measured using outdoor monitors to actual human exposures to PM (topic #1), and of the nature of specific components of PM in producing toxicity (topic #5), lead to more informed study of human exposures to hazardous PM components (topic #2). The evolving nature of research makes it difficult to State when research categorized under an NAS topic will be "completed", but in a general way it is anticipated the research will evolve in a manner consistent with the NAS timeline, shown in the table below. In the same manner, it is difficult to define which research topics will be "completed" in time for the next 5-year review period (interpreted to mean the review planned for completion in 2002). In general, we observe that research results typically flow from any specific research project over a several year period. Typically, 1 to 2 years after funding, research results are evident from abstracts submitted for poster or oral presentation in conjunction with scientific conferences. Then, several months to perhaps 2 years after conference presentation, results are presented in the peer reviewed scientific literature. The consequence of this typical stream of information from research activities is that, for the 2002 NAAQS review, we have been observing a large number of PM-related presentations at scientific conferences and peer reviewed journal articles published in scientific journals. The results from peer reviewed research will be evaluated in the PM Air Quality Criteria Document (AQCD) which is now under development as follows:

- 1998—Plan AQCD and CASAC review of Plan.
- 1999—Develop AQCD and complete External Review Draft.
- 2000—CASAC review and completion of second External Review Draft AQCD; Develop Staff Paper and hold CASAC review of Staff Paper.
- 2001—Final Staff Paper, proposal and public comment of NAAQS Decision.
- 2002—Promulgation of Final Decision on NAAQS.

*Question 1e.* Identify which research topics will be completed in time for use in the next 5-year review period. In addition please include the major milestones for the next 5-year review (including the Clean Air Scientific Advisory Committee of EPA's Science Advisory Board (CASAC) reviews and the timing for the EPA staff work).

Response. The research topics recommended by the NAS represent research directions that are in most cases closely related. Thus, there is an evolution of research activities such that as knowledge is gained in one topic area it helps inform research directions and activities conducted under other topics. For example, results of studies on factors affecting the relationship of PM levels measured using outdoor monitors to actual human exposures to PM (topic #1), and of the nature of specific components of PM in producing toxicity (topic #5), lead to more informed study of human exposures to hazardous PM components (topic #2). The evolving nature of research makes it difficult to State when research categorized under an NAS topic will be "completed", but in a general way it is anticipated the research will evolve in a manner consistent with the NAS timeline, shown in the table below. In the same manner, it is difficult to define which research topics will be "completed" in time for the next 5-year review period (interpreted to mean the review planned for completion in 2002). In general, we observe that research results typically flow from any specific research project over a several year period. Typically, 1 to 2 years after funding, research results are evident from abstracts submitted for poster or oral presentation in conjunction with scientific conferences. Then, several months to perhaps 2 years after conference presentation, results are presented in the peer reviewed scientific literature. The consequence of this typical stream of information from research activities is that, for the 2002 NAAQS review, we have been observing a large number of PM-related presentations at scientific conferences and peer

reviewed journal articles published in scientific journals. The results from peer reviewed research will be evaluated in the PM Air Quality Criteria Document (AQCD) which is now under development as follows:

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- 2001—Final Staff Paper, proposal and public comment of NAAQS Decision.
- 2002—Promulgation of Final Decision on NAAQS.

Table.—NAS Recommended Research Topics, NAS Funding Level and Duration, and EPA Fiscal Year 1998–2000 Resource Estimates<sup>1</sup>

NAS Topic	Recommended Total Funding (in millions)	NAS Funding Years	EPA Enacted Fiscal Year 1998 (in millions)	EPA Enacted Fiscal Year 1999 (in millions)	President's Budget Request Fiscal Year 2000 (in millions) (estimates)
1. Outdoor vs human exposures .....	<sup>2</sup> \$9+	1998–2000	\$6.8	\$8.2	\$9.1
2. Exposure to toxic PM components .....	20	2001–2005	0.5	0.0	0.7
3. Source-receptor measurement tools .....	12	1998–2003	5.9	7.0	6.8
4. Application of methods and models .....	26	1998–2005	0.7	0.4	1.7
5. Assessment of hazardous PM components .....	102	1998–2010	7.3	7.9	7.1
6. Dosimetry .....	7.5	1998–2001	1.2	0.6	1.0
7. Effects of PM and copollutants .....	125	1998–2010	1.9	7.4	8.3
8. Susceptible subpopulations .....	22	1998–2005	8.3	2.7	2.8
9. Toxicity mechanisms .....	57	1998–2003	6.0	8.3	7.1
10. Statistical analysis and measurement error	12	1998–2003	1.7	1.2	1.5

<sup>1</sup>The original fiscal year 1999 President's Budget reflected Operating Expenses and Working Capital Fund resources consolidated in a single Goal and Objective. For the fiscal year 1999 Pending Enacted Operating and the fiscal year 2000 President's Budget, these resources were allocated across Goals and Objectives. The fiscal year 1999 President's Budget figures shown in this table have been revised to reflect the allocation of Operating Expenses and Working Capital Fund resources across all Goals and Objectives. Also, additional funds are allocated to AQCD development, source characterization and similar research, and management.

<sup>2</sup>The NAS recommended a minimum of three exposure studies for 3 years would cost about \$9 million overall. Further, NAS pointed out that adding studies of susceptible populations would increase the required funding by approximately a factor of three or more; thus we indicate this potential funding level by listing \$9 million+ in this table. The EPA is including susceptible subpopulations in studies currently underway.

**Question 2.** Please provide a list of all requests for waivers (both formal or informal from any municipality or State) from the ozone standard for 1998. Include the date received by the EPA and the date of the Agency decision. Please identify any extenuating circumstances regarding decision delays and whether the waiver requests were formal or informal. Please quantify the Agency resources, both fiscal and FTE, used to respond to the requests.

**Response.** To date, 9 requests for excluding ozone data from compliance calculations due to impacts from Mexican/Central American fires have been received by the Agency. All requests have been formally submitted. These requests are summarized in the table below.

Source of Request	Date Received	Date of Response	Comments/Status
Chattanooga, Tennessee	12/8/98	.....	Technical justification not yet submitted.
Kentucky	1/7/99	2/1/99	Request approved.
Oklahoma	1/8/99	.....	Request does not follow Agency's guidance; Agency performing additional analysis before decision.
Louisiana	1/20/99	.....	Request does not follow Agency's guidance; Agency performing additional analysis before decision.
Minnesota	2/4/99	3/1/99	Request approved.
Florida	2/17/99	.....	Request does not follow Agency's guidance; additional justification requested from State.
Texas	2/18/99	.....	Request does not follow Agency's guidance; Agency performing additional analysis before decision.
Jefferson County, Alabama	2/19/99	.....	Approval anticipated early April.
North Carolina	2/26/99	.....	Approval anticipated early April.

The Agency is working to respond to these requests as rapidly as possible. The Agency has the equivalent of 2.0 FTE technical staff reviewing and developing responses to these requests. No contract funds are being used to facilitate the review of these requests. Since several of the requests have not followed the Agency's guidance, review (for those) has involved significant time and effort on the Agency's part in gathering additional data and re-analyzing those data. Nonetheless, the Agency remains committed to responding to these requests with speed and with scientific credibility.

CLEAN AIR PARTNERSHIP

*Question 1.* Please provide a statutory justification for the use of section 103 of the Clean Air Act to fund this program. Include detailed past examples of the use of this section.

Response. Section 103 of the Clean Air Act would provide the statutory authority necessary for the award of financial assistance to support activities undertaken as part of the Clean Air Partnership Fund program. Section 103 requires the Administrator to establish a "national research and development program for the prevention and control of air pollution." As part of this program, Section 103(a)(1) requires the Administrator to "conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention and control of air pollution." Section 103(b)(3) authorizes the Administrator to make grants to support the activities listed in Section 103(a)(1). The Section 103(b)(3) grant authority thus includes the authority to fund demonstration projects, as well as related studies and investigations, such as those that would be supported through the Clean Air Partnership Fund program.

Past examples of the use of Section 103 include:

- A grant to the Tahoe Regional Planning Agency (TRPA) to help fund a coordinated transit system intended to reduce air pollution from mobile sources in the Lake Tahoe, Nevada region.
- A grant to the Northeast States for Coordinated Air Use Management for a heavy-duty diesel retrofit implementation planning and in-use testing project.
- A grant to the Consumer Research Council for a radon and indoor air quality education prevention and mitigation project.
- A grant to the Association of Small Business Development Centers for an energy efficiency education and outreach program for small business.
- A grant to the American Public Power Association for investigating the marketing of landfill gas energy.

*Question 2.* Please provide examples of the projects that are envisioned for this program.

Response. The Clean Air Partnership Fund will be used to provide grants to local and State governments, tribes and multi-state organizations. The Clean Air Partnership Fund will support demonstration projects that: (1) control multiple air pollution problems simultaneously; (2) leverage the original Federal funds; (3) facilitate meaningful public involvement; and (4) provide innovative approaches to air pollution control that could be replicated in other cities and states. For example grants could be awarded for demonstration projects in the following areas:

- Partnership Funds could help provide startup capital for municipalities to establish programs to convert existing diesel fleets of school and transport buses to cleaner fuels.
- Partnership Funds could help establish home energy efficiency investment loan funds. Reducing energy use in homes will reduce local soot, smog and air toxics and greenhouse gas emissions.
- Partnership Funds could be used to create incentives for cleaner electricity generation at utilities. Increased use of combined heat and power and natural gas combined-cycle electricity generation will yield criteria pollutant, air toxic and greenhouse gas emission reductions.
- Partnership Funds could support local revolving loan funds to finance energy efficient retrofits for local and State agency buildings, public schools, hospitals and private industry. The cost savings realized from lower energy bills would allow borrowers to repay the loans and provide an ongoing source of funding for future innovative investments.
- Partnership Funds could help support tax credits for innovative air pollution control technology investments.
- Partnership Funds could be used to help stimulate demand for renewable sources of energy. Renewable energy sources such as fuel cells, photovoltaics, wind and geothermal provide ideal integrated air pollution control technologies.

*Question 3.* Please provide a list of all types of groups or organizations which would qualify for funds under this program.

Response. Entities eligible for grants through the Partnership Fund include local and State governments, tribes and multi-state organizations. Specific eligibility criteria will be included as part of the Solicitation of Proposals which will be issued by EPA after Congressional appropriation of the fiscal year 2000 budget. Section 103 grant recipients can in turn use funds to support activities of other public or nonprofit agencies, institutions, and organizations, as well as private sector entities. Through this mechanism, the Fund will support Partnerships between governmental recipients and non-governmental organizations as well as industry.

#### SUPERFUND

*Question 1.* At how many sites have potentially responsible parties incurred response costs to date?

Response. Using EPA's CERCLIS data base, EPA identified 1,823 sites (NPL and non-NPL) where PRPs have initiated all or a portion of any response action at the site. The response actions considered were removals, remedial investigation/feasibility studies, remedial design, remedial action, long-term response action (e.g. groundwater pump and treat) or operation and maintenance. It should be made clear that because EPA routinely conducts oversight of PRP-lead response activities, most, if not all, of these sites will appear in the counts for question 2 since EPA would have incurred response costs from the Fund to oversee these response actions.

*Question 2.* At how many sites have EPA and/or the States incurred response costs to date?

Response. According to the Agency's Integrated Financial Management System (IFMS), EPA has incurred response costs (disbursements) at more than 2,670 sites at costs of \$200,000 or more per site as of 09/30/98.

*Question 3.* At how many sites where EPA has incurred response costs has it initiated cost recover actions?

Response. Using EPA's CERCLIS data base, EPA identified 1,117 sites (NPL and non-NPL) where EPA has initiated a cost recovery action against and/or obtained a cost recovery settlement for all or a portion of any EPA response costs at the site.

*Question 4.* Does EPA intend to seek cost recovery at the remaining sites where it has incurred response costs?

Response. To ensure effective use of resources, it is EPA's policy to, at a minimum, seek recovery of its response costs at all sites where liable and financially viable responsible parties have been identified and EPA's total unrecovered response costs (including indirect costs) exceed \$200,000. Due to resource limitations, Regions do not have to vigorously pursue cost recovery at sites with total response costs less than \$200,000, because it is likely that the costs of collection will exceed the amount recovered.

*Question 5.* Are there sites where EPA has incurred response costs for which it does not intend to seek cost recover? Why not?

Response. EPA does not seek recovery of its response cost at sites where there are no liable or financially viable potentially responsible parties, so called "orphan" sites. In addition, as noted above, EPA Regions have the discretion not to pursue response costs at sites where total EPA response costs are less than \$200,000. In addition, there are some sites where EPA may chose to pursue some but not all of its response costs due to issues such as significant "orphan shares", litigation risk/lack of evidence, divisibility of harm, and other instances where EPA chooses to exercise its enforcement discretion.

*Question 6.* Then, is it correct to say that for every site at which EPA (or state?) has or will incur response costs that it will seek recover from potentially responsible parties?

Response. While EPA cannot speak for the recovery of State costs, as stated in response to question 4, at a minimum EPA intends to seek recovery of its response cost at all sites where there are liable and financially viable potentially responsible parties and total EPA response costs exceed \$200,000 and in appropriate situations seek recovery at sites with total costs less than \$200,000.

*Question 7.* What is the estimated cost to clean up the remaining NPL sites? Just direct contractor costs, not EPA administrative and other costs.

Response. EPA projections do not separately model contractor costs to cleanup Superfine sites. EPA conservatively estimates cleanup response to comprise numerous activities, described under the response to Question 8, that include contractor and non-contractor costs. Of the \$17.4 billion projected to complete the Superfund pro-

gram in the most recently released Superfund Annual Report to Congress EPA estimates that approximately 70 percent of this will be used for cleanup response.

*Question 8.* I am bothered that with all of the administrative reforms you claim to have made, a report last year by the GAO indicates that more than half of the costs of the Superfund program still go to EPA's program administration and support, with only 46 percent of the funds going to contractors for direct cleanup. And, GAO says that's an increase of 3 percent over the previous year to EPA administration. What is the reason for the high administrative costs? Is it possible for you to identify some areas in which administrative cost could be reduced to provide more money to direct cleanup?

Response. EPA conservatively estimates cleanup response to comprise numerous activities that directly support cleanup responses. EPA estimates that approximately 70 percent of its budget will be used for cleanup response. GAO's definition of "cleanup" does not include many key components of the cleanup process. GAO omitted functions such as lab analysis, engineering and technical analyses, project manager salaries, State/Tribal activities, community involvement activities, and oversight of responsible parties and many other activities necessary to achieve cleanups. GAO's contractor cost computation also fails to recognize the \$175 million in annual Superfund appropriations used by other Federal agencies (e.g., ATSDR, USCG, NIEHS, FEMA, NOAA) for cleanup, testing and assessment, and the approximately \$30 million in annual appropriations to DOJ which has resulted in settlements with private parties for more than \$15 billion in cleanup or reimbursements to the Federal Government. Without these resources, the response cleanup process could not proceed.

For example, at the Red Wing Trucking/Saraland Apartments Site in Saraland, AL, the site was contaminated by years of washing out chemical trucks in the area on which apartments were subsequently built. The responsible party (RP) took over management of the site study and remedial investigation/feasibility study (RIFS) functions to characterize the contamination onsite in order to determine the remedy requirements. EPA samples taken at the site showed that the RP-lead RI/FS had missed a large portion of the contamination, necessitating the relocation of the residents of the apartments and assumption of cleanup responsibilities by EPA. The RPM's salary, site travel, and oversight costs were vital to ensuring the safety of the residents. Without these costs, not included in GAO's definition of cleanup, millions of dollars could have been spent implementing an inadequate and nonprotective remedy.

*Question 9.* In the Budget you make the claim that one of your goals is to "pursue greater recovery of EPA's cleanup costs." This is welcome news, especially in light of GAO's recent report that indicates that historically EPA has not charged responsible parties for certain portions of its costs, resulting in the exclusion of approximately \$3 billion from final settlements. That's 1/5 of the \$15 billion spent to date on Superfund that EPA has failed to recover.

Response. In 1982, before there was any substantial judicial precedent on which it could rely, the agency established a very conservative methodology for charging indirect costs to sites for possible cost recovery. In fiscal year 1992 the agency proposed revised indirect cost methodology to address this issue. Public comments were overwhelmingly opposed to the revisions and the rule has not been finalized. The agency is currently in the process of revising its cost accounting system pursuant to the recent statutory requirement based on OMB's Federal Cost Accounting Standards (FASAB #4, July). That revised methodology should be operational in early fiscal year 2000. In accordance with the FASAB statement, the new methodology will roll virtually all of Superfund's indirect costs into the new rates, and that will make them eligible for cost recovery. The agency considers Superfund cost recovery as an integral part of the overall enforcement effort rather than an independent initiative. The agency's success in persuading potentially responsible parties (PRPs) to conduct approximately 70 percent of new remedial work at NPL sites means that Trust fund moneys are available for cleanups at orphan sites, sites with recalcitrant PRPs, sites with ability to pay issues, sites with orphan share and sites with other legal or evidence issues. Our success in getting the best cases to settle has significantly reduced the amount of costs the agency needs to recover. The agency estimates that approximately \$500 million of the \$3 billion referenced above would be made available for recovery through the application of the new indirect rates.

*Question 10.* Your plan to pursue greater recovery is welcome news. Why, then do your estimates of recoveries for fiscal year 1998, 1999 and 2000 actually go down from \$320 million in fiscal year 1998 to \$250 million in 1999 and \$225 million in fiscal year 2000? One would think it would increase if one of your goals is "pursuit

of greater recovery of EPA's cleanup costs." Can you explain this apparent discrepancy?

Response. [No response was provided by EPA.]

*Question 11.* I also note that EPA did not request the \$650 million in additional appropriations for fiscal year 2000 conditioned on passage of Superfund reform legislation as you have in the past several years. I conclude from this change in policy that cleanups are proceeding at such a pace that the Superfund program is winding down—and so is the need for funding. Would this be an accurate statement? Why or why not?

Response. The Superfund program has made substantial progress in the last 6 years, and approximately 89 percent of the NPL sites have had cleanup activities, are construction complete, or have cleanup underway. However, these accomplishments cannot overshadow the significant work remaining at current and proposed NPL sites. At the end of fiscal year 1999, the Agency will still be working to complete construction at over 700 sites currently on the final NPL.

We also need resources to clean up newly listed sites as quickly as possible. Historically, we have listed an average of 26 sites per year on the NPL. We do not know now how many more sites will need to be added to the NPL, but we will focus our NPL listing activities on those sites that States agree should be added to the NPL and sites where States are unable or unwilling to clean up the site. We have been using and will continue to use these considerations to guide our listing decisions. This year we expect to list roughly 40 sites on the NPL.

Furthermore, even as cleanup activities are completed at sites, EPA will need to invest resources in ensuring that remedies remain protective into the future. EPA will have responsibilities to conduct oversight of continuing operations, to review periodically remedies at which waste remains in place, and to take response actions at sites at which remedies do not remain protective. Finally, EPA expects to continue to have an important role in conducting removal actions to protect communities across the country. The need for EPA involvement in removals is unlikely to decline, and, as fewer sites are added to the NPL in the future, removal actions may be more widely used to achieve necessary cleanups.

*Question 12.* There is some talk of "sun setting" the current Superfund program in the year 2000 because of the great strides your Agency claims to have made through "administrative reforms." I assume EPA would retain some semblance of 106 authority to handle emergencies in such a new program as well as assure that any new Superfund program restores the rights normally guaranteed under our legal system. That means restoring judicial review, financing Superfund with congressional appropriations rather than special taxes not based on pollution, and revising EPA's risk assessment and remediation procedures while allowing affected parties the right to judicial review of those procedures. Such changes are necessary if a new or reauthorized Superfund is to be effective, fair and perceived to be fair is that what you envision as a new Superfund framework beyond your "administrative reforms" of the last 6 years?

Response. The Superfund program today is operating faster, fairer, and more efficiently to achieve greater environmental results. In fiscal year 2000 and beyond, the Agency will build on successful administrative reforms to address the Superfund work that remains to be done in hundreds of communities across America. Through administrative reforms, almost three times as many Superfund sites have had construction completed in the last 6 years that in all the prior years combined. As of September 30, 1998, more than 89 percent of non-Federal sites on the final NPL are either undergoing cleanup construction or are completed. In addition, over 5,500 removal actions have been taken at hazardous waste sites to immediately reduce the threat to public health and the environment. However, a great deal of work remains to be done. At the end of fiscal year 1999, the Agency will still be working to bring more than 700 sites on the final NPL to construction completion. The Agency will continue to employ Superfund administrative reforms to quickly and efficiently complete these sites in the years ahead.

#### NO<sub>x</sub> SIP CALL

*Question 1.* I understand that EPA has requested information from various industries to assure that EPA's emissions inventory that is being used for the NO<sub>x</sub> SIP Call is correct. I also understand that the affected States have already received their budgets for required reductions. If you find that you have errors in your inventory, is it your intent to send new budgets to each of the States to make the correction? Do you also intend to inform the States where the inventory was incorrect so that they can make the appropriate adjustments regarding the affected industries?



Response. At the request of numerous States and industries, EPA reopened the emission inventory comment period, in the final NO<sub>x</sub> SIP Call budget rule, until February 22, 1999. The EPA now expects to calculate new budgets for each State in the affected domain by late April.

After careful review of all of the emission inventory comments, EPA will make appropriate changes to each State's NO<sub>x</sub> emission budget and revise the NO<sub>x</sub> SIP Call to reflect the revised budgets. These revised budgets will then be formally communicated to the respective States so that they may use them in their SIP planning processes. Our response to comments (RTC) documentation, that will accompany the rule revision, will explain EPA's response to the comments and how they were addressed in the inventories and budget calculation.

*Question 2a.* Regarding the NO<sub>x</sub> SIP process, I understand that as many as half the States may not have time or inclination to do their State Implementation Plans, (SIPs) which means that EPA will have to do a Federal Implementation Plan (FIP) for each of these states. Can you tell how many and which States will be subject to a FIP? How does EPA propose to handle this situation?

Response. As required by the CAA, EPA will complete a FIP for any State that fails to meet a SIP Call requirement. Most of the States affected by EPA's September 24, 1998 SIP Call are working toward meeting the September 30, 1999 due date. It is not clear at this time which of these States, if any, will miss the date. Finally, even if EPA were to promulgate a FIP, a State can replace the FIP with an appropriate SIP at anytime. Thus, the FIP would not preclude States from pursuing their own approach to compliance with the SIP Call.

With respect to all of the States affected by the SIP Call, EPA notes that it has consistently offered assistance and support in understanding the rule's requirements and developing and adopting State rules within the timeframes set forth in the final SIP Call. (In fact, EPA has already provided model trading regulations for use by the States.) EPA remains committed to providing States with any technical or policy assistance that would enable the States to submit their SIPs by September 30, 1999.

*Question 2b.* It is my understanding that several States have requested an extension for submitting their SIPs (not an extension of the implementation date). However, EPA has denied this request. In light of the number of States that are concerned that they will be subject to a FIP simply because they do not have enough time to develop their own SIP, can you explain your position?

Response. EPA established the submittal date of September 30, 1999 in the final NO<sub>x</sub> SIP Call in order to protect public health by providing for expeditious reductions in NO<sub>x</sub> emissions that significantly contribute to ozone transport. As explained in EPA's response to the request for a stay submitted by eight states, delaying the SIP submittal data could jeopardize the expeditious achievement of those reductions. Also as explained in that response, EPA believes the States have sufficient time to develop their SIPs in response to the SIP Call. In fact, the majority of States covered by the SIP Call are moving forward to adopt SIPs in a timely manner. The States have had ample opportunity to analyze approaches to reducing ozone transport including their 2-year participation, along with EPA, in the Ozone Transport Assessment Group (OTAG). In addition, in our final NO<sub>x</sub> SIP Call rule, EPA provided a model trading rule which States could adopt to achieve the vast majority of the reductions called for by the SIP Call. Finally, even if EPA were to promulgate a FIP, a State can replace the FIP with an appropriate SIP at anytime. Thus, the FIP would not preclude States from pursuing their own approach to compliance with the SIP Call. (A copy of EPA's response to the stay request is attached).

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LETTER SUBMITTED FOR THE RECORD

ENVIRONMENTAL PROTECTION AGENCY,  
Washington, DC., February 5, 1999.

Mr. RUSSEL J. HARDING,  
Michigan Department of Environmental Quality,  
Lansing, MI.

DEAR MR. HARDING: This letter is in response to the request for an administrative stay filed on January 13, 1999, by Michigan and seven other States. On September 24, 1998, the Environmental Protection Agency (EPA) issued a final rule requiring 22 States and the District of Columbia to reduce emissions of nitrogen oxides (NO<sub>x</sub>) that are transported to other States ("SIP Call"). In the SIP Call, EPA provided States with 12 months from its promulgation—until September 30, 1999—to submit plans to reduce NO<sub>x</sub> emissions. Michigan, along with seven other States, has requested EPA to delay for 7 months—from September 30, 1999 to April 27, 2000—

the time for States to submit these SIPs. For the reasons provided in the enclosure to this letter, EPA is denying the request for an administrative stay of the SIP submission date established in the final SIP Call. While the enclosure details EPA's analysis supporting this denial, I want to reiterate EPA's continued commitment to working with all of the States to implement the SIP Call in a timely fashion.

Sincerely,

ROBERT PERCIASEPE,  
*Assistant Administrator.*

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DENIAL OF REQUEST FOR A STAY OF THE SIP SUBMISSION DEADLINE

In support of a stay of the SIP submission deadline established in the rural SIP Call rule, the States rely on four assertions: (1) that the States should not have to choose between submitting rules and "harsh sanctions" before the Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") has had an opportunity to rule on challenges to the SIP Call; (2) that EPA's continued review of the emission inventories has "exacerbated" the States' difficulties in meeting the 12-month submission timeframe; (3) that an extension of the deadline will not affect public health or the environment because it will not affect the remainder of the SIP Call rule; and (4) that the Clean Air Act provides up to 18 months for a State to submit a plan in response to a SIP Call and that the 12-month period provided in EPA's final rule did not provide an adequate time for thorough, thoughtful rulemaking. These reasons, considered separately or collectively, do not provide a sufficient rationale for EPA to extend the promulgated SIP submission deadline.

The States claim that a stay is necessary because the States should not be required to submit plans prior to the time the court has had an opportunity to rule on their challenge to the SIP Call. Such an approach is contrary to the general presumption in litigation that a promulgated rule remains in effect pending judicial review. However, a court or an agency may decide to stay the effectiveness of a rule "where justice so requires." 5 U.S.C. §705. In determining whether justice requires a stay of an effective date, four factors are typically considered: (1) the petitioners' likelihood of success on the merits; (2) whether there is irreparable harm to the petitioners if the regulation takes effect; (3) the degree of harm that would occur if the regulation were stayed; and (4) whether the public interest would be served by a stay.

EPA believes that there is strong support for the general presumption that the effectiveness of rules should not be delayed pending judicial resolution. Many of EPA's regulations are challenged. Establishing a presumption that compliance is not necessary until after judicial review could result in lengthy delays of many important health protection programs. Therefore, EPA does not believe that it is appropriate to stay the SIP submission deadline solely on the basis that the D.C. Circuit should first rule on the validity of EPA's rule.

Several of the States' claims ostensibly fit within the test established for granting a judicial stay.<sup>1</sup> The States allege harm to themselves due to EPA's reassessment of the inventories and the specter of sanctions should the States fail to make the submissions. In addition, they allege that the public will not be harmed by a stay since EPA has stated the view that sources may be expected to control emissions by the compliance date even if they do not initiate control efforts until April 2000. For the reasons provided below, EPA does not believe that the States have made a case of either harm to themselves or of no harm to the public if the submission date is delayed.

With respect to harm to themselves, the States claim that EPA's decision to give States a further opportunity to review source data and provide corrections to emission inventories has resulted in less time for SIP development for the States and, thus, requires EPA to provide additional time for the States to submit their SIPs. Though it is not clear, the States appear to claim that they cannot begin State planning efforts based on inventories that EPA has "acknowledged" are flawed. The States overstate the implications of EPA's decision to offer an opportunity for the public to request changes to the inventories.<sup>2</sup> While EPA does not dispute that the current inventories may not be perfect, EPA's decision to accept submissions aimed at further refining the inventories was not intended to mean that the refinements

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<sup>1</sup>The States' request does not address the issue of likelihood of success on the merits. EPA believes that the Clean Air Act legally supports EPA's issuance of the final SIP Call rule and that the rule is based on a sound technical analysis.

<sup>2</sup>EPA's decision to provide for further review of the inventories is set forth at 63 Fed. Reg. 57356, 57425-28 (Oct. 27, 1998) and 63 Fed. Reg. 71220, 71221-22 (Dec. 24, 1998).

would be so significant as to require additional time for State SIP submission. In fact, EPA believed and continues to believe that the refinements will be relatively minor and should not affect the timetable for State planning. EPA's decision to provide one last opportunity for the inventories to be refined should not be interpreted as an admission of a substantial flaw in the inventories but rather as a decision to entertain what were expected to be minor adjustments to the inventory as States move forward to develop regulations to achieve the needed emission reductions.

EPA believes that the inventories as they now exist are or should be substantially accurate. States and industry have already had previous opportunities to adjust the inventories. States and industry first developed the inventories using an iterative process over a 2-year period from 1995–1997 for purposes of the analyses performed by the Ozone Transport Assessment Group. In addition, EPA provided an opportunity to make adjustments to the inventories during the initial 120-day comment period on the SIP Call rule. Specifically, between the notice of proposed and final rulemakings, numerous comments regarding revisions to the inventory were received, reviewed and, where justified, incorporated into the base and budget inventories of EGU and non-EGU point sources. Because of these opportunities for correction, it is unlikely that significant flaws have not been previously noted and addressed. Notably, even with a large number of source additions revision, and removal requests, the final emission budget estimates for the sources identified as large increased by only about 4 percent for the entire regional transport jurisdiction area. The resulting net change to the budget for all sources was only 3 percent over the entire 23 jurisdiction area. Because States and sources have already had extended opportunities to raise inventory concerns and because the changes made during those processes were not substantial, EPA does not anticipate that at this late date there will be significant changes to the current inventories.

Moreover, it is important to recognize that even EPA's current action to refine the inventories will not necessarily cure all possible defects. Inventories are invariably based on incomplete information that is subject to a process of continual refinement. As such, they are subject to frequent revision. For example, States were required to submit emissions inventories in 1992 based on emissions for calendar year 1990. CAA § 182(a)(1). Despite submitting these inventories in 1992, and basing many regulations on those inventories, States are still submitting revisions to these 1990 baseline inventories more than 6 years after they were statutorily required. Thus, if EPA, States and sources were to delay regulation until inventories were perfect, States would never develop SIPs, sources would never be regulated, and air pollution would never be reduced. The exercise EPA is undertaking here should not be considered any different from the States' continuous efforts to refine their inventories. Thus, as they do when refining their own inventories, States simultaneously can and should move forward to develop regulations as the inventory data is further refined.

Because the inventory changes are not anticipated to be substantial, EPA believes that States can and should be moving forward to address the NO<sub>x</sub> SIP Call reduction requirements. States need not await these final determinations before they can make substantial progress in the development of plans to achieve the required NO<sub>x</sub> reductions. Although EPA based the budgets for each State on presumptive controls for certain source categories, States are not constrained to regulate those precise categories nor to impose the same controls presumed by EPA. Therefore, since the inventories, and the overall budget numbers, are unlikely to change substantially, States can and should move forward to develop regulations to achieve most or all of the emissions reductions represented by the budget while awaiting final adjustments to the budget numbers. For example, to the extent that States are planning to adopt the emission reduction strategy that EPA relied on, States can move forward with developing the regulatory language for the control measures while leaving open the issue of the precise degree of emission limitation for each covered source. EPA anticipates that the final inventory and budget numbers will be available in sufficient time for the States to make any necessary adjustments in a timely manner.

The States allege harm to themselves because they will face a "Hobson's choice" of adopting regulations that they believe are unlawful or, alternatively, facing "draconian sanctions." These allegations are misdirected. There is no harm to the State, much less irreparable harm, that occurs at the time a State fails to make a required SIP submission if a State does not submit a plan by September 30, 1999, EPA would make a finding of failure to submit the plan. CAA § 179(a). That finding has two implications. First, based on that finding, EPA would be required to promulgate within 2 years a Federal implementation plan ("FIP") that directly regulates

sources, but that imposes no burdens or obligations on States. CAA §110(c).<sup>3</sup> Since a FIP would directly regulate sources, it does not harm the States; moreover, if a State subsequently submits an approvable SIP, the SIP would replace the FIP once it was approved by EPA. Thus, even if a FIP could be considered harmful to a State, it is not irreparable harm.

Second, EPA's finding would start an 18-month period before even the first of two sanctions would apply.<sup>4</sup> However, if and when the State made the submission, an EPA finding that the State had submitted a complete plan would stop the sanctions from applying. 40 C.F.R. §52.31(d). The first sanction would go into effect around April 2001 (if the States still had not submitted the plan) and would directly apply to certain stationary sources, not States. Those sources would be required to provide greater offsets for their new emissions before they could construct. CAA §179(b)(2); 40 C.F.R. §52.31(d) and (e)(1). A second sanction would apply 6 months later (approximately October 2001) if the State still had not submitted a plan. That sanction would place limits on the types of transportation projects for which States could receive Federal funds.<sup>5</sup> CAA 179(b)(1); 40 C.F.R. §52.31(d) and (e)(2). Thus, the only harm to the State, if any, would occur approximately 24 months after September 30, 1999 (i.e., October 2001), well after the court will decide the challenges to the SIP Call.

The States' past action belies their alleged fear of the threat of sanctions. With the exception of Alabama, each of the eight States requesting a stay, at some time, has opted in the past to incur a finding from EPA rather than to make required SIP submission under the Act. According to EPA's Findings and Required Elements Data system, the number of findings for each of the other seven areas ranges from one, for South Carolina, to 71 for Ohio.<sup>6</sup> In many of these cases, the finding was in place for more than 1 year before the State finally submitted the required plan and, in a number of cases, the State did not make the required submission until right before the offset sanction would have been imposed—18 months after the finding was made. These facts cast doubt on the States' contention that irreparable harm, if any, results from the finding, rather than from the actual imposition of sanctions.

With respect to possible harm to the public if the regulation were stayed, the States indicate the EPA has stated that sources may initiate their control efforts as late as April 2000 and still achieve the necessary emission reductions by May 2003. While EPA has made and still supports that statement, allowing SIP submissions as late as April 2000 would interfere with sources' ability to initiate control efforts by April 2000 and to achieve reductions by May 1, 2003.

As an initial matter, expeditious submission of the SIPs is needed to provide maximum protection of public health and the environment. The earlier that States develop rules, the earlier sources will be able to begin implementing the necessary control measures. Moreover, while May 2003 is the latest date by which compliance may be achieved under the SIP Call rule, EPA anticipates that some sources will achieve reductions earlier and thus provide earlier benefits to public health and the environment. Delaying SIP submission could delay or inhibit these earlier reductions. And, it is these emission reductions that will result in reductions of ambient ozone concentrations, which will provide protection of public health and the environment.

More importantly, allowing States until April 27, 2000 to submit SIPs allows no lead time for EPA to promulgate and make effective a FIP, if necessary, that directly regulates sources and requires source compliance by May 1, 2003. The current

<sup>3</sup>EPA has indicated that it will promulgate a FIP in the Fall of 1999 and that the FIP will take effect in an area shortly after the State fails to submit a complete plan or the plan is disapproved.

<sup>4</sup>Automatic sanctions under section 179(a), with only minor exception, apply only in areas designated nonattainment. *See* CAA §179(b)(1); 40 C.F.R. §52.31(b)(3); 59 Fed. Reg. 39832, 398853-54 (Aug. 4, 1994). Thus, it is likely that at least five of the eight States that have requested the stay would not be subject to the automatic offset and transportation funding limitations. West Virginia, South Carolina and North Carolina currently have no areas designated as nonattainment for ozone. EPA has proposed to revoke the 1-hour standard for the remaining nonattainment area in Michigan, 63 Fed. Reg. 69598 (Dec. 17, 1998), and it appears that the remaining nonattainment area in Ohio has clean air quality and that EPA, therefore, will revoke shortly the 1-hour standard for that area. Once the 1-hour standard is revoked for an area, it is no longer designated nonattainment for that standard.

<sup>5</sup>Even if the highway sanction were imposed, a State that subsequently submitted its SIP could receive highway funds that were previously withheld under certain circumstances. Therefore, imposition of the highway sanction would not necessarily result in irreparable harm.

<sup>6</sup>According to EPA's Findings and Requirements Data system, the number of findings made for the remaining five States are Indiana, 32; Michigan, 22; North Carolina, 17; Virginia, 9; and West Virginia, 16.

schedule of SIP submissions in September 1999 allows for EPA to approve or disapprove the submissions by April 30, 2000 and to promulgate FIPs that are effective by that date where State plans are inadequate. If States are not required to submit SIPs until April 27, 2000, where a State fails to make the submission, EPA may not be able to ensure a Federal plan is effective in time to provide sources with adequate lead time for compliance. Furthermore, if the States submit a plan in April 2000 that is disapprovable, EPA would be unable to complete its disapproval rule-making before the Fall of 2000 and a FIP could not be effective until that time. Therefore, an extension of the SIP submission date to April 2000 could result in sources in some States not knowing whether they are subject to controls until well after April 30, 2000, thereby interfering with implementation of controls, and the resultant air quality benefits, by May 2003.

Finally, at the same time the States contend that there will be no harm to public health and the environment if a stay is granted, some of the States requesting the stay indicate that they "do not believe that the implementation date is reasonable." Currently the rule presumes sources will have from September 1999, when States submit plans, until May 2003 to implement measures in the State plans. It is difficult for EPA to believe that if EPA granted a SIP submission deadline extension to April 2000, these States, as well as the sources challenging the rule, would not then seek a further stay of the control measure compliance dates in the final rule. In fact, on January 28, 1999, the Midwest Ozone Group, a coalition of midwestern industries that is challenging the final SIP Call rule, submitted a letter supporting the States' request for an administrative stay and urging EPA "to give consideration to the need to re-evaluate the implementation deadline of May 1, 2003." Granting an extension of the SIP submission deadline could well lead to a situation where the emission reductions would be delayed and thus public health and the environment would suffer. Therefore, EPA believes that an extension of the SIP submission deadline would adversely affect public health or the environment and would be contrary to the public interest.

The States' remaining claims do not support an extension of the SIP submission deadline. First, the States note that at a meeting of the Ozone Transport Assessment Group on June 2-3, 1997, EPA officials stated that EPA would "give affected States up to 18 months in which to revise their SIPs." Any statements that EPA made at a meeting before it proposed, much less finalized, the final SIP Call have no binding effect. In its November 7, 1997 proposal, EPA proposed establishing a 12-month SIP submission deadline. The public had a full opportunity to comment on that issue and EPA considered the public comments before it established the 12-month submission timeframe in the final rule. In any event, the statement allegedly made at the June 1997 meeting is fully consistent with the statutory language in sections 110(a)(1) and (k)(5), as is EPA's final rule. The States' last claim is that the CAA allows EPA to provide States as long as 18 months to submit their SIPs and that the complexity of the SIP Call rule merits the full 18 months. These arguments are not new. EPA fully responded to these concerns in responding to comments on the proposed rule. 63 FR 57356, 57450-51 (Oct. 27, 1998); Responses to Significant Comments at 91-94, Docket A-96-56, VI-C-01. Because EPA fully considered and responded to these concerns in establishing the September 30, 1999 submission date in the final rule, EPA sees no reason to change its final decision and extend the date now based on what are essentially the same arguments.

In addition, EPA recognizes that a number of States have written EPA, urging the Agency to deny the request for an administrative stay. Generally, these States believe that an extension of the SIP submittal date would be counterproductive or even harmful. A number of these States reiterate and provide additional support for the reasons EPA has set forth above to deny the request for a stay. For example, the State of New York provided a detailed discussion of why the opportunity for States to revise their inventories should not affect the States' ability to move forward with SIP planning. The Commonwealth of Pennsylvania presented information regarding how it has already drafted regulations and is moving forward with presentations to the State Environmental Quality Board. Each of these States that are required to submit regulations pursuant to the SIP Call rule have indicated that they will be able to meet the September 30, 1999 submission date. EPA incorporates these letters as additional support for its denial of the eight States' request for an administrative stay of the SIP submission deadline.

Last, with respect to all of the States affected by the SIP Call, EPA notes that it has consistently offered assistance and support in understanding the rule's requirements and developing and adopting State rules within the timeframes set forth in the final SIP Call. (In fact, EPA has already provided model trading regulations for use by the States.) EPA remains committed to providing States with any tech-

nical or policy assistance that would enable the States to submit their SIPs by September 30, 1999.

TRI

*Question 1.* Congress strictly limited EPA's authority to expand the TRI in Section 313 of EPCRA to the manufacturing sector. TRI concepts of "manufacture," "process," and "other use" do not, and Congress did not, intend them to apply outside the manufacturing sector (SIC codes 20-39). Why have you then Ms. Browner added non-manufacturing SIC codes on the Agency's own volition without statutory authority from Congress?

Response. EPA believes that in EPCRA section 313(b)(1)(B), Congress gave EPA the authority to add industry groups to the TRI program, when the Agency reasonably finds that reporting by facilities within those groups would be relevant to the purposes of the TRI program. EPCRA section 313(b)(1)(B) provides that:

The [EPA] may add or delete [SIC] Codes . . . but only to the extent necessary to provide that each [SIC code] to which [section 313] applies is relevant to the purposes of [section 313].

The question under section 313(b)(1)(B) is whether potential reporting by an additional group would be relevant to the purposes of the TRI program. While the Conference Report did refer to adding SIC codes for facilities which are "like facilities within the manufacturing sector," *id.*, EPA believes the relevant similarity is not the operational nature of the industry group, but in the informational value of reporting on toxic chemical use, management, and disposition—i.e., the language in the statute and Conference Report provides that EPA may expand the SIC code coverage to include other facilities that will contribute to the TRI data base information on the use and disposition of toxic chemicals in the United States. By including SIC Codes 20 through 39, Congress made a judgment that reporting by those industries would be relevant to the purposes of the TRI program; the statute then authorized EPA to include additional SIC codes, where EPA finds that reporting by those industries would also be relevant to the TRI program. EPA does not believe that the additional industry groups must be within the traditional manufacturing sector, or must be like or akin to that sector in the way they "manufacture," "process," or "otherwise use" toxic chemicals. Even though EPA believes that EPCRA permits addition of industry groups composed of facilities that "manufacture," "process," or "otherwise use" toxic chemicals in a manner different from facilities within the traditional manufacturing sector, in its recent rulemaking the Agency has limited the addition to industry groups that have significant ties to the manufacturing sector.

*Question 2.* Further, TRI data has nothing to do with "releases to the environment." The data reported to EPA describes the use of reportable chemicals but it is not on a release or the risk of a release. However, EPA allows the confusion of the terms "report" vs. "release" by special interest groups to create adverse publicity for reporting companies and facilities. Why does EPA allow U.S. companies to be unfairly stigmatized by not clarifying the distinct difference between "reportable" chemicals and a chemical "release?"

Response. The Agency is using language provided in the statute and does not intend to create confusion. In its "Data Release" documents, which are the Agency's main outreach material for TRI, EPA puts the release information in perspective by providing a description of the factors that must be considered when using TRI data. The Agency explains that the quantity of the toxic chemical released does not equal the quantity to which one is exposed. EPA provides a list of factors that the user of the TRI data should consider when determining potential risks that may result from releases of toxic chemicals. EPA also provides information on economic information and production information to put trends in releases into perspective.

The statute directs EPA to publish a "uniform toxic chemical release form" and specifies that the form is to provide for the submission of, *inter alia*, "[t]he annual quantity of the toxic chemical entering each environmental medium." EPCRA section 313(g)(1). The statute broadly defines both "release" to mean "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, *injecting*, escaping, leaching, dumping or disposing into the environment," EPCRA section 329(8); and "environment" to "include water, air and land and the interrelationship which exists among and between water, air, and land and all living things." *Id.* section 329(2). Under EPCRA, EPA interprets annual reportable quantity to include "releases."

In addition, the Conference Report emphasized that "[r]eporting on releases to each environmental medium under subsection (g)(1)(C)(iv) . . . shall include, at a minimum, releases to the air, water (surface water and groundwater), land (surface and subsurface), and waste treatment and storage facilities. (Conf. Rep. at 298)

The focus of EPCRA section 313 is on the quantity entering each environmental medium, which includes releases. A lesser focus is on the use of the toxic chemical at the facility. EPCRA section 313(g)(C)(i) provides that the "uniform toxic chemical release form" shall include *inter alia*, the following information " [w]hether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical."

#### INFORMATION MANAGEMENT

*Question 1.* How do any of your expansive regulatory programs at EPA on TRI, Superfund, RCRA, Air and Water, relate to the Vice President's initiative on "Re-inventing Environmental Regulations," which claimed as a goal to reduce all environmental reporting requirements by mid-1996?

Response. [No response was provided by EPA.]

*Question 2.* Which environmental requirements were reduced by 1996? 1997? 1998? Planned for 1999 or 2000?

Response. [No response was provided by EPA.]

#### THE KYOTO TREATY

*Question.* The Administration, through its attempts to force the implementation of the Kyoto treaty well before any indication of Senate ratification, is nothing more than participation in a world industrial policy. Industrial policy developed by the Federal Government assumes it (the Federal Government) can select industries and firms that potentially will be the engines of the economy and allow others to gradually fade out. Industrial policies in the past have had the goal of improving a Nation's economic well-being and has been practiced in France, Japan and to a lesser extent in the United States. Such attempts have never been effective over the long run other than to create opportunities for favor seeking and giving some industries advantages over others. The Kyoto agreement is setting up a system of world industrial policy, whose purpose has nothing to do with economic growth or the well-being of U.S. citizens. Why does the EPA and the Administration want to participate in a world system which does nothing but create a system of global winners and losers over which developed nations will bear the greater pain of cutting back carbon dioxide emissions, without any parallel "reductions" expected or required by underdeveloped nations?

Response. The Administration has been working and will continue to work bilaterally, regionally, and multilaterally to promote more active efforts by developing countries to limit their emissions of greenhouse gases. The term "developing country" encompasses a wide range of nations which are at various states of industrialization and make varied contributions to global emissions. The President has made clear that the participation of key developing countries, whose emissions will surpass those of the industrialized nations within several decades, is an essential part of a global solution to climate change. The Administration will not submit the Kyoto Protocol to the Senate for its advice and consent to ratification until there is meaningful participation from key developing countries.

#### ENERGY POLICY

*Question 1.* Please provide a list of all pending proposed and final regulations, and regulations in the developmental stage, which would impact the oil and gas sector.

Response. The following is a list of pending proposed and final regulations, and regulations in the developmental stage, which may affect the oil and gas sector:

#### Air

##### *Mobile Sources*

- Phase 2 of the reformulated gasoline program, based on a rule finalized in February 16, 1994, will begin in January 2000
- More stringent "Tier 2" light-duty vehicle and light-duty truck emission standards and sulfur levels in gasoline (upcoming NPRM)
  - Potential control of sulfur levels in diesel fuel (upcoming ANPRM)
  - Request to exempt Alaska from current low sulfur diesel requirements (upcoming final decision)
  - Health effects testing requirements for gasoline and gasoline additives
  - Revision to reformulated gasoline regulations to remove counties in Maine from the program
  - Revision to the reformulated gasoline regulations to include St. Louis, MO, in the program (already completed)

*Monitoring Flexibility.*—EPA plans to issue a final rulemaking within the next several weeks to revise Part 75 monitoring regulations (proposed May 21, 1998). These revisions add flexibility in emissions monitoring techniques for oil and gas burning emits. The greater flexibility should reduce the costs of monitoring at oil and gas fired units.

*Ozone Transport—3 related rulemakings.*—The ozone transport State Implementation Plan (SIP) Call (finalized October 27, 1998) requires 22 States in the eastern part of U.S. and the District of Columbia to significantly reduce nitrogen oxides (NO<sub>x</sub>) emissions which help to create unhealthy levels of urban smog. EPA determined the amount of reductions based upon application of reasonably available control technologies. States are free to obtain the reductions however they wish. A Federal Implementation Plan (FIP) rulemaking (proposed October 27, 1998) would be finalized in the event that a State fails to submit a SIP or submits a SIP that is unapprovable. The FIP would provide the same level of reductions required by the SIP Call.

A Section 126 rulemaking (proposed October 27, 1998) resulted from petitions by eight Northeastern States requesting that EPA control large sources of NO<sub>x</sub> from 31 upwind States, that create unhealthy levels of smog in the petitioning States. EPA proposed to accept some portions of those petitions while rejecting other portions. If finalized as proposed, the Section 126 action would impose the same limits on large combustion sources as the above referenced FIP in 19 of the 22 States affected by the SIP Call. EPA has proposed that this action only be implemented if a State does not have an approvable SIP or EPA did not implement a FIP.

The effect of the SIP Call, FIP and Section 126 regulations will be to make “clean” combustion sources, such as those using gas, more economically competitive with coal-fired boilers since gas units typically emit at a lower NO<sub>x</sub> emission rate than coal-fired boilers.

#### *Air Toxics*

EPA has proposed a National Emission Standard for Hazardous Air Pollutant (NESHAP) that will affect the oil and gas sector:

Petroleum Refinery NESHAP (catalytic cracking units, catalytic reforming units and sulfur plant units), Subpart HH [proposed 9/11/98]

Oil and Natural Gas Production and Natural Gas Transmission and Storage NESHAP, Subpart HH [proposed 11/23/98—will be finalized by May 1999]

#### *Waste*

Oil Pollution Prevention Regulation: Revisions Final Rule (RIN 2050-AC62, SAN 2634)

Accidental Release Prevention Requirements: Risk Management Programs Under CAA, Section 112(r); Amendments to the Worst-Case Release Scenario Analysis for Regulated Flammable Substances Direct Final and Proposed Rule (SAN 4279)

List of Regulated Substances and Thresholds for Accidental Release Prevention; Proposed Amendment; Flammable Hydrocarbon Fuel Exemption Proposed Rule and Administrative Stay (SAN 4291)

Recycled Used Oil Containing PCBs Final Rule (RIN 2050-AE47, SAN 4088)

Hazardous Waste Identification; Recycled Used Oil Management Standards Proposed Rule (RIN 2050-AE58, SAN 3668)

Reinventing the Land Disposal Restrictions Program Advanced Notice of Proposed Rulemaking (RIN 2050-AE53, SAN 4093) *Effects Petroleum Refineries sector among various manufacturing and mining sectors. This rule will effect more oil and gas sectors indirectly when petroleum-related listed or characteristic wastes are subject to the LDRs.*

Hazardous Waste Identification Rule (HWIR): Identification and Listing of Hazardous Wastes Reproposal (RIN 2050-AE07, SAN 3328) *Effects Petroleum and Coal Products Manufacturing sector among other manufacturing sectors.*

Revised Standards for Hazardous Waste Combustors Final Rule (RIN 2050-AE01, SAN 3333). *Regulatory effort that could indirectly effect industry sources that utilize hazardous waste incineration in the destruction of wastes from the processing of petroleum products.*

Standardized Permit for RCRA Hazardous Waste Management Facilities Proposed Rule (RIN 2050-AE44, SAN 4028) *A revision to our current permitting requirements that will afford facilities that treat or store hazardous waste in tanks or containment buildings faster permitting under a self implementing approach.*

RCRA Subtitle C Financial Test Criteria (Revision) Notice of Data Availability (RIN 2050-AC71, SAN 2647) *Effects all industries with hazardous waste treatment, storage and disposal facilities.*



RCRA Reporting and Recordkeeping Burden Reduction Notice of Data Availability (RIN 2050-AE50, SAN 4084) *Deregulatory effort that could indirectly effect the sector. Potentially reducing the reporting burden by 40 percent for sources subject to RCRA subtitle C requirements.*

Chlorinated Aliphatic Manufacturing Industry RCRA Listing Proposed Rule (RIN 2050-AD85, SAN 3151) *Two of the 16 potentially affected parent companies are registered with the U.S. Securities & Exchange Commission, as having primary 4-digit Standard Industrial Classification (SIC) codes related to the petroleum industry:*

SIC 1311 = *Crude petroleum & natural gas (Occidental Petroleum Corp headquartered in Los Angeles CA; three potentially affected chemical manufacturing facilities in the United States.)*

SIC 2911 = *Petroleum refining (Shell Petroleum Company headquartered in Houston TX; one potentially affected chemical manufacturing facility in the United States.)*

#### NON-REGULATORY EFFORTS

Regulatory Determination on Remaining Waste From the Combustion of Fossil Fuels (RIN 2050-AD91, SAN 3201).

*This is not a regulatory effort but, depending upon the decisions to be made for this determination on oil combustion wastes, burners of oil and, indirectly, their oil suppliers could be affected. The Agency will decide whether any of the wastes should be subject to hazardous waste regulations. Depending on the decisions yet to be made, action could be taken that indirectly impacts the oil industry. At this point it is too early to say if we will proceed with proposing regulations, or whether such regulations would have any impact on the oil and gas producers.*

Related Effort: Fossil Fuel Combustion Report to Congress

*This effort does address units generating power by burning Oil (we also take a look at gas, but the burning of gas produces little to no waste and therefore there is little to no expectation that we will regulate wastes from burning gas).*

Persistent, Bioaccumulative, and Toxic (PBT) Chemicals and Chemical Categories List.—Non-regulatory effort to identify PET chemicals to focus our waste minimization effort. This list is scheduled to be released soon and will include 53 chemicals.

Working with DOE and States.—EPA (and DOE) are working with the States (Interstate Oil and Gas Compact Commission), the industry, and environmental groups to provide voluntary State oil and gas program reviews for the protection of public health and the environment.

#### Water

- Revisions to Effluent Limitations Guidelines and Standards for Synthetic-Based and Other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category.

- Rule Minimizing Adverse Environmental Impact from Cooling Water Intake structures Under Section 316(b) of the Clean Water Act.

- Rule Establishing Electronic Reporting for NPDES Permittees.

- Revisions to the Underground Injection Control Regulations for Class V Injection Wells.

#### Toxic Release Inventory (TRI)

Potential Addition of Oil and Gas Exploration and Production to the Toxic Release Inventory (TRI) (EPCRA Section 313) (RIN 2070-AD19)—*EPA has indicated that it may consider whether to propose adding facilities which perform exploration and production of oil and gas to the list of facilities reporting under the TRI. This action is still in the pre-proposal stage.*

*Question 2.* Please identify any line item budget programs which will aid and assist the oil and gas sector during the current Oil Crisis.

Response. The Agency currently has no specific line item budget programs or activities which will provide direct aid or assistance to the oil and gas industry. There are, however, two programs that offer the opportunity for the oil and gas sector to design creative new approaches to environmental protection that could be more in line with their own unique economic situation. First, Project XL, which stands for excellence and leadership, is an experimental pilot program that offers chances to test new ideas as long as they produce superior environmental performance and have the support of stakeholders. Second, the Agency's sector-based approach, an outgrowth of the Common Sense Initiative, offers the opportunity to work with EPA to resolve issues and develop innovative solutions with stakeholder input. The Pe-

troleum Refining Sector is still continuing its work initiated under CSI and could be a venue for a larger dialog with EPA.

*Question 3.* The Energy Information Agency estimates that demand for natural gas will increase from 22 Tcf per year today to 30 Tcf by approximately 2010. In order for this demand to be met, existing interstate natural gas pipelines will have to be expanded and new natural gas pipelines will have to be built. The Federal Energy [Regulatory] Commission and the Council on Environmental Quality are beginning to work to establish a Memorandum of Understanding among the key Federal Departments and agencies responsible for NEPA review of natural gas pipelines. Currently, it takes at least 2 years for a proposed interstate natural gas pipeline to complete the NEPA and regulatory review process at FERC in order to obtain a certificate to build. The intent of this Memorandum of Understanding is to have the relevant agencies meet at the beginning of the review process to determine the scope of each agency's review so that the agencies can do their reviews simultaneously to expedite the NEPA review process. They can also then coordinate the information requested of the applicant to eliminate duplication of effort. Are you aware of this effort? Is EPA committed to working to make this Memorandum of Understanding happen?

*Response.* EPA is aware of the effort by CEQ and the Federal Energy Regulatory Commission to establish a Memorandum of Understanding among Federal agencies responsible for NEPA review of natural gas pipelines to facilitate NEPA reviews of pipeline proposals. EPA supports this effort to coordinate the NEPA process and looks forward to working with CEQ and the other agencies to develop the MOU.

#### HYDRAULIC FRACTURING

*Question 1.* Based on your archives and discussions with your regional administrators over the past few months, has the EPA ever encountered a documented case of groundwater contamination associated with hydraulic fracturing?

*Response.* In June 1998, EPA investigated and prepared background information on the practice of hydraulic fracturing, with a primary focus on coal bed methane (CBM) wells and CBM reserves. This information was disseminated internally, especially to the underground injection control program staff in each Regional Office. In November 1998, EPA expanded its efforts beyond CBM wells when the Office of Ground Water and Drinking Water asked the Regions to provide all information pertaining to contamination incidents from hydraulic fracturing operations in general. To date, we have not received any confirmed reports of contamination. However, in compliance with the 11th Circuit's decision, the Administrator stated that the Agency would undertake a review to determine if environmental threats exist. We are working with the States and fully evaluating contamination incidents.

The Agency's primary stakeholder on underground injection wells issues, the Ground Water Protection Council (GWPC), provided EPA with a December 1998 survey of hydraulic fracturing of CBM wells in producing States. As part of the survey, GWPC reported only one alleged contamination incident. Responses to the questions posed in the survey indicated that there were two other States (Virginia and New Mexico) where a complaint was investigated and dismissed.

*Question 2.* Didn't the EPA attempt to defend its position of not regulating hydraulic fracturing as underground injection in the LEAF case in Alabama citing the lack of public health threat and lack of environmental concern? Do you still believe that to be true?

*Response.* In the *LEAF v. EPA* case, EPA asserted that hydraulic fracturing was not an underground injection as defined in the regulations and based on its interpretation of the Safe Drinking Water Act. In taking this position, the Agency relied on the decisions made during the promulgation of final UIC regulations in the early 1980's. At that time, there was no documented evidence of contamination incidents and no party raised concerns regarding public health or suggested that the practice posed any threats to the environment. However, the practice of hydraulic fracturing for coal bed methane recovery became widely used only after the promulgation of these regulations so potential impacts in such cases were not and could not be considered. Moreover, EPA's primary concern in defending against the lawsuit was the effect that reopening long-established regulations, contrary to the statutory cutoff date for judicial review, would have. When the 11th Circuit decided the case, and all avenues of appeal were exhausted, the Administrator stated that the Agency would review subsequent developments to determine if threats exist. During the course of this review, three environmental groups (one in Alabama, two in Virginia) asserted that their drinking water wells have been adversely effected by CBM well operations. We are working with the States and are fully evaluating these claims.

*Question 3.* Based on the constraints of the EPA budget, if a technical solution could be offered that would protect the Agency's ability to regulate activities but allow hydraulic fracturing to return to unregulated status, as argued by the EPA in the LEAF case, would EPA be willing to work with Congress to draft this fix?

Response. We are committed to increasing flexibility in our Federal regulatory approach and being sensitive to the needs of the primacy States as our partners in underground injection control (UIC). We are working closely with the State of Alabama in order to ensure that a resolution satisfying the 11th Circuit's decision regarding hydraulic fracturing is achieved. Alabama has recently held a public hearing on a new State rule that regulates the practice of hydraulic fracturing for coal bed methane wells. More steps still need to be taken by the State to bring the regulation of this activity under Alabama's UIC program. The Agency plans to keep Alabama's Congressional delegation informed of the progress pertaining to this issue.

EPA believes that an appropriate course of action for dealing with the issue of hydraulic fracturing is to proceed with our efforts to gather and analyze information on any potential environmental and public health effects of the practice, working with the States, industry, and interested stakeholders, and clearly communicating with affected parties and interests on the State of our information and analysis. While this process is still ongoing, the Administration is not recommending changes to EPA's existing authority to protect ground water under the Safe Drinking Water Act. Nonetheless, we are ready to provide technical views and information to the committee on this or any other legislative matter affecting EPA authorities.

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RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM  
SENATOR CRAIG THOMAS

RISK MANAGEMENT PROGRAM

*Question 1. I,* and presumably other members of this committee, have received letters over the past 8 months from our constituents angry with the Risk Management Program rules that apply to propane. In light of the significant controversy around this program, including a pending lawsuit that will not be heard in court until October at the earliest, as we draw closer to the June 21, 1999 deadline, what are your plans, if any to extend this compliance date?

Response. EPA shares the concern that you and others have raised that the RMP rule may cover facilities too small to pose a significant risk to the surrounding community. We are actively exploring ways of revising the rule to draw a more appropriate line between those facilities that warrant Federal regulation and those that do not. We expect to finish soon the technical and legal work necessary to arriving at an appropriate resolution of this issue. We will then issue a notice of proposed rulemaking to revise the rule and a stay of the rule for those facilities that would be affected by the proposed rule revision. We understand the urgency of this issue and will keep you informed of our progress.

With regard to the legal challenge to the rule, the Agency does not customarily stay its regulations in order to allow litigants time to pursue legal challenges. Such a practice would provide litigants the *de facto* power to delay implementation of virtually any Agency regulation, regardless of the legal merits of a lawsuit, and the Agency cannot voluntarily take actions it believes run counter to its own mission and the interests of the public. EPA rules are routinely promulgated with immediate or very short compliance dates. In this case, the Clean Air Act provides that regulated entities be given an additional 3 years from the date of promulgation to comply. The RMP rule was promulgated on June 20, 1996 and since that time the National Propane Gas Association (NPGA) has been free to activate its litigation at any time, as well as prepare its members to meet their compliance obligations. The D.C. Circuit is unable to hear this case until at least October, 1999 because NPGA failed to ask for such a hearing in time to have it scheduled prior to June 21, 1999. The main purpose of the RMP rule is to prevent accidents. Delaying RMP implementation means that accidents could continue to occur where they might have been prevented.

*Question 2.* I am troubled by what I'm hearing from many of my constituents, that the Risk Management Program rules are causing propane customers to switch to fuels that are less clean than propane. How do you reconcile the facts that EPA is working to address the global climate issue on the one hand, while on the other hand is busily erecting disincentives to the continued use of a congressionally-approved alternative fuel?

Response. EPA recognizes that whenever the Agency regulates a substance and sets threshold quantities, there is some incentive for certain facilities to consider al-

ternatives to those substances. Therefore, EPA believes that a small amount of fuel switching may occur, but it is unlikely to be significant, for several reasons. First, most propane distributors generally sell propane to customers who won't be covered by this rule at all (because they don't have 10,000 pounds of propane in a process). These facilities will have no possible incentive to reduce inventories or switch fuels. Second, startup costs for alternative fuel systems are likely to be much more expensive than the cost to implement the RMP regulation (EPA expects that preparation and submission of an RMP for a small propane supplier/user would cost on the order of \$200; new storage tanks and piping for a different fuel is likely to cost far more than \$200). Third, alternative fuels, such as diesel fuel and fuel oil, are regulated by EPA and other Federal agencies under other statutes (e.g., under the Clean Water Act, any facility holding more than 1320 gallons of fuel oil in above ground storage must prepare a spill prevention plan). Fourth, the RMP regulation doesn't require fuel switching for any facility, no matter how much propane they store.

EPA does not believe that regulation of propane and other clean-burning fuels in the RMP conflicts or interferes with other Clean Air Act or Agency goals. Under CAA 112(r), EPA is obligated to issue regulations to prevent accidental releases of hazardous substances that could cause acute harm to the offsite public and to mitigate the severity of those releases that do occur. EPA has identified flammable substances, including those used as fuels, as chemicals that may pose a significant hazard to the community, and therefore should be subject to accident prevention regulations. Since nothing in the RMP requires facilities to stop or limit their use of propane (or any other chemical), EPA does not believe the RMP's goal of preventing accidents is inconsistent with the goal of achieving clean air; efforts in both areas should enhance public safety and health. In short, EPA does encourage use of clean burning fuels like propane, yet also recognizes that they may present hazards that should be addressed.

*Question 3.* EPA has reportedly offered to respond to the agriculture community's problems with the Risk Management Program rules by issuing revised guidance documents. Why should they place any stock in this approach when EPA includes a clear disclaimer that the guidance does not supersede regulatory language and that it can be changed at any time in the future?

*Response.* EPA has issued guidance for propane facilities which specifies separation distances for propane tanks which, if met, allow a facility to consider the separate tanks as separate processes. This would allow a facility to apply the 10,000 pound propane threshold to each individual tank, so that a tank smaller than 10,000 pounds capacity would not be covered by the rule. The guidance is based on the best available data and EPA has no reason to think that the separation distances it provides will require changing. In any case, the guidance simply helps facilities make a determination that they could have made on their own. The Agency believes that a very large number of farms using propane will be exempt from the rule either because they are below the threshold quantity established for propane or because they will be able to use the separation distance guidance to determine that they are not covered by the RMP rule.

*Question 4.* EPA stated during the RMP rulemaking in 1996 that propane-specific guidance would be published. How do you expect the industry and its customers to comply by June 21, 1999 when propane-specific guidance was published 2½ years late in November 1998, right at the beginning of the busy winter heating season?

*Response.* EPA met its statutory requirement to provide guidance at the time it promulgated the RMP rule when it issued a document that helps all covered facilities conduct offsite consequence analyses (OCA). Such analyses require application of expertise that many covered facilities are unlikely to have, so provision of that guidance was key to allowing facilities to determine whether they are covered by the rule. Compliance with the rule itself generally does not require such specialized expertise; instead it calls for facility operators to identify the ways in which an accident might occur and develop a program to prevent such accidents from occurring.

Since promulgating the rule and issuing the OCA guidance, EPA has also developed industry specific and general guidance to provide further help in complying with the rule along with free software for offsite consequence calculations and preparing the risk management plan.

In any event, the RMP regulation was published nearly 3 years ago, and propane facilities were notified of their coverage under the RMP regulations more than 5 years ago, when propane was included in the list of regulated substances that EPA published in 1994. Nothing in any Agency guidance document has altered the basic compliance requirements put forth in the original RMP rule as they apply to propane facilities. Guidance documents are a useful tool to assist facilities in regulatory compliance, but that compliance is expected and required regardless of whether or

not a facility happens to be in one of the particular industry sectors for which the Agency has published specific guidance. We believe that we published the propane guidance in sufficient time for all covered propane facilities to comply with the rule. As evidence of this fact, we note that a number of propane facilities have already submitted RMPs to EPA. In fact, of the 48 early submission RMPs we have received (as of March 2, 1999), 34 are from propane facilities. The fact that these facilities (which include the full range of propane users and distributors) submitted their RMPs over 3 months early indicates that propane facilities already have had more than enough time to comply with the regulation. Since facilities in compliance with NFPA-58 have already implemented some of the accident prevention and emergency response elements required by the RMP rule, and since propane facilities in general are among the least complex of facilities covered by the regulation, these early submissions indicate that they are finding it relatively easy to comply.

*Question 5.* I understand that EPA did not implement a fuel use exemption for propane within the Risk Management Program rules in the same way OSHA did within the Process Safety Management regulations. How can the Agency justify such a decision, when the clear language of the Clean Air Act requires the EPA to coordinate its requirements with those established by OSHA for comparable purposes?

*Response.* Since OSHA provided a fuel-use exemption under its Process Safety Management standard (29 CFR 1910.120), the Agency examined this issue in detail. When publishing the list of CAA 112(r) regulated substances in 1994, EPA also published a supplemental notice to seek public comment on whether flammable substances when used as fuels posed a lesser intrinsic hazard than the same substances handled otherwise. However, no data were submitted to EPA to justify this position. Further, EPA collected data on a number of accidental releases of flammable substances which indicated that these substances have caused deaths, injuries, evacuations and extensive property damage. Therefore, EPA determined that the hazard posed by flammable substances is inherent and does not vary with use. In other words, propane is propane, regardless if it is used as a fuel or if it is used as a chemical feedstock in a manufacturing plant. EPA published this analysis and decision in the final RMP rule, 61 FR 31702 (3rd column) (June 20, 1996), which was submitted to Congress for review under the Congressional Review Act. Congress did not act in response to that submission. It should also be noted that a fuel use exemption would not necessarily have included propane dealers and distributors.

#### TIER 2 RULEMAKING

*Question 1.* Has EPA looked at the implications on the refining industry of the Tier 2 Rulemaking considering factors such as: (1) Industry's ability to supply low sulfur gasoline at levels prescribed by EPA to all sectors during this timeframe; (2) Timing requirements for permitting, capital expenditures and actual construction of new or upgraded facilities; (3) Feasibility of current and future technologies and the timeframe for their development and utilization; (4) Pressures on the use of MTBE in fuels; (5) Probable reformulation of diesel; and (6) Industry's current profitability.

*Response.* EPA has considered all these factors in preparing the proposed Tier 2 rulemaking. In an effort to fully understand these issues the Agency has had numerous meetings with representatives of the oil industry. Administrator Carol Browner, Assistant Administrator for Air and Radiation Robert Perciasepe, and Acting General Counsel Gary Guzy, have all participated in these meetings. In addition, we have consulted with policy and technical experts at the Department of Energy.

In developing our proposed regulations on reducing sulfur levels in gasoline and our advance notice of proposed rulemaking on sulfur levels in diesel fuel, we are carefully considering the availability of sulfur reduction technology, cost, and time needed for refinery modifications, permitting and other critical factors. After the proposal is published in the *Federal Register* there will be ample opportunity for all interested parties to review and comment on all aspects of the proposal. EPA will conduct several public hearings around the country and will accept written comments as well.

*Question 2.* I am concerned that the National Environmental Laboratory Accreditation Program (NELAP) budget could be a casualty of budget cuts and agency reorganization. Laboratory data is the very basis of nearly every environmental decision. However, current Federal and State accreditation programs that assess laboratory competency vary in both scope and stringency. This inconsistency allows less than competent laboratories, both public and private, to generate environmental data. NELAP rectified this problem by establishing a single set of rigorous standards. The

result will be a better confidence in data used to make cleanup and compliance decisions. Does the Agency plan to fully fund this program?

Response. EPA will meet its commitments to support the National Environmental Laboratory Accreditation Program. For fiscal year 1999, \$500,000 has been provided to cover NELAP costs. The fiscal year 2000 President's Budget provides \$500,000 for NELAP.

The National Environmental Laboratory Accreditation Program (NELAP), managed by Environmental Protection Agency (EPA), implements environmental laboratory accreditation standards developed through a voluntary association of State and Federal agencies known as the National Environmental Laboratory Accreditation Conference (NELAC). The oversight role of NELAP is clearly defined in the NELAC standards. EPA's NELAP ensures the NELAC standards are applied consistently across State accreditation programs and that a high degree of standardization and uniformity exists among the States.

The development of the national system of environmental laboratory accreditation spans back to the early 1990's when a Federal advisory committee was convened to study the need for a national system of environmental laboratory accreditation. EPA, the States and the private laboratory community agreed that a national, uniform system for accrediting environmental laboratories would benefit the generation of laboratory data and improve the existing, diverse systems in place at that time. Over the past 9 years, EPA, the States, and the private sector have worked to develop the NELAC system by establishing consensus and cooperation among the States through the adoption of uniform standards.

Currently, NELAP is in the midst of completing reviews of the first 15 State applicants for recognition as NELAP Accrediting Authorities. When recognized, these States will be authorized to begin accreditation proceedings for private laboratories in the United States under the NELAC standards. This will be the first time that a national system of accreditation of NELAC's scope will exist.

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RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM SENATOR GEORGE V. VOINOVICH

CLEAN AIR (OTAG)

*Question 1a.* As I mentioned in my opening statement, I believe that EPA's policies often run counter to the efforts of other Federal agencies and even EPA's own mission. For instance, the Administration is interested in preventing urban sprawl and cleaning up abandoned industrial sites. However, EPA has set inflexible NO<sub>x</sub> and NAAQS standards that many areas in this country will be unable to attain. Hence, there will be few incentives to re-use abandoned sites and industry will look toward greenspaces, ultimately undermining efforts to prevent urban sprawl and re-use Brownfields sites. First, why should Congress approve a program to prevent urban sprawl when you are implementing other policies and regulations to do the opposite?

Response. Congress should approve the Better America Bonds program and the rest of the Administration's Livability Agenda because communities have overwhelmingly expressed their desire for more livable communities. In November 1998, more than 220 communities proposed—and the vast majority adopted—measures to manage sprawl and enhance local livability. Measures adopted include those that preserve green space, reduce traffic congestion and offer more transportation choices, improve regional cooperation and enhance quality of life.

Better America Bonds.—A critical element of the Livability Agenda is the Better America Bonds program that will allow communities to decide for themselves how they will preserve their open spaces, protect their water, clean up brownfields, and improve their quality of life.

The Administration's proposed Better America Bonds Program will enable State, tribal and local governments to issue \$9.5 billion in bonds over 5 years through approximately \$700 million in Federal tax credits. Communities will have access to low-cost financing and investors who buy these 15 year bonds will receive Federal tax credits in lieu of interest.

Better America Bonds can be used in a number of ways.

Better America Bonds will further the Brownfields by providing much needed flexible funding that communities can use for Brownfields cleanups. Our Brownfields program is already cleaning up and revitalizing abandoned industrial properties in 227 communities around the country. This program has leveraged \$1 billion in public and private funds, created thousands of new jobs and turned idle land back to productive and profitable use. And it has helped spare green spaces

in nearby suburbs the kind of development that swallowed up 4.3 million acres of our nation's prime and unique farmland in one 10-year span.

Communities have identified lack of funding for cleanup and other Brownfields activities as the greatest barrier to Brownfields redevelopment. For example, the U.S. Conference of Mayors pointed to a lack of capital for local governments as the leading barrier to the clean-up and re-use of Brownfields. Better America Bonds will help bridge the funding gap by supplementing existing Brownfields funding with bond proceeds, thus increasing the funds available for Brownfields and providing financing necessary to enable communities to move forward with their Brownfields plans.

In addition, State, Tribal and local governments, working alone or in partnership with land trusts and other nonprofit organizations, can create or restore urban parks, preserve suburban green spaces, and protect threatened farmland and wetlands by acquiring title or purchasing conservation easements using these new bonds.

Rivers, lakes, coastal waters, and wetlands can be restored or protected, streamside zones can be repaired and land can be acquired to reduce polluted runoff.

To ensure that communities can grow according to their own values, the Administration's Agenda observes these key principles:

- Communities know best. Land use decisions are—and will continue to be—made by local entities.
- The Federal Government should inform, not dictate, patterns of future growth. Government can supply information, tools and resources to empower citizens and communities by helping them envision different strategies. Government can also provide incentives for communities to work together to address challenges of growth and development.

The Livability Agenda also includes: transportation enhancements; regional smart growth partnerships; schools as community centers; community-Federal information partnerships; and regional crime-data sharing. It focuses broadly on a range of issues to improve the quality of life in a community and touches on important parts of our daily lives—the safety of our homes and streets, our commute to work, the schools where our children learn to read, and the parks where we relax.

EPA's efforts to Encourage Investment In Existing Communities.—EPA's efforts to improve environmental quality are intended to provide the health and livability benefits of a clean environment to all Americans—in cities, suburbs, towns, and rural communities. While certain Clean Air Act provisions, for instance, have sometimes been criticized because they may encourage development in greenfields, rather than in existing cities and suburbs, research has shown that the location decisions of private firms are not influenced to any significant extent by environmental regulations. Studies of how environmental regulations affect competitiveness or location decisions concluded that environmental regulations have not been shown to be a barrier to either business location or economic competitiveness. On the contrary, organizations as diverse as real estate researcher Price Waterhouse Coopers/Lend Lease, the grass roots/business/government partnership Envision Utah, Sierra Business Council, and Bank of America, have cited clean air, clean water, access to nature, transportation choices such as transit, livability and quality of life as positive attributes companies do and should seek in making location or investment decisions.

At the same time, we are continuing to create new incentives in our regulatory programs that encourage more investment in existing communities. For instance, our Clean Air-Brownfields Partnerships Pilot projects are designed to quantify the air quality benefits of infill redevelopment. We are working with three cities—Dallas, Baltimore and Chicago—to analyze their infill redevelopment programs and incentives and their potential air quality impacts. In these pilots, EPA and the cities are exploring how the Clean Air Act can become a better tool for encouraging investment in existing cities and suburbs, rather than a potential disincentive and that might otherwise encourage new development to the undeveloped fringes of communities.

EPA's Brownfields Initiative has empowered States, communities, and other stakeholders in economic development to work together to prevent, assess, safely clean up, and sustainably reuse brownfields. EPA provides communities with grants for assessing and cleaning up brownfields. These grants are designed as "seed money" to help communities begin to deal with their brownfields problems. Since fiscal year 1995, EPA has provided funding to 250 States, cities, towns, counties, and tribes for Brownfields Assessment Demonstration Pilots. The Pilots, each funded at up to \$200,000 over 2 years, will test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and fa-

cilitate coordinated site assessment, environmental cleanup and redevelopment efforts at the Federal, State, and local levels.

*Question 1b.* Second, why should we support Better America Bonds when EPA has consistently tried to micromanage State efforts to clean up Brownfield sites?

Response. EPA has worked closely with States to provide financial and technical support to local Brownfields efforts. EPA's State partners have applied for and been awarded assessment and cleanup revolving loan fund grants to further brownfields cleanup in their States. EPA has collaborated with States on implementing the Targeted Brownfields Assessment program and the Brownfields Tax Incentive, providing further encouragement for locally directed Brownfields activities. States are the lead regulator at Brownfields sites, often through State Voluntary Cleanup Programs. Over the past 3 years, EPA will have provided \$30 million to support State Voluntary Cleanup programs. EPA has signed Memoranda of Agreement with 12 States to help clarify Federal and State roles. Further, the EPA Brownfield program has been developed without EPA issuing any regulations or rules that direct anyone, including States, on how Brownfield cleanups will be conducted. The success of the Brownfield program is that it is responsive to State, local, and tribal governments to meet their needs to return property back to productive use.

Better America Bonds will further the Brownfields Initiative by providing much needed flexible funding that States and communities can use for Brownfields activities, greenspace acquisition and water quality protection. A recent report by the U.S. Conference of Mayors pointed to a lack of capital for local governments as the leading barrier to the cleanup and reuse of brownfields. The Administration's proposed Better America Bonds Program will enable State, tribal and local governments to issue \$9.5 billion in bonds over 5 years through approximately \$700 million in Federal tax credits. Better America Bonds are not limited to Brownfields. Eligible projects include open space acquisition and improvements in water quality. Communities will have access to low cost financing and investors who buy these 15 year bonds will receive tax credits in lieu of interest. Working in conjunction with other Brownfields tools such as the assessment grants and the Brownfields Tax Incentive, the Better America Bonds will supplement, not replace, existing brownfields funding, thus increasing the range of tools and funds available for brownfields cleanup and redevelopment.

*Question 2a.* You are requesting \$200 million for the Clean air Partnership Fund for projects that achieve innovative and early air pollution and greenhouse gas emission reductions. Your premise is to allow State and local governments to partner with other parties and the Federal Government to demonstrate creative ideas for cleaning the air. I am curious that if you are interested in achieving early air pollution reductions why you did not accept the Midwest and Southern Governors' proposal for the NO<sub>x</sub> SIP Call, which would have achieved the 8-hour ozone standard 1 year earlier—in 2009—than the ozone rule allows for in 2010?

Response. Attainment deadlines have not yet been set for the 8-hour ozone standard. EPA expects these deadlines to range between 2005 and 2010. EPA's NO<sub>x</sub> SIP Call required States to reduce "transported" air pollution in order to help provide for expeditious attainment of both the 1- and 8-hour ozone air quality standards. Implementation of the NO<sub>x</sub> reductions called for by this action is projected to enable most of the new nonattainment areas to achieve these standards by 2005. As a result, most of these new areas should need few, if any, additional local measures to attain.

*Question 2b.* How is human health and the environment protected under a model that would achieve the standards a year later than the Governors' proposal?

Response. Thus we believe that compliance will provide cleaner air substantially faster than the 2009 date connected with the Governors' proposal.

*Question 3.* In your budget proposal, you encourage the use of multi-state groups to help resolve current air problems. What assurances do States have that if they enter into such groups, like OTAG, that EPA will take their recommendations into consideration? For instance, OTAG recommended NO<sub>x</sub> reductions in amounts up to 85 percent along with the completion of subregional modeling under the NO<sub>x</sub> SIP Call. Ohio concurred in this recommendation. However, your Agency chose to impose an across-the-board, uniform 85 percent reduction notwithstanding real environmental data demonstrating little or no impact from the many States in OTAG. And, you rejected the use of subregional control strategies. Why should States invest the time to enter groups when they have no assurance that you will take their recommendations into account?

Response. The technical efforts by multi-state groups to develop technical data and submit at least a range of recommendations are extremely important. With respect to the work of the OTAG, EPA depended extensively upon the technical data,



modeling, and control technology and cost information developed in that process. OTAG's efforts served as a major part of the technical foundation for EPA's NO<sub>x</sub> SIP Call. In its recommendations, OTAG was not able to agree on a specific control level, and instead recommended a range of controls from no controls beyond existing Clean Air Act requirements to the 85-percent level of controls. EPA considered the range presented by OTAG, and ultimately employed "highly cost-effective" control measures to calculate State NO<sub>x</sub> reductions. We believe that this is the most appropriate way to proceed. Thus, EPA chose to use the level of 0.15 pounds of NO<sub>x</sub> per million British Thermal Units. EPA also chose to strongly recommend that States employ an "emissions trading" program to further lower overall compliance costs. Thus, although the OTAG States were not able to reach consensus on one control level, the OTAG efforts were important in developing technical information and a range of control levels which EPA carefully considered in its rulemaking. The Agency wants to continue efforts to partner with multi-state groups to find solutions to some of the complex issues we face.

*Question 4.* In your budget, you include \$62 million—\$6 million more than 1999—for PM<sub>2.5</sub> research so you can provide Regions, States and tribes with new information and tools they need to characterize the PM<sub>2.5</sub> problem.

In the late 1970's, EPA sought the removal of asbestos from schools without knowing a lot of information about asbestos. Asbestos removal has cost about \$50 billion over the last 20 years. However, a recent study published in the New England Journal of Medicine found that EPA grossly overestimated the cancer risk from asbestos in buildings by about 10 times. This is money that could have been better spent on books and more teachers. However, EPA has never made an announcement or effort to reverse the multi-billion dollar asbestos removal effort that your early pronouncement sparked.

Can you assure me that you aren't making the same mistake with PM<sub>2.5</sub>? You are requesting \$62 million for a program that you admit you don't have adequate information about. Yet you are willing to move forward with costly regulations without knowing what the benefits will be. What you have basically said is "whether we are right or wrong, we are moving ahead." We need to ensure that money is not being spent on a largely fruitless endeavor.

Response. EPA is not moving forward with "costly regulations" for PM<sub>2.5</sub> without an estimate of the potential benefits. Current scientific knowledge demonstrates that the PM<sub>2.5</sub> standard is necessary to protect the public health. To determine how best to protect public health, EPA, in partnership with State and local governments, is now collecting additional information that can be used to inform future regulatory decisions regarding PM<sub>2.5</sub>. As noted in the question, the \$62 million is for research—not for imposition of "costly regulations." EPA is following the July 16, 1997 memorandum from President Clinton to Administrator Browner, "Implementation of Revised Air Quality Standards for Ozone and Particulate Matter," which lays out a phased, common sense approach to protecting the public from the health hazards of PM<sub>2.5</sub>. Specifically, the memorandum stated that: "Implementation shall ensure that the Environmental Protection Agency ("Agency") completes its next periodic review of particulate matter, including review by the Clean Air Act Scientific Advisory Committee, within 5 years of issuance of the new standards, as contemplated by the Clean Air Act. Thus, by July 2002, the Agency will have determined, based on data available from its review, whether to revise or maintain the standards. This determination will have been made before any areas have been designated as "nonattainment" under the PM<sub>2.5</sub> standards and before imposition of any new controls related to the PM<sub>2.5</sub> standards." This point was further supported by Congressional action in the TEA-21 legislation, which clarified the time schedule for PM<sub>2.5</sub> data collection and designations to ensure that no designation from PM<sub>2.5</sub> would be made without 3 years of Federal references method air quality data. Both of these actions were designed to ensure that new controls for PM<sub>2.5</sub> are not implemented before EPA has adequate information to support their imposition. At the same time, the Agency believes that it is prudent to use the available time between now and nonattainment/attainment designations to support the development of new tools and techniques to aid the implementation of the PM<sub>2.5</sub> NAAQS.

*Question 5.* As a followup to my last question, last year \$56 million was appropriated to study PM<sub>2.5</sub>. How was this money spent and has EPA identified any findings?

Response. The distribution of funds to the research topics recommended by the National Academy of Sciences Research Committee on Particulate Matter for fiscal year 1999 is shown in the table below. Using these funds, the Agency is continuing its implementation of a very strong program of particulate matter research. The program is based on a philosophy of working closely with the National Academy of

Sciences for strategic research planning, with the Clean Air Scientific Advisory Committee for scientific peer review of specific activities, and with ORD's Board of Scientific Counselors for program management review. With this strong foundation of extramural strategic, technical and management support, the Agency is planning and implementing a comprehensive program coupling research and ambient monitoring to address the NAS recommendations for particulate matter research. The research is focused on understanding human exposure to PM, including exposure to sensitive subpopulations, on identifying the components and mechanisms by which PM produces effects, on the development of source-to-receptor methods and tools, and on the role of PM and copollutants such as ozone on human health, among other efforts.

For research activities in general, we observe that research results typically flow from any specific research project over a several year period. Typically, 1 to 2 years after funding, research results are evident from abstracts submitted for poster or oral presentation in conjunction with scientific conferences. Then, several months to perhaps 2 years after conference presentation, results are presented in the peer reviewed scientific literature. The consequence of this typical stream of information from research activities is that, for the fiscal year 1999 budget year, the research is now underway and findings cannot be expected yet. However, extensive research coordination among EPA and other public and private sector research organizations is assuring that the NAS research priorities are being addressed and the fiscal year 1999 resources are being applied and leveraged effectively in the context of other research and monitoring efforts.

The EPA is continuing, with fiscal year 1999 funding, many activities begun in fiscal year 1998 or earlier that are producing important findings. For example, key components of PM, such as transition metals, have been shown to produce enhanced toxicity in animal studies and in humans. Several hypotheses as to the mechanisms by which metals and other PM components may produce toxicity are being evaluated, including direct inflammatory processes and indirect stress upon the cardiopulmonary system. In addition, we are finding through study of potentially susceptible subpopulations, such as the elderly with existing heart disease, that ambient levels of PM<sub>2.5</sub> are associated with changes in important cardiac measures. In fiscal year 1999, we are continuing to analyze these results and collect additional toxicological, epidemiological, and exposure data to address the research priorities identified by the NAS.

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RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM SENATOR  
MICHAEL D. CRAPO

FOOD QUALITY PROTECTION ACT

*Question 1.* How much importance has the EPA given to the impact on minor crops as it develops pesticide rules?

Response. EPA puts special emphasis on promoting and maintaining pesticides for minor use crops. Pesticides for minor uses are worth preserving because they are of major significance in agricultural production. Without these small-scale, but vital pesticide uses, many of the fruits and vegetables grown in the United States could not be produced successfully. However, since many of these uses produce smaller revenues for pesticide registrants than do major use products, companies are sometimes reluctant to support and maintain registrations and associated tolerances for these low-market products. Unfortunately, a minor crop farmer is usually dependent on only a small arsenal of pest control products, and the loss of any of them could drastically affect their ability to farm.

The Agency has long recognized the potential impacts of its decisions on minor crop growers and has taken numerous steps to alleviate some of the problems. Congress also realized the need to focus on minor use pesticides by putting EPA's minor use policy into law. Among other things, FQPA calls for coordinated action between EPA and USDA on minor use issues and requires both Agencies to establish programs to integrate the needs of minor uses in all regulatory actions. The new law gives registrants a variety of incentives to develop new minor use pesticides and help preserve the availability of existing ones. These incentives include expediting the review of data submitted in support of a minor use, granting time extensions for generating data, and giving those who invest in data development for minor uses extended exclusive rights to the data. Careful consideration is given to the data requirements needed to support minor uses to minimize the burden of performing studies. EPA is acutely aware of the uncertainties faced by minor crop growers, and

will continue to work with growers and registrants to focus attention on those situations where limited crop protection alternatives exist.

*Question 2.* Has a monetary and crop impact study been done by the EPA for the minor crop pesticides most likely to be eliminated? If not, why not?

Response. The Agency has been working very closely with the USDA to help identify use patterns for many pesticides that are currently under review—not just those used on minor crops. Through the Tolerance Reassessment Advisory Committee (TRAC) process, EPA has engaged crop growers and their representatives regarding the importance of these pesticides in production of their crops. We have made progress in identifying minor use crops which are most reliant upon these pesticides through these and other processes.

Where possible, the Agency prefers not to conduct complete impact assessments for every minor crop pesticide as they are costly to generate. Therefore, rather than generate impact assessments in all instances, the Agency, while employing uniform criteria in its decisionmaking, considers each potential assessment on a case-by-case basis.

*Question 3.* Can products be left on the market until there are adequate, acceptable, and cost-effective alternatives available to growers?

Response. [No response provided by EPA.]

*Question 4.* Can the EPA take into consideration the discrepancies between United States and Canadian pesticide regulations when determining the policy on a particular pesticide?

Response. EPA's goal is to ensure that pesticide issues and policies are negotiated and implemented to protect domestic interests, and are, to the extent possible, compatible with its neighboring countries. There are, however, growing trade concerns between United States and Canadian farmers, some of which involve pesticides issues. EPA is working to do all it can under current U.S. law to level the playing field between farmers in the two countries. The Agency already has underway a number of activities and projects, directed by the NAFTA Technical Working Group (TWG) on pesticides, that foster pesticide harmonization with Canada, including joint data reviews, development of uniform protocols for data development, cooperative review of chemicals, and extensive information sharing and consultation on trade issues. EPA will also continue to accelerate ongoing efforts to harmonize regulatory requirements and processes and to advance the level of work sharing between the two countries.

Under the December 2, 1998 Record of Understanding between the governments of the United States and Canada, the two countries have committed to accelerate bilateral harmonization of pest control products building on existing TWG work. As a result of these efforts, there will be greater potential for faster and simultaneous access to a wider range of pest control products for both major and minor crops in both countries. The Agency is ready to work with USDA in the design and to conduct a study on the extent and impact of pricing differentials for pesticide products between the United States and Canada and possible reasons for the differences.

Several bills have been drafted at the national (HR 4814 Canola Pesticide Registration Harmonization Act) and State levels (North Dakota House Bills No. 1335, 1252, 1360) which attempt to resolve 'level playing field' issues by making Canadian pesticides more accessible to U.S. growers. EPA is reviewing the legislation with particular attention to assuring that the bills do not conflict with the requirement that all pesticides used and marketed in the United States be fully registered under FIFRA.

*Question 5.* Do seed crops need to meet the same regulations as crops used for food?

Response. This question can be read in several different ways and depends on whether the Senator is referring to seeds that have been treated with a pesticide prior to planting, or pesticide residues that may occur in the seed from an earlier application of a pesticide to the growing plant. In either case, if the seed will in any way be used for food or feed, then it is considered a raw agricultural commodity and any pesticide present must be within legal limits, that is, at or below the established tolerance.

EPA is assuming that the question stems from the issue surrounding the difficulty of U.S. canola growers who have acquired or ordered seed from Canada treated with lindane, thiram and thiabendazole, pesticides that are not registered in the United States. Under FIFRA, treated seed may not be imported into the United States, unless either the treating pesticide or the treated seed itself is registered in the United States and appropriate tolerances (maximum legal pesticide residue limits) are in place. Otherwise, EPA cannot be guaranteed that the treated seed will not be used as food or feed, or once grown and the crop harvested, unsafe levels

of residues may otherwise be present in food for human consumption. The answer to the above question is yes because the same scenario and rationale applies to other food/feed commodities that have been treated after harvest with a pesticide entering the country. Without acceptable toxicology and dietary exposure data, and subsequent U.S. registration, EPA cannot assure adequate protection for people from potential exposure.

EPA is, however, taking steps to ensure that treated seed will not continue to be an issue between the United States and Canada. The Agency is accelerating the review and decisionmaking on pending applications for new canola pesticides which should provide more pest control tools for U.S. canola growers in the short term. A notice has also been sent out to affected parties that informs everyone concerned of our requirements, so that growers will be able to factor EPA requirements into their purchase decisions for this upcoming growing season. The Agency and Canada's Pest Management Regulatory Agency are committed to work together to develop a harmonized policy for movement of treated seeds by December 1999.

#### BETTER AMERICA BONDS INITIATIVE

*Question 1.* What specific criteria will be used to judge the plans submitted by State and local governments? Will these criteria be developed by the EPA or by State and localities?

Response. The three broad uses eligible for funding are open space preservation, water quality improvements, and Brownfields assessments and cleanups. Beyond that, no formal criteria have yet been developed. Once Congress enacts the Better America Bonds portion of the Administration's budget, EPA will work with the Federal agencies to solicit suggestions for criteria from States, local government, land trusts, conservation organizations, community development groups and other stakeholders. EPA will develop the criteria in cooperation with the other Federal agencies and in consultation with Congress.

*Question 2.* What type of compliance monitoring will be used by EPA? For how long? What repercussions would there be for plans/projects deemed out of compliance?

Response. Neither compliance monitoring procedures nor other administrative components of the Better America Bonds have yet been developed, pending Congressional action on the President's budget. However, we anticipate, as proposed in the Department of Treasury's Greenbook, that the Internal Revenue Service would audit Better America Bonds in a manner similar to their audits of tax-exempt bonds. If 95 percent of proceeds failed to be used for qualifying purpose or the use of qualifying facilities changed to a disqualified use during the 15-year period from time of issuance to final maturity, no further credits would accrue and issuers would be obligated to reimburse the Federal Government for any credits accruing prior to that date. If a settlement cannot be reached with the issuer, the Federal Government would have the right to recover past credits from bond holders. Problems like this are very rare with respect to tax-exempt bonds and we expect that to be the case with Better America Bonds.

*Question 3.* For lands purchased using Better America Bonds (BAB), is public access to those lands ensured? Are such lands purchased exclusively in willing-buyer, willing-seller situations?

Response. With two exceptions noted below, property acquired with the proceeds of Better America Bonds could not be used privately. Public access to lands acquired, for example, to preserve open space or establish a public park would be controlled by State or local governments in a manner consistent with the environmental objectives of the project. Public access to some open spaces might be restricted to wilderness camping while public parks might be open from dawn to dusk. In general, however, bond proceeds cannot be used for property where access is limited to a select portion of the public, for example, a golf course open only to club members. The exceptions to the general rule that property financed with bond proceeds is not to be privately used are: (1) Cases where proceeds are used to secure an easement on open space that permits continuing private, but limited, use. For example, bond proceeds might be used to secure an easement preventing the commercial or residential development of farm or ranch land under terms that allowed continued private farm or ranch use. (2) Where bond proceeds are used to remediate brownfields owned by State or local governments, subsequent private use of the site is permitted. For example, an abandoned industrial facility acquired by a city because the prior owner failed to pay property taxes could be remediated with the use of bond proceeds, the property sold to a private developer for commercial use under an arrangement that deposited installment payments of the purchase price in a sinking fund to be used to retire the bond at the end of 15 years.

*Question 4.* One of the open space priorities is stated as preserving farmland. As a condition, the “property must remain an open space.” Does this mean that land is taken out of agricultural production?

Response. On page 3 of the Treasury Greenbook section entitled: Tax Credits for Holders of Better America Bonds, the qualifying purposes for BABs are defined as:

“(a) Acquisition of land for open space, wetlands, public parks or greenways to be owned by an eligible issuer or by a 501(c)(3) entity whose exempt purpose includes environmental preservation.

(b) Construction of visitor facilities, such as camp grounds and hiking or biking trails, in connection with such acquired land or other open space, wetlands, or parks that are owned by an eligible issuer or by a 501(c)(3) entity whose exempt purpose includes environmental preservation.

(c) Remediation of land acquired under (a) above or of publicly-owned land, wetlands, or parks (for example, for enhancing water quality) by planting trees or other vegetation, creating settling ponds to control runoff, undertaking reasonable measures to control erosion or protect endangered species, and remediating conditions caused by the prior disposal of toxic or other waste.

(d) Acquisition of permanent easements on privately-owned open land that prevents commercial development and any substantial change in the use or character of the land. Such easements must be in a form which, if contributed by the owner of the open land, would qualify under section 170(h).

(e) Environmental assessment and remediation of contaminated property—brownfields—owned by State or local governments because it was abandoned by the prior owner, e.g., for non-payment of taxes. The property would have to be an area at or on which there has been a release (or threat of release) or disposal of any hazardous substance within the meaning of section 198. For this use and this use only, private use (by an entity which is not a 501(c)(3) entity of proceeds as well as private payment of bond principal is permitted. For example, the cost of environmental remediation of such property could be refinanced with BABs and the land subsequently sold to a private entity with the proceed of the sale used to repay principle through the use of a sinking fund. The Federal Government would not be a qualifying private entity. No expenditures financed with BAB proceeds would be eligible for expensing under section 198.”

Using Better America Bond proceeds to acquire an easement on farmland does not mean that the land would have to be taken out of use for farming purposes. However, if open land were acquired outright with bond proceeds, leasing that land for farming or other private purposes would constitute an impermissible private use.

*Question 5.* The application process for bonds is described as “open competitive” with preference given to “regional proposals reflecting partnerships and comprehensive planning among local governments.” To what extent might this disadvantage applicants from small, rural towns who do not have existing, developed planning and zoning or any experience with this type of project? The award criteria also emphasize partnerships between adjacent rural and urban communities. Does this place isolated communities at a disadvantage?

Response. As mentioned above, the guidelines for evaluation have not yet been developed. However we intend to encourage and facilitate applications from all types of communities, including small, isolated, and rural communities. We do not intend for this program to favor one type of community over another. We will seek advice from these kinds of communities as we further develop this program, and we welcome the input of our colleagues on the Hill to address these issues.

*Question 6.* There are a great number of private landowners struggling to meet ESA requirements on their land. Would they qualify for any assistance under the Better America Bonds program?

Response. The qualifying purposes of the Better American Bonds are defined above. The use of qualifying purpose ‘d’ seems relevant—[“Acquisition of permanent easements on privately-owned open land that prevent commercial development and any substantial change in the use or character of the land. Such easements must be in a form which, if contributed by the owner of the open land, would qualify under section 170(h).”]. This implies that Better America Bonds could help landowners if the easements that resulted from the Better America Bonds purchase would contribute to meeting requirements established under the Endangered Species Act, in addition to meeting a purpose of the broad program. Again, however, no specific criteria have yet been developed, do we do not have a definite answer yet.

RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM  
SENATOR KAY BAILEY HUTCHISON

## PROPOSED STORM WATER PHASE II REGULATIONS

*Question 1.* The proposed Phase II storm water regulations will bring under their coverage thousands of counties and cities which handle runoff rainwater through above-ground vegetated drainage ditches. These open ditches, under the proposed regulations, will be categorized as "municipal separate Storm water systems," even though in States like Texas and the arid West, the ditches are usually dry.

Why are dry ditches to be defined as municipal separate Storm water systems, and why are their local governments to be brought into the net of coverage under proposed Storm water regulation?

Response. EPA designated municipal separate storm sewer systems as sources needing regulation based on the demonstrated water quality impairments associated with population densities and urbanized areas. As discussed in the preamble to the proposed rule, urban storm water is identified as a major source of water quality impairment in streams, rivers, lakes, and estuaries because it may contain or mobilize high levels of contaminants such as sediment, suspended soils, nutrients, heavy metals, pathogens, toxins, and floatables. Although many of the municipal separate storm sewer systems covered under Phase II may have vegetated ditches as part of their systems, such ditches are typically part of a complex arrangement of conveyances designed to collect and transport storm water. Even ditches that remain dry for a significant portion of the year will discharge storm water during periods of rain. The storm water control programs in the proposed rule focus on pollution prevention rather than end of pipe treatment controls. The control provisions are more preventative than remedial. Therefore, prevention of pollution is a year-round activity, including during dry seasons.

The proposed rule was developed with a Federal advisory committee (under the Federal Advisory Committee Act (FACA)). Membership included representatives from Texas, as well as others from Western and Southwestern States. EPA proposed only to require coverage for those municipal separate Storm systems located in highly populated urbanized areas, because the Agency considered them to be among the most significant sources of Storm water runoff not covered by the Storm Water Phase I regulations. The proposed regulations were written in such a way as to allow considerable flexibility on the part of local governments in determining the specific measures necessary to address Storm water runoff in their individual communities. Thus, communities should take into account the design of their Storm sewer systems, as well as the frequency and intensity of rainfall in their respective geographic areas, in determining how to implement the Phase II program.

*Question 2.* The proposed Phase II storm water regulations seem to be designed for urbanized areas that have a lot of commercial and residential development, as well as high rainfall. In my State, as well as the rest of the arid West, we have a lot of low density, unincorporated suburban fringe areas which receive very low rainfall, and handle any storms with above-ground vegetated road ditches. The runoff from these ditches is not noticeably different from background conditions, yet the local governments in these areas will be required to undertake a wide variety of mandated activities at great cost.

Why does the proposed regulation treat all parts of the country the same, regardless of rainfall levels, type of topography and type of drainage systems?

Response. The rule does not require that all parts of the country be managed in the same fashion. Although the proposed rule covers municipal separate Storm sewer systems located in urbanized areas throughout the country, it is flexible enough to allow local governments that operate Storm sewer systems to tailor their programs to local circumstances. The rule would not require coverage for areas of low density; only those that are designated as within urbanized areas by the Census Bureau (population density at least 1,000 per square mile, total population 50,000 or greater).

Even in areas of low rainfall, Storm water runoff can have significant impacts on water quality as a result of various constituents in the discharge. Storm water carries with it accumulated sediment, debris and toxic pollutants that threatens aquatic life even in water bodies in normally "dry" areas of the country. Because local Storm sewers provide a system for rapid conveyance of pollutants whenever it rains, the resulting programs are designed to reduce pollutants to the maximum extent practicable. Control programs are necessary to reduce and prevent pollution year round. The proposed rule nevertheless specifically contemplates waivers for construction activity in areas of low rainfall, including activity that would either be conducted or regulated by municipalities.

The proposed rule would require municipal separate Storm sewer systems to conduct or participate in a program that includes public education and involvement, prohibition of illicit discharges, control of runoff from construction sites and post-construction phase development, and pollution prevention measures for municipal operations that relate to storm water. The proposal allows considerable flexibility and local determination in the appropriate management practices to be selected and in determining who may conduct these activities on behalf of the municipalities. Municipalities should take into consideration rainfall, topography, and type of drainage system, as well as other factors, such as service area population, commercial and industrial activity contributing to their system, and cost effectiveness of specific best management practices, in developing a program that best suits their needs.

CONFINED ANIMAL FEEDING OPERATIONS (CAFOs)

*Question 1.* Is there an economically feasible test for these requirements in the Strategy or, at minimum, a cost analysis looking at the impact these requirements would have on small, medium and large operations?

Response. The USDA-EPA Unified National Strategy for Animal Feeding Operations is not a new regulation nor is it a substitute for existing Federal regulations and it does not impose any binding requirements on USDA, EPA, the States, Tribes, localities, or the regulated community. The Strategy is a framework of actions that USDA and EPA plan to take over a multi-year timeframe under existing legal authorities and initially under existing regulatory authorities, to minimize the water quality and public health impacts of improperly managed animal wastes. It is targeted at large operations (+ 1,000 animal units) and facilities either causing water quality or public health problems, or that pose a significant risk of doing so. The Strategy does indicate that EPA intends to review and revise, as appropriate, existing regulations as they pertain to animal feeding operations (AFOs), consistent with the court-ordered deadlines in its consent decree with NRDC. EPA will estimate the costs and benefits associated with any proposed rulemaking consistent with the Administrative Procedure Act, Regulatory Flexibility Act, Executive Order 12806, and other appropriate requirements.

We believe that many producers are effectively managing their animal wastes. For 95 percent of AFOs, a variety of voluntary programs provide the technical and financial assistance to help producers meet technical standards and remain economically viable. Animal feeding operations that do not have good management practices will bear the greatest costs in developing and implementing comprehensive nutrient management plans. The Strategy emphasizes that the existing regulatory program focus permitting and enforcement priorities on large facilities and high risk operations, estimated to be approximately 5 percent of AFOs.

*Question 2.* How has EPA planned on addressing the massive economic burden these requirements will place on States with delegated authority? Will EPA be evaluating the States that have delegated authority to determine whether they have the resources to carry out the Strategy?

Response. States and Tribes play a critical role in the development and implementation of national and State and Tribal resource protection programs. USDA and EPA are committed to working in partnership with States and Tribes. USDA and EPA believe the need for a national goal and performance expectation for AFOs can be balanced with the need for flexibility to address the various needs and priorities of the States and Tribes, including coordination with other clean water programs.

In the case of the regulatory program for concentrated animal feeding operations (CAFOs), 44 States are authorized to implement National Pollutant Discharge Elimination System (NPDES) permitting and enforcement activities. As part of the NPDES authorization process, States need to demonstrate that they have adequate resources, as well as appropriate legal and regulatory authorities, to carry out the NPDES program. In recognition of NPDES-authorized States' differing circumstances, the Strategy does, however, provide several types of flexibility.

First, EPA recognizes that some States may be implementing non-NPDES permitting programs under State laws that meet or exceed the requirements of, and therefore, are functionally equivalent to the NPDES program. Where an NPDES-authorized State indicates an interest in amending its NPDES program authorization to incorporate ongoing or new regulatory approaches for CAFOs that meet or exceed the NPDES requirements, EPA is willing to work closely with the State to amend its authorization.

Second, because of differences in workload and resources among authorized States, EPA is providing flexibility for States in the issuance of permits for CAFOs with fewer than 1,000 animal units (AUs). While NPDES-authorized States are expected to issue general permits to the largest CAFOs (greater than 1,000 AUs) by

January 2000, States will have until the end of 2002 to issue permits to CAFOs with fewer than 1,000 AUs where the situation warrants. EPA acknowledges that some States may even need additional time beyond 2002 to issue permits for smaller CAFOs.

A final area of flexibility relates to the schedule for issuing individual permits to certain CAFOs. Although these individual permits should be issued as expeditiously as possible, EPA and States should consider State-specific circumstances such as the total number of CAFOs with greater than 1,000 AUs, the need to issue individual permits to new or exceptionally large facilities, and the availability of technical assistance for development of comprehensive nutrient management plans. States may give permitting priority to impaired water bodies (such as 303(d) listed waters or those identified in State water quality management plans). In addition, where a State develops an NPDES program that provides for a comprehensive response to environmental issues at CAFOs, EPA will defer to an authorized State's judgment with respect to the use of individual or general permits.

In addition to this flexibility, the Administrator requested and Congress provided an additional \$20 million for Section 106 Grants for States and Tribes for fiscal year 1999 as part of the Clean Water Action Plan (CWAP) budget initiative. This funding was requested in recognition of the extra workload that the CWAP places on States and Tribes, including that of the AFO Strategy. The President's fiscal year 2000 budget maintains the fiscal year 1999 funding level, for a total of \$115.5 million for Section 106 Grants.

#### FOOD QUALITY PROTECTION ACT (FQPA)

*Question 1.* Should the Agency make final decisions on the risks and continued availability of important crop protection products before the procedures for establishing the basis for the registration decision have all been reviewed and commented on by the affected parties? Shouldn't the Agency consider any decisions made before the procedure for evaluation, particularly before the science policies are finalized, as no more than interim if decisions on certain products are made before the procedures and policies are in at least an interim final form? How can farmers, registrants and others effectively interact with the Agency and plan for the future if the registration and evaluation process is not clearly understood?

Response. Before FQPA, EPA had embarked on a new era of increased openness and accountability in the way it does business. As it moves forward with FQPA implementation, EPA is committed to a process allowing for broad stakeholder input. The Agency wants to make every effort to see that its policies and decisions are developed in an open and transparent manner. Immediately after the law was signed, EPA established the Food Safety Advisory Committee (FSAC) to provide input on our interim approach to risk assessment and to help us prioritize implementation activities. This group was comprised of a wide range of parties representing industry, environmental groups, growers, and Congress.

The FSAC assisted EPA in initiating an interim decision logic to ensure continuation of registering and reregistering pesticide chemicals while science policies were being worked out. The Agency is currently utilizing its draft science policies in its decisions with the full knowledge that, as these policies get further refined, some decisions may need to be revisited. EPA expects to have virtually all science policies finalized and in place before any risk management decisions are made.

EPA is working with the Department of Agriculture to ensure that implementation of FQPA is informed by a sound regulatory approach, by appropriate input from affected members of the public, and by due regard for the needs of agricultural producers. The Tolerance Reassessment Advisory Committee (TRAC), chaired by EPA Acting Deputy Administrator Peter Robertson and USDA Deputy Secretary Richard Rominger, seeks advice and consultation from affected user, producer, consumer, public health, environmental, industry, and other interested groups. TRAC has been instrumental in opening up the decisionmaking process.

EPA is very aware that its decisions can have real effects on farmers and other pesticide users. The final two TRAC meetings (scheduled for April and June 1999) will focus on ways to get grower input on practical, feasible, and affordable risk mitigation measures. EPA's risk assessments will attempt to identify those crops/uses that are driving the risk, so that the Agency and the growers can work together to devise realistic solutions. All decisions will be communicated clearly to Congress, farmers, and other stakeholders. The challenge everyone faces is in establishing an orderly process that will allow EPA to meet the mandates of FQPA while ensuring that producers have access to tools they need to ensure a wholesome, adequate, and safe food supply. The Agency is actively working with growers, the Department of Agriculture, registrants, and the research community to ease this tran-



sition so that as older products leave the marketplace new methods become available.

*Question 2.* In preparing decisions under FQPA, to what extent is the Agency relying on worst-case, default assumptions when there are data-gaps? Is the Agency prepared to issue data call ins or consult USDA when data gaps exist?

Response. While EPA is always interested in new information that could help it refine its analyses, the Agency already has a wealth of reliable data upon which to evaluate these chemicals. In making decisions on tolerances, EPA relies on actual data generated by the registrant, other agencies such as USDA, and from the scientific literature, supplemented with scientifically reviewed models, not on default values based on worst-case assumptions. For example, EPA's approach to addressing drinking water exposure uses groundwater and surface water monitoring data when these are available, reliable and appropriate for this purpose. When monitoring data are not available, EPA uses screening procedures using mathematical models and known properties to identify those pesticides with low or no potential for contaminating drinking water at levels of concern to human health. These procedures enable us to identify, with a high degree of confidence, those pesticides that have a very low likelihood of getting into drinking water at levels of concern to human health.

EPA has had broad authority to call-in new data under FIFRA for many years, which FQPA extended to also include data needed under FFDCA. This authority to call-in needed data has been one of the Agency's most powerful tools, and we will certainly use it if necessary to complete tolerance reassessments. Whenever possible, the Agency makes decisions based on the wealth of reliable data already at its disposal. As some data may take 2-3 years to gather and review under a data call-in, EPA believes it would not be in everyone's best interest to wait for additional data if available data is sufficient to make a decision. A broad data call-in would force all companies to generate data whether or not the data would support the retention of their approved uses.

*Question 3.* Approximately 7 months remain until the statutory deadline for the Agency to review  $\frac{1}{3}$  of all tolerances. In the absence of transparent regulatory and science procedures, is it realistic to expect the Agency to meet the deadline using reliable data, sound science and appropriate interaction between registrants, users, consumers and the EPA?

Response. EPA expects to meet the FQPA goal of reassessing 33 percent of all food tolerances by August 1999. To date, of the 9,728 tolerances subject to reassessment, EPA has reassessed 2,308 tolerances, of which 999, or about 43 percent, are for the high priority chemicals, i.e., the organophosphates (OPs), carbamates, organochlorines, and probable carcinogens. The Agency expects to reassess approximately 1,000 more tolerances by August to surpass the 33 percent goal. Given the complexities of refining risk assessments, not all of the high priority chemicals will be complete by that time despite the amount of resources spent so far. Instead, this first third will consist of reassessments from tolerance revocations, reregistrations, and registration actions. So far, 28 preliminary risk assessments for organophosphate pesticides have been released for public comment. The remaining 15 preliminary risk assessments will be released for comment between now and May 1999.

EPA goes to great lengths to ensure that all of its advisory committees include a cross-section of viewpoints, including environmental, public interest groups, registrants, and growers. The Tolerance Reassessment Advisory Committee (TRAC) provided EPA and USDA with guidance on an approach for reassessing tolerances, beginning with the organophosphate pesticides, that allows for much greater transparency and opportunity to participate in both our risk assessment and our risk management processes. In many cases, the public comment process is providing additional health and environmental effects data, use data, or other relevant information which EPA is using to refine the risk assessments.

The Agency presents complex scientific issues and risk assessment approaches to the Science Advisory Panel (SAP), and we will continue to seek outside peer review of significant science policy issues. These policies are also presented to the public at numerous forums and have, or will be, published in the *Federal Register* and posted on the Internet to receive public comments. EPA expects to begin a public comment period on risk management for the first of the organophosphate pesticides in the spring or early summer of this year. The comment periods will allow for discussion and examination of both risk mitigation measures and possible transition processes to alternative pest control approaches where needed. EPA and USDA are working on the best ways to start this second phase of organophosphate tolerance reassessment and will be consulting with the TRAC at its upcoming meetings.

ENVIRONMENTAL REVIEW FOR COLONIA WASTEWATER TREATMENT  
ASSISTANCE PROGRAM

*Question 1.* Until recently, the Texas Water Development Board has conducted all environmental reviews for Colonia Wastewater Treatment Assistance Program projects. The EPA has now decided that the State environmental review process would no longer be used for the Colonia Wastewater Treatment Assistance Program and that EPA's Region 6 office would retain final authority in approving these projects. This has resulted in some delays with Colonia projects.

What was the rationale behind this decision and what can be done to help ensure that timely environmental reviews are done on Colonia projects to ensure that there are no more delays with these important projects?

Response. Based upon questions that arose regarding the application of the National Environmental Policy Act (NEPA) to infrastructure projects funded by the Colonia Wastewater Treatment Assistance Program, EPA reviewed the matter and determined that NEPA does in fact apply to almost all of the State and Tribal Assistance Grant (STAG) projects funded by the various Appropriations Acts, including the colonias projects. This determination is based upon a January 20, 1995, memorandum from the Agency's Office of Federal Activities (attached).

While EPA must conduct its own, independent review of these projects under NEPA, in most cases the work conducted by the State agency, in this case the Texas Water Development Board, is incorporated and is a major basis of EPA's NEPA evaluation. While there is currently no backlog of NEPA reviews, staffing reassignments have been made in an effort to reduce the current 136 day average review time for a colonia project to no more than 90 days.

ENVIRONMENTAL PROTECTION AGENCY,  
*Washington, DC, January 20, 1995.*

MEMORANDUM:

SUBJECT: NEPA Guidance for Special Wastewater Treatment Projects in the Fiscal Year 1995 Appropriation Bill

FROM: Richard E. Sanderson, Director, Office of Federal Activities (2252)

TO: NEPA Coordinators

The purpose of this memorandum is to provide guidance on the requirements for compliance with the National Environmental Policy Act (NEPA) for special projects authorized for EPA grant funding by the Fiscal Year 1995 Appropriations Act (Act). The Act appropriated "no-year" money to fund special wastewater treatment projects identified by Congress. Each region has projects on this list. The list is included in the attached copy of the guidance memorandum prepared by the Office of Water Management (OWM).

The OWM memorandum indicates that NBPA applies to all of these projects except the three to be funded as Clean Water Act (CWA) section 104(b)(3) demonstration projects. These three are exempted from NEPA under the CWA section 511(c). The Office of General Counsel (OGC) has prepared an "Analysis of NEPA applicability to special grants authorized by fiscal year 1995 Appropriations Act." This analysis is also attached.

OFA GUIDANCE TO REGIONAL NEPA COORDINATORS

An independent EPA NEPA analysis for the non-demonstration projects is required. In addition, other cross-cutting Federal statutes, such as the Endangered Species Act and the National Historic Preservation Act, also apply to these projects. The Council on Environmental Quality's (CEQ) NEPA regulations do not allow EPA to adopt a State analysis. However, the NEPA regulations do require agencies to "cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements . . ." (40 CFR 1506.2). There are several ways the regions can use the existing information and assessments for these projects as summarized below and as discussed in greater detail in the attached OGC analysis. In all cases, EPA must independently evaluate the State documentation and review process and is responsible for the accuracy of the NEPA documentation and the adequacy of the process (40 CFR 1506.5).

- Where States have performed environmental reviews under NEPA-like statutes or pursuant to State Revolving Fund regulations, EPA can incorporate, but not simply adopt, the State analysis into the Agency's NEPA analysis.
- Where State reviews have found no significant impacts and EPA approves of that finding and the State process, EPA may issue an environmental assessment

(EA) summarizing and reverencing the State analysis and an accompanying Finding of No Significant Impact (FONSI).

- Where State reviews have found significant impacts or EPA independently determines that there are significant impacts, EPA must issue a notice of intent and proceed with an environmental impact statement (EIS) and record of decision (ROD) in accordance with the Agency's regulations at 40 CFR Part 6.

- Where construction of projects is complete or nearly completed, a NEPA analysis will not have to be done.

- Where construction has started and the project is not nearly completed, a NEPA analysis is required and a notification of intent to pursue an independent analysis must be sent to the grantee.

- Where projects to be funded have been ongoing for several years, additional assessment may not be required if prior federal NEPA documentation has addressed the portions of the project to be funded by the fiscal year 1995 grant. The region will need to assure that since the previous assessment: (1) there are no substantial changes in the proposed action relevant to environmental concerns, or (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

If the NEPA analysis was carried out under an earlier construction grant action and is no longer adequate or the project has not previously been assessed by EPA, it will be necessary to issue either an EA/FONSI or an EIS/ROD. The regulations applicable to these special project grants are the CEQ regulations (40 CFR Parts 1500-1508) and EPA's NEPA regulations (40 CFR Part 6, Subparts A-D). EPA's regulations at 40 CFR Part 6, Subpart E, while they do not apply to these special project grants, may provide additional guidance.

We anticipate that additional issues or sub-issues may arise which are not fully treated in this general guidance memorandum. These should be brought to our attention as soon as possible. In addition, we have scheduled a teleconference on Tuesday, January 24, 1995 from 11:00 am. to 12:00 noon eastern standard time to discuss this guidance and additional issues or concerns with the process. The call-in number is (202) 260-4257. We look forward to your participation. Please inform John Gerba (202/260-5910) if you or your staff will not be on the call.

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RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM SENATOR  
FRANK R. LAUTENBERG

SUPERFUND

*Question 1.* Please describe the Superfund program today, as compared with 6 years ago when Congress began debate on comprehensive legislation. In your answer, specify progress in the program over the past 6 years, including progress in getting sites cleaned up and improvements made in program implementation.

Response. The Superfund program is making significant progress in cleaning up hazardous waste sites and protecting public health and the environment to ensure a fairer, more effective, and more efficient program. Since 1993, the Agency has initiated three rounds of Administrative Reforms whose major goals have been to make common-sense, cost-effective cleanup choices; reduce litigation by increasing fairness; and help governments, communities and industry become more informed and involved in the decisionmaking process.

Through the Administrative Reforms, EPA has significantly changed how the Superfund program operates. We have made considerable progress in cleaning up sites on the National Priorities List (NPL). We have gone from cleaning up 65 sites per year to cleaning up 85 sites per year. As of September 30, 1998, approximately 89 percent of the NPL sites have had cleanup activities, are construction complete, or have cleanup underway:

- 585 (41 percent) Superfund sites have reached construction completion.
- 457 (32 percent) Superfund sites have cleanup construction underway;
- An additional 209 (15 percent) sites have had or are undergoing a removal cleanup action.

In addition, approximately 990 NPL sites have final cleanup plans approved, and approximately 5,500 removal actions have been taken at hazardous waste sites to immediately reduce the threat to public health and the environment. Responsible parties continue to perform approximately 70 percent of new remedial work at NPL sites. More than 30,900 sites have been removed from the Superfund inventory of potentially hazardous waste sites to help promote the economic redevelopment of

these properties. By the end of fiscal year 1998, EPA awarded 227 Brownfields Pilot grants to facilitate productive reuse at sites.

The accelerated pace of cleanup is demonstrable. In only 2 years, fiscal year 1997 and fiscal year 1998, EPA completed construction at 175 sites—

- Which is more than during the entire first 12 years of the program (149 sites)
- One hundred and twenty-eight (73 percent) of these 175 sites are designated enforcement lead, demonstrating the success of both the “enforcement first” policy and the numerous enforcement reforms.
- One hundred and eleven (63 percent) of these 175 sites were added to the NPL during the 1990’s. Completion of these sites in less than 8 years reflects improvements in the pace of Superfund cleanups and demonstrates how the reforms have worked together to make Superfund more efficient.

Remedy reforms have made the Superfund program faster and more efficient, resulting in EPA completing construction of 87 NPL sites in fiscal year 1998. Other noteworthy achievements include the 30 site decisions reviewed by the National Remedy Review Board, resulting in an estimated savings of \$43 million; updating more than 200 remedies over a 3-year period, based on changes in science and technology resulting in a projected savings of over \$1 billion; evaluating more than 150 projects since the establishment of the Risk-Based Priority Panel, and establishing Community Advisory Groups at 47 non-Federal sites (more than 100 already exist at Federal facilities). EPA has worked with potentially responsible parties to obtain over \$15 billion in commitments to conduct response work and reimburse Agency costs, saving taxpayers’ money.

Liability reforms have made Superfund fairer. EPA has collected over \$399 million, established 115 Special Accounts, and accrued over \$69 million in interest for a total of \$468 million. The Agency has removed 18,000 small contributors from the Superfund liability system. EPA offered approximately \$145 million in orphan share compensation at 72 sites. In addition, EPA has referred close to 100 Prospective Purchaser Agreements to the Department of Justice; of these, close to 90 are final agreements. These agreements will facilitate the cleanup and reuse of contaminated properties.

Our accomplishments in protecting human health and the environment are significant. Environmental indicators show that the Superfund program continues making progress in hazardous waste cleanup, reducing both ecological and human health risks posed by dangerous chemicals in the air, soil, and water. The Superfund program has cleaned over 132 million cubic yards of hazardous soil, solid waste and sediment and over 341 billion gallons of hazardous liquid-based waste, groundwater, and surface water. In addition, the program has supplied over 350,000 people at NPL and non-NPL sites with alternative water supplies in order to protect them from contaminated groundwater and surface water. Over 14,300 people at NPL and non-NPL sites have been relocated in instances where contamination posed the most severe immediate threats.

States and Indian tribes are key partners in the cleanup of Superfund hazardous waste sites. Since 1995, States and Tribes have submitted letters in support of NPL listings for 123 sites under our State concurrence policy. In addition, with the May 1998 release of the “Plan to Enhance the Role of States and Tribes in the Superfund Program,” the Superfund program has provided opportunities for increased State and tribal involvement in the program. As a result, 14 pilot projects with States and tribes have been initiated.

*Question 2.* Describe projections for future progress under Superfund, including the number of cleanups expected by the end of this Congress.

Response. The Superfund program is a fairer, more effective, and more efficient program as a result of our Administrative Reforms which will continue in fiscal years 1999 and 2000. The Superfund program will continue its emphasis on completing construction at sites on the National Priorities List (NPL) (85 completions per year for a cumulative total of 755 by the end of fiscal year 2000), and conducting removal response actions (300). About 60 percent will have construction completed, almost 30 percent with remediated construction underway, and an additional 5 percent will have initiated physical cleanup action (removals) to mitigate threats to human health. The program will continue to employ Administrative Reforms to ensure a fairer, more effective, and more efficient program. The program will also work with the States, tribes, and local governments, the surrounding communities, and potentially responsible parties, both Federal and private, to leverage resources and to assure the successful implementation of the Superfund program.

The Superfund program plans to exceed the Agency target of 650 construction completion sites during fiscal year 1999, 1 year earlier than originally expected. In addition, the Administration recently announced our target of 925 NPL sites “con-

struction completed" by the end of 2002. By 2005, EPA expects to complete construction at 1180 sites.

*Question 3.* Is major reform legislation needed to achieve the above projections, or to maintain progress and achieve cleanups of the remaining sites.

Response. Because of the success of our Administrative Reforms, Superfund cleanups are faster, fairer and more efficient. Our goal should be to build on this success and complete cleanups as quickly as we can. We do not need comprehensive legislation to achieve this goal, although targeted legislative changes may be helpful.

Because of our Administrative Reforms, EPA has accomplished a great deal of cleanup activities in recent years. By the end of the 106th Congress, 61 percent of the non-Federal facility sites on the NPL will be construction complete and fully 90 percent will be construction complete or have construction underway and another 5 percent will have had removals to mitigate the threats, to human health. EPA is on track to finish cleanup at most current NPL sites by 2005. From 1980 to 1993 only 155 sites had been cleaned up; today cleanup construction has been completed at 585 sites. In the last 6 years EPA has cleaned up three times as many sites as in the first 12 years of Superfund.

Liability reforms have made Superfund fairer. EPA has settled with over 18,000 *de minimis* parties, offered \$145 million in orphan share funding, eliminated open-ended cleanup obligations in model consent decrees, capped the liability of large municipal waste generators and signed nearly 100 prospective purchaser agreements to spur redevelopment.

Remedy reforms have made Superfund faster and more efficient. We have shortened cleanups by 20 percent, updated remedies to save over \$1 billion, required treatment for toxic hot spots (using treatment in less than 50 percent of remedies in 1997), and used newer phased approaches for cleaning up groundwater.

Given this progress, legislation should focus on those changes that could be helpful to continuing our progress. Legislation to support the President's request is needed to reinstate the Superfund taxes, and provide EPA with access to mandatory spending. As part of Superfund reauthorization, the Administration would support targeted liability relief for qualified parties that build upon the current success of the Superfund program. The Administration would support provisions that address:

- prospective purchasers of contaminated property
- innocent landowners
- contiguous property owners, and
- small municipal waste generators and transporters

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RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM  
SENATOR BOB GRAHAM

METHYL BROMIDE

*Question 1.* How much has the Environmental Protection Agency budgeted in fiscal year 2000 for programs supporting the USDA work to identify an alternative for methyl bromide?

Response. About one full-time equivalent, \$150,000 in grant funds to support farmer-led testing of alternatives in a real-world, on-farm situations, and to support an annual conference for growers on research into alternatives to methyl bromide, and about \$100,000 in contractual support for background work on alternatives to methyl bromide, use statistics, and associated information pertaining to the phase-out of methyl bromide.

*Question 2.* What changes have been made to the EPA program based on last year's extension of the production phase-out date from 2000 [2001] to 2005?

Response. EPA is now formulating the necessary regulations to implement recent Congressional changes to the Clean Air Act. The main step in this rulemaking process is the step-wise phase down from the 1991 baseline, 25 percent in 1999, 50 percent in 2001, 70 percent in 2003, and 100 percent in 2005. EPA will also be working with appropriate stakeholders in the formulation of the necessary exemptions for quarantine and pre-shipment uses, as well as critical agricultural uses after 2005. The proposal for the 1999 25 percent phase down was published in February 1999, and we expect to issue the final regulation soon. Regulations for the additional phase down steps will be proposed later in 1999. In addition, EPA is now working with the Department of Agriculture, Food and Drug Administration and the U.S. Trade Representative in the formulation of the necessary regulations to allow methyl bromide to be exempted for quarantine and pre-shipment uses.

*Question 3.* Can you describe the role of the EPA in the new coordinating committee between EPA and USDA on methyl bromide alternatives research? How supportive is EPA of this endeavor?

Response. EPA and USDA are now conducting a series of working meetings to define specific tasks that must be accomplished to assure that farmers have alternatives to methyl bromide by the final phaseout date. These meetings examine the specific uses of methyl bromide, what the best alternatives to those uses are likely to be, and any regulatory barriers that may exist which need to be overcome to insure those alternatives are fully available to the U.S. agricultural community. This committee will look at specific crops in Florida, California, and other States that currently use methyl bromide as an integral part of their production system. The committee will produce a set of action items later this spring that will guide both EPA and USDA in the overall effort of insuring that American farmers have access to good alternatives to methyl bromide. EPA is fully supportive of these efforts, and is providing direct support to assure the goals of the committee are met.

*Question 4.* How is EPA working to insure that individual growers understand the challenges they will face with the production phase-out of methyl bromide.

Response. Since 1992, EPA has had a comprehensive outreach program covering the main issues of the methyl bromide phaseout. A five-point program now provides information on why EPA is phasing out methyl bromide, when it will no longer be available, what alternatives are available to replace the use of this pesticide, and how current users can continue to produce food and fiber without methyl bromide. Included in this program are: (1) a newsletter which is updated and distributed to methyl bromide users and other interested stakeholders periodically; (2) the publication and distribution of thirty documented case studies that describe alternatives to methyl bromide; (3) a web site in operation since 1995 that provides all relevant information on the phaseout, including the 30 documented case studies that describe good alternatives to methyl bromide; (4) field visits and farmer group speaking engagements in areas where significant methyl bromide is used; and (5) support of an annual conference on methyl bromide alternatives. With the extension of the phase-out date, EPA will continue these programs to insure the American agriculture community is informed of new developments related to methyl bromide.

*Question 5.* Do you anticipate that the current level of funding for alternatives research at the USDA will produce a viable alternative for methyl bromide in time for the production phaseout?

Response. We defer to USDA on whether the current level of funding for research into alternatives for methyl bromide is sufficient to develop viable alternatives.

The USDA Agricultural Research Service has been funding research of alternatives to the use of methyl bromide for several years. This research must continue to insure that adequate alternatives are in place by the phaseout date of 2005. The fiscal year 2000 Budget proposes \$15 million, the same level as fiscal year 1999. Enacted, to continue this important research effort.

*Question 6.* How do the cumulative expenditures at EPA since the adoption of production phase-out dates for methyl bromide compare with the expenditures on other ozone-depleting substances from the time production phase-out dates were adopted through the phase-out deadline?

Response. Our records do not allow a detailed comparative assessment of cumulative expenditures on a pollutant-by-pollutant basis. Generally, however, it is reasonable to assume that current levels of comparative funding may well have been characteristic of past expenditures, which would put investment in methyl bromide phaseout and alternatives at about 10–15 percent of overall expenditures on all other stratospheric ozone depleting compounds combined. This excludes funding earmarked by Congress for a Multilateral Fund of the Montreal Protocol.

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RESPONSES BY ADMINISTRATOR BROWNER TO ADDITIONAL QUESTIONS FROM  
SENATOR BARBARA BOXER

FOOD QUALITY PROTECTION ACT (FQPA)

*Question 1.* The Food Quality Protection Act requires EPA to apply an additional tenfold margin of safety, a so-called "10x factor," in the establishment of pesticide tolerances when data with respect to exposure or toxicity of infants and children to a given pesticide is lacking.

Although EPA has apparently acknowledged that such data, particularly developmental neurotoxicity tests, are lacking for most organophosphates, I understand that EPA has not consistently applied a 10x factor in its review of such pesticides.

Is this accurate? And if so, what is the justification for not applying the 10x factor to its review of organophosphates given the lack of these neurotoxicity tests?

Response. [No response was provided by EPA.]

*Question 2.* In its FQPA work to reestablish pesticide tolerances, how many times has EPA applied the 10x factor referred to above? Has EPA issued any guidance or policy rationale concerning the implementation of the 10x factor?

Response. Through March 1, 1999 the following are the number of Agency tolerance decisions and the appropriate safety factor employed. These numbers reflect a total of 120 tolerance decisions for conventional pesticide active ingredients (excluding biopesticides and antimicrobials) resulting from new registration petitions, emergency exemption requests, and reregistration actions.

- The Agency retained the tenfold safety factor for 15 active ingredient decisions;
  - The Agency applied a threefold safety factor for 15 active ingredient decisions;
- and
- Based on reliable available data, the Agency was able to remove the additional tenfold safety factor for 90 active ingredient decisions.

EPA has been working with the Tolerance Reassessment Advisory Committee (TRAC) and others to ensure that its science policies, risk assessments, and decision processes are transparent and open to public participation. Important to these discussions is the identification of nine science policy issues believed key to the implementation of FQPA and tolerance reassessment. The Agency will publish these policies in draft form and will provide the public opportunity to comment. The major science policy issue related to the 10x safety factor is establishment of appropriate, clear, and transparent criteria for retaining or otherwise modifying the additional tenfold factor. Determination of what constitutes a complete and reliable data set for toxicology and exposure data to assess risks to children is also important in making these decisions.

In February 1998, the Administrator convened an intra-agency workgroup to examine policy concerning the 10x safety factor, including information needed to determine the toxicity and exposure of pesticides to infants and children. This workgroup was charged to look at such issues as establishing procedures for consistency and documentation; ensuring the adequacy of the data for decisionmaking; and establishing criteria for applying the factor. In March 1998, EPA brought draft interim guidance on the application of the 10x safety factor to the Science Advisory Panel (SAP). The Agency then refined and clarified its policy to address Panelists' comments. EPA's revised evaluation criteria and decision process were presented again to the SAP in December. Present at the December SAP meeting was the intra-agency's draft report. The intra-agency workgroup recommended the adoption of toxicity tests not currently required. If EPA accepts this recommendation it may be necessary to revisit its interim decisions.

In March 1999, EPA plans to release for public comment several documents on its proposed 10x policy. The first, entitled "10x Task Force and the Office of Pesticide Programs' Guidance Documents," will contain criteria and procedures for making determination on whether and how to apply the additional safety factor. In the second document, "Standard Operating Procedures for the Use of the FQPA Factor," EPA will develop detailed, working level guidance for applying the policy established in the 10x guidance documents. The public will have 60-days to comment after which EPA will revise the policies, if warranted. An August 1999 date is projected for the final versions and ultimate adoption of a standard policy. If the final policy is notably different from EPA's interim approach to applying the tenfold safety factor, affected decisions will be reevaluated to ensure thorough protection for infants and children.

*Question 3.* In its recently released report, "Do You Know What You're Eating: An Analysis of U.S. Government Data on Pesticide Residues In Foods," Consumers Union found that fruits and vegetables often contain pesticide residues that are unsafe for children. For example, residues of the pesticide methyl parathion on peaches and other foods was found to exceed the safe dose for children by as much as 125 times.

What does EPA plan to do in the 1999 growing season to reduce the clear risk that methyl parathion poses to children?

Response. Although some have questioned the scientific validity of Consumers Union's analysis, EPA has not reviewed its methodologies in enough detail to take them to task. Hence, the Agency is not in a position to comment on their findings. Nevertheless, EPA shares with the Consumers Union its concern that the risks from some of the "worst" pesticides may be inappropriate and some level of mitigation will be in order. Under FQPA's more stringent safety standards, EPA is evaluating those pesticides first that have the potential to pose the greatest risk to public

health and the environment, i.e., the organophosphates (OPs). The Agency is now well into a comprehensive scientific review of each of the OPs, including methyl parathion. With the help of the Tolerance Reassessment Advisory Committee (TRAC) members, EPA and USDA detailed a stringent process, complete with self-imposed deadlines, for releasing its preliminary findings, further refining the risk assessments, and imposing risk mitigation measures and practical transition strategies. If unreasonable risks are identified during the process, EPA and USDA, along with affected parties, will work together to take necessary action to reduce the risk.

The preliminary risk assessment for methyl parathion was released for public comment in December 1998. EPA's initial findings indicate that both the acute and chronic dietary risks are exceedingly high for all population subgroups, and similar to CU's findings, apple juice, peaches and milled white rice appear to be of greatest concern. However, because conservative assumptions were used to compensate for missing exposure information, the Agency may have exaggerated the risk. Since the public comment period has closed, efforts are underway to further refine the dietary risk assessment based on more detailed, real world information to more accurately estimate people's actual exposure and ultimate risk. A final risk assessment along with a call for suggested risk reduction measures regarding the use of methyl parathion will be issued this summer.

This unprecedented food-safety review is an enormous challenge and EPA has an ambitious schedule. The degree to which the public is invited to participate is also unprecedented. Yet while this scientific review of pesticide residue safety is underway, it is important to note that the U.S. food supply continues to be the safest in the world, and that the benefits of eating a balanced diet outweigh any risks. EPA encourages consumers, and especially parents, to always wash their fruits and vegetables thoroughly, and those who still wish to take extra precautions may choose to consider purchasing organically grown foods.

#### SUPERFUND

*Question 4.* In the last 3 years, how many Superfund clean ups have been performed by the Agency in California pursuant to its emergency removal authority rather than its remedial authority?

*Response.* Over the last 3 years, fiscal year 1996 through fiscal year 1998, EPA has started 36 removal actions at all sites and 17 remedial actions at National Priorities List sites in California. The statistics provided below break out the actions over each fiscal year.

Superfund Response Action in California, Fiscal Years 1996–1998

Type of Superfund Response	Fiscal Year 1996	Fiscal Year 1997	Fiscal Year 1998
NPL Removal .....	2	3	2
Non-NPL removal .....	8	11	10
Total Removal Actions .....	10	14	12
NPL Remedial Actions .....	6	5	6

*Question 5.* Many citizens in California have expressed the concern that EPA is increasingly relying upon its removal authority to expedite clean-up actions. This reliance has the effect of excluding them from clean-up decisions because the Agency, they argue, does not apply the same public participation requirements to removal actions as it does to remedial actions.

Does EPA provide citizens with public participation opportunities consistent with the requirements of 42 U.S.C. Sec. 9617 when conducting removal actions? What can the Agency do to ensure that the public has the opportunity to participate in clean-up determinations made pursuant to removal authority?

*Response.* EPA removal actions include significant community involvement activities that are consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and national guidance. It is EPA's intent to fully involve affected communities in cleanup actions conducted pursuant to our removal authorities. In 1992 EPA issued guidance on public participation for the Superfund removal program that describes EPA's policy for community involvement for removal actions, including time-critical and non-time critical responses. Among other requirements, EPA is required to notify affected citizens and State and local officials of all removal actions and to establish and make available to the public an administrative record file for each removal. At removal actions with onsite activity



lasting longer than 120 days, EPA must also conduct community interviews and prepare a community involvement plan. In addition, for non-time-critical responses that allow a planning period of greater than 6 months, EPA is required to provide for a 30 day public comment period on the proposed remedy, and EPA must respond to these comments. EPA also regularly uses public meetings, community visits, fact sheets, and other communication mechanisms to enhance community involvement in removal actions.

*Question 6.* How many Superfund sites in California have been capped as a final remedy during the past 3 years? What percent does this number represent of the total number of California sites which have a final remedy in place?

Response. California has 99 sites (3 proposed, 92 final, and 4 deleted) on the N.L. Construction has been completed at 31 of these sites. Four of these Superfund sites, Riverbank Army Ammunitions Plant, McColl, South Bay Asbestos, and Lorentz Barrel & Drum, have been capped as part of a final remedy in the past 3 years. These 4 sites have achieved construction completion and represent 13 percent of the 31 sites that have had construction completions in California. In addition, the remedial work at all of these sites included other response actions in addition to capping, such as soil excavation, groundwater extraction and treatment, or institutional controls, as integral parts of the final remedies for the sites.

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LETTERS SUBMITTED FOR THE RECORD FROM EPA

ENVIRONMENTAL PROTECTION AGENCY,  
Washington, DC., April 1, 1999.

Hon. JOHN H. CHAFEE, *Chairman*,  
U.S. Senate, Environment and Public Works Committee,  
Washington, DC.

Dear MR. CHAIRMAN: Thank you for forwarding followup questions from the February 24, 1999 hearing on EPA's Fiscal Year 2000 Budget. We are continuing our efforts to respond to these questions, and are providing this interim letter with those responses that have been finalized to date. Per your request, in addition to responses to your questions, we are also providing a copy of responses prepared for other members of the committee.

We will continue to forward remaining responses as they are finalized by the Agency.

Sincerely,

DIANE E. THOMPSON,  
Assistant Administrator.

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ENVIRONMENTAL PROTECTION AGENCY,  
Washington, DC., April 16, 1999.

Hon. JOHN H. CHAFEE, *Chairman*,  
U.S. Senate, Environment and Public Works Committee,  
Washington, DC.

Dear MR. CHAIRMAN: Thank you for forwarding followup questions from the February 24, 1999 hearing on EPA's Fiscal Year 2000 Budget. We are continuing our efforts to respond to these questions, and are providing this interim letter with additional responses that have been finalized to date. Per your request, in addition to responses to your questions, we are also providing a copy of responses prepared for other members of the committee.

We will continue to forward remaining responses as they are finalized by the Agency.

Sincerely,

DIANE E. THOMPSON,  
Associate Administrator.

ENVIRONMENTAL PROTECTION AGENCY,  
*Washington, DC., April 27, 1999.*

Hon. JOHN H. CHAFEE, *Chairman,*  
*U.S. Senate, Environment and Public Works Committee,*  
*Washington, DC.*

Dear MR. CHAIRMAN: Thank you for forwarding followup questions from the February 24, 1999 hearing on EPA's Fiscal Year 2000 Budget. We are continuing our efforts to respond to these questions, and are providing this interim letter with additional responses that have been finalized to date. Per your request, in addition to responses to your questions, we are also providing a copy of responses prepared for other members of the committee.

We will continue to forward remaining responses as they are finalized by the Agency.

Sincerely,

DIANE E. THOMPSON,  
*Associate Administrator.*

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ENVIRONMENTAL PROTECTION AGENCY,  
*Washington, DC., May 13, 1999.*

Hon. JOHN H. CHAFEE, *Chairman,*  
*U.S. Senate, Environment and Public Works Committee,*  
*Washington, DC.*

Dear MR. CHAIRMAN: Thank you for forwarding followup questions from the February 24, 1999 hearing on EPA's Fiscal Year 2000 Budget. We are continuing our efforts to respond to these questions, and are providing this interim letter with additional responses that have been finalized to date. Per your request, in addition to responses to your questions, we are also providing a copy of responses prepared for other members of the committee.

We will continue to forward remaining responses as they are finalized by the Agency.

Sincerely,

DIANE E. THOMPSON,  
*Associate Administrator.*

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ENVIRONMENTAL PROTECTION AGENCY,  
*Washington, DC., May 19, 1999.*

Hon. JOHN H. CHAFEE, *Chairman,*  
*U.S. Senate, Environment and Public Works Committee,*  
*Washington, DC.*

Dear MR. CHAIRMAN: Thank you for forwarding followup questions from the February 24, 1999 hearing on EPA's Fiscal Year 2000 Budget. We are continuing our efforts to respond to these questions, and are providing this interim letter with additional responses that have been finalized to date. Per your request, that we provide copies of responses prepared for other members of the committee, enclosed are responses to questions from Senator Inhofe.

We will continue to forward remaining responses as they are finalized by the Agency.

Sincerely,

DIANE E. THOMPSON,  
*Associate Administrator.*

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ENVIRONMENTAL PROTECTION AGENCY,  
*Washington, DC., May 26, 1999.*

Hon. JOHN H. CHAFEE, *Chairman,*  
*U.S. Senate, Environment and Public Works Committee,*  
*Washington, DC.*

Dear MR. CHAIRMAN: Thank you for forwarding followup questions from the February 24, 1999 hearing on EPA's Fiscal Year 2000 Budget. We are continuing our efforts to respond to these questions, and are providing this interim letter with additional responses that have been finalized to date. Per your request that we provide

copies of responses prepared for other members of the committee, enclosed are responses to questions from Senator Inhofe.

We will continue to forward remaining responses as they are finalized by the Agency.

Sincerely,

DIANE E. THOMPSON,  
*Associate Administrator.*

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ENVIRONMENTAL PROTECTION AGENCY,  
*Washington, DC., June 3, 1999.*

Hon. JOHN H. CHAFEE, *Chairman,*  
*U.S. Senate, Environment and Public Works Committee,*  
*Washington, DC.*

Dear MR. CHAIRMAN: Thank you for forwarding followup questions from the February 24, 1999 hearing on EPA's Fiscal Year 2000 Budget. We are continuing our efforts to respond to these questions, and are providing this interim letter with additional responses that have been finalized to date. Per your request that we provide copies of responses prepared for other members of the committee, enclosed are responses to questions from Senator Inhofe.

We will continue to forward remaining responses as they are finalized by the Agency.

Sincerely,

DIANE E. THOMPSON,  
*Associate Administrator.*

