

S. HRG. 114-341

**EXAMINING THE PRESIDENT'S FISCAL YEAR 2017
BUDGET REQUEST FOR THE U.S. ENVIRON-
MENTAL PROTECTION AGENCY**

HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

APRIL 19, 2016

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ONE HUNDRED FOURTEENTH CONGRESS
SECOND SESSION

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**EXAMINING THE PRESIDENT'S FISCAL YEAR
2017 BUDGET REQUEST FOR THE U.S. ENVI-
RONMENTAL PROTECTION AGENCY**

TUESDAY, APRIL 19, 2016

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

The committee met, pursuant to notice, at 10:02 a.m. in room 406, Dirksen Senate Office Building, Hon. James Inhofe (chairman of the committee) presiding.

Present: Senators Inhofe, Boxer, Vitter, Barrasso, Capito, Boozman, Wicker, Fischer, Rounds, Sullivan, Carper, Cardin, Whitehouse, Gillibrand, Booker and Markey.

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

Senator INHOFE. The hearing will come to order.

First of all, welcome, Administrator McCarthy. We appreciate you being here. As I said to you before the meeting, this may be the last positive note, but I want to start off on a positive note, and that is I want you to commend your staff that has been working on TSCA with us. It has been very, very difficult, and it looks like now we are just a matter of hopefully hours away of having agreement with the House. But without your staff concentrating on that, it really couldn't have happened, so I hope you will share that with them. I am sure maybe they are watching now.

Administrator, the President has requested almost \$8.3 billion to fund EPA next fiscal year, an increase of more than \$87 million from last year's enacted. I would like to address what I believe are misplaced priorities and how the President is sacrificing EPA's core programs to advance his climate agenda.

The President is seeking—and I had two different sources here. I think the figure is accurate. The total amount he is seeking would be \$235 million to implement the Clean Power Plan, even though EPA has testified before this Committee that they have done no modeling whether the rule would have any impact on global temperature change and the Supreme Court has stayed it from going into effect because of ongoing litigation which could well last until 2018.

The President is intent on picking winners and losers in the energy economy. The budget request makes clear the President's intention to now squeeze the oil and gas sector through costly new regulations and increased inspections and enforcement, much like

it did with coal mines and power plants at the beginning of the Administration. Another example is how the budget requests \$300 million in mandatory funding, or more than \$1.6 billion over 10 years, to pay for charging stations for electric vehicles and other subsidies to remake our transportation infrastructure.

Meanwhile, the President again proposes cutting \$40 million from the very successful diesel emission retrofit program that Senator Carper and I support. The budget would also eliminate State grants to address radon, even though radon is the second leading cause of lung cancer.

In the hearing earlier this month, we heard testimony about the challenges faced by States and local governments in meeting EPA clean water mandates. But the President's budget would cut \$414 million from the Clean Water State Revolving Fund which helps these very same States and local communities pay for improvements to sewer and wastewater treatment systems.

Regardless of what one thinks about the President's policy goals, here are a few objective results: The Supreme Court has stayed the Clean Power Plan, the centerpiece of the President's climate legacy, over questions that EPA exceeded the limits of its authority under the Clean air Act.

A headline in the New York Times and report by the GAO about EPA's violating the law by using taxpayer money for covert propaganda and illegal lobbying to support the Waters of the U.S. rule. Injunctions were issued to halt the WOTUS rule itself by the Sixth Circuit and a Federal district court in North Dakota. Last year's Supreme Court decision remanding a rule to limit mercury emissions from power plants because EPA ignored costs.

As we have seen from the Gold King Mine blowout and the contaminated drinking water in Flint, Michigan, EPA has at times been distracted from fulfilling its core missions due to the Obama administration's single-minded focus on remaking EPA into an agency that regulates climate change and the energy sector.

The members of this Committee and I look forward to asking you about the EPA's priorities and regulatory agenda.

Senator BOXER.

[The prepared statement of Senator Inhofe follows:]

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

Administrator McCarthy, thank you for appearing this morning. The President has requested almost \$8.3 billion to fund EPA next fiscal year—an increase of more than \$87 million from last year's enacted.

This budget is just the latest example of the Administration's misplaced priorities and how EPA's core programs are being sacrificed to advance President Obama's climate legacy.

The President is seeking more than \$50 million just to implement the Clean Power Plan—even though the rule will have negligible impact on global temperature change and the Supreme Court has stayed it from going into effect because of ongoing litigation.

The Obama EPA is intent on picking winners and losers in the energy economy. The budget request makes clear the President's intention to now squeeze the oil and gas sector through costly new regulations and increased inspections and enforcement, much like it did with coal mines and power plants at the beginning of the Administration.

Another example of this is how the budget request seeks \$300 million in mandatory funding (or more than \$1.6 billion over 10 years) to pay for charging stations for electric vehicles and other subsidies to remake our transportation infrastructure.

Meanwhile, the president proposes cutting \$40 million from the very successful diesel emission retrofit program that Senator Carper and I support. The budget would also eliminate state grants to address radon, even though radon is the second leading cause of lung cancer.

In a hearing earlier this month, we heard testimony about the challenges faced by states and local governments in meeting EPA clean water mandates. But the President's budget would cut \$414 million from the Clean Water State Revolving Fund which helps these very same states and local communities pay for improvements to sewer and waste water treatment systems.

A key part of last year's budget request was to fund dozens of new attorneys. But what does EPA have to show for this hiring spree?

- The Supreme Court has stayed the Clean Power Plan—the centerpiece of the President's climate legacy—over questions the EPA exceeded the limits of its authority under the Clean Air Act.
- A headline in the New York Times and report by GAO about how EPA violated the law by using tax-payer money for covert propaganda and illegal lobbying to support the Waters of the U.S. rule.
- Injunctions were issued to halt the WTUS rule itself by the Sixth Circuit and a federal district court in North Dakota.
- And let's not forget last year's Supreme Court decision remanding a rule to limit mercury emissions from power plants because EPA ignored costs.

As we have seen from the Gold King Mine blowout and the contaminated drinking water in Flint, EPA has at times been distracted from fulfilling its core missions due to the Obama Administration's dingle-minded focus on remaking EPA into an agency that regulates climate change and the energy sector.

The job of EPA Administrator comes with a high level of scrutiny from Congress and the American people. We may not see eye to eye on everything. But I appreciate the support you and your staff have provided for some of the Committee's work especially to modernize the Toxic Substance Control Act. As you know the Senate passed by voice vote last December a TSCA reform bill named after our colleague Frank Lautenberg, and I thank you and your staff for your continued help in moving that bill forward.

The members of this Committee and I are looking forward to questioning EPA's priorities and regulatory agenda.

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

Senator BOXER. Thanks, Mr. Chairman.

Welcome, and I will defend you as much as possible from what is coming at you.

EPA's work implementing our Nation's landmark laws to address clean air, children's health, safe drinking water, toxics, and water quality in America's lakes and rivers is essential for public health and safety. Despite my colleague's chagrin, the work of the EPA to keep our families healthy is widely supported in poll after poll after poll where the opinion of this Senate and this House is probably around the 17, 18 percent range at best. So let's be clear what we are talking about.

Vast majority support your work and, sadly, vast majority think that we are not doing our jobs or not doing it well. That is sad.

Now, on the budget, EPA's budget of \$8.27 billion is down from 7 years ago when the budget was \$10.3 billion. It is a sad situation, and I am sorry that the President didn't make this a bigger priority. I guess it is \$127 million increase above 2016, but there are cuts in this budget where I agree with my colleague that are wrong.

So the problem is not enough money in the budget. That is what I think. And you are asked to do more with less, and you get criticized when you don't have a Johnny-on-the-spot answer when they have cut you like this over the years.

It is important that EPA continue to focus on combatting dangerous climate change, which is happening all around us. For example, 2015 was the hottest year on record; 15 of the 16 warmest years on record have occurred in the 21st century. Sea levels are rising many times faster than they have only in the last 2,800 years. That is all. We see record rainfalls, record droughts, record fires, and scientists are saying too much carbon pollution in the air caused by human activity.

Young people, when asked about this, think that those people who don't recognize this as a threat are out of touch, and that is a nice way to put it. They say worse than that.

EPA also has a critical responsibility to ensure drinking water is safe, and the American people have a right to expect that they will not be poisoned when they turn on their faucets. Small point, right? The lead poisoning of children in Flint is a tragedy, and we must commit to never let it happen again. The State of Michigan failed the people of Flint, is primarily responsible, in my view, because they changed the source of the water to save a few bucks; it ignored multiple warnings that it was poisoning its own citizens, and EPA has a responsibility to speak out when it sees action being taken that could harm public health. EPA could have, and should have, done more, and I hope the actions taken by EPA since the Flint crisis will help prevent similar tragedies from taking place in the future.

This problem is far more widespread than is acknowledge. I know of cases in Mississippi, California, where they have turned off the drinking water for the children. Obviously, the older the pipes, the worse the problem. But the offense in Flint demonstrates we have a long way to go to provide reliable, safe drinking water to all Americans and in cleaning up the waterways that serve as sources of our drinking water.

The American Society of Civil Engineers gives our Country's drinking water and wastewater infrastructure a big fat D. It is embarrassing that this, the greatest Country in the world—a lot of people say let's make America great again. America is great. But how do we stand here with an infrastructure rated D, or sit here, as the case may be?

The American Water Works Association estimates that 7 percent of homes, 15 to 22 million Americans, have lead service lines. This is unacceptable. We have to continue to invest in improving the Nation's failing water infrastructure.

We are very happy about WIFIA. This is a program Senator Inhofe and I and all of the Committee worked on together to leverage private financing for critical drinking water. But WIFIA shouldn't be a replacement for the State Revolving Funds. I agree with my colleague on that. Our Nation's infrastructure needs far outstrip the funding available, and the proposed \$257 million cut to the State Revolving Funds will make this funding gap worse.

Administrator McCarthy, you have a tough job, but the American people do support your mission, as I said. In poll after poll they favor the efforts to address climate change, cleanup the air, protect our water, and provide safe drinking water to 117 million Americans. You are doing essential work.

For some reason this issue has become a partisan divide. It is my biggest regret, as I get ready to leave the Senate that I love so much, to see this divide. It is sad. We will see it on display today. It will speak for itself.

Thank you.

Senator INHOFE. Administrator McCarthy.

STATEMENT OF GINA MCCARTHY, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY; ACCOMPANIED BY: DAVID BLOOM, CHIEF FINANCIAL OFFICER, ENVIRONMENTAL PROTECTION AGENCY

Ms. MCCARTHY. Chairman Inhofe, Ranking Member Boxer, I really appreciate the opportunity to appear before you today to discuss EPA's proposed Fiscal Year 2017 budget, and I am joined today by the Agency's Deputy Chief Financial officer, David Bloom.

EPA's budget request of \$8.267 billion for the 2017 Fiscal Year lays out a strategy to ensure steady progress in addressing environmental issues that affect public health. For 45 years our investments to protect public health and the environment have consistently paid off many times over. We have cut air pollution by 70 percent and cleaned up half of the Nation's polluted waterways all the while our national economy has tripled.

Effective environmental protection is a joint effort of the EPA, States, and our Tribal partners. That is why the largest portion of our budget, \$3.28 billion, or almost 40 percent, is provided directly to our State and Tribal partners. In Fiscal Year 2017, we are requesting an increase of \$77 million in funding for State and Tribal Assistance categorical grants in support of critical State work and air and water programs, as well as continued support for our Tribal partners.

This budget request also reinforced EPA's focus on community support by providing targeted funding in support for regional coordinators to help communities find and determine the best programs to address local environmental priorities.

The budget includes \$90 million in Brownfield Project grants to local communities. That is an increase of \$10 million, which will help return contaminated sites to productive use.

This budget prioritizes actions to reduce the impacts of climate change and it supports the President's Climate Action Plan. It includes \$235 million for efforts to cut carbon pollution and other greenhouse gases through common sense standards, guidelines, as well as voluntary programs.

The EPA's Clean Power Plan continues to be a top priority for the EPA and for our Nation's inevitable transition to a clean energy economy. Though the Supreme Court has temporarily stayed the CPP rule, States are not precluded from voluntarily choosing to continue implementation planning. EPA will continue to assist States that voluntarily decide to do so.

As part of the President's 21st Century Clean Transportation Plan, the budget also proposes to establish a new mandatory fund at the EPA, providing \$1.65 billion over the course of 10 years that will be used to retrofit, replace or repower diesel equipment, and up to \$300 million in Fiscal Year 2017 to renew and increase funding for the Diesel Emissions Reduction Grant Program. The budget

also includes a \$4.2 million increase to enhance vehicle engine and fuel compliance programs, including critical testing capabilities.

We also have to confront the systemic challenge that threatens our Country's drinking water and the infrastructure that delivers it.

This budget includes a \$2 million request for State Revolving Funds and \$42 million in additional funds to provide technical assistance to small communities, loan financing to promote public-private collaboration, and training to increase the capacity of communities and States to plan and finance drinking water and wastewater infrastructure improvements.

The EPA requests \$20 million to fund the Water Infrastructure Finance and Innovation Act Program, or WIFIA, which will provide direct financing for the construction of water and wastewater infrastructure by making loans for large innovative projects of regional or national significance.

This budget also provides \$22 million in funding to expand the technical, managerial, and financial capabilities of drinking water systems. Included is \$7.1 million for the Water Infrastructure and Resiliency Finance Center, as well as the Center for Environmental Finance that will enable communities across the Country to focus on financial planning of upcoming public infrastructure investments, to expand work with States to identify financing opportunities for rural communities, and to enhance partnerships and collaboration with the U.S. Department of Agriculture.

EPA is also seeking a \$20 million increase to the Superfund Remedial Program, which will accelerate the pace of cleanups, supporting States, local communities, and Tribes in their effort to assess and cleanup sites and return them to productive use.

EPA's Fiscal Year 2017 budget request will let us continue to make a real and visible difference to communities and public health every day, and provide us with foundation to revitalize the economy and improve infrastructure across the Country.

Thank you for the opportunity to testify today, and I look forward to answering your questions.

[The prepared statement of Ms. McCarthy follows:]

STATEMENT OF GINA MCCARTHY, ADMINISTRATOR, U.S. ENVIRONMENTAL
PROTECTION AGENCY

Chairman Inhofe, Ranking Member Boxer, and members of the Committee, thank you for the opportunity to appear before you to discuss the Environmental Protection Agency's proposed fiscal year budget. I'm joined by the agency's Deputy Chief Financial Officer, David Bloom.

The EPA is, at its very core, a public health agency. The simple fact is you cannot have healthy people without clean air, clean water, healthy land, and a stable climate. We have worked hard to deliver these and made significant progress over the years for the American people. This budget request of \$8.267 billion [in discretionary funding] for the 2017 fiscal year, starting October 1, 2016, lays out a strategy to ensure that steady progress is made in addressing environmental problems. This strategy includes actions to protect public health and it ensures that the agency and its partners in environmental protection, states and tribes, are positioned to meet the challenges of the future. The request is \$127 million above the agency's enacted level for fiscal year 6. For 45 years, the EPA's investments to protect public health and the environment have helped make the nation's air, land, and waters cleaner.

However, in many ways we are now at a turning point. As science advances, it improves our ability to measure pollution and provide better and more complete access to environmental information, but we know that the technologies and tools that

we have relied on to date cannot be expected to meet all of today's challenges, like climate change and aging infrastructure. This budget supports efforts to leverage investments in technology, and be even more innovative and responsive, while reflecting an understanding that a strong economy depends on a healthy environment. It funds essential work to support our communities, address climate change, protect our waters, protect our land, ensure chemical safety, encourage pollution prevention, advance research and development and promote innovation and modernization to streamline processes.

Supporting our state, local, and tribal partners is a central component of our work to protect public health and the environment. This budget builds on a history of addressing environmental and public health challenges as a shared responsibility. We are doing this while supporting a strong workforce at the EPA and maintaining a forward and adaptive organization with the tools necessary to ensure effective use of the public funds provided to us.

MAKING A VISIBLE DIFFERENCE IN COMMUNITIES ACROSS THE COUNTRY

We are committed to continuing our work with our partners to make a visible difference in communities across the country—especially in areas overburdened by pollution—including distressed urban and rural communities.

The EPA has made community support a top priority and this budget reinforces that focus. It includes a multi-faceted effort that builds and strengthens capacity using innovative tools, comprehensive training, technical assistance, and increased access to the most up-to-date scientific data. The EPA is committed to assisting communities in addressing their most pressing environmental concerns and will continue to innovate by taking full advantage of advances in technology to detect air and water pollution.

In fiscal year 7, the EPA will provide targeted funding and support for regional coordinators to help communities find and determine the best programs to address local environmental priorities. The fiscal year budget also provides \$17 million for the Alaska Native Villages infrastructure assistance program, and an additional \$2.9 million within the Integrated Environmental Strategies program will support these communities in conducting resiliency planning exercises and capacity-building. This will build upon previous collaborative efforts with FEMA, NOAA and HUD.

Across the budget, activities help communities adopt green infrastructure, provide technical assistance for building resilience and adapting to climate change, and help communities to reduce environmental impacts through advanced monitoring technology and decisionmaking tools. The EPA's budget also includes \$90 million in Brownfields Project grants to local communities, an increase of \$10 million. These funds will help to return contaminated sites to productive reuse by increasing investments in technical assistance and community grants for assessment and clean-up of areas where we work, live and play.

The EPA will continue work to limit public exposure to uncontrolled releases of hazardous substances and make previously contaminated properties available for reuse by communities through a request of approximately \$521 million in the Superfund Remedial program and another \$185 million in the Superfund Emergency Response and Removal program. An increase of \$24 million in Superfund cleanup programs will enable the remedial program to maximize the preparation of "shovel-ready" projects, and provide funding to reduce the backlog of new construction projects that address exposure to contaminated soil and groundwater. It also supports critical resources with the Emergency Response and Removal program giving us the ability to quickly respond to simultaneous emergencies.

ADDRESSING CLIMATE CHANGE AND IMPROVING AIR QUALITY

The fiscal year budget request for the agency's work to address climate change and to improve air quality is \$1.132 billion. These resources will help protect those most vulnerable to climate impacts and the harmful health effects of air pollution through commonsense standards, guidelines, and partnership programs.

Climate change remains a threat to public health, our economy, and national security and the U.S. recognizes our role and our responsibility to lead in cutting carbon pollution that is fueling climate change. To do so, our work will position the business community, its entrepreneurs, and its innovators to lead the world in a global effort while at the same time, expanding the economy. States and businesses across the country are working to build renewable energy infrastructure, increase energy efficiency, and cut carbon pollution—creating sustainable, middle class jobs and displaying the kind of innovation that has enabled this country to overcome so

many challenges. Over the last decade, the U.S. has cut its total carbon pollution more than any other nation on Earth. And last November, we set a goal of reducing economy-wide greenhouse gas emissions by 26—28 percent by 2025. Even so, we are still ranked just behind China as the second largest emitter of CO₂, so we need to continue to lead by example as we work to address this global challenge.

The fiscal year budget prioritizes actions to reduce the impacts of climate change, one of the most significant challenges for this and future generations, and supports the President's Climate Action Plan. The budget includes \$235 million for efforts to cut carbon pollution and other greenhouse gases through common sense standards, guidelines, and voluntary programs. The EPA's Clean Power Plan, which establishes carbon pollution reduction standards for existing power plants, is a top priority for the EPA and will help spur innovation and economic growth while creating a clean energy economy. Although the Supreme Court has stayed the CPP rule, the stay does not preclude all continued work on the CPP and does not limit states that want to proceed with planning efforts or other actions to reduce greenhouse gas emissions from power plants. During the stay, EPA will continue to assist states that voluntarily decide to move forward, helping to pave the way for plans that will involve innovative approaches and flexibility for achieving solutions.

The President's Climate Action Plan also calls for greenhouse gas reductions from the transportation sector by increasing fuel economy standards. These standards will represent significant savings at the pump, reduce carbon pollution, and reduce fuel costs for businesses, which is anticipated to lower prices for consumers. The budget includes a \$4.2 million increase to enhance vehicle, engine and fuel compliance programs, including critical testing capabilities, to ensure compliance with emission standards. An additional \$1 million is included in the President's request to share the agency's mobile source expertise and technical assistance internationally with a focus on heavy duty trucks.

As part of the President's 21st Century Clean Transportation Plan, the President's Budget proposes to establish a new mandatory fund at the EPA. The existing fleet of cars, trucks, and buses is aging, contributing to climate change and putting our children's health at risk. To protect the health of the most vulnerable populations and reduce childhood exposure to harmful exhaust, the EPA will provide a total of \$1.65 billion through the Fund over the course of 10 years to retrofit, replace, or repower diesel equipment. The proposed funding, which is separate from the agency's discretionary funding request, will provide up to \$300 million in fiscal year to renew and increase funding for the Diesel Emissions Reduction Grant Program (DERA), which is set to expire in 2016. This budget also provides \$10 million in discretionary funding to support our existing DERA program to provide national grants and rebates to reduce diesel emissions in priority areas.

PROTECTING THE NATION'S WATERS

Protecting the nation's waters remains a top priority for the EPA. In fiscal year 7, the agency will continue to build upon decades of work to ensure our waterways are clean and our drinking water is safe. There are far reaching effects when rivers, lakes, and oceans become polluted. Polluted waters can make our drinking water unsafe, threaten the waters where we swim and fish, and endanger wildlife. To meet these needs and to protect public health, we need to expand our impact through innovation. The State Revolving Funds (SRF) alone, while important, cannot and should not be relied upon to solve all infrastructure needs. New funds available under the Water Infrastructure Finance and Innovation Act (WIFIA) credit program, as well as technical assistance to help communities plan future investments and better leverage Federal, state, and local resources are necessary to get us there.

We have to confront the systematic challenges that threaten our drinking water; a resource essential to every human being and living thing on Earth. The EPA will continue to partner with states to invest in our nation's water infrastructure. This budget includes a combined \$2 billion request for the Clean Water and Drinking Water State Revolving Funds and \$42 million in additional funds to provide technical assistance to small communities, loan financing to promote public-private collaboration and training to increase the capacity of communities and states to plan and finance drinking water and wastewater infrastructure improvements.

The Water Infrastructure Finance and Innovation Act (WIFIA) established a new financing mechanism for water and wastewater infrastructure projects. In this budget, the EPA requests \$20 million to fund the WIFIA program, which will provide direct financing for the construction of water and wastewater infrastructure by making loans for large innovative projects of regional or national significance. The WIFIA program also will work to support investments in small communities and promote public-private collaboration. \$15 million of the \$20 million increase in the

budget will allow EPA to begin making loans for WIFIA projects. The program is designed to highly leverage these funds, translating into a potential loan capacity of nearly \$1 billion to eligible entities for infrastructure projects.

This budget provides \$22 million in funding to expand the technical, managerial, and financial capabilities of drinking water and wastewater systems to provide safe and reliable services to their customers now and into the future. Included is \$7.1 million for the Water Infrastructure and Resiliency Finance Center and the Center for Environmental Finance that will enable communities across the country to focus on financial planning for upcoming public infrastructure investments, expand work with states to identify financing opportunities for rural communities, and enhance partnership and collaboration with the U.S. Department of Agriculture. The Water Infrastructure and Resiliency Finance Center is part of the Build America Investment Initiative, a governmentwide effort to increase infrastructure investment and promote economic growth by creating opportunities for State and local governments and the private sector to collaborate on infrastructure development.

PROTECTING OUR LAND

The EPA strives to protect and restore land to create a safer environment for all Americans by cleaning up hazardous and non-hazardous wastes that can migrate to air, groundwater and surface water, contaminating drinking water supplies, causing acute illnesses and chronic diseases, and threatening healthy ecosystems. We preserve, restore, and protect our land, for both current and future generations by cleaning up contaminated sites and returning them to communities for reuse. Funding will assist communities in using existing infrastructure and planning for more efficient and livable communities, and encouraging the minimization of environmental impacts throughout the full life cycle of materials.

Approximately 53 million people in the U.S. live within 3 miles of a Superfund remedial site, roughly 17 percent of the U.S. population, including 18 percent of all children under the age of five. In fiscal year 7, we will increase the Superfund Remedial program by \$20 million to accelerate the pace of cleanups, supporting states, local communities, and tribes in their efforts to assess and cleanup sites and return them to productive reuse, and encourage renewable energy development on formerly hazardous sites when appropriate. We also will expand the successful Brownfields program's community-driven approach to revitalizing contaminated land, providing grants, and supporting area-wide planning and technical assistance to maximize the benefits to the communities.

TAKING STEPS TO IMPROVE CHEMICAL FACILITY SAFETY

The EPA is requesting \$23.7 million for the State and Local Prevention and Preparedness program, an increase of \$8.4 million above the fiscal year enacted level.

In support of the White House Executive Order 13650 on Improving Chemical Facility Safety and Security, the requested increase will allow the EPA to continue to expand upon its outreach and technical assistance to improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to facility workers and operators, communities, and responders.

These efforts represent a shared commitment among those with a stake in chemical facility safety and security: facility owners and operators; Federal, state, local, tribal, and territorial governments; regional entities; nonprofit organizations; facility workers; first responders; environmental justice and local environmental organizations; and communities. The EPA therefore plays a significant and vital role.

In fiscal year 7, the EPA will develop, initiate and deliver training to aid with expansive outreach and planning for local communities, emergency planners, and responders. This will assist local emergency planners and first responders in using the risk information available to them, educating the public about what to do if an accident occurs. The EPA also will work effectively with facilities to reduce the risks associated with the chemicals that are stored, used, or produced onsite to help prevent accidents from occurring.

Continuing EPA's Commitment to Innovative Research & Development

In building environmental policy, scientific research continues to be the foundation of EPA's work. Environmental issues in the 21st century are complex because of the interplay between air quality, climate change, water quality, healthy communities, and chemical safety. Today's complex issues require different thinking and different solutions than those used in the past. In fiscal year 7, we will continue to strengthen the agency's ability to develop solutions by providing \$512 million to evaluate and predict potential environmental and human health impacts for decisionmakers at all levels of government. Activities in the fiscal year Budget include

providing support tools for community health, investigating the unique properties of emerging materials, such as nanomaterials, and research to support the nation's range of growing water-use and ecological requirements. The Chemical Safety and Sustainability program will continue to place emphasis on computational toxicology (CompTox), which is letting us study chemical risks and exposure exponentially faster and more affordably than ever before. The EPA's ToxCast program has screened nearly 2,000 chemicals and Tox21 has screened over 8,000. In fiscal year we have an opportunity to further enhance CompTox and broaden its application, adding significant efficiency and effectiveness to agency operations.

SUPPORTING STATE AND TRIBAL PARTNERS

Effective environmental protection is a joint effort of the EPA, states and our tribal partners, and we are setting a high bar for continuing our partnership efforts. That's why the largest part of our budget, \$3.28 billion dollars, or almost 40 percent, is provided directly to our State and tribal partners. In fiscal year 7, we are requesting an increase of \$77 million in funding for State and Tribal Assistance categorical grants in support of critical State work in air and water protection as well as continued support for our tribal partners.

The EPA is focused on opportunities to continue building closer collaboration and targeted joint planning and governance processes. One example is the E-Enterprise for the Environment approach, a transformative 21st century strategy to modernize the way in which government agencies deliver environmental protection. With our co-regulatory partners, we are working to streamline, reform, and integrate our shared business processes and related systems. These changes, including a shift to electronic reporting, will improve environmental results, reduce burden, and enhance services to the regulated community and the public. State-EPA-Tribal joint governance serves to organize the E-Enterprise partnership to elevate its visibility, boost coordination capacity, and ensure the inclusiveness and effectiveness of shared processes, management improvements, and future coordinated projects.

MAINTAINING A FORWARD LOOKING AND ADAPTIVE EPA

The EPA has strategically evaluated its workforce and facility needs and will continue the comprehensive effort to modernize its workforce. By implementing creative, flexible, cost-effective, and sustainable strategies to protect public health and safeguard the environment, the EPA will target resources toward development of a workforce and infrastructure that can address current challenges and priorities.

We are requesting funding in this budget to help us fast-track efforts to save taxpayer dollars over the long term by optimizing and renovating critical agency space. That space includes laboratory buildings across the country, where we conduct critical scientific research on behalf of the American public. Since fiscal year 2, the EPA has released over 250,000 square feet of office space nationwide, resulting in a cumulative annual rent avoidance of nearly \$9.2 million across all appropriations. Additional planned consolidations and moves could release another 336,000 square feet of office space in the next several years.

The agency will continue on-going work to improve processes and advance the E-Enterprise effort—replacing outdated paper processes for regulated companies with electronic submissions. The EPA's goals for process improvements are: leveraging technology, streamlining workflow, and improving data quality, and increasing data sharing and transparency. The agency also is making necessary investments to improve internal IT services to support productivity and address cybersecurity needs.

In fiscal year 7, the EPA requests \$3.3 million to expand Program Evaluation and Lean efforts as a part of the High Performing Organization Cross-Agency Strategy. We continue to eliminate non-value added activities to focus more directly on all tasks that support its mission of protecting public health and the environment.

The EPA continues to examine its programs to find those that have served their purpose and accomplished their mission. The fiscal year President's Budget also eliminates some mature programs where State and local governments can provide greater capacity. Those grant programs are the Beaches Protection categorical grants, the Multi-purpose categorical grants, the Radon categorical grants, the Targeted Airshed grants and the Water Quality Research and Support grants, totaling \$85 million.

We are committed to do the work that is necessary to meet our mission and protect public health. The EPA's fiscal year budget request will let us continue to make a real and visible difference to communities and public health every day. It will give us a foundation to revitalize the economy and improve infrastructure across the

country. And it will sustain state, tribal, and Federal environmental efforts across all our programs.

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

RESPONSES BY GINA MCCARTHY TO ADDITIONAL QUESTIONS
FROM SENATOR GILLIBRAND

Question 1. Administrator McCarthy, thank you for testifying here today, and for your continued leadership at the EPA to protect clean air and clean water, and address the urgent threats we face from climate change. The EPA has a critical responsibility to protect the health of our families; whether it is working to ensure that our children in the Bronx can go outdoors in the summer without fear of an asthma attack, or that families in UpState New York can swim and fish in our lakes, rivers and streams without fear of pollution by harmful runoff and algae blooms. While we still have much work to do to fully realize those goals, initiatives like the Clean Power Plan and the Clean Water Rule have helped us move the ball forward, and I continue to support those efforts.

I would like to ask you about a 2 areas of concern I have that are specific to New York:

As I am sure you are aware, EPA Region 2 has been working to address a situation in the Village of Hoosick Falls, in UpState New York, where drinking water has been contaminated by the chemical PFOA.

A significant concern is that PFOA is an "unregulated contaminant" under the Safe Drinking Water Act, which limited the EPA's ability to respond to PFOA contamination, and led to an initially false assumption that the drinking water in Hoosick Falls was safe to drink, when it was in fact likely making people very sick. This is nothing short of an environmental disaster for the families who have been affected by PFOA contamination in their water.

What would it take to reclassify PFOA so that it is regulated under the Safe Drinking Water Act?

Response. The EPA is evaluating PFOA and PFOS as drinking water contaminants in accordance with the process required by the Safe Drinking Water Act (SDWA). To regulate a contaminant under SDWA, the EPA must find that the contaminant: (1) may have adverse health effects; (2) occurs frequently (or there is a substantial likelihood that it occurs frequently) at levels of public health concern; and (3) there is a meaningful opportunity for health risk reduction for people served by public water systems.

The EPA included PFOA and PFOS among the contaminants for which water systems were required to monitor under the third Unregulated Contaminant Monitoring Rule (UCMR 3) in 2012. Results of this monitoring effort can be found on the publicly available National Contaminant Occurrence Data base (NCOD) at <https://www.epa.gov/dwucmr/occurrence-data-unregulated-contaminant-monitoring-rule#3>, which is updated by the EPA approximately quarterly. In accordance with SDWA, the EPA will consider the occurrence data from UCMR 3, along with the peer reviewed health effects assessments supporting the PFOA and PFOS Health Advisories, to make a regulatory determination on whether to initiate the process to develop a national primary drinking water regulation.

Question 2. Given the attention that has been placed on PFOA, and concerns that have been raised both in New York and other New England states about its prevalence in our region and potential health impacts, what additional steps can be taken to protect the public from PFOA?

Response. The EPA established health advisories for PFOA and PFOS in May 2016 based on the agency's assessment of the latest peer-reviewed science in order to provide drinking water system operators and Federal, state, tribal and local officials, who have the primary responsibility for overseeing these systems, with information on the health risks of these chemicals. These advisories will help them take the appropriate actions to protect their residents. The EPA is committed to supporting states and public water systems as they determine the appropriate steps to reduce exposure to PFOA and PFOS in drinking water. As science on health effects of these chemicals evolves, the EPA will continue to evaluate new evidence.

If past sampling data shows that drinking water contains combined PFOA and PFOS at individual or combined concentrations greater than 70 parts per trillion, water systems should:

- Quickly undertake additional sampling to assess the level, scope and localized source of contamination to inform next steps;

If water sampling results confirm that drinking water contains PFOA and PFOS at individual or combined concentrations greater than 70 parts per trillion, the agency recommends that water systems:

- Promptly notify their State drinking water safety agency (or the EPA in jurisdictions for which the EPA is the primary drinking water safety agency);
- Consult with the relevant agency on the best approach to conduct additional sampling;
- Provide consumers with information about the levels of PFOA and PFOS in their drinking water, including specific information on the risks to fetuses during pregnancy and breastfed and formula-fed infants; and
- Identify options that consumers may consider to reduce risk, such as seeking an alternative drinking water source, or in the case of parents of formula-fed infants, using formula that does not require adding water.

A number of options are available to drinking water systems to lower concentrations of PFOA and PFOS in its drinking water supply. In some cases, drinking water systems may be able to reduce concentrations of perfluoralkyl substances, including PFOA and PFOS, by closing contaminated wells or changing rates of blending of water sources. Alternatively, public water systems can treat source water with activated carbon or high pressure membrane systems (e.g., reverse osmosis) to remove PFOA and PFOS from drinking water. These treatment systems are used by some public water systems today, but should be carefully designed and maintained to ensure that they are effective for treating PFOA and PFOS. In some communities, entities have provided bottled water to consumers while steps to reduce or remove PFOA or PFOS from drinking water, or establish a new water supply, were completed.

HOOSICK FALLS

Question 3. On February 1st, I wrote to Region 2 Regional Administrator Judith Enck, asking the EPA to expedite the process for listing Hoosick Falls as a Federal Superfund site. Will you commit to me that you will personally ensure that this process moves as quickly as possible and that EPA will be aggressive in ensuring that the contamination is remediated?

Response. Addressing the contamination in the Village of Hoosick Falls is a high priority for the EPA. We are currently gathering information needed to evaluate the site for inclusion on the National Priorities List of Superfund sites. We also are conducting investigations to identify the parties responsible for the contamination. We are working actively with both the New York State Department of Health and New York State Department of Environmental Conservation to coordinate our respective investigative and remedial efforts to ensure that accurate information is provided to the public and to effectively address the contamination problem.

HUDSON RIVER

Question 4. What purpose does it serve for the EPA to release a white paper dismissing data presented NOAA which has a responsibility for the Hudson River a Federal Trustee—before your agency even begins its 5 year review?

Response. The EPA's white paper presents a thorough, detailed, scientific evaluation of a scientific article authored by National Oceanographic and Atmospheric Administration (NOAA) scientists. In the EPA paper, the agency does not dismiss any data, but instead, identifies and addresses important and more recent data that NOAA did not consider in its analysis. In that analysis, NOAA concluded that the dredging project's goals would not be achieved for decades longer than the EPA had predicted in 2002, the year the EPA selected the cleanup action. In the EPA's white paper, the agency presents its conclusion that, based on more recent data, as well as other factors, the project is on a trajectory of environmental improvement consistent with the EPA's prediction 14 years ago.

In the white paper and publically, the EPA has been careful to define "project success" in terms of accomplishing the planned dredging/mass removal and that, following the agency's recent comprehensive review, we do not have any information to indicate otherwise. Therefore, we can move forward to the project's monitored natural recovery phase. The EPA has acknowledged that PCBs remain in the river and supports the Trustees' efforts to address such potential injury through the Natural Resource Damage (NRD) assessment and claims process. The EPA will continue to cooperate and communicate with Federal and State natural resource trustees on the Hudson River remediation.

HUDSON RIVER-RESTORE AND PROTECT

Question 5. Will you ensure that all relevant evidence and data is evaluated during the course of the 5 year review, and that the Federal Trustees have a seat at the table so that EPA can work with them cooperatively to ensure that we are doing everything possible to fully restore and protect the Hudson River?

Response. Yes, we are working closely with all the stakeholders to ensure a thorough Five-Year Review (FYR). The stakeholders, including the Federal Trustees, New York State Department of Environmental Conservation and Department of Health, the Community Advisory Group, and non-governmental organizations have been invited to be part of the FYR team.

RESPONSES BY GINA MCCARTHY TO ADDITIONAL QUESTIONS
FROM SENATOR INHOFE

OZONE IMPLEMENTATION GUIDANCE

Question 1. EPA is required to issue ozone implementation guidance. However, despite 90 percent of the states that commented on the proposed standard requested EPA propose an implementation rule at the time the Agency finalized the standard, EPA will not propose an implementation rule until October 2016. Yet, we know EPA is dedicating air office officials toward the stayed-Clean Power Plan-related activities. Why are you not doing something 90 percent of states commenting, reflecting a bipartisan consensus, requested, rather than pursuing actions that are legally vulnerable and being challenged by more than half the states?

Response. Concurrent with promulgation of the final revised NAAQS, the EPA also issued an implementation memo (<https://www.epa.gov/sites/production/files/2015-10/documents/implementation—memo.pdf>) describing rules and guidance that remain current and applicable to the revised standards, and updates that the agency expects to complete for states to use in planning for the revised NAAQS. The EPA and State co-regulators share a long history of managing ozone air quality under the Clean Air Act (CAA), underpinned by a wealth of previously issued rules and guidance. The EPA is committed to helping air agencies identify and take advantage of potential planning and emissions control efficiencies that may occur within the horizon for attaining the 2015 standards.

Addressing carbon pollution is also a part of the agency's obligations under the Clean Air Act. Since the Supreme Court stayed the Clean Power Plan (CPP) pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the agency's guidance and assistance. The agency will be providing such assistance, which is not precluded by the stay. In particular, some states have asked to move forward with outreach and to continue providing support and developing tools, including the proposed design details for the Clean Energy Incentive Program (CEIP). The agency will move forward in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants.

CLEAN AIR SCIENTIFIC ADVISORY COMMITTEE-NOMINATIONS

Question 2. Administrator McCarthy, as you know, I have long been concerned about the integrity of the selection process for nominations to the Clean Air Scientific Advisory Committee (CASAC) and the Science Advisory Board (SAB). I was surprised to learn in response to my February 2, 2016, letter on the most recently appointed members of CASAC that each of those selected were nominated not by the public, rather, they were all nominated by the EPA or an EPA designated Federal officer. Essentially, anyone nominated by an individual outside of the agency's network was not selected. Are you concerned by this finding? What is the point of soliciting public nominations if the EPA only selects those internally appointed?

Response. The EPA has policies and procedures that meet and exceed what is required by law, in order to assure expert and independent advice from our advisory committees. For example, although not required by law, the EPA provides the general public the opportunity to nominate candidates for the CASAC. The agency believes this more open nominations process expands the breadth and diversity of its applicant pool. In selecting members for the CASAC, the agency evaluates the qualifications and experience of all candidates without regard to whether individuals are nominated by the public or identified through staff outreach.

SCIENCE ADVISORY BOARD-POLICY STATEMENT

Question 3. Administrator McCarthy, as part of the fiscal year omnibus, EPA was required to develop a policy statement for its Science Advisory Board, which would include goals on increasing membership from states and tribes, as well as update its conflict of interest policy. This was to be submitted to GAO for review last month. I understand it is still outstanding. What is the reason for delay and when does the Agency plan to submit this policy statement?

Response. The agency has developed a draft policy statement for the Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC) that describes how the EPA implements the Federal Advisory Committee Act (FACA), Federal ethics regulations, and agency policies for scientific integrity and peer review applicable to these advisory committees. The agency remains committed to the goal of including a diversity of scientific perspectives on the SAB and the CASAC, including the perspectives of scientists from State and local governments, tribes, industry, and nongovernmental organizations. The draft policy statement is currently undergoing final internal review and should be provided to the GAO in the coming weeks. The agency takes seriously the requirements for transparency, independence and balance of its advisory committees, including the SAB and the CASAC. The EPA frequently goes above and beyond the requirements of FACA to ensure that the SAB and the CASAC advisory processes are open and transparent, and applies Federal ethics regulations to members of these committees.

GAO RECOMMENDATION

Question 4. Administrator McCarthy, last May GAO issued a report on the SAB entitled, “EPA’s Science Advisory Board: Improved Procedures Needed to Process congressional Requests for Scientific Advice,” that included four recommendations—all of which remain unimplemented. What is the reason for delay in fulfilling these recommendations?

Response. In the June 2015 report, EPA’s Science Advisory Board: Improved Procedures Needed to Process congressional Requests for Scientific Advice (GAO 15–500), the Government Accountability Office (GAO) recommended that the agency clarify procedures for reviewing congressional committee requests to the SAB to determine which questions should be taken up by the SAB and criteria for evaluating such requests. The agency agreed with those recommendations and is developing a process for considering requests for the SAB advice from the congressional committees listed in the SAB’s authorizing statute (the Environmental Research, Development and Demonstration Authorization Act, ERDDAA). The draft process is undergoing final internal review and should be finalized in the coming weeks. In addition to developing a written process for evaluating congressional requests for the SAB advice, the agency is considering whether amendments to the SAB charter also would be helpful to clarify how congressional requests for the SAB advice will be handled.

SIP BACKLOG

Question 5. At a March 9 full committee hearing with State environmental regulators, we received testimony that EPA has increasingly issued Federal implementation plans while simultaneously slow-walking review of State implementation plans. Although I understand EPA has made some progress in addressing the SIP backlog, can you please provide the Committee a breakdown of the status of EPA’s work toward reducing the SIP backlog?

Response. The EPA has been working with states since 2013 on plans to reduce the State Implementation Plan (SIP) backlog and address the states’ priority SIPs. This work has resulted in 4-year plans developed with states to substantially reduce the historic backlog of SIPs by the end of 2017. Steady and substantial progress has been made over the last several years through the EPA and the states working together. An important part of the agency’s joint effort with the states is ongoing discussions between the regions and states to identify which SIPs the states prioritize for action. The EPA has acted on hundreds of pending SIPs in each of the last several years.

NATIONAL ACADEMY OF SCIENCES REVIEW-SCC

Question 6. In July 2015, the EPA, as part of the Interagency Working Group on the Social Cost of Carbon (SCC), requested the National Academy of Sciences review the SCC. How much funding for NAS’s review has EPA committed?

Response. At the request of the Interagency Working Group (IWG) on the Social Cost of Carbon, co-chaired by the White House's Office of Management and Budget (OMB) and Council of Economic Advisors (CEA), the National Academies of Sciences, Engineering and Medicine convened a Committee on "Assessing Approaches to Updating the Social Cost of Carbon." This is an interagency sponsored project, with contributions coming from the EPA as well as the Departments of Commerce, Energy, Interior, and Transportation. The Department of Energy (DOE) is serving as the coordinating agency for the contract.

MULTIPURPOSE GRANTS

Question 7. For fiscal year Congress appropriated \$21 in multipurpose grants to states and tribes, which EPA requested zero funding for in its fiscal year budget request. Can you please explain the reason for eliminating funds for this program? In early April, EPA released its formula for disbursing the grants, with more than 60 percent going to "core air regulatory work;" yet Congress stipulated the grants were to provide "states and tribes to have the flexibility to direct resources." How does EPA's formula provide states and tribes flexibility to use these grants?

Response. The EPA formula provides flexibility to states within both funding focus areas. First, states have latitude to decide what air activities to fund with the air portion of their funding. The second part of a state's funding is available for priority activities identified by individual states under any existing continuing environmental program. For both focus areas, State identified activities must fall under existing Federal environmental statutes consistent with the language included in the fiscal year appropriations. Additionally, states have the flexibility to fund these activities under a Performance Partnership Grant (PPG) or new standalone multipurpose grant. The fiscal year President's Budget request included increases for several grants to states and tribes, including \$40 million for State and local air quality management grants, \$30.9 million for Tribal General Assistance Program grants, \$15.7 million for Environmental Information grants, and \$15.4 million for pollution control (section

RESPONSES BY GINA MCCARTHY TO ADDITIONAL QUESTIONS FROM SENATOR ROUNDS

EPA REGULATIONS-RESOURCES

Question 1. We have held several hearings in which State and local officials have come to testify about the challenges of implementing EPA regulations on a limited budget with limited resources. This is particularly problematic in South Dakota, where the Department of Environment and Natural Resources is a small staff with a limited budget and is required to oversee the implementation and compliance with State and Federal regulations. Although we have repeatedly heard your agency say that there are resources to help states comply with regulations, I am increasingly concerned with the amount of what I consider to be unfunded mandates coming out of your agency.

Again, although you have said there are resources to help states comply with EPA regulations, I have heard time and time again that this is not the case as these limited resources are spread out among all of the states. What do you tell states who are repeatedly telling you that they simply don't have the resources to comply with these vast, comprehensive EPA regulations?

Response. Supporting our State partners, the primary implementers of environmental programs on the ground, is a long-held priority of the EPA. Funding to states and tribes in the State and Tribal Assistance Grants (STAG) account continues to be the largest percentage of the agency's budget, at 39.7 percent in fiscal year 7. This percentage excludes resources the EPA provides to states and tribes via cooperative agreements, interagency placement assignments, and other vehicles from the agency's operating accounts (e.g., Leaking Underground Storage Tanks, Superfund, and Environmental Programs and Management). This reflects the agency's recognition of and commitment to supporting our partners and leveraging limited resources to oversee the implementation of and compliance with EPA regulations. In fiscal year 7, the EPA will continue to modernize the business of environmental protection through the E-Enterprise strategy jointly governed by states and the EPA. Under the E-Enterprise strategy, the agency will continue to streamline its business processes and systems to reduce reporting burden on states and regulated facilities, and improve the effectiveness and efficiency of regulatory programs for the EPA, states, and tribes.

EPA REGULATIONS-STATE COMPLIANCE

Question 2. We have held several hearings in which State and local officials have come to testify about the challenges of implementing EPA regulations on a limited budget with limited resources. This is particularly problematic in South Dakota, where the Department of Environment and Natural Resources is a small staff with a limited budget and is required to oversee the implementation and compliance with State and Federal regulations. Although we have repeatedly heard your agency say that there are resources to help states comply with regulations, I am increasingly concerned with the amount of what I consider to be unfunded mandates coming out of your agency.

Do you plan to do anything more to help states comply with current and future EPA regulations?

Response. The fiscal year President's Budget includes an increase of \$40 million for State grants to assist with implementation of climate and air quality programs, as well as \$15.4 million for State and tribal grants to assist with implementation of water quality programs. The request also includes an additional \$15.7 million for grants to states and tribes to build tools, services, and capabilities that will enable greater exchange of data for delegated programs between states, tribes, regulated entities, and the EPA following E-Enterprise principles. Leveraging technology will enable the EPA, states, and tribes to move from a heavily paper-based evidence gathering process to a digitally based rapid electronic process. The vision is to better identify patterns of problems, be more efficient and effective in data collection and records management, increase transparency on programmatic and compliance status and allow for quicker responses where appropriate.

REGULATORY IMPACT ANALYSES

Question 3. Last year the Subcommittee on Superfund, Waste Management, and Regulatory Oversight held a hearing on EPA's use of Regulatory Impact Analyses (RIA's) and the cost and benefit of EPA regulations. At the hearing we discussed a July 2014 GAO report that offered several recommendations for how EPA could improve adherence to OMB guidance, enhance the accuracy of RIA's and better monetize the cost and benefits of RIA's.

I am concerned that EPA continued to promulgate major, costly regulations, such as WOTUS and the Clean Power Plan, without fully implementing GAO's recommendations. I understand these recommendations are still open, when can we expect they will be fully implemented?

Response. In its recent update on these recommendations (<http://www.gao.gov/products/GAO-14-519>), the GAO has closed one recommendation, recognizing that the EPA has implemented it. On other recommendations, the GAO notes that "EPA is making progress in the spirit of" these recommendations but has not closed them given the longer-term nature of these efforts.

REGULATORY IMPACT ANALYSES-RELIABILITY

Question 4. Last year the Subcommittee on Superfund, Waste Management, and Regulatory Oversight held a hearing on EPA's use of Regulatory Impact Analyses (RIA's) and the cost and benefit of EPA regulations. At the hearing we discussed a July 2014 GAO report that offered several recommendations for how EPA could improve adherence to OMB guidance, enhance the accuracy of RIA's and better monetize the cost and benefits of RIA's.

How do you explain the reliability of recent EPA regulations, if they were promulgated through a process that GAO specifically suggested might not be entirely accurate and needed improvement?

Response. While the GAO made recommendations to improve the agency's process, there was not a finding of systematic deficiencies with respect to the accuracy of the analytical work. The EPA regulations have been developed in accordance with all applicable requirements, including those of Executive Orders 12866 and 13563 and the guidelines of OMB Circular A-4. The EPA relies on the best available information to calculate both the costs and benefits of rules and further refines these analyses through the interagency and public comment processes. In addition, the EPA maintains a public docket where all of the underlying documentation for each RIA is available. Further, consistent with E.O. 12866, the RIAs developed for economically significant regulations are reviewed by OMB and undergo an interagency review process before being released for public notice and comment.

EPA REGULATIONS-SMALL BUSINESS IMPACTS

Question 5. Last month, the Subcommittee on Superfund, Waste Management, and Regulatory Oversight hosted a hearing on small business impacts from EPA regulations, and we received testimony regarding a number of instances where the EPA has disagreed with the Office of Advocacy's recommendations on a particular rulemaking. Our witnesses testified that there is no mechanism in the law that reconciles these differences between the EPA and the Office of Advocacy. I asked at the hearing for you to share how you view the Office of Advocacy's recommendations and how seriously you consider these recommendations throughout the rulemaking process, to which you said you do take Advocacy's comments into account. However, there are many instances where the Agency, in fact, takes action against Advocacy's recommendation.

Do you think a third party arbiter would help reconcile differences between EPA and Advocacy?

Response. The agency considers all comments received as part of a rulemaking process, including information received from the public as well as through the inter-agency process. The views of small businesses are taken into account through various means in the process, including participation by the Small Business Administration in the interagency review process run by the Office of Management and Budget. In addition, as part of its Regulatory Flexibility Analysis for a rulemaking, the agency responds to comments filed by the Office of Advocacy. The agency describes steps taken to minimize impacts on small businesses and other small entities, and provides an explanation of why any significant alternatives considered by the agency that affect the impacts on small entities were not adopted in the rule.

REGULATORY FLEXIBILITY ACT

Question 6. At the same subcommittee hearing, we received testimony that there are opportunities for EPA to increase transparency with its implementation of the Regulatory Flexibility Act. For example, one witness testified that EPA could make its final SBREFA report public at the time complete rather than waiting until a rule is issued, something OSHA already does with its SBREFA reports.

Why does EPA wait until a rule is issued to release its SBREFA report? Don't you think the public and regulated entities, such as small businesses, would benefit from the report being made publicly available as soon as complete? Will you commit to making these reports public when complete moving forward?

Response. A completed SBREFA report is one of the support documents used by the agency in developing a proposed rule, and is provided to the Administrator so that its recommendations may be considered during the development of the rule. The report is made public when the proposed rule is released for public comment, consistent with all applicable requirements. Small entity representatives provide key input to the Federal participants in the Small Business Advocacy Review Panel, who then develop recommendations to the Administrator on how best to achieve the goals of the RFA. Because the Panel Report is a key element of the administrative record for the proposed rule, it is placed in the rulemaking docket at the time the proposed rule is published. Comments on the report are then considered in development of a final rule.

REGULATORY FLEXIBILITY ACT

Question 7. The courts have held agencies are not required to consider indirect or secondary impacts of a rule for purposes of the Regulatory Flexibility Act. However, I understand that the compliance burden is on the states, but often small businesses are significantly indirectly impacted by regulations, regardless of who has the burden of complying with the regulations.

Do you believe indirect impacts on small businesses should be considered and do you think a rulemaking would benefit from greater small business input early in the rule development process?

Response. In addition to the requirements of the Regulatory Flexibility Act, the agency frequently undertakes many types of public outreach, including outreach to small businesses, during the development of its rules. For example, the agency may hold public meetings early in the rule development process. Frequently, agency offices, including the regional offices, hold meetings with stakeholders including small businesses. The information gained from this engagement informs the rulemaking process by providing input from various stakeholders. In addition to the public and stakeholder meetings, the agency has other mechanisms in place to ensure that the views of small businesses can be incorporated into the agency's decisionmaking process.

esses. One such example is that the EPA's Deputy Administrator holds periodic meetings with small businesses to discuss regulatory topics suggested by and of interest to small businesses. The EPA also has an Asbestos and Small Business Ombudsman that advocates for small business during the EPA rulemaking process.

RESPONSES BY GINA MCCARTHY TO ADDITIONAL QUESTIONS
FROM SENATOR WICKER

WATERSHED TRADING PROGRAM

Question 1. Do you think EPA needs to do more to allow watershed trading to occur?

Response. The EPA has taken many important steps to support efforts by states and other stakeholders to pursue water quality trading consistent with the Clean Water Act.

To date, the EPA has authorized forty-six states to run their own National Pollutant Discharge Elimination System (NPDES) programs. State permitting authorities (or the EPA in unauthorized states) can establish water quality trading programs, based on their unique regulatory structure as well as stakeholder and environmental needs. The primary demand-side driver for nutrient trading is the existence of a new or more stringent water quality based effluent limit for nutrients in a point source's NPDES permit. States usually include such water quality-based effluent limits in NPDES permits following State establishment of a nutrient TMDL, or State determination of "reasonable potential" for the NPDES permittee's discharge. Without this permit driver in place, there has been little demand for nutrient reduction credits.

Roughly one third of states have had water quality trades in their state. Each State with a trading program has developed its own unique trading rules. Some states have enacted statutes or regulations that authorize and regulate their state-wide trading programs, such as Connecticut, Virginia, and Ohio. Other states authorize trading on a case-by-case basis through watershed-specific or individual NPDES permits, such as North Carolina's Neuse River Compliance Association trading program. Other states, such as Arkansas and Louisiana, are considering developing water quality trading programs. Many of the states with active trading programs, such as Pennsylvania and Oregon, allow NPDES permit holders to attain their nutrient water quality-based effluent limits through the purchase of nonpoint source nutrient reduction credits.

As demand drivers increase, we anticipate water quality trading to increase as a flexible method for meeting those regulatory requirements. The EPA looks forward to continuing its work with states and other stakeholders interested in pursuing these approaches.

WATERSHED TRADING PROGRAM-CLEAN WATER ACT

Question 2. EPA allows some non-point source nutrient reduction initiatives under EPA's watershed trading program, but there is no usable process to allow this to occur.

Are legislative changes to the Clean Water Act necessary to make watershed trading usable?

Response. The Clean Water Act provides sufficient authority for the EPA to implement its water quality trading policy. The EPA's 2003 Water Quality Trading Policy encourages states, interState agencies and tribes to develop and implement water quality trading programs consistent with the Clean Water Act (CWA) and its implementing regulations for nutrients, sediments and other pollutants (with some exceptions) where opportunities exist to achieve water quality improvements at reduced costs. One of the EPA's roles under its CWA oversight authority is to ensure that any such water quality trading programs are consistent with the CWA and its implementing regulations. The EPA is working with states and interested stakeholders to educate and assist them regarding their options for establishing water quality trading programs.

DISINFECTION BY-PRODUCTS RULES

Question 3. Are Tier 2 public notices (PN) for the EPA disinfection by-products rules eligible for electronic reporting or annual notice (similar to Tier 3 PNs)?

Response. Tier 2 notices require notice within 30 days of the violation and subsequent notice every 3 months for as long as the violation continues. Annual notices are not an option. Tier 2 requires mail or direct delivery with the bill and a method

to notify those who do not receive a bill or do not have service connection addresses (such as renters, apartments, nursing homes, etc.). Posting on the internet is allowed as one of the methods to reach those consumers. In addition, systems might be required to use other methods to reach consumers who might not see a posted notice in a school, library, or other commercial/public buildings.

NATIONAL RADON ACTION PLAN

Question 4. In your testimony on April 19, you stated that the National Radon Action Plan (NRAP) will replace the Federal Radon Action Plan (FRAP). The major differences between FRAP and NRAP are that NRAP has no dedicated funding plan like the State Indoor Radon Grant (SIRG) program and the major responsibilities are pushed to the states and private sector.

How will NRAP be successful without Federal funding and active Federal leadership?

Response. In fiscal year 6, the EPA closed out the Federal Radon Action Plan and launched a broader plan, the National Radon Action Plan (NRAP). This plan was endorsed by nine non-governmental organizations and three Federal agencies. The EPA will continue to lead the Federal Government's response to radon and continue to implement the agency's own multi-pronged radon program. With funding requested in fiscal year through the agency's indoor air program, the EPA will encourage radon risk reduction as a normal part of doing business in the real estate marketplace, will promote local and State adoption of radon prevention standards in building codes, and will participate in the development of national voluntary standards (e.g., mitigation and construction protocols) for adoption by states and the radon industry.

NATIONAL RADON ACTION PLAN—SIRG PROGRAM

Question 5. In your testimony on April 19, you stated that the National Radon Action Plan (NRAP) will replace the Federal Radon Action Plan (FRAP). The major differences between FRAP and NRAP are that NRAP has no dedicated funding plan like the State Indoor Radon Grant (SIRG) program and the major responsibilities are pushed to the states and private sector.

Is there a plan or need to create a SIRG program within NRAP to make it successful?

Answer: In fiscal year 6, the EPA closed out the Federal Radon Action Plan and launched a broader plan, the National Radon Action Plan (NRAP). This plan was endorsed by nine non-governmental organizations and three Federal agencies. The EPA will continue to lead the Federal Government's response to radon and continue to implement the agency's own multi-pronged radon program. With funding requested in fiscal year through the agency's indoor air program, the EPA will encourage radon risk reduction as a normal part of doing business in the real estate marketplace, will promote local and State adoption of radon prevention standards in building codes, and will participate in the development of national voluntary standards (e.g., mitigation and construction protocols) for adoption by states and the radon industry.

STATE INDOOR RADON GRANT PROGRAM

Question 6. You justified EPA's cuts in funding for SIRG in part by saying that SIRG funding to some states has not been very effective.

Can EPA modify the grant allocation to make SIRG more effective? Please comment and assess ways to improve SIRG rather than eliminate it.

Response. Reducing radon related deaths continues to be a priority for the EPA and the Administration. From 1990 to 2013, the estimated number of homes needing mitigation (i.e., having radon levels at or above 4 picocuries per liter (pCi/L) and no mitigation system) increased by 14 percent; from about 6.2 million to 7.1 million homes. During the same period, the number of homes with operating mitigation systems increased by more than 700 percent from 175,000 to 1,245,000 homes.

For over 25 years, the EPA has provided Federal funding to states and technical support to transfer best practices among states that promote effective program implementation across the Nation. Section 306 of the Indoor Radon Abatement Act (IRAA) authorizes radon grant assistance to states, as defined by the Toxic Substances Control Act (TSCA) Title III. The EPA has targeted this funding to support states with the greatest populations at highest risk. In future years, the EPA will continue to promote partnerships between national organizations, the private sector,

and more than 50 state, local, and tribal governmental programs to achieve radon risk reduction.

STATE INDOOR RADON GRANT PROGRAM—RADON PROFESSIONALS

Question 7. If SIRG is eliminated, will EPA undertake and maintain the State listings of certified radon professionals?

Response. In fiscal year 7, the EPA will continue providing consumers with information and guidance on locating qualified radon measurement and mitigation services professionals. The EPA's website (<https://www.epa.gov/radon/find-radon-test-kit-or-measurement-and-mitigation-professional#who>) contains information regarding radon credentialing programs, listings for State radon program contacts and general indoor air quality information. In addition, most states provide information about qualified radon service providers and many states have some form of radon requirements for radon service providers.

Forty-five states requested and received State Indoor Radon Grants (SIRGs) funding this past fiscal year. In the absence of SIRG, states would depend on their own funds to continue investment in radon programs. States receiving Federal SIRG funds are required to provide a 40 percent match. Many states provide this through in-kind matches (non-monetary resources), others through appropriated funds. This would be the starting place for states to consider whether they would fund State programs in the absence of SIRG funds. A number of states have developed additional radon funding mechanisms through State licensing or mitigation system installation fees.

STATE INDOOR RADON GRANT PROGRAM—CONSUMERS

Question 7. How will the agency ensure that consumers are not subject to fraud from uncertified professionals using equipment that may not be calibrated and traceable to a radon standard or a radon decay product standard, particularly in non-regulated states?

Answer: In fiscal year 7, the EPA will continue providing consumers with information and guidance on locating qualified radon measurement and mitigation services professionals. The EPA's website (<https://www.epa.gov/radon/find-radon-test-kit-or-measurement-and-mitigation-professional#who>) contains information regarding radon credentialing programs, listings for State radon program contacts and general indoor air quality information. In addition, most states provide information about qualified radon service providers and many states have some form of radon requirements for radon service providers.

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STATE INDOOR RADON GRANT PROGRAM—STATE GRANTEES

Question 8. Please provide a list of State grantees and indicate which states are likely to continue their current investment in radon in the absence of Federal SIRG funding.

Answer: In fiscal year 7, the EPA will continue providing consumers with information and guidance on locating qualified radon measurement and mitigation services professionals. The EPA's website (<https://www.epa.gov/radon/find-radon-test-kit-or-measurement-and-mitigation-professional#who>) contains information regarding radon credentialing programs, listings for State radon program contacts and general indoor air quality information. In addition, most states provide information about qualified radon service providers and many states have some form of radon requirements for radon service providers.

All states with the exception of New Hampshire, Maryland, Hawaii, Arkansas, and Louisiana requested and received State Indoor Radon Grants (SIRGs) funding this past fiscal year. In the absence of SIRG, states would depend on their own funds to continue investment in radon programs. States receiving Federal SIRG funds are required to provide a 40 percent match. Many states provide this through in-kind matches (non-monetary resources), others through appropriated funds. This

would be the starting place for states to consider whether they would fund State programs in the absence of SIRG funds. A number of states have developed additional radon funding mechanisms through State licensing or mitigation system installation fees.

RADON RISK MAPS

Question 9. The last Federal surveys and State radon mapping occurred nearly three decades ago. Several states have updated State risk data with their own maps that show a larger risk than initial assessments. Does EPA have any plans to update the EPA radon risk maps?

Response. In fiscal year 7, the EPA will continue to maintain its map of radon zones aimed at assisting national, State and local governments, and private organizations to target their resources to implement radon-resistant building codes. Please visit <https://www.epa.gov/radon/find-information-about-local-radon-zones-and-state-contact-information#radonmap> for more information. The agency continues to recommend that this map be supplemented with any new data vetted by the states in order to further understand and predict the radon potential for specific areas and counties. This approach is captured in new consensus-based private sector radon standards under development by the radon industry's standards consortium.

ECOLABELS

Question 10. The US Green Building Council recently announced the LEED green building rating system will now award credit for forest products certified to the SFI and ATFS standards. I understand that the EPA is re-examining its interim recommendations regarding the use of environmental standards and labels in Federal procurement for lumber.

Can you please tell me what your agency is doing to reconsider your recommendation and ensure that it appropriately recognizes other credible standards like Sustainable Forestry Initiative (SFI) and the American Tree Farm System (ATFS)?

Response. The EPA is seeking clarification from the U.S. Green Building Council (USGBC) on whether the LEED Alternative Compliance Pathway that awards credit for forest products certified to the Sustainable Forestry Initiative (SFI) and American Tree Farm System (ATFS) standards sufficiently addresses environmental criteria or if it is focused more narrowly on legality of harvesting.

The Implementing Instructions for Executive Order 13693—Planning/or Federal Sustainability in the Next Decade—directed the EPA, in consultation with the Office of Management and Budget and the Council on Environmental Quality, to issue these recommendations to assist Federal purchasers in identifying and procuring environmentally sustainable products. The basis for our interim recommendations on wood/lumber was the DOE GreenBuy Program. The EPA is pursuing several options to determine if an update to the lumber/wood interim recommendations is appropriate, and has updated the website to reflect this (see the footnote for Lumber/Wood under the Construction sector at <https://www.epa.gov/greenerproducts/epas-recommendations-specifications-standards-and-ecolabels>).

The EPA is engaging with both the Department of Energy and the U.S. Department of Agriculture in a high-level review to determine the effectiveness of these standards in protecting human health and the environment. Furthermore, the EPA's standards executive is currently reviewing the forestry standards to determine if they were developed through a voluntary consensus approach consistent with the National Technology Transfer and Advancement Act (NTTAA) and OMB Circular A-119. Finally, SFI, ATFS, Canadian Standards Association (CSA) and Forest Stewardship Council (FSC) have each volunteered to have their forestry standards assessed against the criteria developed through a multi-stakeholder consensus process in the guidelines pilot for the flooring and furniture sectors. The results of that pilot assessment can help inform whether those standards would meet the EPA's baseline criteria for environmental performance as specified in the EPA's draft guidelines for Environmental Performance Standards and Ecolabels for use in Federal procurement.

ECOLABELS—INTERIM RECOMMENDATIONS

Question 11. The US Green Building Council recently announced the LEED green building rating system will now award credit for forest products certified to the SFI and ATFS standards. I understand that the EPA is re-examining its interim recommendations regarding the use of environmental standards and labels in Federal procurement for lumber.

Can you give me an assurance that you will move quickly with this review and provide a timeline when a decision will be made?

Response. The EPA will consider the input received from other Federal agencies, stakeholders, and experts, along with information obtained during our assessment of forestry standards during the pilot process, to inform the further refinement and finalization of the EPA's guidelines and recommendations. The agency believes it can decide on a path forward within the next several months.

Senator INHOFE. Thank you, Madam Administrator.

First of all, in light of what is going on right now, you have the Supreme Court and their stay is taking place on the Clean Power Plan. I wrote EPA a letter on March the 10th on this topic, but the response received yesterday doesn't really answer the question, I don't believe.

EPA's letter states that it will not need to submit initial plans by September 6th of 2016, as initially stated. But it doesn't say about after that, because in 2018 it would seem to me that as long as the stay is there, and, of course, it is going to be there until all the legal problems are cleared up, 27 States, including my State of Oklahoma, is suing you at this time.

So it is going to be at least probably 2018. Now, 2018 happens to be the deadline of the final. Now, is that deadline going to be delayed also, the same as the deadline for the beginning that would have taken place on September the 6th?

Ms. MCCARTHY. Well, Senator, what we do know is that the implementation of the rule is currently stayed. The Supreme Court didn't actually speak to any of the tolling issues regarding the compliance requirements. We certainly know that the issue will not be resolved by this coming October and September. Beyond that, the courts are going to have to speak to that issue when decisions are made.

Senator INHOFE. But as far as deadlines, you have these people out there right now looking at deadlines in different States, different counties, the private sector. Are you saying that you are not prepared now to extend those deadlines like you did the initial deadline of September 6th?

Ms. MCCARTHY. No, sir. We are stayed in terms of moving forward to implement the rule as it currently exists, and we need to wait for the court to make those decisions.

Senator INHOFE. And I assume the same thing is true with WOTUS?

Ms. MCCARTHY. That is correct.

Senator INHOFE. OK, now, I think the majority would not agree with that.

I want to mention one other thing, and this time goes by pretty fast. On December 14th the Government Accountability Office, the GAO, found the EPA violated the Anti-Deficiency Act and appropriations law restrictions on covert propaganda and grassroots lobbying in promoting the WOTUS rule. Now, the Anti-Deficiency Act requires the EPA to report immediately to Congress and to the President about the violation. Have you done this?

Ms. MCCARTHY. We actually have our response at OMB now and they are looking at that. We have not, as far as I know, identified resources that were attributable to the two issues out of many that GAO identified.

Senator INHOFE. Now, who has that now?

Ms. MCCARTHY. The office of Management and Budget is looking at our corrections, as well as any identified resources that went into those two issues that GAO identified.

Senator INHOFE. And you are saying that is going to happen before this Committee is going to be in a position to evaluate this? Because when they say report immediately to Congress, that is us.

Ms. MCCARTHY. Yes. Well, sir, these are two issues. They are both social media issues, one related to a blog, the other related to the use of a social media that we used in accordance with OMB guidance. We haven't really identified significant funding that went into either of those two actions.

Senator INHOFE. Well, OK. I would say this: That is something that this Committee is very concerned about.

I do want to get one other issue out there, the ozone. We have talked about this in the past.

Ms. MCCARTHY. Yes.

Senator INHOFE. We have the requirements, parts per million or the parts per ppb, and it appears that we set standards, then go down the road, and before the counties, now this is confusing because you really think in terms of the number of people, the population. What happens, the 210 counties account for 40 percent of the American population. So we have 40 percent of the American population from those counties not in compliance with the 75 parts per million.

Now, what was the reasoning behind going over and now saying, even before you do that, we are going to set a new standard of 70 parts per million? What is the logic?

Ms. MCCARTHY. Well, very quickly, what happened was that the prior administration moved forward with an ozone standard that the courts deemed was not legally solid and based on sound science. They kicked it back to the Agency. The court dictated us to resolve that issue in a specific timeframe, and then we also had obligations under the Clean Air Act to continue to look every 5 years at whether those standards need to be adjusted. So it ended up squeezing the system a bit.

Senator INHOFE. It doesn't mean you have to set those standards, yet. You have to, you say, look at them.

Ms. MCCARTHY. Yes.

Senator INHOFE. Right now Senators Thune and Flake have legislation, you are familiar with that legislation, where it says that until 85 percent of the counties have, although it could be interpreted as to the population, but 85 percent of the counties have complied, we are not going to be setting new standards. Is that reasonable or is that unreasonable?

Ms. MCCARTHY. Well, there is no inconsistency with continuing to move in a fashion that is reasonable to continue to look at how we achieve health standards moving forward. We have always had great success over time, and there is no threat to establishing a standard on health as long as the implementation is reasonable and appropriate, which we believe it is and has been.

Senator INHOFE. Well, I was the mayor of Tulsa when we were out of compliance, and it was very, very difficult. So these people are going through the punishment phase before they have had a chance to accomplish.

Ms. MCCARTHY. Well, we don't think of it as a punishment phase.

But the good news is that when we are looking at the ozone standard, even the most stringent one that we just established at 70 part per billion, we are only looking at about a dozen counties that would be out of attainment by 2025, if you don't count the counties in California, which we know have unique geographic challenge.

So we actually think that they can use the systems already in place, the rules have been put in place, that reducing NOx and VOC emissions to achieve national compliance, as well as address significant problems at the county level. So we are actually moving in a way that is consistent with the direction that the Nation is heading, and the good news is that we have had so much success in reducing NOx and VOCs that this should not be a significant burden to any county.

Senator INHOFE. Well, it is a burden because we have been there.

Senator Boxer.

Senator BOXER. Administrator McCarthy, my State just experienced a massive natural gas leak at Aliso Canyon that released 96,000 metric tons of methane into the atmosphere. Until the well was capped, the leak accounted for 20 percent of California's total methane emissions, and that is a potent greenhouse gas, as we all know. This highlights the need to improve controls for methane emissions.

I am pleased the EPA has made it a priority to cut methane emissions from existing sources of methane. When do you expect to propose standards for existing sources? Give me an idea.

Ms. MCCARTHY. Well, Senator, we are moving forward hopefully very soon with the release of the information collection request, which is really the fundamental information we need in order to regulate effectively under the law. So we are looking at opportunities to move quickly this year, as well as continue that.

Senator BOXER. Well, when do you expect to propose standards? I mean, I know you are going to start. Just give me a sense of it. It may be the next administration, but when do you think you will have these?

Ms. MCCARTHY. Well, we certainly would have a significant information next fiscal year, but we are not ruling out an opportunity to continue this this year.

Senator BOXER. Well, just count me as one person who thinks this is essential, because what a nightmare we have had.

Administrator McCarthy, EPA's proposed revisions to its Risk Management Program regulations will add new requirements for chemical facilities to improve safety. I have had to deal with this when I was chairman of this Committee, these horrific explosions because of the failure to really have the best safety standards at these plants.

So the rule is long overdue. OMB's Website indicates EPA intends to publish a final rule by the end of 2016. Can you assure this Committee that you can complete that rule on time?

Ms. MCCARTHY. We are fully prepared to complete that rule on time. It is out; it is open for comment. We are looking forward in delivering that to the American people by the end of this year.

Senator BOXER. So your intent is to have the rule by the end of 2016.

Ms. MCCARTHY. We do intend to do that.

Senator BOXER. OK. Administrator, the drinking water crisis in Flint highlights the need to address the Nation's failing water infrastructure. We don't have to go into the pain and suffering of that community, those little kids facing lives that are very problematic because of this failure of Government to provide them with safe drinking water.

So I don't know quite why your budget request is a net cut of \$257 million for these State Revolving Loan Programs. So in light of those cuts, can you explain how EPA will ensure adequate investments in clean water and drinking water?

Ms. MCCARTHY. Well, we are looking to supplement the State Revolving Fund with other specific investments, but you are right, it is—

Senator BOXER. What does that mean? What does that mean?

Ms. MCCARTHY. Well, we are looking at investments that will go to support WIFIA. We are looking for investments that would go to support our financing strategy, where we are working with States. There is no question that we are sympathetic to the need for more State Revolving Fund moneys, and we will try to work with communities and States to make the most of this.

But the challenge we have is that our operating budget is significantly limited and we have to look at presenting a budget that is reasonable and appropriate for the full range of responsibilities that the Agency has.

Senator BOXER. Well, let me just say I am very sympathetic to your problems, but at the end of the day I would hope to see EPA fighting for a budget that meets the needs of the people. So, again, when we look back all those years ago, we are spending \$2 billion more.

Now, I know my colleagues probably on the other side of the aisle would not agree with me on this one, but I don't get how we can be spending less than we did several years ago when we have aging infrastructure. And I agree it is wonderful to have this leveraging, the WIFIA program, but it shouldn't replace the State Revolving Funds.

It is upsetting because WIFIA was not meant to be a replacement, and I think my colleague and I would agree, to the State Revolving Funds. We want to have the State Revolving Funds be healthy and then have the leveraging ability of a WIFIA to come into play.

So can you talk about the steps EPA has taken since the Flint crisis to avoid a repeat of this disaster?

Ms. MCCARTHY. Certainly. Well, first of all, we are working very hard in the city of Flint to restore that water system appropriately. We have also written to every Governor in every primacy agency at the State level to make sure that they are looking at reviewing all of the data.

They are looking at being transparent, notifying individuals and homeowners when they see lead increasing. We are looking at opportunities to bring together both people to look at what went

wrong in Flint. We are looking at our lead and copper rule to strengthen it, as well.

So we are taking a number of steps and also would like to continue the dialog on infrastructure investments, where we recognize that we simply have aging infrastructure, well beyond the lead challenge, that needs to be addressed that is currently hard to envision how we are going to maintain safe drinking water not just for legacy problems like lead, but for some of the new contaminants we are seeing.

Senator BOXER. Well, Administrator McCarthy, my time is up, but I do want to say this to you as we wind down our current jobs. I think it is the role of EPA to get ahead of these kinds of crises; not to whisper in the ears of the State, but to yell in the ears of the State when we know facts.

Now, there is a lot we know about lead. We know what it does to children; we know what it goes to fetuses; we know what it does to sick people. We need to get out in front, not whisper in the ears of people, because the people don't want to hear the bad news.

So I am going to count on you and push you to do that. And if my colleagues yell at you, you can say it is my fault. But we need to get ahead of this stuff because the people are counting on us. All you have to do is look at the faces of those people there who are poisoned. That is murder by any other definition. That is a felony, because we know what lead does; it is not a great mystery.

Ms. MCCARTHY. I would expect nothing less of you than to push us to do that.

Senator BOXER. OK.

Senator INHOFE. Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman, for convening this important budget oversight hearing today. The oversight function of this Committee is critical to ensuring taxpayer dollars are spent in a judicious and also an accountable manner. The EPA must be accountable to the American people. There isn't a day that goes by that I don't hear concerns from my constituents about the impacts of the EPA regulations on Nebraskans.

For example, Nebraska's public power utilities are grappling with how they could ever comply with the EPA's carbon emission reduction mandates. The city of Omaha is struggling with the Agency's expensive CSO mandate and drinking water affordability. Nebraska's farmers are waiting on new crop technology products that are stuck in a broken regulatory process. Our ethanol producers are desperate for certainty under the RFS.

Homebuilders, transportation stakeholders, and local government officials are concerned about the Federal Government expanding control over our State's water resources. Communities and small business owners fear that the EPA's ozone mandate will stunt potential economic development and growth. Families are concerned about the future of their livelihoods due to the EPA's activist role, the consequences of which could lead to the elimination of entire industries.

The EPA has an enormous impact on the American people. For this reason, it is important that this Agency be open, transparent, and take responsibility for its actions. Throughout this Administra-

tion, we have witnessed the EPA's misguided actions that have negatively impacted families all across this Nation.

For example, in 2012, the EPA conducted aerial surveillance of feed yards in Nebraska. These properties are not only places of work, but they are homes where Nebraskans live and where they raise their children. The EPA also joined the Army Corps of Engineers to propose and finalize the very intrusive Waters of the U.S. rule, which threatens the economic security of countless Nebraska families.

Moreover, a GAO report found that your agency broke the law by gathering public support for the misguided WOTUS rule through the use of social media. In another, more recent example, an EPA grant to the Northwest Indian Fisheries Commission was used to fund an anti-farmer advocacy campaign in Washington State. The billboard's website, radio ads, and other social media associated with this campaign villainized farmers and ranchers, and I found this initiative, which was funded by your Agency, extremely troubling.

As we conduct our discussion today, I would ask you to bear in mind that these Americans, both in Nebraska and across the Country, who work hard each and every day to protect our treasured environment and natural resources, are important.

As I mentioned in my opening remarks, Administrator, recent revelations have come to light regarding how the What's Upstream? campaign has been funded, and that was through an EPA grant. The financial assistance that your agency gave to fund this lobbying campaign is a blatant violation of Federal law. Even more disturbing is the revelation that a 2014 inspector general's report found this EPA region had insufficient protections in place to ensure against using these funds for lobbying purposes.

So I would ask you, at what point did your Agency become aware of the misuse of EPA funds for the What's Upstream? Campaign and what role did EPA have in reviewing that billboard and website?

Ms. MCCARTHY. Well, I cannot give you the exact date, but I can assure you that EPA also was distressed about the use of the money and the tone of that campaign, and we have put a halt to reimbursements of any funds under that. It is a subcontract and we have told our contractor that we need to have a full discussion and review before additional moneys are expended. And I do know that the most egregious tone was reflected on billboards. That will not be reimbursed through this fund.

Senator FISCHER. Thank you.

I would ask you, are you planning on putting protections in place in the Agency so that we can be sure that grant funds aren't used in that manner in the future?

Ms. MCCARTHY. I think we need to re-look at the details and the scope of our contract so that subcontractors that are then used not only meet the legal merits of what we have to do, but also reflect the tone and the interest of EPA in collaborating with agriculture on these issues.

Senator FISCHER. Thank you.

Could you get information to my office about what policies and procedures that you are putting place that would prevent misuse in the future?

Ms. MCCARTHY. Certainly.

Senator FISCHER. Thank you. I know all of my colleagues join me in supporting agriculture, and especially our families who work hard every day to produce a safe, affordable, healthy product in order to feed the world.

Thank you.

Senator INHOFE. Thank you, Senator Fischer.

Senator BARRASSO.

Senator BARRASSO. Thank you, Mr. Chairman.

There is an April 7th Wall Street Journal story, Toxic Spill Fears Haunt Southwest. This has to do with the spill about 6 months ago that the EPA crew accidentally caused where you unleashed waste at a gold mine, the spring snow melt, as it says, threatens to stir up pollutants. So the people in the area are concerned that as the snow melts and comes down.

The article talks about a 46 year old oilfield worker about the contamination. It says, "The EPA hasn't returned to conduct more tests, and now Mr. Dils and others are worried that lead and other toxic materials that settled in the river will be stirred up." And just to remind folks, this is the one, you have seen the picture, the mustard orange colored river, 3 million gallons of toxic material that poured into that river.

So he said they are worried that these toxic chemicals will be stirred up, contaminate the river again as the Animas swells with spring snow melt from the Rocky Mountains. So he says, "I'm nervous about the long-term effects." Says, "It will be a matter of testing our well continuously, and we don't have the money to do it."

So in your oral testimony before the Indian Affairs Committee specifically related to that toxic spill, you stated that the EPA water results, in your words, "indicated that water and sediment have returned to pre-event conditions." This gives, I believe, an incomplete picture of the long-term impacts of this EPA-caused environmental disaster. Ppeople in the area are referring to the EPA and they are saying EPA stands for the Environmental Polluting Agency, the Environmental Poisoning Agency.

As Senator Boxer just said, look at the faces of those who were poisoned. This is murder. This is Barbara Boxer's quote about what happens when people are poisoned. She, a little earlier, said this is murder; and that's the way people in the area feel about what has happened.

Communities want to know if their families will be safe as a result of the disaster that the EPA has caused, and you said it will take responsibility for. They need money for testing, and what EPA has offered in terms of technical support and long-term monitoring isn't nearly enough.

So when the Indian Tribes impacted wanted a followup hearing to examine these issues specifically in that location, at first the EPA refused to even send a witness to testify in person. The hearing is going to be this Friday, Earth Day. Instead, the EPA offered only written testimony.

As a result, the Senate Indian Affairs Committee has had to issue a subpoena, something that the Indian Affairs Committee hasn't had to do since the Jack Abramoff scandal. That puts you and the EPA in a very exclusive club, and it shouldn't have happened. This was a bipartisan subpoena.

We are holding this field hearing to do oversight into this catastrophe that the EPA has caused. So the Indian Affairs Committee, both Democrat and Republican Senators, have now given you and EPA, or EPA Assistant Administrator Stanislaus an opportunity to testify at the field hearing Friday in person.

So my question is, this Friday, are you planning to go to New York for the signing of the Paris Climate Agreement, stay here, or will you take this opportunity to face the people, the Navajo Nation, other Tribes whose communities were poisoned, and commit to them, as well as all the affected communities of this spill, the people who were poisoned, that you will provide them with the testing and the funding they actually need to assure that their families will be safe?

Ms. MCCARTHY. Well, Senator, there may be some confusion, but I was actually never invited to this hearing. Mathy Stanislaus was originally and Mathy Stanislaus will be attending.

Senator BARRASSO. So you have been subpoenaed as a result of the EPA's decision to send no one, so we named you and Mathy Stanislaus, either/or. So my question is does the buck stop with you or with Mr. Stanislaus?

Ms. MCCARTHY. Mathy Stanislaus will be attending the meeting, and we did our best to communicate with your staff to let them know that we were happy to send somebody before the subpoena was issued. We failed to be able to have those calls and communications returned to us.

Senator BARRASSO. I wanted to switch topics to the more than 2,400 jobs that have been lost in the energy sector in Wyoming since January. They are good-paying jobs, benefits that provide for Wyoming families. You stated before the Environmental Council of the States, on April 13th of this year, that "I can't find one single bit of evidence that we have destroyed an industry or significantly impacted jobs other than in a positive way." That is your quote.

I don't know what you are talking about. I hear it every day back in my State, in Wyoming, heard it this weekend, how EPA regulations are destroying the coal industry. Your regulations are costing jobs. Are you going to tell the laid-off coal miners in Wyoming and West Virginia and Kentucky that you take no responsibility whatsoever for what is happening in coal country?

Ms. MCCARTHY. Sir, I think our responsibility is to make sure that when the energy system is shifting, as it is in the market today, that we do everything we can to help those communities and those folks be able to cope with a shift in the economy and the energy system that we are seeing. And I am happy to have any of those conversations if I can be helpful.

Senator BARRASSO. So based on your quote of April 13th, you are saying you are not responsible for even one job loss in coal industry.

Ms. MCCARTHY. Sir, that is not what my quote said, but what I would indicate to you is I believe that the energy system has been

shifting since the 1980's, and it is time that we work with those communities and individuals to make sure that everybody in the United States has an opportunity to live well. And there are challenges in those communities, without question, but the vast majority of that is related directly to the market shift, not to EPA regulation.

Senator BARRASSO. Mr. Chairman, I will point out that 2,400 jobs have been lost in the energy sector in Wyoming since January, and I believe it is directly a result of the EPA actions. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Barrasso.

Senator MARKEY.

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

And thank you, Administrator McCarthy, for everything that you do for our Country. Thank you for the Clean Power Plan which you have put together. It is a very important part of the solution to the intensification of the warming of the planet, and I think it really helps the United States be a credible leader in working on these issues.

Two thousand 15 was the warmest year on record. 2016 is off to a start that could break last year's record. In fact, 15 of the 16 hottest years on record have occurred since 2001. Only 1998 rivals the temperature seen in the 21st century, so we have to act now.

A recent report by Environment America shows that each year renewable energy could power our Country 100 times over. We are making strides in smart grid and storage technologies. The question is no longer if we can provide power for the Country with renewable energy, it is when and how we make the transition to 100 percent renewable. I don't think there is any question that by 2100 we will be there. The technology will just make it possible, along with the capacity of the grid to be able to manage those technologies.

But, nonetheless, I know that there are still those that believe that you are the principal person responsible for this shift in the energy generation in our Country and the sources that create it. We know that natural gas, because of fracking, has just become a plentiful supply of alternative means of generating electricity in our Country, and we know that it has half of the greenhouse gases that coal does, and we also know that it is very competitive, if not less expensive than coal.

So that is just the reality in the free market, Darwinian-Adam Smith free market. And the same thing is true for 30 States deciding that they want to have renewable electricity standards. That is just 30 States deciding that they want to do that. And I don't think we want to get into the way of individual States making a decision as to what their mix of generation should be across all sources.

But I would also note again, and I think it is important to have this very, very clear, in 2009 the House, in the Waxman-Markey bill, actually provided \$200 billion for carbon capture and sequestration for the coal industry, for the electrical generation industry in its use of coal; and that \$200 billion was in that legislation in order to create a bridge for the coal industry. Now, Peabody Coal, amongst other coal companies, said that they did not want the bill; they did not want that money, which is their choice.

But as a result, that \$200 billion is not available right now, which it would have otherwise been. And I think that could have played a large role in ensuring that the coal industry had a bridge to the future, because with carbon capture and sequestration it would have dramatically reduced the amount of greenhouse gases down to levels which would have been compatible with the goals the Country has for the reduction in greenhouse gases over the next 20 or 30 years.

We also had money in to help communities respond to the changing energy landscape. We built that in as well for the communities.

So I just want to make that very, very clear. That legislation was intended to actually help the industry with the transition that was already going on, and to make sure that it would deal with that source of fuel in a way that could have made it compatible.

So can you talk a little bit, as well, about how the Clean Power Plan creates flexibilities for each one of the States to be able to deal with the reduction in greenhouse gases, which is going to be required?

Ms. MCCARTHY. Well, Senator, the Clean Power Plan is enormously flexible in terms of allowing States to determine their own energy mix, as well as to work with other States to identify the best path forward that will not only achieve the greenhouse gas reduction targets, but also look at how we can strengthen the economy of every State moving forward.

I agree with what you said, but one of the other pieces that I would add is that solar and wind now is so cost-competitive, and that is where job growth is being seen. So there is a need to address the challenges in these coal communities, but there is also an opportunity here for lowering energy costs while we maintain a sound and reliable energy system.

Senator MARKEY. Thank you so much for your great work. Thank you.

Senator INHOFE. Thank you, Senator Markey.

Senator ROUNDS.

Senator ROUNDS. Thank you, Mr. Chairman.

Good morning, Administrator.

Ms. MCCARTHY. Good morning.

Senator ROUNDS. Last week a subcommittee of this Committee on Superfund, Waste Management, and Regulatory Oversight, a committee that I chair and Senator Markey sits as the ranking member, hosted a hearing on small business impacts from EPA regulations, and we received testimony regarding a number of instances where the EPA has disagreed with the Office of Advocacies out of the SBA, but the Office of Advocacy's recommendations on particular rulemaking.

Our witnesses testified that there is no mechanism in the law that reconciles these differences between the EPA's decisionmaking process and the Office of Advocacy's opinions. Can you please share how you view the Office of Advocacy's recommendations and how seriously you consider these recommendations throughout the rule-making process?

Really what I am curious about is it doesn't appear that there is any way to reconcile the difference when, as in this particular case, the one that we were working on was WOTUS, where the Of-

office of Advocacy actually came out and said they disagreed with implementing it; and yet it moved forward.

Can you share with us the role that it plays, the reactions that you have and how it is considered, how their position is considered in your decisionmaking process?

Ms. MCCARTHY. Well, we certainly work with the Small Business Administration to comply with the law, which is that we need to consult with them in a panel that is established to look at the rule to provide us advice on how we can both identify and respond to significant challenges that small businesses might face. And I think we have actually a very good record of being able to have a robust process that informs our decisionmaking early on in the rules so that we can propose rules that are more sensitive to the needs of small businesses and finalize those rules.

Now, there are differences between the work we do with the Small Business Administration to comply with all of the OMB rules and requirements and what the Small Business Advocacy Office might understand and move forward in terms of their concerns, but we try to resolve them; and I can certainly show you where their input has provided us tremendous opportunity to get at the reductions we are supposed to achieve, but to do it in a way that is much more sensitive of the unique challenges that small businesses face.

Senator ROUNDS. Administrator, I think that would be helpful because in this particular case, with WOTUS, their recommendation was do not implement it; and yet the process moved forward with the implementation. As we all know, it has now been stayed, and yet it appears as though they were straightforward in their recommendations. If there is evidence that there was a reasoning or a discussion that continued on, that would be very helpful to this Committee to be able to see that; and if you could provide that it would be helpful. Is that available?

Ms. MCCARTHY. I certainly know that we had meetings to discuss the implications on small business. I was briefed on those discussions, and I would be happy to provide you a summary of those or see what else I might be able to provide you to indicate that we did listen to those inputs.

You know, the Clean Water Rule is a little bit different than an implementation rule; it is really looking at how you structure the jurisdictional questions around what streams and rivers require protection under the Clean Water Rule and how we manage those. And, frankly, how we did the Clean Water Rule was to try to be very clear in terms of trying to reduce sort of the process of identifying those jurisdictional answers, as well as how you would mitigate the challenges moving forward.

Senator ROUNDS. And I think that is one of the reasons why they had recommended that it not be implemented, was the frustrations that they had looked at as an outside group. I am wondering if it isn't time to perhaps have a third party as an arbiter when it comes to these types of problems, where you have two Federal agencies, one in which you want to implement a rule and one in which you have another Federal agency which says clearly this is damaging to small business.

Is it time to start talking about a third-party arbitration process within the Federal agencies themselves?

Ms. MCCARTHY. I think there is a panel process that we are required to go through in many instances, but in this case, Senator, this wasn't the sort of something that EPA just decided on our own to do; the Supreme Court told us two times that the current guidance and rules were not sufficient, that we needed to do science and we needed to come back.

And when we did come back and we suggested maybe a guidance was the thing to do, we were told by many in Congress, as well as stakeholders, no guidance; do rules, we want a public process. And that is what we did. And we will see whether this rule stands up when it is held to court scrutiny. But I am very confident that we did the work we should do and that it will prevail.

Senator ROUNDS. Mr. Chairman, thank you.

Administrator McCarthy, thank you.

Ms. MCCARTHY. Thank you, Senator.

Senator INHOFE. Thank you, Senator Rounds.

Senator WHITEHOUSE.

Senator WHITEHOUSE. Thank you, Chairman.

Welcome, Administrator McCarthy.

Ms. MCCARTHY. Senator, how are you?

Senator WHITEHOUSE. First of all, just for the record, I do believe that it has been reported in a variety of forums that the war on coal was actually waged and won by the natural gas industry, including a recent story by that famously liberal publication, the Wall Street Journal. So I will ask unanimous consent to have that Wall Street Journal story put into the record.

This past week, in Rhode Island, in addition to the national New York Times front page story on the dying out and bleaching, which is more or less the same thing, of the Great Barrier Reef, the Providence Journal ran a front page story headlined Drowning Marshes. Our seaside marshes are not keeping up with the pace of sea level rise. The newspaper also did a big story on the historic buildings in and around Newport and the number of them that are vulnerable to our current State projections of sea level rise, which actually numbers 550 historic or historic designation-eligible buildings worth close to half a billion dollars.

Unless somebody around here wants to repeal the law of thermal expansion, then we are going to have to really address this problem, and it is going to hit my ocean State very, very hard. These are facts that my State lives with every day, so don't let up; keep doing what you are doing. We understand. Clearly, there are several dimensions to the political fight that you are caught in the middle of.

One is, unfortunately, Republican versus Democrat. It didn't use to be that way; this used to be a Committee where Republicans and Democrats worked together on environmental issues. But at least for now those days appear to be past. It is also a little bit of the past versus the future; and the future is inevitable, but the past is often reluctant to give up its incumbency.

But it is also geographic. And as you heard from Senator Barrasso, he has some very legitimate concerns about what is happening in Wyoming. Rhode Island also has very legitimate concerns; they just happen to be the opposite side. The more that Wyo-

ming coal pollutes, the more that we experience these changes in Rhode Island.

The third story in the Providence Journal related to a big session that they had and they brought in people to talk about our fisheries. Rhode Island's fisheries are in a State of upheaval because of the warming temperatures of the sea. We know that 90 percent of the excess heat from climate change from the warming planet has gone into the oceans.

This is something that we measure with thermometers, so unless people want to be not against science, but against measurement, they are going to have a real problem with this data. It is not complicated to take these measures, and fishermen are telling me, Sheldon, things are getting weird out there. They are getting fish like tarpon and grouper in their nets in Rhode Island Sound.

Joe Manchin and I have exchanged visits to each other's States so I could understand the problems of coal country and he could understand the problems of ocean country, if that is a phrase. And we went out on a fishing boat and the captain said, you know, this isn't my grandfather's ocean; I grew up fishing and I don't know what is going on out there any longer. And that creates real peril for our fishing industry. So don't forget the Rhode Islands of the world when you are taking heat from the folks who are on the side, I would say here, of the past.

And I would urge my colleagues, you know, we met at Senator Markey's request with a delegation that included a gentleman from the Mexican Parliament. They have just accepted an auction for 3.5 cent per kilowatt hour wind power or solar. I forgot which. But it was a clean power source. Three point five cents. It is really hard to compete with that.

And the day is going to come, those prices are going down, when this adjustment has to happen; and there are two ways we can make it happen. It can be a managed transition in which the harm from the transition, the upheaval from the transition is dealt with in a responsible way, or it can be an abrupt transition. And I would suggest that what we have seen with Peabody Coal and with some of these other companies show that when the industry focuses on just truculent, grit your teeth and wait until the better end, the abrupt transition is very, very unpleasant.

So my time is up. Keep doing what you are doing. And I urge my colleagues to please work with us. There is a way to make this transition much more manageable for the genuine economic concerns that they face in their States, but it is not fair to come here and talk about the economic concerns that they face in their States and then completely ignore the changes that are happening in my State. Thank you.

Senator INHOFE. Thank you, Senator Whitehouse.

Senator WICKER.

Senator WICKER. Administrator McCarthy, thank you very much for coming to see us again.

I want to ask about radon. The State Indoor Grant is one of a number of programs the President proposes to eliminate in his budget. On the other hand, the President's budget requests \$235 million in climate-related funding, the centerpiece of which is the Clean Power Plan, of course.

The Clean Power Plan, according to your figures, will avoid 6,600 premature deaths by the year 2030. On the other hand, by your own analysis, radon causes an estimated 21,000 lung cancer deaths each year. Do I have those figures right, at least, Administrator?

Ms. MCCARTHY. Well, I don't have that exact figure, but the figures that we provide for 2030 are annual figures. Every year that is a reduction.

Senator WICKER. OK. So what you are saying is that the Clean Power Plan will avoid 6,600 premature deaths per year.

Ms. MCCARTHY. Yes.

Senator WICKER. OK. And by contrast, radon causes an estimated 21,000 lung cancer deaths annually in the U.S. It just seems to me that you are not being cost-efficient there. The core mission of the EPA is to protect human health and environment. Given these numbers, it seems to me that taking the money away from known threats such as indoor radon is inefficient, in that there are some 21,000 lung cancer deaths attributed to radon each year.

Ms. MCCARTHY. Well, let me just respond to that. If I thought \$8.1 million in State grants would actually reduce 21,000 lives and save those, I would. Really, the question is whether or not that \$8.1 million to States is the right way to address the risk that is apparent. And we have developed a separate strategy that we think is more efficient that doesn't require State grants to be done, and we have not found that State grants are the most appropriate and efficient way to address that risk.

What you are comparing is known reductions that we believe will happen versus the entire risk to radon.

Senator WICKER. You are saying the State indoor radon grant program is an ineffective program?

Ms. MCCARTHY. I am saying that there are more effective ways to use our resources, and we are trying to do that. That is how we have framed this budget.

It is not that we don't like the grants, but you have to—

Senator WICKER. So what is the name of the program, then, that you are advancing and advocating today to supplant the State indoor radon grant?

Ms. MCCARTHY. We have our indoor air program, and part of their charge is to address radon, and we are doing that in two different ways. We have a Federal plan that is looking across the board at how we do this using Federal resources from agencies that are essentially landlords, and we are also marrying that effort with individual States and NGO's and innovators who have technology options to actually reduce radon in the home and how we spread that word more effectively.

Senator WICKER. OK, well, we will discuss that more in depth with some questions for the record.

Ms. McCarthy, the Clean Power Plan has been stayed by the Supreme Court. You have said it doesn't prevent EPA from continuing to work on the rule. Now, last month you testified before the House Energy and Commerce Committee with regard to the stay.

Ms. MCCARTHY. Yes.

Senator WICKER. So we certainly won't do anything that implements or enforces the rule, consistent with the Supreme Court stay. What work is your agency continuing to do with regard to the

Clean Power Plan? Have you requested any legal analysis to ensure that you have the legal authority to carry out this work? And if you have requested such a legal analysis and received one, can you provide that analysis to this Committee?

Ms. MCCARTHY. Well, I can certainly tell you that I have worked with our Office of General Council, who is working very closely with the Department of Justice to make sure that we totally respect the decision of the Supreme Court, as we always would. We are continuing to attend meetings that the States request of us. We are continuing to work with States that, on a volunteer basis, want to actually continue to move forward in the development of their State plans; and we are continuing to look at the tools available to the agency to support that effort. For example, the States want us to develop an accounting system that would help them to account for their greenhouse gas emissions.

Senator WICKER. But in the short time we have, with regard to a legal analysis, you have been working with your inside counsel and with the Justice Department.

Ms. MCCARTHY. Correct. Yes.

Senator WICKER. Have they provided you with written analyses about whether you can go forward and what you can do and what you can't do?

Ms. MCCARTHY. I have certainly had many discussions with my Office of General Counsel, who has told me what everybody believes is the consensus of what we should and shouldn't be doing. It is very clear to me—

Senator WICKER. Is there anything in writing? You see what I am getting at, though. I am just trying to get a specific answer so I can know if you can provide this Committee with copies of this written advice. So you have mentioned oral advice.

Ms. MCCARTHY. Yes. I did not see anything in writing.

Senator WICKER. But do you have anything in writing?

Ms. MCCARTHY. I have not seen it provided to me, but I can go back and see if there is written discussion of this. But clearly we are doing everything possible to consult with our attorneys and make sure we are being very respectful. But I am doing nothing that implements or enforces this rule, consistent the Supreme Court's decision.

Senator WICKER. If you have anything in writing, I would appreciate it if you would submit it to this Committee.

Ms. MCCARTHY. Thank you, sir.

Senator INHOFE. Thank you, Senator Wicker.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman.

Administrator McCarthy, I very much respect what you are doing and thank you very much for your service. We have worked together on many issues and I very much support your leadership at EPA.

Having said that, last year I raised an issue at the budget hearing and I thought we were going to do better this year, and it looks like we haven't done any better this year. So perhaps you can try to clarify for me the budget as it relates to water infrastructure in this Country.

Your own department has estimated a need of \$655 billion over the next 20 years in regards to clean water and save drinking water. Since we last met, we have had the tragedy of Flint, and Flint is not an isolated circumstance. What they did I hope is isolated, that is, not actively responding to minimize the risk of lead in drinking water, but we know that there is a lot of lead in pipes that lead into people's homes; we know that there is corrosion issues; we know that there is old, inefficient water systems in regards to safe drinking water; and we know that the clean water infrastructure is in bad need of repair, to the tune of, as I said, \$655 billion, your own estimates, over the next 20 years.

So I am perplexed as to why, in regard to the State Drinking Water State Revolving Fund, the President's budget is less this year requested than what the President requested last year in his budget. And then when you go to the Clean Water State Revolving Fund, the amount the President requested is substantially less than the amount appropriated in last year's budget, to the tune of about \$413 million. That does not seem like a commitment to modernize our water infrastructure. Do you have a better explanation this year?

Ms. MCCARTHY. There are obviously constraints that we have. One is we have to respect the levels that were established in the bipartisan budget agreement, and our choice was how do we use the money that is allocated to us in the best way that we can. There is no question that we have to have a larger conversation about how we fund infrastructure. I think Flint has made that very clear to everybody. But I don't think that that is something that we can identify as a way to fully resolve within the budget constraints of EPA.

Senator CARDIN. I very much appreciate the struggle with the budget caps and the omnibus limits. I very much appreciate that. And I do want you to adhere to those limits because that is our agreement for this budget year, and we are all going to work to adhere to the agreement that has been reached.

But there are creative ways that you can help us find ways to improve our water infrastructure. The last one we did the WIFIA funds. There are different tax incentives that you can be talking about. There are different challenges we have in dealing with the last connection between the drinking water supplies and a person's home.

It seems to me that, recognizing the risk factor that we have today, we need your advocacy for stronger water infrastructure in America.

Ms. MCCARTHY. Well, I will do my best to be able to provide my voice to that. I will tell you I think there has been no worse issue that I have faced in my almost 36 years now than Flint, Michigan. It was devastating to the individuals there.

And if there is anything that we can do as a Country to recognize the challenges we face, because in Flint it is not only the lead issue; it is the fact that it has half of the population it had in the 1970's and it now has a big system that they haven't invested in in decades. So it is enormously challenging.

And from that perspective it is not different than many other urban areas that have lost significant populations and simply don't

have a way of continuing to make those investments moving forward. And you are absolutely right, it becomes a responsibility of EPA to identify those challenges and to speak as loudly as we can about them, and I will do the best I can with the time I have remaining.

Senator CARDIN. I appreciate that. I point out, as you just said, it is not just Flint. The systems in my State date back 100 years, and the ratepayers just cannot do everything that is required in order to replace pipes that are in some cases 100 years old. In Baltimore City, our public schools, the drinking water supplies through the fountains have been terminated because it is not safe because of lead. So we have a national problem and we need national leadership.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Cardin.

Senator SULLIVAN.

Senator SULLIVAN. Thank you, Mr. Chairman.

As I have been saying in the Committee, it is not just aging infrastructure, it is lack of infrastructure. There are entire communities in my State that don't have clean water or flush toilets; they live in Third World conditions, and we certainly would want your help there, Administrator McCarthy.

I wanted to raise a concern that I have raised on this Committee with you a lot, and it is the concern about we certainly all want clean air, clean water. My home town of Anchorage won another award for best practices recently on clean water.

But the concern about the law and your agency not abiding by the law, you know, since you last appeared here, two courts have placed injunctions on your two signature regulatory issues, the Waters of the U.S. and the Clean Power Plan. These are really important issues to us in terms of oversight.

Many of us asked for the legal justification on WOTUS. You were reluctant to provide it. Now I understand why. Have you read the 6th Circuit opinion that has put a stay on the Waters of the U.S. ruling?

Ms. MCCARTHY. I am certainly aware of it.

Senator SULLIVAN. Do you know what they said?

Ms. MCCARTHY. Yes.

Senator SULLIVAN. What did they say?

Ms. MCCARTHY. Well, basically they said that they wanted to make sure that they looked at the underpinnings of the rule from both a science perspective, as well as a legal perspective, and indicated that the rule shouldn't continue to move forward until they were done.

Senator SULLIVAN. They were also concerned and favorably disposed to the petitioner's argument that you were expanding your jurisdiction under the Clean Water Act, which is only the realm of Congress. Only we can do that; the EPA can't do this.

Ms. MCCARTHY. And that is why we are looking forward to—

Senator SULLIVAN. So that is a big deal. But let me go. There is another much bigger that I don't think is getting nearly the attention, it is the injunction by the U.S. Supreme Court for the Clean Power Plan. You glossed over it in your testimony, but this is a really big deal.

Let me ask you, Administrator McCarthy, how many times do you think the Supreme Court has done this in its history, has put an injunction on a Federal regulation before a lower court weighed in on its merits? How many times in the history of the Supreme Court has that happened?

Ms. MCCARTHY. I am not aware of any.

Senator SULLIVAN. I can tell you. Never before it happened to you. So this is an unprecedented action and, again, it goes to this issue of the rule of law. So have you thought about why they did that? Have you read that ruling?

Ms. MCCARTHY. Well, it was fairly short.

Senator SULLIVAN. It was short, but has your team thought about why the Supreme Court, first time in U.S. history, took this kind of unprecedented action? It is a big, big deal. Why do you think they did it? Let me just ask you a couple reasons why they may have done it.

Your recent record in the Supreme Court, utility air regulators, where Justice Scalia said you had violated the separation of powers; the EPA v. Michigan; the WOTUS ruling. Do you think that those may have impacted the Supreme Court's ruling?

Ms. MCCARTHY. Sir, the Supreme Court gave no indication that they were relooking at the merits on this issue when they—

Senator SULLIVAN. No, but I am asking you guys to reflect on why.

Ms. MCCARTHY. It would be way more presumptuous of me to indicate what I think the Supreme Court was thinking.

Senator SULLIVAN. When Laurence Tribe was arguing against the rule, he stated, and Laurence Tribe is not some kind of Republican partisan, "Burning the Constitution should not become part of our national energy policy. The EPA, with this rule, is attempting an unconstitutional trifecta: usurping the prerogatives of the States, Congress, and the Federal courts all at once."

Do you think the Supreme Court may have been thinking about Laurence Tribe's arguments?

Ms. MCCARTHY. Sir, I know the Supreme Court did their job. We will do our job on the merits, and I am very confident of this rule not just being constitutional, but being legally solid all around.

Senator SULLIVAN. Do you think they may have been thinking about job losses that have occurred because of EPA regulatory issues?

Ms. MCCARTHY. Sir, I can't say what the Supreme Court was thinking. They made their decision and I respect it.

Senator SULLIVAN. Let me ask one other issue, Administrator McCarthy, on why the Supreme Court may have done that, and I think it relates to your views on some of these regulatory issues. You were quoted, on the eve of the EPA v. Michigan case, when they asked if you thought they were going to rule in your favor, you said yes. They didn't. But then you said, "Even if we don't win, it was 3 years ago that we issued the rule. Most of them," meaning companies in America, "are already in compliance, investments," hundreds of millions, "have been made and we'll catch up. We're still going to get at these issues from these facilities."

So, in essence, you publicly were stating even if we lose on the rule, we win.

Ms. MCCARTHY. No, sir, that wasn't what I—

Senator SULLIVAN. That statement has been played around the Country. Many, many Americans are upset by it. Do you understand how that exudes arrogance and a disrespect for the rule of law when your agency is essentially saying we don't even care how the courts rule? And do you think the Supreme Court may have taken this unprecedented action because of your statement that you made on this issue?

Ms. MCCARTHY. Well, I would find it—well, I won't even—

Senator SULLIVAN. Do you regret making that statement?

Ms. MCCARTHY. No, not at all, because I wasn't indicating what you just said. The Supreme Court actually didn't negate the rule; they remanded it back because they thought we needed to do a job earlier on in the process on cost, which we have just completed. I think we got nine comments on that.

And we know that we are past now the 4-year window for full compliance on that rule. I am proud of it. I love the lives that we are saving as a result of that rule. And the industry has been able to manage their way through it brilliantly.

Senator SULLIVAN. Mr. Chairman, I have some more questions, and I would ask, once everybody is done, I would like, if it is possible, to stay. We do this in every other committee. I don't know why this would be a problem.

Senator INHOFE. Well, this is not every other committee. What I will do, we will certainly, if Senator Boxer wants to have an additional 3 minutes or something like that, I could yield mine to you. But that is about as far as we could go. Thank you.

Senator SULLIVAN. Thank you, Mr. Chairman.

Senator INHOFE. Thank you.

Senator CARPER.

Senator CARPER. Thanks. I want to just note with some irony that the job approval rating of the U.S. Senate, both sides of the aisle, pales by comparison to the voter approval of the EPA, and your stewardship with respect to clean air and clean water.

I would also say lovingly to my colleagues on the other side that we sure could use a nice Supreme Court Justice. I think the President has given us a pretty nominee, and I would urge you to spend some time with him.

When I left the hearing earlier this morning to go a roundtable with the Committee on Homeland Security, Senator Inhofe was saying that he wanted to start off the hearing on a positive note, and he conveyed his gratitude to you and to EPA with respect to an issue that has been contentious on this Committee, and I just want to second that emotion from you. I know it is not easy for you; it is not easy for us. But thank you very much for your work there.

I want to talk about another issue that we have worked on together on this Committee, Senator Inhofe and myself, Senator Boxer, and a new colleague from West Virginia now have authored legislation reauthorization for DERA, Diesel Emission Reduction Act. Diesel legislation is close to my heart. The original author of that was George Voinovich, as you will recall. I understand from the President's budget proposal that his budget shifts funding away from DERA and instead funds clean diesel programs through at-

tacks on oil producers separate from the EPA budget. Is that correct?

Ms. MCCARTHY. It actually relies on a separate mandatory fund. But we have \$10 million allocated on our Fiscal Year 2017 budget. I think you and I share a love for the DERA program, and certainly for all of the great reductions in emissions that has resulted from it in the past.

Senator CARPER. Thank you. Can you just explain the reason for this shift in funding? And if the Administration is not able to convince those of us in the legislative branch to implement this tax on oil, how important is the current funding mechanism for the DERA program?

Ms. MCCARTHY. Well, we know that diesel emissions are particularly difficult to manage and we know that we are supporting, beyond the diesel campaign and the DERA money, opportunities to look at areas like ports and others that are so important to address.

So I think the idea was that we would provide a more stable mandatory basis for supporting programs that were like the DERA program that showed consistent success. It is an opportunity to look over a 10-year horizon to implement or to effectively get \$300 million dedicated to this, and it was the choice of the President to move in this direction and to support DERA in a considerable way.

Senator CARPER. All right, thank you.

Changing back to the Clean Power Plan, if I could, it is my understanding that the budget request from the Administration includes \$25 million to the States through a grant program to implement the Clean Power Plan. Is that correct?

Ms. MCCARTHY. That is correct.

Senator CARPER. Do you believe that the States will use this money to provide better flexibility and certainty to utilities within their States when implementing the rule?

Ms. MCCARTHY. I think they will fully utilize it, yes.

Senator CARPER. OK. Do you believe that cutting these funds will derail the Clean Power Plan?

Ms. MCCARTHY. No, sir, but I think it will slow down the ability of States to hit the ground running.

Senator CARPER. And who would it hurt the most if we were to cut these funds?

Ms. MCCARTHY. The States.

Senator CARPER. All right. Earlier, one of my colleagues was talking to you about Waters of the U.S. We spend a fair amount of time in our State, and I know my colleagues have in their States, meeting with different folks, could be developers, could be farmers, a lot of different folks who represent different environmental views.

But my understanding is that one of the reasons why you have promulgated this is because for years we heard that there is not enough certainty and predictability for folks who are farming, for folks that want to develop or build communities or housing projects; there is not enough certainty for them to know what to do, and they have been asking for some certainty and predictability. My understanding is that you have tried to provide that. Would you just respond to that thought?

Ms. MCCARTHY. We did. We actually were required to do this by the Supreme Court. But we also knew that there was a level of uncertainty that was causing a lot of backup in the process for decisions to get made, for people to have certainty about what was in and what wasn't, and what the mitigation strategy would be. We spent a considerable amount of time working to make sure that we were following the science to say what is in, what is out, and where case-by-case review is necessary.

We also provided significantly more clarity for the agriculture community on the exemptions and exclusions. We didn't take any away; we actually added some into the system so that agriculture would be able to perform their vital role for all of us in a way that would allow them to be sure that they are not running afoul of any rule or regulation.

Senator CARPER. All right. Thanks so much.

Senator INHOFE. Senator Vitter.

Senator VITTER. Thank you, Mr. Chair.

Thank you both for being here. Mr. Bloom, our apologies for not directing any questions to you. I know you are all upset and frustrated by that.

[Laughter.]

Senator VITTER. But like the others, I am going to direct my questions to Ms. McCarthy.

I want to build on some previous comments and questions, Madam Administrator, about the Small Business Regulatory Flexibility Act. I am Chair of Small Business. This has been a real concern of a lot of members, including Democrats, and I heard your response to Senator Rounds a few minutes ago that you take it very seriously.

In the case of WOTUS, which is a big deal by anyone's estimation, the EPA said it has no significant impact on small business. Do you really stand by that and do you really think that backs up your statement that you take this mandate to mitigate impacts on small business seriously?

Ms. MCCARTHY. Well, sir, when we were looking at the Clean Water Rule, we consulted with OMB. The decision was that we were not required to formally do a panel, SBREFA panel, but we did commit to having significant conversations and that is how we—

Senator VITTER. I don't mean to interrupt you, but that means that you determined the WOTUS rule had no major impact on small business.

Ms. MCCARTHY. Because it was a jurisdictional rule instead of an implementation rule.

Senator VITTER. You stand by that?

Ms. MCCARTHY. Certainly. I stand by the fact that we did the outreach to small business the way we should.

Senator VITTER. And you think reaching that conclusion is evidence of your taking the small business impact issue seriously?

Ms. MCCARTHY. I think the evidence of our taking it seriously was we went above the beyond the requirements under the law to reach out to small businesses and get their input.

Senator VITTER. Just for the record, I completely disagree. I don't think you met your requirements.

Ms. MCCARTHY. OK, Senator.

Senator VITTER. More recently, EPA submitted its proposed rule regulating methane emissions for new oil and natural gas infrastructure to the White House. You submitted that to the White House for review before the small entity representatives on the panel submitted any comments to the EPA. Do you think that evidences your taking this small business impact issue seriously?

Ms. MCCARTHY. I am sorry, Senator, I don't know the exact timing on that, but often there are overlaps. But, as you know, we make adjustments through the interagency process so that those efforts are completed before any proposal is out for public comment.

Senator VITTER. Well, I do know the timing, and I am telling you you submitted it to the White House for review before getting any small business input. Now, I know you can always come back and change things, but normally, you have a draft, once you are giving it to the White House, that is basically it. Once again, to me, this is a red flag that you all aren't taking the small business impact issue the least bit seriously.

Let me move on to a second issue, which is Flint; and we have talked about that.

Ms. MCCARTHY. Yes.

Senator VITTER. I think it is very clear to all of us that there were multiple failures of government at multiple levels with regard to this issue, and it is now well established that that, unfortunately, includes EPA, that EPA knew of the crisis well before national media attention, but seemed to fail to act on the issue and notify Flint residents.

Because of this, Senators Inhofe, Cornyn, and I wrote to you with some specific questions on February 4th. It is now two and a half months later; we have no response. When are we going to see a detailed written response?

Ms. MCCARTHY. I apologize for interrupting. You are going to get it momentarily. I am sorry, within the next day or two.

Senator VITTER. OK, so we will look for that within the next 2 days. Again, we sent this February 4th.

Ms. MCCARTHY. Right, sir.

Senator VITTER. Detailed questions, and we look forward to a substantive, specific detailed response.

Ms. MCCARTHY. We will do the best we can.

Senator VITTER. Ozone regulation.

Ms. MCCARTHY. Yes.

Senator VITTER. You recently claimed at a conference that you "can't find one single bit of evidence that the EPA has destroyed an industry or significantly impacted jobs other than in a positive way." Do you stand by that statement?

Ms. MCCARTHY. Yes, sir.

Senator VITTER. OK. Well, I just want to point out, related to ozone regulation, I can tell you from Louisiana there were four major chemical manufacturing projects under active consideration for Baton Rouge. That was public, specific projects.

After EPA first proposed lowering the ozone standard in December 2014, those were canceled. Since that has been finalized, that cancellation is definitive. Just those projects, one metro area that happens to be in my State, totaled 2,000 direct and indirect jobs.

New payroll would have been over \$86 million. Is that a negative impact?

Ms. MCCARTHY. Well, sir, the jobs that you are talking about are essential for everybody to continue to grow, so I am happy to look at that issue, but very often companies make decisions on the basis of their larger economic benefits and costs, and very often they will point to an EPA rule to justify that decision when there are many other issues going on that actually account for that decision more directly.

Senator VITTER. Well, I can tell you in the case of Greater Baton Rouge, ozone is a huge issue because it pushes the whole area into non-compliance. It is absolutely categorically canceling projects, including the four I mentioned, and that is over 2,000 jobs. So, you know, when you make the statement that you see no evidence anywhere that anything EPA has done has hurt jobs, I think that is a very crystal clear example to the contrary.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Vitter.

Senator BOOKER.

Senator BOOKER. Mr. Chairman, I would first like to say thank you to you publicly. Your staff and team has been working so well with mine in regards to TSCA, and I am just grateful. These last few days you guys have been pretty extraordinary, so thank you, sir.

Senator INHOFE. Thank you.

Senator BOOKER. It is just so good to see you. And again I apologize for you just being completely ignored today, which is just insulting. If you would like to hang out after, I will buy you a beer.

Ms. MCCARTHY. He is great moral support.

Senator BOOKER. OK.

But, Administrator, I just want to thank you. You have been such a great partner focusing and championing a lot of issues that are very personal to mine. You have been to my State a number of times and I am grateful for your work, especially for marginalizing and vulnerable populations. I think we have a crisis in this Country in terms of the toxicity and how it affects our children, particularly children in rural areas and urban area, and to see the health data for those children is just alarming to me.

Really quick, one of my greater frustrations about the historical change of our Country is really President Reagan, who reauthorized the last time the Superfund clean-up efforts with some current Senators even being a part of that, was helping us to more quickly remove Superfunds, which exist in every single State of our Country.

Are you aware of the health data, now that we have a lot more longitudinal data, that is showing that birth defects for children born around Superfund sites is about 20 percent higher, showing that autism rates for children born around Superfund sites are about 20 percent, that give us more scientific urgency to removing these Superfund sites? Are you aware of that data?

Ms. MCCARTHY. To some extent. I am aware of a number of studies that have been done that show a couple of things. One is the hell of damage around these sites, but also the economic benefits of transforming these sites.

Senator BOOKER. Right. And definitely every dollar invested in cleaning up these sites creates greater economic growth, greater jobs. But for me the children, now that we are seeing much more longitudinal studies, the lost economic productivity of kids that are being affected and their health is being affected is really troublesome.

So I have reintroduced the same legislation that was reauthorized by Ronald Reagan, voted on by a number of my colleagues, Republicans and Democrats, which is a small tax on polluting industries. What I guess I want to ask you really directly is when I put a request into the EPA to give me the count of Superfund sites, we have actually seen an increase in our Country of Superfund sites, as opposed to a decrease.

And these orphan sites, many of them are ready to go but lacking the funding to remove them. It seems pretty stunning to me that you are not able to right now actively cleanup these sites which are affecting the health of children and pregnant women.

Ms. MCCARTHY. Well, we would certainly love an ability to be able to knock some of those sites off the list. It is a long and slow process, and additional funding certainly helps to address that issue.

Senator BOOKER. So Congress's inaction to find this is putting at risk the health of our children and pregnant women in every State around the Country.

Ms. MCCARTHY. There are many risks in every State around the Country from environmental exposures. Superfund sites are one of them.

Senator BOOKER. Thank you very much.

The other issue that I just want to bring up really quickly is air quality. Urban areas in New Jersey have, and you came to Newark, in fact, and helped us to start to produce the data on this, but the asthma rates are about three, four times higher. No. 1 reason why children are missing schools; the lack of productivity, the impact it has on that child's overall success is pretty dramatic, and that evidence is pretty iron clad, correct?

Ms. MCCARTHY. Yes, it is.

Senator BOOKER. So I know you are doing some shifts and changes with the DERA program, but could you just outline for me, and I have one more question after this, so I am hoping you can do it quickly, some of the efforts to deal with the clean air which disproportionately impacts our poorest and most vulnerable communities in areas that are heavily dependent, really located in transportation superstructures?

Ms. MCCARTHY. Well, as you know, our work on the National Ambient Air Quality Standard is a significant step forward in terms of looking at ozone and particulate matter, to be specific. So we are looking at those issues.

We are also doing community level work. We are trying to get better monitoring data, look at potential localized emissions that are also crucial moving forward. We are working with innovators to develop new monitoring so we can have a better understanding of what air quality looks like. So we are working on a number of different funds from both national rules, as well as local community efforts.

Senator BOOKER. And really quickly, relative to other areas of the budget, there is a very small pool for environmental justice work. Could you just detail that? And I will be respectful for the Chairman.

Ms. MCCARTHY. Yes. We have a whole community effort that we are looking to support in this proposal and continue, it is called Making a Visible Difference in Communities and it is called Environmental Justice. Those are incredibly important efforts moving forward, and they are efforts that are extraordinarily positive because they bring other agencies to the table so the communities that otherwise wouldn't have the wherewithal to take care of these exposures get opportunities not just to reduce those through our funding, but also opportunities for new jobs, for new housing to really become active, engaged, and affirmative communities that control their own destiny.

Senator BOOKER. Thank you very much.

Ms. MCCARTHY. It is a wonderful opportunity.

Senator BOOKER. Thank you. And, again, I appreciate your leadership and the passion you have for vulnerable communities.

Mr. Chairman, thank you for the time.

Senator INHOFE. Thank you, Senator Booker.

Senator CAPITO.

Senator CAPITO. Thank you, Mr. Chairman.

I want to thank the witness and thank you for your service.

Ms. MCCARTHY. Thank you, Senator.

Senator CAPITO. I wanted to ask you about the Clean Power Plan. And I have been sort of in and out of the meeting, so I apologize if you have directly answered the question that I am going to ask, but I think the initial response I heard was vague, and that is what has concerned me; and that is what would happen to the deadlines under the Clean Power Plan if the rule is ultimately upheld by the Supreme Court.

Janet McCabe, who is your Acting Assistant Administrator, she said that it is actually a little premature to be speculating specifically about the compliance dates in the Clean Power Plan, but I would beg to differ since it could have massive consequences to all of our States. I think something more crystal clear and definitive, whether these deadlines will be suspended or tolled as your brief, I think, before the Supreme Court seemed to agree to.

So I guess today have you made a statement, again, if I wasn't in the room, I apologize, to a clear signal as to what will happen to these deadlines if your rule is upheld at the Supreme Court level?

Ms. MCCARTHY. Well, the reason why I think Janet indicated it is premature is the first compliance deadline doesn't happen until 2022. So we are hoping that it will be expedited, as they know there is an expedited schedule already in the district court to get through this system and get to the Supreme Court, as they have indicated.

The Supreme Court didn't speak to the tolling question; all they did was stay the rule. We do not have the authority on our own to be able to make changes to that rule, and we certainly expect that the courts, when they make their final decisions, will speak to that issue directly.

Senator CAPITO. So I guess what I am hearing is that since the compliance date is not until 2022, the anticipation is that the deadlines, if the Court doesn't speak to it, the deadlines would go forward as proposed?

Ms. MCCARTHY. Well, the deadline would if the Court doesn't speak to it. The deadline we knew we couldn't manage was the one that is coming up, because there is no way in which we will be to the Supreme Court in a timely way.

Senator CAPITO. And what happened to that deadline?

Ms. MCCARTHY. We indicated to the States not to submit plans because we are not implementing the rule.

Senator CAPITO. Right. By that deadline.

Ms. MCCARTHY. That is correct.

Senator CAPITO. But you are still going to have a time for them to submit plans if in fact the Supreme Court agrees with the regulation.

Ms. MCCARTHY. That is correct.

Senator CAPITO. OK. Let me ask you this. You have stated in your budget and you stated, I think, well, I have here that 25 States are continuing to voluntarily work on implementation plans. Is that correct?

Ms. MCCARTHY. Yes. There are a number of States. I don't have the exact number, but there are a number of States that are working on plans and there are many States that continue to get together and talk to us and look at how they would be prepared for the rule moving forward.

Senator CAPITO. If we could get a more definitive number of States that are actually moving forward, because in your budget you are saying that you want to spend \$25.5 million to work with States to develop and review CPP plans. So your whole climate change budget is \$235 million.

Ms. MCCARTHY. That is correct.

Senator CAPITO. Twenty-five million of that is supposedly to help voluntarily with these States.

Ms. MCCARTHY. For EPA to develop tools and work with the States. But there is also \$25 million for the States themselves to continue to move forward on implementation voluntarily or on other issues related.

Senator CAPITO. That is an additional 25?

Ms. MCCARTHY. That is correct.

Senator CAPITO. Is that the STAG grants to States?

Ms. MCCARTHY. That portion is, yes.

Senator CAPITO. Yes.

Ms. MCCARTHY. That is not the total of the STAG grants.

Senator CAPITO. So that is \$50 million, and we are still \$185 million asking for appropriations for where you State that the centerpiece of this effort, the Clean Power Plan. I would just register some concern that in fact it appears, through your budget, that you are moving forward with this even though you have a stay on it. It is still very much a part of the appropriations process.

And when I look and see that the Clean Water State Revolving Loan Fund, which a lot of people have, and I would join in my concern about the cuts there, I could make a suggestion. I have \$185 million sitting over here I think could go right over to the Clean

Water State Revolving Fund and I think impact a lot of people and their health as well.

Ms. MCCARTHY. Senator, if I could just point out.

Senator CAPITO. Yes. Of course.

Ms. MCCARTHY. All of that money I would be able to provide you the detail, but only those two are directly related to the Clean Power Plan, that is \$50.5 million. The rest is identified as opportunities in our vehicle emissions, our Energy Star program, our methane reduction initiatives. So there are a number of others that we can certainly provide you with details on.

Senator CAPITO. So it is a little vague in here, because you say the centerpiece of these efforts is the Clean Power Plan right after you ask for \$235 million.

Ms. MCCARTHY. And it is not all tagged to that, just the 50.5.

Senator CAPITO. OK. All right, then let's move to methane, because you are undertaking a series of mandates covering methane, but you, even in your own statements in February, said my caveat is that EPA is learning this industry right now because it is not an industry we regulate. We have just gotten into regulation of this, so there are hundreds of thousands of small sources and EPA doesn't generally have a relationship with this industry, it is regulated at the State level, as we do other sectors that we have regulated for decades, but we are learning.

So we are learning, but we are moving forward with a costly regulation, and the regulation has been at the States. We have pushed down the methane; emissions have fallen by a greater percentage than the number of wells that have been drawn. Do you feel that the States are not adequately regulating in this area? And why would you not let them continue since their record is moving in the absolutely correct direction?

Ms. MCCARTHY. Well, the rules that we are moving forward on we are very confident that we have the level of information we need to do that rulemaking appropriately. There are some States that are doing a great job, and we are coordinating with them to make sure we are not duplicating and to coordinate on reporting or any other requirements under a Federal law. But there are many States that continue to have challenges in this regard and what we have identified is that there are many more methane emissions from the oil and gas sector than we had previously understood.

So when I am talking about learning, we are actually putting out an information collection request to the industry that will provide us the level of data not just on emissions, but on technology choices to reduce those, as well as costs, so that we can work with States to identify where they can improve and where a Federal rulemaking may be advisable and what that might look like.

Senator CAPITO. Thank you.

Senator INHOFE. OK, this does complete all of those who have been here. I am going to do something that I know I will regret, but I am going to do it anyway, because we have one member on our side who really wants to have three more minutes. So I am going to ask Senator Boxer if she would like to have three more minutes and, if so, maybe even give that to you, Senator Whitehouse.

Senator BOXER. No, I am going to need my 3 minutes.

Senator INHOFE. Why don't you go ahead and take your 3 minutes, then?

Senator BOXER. I would prefer to wait.

Senator INHOFE. Well, I would prefer you take it now. Please do.

Senator BOXER. Well, I would prefer to wait.

Senator INHOFE. Well, I prefer you take it now. You know, we had an election, you understand.

Senator BOXER. It is ridiculous.

Senator INHOFE. Yes, I agree.

Senator BOXER. But I will take it now. I will take it now.

First of all, I want to answer some of the garbage that you have heard here today. I want to talk about job creation, because a lot of people here have taken it on and said environmental regulations stop jobs.

Let me tell you about my State. Leader in taking action on climate; leader in taking action on pollution control. We created, in our great State, since 2011, 17 percent of all the new jobs. OK? And we account for 11 percent of the population. And I will ask unanimous consent to place those exact numbers in the record.

Senator INHOFE. Without objection.

Senator BOXER. Now, we also hear from Senator Vitter the ozone rule is killing jobs. Let me just say something here. If you can't breathe, you can't work. Let's be clear. And if you die prematurely, you surely can't work because you are dead. So here is the deal. With this rule we will save 320 to 660 people from premature death. OK? Two hundred thirty thousand asthma attacks in children will be averted. One hundred sixty thousand days we will not have kids miss school; 28,000 missed work days will not happen; 630 asthma-related emergency room visits will not happen; and 340 cases of acute bronchitis in children will not happen.

So when you look at this and you see this constant refrain from my colleagues on the right here against the environment, totally against it, attacking you, and you have been fabulous standing up to these nonsensical attacks, you wonder why they are doing it given I made a mistake, I said our job approval as a Congress was 18 percent; it is 14 percent according to a CBS News poll, April 2015. People want us fighting to clean up the air and cleanup the water. There is no question about it.

And I will put into the record the counter poll numbers; Senator Carper alluded to it. I want to be pretty clear. First of all, from 1970 to 2014, aggregate national emissions of the six common pollutants alone dropped an average of 69 percent, while gross domestic product grew by 238 percent. So anyone who has been alive through these years, who has a heartbeat and a pulse knows when you cleanup the environment, you boost the economy for so many reasons: people's health; the fact that, yes, we make investments in clean technology that get disbursed throughout the world.

And if you look at the voter support for Clean Power Plan, 60 percent; 73 percent of voters support the U.S. Environmental Protection Agency placing stricter limits on the amount of ozone pollution; and they do not want the Congress to deal with it.

I will close with this. The Waters of the United States, 77 percent say the EPA should protect us from the dirty water and do the clean water rule; 9 percent say the Congress should to it.

So I stand with the American people against this right-wing rhetoric, and it is just ridiculous that this is the Environment Committee and you need to be subjected to the kind of attacks that you have been submitted to.

And also on TSCA there is no agreement. I just checked with Nancy Pelosi.

Senator INHOFE. All right, I will take my 3 minutes and 52 seconds, and I am going to give my 3 minutes and 52 seconds to Senator Sullivan, after which we will be adjourned.

Senator SULLIVAN.

Senator SULLIVAN. Thank you, Mr. Chairman. I want to thank the Ranking Member, whom I have the utmost respect for. I just think sometimes we are reflecting the different frustrations of our constituents, and my constituents are enormously frustrated by many, not all, actions of the EPA, and one of them is compliance with the rule of law. And it is not just me talking, it is Laurence Tribe, it is the U.S. Supreme Court, it is the 6th Circuit. I mean, it is pretty dramatic.

Administrator, I appreciate your service. I know it is not always easy, but I am shocked at your statement about even if we lose, we win. This is the kind of statement that fuels the frustration so many Americans have regarding their Federal Government, and I just would thoroughly disagree with you. I think that is the kind of statement that senior Administration officials should not be making, because it demonstrates that you are not serious about the rule of law.

But let me go to another issue that we had a hearing on, the Animas River spill. You testified here, when I asked a question on that, should you be held to the same standard as the public or private sector of American citizens or companies, you said that, actually, it would be a higher standard that would be appropriate for your agency.

So can you give us an update on what happened there? And let me just ask a couple questions. Has anyone been held accountable? And what do you think would happen if a private sector company did exactly what the EPA or its contractors did in this case, which is, I assuming accidentally, I am assuming you didn't intentionally pollute a water, through a mistake?

What would happen to a private sector company? I can tell you, you probably know this, EPA has actually criminally prosecuted private sector companies for doing something less serious. So this is a bit of an act as I say, not as I do issue.

Can you give us an update and is anyone being criminally prosecuted or is anyone resigning or has anyone taken responsibility as you would if it were a private sector company who did the identical thing? At the last hearing we had on this, for the record, I did give many examples of that kind of prosecution that the EPA has undertaken. What is the latest? And are you holding yourself to a higher standard, as you said you would, than you would to a private American citizen?

Ms. MCCARTHY. I believe we are, and I know that the Office of the Inspector General is producing a report where he is looking at the issue and will provide that when the report is complete. But I think, as you know, we were there actually to be of assistance to the State and those local communities struggling with the mine situation and the potential for a blowout.

Senator SULLIVAN. But, Administrator, if it is a higher standard and you made a mistake, not intentional, you polluted dramatically a river, if a private sector American did that, say with a backhoe like happened in Alaska, unintentionally, criminally prosecuted. So how can you say you are holding EPA to a higher standard when it doesn't even seem like anyone has resigned or done anything? So I don't get it.

Ms. MCCARTHY. I think there is a difference between going in and trying to be helpful to resolve the situation that we know is a significant problem and there is a difference between intending to create a problem, and so—

Senator SULLIVAN. Right, but you have prosecuted criminally people who have not intentionally polluted.

Ms. MCCARTHY. Yes.

Senator SULLIVAN. Now, look, polluters should be prosecuted to the full extent of the law, I agree with that. But if you are saying that you should be held to the same standard, let me just end with a related—

Ms. MCCARTHY. The issue is, were we negligent? Did we do our job? Was the accident intended or could we have done something that prevented that? Those issues the Inspector General is looking at and we will be able to speak to that. But, in the meantime, our job is to clean it up, to reimburse those expenses, to look at the long-term monitoring, and we certainly are doing that to the best we can.

Senator INHOFE. Madam Administrator, we are adjourned.

Ms. MCCARTHY. Oh, thank you so much.

[Whereupon, at 11:53 a.m. the committee was adjourned.]

