

CONSIDER PENDING NOMINATIONS

HEARING

BEFORE THE

**COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE**

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

OCTOBER 2, 2007

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



Available via the World Wide Web: <http://www.fdsys.gpo.gov>

U.S. GOVERNMENT PRINTING OFFICE

73-573PDF

WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED TENTH CONGRESS
FIRST SESSION

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¹Note: During the 110th Congress, Senator Craig Thomas, of Wyoming, passed away on June 4, 2007. Senator John Barrasso, of Wyoming, joined the committee on July 10, 2007.

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CONSIDER PENDING NOMINATIONS

TUESDAY, OCTOBER 2, 2007

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

The full committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, the Hon. Barbara Boxer (chairman of the committee) presiding.

Present: Senators Boxer, Craig, Baucus, Lautenberg, Cardin, Whitehouse, Isakson and Alexander.

Also Present: Senator Chambliss.

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

Senator BOXER. The Committee will come to order.

I want to welcome everybody, and Senator Craig will be sitting in as Ranking Member today for Senator Inhofe.

I just wanted to place in the record something, because we had a little contention at the Committee when I wanted to invite Senator Mikulski up to the dais, and Senator Inhofe said this had never happened before. We went back in the record and found out on Wednesday, September 13, 2006, Chairman Inhofe invited and allowed Senator Alexander to sit immediately to Senator Inhofe's right, asked him to engage in questions. We will put this in the record, without objection, and the photographs that prove the point.

The idea of doing this is that, I don't mind if we have disagreements, but let's not—let's get the facts right. So I just wanted to make the case that I will continue to run this Committee the way Senator Inhofe did, and these decisions will be made.

Now I see Senator Chambliss is up here which is fine. Then I would ask that Senator Craig make a unanimous consent request to permit that, if he would.

Senator CRAIG. I would so ask unanimous consent request to allow Senator Chambliss to be at the dais for the purposes of introduction.

Senator BOXER. Is there any objection?

We are making an exception here. Also I would state that, if there is no objection, I would certainly allow the Senator to stay here, if he wishes to ask any questions, if there is no objection to that. So ordered. We have a new day at the Committee, and isn't it nice to get along.

[Laughter.]

Senator CRAIG. Kumbayah.

[Laughter.]

Senator BOXER. So if you could put me back to five minutes, I will start my statement now.

This morning, the Committee meets to consider the nomination of six individuals. We will first hear from Mr. Andrew Cochran of Virginia, who is nominated to be the Inspector General of the EPA. On the second panel, we will hear from Mr. John Bresland, of New Jersey, who is nominated to be both a member of the Chemical Safety and Hazard Investigation Board and its chairperson; Mr. C. Russell Shearer, nominated to be a member of that board. The second panel also includes Mr. Thomas Gilliland to be a member of the Board of Directors of the Tennessee Valley Authority. I can say to you, sir, you have strong support from members of your State.

Two other reappointment nominations for the board of TVA, Susan Williams and William Graves, are not present today, but they have submitted the required paperwork.

Mr. Cochran, I intend to carefully review your qualifications for this position. The EPA Inspector General must be an individual who is committed to protection of the environment as well as an effective investigator. You must also be willing to maintain an adequately sized staff of qualified individuals to help you succeed in your job. Congress and the American public rely upon the IG to be thorough and objective and determined to ensure that the EPA fulfills its mission.

Mr. Bresland and Mr. Shearer, it is critical that the Chemical Safety Board maintain itself as an independent Federal agency that investigates industrial chemical accidents. This is highly technical work, it is important to providing a safe workplace and protecting the public and our Nation's economy. If confirmed, I would expect you both to be aggressive in reviewing effectiveness of regulations and regulatory enforcement that both avoid accidents and mitigate their impacts.

We also, as I said before, have Mr. Thomas Gilliland, and your Senator, again, Senator Isakson, on this Committee, speaks very highly of you. I look forward to discussing with you your commitment to making sure that TVA demonstrates a commitment to environmental leadership including reducing greenhouse gases and addressing global warming.

So that is my entire statement, and I will call on members in order of their appearance, but of course, I will turn it over to Senator Craig, who is sitting in for the Ranking.

**STATEMENT OF HON. LARRY E. CRAIG, U. S. SENATOR FROM
THE STATE OF IDAHO**

Senator CRAIG. Madam Chairman, first and foremost, thank you for scheduling this hearing and getting these nominees or renominations before the Committee, I think they and we appreciate it, in a timely fashion. As you have already mentioned, the Ranking Member, Senator Inhofe, has asked that I stand in this morning, at least for a period of time, as we start this hearing.

So first and foremost, congratulations to each of the nominees before us today. I am pleased that we are having these hearings at this time.

Since March 2006, the EPA has been without a confirmed Inspector General. This is a critical position, as the Chairman has al-

ready mentioned, that needs to be filled, in my opinion, and I think the opinion of everyone, as soon as possible. The Chair has had some concern in the past over similar candidates' auditing experiences. Andrew Cochran is a well-qualified candidate with a lot of experience, in my opinion, in auditing. He served as senior counsel for oversight and investigations on the Committee on Financial Services for the United States House of Representatives, and as audit division director and senior analyst at the Office of Inspector General at the Department of Commerce. That certainly appears, in this position, to be high qualifications. This type of experience obviously is critical to an inspector general.

Let me welcome the other three nominees that are before the Committee for the first time: Thomas Gilliland, to be a board member of the Tennessee Valley Authority, and as has already been said, both Senators Chambliss and Isakson will introduce him. I therefore gather he is from Georgia.

[Laughter.]

Senator CRAIG. Russell Shearer, to be a member of the Chemical Safety and Hazard Investigation Board; and John Bresland to be the Chairman of the Chemical Safety and Hazard Investigation Board.

So again, Madam Chairman, thank you very much for holding this hearing.

Senator BOXER. Thank you, Senator Craig, for sitting in for Senator Inhofe.

Now we will go in order of arrival and back and forth, of members of the Committee, then we will get to Senator Chambliss.

Senator Cardin.

**STATEMENT OF HON. BENJAMIN L. CARDIN, U. S. SENATOR
FROM THE STATE OF MARYLAND**

Senator CARDIN. Madam Chair, thank you very much. I welcome the nominees today, and I thank them for being willing to serve in these very important public positions.

Madam Chair, I just really want to underscore the point that you made, the positions that we are considering today are very important for the health and safety of the people of this Country. When I think back, Nikki Tinsley and her role as Inspector General, in being aggressive in looking after the appropriate role for EPA, I just urge Mr. Cochran, when we talk today about your willingness to act as an independent person, willing to take on a President or an Administration.

Your term, if confirmed, will go beyond the term of this Administration. So the continuity in the Inspector General's office, to me, is a very important standard. I hope that you will be prepared to assure this Committee that your sole responsibility will be to make sure the laws are carried out, and willing to take on whomever to make sure that in fact takes place.

The other nominees are for extremely important positions concerning public safety. Some come with experience, others do not. I hope that again, during the course of the confirmation process, that you will address the issues of the independence of your position of representing the public and not an Administration, because I think

that is the key role of each of the nominees, of the positions that you are seeking.

Madam Chair, I will ask that my statement be made part of the record, and I thank you very much for the opportunity to make these opening comments.

[The prepared statement of Senator Cardin follows:]

STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR FROM THE
STATE OF MARYLAND

Madame Chairman, thank you for holding this hearing today.

I approach every Presidential nominee with a bias toward supporting that person. Public service is a great honor and it often comes at some significant personal sacrifice.

I want to support nominees, and I am sure that I will support most, and perhaps all, of the nominees before the Committee today.

Some of the people before the Committee today, quite frankly, need to put some of our concerns to rest before I'll support them.

The Inspector General of the U.S. Environmental Protection Agency is one of the lesser known leaders in the EPA, but the role can be an incredibly important one for the Agency and for the Country.

We saw during the tenure of Nikki Tinsley that the EPA IG can be an important catalyst within the Agency. Her greatest strength was to undertake aggressive, insightful programmatic reviews of EPA's actions.

The IG has to be independent. That person and his or her staff need to bring strong, independent knowledge to the job. We all benefit when EPA's own internal watchdog is constantly pressing the Agency to organize its work around its core missions and to do so in the most effective and efficient fashion possible.

The attributes that make up an excellent IG are

- a person of the highest integrity,
- a person with a passion for the mission of the Agency, and
- a person who is willing to make other Agency leaders uncomfortable from time-to-time.

Mr. Cochran, you have been nominated to this important position. We will be looking to you to address forthrightly how you fit that profile.

That means you need to convince us that the concerns about the use of federal funds for lobbying by your employer are unfounded.

You need to convince us that you will bring a sense of independence to the job. That means criticizing Bush Administration policies at EPA if you find that they are not working efficiently and effectively to protect human health and the environment, which is the core mission of EPA.

This Senator and this Committee will demand a similar level of excellence in the other nominees that we will be hearing from today.

Mr. Shearer, do you have a commitment to safety in the chemical industry and sufficient independence to tackle tough cases?

Unlike Mr. Bresland, another nominee to the Chemical Safety Board before us today, you do not bring relevant private sector employment history to the job. You have held a number of positions within the present Administration, and the President should be given great deference in picking his team.

But you are being nominated to a five-year term on the Chemical Safety Board. There you to do more than carry out Administration's policies. You need to exercise independent judgment and provide dynamic leadership to a small but vitally important group.

Today we will be listening carefully to learn how you will demonstrate such independent judgment and leadership.

Madam Chairman, the nominees that we are considering are being asked to play a key role for all Americans. We owe it to the nation to make sure that the nominees we are considering meet the highest standards of public service.

I look forward to hearing from our nominees and to today's discussion.

Thank you, Madame Chairman.

Senator BOXER. Thank you so much. I would ask unanimous consent that the extra 2 minutes that you did not use go to Senator Baucus, because I think he may need a little extra time. If you need them, then you will have 7 minutes for your statement.

Senator BAUCUS. Thank you.

Senator BOXER. Senator Isakson.

**STATEMENT OF HON. JOHNNY ISAKSON, U. S. SENATOR FROM
THE STATE OF GEORGIA**

Senator ISAKSON. Thank you, Madam Chairman. I want to at the outset acknowledge my deep appreciation to you and Bettina for the cooperation you have given in allowing Tom Gilliland, our appointee-designate to the TVA Board's hearing to be held today. You have been a tremendous help to me and I am greatly appreciative of that.

I am greatly appreciative of the opportunity to brag about somebody who is a deep personal friend of mine. A lot of time when you are up here, and somebody from your State has been nominated for something, you read from a script that they provide you, and you are as sincerely as you can complimentary of someone who know tacitly and not really very well.

I know this gentleman extremely well. I have known him for 40 years. He is an outstanding graduate of the University of Georgia and has a Juris Doctor degree from Emory University, Phi Beta Kappa. He married way over his head when he married Candy—

[Laughter.]

Senator ISAKSON [continuing]. They have two beautiful, handsome sons who, I must inject, only as I told them last night, their two sons, both are at Yale, both scored 1600 on the SATs. They are outstanding individuals. You could have squared my SAT score and it wouldn't have gotten to 1600.

[Laughter.]

Senator ISAKSON. I am just tremendously impressed with that.

But Tom served as Chief of Staff to Lieutenant Governor Peer Howard, a Democrat who was one of my best friends in college. He has been appointed by both Democrat and Republican governors of Georgia to the Stone Mountain Authority. He has been an advisor on the transition team in terms of Lieutenant Governor Casey Kagel. He is No. 2 man at the third largest bank in the State of Georgia, United Community Bank. He is a lover of the environment, he is appreciative of business, he is appreciative of the opportunities that this great Country gives to us. I can assure you, there could be no better qualified individual to serve on the board of TVA than Tom.

Lastly, I have only put one hold on one bill in my career in the U.S. Senate. Unbeknownst to me, it was the Majority Leader's bill 2 years ago, and that was Majority Leader Frist, when he introduced the recomposition of the TVA board. Citizens of Georgia have for years not been represented ever on the TVA board, and we constitute a part of the TVA service, and all 10 of our border counties with Tennessee, their EMCs derive their power from TVA.

I am very appreciative of former Majority Leader Bill Frist, Senators Lamar Alexander and Bob Corker from Tennessee, the other States represented who came together and felt like it was right for the State of Georgia to be represented, and to Tom Kilgore, the now-Chairman and operating officer of the TVA Authority for having been so courteous as to call me and let us know when an opening came to consider Mr. Gilliland for this place.

So it is a privilege for me to introduce a distinguished citizen of our State, one who will do a good job in a tremendously important responsibility. Again, I want to thank the Chairman at the end for what I said at the beginning, for all her cooperation in making this happen today.

Senator BOXER. Thank you so much, Senator. It was a pleasure to work with you.

Senator Whitehouse.

**STATEMENT OF HON. SHELDON WHITEHOUSE, U.S. SENATOR
FROM THE STATE OF RHODE ISLAND**

Senator WHITEHOUSE. Thank you, Madam Chair.

I just want very briefly to relate that in a discussion that I had with Mr. Cochran, he indicated that he saw his role in the Inspector General position at EPA as more than just protecting that agency against financial mis-deeds or defalcations, but also to have a role in ensuring that there was process integrity in its regulatory function, to make sure that there was not impropriety in the weight that was given, for instance, to industry views that the rules and regulations were followed, and that it was an agency in which both environmental and business interests could claim a fair shot.

I think that is a very important point, and I am delighted that he sees his role that way. I wanted to make a record of it.

If I may ask unanimous consent that an article from the *Washington Post* entitled Bush's EPA is Pursuing Fewer Polluters, By A Full-Third from Sunday, September 30, 2007, be made a part of the record.

Senator BOXER. Without objection, so ordered.

[The referenced material was not available at time of print.]

Senator WHITEHOUSE. That concludes my statement. Thank you, Madam Chair.

Senator BOXER. Thank you.

Senator Baucus.

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

Senator BAUCUS. Thank you, Madam Chairman.

I thank you for calling this hearing. I look forward to hearing from all the nominees. However, I am going to direct my comments to Mr. Cochran.

The Roman writer Juvenal famously asked, "Who will guard the guards?" The Environmental Protection Agency's mission is to guard human health and the environment. Mr. Cochran, if confirmed as Inspector General of EPA, you will have to watch the guards. Across the Country, people will look to you to hold EPA's feet to the fire and ensure that EPA is keeping us safe.

Nowhere is this truer than in Libby, MT. I will support your nomination if I am certain in your ability to display independence and toughness. Regardless of what political party controls EPA, the people of Libby and the people across America deserve nothing less.

Libby has been twice wronged. For decades, W.R. Grace's vermiculite mill in Libby spewed toxic tremolite asbestos into the air. They gave it to residents to put on their lawns. They even

spread it on high school tracks. Over 200 people in Libby have died from asbestos-related disease because of W.R. Grace.

Unfortunately, the tragedy has not ended for the people of Libby. Despite the best efforts of EPA staffers on the ground, one I will mention, Paul Parronard, the agency leadership has made serious mistakes. In August 2006, I asked the Inspector General of EPA to review EPA's work in Libby. What the report found was truly outrageous. After 7 years, EPA has failed to complete the necessary toxicity studies to determine the safe level of human exposure to Libby amphibole. They failed to conduct the toxicity tests to determine how safe is safe. This means that after 7 years, EPA still cannot say how clean they need to make the homes and the businesses to protect the families in Libby.

Why were these studies never done? According to a 2006 Inspector General report, EPA scientists requested the studies, but EPA's budget office did not approve their request. EPA cut corners to save a buck.

The review also found that EPA had given the people of Libby dangerously inaccurate information in so-called comfort letters. EPA told homeowners that their homes were clean, when in fact EPA had no idea what level of exposure to Libby asbestos is safe.

EPA also published documents such as "Living with Vermiculite," telling people it was okay to sweep up asbestos-laced vermiculite attic insulation in their homes. An outrage.

I am also concerned by EPA's decision not to declare a public health emergency in Libby. According to press reports, EPA was prepared to declare a public health emergency in Libby in the spring 2002. Administrator Whitman was so inclined. Declaring a public health emergency in Libby would have given the agency clear authority to remove all vermiculite attic insulation in homes in Libby. That declaration of public health emergency would have also required the Agency for Toxic Substances and Disease Registry to provide some level of medical care for people in Libby. A huge problem. Now they don't get the care. That declaration would also have implications nationwide.

However, according to press reports, the Office of Management and Budget intervened and EPA never declared a public health emergency. Once again, EPA and OMB put saving a buck ahead of the people of Libby.

Mr. Cochran, I hope I have impressed upon you, I am sick of the bean counters at OMB and EPA cutting corners in Libby to save money. According to your resume, you have extensive experience as an auditor, looking for financial waste. That is important. But quite frankly, it is not what is most needed in that job of Inspector General. The people of Libby and I am sure elsewhere in the Country need an Inspector General that will put them first. The people of Libby need someone whose first thought isn't what is cost-efficient, but rather, someone whose first thought is what is right.

I will be looking to see if you are that kind of person. Thank you, Madam Chairman.

[The prepared statement of Senator Baucus follows:]

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

Chairman Boxer, thank you for calling this hearing. I would also like to thank the nominees for their willingness to serve.

I look forward to hearing all of the nominees' testimony. However, I will direct my comments to Mr. Cochran.

The Roman writer Juvenal (Jew-ven-all) famously asked, "who will guard the guards?"

The Environmental Protection Agencies' mission is to guard human health and the environment.

Mr. Cochran, if confirmed as Inspector General of the EPA, you would have to watch the guards. Across the country, people would look to you to hold EPA's feet to the fire and ensure that the EPA is keeping us safe.

Nowhere is this truer than in Libby, Montana. Mr. Cochran, I will support your nomination if I am certain in your ability to display independence and toughness. Regardless of what political party controls the EPA, the people in Libby and across America deserve nothing less.

Libby has been twice wronged. For decades the W.R. Grace vermiculite mill in Libby spewed toxic tremolite asbestos into the air. They gave it to residents to put on their lawns. They even spread it on the high school track. Over 200 people in Libby have died from asbestos related disease because of W.R. Grace.

Unfortunately, the tragedy has not ended for the people of Libby. Despite the best efforts of EPA staffers on the ground, the Agency leadership has made serious mistakes.

In August of 2006, I asked the Inspector General to review EPA's work in Libby. What the report found was truly outrageous. After seven years, EPA has failed to complete the necessary toxicity studies to determine the safe level of human exposure to the Libby amphibole.

This means that after seven years, EPA still cannot say how clean they need to make the homes and businesses to protect the families in Libby.

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The review also found that EPA had given the people of Libby dangerously inaccurate information. In so called "comfort letters," EPA told homeowners that their homes were clean, when in fact EPA has no idea what level of exposure to Libby asbestos is safe.

EPA also published documents such as "Living with Vermiculite," telling people that it was ok to sweep up asbestos laced vermiculite attic insulation in their homes. This is an outrage.

I am also concerned by EPA's decision not to declare a Public Health Emergency in Libby. According to press reports EPA was prepared to declare a Public Health Emergency in Libby in the spring of 2002. Declaring a Public Health Emergency in Libby would have given the Agency clear authority to remove all Zonolite Attic Insulation in homes in Libby.

The declaration of Public Health Emergency also would have required the Agency for Toxic Substances and Disease Registry (ATSDR) to provide some level of medical care for people in Libby.

However, according to press reports, the Office of Management and Budget intervened and EPA never declared a Public Health Emergency. Once again EPA and OMB put saving a buck ahead of the people of Libby.

Mr. Cochran, I hope I have impressed upon you that I am sick of the bean counters at OMB and EPA cutting corners in Libby to save money.

According to your resume, you have extensive experience as an auditor looking for financial waste. This is an important skill. But, quite frankly, it is not what is most needed in Libby.

The people of Libby need an Inspector General that will put them first. The people of Libby need someone who's first thought isn't "what is cost efficient" but rather someone who's first thought is "what is right."

I will be looking to see if you are that kind of person.

Senator BOXER. Senator, thank you.
Senator Lautenberg.

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

Senator LAUTENBERG. Madam Chairman, if our colleague, other colleague from Georgia has any particular——

Senator BOXER. Well, I am going to wait until all the members of the Committee are heard first.

Senator LAUTENBERG. I agree with you.

[Laughter.]

Senator LAUTENBERG. I wanted to be able to criticize Saxby, actually.

Anyway, it was offered in good nature. I am satisfied that we go on with our business.

Madam Chairman, thanks for holding today's hearing on the nominations for the positions at EPA and Chemical Safety Board and Tennessee Valley Authority. The role as defined by Senator Baucus is a recitation, I think, of something we said years ago, applies so well, and that is, you know, Mr. Cochran, that you have the responsibility of watching the watchers and making sure that they do their job, to coin a phrase. We see problems that we have had at EPA with problems of management of programs and where there are arbitrary decisions made not to meet the standards that were set down in programs that they have.

Now, that is a fairly delicate area, I will admit. But the fact of the matter is that I would hope that your mission is to do everything that they are supposed to do as honestly and efficiently as can be done. I am concerned about something, Mr. Cochran, because the objectivity, the independence of the Inspector General is a critical issue. I will be looking for that independence and dedication.

But I will ask you this. You are a member, an officer of the Federalist Society. They are not particularly supportive of environmental regulation that is often proposed or in place now. I wonder, and we will talk about that when I have a chance to ask you a question, I wonder what kind of an influence you bring as a result of your affiliation with that organization.

Regarding the Chemical Safety Board, it was 1990, Madam Chairman, when Senator Durenberger and I created the Chemical Safety Board. It took until 1997 to get some funding for it. Our mission was to have the Board investigate the causes of serious accidents at chemical plants, oil refineries, industrial facilities, and make recommendations on how to better protect workers and the public. Those nominations come at a critical time for the Board. Former Chairperson Carolyn Merritt showed excellent leadership at the Chemical Safety Board, and we have to make sure that her work, excellent work, continues. Both nominees for the Chemical Safety Board must demonstrate that they are fully committed to protecting the safety of workers and the public from the potential dangers of a chemical accident.

I chaired a subcommittee hearing on the Chemical Safety Board and its work just this past July. Several witnesses said that we need more board members with a background in chemical process safety. Mr. Bresland has already served on the Board for 5 years, has a long history of working on chemical process safety issues in the private sector. But I am less convinced, Madam Chairman,

about Mr. Shearer's qualification. While he served as an attorney in several positions related to toxic chemicals in the Department of Defense and Energy, he has no obvious background, apparent background in chemical process safety, which is a primary focus of the Chemical Safety Board.

So finally, when the Tennessee Valley Authority, while they have no direct impact on the State of New Jersey, its generation of electricity affects our climate and therefore all Americans. As nominee for its Board, Thomas Gilliland can play a critical role in the reduction of carbon emissions of TVA plants. So I look forward to learning about how he intends to do that. Madam Chairman, thank you again for calling this hearing.

Senator BOXER. Thank you very much, Senator.

Now, Senator Chambliss. Welcome.

STATEMENT OF HON. SAXBY CHAMBLISS, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Thank you very much, Madam Chairman. I appreciate your courtesy of allowing me to be here this morning to share the introduction of a great Georgian with my long-time dear friend, my colleague, Johnny Isakson.

I am very proud to introduce a fellow University of Georgia graduate, a man who has distinguished himself in our State over the last number of decades, and I want to give my wholehearted support to the nomination of Tom Gilliland to the TVA Board. Tom has been a friend for many years. His financial background and judicious demeanor make him well-qualified to sit on this very important Board. Tom is the Executive Vice President, Secretary and General Counsel for United Community Banks, which is the third largest bank holding company in our State. Therefore, from a financial background standpoint, he certainly has the qualifications to sit on this Board.

In addition, Tom lives in the TVA service area. He and his wife live in Blairsville, GA, which is a very beautiful part of our State. He is very knowledgeable about the environmental, recreation and power resources provided by TVA. In addition, as a businessman, he knows and understands the economic impact that TVA has on our State and the entire region it serves.

I am particularly pleased the Committee is considering Tom's nomination, because although over 100,000 Georgia households are served by TVA, the State of Georgia has never been represented on this Board. TVA provides power to customers in 10 counties in our State, served by 3 electric membership corporations. TVA also has reservoirs located in Georgia as well. These reservoirs have a combined surface area of 14,522 acres and 300 miles of shoreline.

Finally, Georgia is home to over 750 TVA retirees and their families. Clearly, there are a number of ties between North Georgia and the TVA. Tom's confirmation to the TVA Board will enhance the existing relationship, and I believe he will be a great asset to the TVA Board.

So I thank you for allowing me the opportunity to introduce my friend, Tom Gilliland. I believe you will find him worthy of the position for which he has been nominated, and I urge you to move his nomination very quickly.

Senator BOXER. Thank you very much, Senator.

We are now going to start 5-minute rounds of questions. I am going to switch places with Senator Baucus, who has some commitments that he needs to fulfill. So I will start it off with Senator Baucus. Oh, you want to have the statement first. Go ahead, sir.

STATEMENT OF ANDREW R. COCHRAN, NOMINEE FOR INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY

Mr. COCHRAN. Good morning, Madam Chairman and distinguished members of the Senate Committee on Environment and Public Works. I am Andrew Cochran, and I am honored to appear before you today as the nominee for Inspector General at EPA.

I am grateful to the President and EPA Administrator Steven Johnson for this opportunity. If confirmed, I look forward to working with EPA, this Committee and the entire Congress as an independent, objective voice to assess and report upon EPA's work to efficiently and economically improve human health and environmental quality.

The Inspector General Act mandates the selection and confirmation of Inspectors General "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." I have years of experience and accomplishments in five of the seven named areas of expertise in the Executive Branch and on Capitol Hill.

Since 2004, I have represented private sector firms and the concerns of terrorism victims, victims of Libyan-sponsored terrorism in the 1980s, Hamas terrorism in the West Bank and Gaza, and the victims of 9/11 before Congress and the Executive Branch to fight for the approval of beneficial legislation that would help them seek justice in sole litigation.

I also started and direct the counter-terrorism blog, one of the premier online centers in the world, for the dissemination of objective and independent terrorism and counter-terrorism news and analysis. During my nearly 11 years with the Commerce Department Inspector General's Office, I directed numerous audits and inspections that significantly improved the management of Commerce Department programs, reported on important policies and procedures, or resulted in significant cost savings.

As the first director of the NOAA performance audit division, I directed the first performance audit of a regional fishery and management decision by the North Pacific Fishery Management Council in 1992. We found violations of the National Environmental Policy Act, Magnuson Fishery and Conservation Act, as it was then known, and an important executive order on cost benefit analysis. Senator Baucus, in my oral exit conferences with senior departmental and NOAA officials, I told them that the proposed amendments by the North Pacific Fishery Management Council were unacceptable and indefensible. Despite heavy pressure from the allies of the Council, we stuck by our guns. We implemented the findings and recommendations and worked with NOAA to implement those recommendations. NOAA turned down the proposed amendment and came back with new amendments.

The Inspector General awarded me the bronze medal, the highest award in the OIG, for that report. Senator Baucus, based on what I read about Libby, the situation there, it is unacceptable and indefensible. My reports on that Council and other reports, numerous other reports, provided our expert and unbiased opinion on an important decision or standard practice without quantifiable cost savings.

Three peer reviews conducted by other departments concluded that audits issued under my direction met generally accepted Government auditing standards. In March 2001, I was selected as the first senior oversight counsel for the House Financial Services Committee, and was lead counsel for the first Congressional hearings on Enron, Global Crossing and WorldCom.

I have enjoyed working with many outstanding inspectors general in the past 24 years. Their examples of a commitment to professional excellence, professional and personal courtesy will guide me in the years ahead. If confirmed, I will seek the advice of the respected veterans now serving as inspectors general.

I assure the Committee that should I be confirmed, I will faithfully and independently discharge my duties to uphold the legacy established by so many in the position. To quote from a July hearing chaired by Senator Lieberman, I will be a watchdog, not just a junkyard dog or lapdog.

The EPA stands as the Federal guardian protecting our environmental resources. I am truly excited at the prospect of serving as the Inspector General of that agency, which has a direct impact on the health and safety of all Americans every day. An Inspector General can serve as a positive force for change, and if confirmed, I pledge to continue the OIG's record of honorable achievements and service to the taxpayers.

If confirmed, I will work in a constructive, respectful atmosphere with the OIG employees, EPA management, Congress and other stakeholders. I will direct the work of the OIG in accordance with the high standards, principles and traditions of the profession. I will maintain frequent and open communications with EPA management and the Congress, and will report significant problems to the Congress when uncorrected by EPA.

I want to thank my family, friends and associates, especially my wife, who is watching with her mother at home. Madam Chairman and members of the Committee, this concludes my statement. I look forward to your questions.

[The prepared statement of Mr. Cochran follows:]

STATEMENT OF ANDREW R. COCHRAN, NOMINEE FOR INSPECTOR GENERAL,
ENVIRONMENTAL PROTECTION AGENCY

Good morning, Madam Chairman and distinguished Members of the Senate Committee on Environment and Public Works. I am Andrew Cochran of Springfield, VA, and I am honored to appear before you today as the nominee for Inspector General of the Environmental Protection Agency.

I am grateful to President Bush and EPA Administrator Steven Johnson for offering this opportunity. If confirmed, I look forward to working with EPA, this Committee, and the entire Congress as an independent, objective voice to assess and report upon EPA's work to economically and efficiently improve human health and environmental quality. The Inspector General Act mandates the selection and confirmation of Inspectors General "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." I

have years of experience and accomplishments in five of the named areas of expertise. I practiced law and public accounting in the private sector; advised the Deputy Secretary of Commerce in the 1980s of potential improvements and budgetary savings in Commerce Department operations; conducted numerous program analyses and audits as a career professional in the Commerce Department's Office of Inspector General; and conducted Congressional investigations into corporate accounting and stock offering irregularities as senior oversight counsel of the House Financial Services Committee. Since 2004, I have represented the concerns of terrorism victims, homeland security-related firms, and high-tech companies before Congress and the Executive Branch, working to obtain bipartisan approval of beneficial legislation and regulations. I also started and still direct one of the premier online centers in the world for the dissemination of independent and objective terrorism and counterterrorism news and expert analysis. Much of my professional success has involved reaching across the aisle to build coalitions with parties of different interests and desires.

I wish to focus on the nearly 11 years, from 1990 to 2001, during which I was a career professional in the Commerce OIG. I directed numerous audits and inspections that significantly improved the management of Commerce Department programs, reported on important policies and procedures, or resulted in significant cost savings. I was the first director of a performance audit division focused totally on the operations of NOAA, the National Oceanic and Atmospheric Administration. In that role I directed the first performance audit of a regional fishery management allocation decision by NOAA and a fishery management council. I have already provided a copy of the report on the fishery management allocation decision to the Committee. The Inspector General awarded me the Bronze Medal, the highest award in the OIG, for that report. I also directed the first OIG audit of a range of export licensing decisions; the first OIG audit of a spectrum licensing decision (which affected development of the then-infant digital messaging industry); and the first OIG audit report to recommend that an official Commerce Department publication should be disseminated entirely on the Internet (in 1999). These reports provided our expert and unbiased opinion on an important decision or standard practice, without quantifiable cost savings. They were among a number of highly sensitive audits that) directed and, along with many others, included findings and recommendations that were unwelcome within the audited agency. But when I left the Commerce OIG in 2001, all of the recommendations in my final performance audit reports had been resolved. I also directed audits that, in total, saved tens of millions of dollars for the taxpayer. Three peer reviews conducted by other departments during my tenure concluded that audits issued under my direction were conducted in compliance with generally accepted government auditing standards.

In March 2001, I was selected as the first senior oversight counsel for the new House Financial Services Committee and served there during the period covering the 9-11 attacks and the corporate accounting scandals. I was lead counsel for hearings and investigations into terrorism issues and the accounting scandals, including the first Congressional hearings on the accounting issues at Enron, Global Crossing and WorldCom. During my tenure, I worked in partnership with Democratic committee staff to ask GAO and the Inspectors General of Treasury, HUD, and the federal financial regulators to conduct audits and report to Congress on issues such as the response of the regulators and financial markets to the 9-11 attacks; the protection of critical infrastructure from future attacks and disasters; mismanagement of public housing authorities; single-family mortgage fraud; and the search for dictators' assets hidden throughout the world.

My high respect for the men and women who occupy the position of Inspector General, and for the standards governing their conduct and performance, started with my first positions here in Washington. During the summer of 1979, I was a Congressional intern for my Congressman from Ohio, the Honorable Clarence J. Brown, who was an original co-sponsor of the Inspector General Act of 1978. In 1983, he became the Deputy Secretary of Commerce, and I left the Cincinnati office of Arthur Andersen & Co., where I had practiced as a CPA, to assist him in overseeing the management of the Department of Commerce.

I have enjoyed working with many outstanding Inspectors General on management issues over the past 24 years, from Sherman Funk at the Commerce Department in the 1980s, to Gaston Gianni and Jeffrey Rush when I was at the House Financial Services Committee. These examples of a commitment to professional excellence, independence, and personal courtesy will guide me in the years ahead and, if confirmed, I will seek the advice of the respected veterans now serving as Inspectors General. I assure the Committee that, should I be confirmed, I will faithfully and independently discharge my duties to uphold the legacy established by so many in the position. To quote from the recent hearing chaired by Senator Lieberman to

consider how to strengthen the role of Inspectors General, I will be neither a lapdog nor a junkyard dog, but a watchdog.

The Environmental Protection Agency stands as the Federal guardian protecting our environmental resources, and I am excited at the prospect of serving as the Inspector General of this agency, which has a direct impact on the health and safety of all Americans every day. The taxpayers of our nation need an Office of Inspector General of committed, trained, assertive, and competent professionals to prevent and detect waste, fraud, and abuse in the delivery of EPA's services. An Inspector General can serve as a positive force for change and, if confirmed, I pledge to continue the OIG's record of honorable achievements and service to the taxpayers.

If confirmed, I will work constructively in a respectful atmosphere with the OIG employees, EPA management, Congress, and other stakeholders. I will direct the work of the OIG in accordance with the high standards, principles, and traditions of the profession. I will maintain frequent and open communications with EPA management and the Congress, and will report significant problems to the Congress when uncorrected by EPA.

Madam Chairman and members of the Committee, this nomination provides me with the opportunity to serve the nation as a federal management expert at the highest level of an Executive Branch agency. Thank you again for holding this hearing to consider my nomination, and I look forward to your questions.

Senator BOXER. Senator Baucus.

Senator BAUCUS. Thank you.

Mr. Cochran, why do you want this job?

Mr. COCHRAN. I was a management wonk long before I was a counter-terrorism wonk. I have years of experience in the area, far more than any other field. An inspector general position in an Executive Branch agency is one of the highest honors that a management and budget expert can possibly have. The EPA is one of the most important agencies in Government. It was truly an honor to receive the phone call and to be asked to consider taking this position.

I want to assist EPA and the management of the agency work on behalf of the taxpayers to protect the Nation's health, human health and environmental quality.

Senator BAUCUS. So this is not a job that you sought?

Mr. COCHRAN. No, sir.

Senator BAUCUS. Who called you?

Mr. COCHRAN. The White House called me. Nobody intervened with them on my behalf.

Senator BAUCUS. The White House called you up and said, Andrew, we would like you to take this job?

Mr. COCHRAN. They called me on April 12 on my cell phone, because I had talked with them 3 years ago about another position, they chose someone else. I was actually in Williamsburg with my wife. Out of the clear blue sky, the phone rang.

Senator BAUCUS. Who called you?

Mr. COCHRAN. The Office of Presidential Personnel.

Senator BAUCUS. Who was that?

Mr. COCHRAN. Jennifer Christy.

Senator BAUCUS. Were there any reasons why they, why Jennifer said they were singling you?

Mr. COCHRAN. They were looking through my file, and there had been a number of other inspectors general confirmed since 2004 when I talked to them about Treasury. They found me, and I asked if there was anybody who intervened or anything else, and she said no.

Senator BAUCUS. Did you ask any questions of them, conditions of the job, or did they say anything to you about the conditions of the job?

Mr. COCHRAN. I met with her a couple of times, I met with the EPA Administrator and the Deputy Administrator once each. They laid no conditions upon my work. We talked about general theory of an inspector general, which I have years of experience in. I had, there was no expectation of any hindrance to my independence, and I wouldn't take any. I don't honestly need this job to live. I have a good job and a good life.

Senator BAUCUS. I am sorry, I missed your experience as inspector general. Where was that?

Mr. COCHRAN. In the Office of Inspector General at the Commerce Department.

Senator BAUCUS. At Commerce, in the office?

Mr. COCHRAN. Right, not as the Inspector General.

Senator BAUCUS. How long were you there?

Mr. COCHRAN. Just 3 weeks short of 11 years.

Senator BAUCUS. About 11 years in Commerce. OK. What did you do there? What was your job there?

Mr. COCHRAN. I was division director and senior analyst. We had, we would move from area to area. So my first position as division director was actually over the NOAA audit division. I ended up auditing every agency of the Commerce Department, and conducting almost every type of performance audit.

Senator BAUCUS. Did anything come up during your work there that you, an irregularity of some kind, that you did something about?

Mr. COCHRAN. Well, as I said first, the North Pacific Fishery Management Council audit, where we basically forced NOAA to turn down the proposed amendments of that Council.

Senator BAUCUS. Was that you or was that your boss or others? Was that you?

Mr. COCHRAN. I directed the audit and all the dissertation Ph.D, and one other auditor, and we wrote the audit and our findings were not directed or guided from the Inspector General. Then in 1995, if you are looking for sensitive audits, one audit I did not add, I am not sure I added to the list for the EPW work was that we did an audit of excessive travel charge card use by employees of the Commerce Department, including senior officials in the Department, and found charges for gifts, jewelry, meals in town and five figure unpaid balances.

Senator BAUCUS. Turning to Libby, as I mentioned in my opening statement, I am concerned about the very grave mistakes that EPA made, failing to conduct toxicity studies, inaccurate communication, in fact, misleading information to the people there. Also choosing not to declare a public health emergency. I want to find out what happened. To do that, I have requested documents from the agency, also from the White House and other relevant agencies. If confirmed, do you agree to give me and my staff access to copies of all documents relating to EPA, OMB, Grace and the White House's involvement with Libby?

Mr. COCHRAN. Senator, I will provide documents to the Committee concurrent with all the statutory and constitutional obliga-

tions. I will work with the Committee to provide the documents that I can provide.

Senator BAUCUS. Well, that is an easy answer. But you know, the proof is in the pudding. Because it is easy to hide behind things like privilege and so forth.

Let me just tell you something. We had a hearing in Libby, and I asked for information. The EPA gave us some, but then redacted lots of information. It turned out some of the information redacted were public press releases by members of the Senate. There was no reason they should not be given over. In fact, I might say, the Assistant Administrator, when I asked her about this, had no idea what was not given to us and did not know that EPA had excluded certain matter claiming to be privileged by in fact totally public.

So that answer you gave me is a nice, glib answer. But it doesn't really indicate operationally how that might work. So could you answer again that same question, a little more fully?

Mr. COCHRAN. I don't know all the situation there, sitting on this side of the table. I certainly don't have access to any of those documents and discussions on privileges. I will do what I can to provide all the necessary documents to the Committee. I have always done that. I would say, in fact, that at the beginning of the North Pacific Fishery and Management Audit, an official at NOAA wanted to withhold documents from us, and that just didn't last. It didn't last for about a day.

Senator BAUCUS. Let me just remind you, the Inspector General Act states clearly, "Nothing in this section or any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress or any other committee or subcommittee thereof."

Mr. COCHRAN. I will enforce, I will live up to the measures of the Act as I did when I was at the Commerce Department. I also want to note that another audit I directed, I recommended administrative action against a contracting officer, it was the first time it had been done, for allowing excessive costs in National Weather Service offices.

Senator BAUCUS. Well, I just urge you to think more clearly, more deeply how you might be more forthcoming the next couple of days and weeks. Because that response was basically, to be honest with you, is a typical bureaucratic response. It is not one that gives the people of Libby much comfort. We are going to find out exactly what happened here, and the degree to which there was some kind of a cover-up at the EPA, IG and so forth.

Mr. COCHRAN. It is driven more by my not having intimate knowledge of the details, because I can't, sitting on this side, and not for lack of desire to work with the Committee.

Senator BAUCUS. All right.

Senator BOXER. Senator, do you want some more time?

Senator BAUCUS. Can I have a couple minutes?

Senator BOXER. You can have it, yes, and I will extend—

Senator BAUCUS. I will indulge—

Senator BOXER. Take as much as you want.

Senator BAUCUS. I don't want to take advantage of my colleagues, here.

Senator BOXER. Well, we are going to give you another 3 minutes.

Senator BAUCUS. OK, three.

A great concern also is, how do you view your job? Are you a bean counter?

Mr. COCHRAN. No, sir.

Senator BAUCUS. Or are you somebody who is going to stand up and blow the whistle when something is not right?

Mr. COCHRAN. Sir, the term performance audit is a really broad term. Under the Government Auditing Standards, there are actually five different types of those audits. There is program effectiveness, economy and efficiency, internal controls, compliance with laws and regs and prospective analyses. I have done at least four of the five, maybe all five.

So it is definitely not a bean counter. There is a type of qualitative program effectiveness report that I have done. I did for instance numerous offices of the International Trade Administration overseas. I don't know that any of them saved a dime. Conducted an audit of the ability of the Patent and Trademark Office to put its entire official gazette online. Didn't save a dime.

So I have done those types of reviews. I am certainly comfortable with those. What you need is qualified people, the right scope, it needs good planning, et cetera. So I did them at Commerce, and there isn't anything new in that type of audit situation that I haven't done and I can already do.

Senator BAUCUS. I am also, frankly, concerned about the EPA's failure to declare a public health emergency. It is very clear, according to press reports, there is a very enterprising reporter, who is a Seattle PI, long, long lengthy articles, lots of quotes and documented, it is quite clear that although declaration is proper and appropriate, that OMB did not want to, because it would mean taxpayers' dollars would be used to give medical care to people who are suffering on account of asbestos diseases. That is basically what it looks like happened.

Let me just remind you that people in Libby suffer from asbestos-related diseases at a rate of 40 to 60 times the national average. For mesothelioma, the cancerous type, 100 times greater than the national average. It is an outrage. Have you ever been to Libby?

Mr. COCHRAN. I have not been there. But I have certainly heard about it. I have been reading about Libby for some time.

Senator BAUCUS. You know what? If you take this job, you are going to be going to Libby.

Mr. COCHRAN. Fine.

Senator BAUCUS. I will guarantee that.

Mr. COCHRAN. So do I.

Senator BAUCUS. That is going to be a condition. That is going to be a condition. You spend some time up there, so you know what is going on. It is just so bad.

Anyway, will you commit to completing a rigorous investigation as to why EPA never declared a public health emergency?

Mr. COCHRAN. Senator, when I get in the job, I promise I am going to take a look at everything that is going on in Libby. I don't know if there is something already underway as far as an inves-

tigation. I look forward to working with the Committee and with you and your office.

Senator BAUCUS. I asked a different question. Will you commit to complete a rigorous investigation as to why Libby was never declared a public health emergency? Will you, as IG, make that commitment and declaration here today now?

Mr. COCHRAN. I will certainly take a long look at it, Senator, and I can commit to that.

Senator BAUCUS. I said—OK, here are the words. You, Inspector General, complete a rigorous investigation, not anybody else, you, into why EPA never declared a public health emergency. I want you to dig into it, get to the bottom of it, you personally, IG, if you are the IG. You may not be the IG. But if you are the IG, will you make that public, solid, firm commitment here today that you will do that?

Mr. COCHRAN. I will make the commitment to do everything possible to uncover what is going on in Libby and take care of that situation.

Senator BAUCUS. No, that is not the question I asked. Let me restate the question. Will you commit to complete a rigorous investigation as to why the EPA never declared a public health emergency, never declared a public health emergency? Will you conduct a rigorous investigation as to why that declaration never occurred?

Mr. COCHRAN. Yes, I will.

Senator BAUCUS. You will do that?

Mr. COCHRAN. Yes, I will.

Senator BAUCUS. Thank you.

Senator BOXER. Senator, if you would like to stay for another round.

Senator BAUCUS. My time has expired.

Senator BOXER. Thank you.

Senator Craig.

Senator CRAIG. Mr. Cochran, first and foremost, thank you very much for allowing yourself to be nominated to this very important position.

The Senator from Montana and I share some very common ground. He has a Superfund site, I have a large Superfund site. It is old mine legacy, what we know now we didn't know 100 years ago or 50 years ago, but we know it now. A very large chunk, in fact, one of the largest Superfund sites in the Nation, is in the great old Coeur d'Alene mining district of north Idaho. His was asbestos, mine was lead. We have worked our way through a decade of cleanup.

I have constantly been on EPA, along with other agencies associated, to make sure it got done right and thoroughly, and I don't blame the Senator from Montana for pursuing this. You have to, you must. Not only because of the legacy that must be cleaned up, if those communities are ever to experience economic and human vitality again, but also those who in a very innocent way were damaged, injured, or lost their lives as a result of it. We now know a great deal more about asbestos and lead than we ever did before, and obviously, from what we know now, this Country, our Government is doing everything it can to make sure that it is not allowed

into the mainstream of human association and a lot of other reasons.

So I am pleased that the Senator from Montana is pursuing what he is pursuing. If there are still outstanding legal issues, and I don't know that of Libby, then obviously there are difficulties. There were some for a time in Idaho, in which you pressed but could not legitimately get information, because there was a legal process underway. But I simply know of Libby, I don't know the details of it. But we share a similar kind of environment.

Let me ask you these questions, because I think it is important that we understand your broad, along with your specific, capability. When you were at the Office of Inspector General at the Department of Commerce, 1990 through 2001, how broad was your auditing experience? I think you listed five different types of audits, and you had done at least four. If you could give us that kind of specificity, I think it would be very important.

There are good audits, if you will, there are positive reports to be made sometimes. Sometimes it is right to tell the right story that is there, that sometimes we just forget about, when an audit is produced and all the right things are found, versus the negatives. Because I think not only does the public and does Congress want to hear what isn't going on right, but I think there is also a responsibility to tell what may be going on right. Would you respond to your ability in those kinds of audit differences?

Mr. COCHRAN. Thank you, Senator. Yes, I conducted audits of all types of agency activities, grantees, contractors, program effectiveness audits, audits to determine if a program was actually working, the compliance audits to determine if they are actually in compliance with laws and regulations. Then typical, you know, some typical bean counter audits that are part of the standard inventory, bank card audits, travel charge card, et cetera. I covered every agency of the Commerce Department.

I would say also that I would look forward to trying to assist the agency in developing best practices. David Williams, the current Postal Service Inspector General, has conducted a number of audits under what he calls value propositions with the agency, and he conducted the last peer review at EPA IG. If confirmed, I will look forward to meeting him and discussing how to take that structure into the EPA IG office.

Senator CRAIG. How comfortable will it be for you to switch subject matter to the management of EPA and associated issues from your current emphasis on counter-terrorism?

Mr. COCHRAN. I have done it before. I don't think it would be difficult. I have done it before. I did it when I moved from the Inspector General's office when I was selected to be the first senior oversight counsel at House Financial Services. I moved into financial institutions, insurance, housing.

Actually, inspectors general switch agencies all the time. David Williams is on his fifth agency. He was the Acting Inspector General at HUD when I was on the committee, while simultaneously serving at the IRS as the Inspector General for the IRS. Also, obviously I am not going to be alone there, I am going to have upwards of 300 dedicated professional people with hundreds of years of experience who have done outstanding work for EPA and the Con-

gress and the taxpayer. I look forward to working with them if confirmed on the matter.

Senator CRAIG. You speak of a variety of audits, audits of efficiency, audits of effectiveness, audits of some might call it bean counting, but effective use of taxpayers' money. How many tax dollars have you saved the American public by being an auditor to date?

Mr. COCHRAN. Well, it is upwards of tens of millions. We try to be careful in the quantification. But for instance, the audit of the National Weather Service office buildings where the contracting officer wasn't controlling the costs, we saved at least \$10 million there. When the Economic Development Administration sold a steel mill that had been in its inventory for years, back to the 1970s, and we found they could release an environmental reserve worth \$61 million for better use in EDA's programs.

NOAA had a series of unliquidated obligations worth \$10 million one year and \$30 million the next year that we helped unlock, instruments that hadn't been liquidated for upwards of 15 years and they could use that for other purposes. So it is a lot of money.

Senator CRAIG. Madam Chairman, one more question, if I may?

Senator BOXER. Yes.

Senator CRAIG. As an inspector general, and you are an interesting and extremely important group of people across the system of our Government, because we oftentimes refer to the work done or not done through the offices of the inspectors general of the different agencies. It is a basis from which chairmen, ranking members, all members of the Senate and the Congress look for information as to what an agency is or is not doing appropriately.

Do you have an inspector general or someone who, in that line of work, current or retired that you view as the model, the kind of person you see yourself being in a role at EPA?

Mr. COCHRAN. I already mentioned David Williams, who has been very effective with a number of agencies. I was very impressed with the way Glenn Fine at Justice and the FBI director handled that very sensitive national security letter audit in which you had Mr. Fine release the audit and then the next day the director of the FBI sits in front of open microphones and says, I didn't do this, I didn't do this, and I promise to do this. That takes weeks, months of constant communication and agreement toward the findings and recommendations. That was a great example.

I worked with Sherman Funk years ago at the Commerce Department and Jeff Rush and Gaston Giani, when they were at the Treasury and FDIC, respectively, and I was on the committee. I worked with Democratic staff on the committee to start a number of audits and special projects for Congress, and with the GAO also.

Senator CRAIG. Thank you very much, Andrew.

Mr. COCHRAN. Thank you, Senator.

Senator CRAIG. Madam Chairman, thank you.

Senator BOXER. Thank you, Senator Craig.

Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

Mr. Cochran, I mentioned the Federalist Society and your affiliation there. Could you describe their attitudes about environmental

programs? They are opposed to larger parts in Government, et cetera. How do they portray those?

Mr. COCHRAN. Senator, I have been on the executive committee of the financial services and e-commerce practice group. There are different practice groups. Honestly, I haven't paid any attention to the environmental group. I have been just shoehorned in there. What we have talked about is State versus Federal regulation of financial services, financial institutions, the proper role of attorneys general and governors of State and, for instance, New York State Banking Commission, and financial institutions.

So I haven't really touched the environmental part of the Federalist Society.

Senator LAUTENBERG. Thanks very much. I find your statement a little surprising, and obviously you are a person with a lot of experience. But not to be looking at what the organization's principles are as opposed to the finances, as contrasted to the interest in the financial side, I think is what has gotten a lot of corporate America into serious problems, looking at the balance sheet and the financial statements, but not at the purpose, at the mission.

I would ask you to take a look and send me a note about what their policies are, so that we both have a clear idea what they are, and that—and I won't ask you to—I will reserve the opportunity to ask further questions when I get that information.

How about whistleblowers? Do you think they are an important source of information for inspectors general?

Mr. COCHRAN. Yes, they are, they have been very important. Actually, the North Pacific audit started with a letter from the outside, an outside interest group with all the pertinent facts we needed to start that audit. If it hadn't been for that, I doubt we would have done that very sensitive audit.

Senator LAUTENBERG. So you would welcome that source of information, and make sure that these people are protected from re-cremination?

Mr. COCHRAN. Certainly. Congress and the Executive Branch, I believe, have agreed recently to provide additional protections. If they have done that, that is fine. I worked with whistleblowers at the Commerce Department Inspector General's office all the time.

Senator LAUTENBERG. We have a situation in New Jersey that I think if you go through the 50 States, probably the District as well, you can find situations that are seriously neglected by no attention from EPA or poor decisions on their part. We have one at a place called Ringwood, New Jersey. I don't know whether you saw the recent decision to relieve Ford of any of its responsibility for the dumping of paint and chemicals all over the area in a little town in New Jersey that has a population of Native Americans. I have been up there several times and looked at the material that they have left lying around.

Now, would a decision like that come in any way before the IG to see whether or not that decision is appropriately made?

Mr. COCHRAN. Well, I would take a look, again, it is hard to speak on this side of the table. But if the current inventory, and I noticed there is a new Inspector General report on Ringwood, and see where that is headed and resolve the recommendations in conjunction with the agency and pursue that.

Senator LAUTENBERG. What we see now happening is that the agency made decisions that didn't square with the reality. For instance, post-9/11, the agency made a decision, made a statement that said people were not in danger as a result of the aftermath of 9/11, the exposure to poor air quality, the building materials, et cetera. We are finding now that there are people, 6 years later, who have serious illnesses, life debilitating conditions. At what point does the IG look at something like that and say, challenge a decision that is made?

Mr. COCHRAN. Senator, I want to address that first by telling you that the issue has always been close to my heart, because of my visit to Ground Zero with a group of Congressional staff in 2001, November 2001, where I stood on that small wooden platform at the edge of the debris field. I can't forget the above-ground wreckage and the smoldering ruins from below, the numbed faces of the rescue workers. They had to hose down the area constantly, wear the masks. I will remember the odor and the smell forever.

So I have followed that issue on the counter-terrorism blog and as a consultant. It is one of the things that motivates my work for 9/11 victims here on the Hill.

Senator LAUTENBERG. Well, I would hope that there is a specific action that can be taken to look at these things. I don't know when a challenge is made to an important decision like that, but obviously the wrong decision. There can't be a non-consequential position on that and say, okay, someone decided that everything was going to be all right, and it was far off the mark.

Again, I don't want to extend your authority, please note that if I do here, as the IG. But is there a point in time when appeals are made and who would review something like that? If there was an appeal to EPA that said, no, you're wrong, there are lots of sick people out there and we ought to take some responsibility for it?

Mr. COCHRAN. I don't know the exact answer to that question, Senator. As management oversight, I am not an advocate for policy, but that is something that is an issue, of course, that will arise if I am confirmed.

Senator LAUTENBERG. Madam Chairman, I will have some other questions for Mr. Cochran. There is one thing if I may take a couple of seconds more.

There is strong evidence that EPA, the Department of Transportation and the White House coordinated a lobbying effort against the Pavely Waiver. This waiver would allow California and other States to have decreased emissions from their cars and not be overridden by the Federal Government.

Is it appropriate for EPA to be involved in a lobbying campaign to defeat a waiver like this?

Mr. COCHRAN. Senator, I have read something about that, but that is something that if I am confirmed, and I arrive at the agency and that is still an issue, I will look forward to working with EPA and the Committee on that. I can't make a judgment on it at this time. If it is still an issue when I—

Senator LAUTENBERG. It is an issue and a question of preemption that has to be clearly examined, Madam Chairman.

Mr. COCHRAN. It could be, if the Committee requested, I don't know if the Committee requested an audit of the waiver decision

process, if that has already been done, or if the office has already started it. I don't know.

Senator LAUTENBERG. I would ask that you also take note of that and get back to me, please. Thank you.

Senator BOXER. I think that was very important. I am going to pick up on it.

Senator Isakson.

Senator ISAKSON. Thank you, Madam Chairman. Thank you, Mr. Cochran, for your willingness to serve.

I don't like hypothetical questions, but sometimes it is impossible in your position to answer a historical question, in a hypothetical circumstance. But let me ask you a hypothetical question, in your responsibilities, if you are appointed. If in the course of audit or inspection or investigation within the Department you came upon information that you clearly indicated there may be an impropriety within the management of the Department, what action would you take? Where would you go?

Mr. COCHRAN. I would go to the counsel to the Inspector General and the experienced, dedicated professionals in the Office of Investigations. Also, what is the recommendation, what are the facts. It is not going to matter to me that there is a senior official implicated. Honestly, I have been involved already in audits in which senior officials were frankly, embarrassed. It didn't change any of the audit findings or recommendations.

Senator ISAKSON. That office is an office that serves all IGs, is that correct?

Mr. COCHRAN. Well, there is a counsel to the IG in the EPA IG office. Of course, the EPA IG has a number of dedicated outstanding professional investigators.

So that is where the recommendation is going to come from on cases. I am not going to be driven by somebody's office title.

Senator ISAKSON. You were in the House Financial Services Committee, I take it, during the Sarbanes-Oxley years?

Mr. COCHRAN. For better or for worse, yes.

Senator ISAKSON. You were there specifically during the investigations of the accounting scandals that resolved around WorldCom, Global Crossing and Enron, is that correct?

Mr. COCHRAN. Yes, sir.

Senator ISAKSON. You were there when Sarbanes-Oxley became law, first Sarbanes' initiation here and then Oxley's iterations in the House and the final law, is that correct?

Mr. COCHRAN. Yes, sir.

Senator ISAKSON. Nobody has ever accused that of being anything other than one of the more effective, far-reaching pieces of legislation in the history of the Congress of the United States of America, I would think.

Mr. COCHRAN. Yes, sir, thank you. The investigations involved stepping on a lot of toes in the business world, I might add.

Senator ISAKSON. A lot of connected toes in the business world.

Mr. COCHRAN. Yes, sir.

Senator ISAKSON. You made reference, you say you also started and still direct one of the premier online centers in the world for the dissemination of independent and objective terrorism/counter-

terrorism news and expert analysis. Is that private or is that part of your function in the Government?

Mr. COCHRAN. I started that on January 5, 2005, actually I started in the consulting business in 2004. By the end of 2004, I saw a need in the marketplace for a single multi-expert Web site dedicated solely to counter-terrorism facts and news and analysis.

Senator ISAKSON. So it is private?

Mr. COCHRAN. It is private.

Senator ISAKSON. But nothing in your public responsibilities has been merged with that private responsibility, has it?

Mr. COCHRAN. No. No, sir.

Senator ISAKSON. Last question. You made reference in your testimony, you worked in partnership with Democratic committee staff to ask GAO and the Inspectors General of Treasury, HUD and the financial regulators to conduct audits and report to Congress on issues such as the response of the regulators and financial markets to 9/11. Would you expand on that?

Mr. COCHRAN. Soon after the attacks, the committee generated requests to GAO for a comprehensive series of audits and reports. I worked to basically kind of slice that bologna up into smaller pieces so it could be done more quickly. For instance, I think most Americans don't realize the Herculean effort it took to reconstruct the technology of lower Manhattan, how the markets and the telecom companies and the Federal Reserve System did a heroic job to do that. The effort out of that to build a stronger critical infrastructure protection scheme, that is what we asked GAO and the financial regulators to report on.

Senator ISAKSON. When you made reference to working in partnership with the Democratic committee staff, was that your initiation with them or their initiation with you to get involved in that?

Mr. COCHRAN. We worked together often on the Financial Services Committee. I had a co-counsel for oversight matters, and we worked together all the time.

Senator ISAKSON. You worked as a team?

Mr. COCHRAN. It is close to a team. We helped each other provide information and issues and prepare questions.

Senator ISAKSON. Thank you very much.

Mr. COCHRAN. Thank you.

Senator BOXER. Thank you.

I don't know exactly where to start, but I will ask you this. Mr. Cochran, how many program evaluations, not audits, but evaluations of environmental programs have you led in your professional career?

Mr. COCHRAN. Madam Chairman, I had a copy of the North Pacific audit in a box at home. All those contents, it is not online anywhere, unfortunately, and I couldn't find out exactly how many audits or evaluations of any type I did over that 11-year period.

Senator BOXER. No, no, no. I am just saying environmental programs.

Mr. COCHRAN. Well, at least one on the Council and two audits of the use of Superfund monies by Commerce Department programs. Then some other Weather Service audits.

Senator BOXER. But I am talking about not audits, but evaluations of environmental programs, whether the environmental pro-

gram was meeting its goals, was being enforced, that there was no corruption, that kind of thing. How many?

Mr. COCHRAN. At least the one.

Senator BOXER. The one on?

Mr. COCHRAN. On the North Pacific Fishery Management Council.

Senator BOXER. OK, one. OK. I want to reiterate Senator Lautenberg's question. Do you believe it is appropriate for EPA to be involved in a lobbying campaign to defeat the California waiver?

Mr. COCHRAN. It all comes down to what you define as a lobbying campaign. I don't know exactly what they have done.

Senator BOXER. Well, it is in the record. There have been hearings in the House that there were phone calls made from the Department of Transportation to members of Congress that the EPA was involved in it. So direct phone calls to members of Congress, telling them to be against the California waiver. Do you believe it is appropriate for the EPA to involve in such a lobbying campaign to defeat the waiver?

Mr. COCHRAN. It is improper. I know it is improper for agency officials to lobby, and then there is the provision of information. A matter like that should be taken up within the investigatory structure of transportation, of DOT.

Senator BOXER. Well, this is EPA was involved in it.

Mr. COCHRAN. Or EPA, if they are involved.

Senator BOXER. So you don't think it is appropriate for the EPA to have been involved in a lobbying campaign to defeat the California waiver?

Mr. COCHRAN. If the facts meet the requirements in law for agency, for the improper lobbying of the Hill by agency officials, that is a matter for EPA's investigators to take up.

Senator BOXER. Well, if you are the IG, do you commit to me that you would launch an investigation into this improper lobbying by EPA?

Mr. COCHRAN. I will take a look at it, yes, Madam Chairman. Yes, I will.

Senator BOXER. You commit to me that you will launch an investigation into the involvement of EPA in a lobbying campaign to defeat the California waiver, yes or no?

Mr. COCHRAN. Yes, I will.

Senator BOXER. OK. I wanted to ask you, I was looking at your resume, which is very interesting, and you have had a lot of interesting experiences. I wanted to go over a couple of these items on here.

What is the Virginia Ridge Foundation?

Mr. COCHRAN. It is just a girls club that my wife started to provide cooking classes for young girls, based on something, and that friends ran in Maryland. We never did anything with it, honestly, but the Committee form asked me for all the memberships.

Senator BOXER. Because you are still president of it.

Mr. COCHRAN. Yes, I know, but we are going to get rid of it.

Senator BOXER. OK, got you. What is the Counter-Terrorism Foundation?

Mr. COCHRAN. The Counter-Terrorism Foundation is the vehicle for helping to fund and manage the counter-terrorism blog. It has

tax-exempt status. It was started last year. I am one of the board members. There are five other board members.

Senator BOXER. What is your experience in counter-terrorism?

Mr. COCHRAN. Well, I started into the issue with the House Financial Services Committee. I was very active in conducting terrorist financing investigations for the 3 years I was there. Then when I came out, after representing companies and some non-profit organizations, and, well, not really organizations, one expert, Steve Emerson, an investigative project. Then in 2005, started representing the Motley Rice law firm on behalf of its terrorism victims who were seeking justice in court.

Senator BOXER. So I assume that if you get this job, you won't be doing that any more?

Mr. COCHRAN. That is right. I would give it all up. I have signed an ethics agreement on that already.

Senator BOXER. Right. OK. Do you know Steven Johnson?

Mr. COCHRAN. I only met him once. I had the one interview with him in April and that was it.

Senator BOXER. An interview about?

Mr. COCHRAN. About the job. It was just kind of a standard job interview and the situation, the White House called, I talked with them, I went to EPA, met with them. That was it. I didn't know him before and I haven't seen him since.

Senator BOXER. I am sorry, say that again?

Mr. COCHRAN. I didn't know him before and I haven't seen him since.

Senator BOXER. Yes, but you were interviewed by Steven Johnson for the job of Inspector General?

Mr. COCHRAN. Yes, it is standard procedure.

Senator BOXER. I am just asking questions.

Mr. COCHRAN. Yes.

Senator BOXER. You thanked him in your opening statement because he is supporting your nomination, is that where that is?

Mr. COCHRAN. Yes.

Senator BOXER. Now, Mr. Cochran, when working for GAGE, did you ever perform any work for the telecommunications company Vonage?

Mr. COCHRAN. No, I did not.

Senator BOXER. Now, Mr. Cochran, news reports indicate that Federal attorneys may be investigating GAGE for potential violations of Federal law when lobbying for organizations that receive Federal money through earmarks. Are you aware of that investigation?

Mr. COCHRAN. No. I have never been asked any question about that, and I don't know to what organizations they would be referring.

Senator BOXER. OK. Did you ever lobby any members of the Senate in your position at GAGE or their staffs? Did you ever phone them about anything?

Mr. COCHRAN. Well, sure. I have lobbied, I have—

Senator BOXER. What would that be?

Mr. COCHRAN. I met with numerous members and staff of the Senate to, for the concerns of clients.

Senator BOXER. Give us an example, please. What lobbying did you do toward, for example, members of this Committee?

Mr. COCHRAN. OK. Well, not members of this Committee, I don't think. For instance, there is a bill on the Floor this week which would authorize national subpoena authority by both sides in the 9/11 aviation trials. I worked with Senate Judiciary staff on that. It is now a bipartisan bill with support from both sides of the aisle.

Senator BOXER. So could you make available for this Committee the members or staff of the Senate that you have lobbied and what you have lobbied them on?

Mr. COCHRAN. I can.

Senator BOXER. Thank you very much.

Mr. Cochran, do you think there is a difference between conducting an audit and evaluating a program?

Mr. COCHRAN. Well, as I said, the term performance audit, really I think there might be a misunderstanding. It is really a broad term. So it can include a program evaluation, and I think people see the word audit and think numbers. It doesn't have to be numbers in the Inspector General context. So it can include program evaluations.

Now, in the Inspector General world, there are offices of program evaluations that do quicker turnaround inspections or program evaluations that meet different types of standards. But I conducted all types.

Senator BOXER. Well, EPA and Department of Commerce say that there is a definition for what evaluators do. Do you know what that is?

Mr. COCHRAN. Somewhat. But it differs. I read that, I don't have it committed to memory.

Senator BOXER. OK. Well, I will say, evaluators plan and conduct comprehensive reviews of programs and use design and methodology strategies that maximize innovation, identify new issues and focus on increased understanding of programs. So that is why I keep asking, how many program evaluations, not audits, but evaluations of environmental programs have you led in your career. You said one you could think of.

OK. All right. I am going to—Senator BAUCUS.

Senator BAUCUS. Thank you, Madam Chairman.

Mr. Cochran, several publications have reported that your current employer, GAGE LLC, is under investigation by the U.S. Attorney's office for questionable financial dealings. At issue is whether or not a GAGE client, a Montana-based alliance, used appropriate dollars to pay GAGE for lobbying services. I don't presume to know whether these accusations are true, but they are troubling.

So as Inspector General, if you are, would you be the conscience of the agency, that is, would you agree to provide me with a description of the nature of all the work you have conducted for your clients?

Mr. COCHRAN. I am sorry, I didn't quite catch that.

Senator BAUCUS. The nature. I mean, in addition to a list of the clients, the nature of the work that you did for each of those clients.

Mr. COCHRAN. I didn't do any work for Enza. My work at GAGE started September 1, 2005 as a result of a merger. Quite honestly, I have never done anything for any Montana-based client. So I will provide—

Senator BAUCUS. You began when? What date?

Mr. COCHRAN. September 1, 2005. When I came off the Hill, January 1, 2004, I worked for a firm named Public Policy Partners. We merged with GAGE September 1, 2005.

Senator BAUCUS. But there are reports that the U.S. Attorney's office is looking into improper financial dealings with GAGE.

Mr. COCHRAN. No one has asked me any questions. My life is an open book. I have just never—

Senator BAUCUS. Are you aware of this investigation?

Mr. COCHRAN. I have read news reports. But I have learned in 24 years in town to not take as gospel every news report of every possible investigation.

Senator BAUCUS. Have there been any discussions in the firm about this?

Mr. COCHRAN. I didn't actually, I mean, I am trying to remember a conversation. There may have been, Senator, I just don't recall, because since I didn't do any work for Enza—I have a special niche, the Homeland Security/Counter-Terrorism niche. That has been my niche at the firm since I came over, and I have just never done any work for a Montana-based client.

Senator BAUCUS. I am sorry, the home what?

Mr. COCHRAN. Homeland Security and Counter-Terrorism.

Senator BAUCUS. I am curious, what does that have to do with the Inspector General for an environmental agency? That is very different, isn't it?

Mr. COCHRAN. Well, it is different, except that the standards under which every Inspector General operates are the same. Basically, I would be switching subjects.

Senator BAUCUS. Well, there is something to that, but again, to some degree, I don't how to state this, if you want to have a heart transplant, you go to a cardiac surgeon, you go to somebody who knows the subject. If you want to have a really good IG in the environmental area, I suppose it is different than the IG at the Defense Department, might be different than the IG at the Agriculture Department. Agriculture is a little bit different from Defense, different from environmental issues.

Mr. COCHRAN. The Inspector General Act envisions a cadre of trained professional evaluators, auditors, inspectors general. That is why so many of them have moved around from agency to agency.

Senator BAUCUS. But it sounds a little bit like just the bean counter game, just looking at the financials. Irrespective of policy.

Mr. COCHRAN. But there is still a group of up to 300 dedicated professionals, many of whom have been there for years and years. So the Inspector General doesn't plan or conduct the audit work by himself. He has a strategic vision and a mind set, and he concludes the audits and the reports. But the professionals are right there behind him all the time.

Senator BAUCUS. But I think EPA's Inspector General, who is more in the nature of a whistleblower, found some things that were not quite right.

Mr. COCHRAN. All Inspectors General eventually become whistleblowers, and investigations are an important part of all offices of inspectors general.

Senator BAUCUS. It is also true there are some IGs who I think are pretty tepid, lapdogs of agencies. That is also true. So how are we going to figure out what camp you are in? How do we know what kind of a person you really are?

Mr. COCHRAN. My consulting practice at this point is really heavily oriented towards helping terrorism victims. Honestly, there are companies and countries who won't hire me because of the clients I have. One of my main clients is a trial litigation firm that has pursued the InterBank in civil suit, pursued airlines and airports over aviation security on 9/11. I think my career actually screams objectivity and independence, both in private practice, on the Hill, on the House Financial Services Committee, and in the Inspector General's office.

Senator BAUCUS. What are your views about climate change? How aggressively should the United States move to address climate change issues?

Mr. COCHRAN. Inspectors General are not a policy—

Senator BAUCUS. Tell us your personal view. You are a citizen, Mr. Andrew Cochran. You are an American citizen. You read the newspapers, you have a personal view. What is it?

Mr. COCHRAN. It is a very important issue. It needs to be addressed. If confirmed as Inspector General, whatever programs and policies—

Senator BAUCUS. I am not talking about that. I am just talking about you as a—I am trying to figure out who you are. I am trying to figure out what your inclination is.

Mr. COCHRAN. I am trying not to bias my independence, bias one way or another towards one particular view or another. In case I am confirmed, I just want to assure you that no matter what the issue, if a policy is put in place or a program at EPA, that I will faithfully, independently, objectively, assertively determine whether that policy is being carried out—

Senator BAUCUS. Yes, but there is a moral dimension here, like what is right and what is wrong, which is independent often of the numbers, whether the balance sheet balances, whether—you know what I am getting at?

Mr. COCHRAN. Sure, and it wouldn't be confined to just whether the numbers balance. It would be whether the program is being effectively implemented, whatever that program is.

Senator BAUCUS. So if you were to see, your view, that the EPA had not conducted toxicity studies, at the same time EPA was putting out a pamphlet saying to people in Libby, Montana that these levels are OK, what would you do about that at that time? Anything? Looks like the numbers are OK.

Mr. COCHRAN. Offices of Inspector develop annual plans and then leave room for audits and program evaluations where there needs to be a quick turnaround, such as the Libby, Montana evaluation done in the last quarter of last year. That would be something I would talk with the professionals at the Inspector General's office and agency management and the Congress, and outside interest groups, all of which is invited and urged upon by the auditing

standards, to see if there is a way to conduct a timely program evaluation with dedicated, talented, qualified professionals.

Senator BAUCUS. If you are named IG, how long is your term?

Mr. COCHRAN. There is no set term in law right now, although there are proposals to change that. It is subject to removal by the President. It would at this point continue into the next Administration.

Senator BAUCUS. It would continue?

Mr. COCHRAN. Yes, sir.

Senator BAUCUS. So are you saying it would continue indefinitely until you were either removed or resigned?

Mr. COCHRAN. It is not just an indefinite term. It is at the pleasure of the President. That is what the IG Act stipulates at this time.

Senator BAUCUS. Does that mean that the next President could just find a new IG?

Mr. COCHRAN. Sure.

Senator BAUCUS. Because my understanding is, something says a 5-year term, that it is difficult within a 5-year period, anyway, for a new President to remove an IG. Is there anything to that?

Mr. COCHRAN. I don't know. I have never heard of that.

Senator BAUCUS. So as far as you are concerned, to your knowledge, if you are confirmed, you are there solely at the pleasure of the President?

Mr. COCHRAN. That is my understanding of the law at this time.

Senator BAUCUS. Madam Chairman, I think our understanding needs to be cleared up a little bit. I am not convinced that that is exactly the law in this case. But I appreciate it.

Thank you, Mr. Cochran. I appreciate the time you have taken.

Senator BOXER. Senator Craig?

Senator CRAIG. I don't know that I have anything additional. I would be happy to yield to Senator Alexander for any questions.

Senator BOXER. My understanding is Senator Alexander wants to introduce a member of the next panel, is that correct?

Senator ALEXANDER. I will be glad to come back and do that.

Senator BOXER. We are at the end here. I have about five minutes of questions, and I don't know if anyone—Senator Isakson doesn't, and I don't think Senator Craig does.

Senator ALEXANDER. I will be glad to wait.

Senator BOXER. Senator Craig, did you want to—

Senator CRAIG. Well, just the last question that I thought Senator Baucus asked about not only the qualifications but the terms of an Inspector General. I didn't know there was a question there. I am now curious, because I thought that Inspectors General were appointed by Presidents and served at the pleasure of Presidents and that the term was not a fixed term.

Mr. COCHRAN. Correct.

Senator CRAIG. It could live or die with the coming of a new President. Is that your understanding?

Mr. COCHRAN. That is my understanding.

Senator CRAIG. OK. Well, it was mine, but if there is a gray area, we need to know about it.

With that, I have no further question, Madam Chairman. Thank you.

Senator BOXER. I have just a couple. How long did your meeting with Mr. Johnson last in April when you had that meeting?

Mr. COCHRAN. Half an hour, maybe half an hour.

Senator BOXER. What were his questions that he asked you?

Mr. COCHRAN. He asked me about background and why I want the job and how I see the mix of, how I see the communication flow with the Inspector General's office. I said with respect to audits and program evaluations, that should be constant and continuous. I cited the Glenn Fine audit of national security letters.

Then investigations of course are private, secret. He was fine with that. There was no attempt to influence the direction of the office or the hiring practices of the office whatsoever.

Senator BOXER. OK, I wasn't asking you that. But you had a 30 minute meeting. What else did he ask you about?

Mr. COCHRAN. Background, what did I do, standard type of job interview, actually.

Senator BOXER. Did he mention any particular ongoing issues that were happening now at the Department?

Mr. COCHRAN. No.

Senator BOXER. OK. We now have an e-mail that says very clearly that Steven Johnson gave his OK to DOT to lobby members of Congress. Do you think that is allowed by law?

Mr. COCHRAN. I don't know, because I am not an attorney in that area. I think that is, that requires a legal interpretation of legal counsel, and to take a look at that.

Senator BOXER. Well, I would call to your attention Chapter 93, Section 1913 that says, "No part of the money appropriated by any enactment of Congress shall, in the express authorization by Congress, be used," and it lists a number of things, and it talks to influence, in any manner, a member of Congress. Is that clear to you?

Mr. COCHRAN. That is the first time I have seen that, but it is—

Senator BOXER. It is the first you have ever seen this and you are nominated for Inspector General? You were, worked in the Inspector General's office? I am a little stunned at that.

So given the fact that I have an e-mail here, and I am picking up on Senator Lautenberg's line of questioning on the waiver, that we have an e-mail that shows that a CEQ employee wrote, "It's OK for Secretary of Transportation to make calls, I spoke with Steve Johnson this morning." So I am asking you again, now that you know this law and you know we have the e-mails, do you think this is against the law, what happened there?

Mr. COCHRAN. Well, I think counsel to the IG or some other counsel would have to look at the case law on that, and whether that e-mail fits that kind of description.

Senator BOXER. OK. Well, I have some concerns here. I think you are a nice person, believe me, it is nothing personal. But it took three times for you to agree to do something that Senator Baucus asked, which I think is a no-brainer to look into, this horrific situation at Libby. You danced around it and finally said yes. It took three proddings from me and you don't know about—I don't know. I am just, I am open, I am not closed, but I am concerned.

Senator Lautenberg, I am sorry. I didn't realize that you had come back. Do you have any final questions?

Senator LAUTENBERG. I want to be here for the next panel.

Senator BOXER. OK. Mr. Cochran, before you leave, I have to ask you certain questions, I am sorry, in order for this Committee and other committees to exercise the legislative and oversight responsibilities, it is important that committees of Congress are able to receive testimony, briefings and other communications of information. Do you agree, if confirmed as Inspector General of the EPA, to appear before this Committee or designated members of this Committee and other appropriate committees of the Congress and provide information subject to appropriate and necessary security protection with respect to your responsibilities as Inspector General of the EPA?

Mr. COCHRAN. Yes.

Senator BOXER. Do you agree when asked to give your personal views, even if those views differ from the Administration in office at the time?

Mr. COCHRAN. Yes.

Senator BOXER. Do you agree to ensure that testimony, briefings, documents and electronic and other forms of communication of information are provided to this Committee and its staff and other appropriate committees in a timely manner?

Mr. COCHRAN. Yes.

Senator BOXER. Do you know of any matters which you may or may not have disclosed that might place you in a conflict of interest if you are confirmed as Inspector General of EPA?

Mr. COCHRAN. No.

Senator BOXER. OK. We thank you very much. Appreciate your testimony.

We have asked the next panel to come up. Actually, we are going to ask all the others to come up, right, at this time. John Bresland, Russell Shearer, Thomas Gilliland, William Graves, Susan Richardson Williams. We welcome all of you to the table. While we are doing that, we are very happy to give Senator Alexander as much time as he may wish to make his statement. Senator Alexander.

Senator ALEXANDER. Thank you for your courtesy, Madam Chairman.

I thank you for your expeditious hearings on Tom Gilliland's nomination and the renomination of Bishop Graves and Susan Williams.

Senator BOXER. Senator, if you would yield, I erred. Those last two are not here today. But they have filed their papers. So this is a hearing on them as well. Please proceed.

Senator ALEXANDER. The reason that is so important is the Tennessee Valley Authority is the largest utility. It is a unique agency. It has the capacity for doing some things that are consistent with what this Committee is trying to do.

For example, in its strategic plan, it is thinking about how to reduce carbon in its coal plants, how to expand nuclear power, which is carbon free, it is exploring geothermal and solar power, which are the more appropriate renewable energies in our part of the world. Because of the new governance structure that the Congress has created for the Tennessee Valley Authority, for the first time

it has a modern governance structure. The President and the Congress have appointed really talented men and women to the board and they are moving in a very strong direction to create a charter for reliable, clean, large amounts of reliable, clean energy for the Tennessee Valley.

Now, it is in that that I am very pleased the President has nominated Tom Gilliland. I have heard a good deal about him from Senator Isakson, who knows his reputation. But the strength, Madam Chairman, that he brings to the TVA Board to me seems to be one of legal, business and audit background. This, as I said, is the largest utility. He has extensive experience with audits. TVA now has the responsibility, as other agencies, as public institutions do, of letting the sun shine in on their business operations. Mr. Gilliland is committed to that.

So I simply wanted to come here today and express my support for his nomination and to say that I am convinced that if he should be confirmed, which I hope he is, he will add business and audit strength to an already strong Board. I thank you for the time.

Senator BOXER. Thank you so much, Senator. So I will give up my place here to Senator Lautenberg, because I know he has some time problems. So please go ahead, Senator.

Senator LAUTENBERG. Thank you very much, Madam Chairman.

I do have another appointment. This is the Chemical Safety Board appointment, so it is critical. I wanted to express my appreciation for Mr. Bresland's appearing. You identified him as a New Jersey person. We welcome that affiliation, I promise you. But he also has another redeeming quality, he spent a lot of years in Ireland. Therefore, he comes with not only the knowledge that he has gained thoroughly over his career but also has a certain charm that goes with the individual. I am pleased to welcome you here, and all of you.

I am going to, Madam Chairman, ask that questions be submitted and that we hold the record open. New Jersey has a very active interest, as we have across the Country, in our Chemical Safety Board. There is so much exposure in the State of New Jersey, there is a 2-mile stretch identified by the FBI as the most inviting stretch for a terrorist attack. It is described as the most dangerous 2 miles, from the Newark Liberty Airport to the harbor of New Jersey and New York. There are chemical facilities galore there. Heaven forbid that if there was an attack on those facilities, 12 million people would be at risk.

The Chemical Safety Board has enormous responsibility in terms of making sure that the security measures that are taken are serious, stringent enough, Madam Chairman, and well financed enough, domestic security, so that we can give assistance to the communities and the companies where necessary to make sure that they are properly protected. I welcome the others of you here as well. But again, I will reserve the time for questions to be submitted in writing.

Thank you very much.

Senator BOXER. Senator Lautenberg, thank you. I just need to say that you have been a true leader on this issue of chemical safety. I remember when Senator Corzine was here, the two of you teamed up and worked very well on this, and you have carried the

ball forward with Senator Menendez. So I just want to thank you very much.

Senator do you have any comments, or should we just go to the testimony?

Senator ISAKSON. In the interest of their time, let's just go to the testimony. But can I do one thing?

Senator BOXER. You can.

Senator ISAKSON. There are two lovely ladies here I meant to introduce before. First is Candy. Candy, would you stand up? Candy Gilliland, this is Tom Gilliland's wife. Next is a lady that is very familiar to all of us, Emily Reynolds. Emily was Secretary of the Senate and now serves as Secretary of the TVA Board.

Senator BOXER. Excellent. Thank you for that.

OK, gentlemen. I am sure you are just thrilled and delighted, after you sat through the other witness, to take your place in the hot seats. We really do welcome you, and I assure you your experience will be a bit different.

We will start with Mr. Bresland, and again, thank you all for agreeing to hold these positions. Go ahead, sir.

STATEMENT OF JOHN S. BRESLAND, NOMINEE FOR BOARD MEMBER AND CHAIRMAN OF THE U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Mr. BRESLAND. Thank you, Chairman Boxer and distinguished members of the Committee.

My name is John Bresland. I am honored to appear before you today to describe my background and to express my strong commitment to carrying on the important life-saving work of the Chemical Safety Board.

With me this morning is my wife, Beth, who is sitting over here. She is an oncology social worker at Sibley Memorial Hospital here in Washington, D.C.

It is also an honor to have Senator Lautenberg present at the hearing this morning. We all salute the Senator's extraordinary leadership on the issue of chemical safety and his role in establishing the CSB in 1990.

In 2002, the Senate confirmed me as a CSB Board member. During my 5-year term, I had the privilege of working with Carolyn Merritt, the Board Chairman, whose 5-year term ended in August. Carolyn did an exceptional job, and I congratulate her for that. Through her efforts and the hard work of the Board members and staff, the productivity and the prominence of the Chemical Safety Board has increased dramatically. The CSB is now known around the world as the preeminent independent agency investigating accidents in chemical plants and oil refineries.

I am convinced that as a result of our investigations and safety recommendations, lives have been saved and communities have been protected. I am proud to have been part of Carolyn's legacy and would hope to continue it and build on it should I be confirmed.

I believe that my 35 years of experience in the chemical industry and 5 years at the CSB make me uniquely qualified to serve as the next chairman. During my career in industry, I served in high management positions involving responsibility for worker safety

and the environment, including as a chemical plant general manager and as corporate director of risk management for Honeywell.

I am totally committed to the mission of the CSB: to save the lives of workers and to protect the public by conducting truly independent investigations that pull no punches in getting to the root causes of tragic industrial chemical accidents. In my 5 years on the Board, I have strongly supported our investigations staff in producing fair but thorough and tough accident reports with appropriate recommendations to companies, trade organizations, and Government agencies such as EPA and OSHA. As an active Board member, I traveled to many accident sites with the investigation teams to represent the agency and to see first-hand what had happened.

I believe that the CSB's accident investigations, which are independent of any company, industry or government influence, can bring to light serious problems that when corrected will save lives and reduce worker injuries. I have given more than 100 speeches and presentations on the CSB's work to industry groups, labor gatherings and other stakeholders. My message is always the same: you must be committed to safety 100 percent of the time. Accident prevention is the moral thing to do, it is also the only rational business model because chemical plant explosions and fires are so destructive and result in severe economic consequences. Businesses must be good stewards of their workers and good neighbors in their communities.

If confirmed, my goals for the CSB include first, continuing to conduct tough, independent investigations of chemical plant accidents; second, increasing the size and the expertise of our investigative staff; and third, broadening our outreach, especially to smaller businesses and to the emergency preparedness and response communities.

Finally, I fully support the testimony of Chairman Merritt before this Committee in July where she called for improvements to the CSB's authorizing statute, which would strengthen and clarify the Board's investigative authority. These changes are needed to assure the continued quality and speed of the Board's investigations. If confirmed, I look forward to working closely with the Committee on these issues.

In conclusion, it has been a privilege for me to serve on the Chemical Safety Board and to have worked with the talented and dedicated people at the CSB. As a first generation American who had the opportunity to come to the United States in my 20's and became a citizen in 1983, I am deeply honored to have been nominated by the President to serve as a chairman of the Chemical Safety Board. I offer you my integrity, my judgment and my experience.

If confirmed, I commit to work tirelessly to improve the safety of the chemical processing and oil refining industry in the United States. Thank you for the opportunity to appear before you here today.

[The prepared statement of Mr. Bresland follows:]

STATEMENT OF JOHN S. BRESLAND, NOMINATED TO BE A BOARD MEMBER AND
CHAIRMAN OF THE U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

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With me this morning is my wife, Beth, who is an Oncology Social Worker at Sibley Memorial Hospital.

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My goals for the CSB include:

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- Second, increasing the size and expertise of our investigative staff;
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Finally, I fully support the testimony of Chairman Merritt before this Committee in July, where she called for improvements to the CSB authorizing statute which would strengthen and clarify the Board's investigative authority. These changes are needed to assure the continued quality and speed of the Board's investigations. If confirmed, I look forward to working closely with the Committee on these issues.

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I offer you my integrity, my judgment, and my experience.

If confirmed, I commit to work tirelessly to improve the safety of the chemical processing and oil refining industry in the United States. Thank you for the opportunity to appear before you today.

RESPONSE FROM JOHN S. BRESLAND TO ADDITIONAL QUESTIONS
FROM SENATOR SANDERS

Question 1. The Chemical Safety and Hazard Investigations Board plays a critical role in investigating industrial chemical accidents. This continued success is dependent on an effective working relationship with state and local authorities. Concerns have been raised about the CSB's response to previous incidents, especially regarding the CSB's procedures for notifying incident commanders prior to its arrival on scene. What specific steps has the CSB taken to alert incident commanders of its intent to deploy investigators to an incident previous to their arrival?

Response. I agree that the CSB's success is greatly aided by effective working relationships with state and local authorities, including local incident commanders who oversee emergency response activities under the National Incident Management System (NIMS). For the most part, we have established effective working relationships with state and local officials at sites around the country—despite the CSB's relatively short history and limited staffing. States and localities derive substantial benefits from the CSB's independent safety investigations, recommendations, and outreach, which lead to safer chemical facilities and communities around the country. As chairman, I will be fully committed to continuing and growing the CSB's positive working relationships with state and local officials.

As a matter of course prior to deploying any investigative team, we notify:

- Site management
- Corporate management
- Local fire, police, and emergency management, including the incident commander if one has been designated
- Fire marshal, if on scene or expected on scene
- The Occupational Safety and Health Administration (OSHA), if on scene or expected on scene
- The Environmental Protection Agency (EPA), if on the scene or expected, and any EPA on scene coordinator
- The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), if on scene or expected
- The Agency for Toxic Substances and Disease Registry (ATSDR), in the event of off-site consequences
- The Local Emergency Planning Committee (LEPC) chairman or Office of Emergency Management
- The National Transportation Safety Board (NTSB), if the incident involved a ship, barge, railcar, tank truck or pipeline located at a fixed facility
- Other national or regional response teams
- Union(s) representing workers at the facility.

In addition, in cases where we have not have prior dealings with specific state or local fire services, we often contact organizations such as the National Association of State Fire Marshals (NASFM) to help establish positive relationships with relevant officials before our investigators arrive. NASFM has strongly supported the Board's mission, and their recent efforts at facilitating these local contacts have been particularly helpful.

I believe the "concerns" noted in the questions relate to certain claims made in an unsigned, one-page statement distributed by several representatives of the International Association of Fire Chiefs (IAFC) in September 2007, more than 10 months after the CSB's deployment to a major chemical accident site in Danvers, Massachusetts, in November 2006. The CSB has thoroughly refuted those claims in a 16-page letter to the Committee last month, which I include for the record.

Specifically, the CSB letter explains how, prior to the arrival of our investigators, the agency had notified the Massachusetts state fire marshal, the Danvers Fire Department, the EPA, the U.S. Coast Guard,¹ the Danvers town manager, the Danvers director of public health, and the offices of Representative John Tierney, Senator Edward Kennedy, and Senator John Kerry. When the CSB team arrived at the site on November 24, team members promptly approached town officials and the incident commanders (bearing appropriate, signed letters of authority under the Clean Air Act) and described the mission of the agency and the reasons for the deployment. Unfortunately, after all these notifications and contacts had occurred, the CSB was blocked from the accident site for a period of five days.

¹We notified the Coast Guard because that agency was present at the accident site, due to its proximity to a navigable river, and there was concern about a potential impact of firewater runoff on those waters.

Question 2. In Homeland Security Presidential Directive-5, the Administration established a “single comprehensive approach to domestic incident management . . . to ensure that all levels of government have the capability to work efficiently and effectively together. . . .” Under this directive, the National Incident Management System (NIMS) was developed “to provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.” How are the CSB’s protocols for responding to incidents at chemical facilities consistent with the NIMS? How many members of the CSB have been trained and certified in the NIMS?

Response. All of our career investigators, including investigation supervisors and investigation managers, have had thorough training on the National Incident Management System (NIMS). Most of our investigators received their NIMS training in an eight-hour course presented by Maryland Fire and Rescue Institute (MFRI) in 2005 and were registered with FEMA. Those who did not take the MFRI course completed an online independent study course (IS-00700) and were also registered with FEMA. We plan to continue providing comprehensive NIMS training for all our investigators, as we have done for the past several years.

As a matter of both policy and actual practice, the CSB does nothing to interfere with NIMS or other emergency response activities at accident sites, and that will be my continued policy as chairman if confirmed. At any accident site, if emergency response activities are ongoing or an Incident command system is in place, our procedure calls for the CSB lead investigator to report directly to the incident commander (IC) upon arrival. The lead investigator should establish the authority of CSB to investigate while being sensitive to avoid possible disruptions to any ongoing emergency response operations.

It would clearly be inappropriate, however, for an incident commander to seek to direct the CSB’s investigation or to prescribe the terms under which the CSB can interview witnesses or access the site, other than for reasons of protecting safety or completing emergency response actions. In many cases, the CSB’s investigators have specialized chemical expertise that is highly useful to incident commanders (many of whom have never had to respond to a major chemical accident) and other agencies, and we invariably seek to be of assistance where possible.

I should emphasize that the CSB is not an emergency response agency but was created by Congress solely as independent investigative body. In some cases, the CSB’s investigations examine the effectiveness of emergency response activities, coordination, and command structures. The CSB’s position on this issue is similar to that of the NTSB, which also examines the effectiveness of emergency response as part of its accident investigations.

Question 3. What steps does the CSB intend to take to ensure better coordination of its activities with other federal, state, and local agencies?

Response. During the recent public comment period on the National Response Framework (NEW) this month, the Chemical Safety Board asked the Department of Homeland Security (DHS) to incorporate specific language into the NRF stating that “nothing in this directive alters, or impedes the ability to carry out, the authorities of Federal departments and agencies to perform their responsibilities under law.” This would conform the NRF to the language in paragraph 5 of Homeland Security Presidential Directive 5 (HSPD-5). The Board also requested DHS to emphasize that incident commanders should seek to coordinate with federal safety investigations, such as those conducted by the CSB and the NTSB.

If I am confirmed as chairman, we will continue to work with DHS and FEMA to seek refinements to both the National Response Framework and the National Incident Management System (NIMS) which would promote improved coordination, particularly during the phase when emergency response activities are being completed and safety investigations are getting underway. I will also continue and expand the CSB’s successful outreach to local and state fire and response organizations, as described below.

Question 4. Many members of the public safety community apparently are not aware of the CSB and its role and mission. What steps will you take as chairman to improve the CSB’s outreach to the public safety community?

Response. Communities and responders benefit from the CSB’s thorough, independent investigations of chemical accidents, but it remains a significant challenge for the CSB to be known by all fire departments throughout the country. The CSB is currently a \$9 million, 40-person agency with only a handful of staff focused on outreach. By contrast, the U.S. has more than 30,000 fire departments, served by more than 1.1 million firefighters, both career and volunteer.

The CSB's board and staff have made numerous presentations to fire safety organizations over the past five years, including the National Fire Protection Association, the National Association of State Fire Marshals, the National Association of Fire Chiefs, the National Association of State Fire Marshals, the National Association of Fire Chiefs, and the International Association of Fire Chiefs. We have also published articles describing the CSB's mission, investigations, and safety products in a number of fire-related magazines and websites, including the International Association of Fire Chiefs On Scene newsletter, Industrial Fire World, Firehouse.com, Fireengineering.com, and many others. Our safety videos are also featured on the website of the U.S. Fire Administration. We have received more than 400 individual requests for our safety video DVD's from fire chiefs, officers, and other emergency responders—many accompanied by strong words of praise for the agency's investigations and efforts at reaching out to the fire community.

If confirmed as chairman, I intend to continue and increase the CSB's vigorous outreach to the emergency response community by speaking at fire safety conferences, contributing articles to fire safety publications and websites, and making our CSB safety videos and materials freely available to firefighters and others on CSB.gov, YouTube, and fire safety websites.

RESPONSE BY JOHN S. BRESLAND TO ADDITIONAL QUESTIONS FROM SENATOR VITTER

Question 1. Temporary trailers are used for turn around or construction projects within plants. Assuming it is more cost effective to operate within the process area, would it be reasonable to require someone to rent structures that ARE blast resistant (instead of not) to protect people in the blast zone?

Response. The BP Texas City explosion and fire occurred on March 20, 2007. Because all of the fatalities occurred in occupied temporary trailers close to the scene of the explosion, the Chemical Safety Board made an urgent recommendation on October 25, 2007 to the American Petroleum Institute (API). The wording of the recommendation was:

In light of the above findings concerning the March 23rd incident at BP's Texas City refinery, revise your Recommended Practice 752, "Management of Hazards Associated with Location of Process Plant Buildings" or issue a new Recommended Practice to ensure the safe placement of occupied trailers and similar temporary structures away from hazardous areas of process plants.

As its response to the CSB recommendation, in June 2007 API published its Recommended Practice 753 "Management of Hazards Associated with Location of Process Plant Portable Buildings". API's response is currently being evaluated by the CSB to determine if it is acceptable.

Recommended Practice 753 is based on the following guiding principles:

- Locate personnel away from covered process areas consistent with safe and effective operations
- Minimize the use of occupied portable buildings in close proximity to covered process areas
- Manage the occupancy of portable buildings, especially during periods of increased risk including unit start-up or planned shut-down operations
- Design, construct, install and maintain occupied portable buildings to protect occupants against potential hazards
- Manage the use of portable buildings as an integral part of the design, construction, maintenance and operation of a facility

The CSB does not promulgate regulations and thus cannot "require someone to rent structures". However I would encourage facilities to follow the API Recommended Practice, regardless of whether they rent or purchase the structures.

I believe that the CSB's recommendation to API and the implementation of the API Recommended Practice 753 by the oil refining and chemical industry will have a very positive impact on the safety of employees in those industries.

Question 2. Can you define "Neutral Risk" as it relates to occupied structures in blast zones?

Response. The term "Neutral Risk" is not a term that I am familiar within the context of chemical or oil refinery process safety. I worked in the chemical industry for 35 years and at the CSB for five years. During that time I worked closely with the American Petroleum Institute, the American Chemistry Council and the Center for Chemical Process Safety and I have not heard the term Neutral Risk used as a chemical process safety term. The term is used in financial markets and in the nuclear power industry.

Question 3. How does the “Neutral Risk” standard protect people from the blast and ensure that the building protects occupants from not only the building itself during a blast but also the blast environment?

Response. As I stated above I am not familiar with the “Neutral Risk” standard in the context of chemical or oil refining facilities.

Question 4. Because of the neutral risk standard, I understand that tents are allowed in blast areas as a means to protect workers from blasts because the interpretation of the “neutral risk” standard means occupants face minimal risk from the tents themselves. Does CSB allow for Tents in blast zones? How do Tents ensure the people are protected from the blast environment?

Response. The CSB does not promulgate standards and thus does not “allow” or forbid the use of tents in blast zones. API Recommended Practice 753 excludes “lightweight fabric enclosures such as tents” from the definition of portable building. In its review of API 753 the CSB is assessing this exclusion.

Question 5. Shouldn’t any structure such as a bath room be blast resistant if located in a blast zone?

Response. Section 3 of the API Recommended Practice 753 gives a method for facilities which have the potential for an explosion hazard to determine an appropriate location for portable buildings. If the bathroom is a portable structure, the facility should consult API Recommended Practice 753. If the bathroom is a permanent structure, its design, location and installation should take into account the potential for a fire, explosion or toxic gas release.

RESPONSE BY JOHN S. BRESLAND TO ADDITIONAL QUESTIONS FROM
SENATOR LAUTENBERG

Question 1. Why did you decide to vote against recommending a new OSHA standard to prevent combustible dust explosions?

Response. In 2003 there were two catastrophic combustible dust explosions (West Pharmaceutical, Kinston, NC; and CTA Acoustics, Corbin, KY) which killed a total of 13 employees and destroyed both facilities. The CSB investigated both incidents, determined the root causes and made recommendations to the companies, their suppliers and various safety organizations and regulatory agencies. I voted to completely accept both reports. Following these two incidents and a third in October 2003 in Huntington, Indiana the CSB decided to carry out a comprehensive study of combustible dust hazards in the United States. I supported that effort. The study resulted in a CSB staff recommendation that OSHA develop a new standard for preventing combustible dust explosions. After considerable thought and discussion with other Board members I decided not to support that recommendation. In my vote against recommending a new OSHA standard I concluded that the most effective way to prevent future dust explosions was to use the available literature to undertake a comprehensive education program to the industries using combustible dusts. I believe that this would be a much faster way to get the message out to the industry than waiting for OSHA to go through the prolonged process of writing a regulation on combustible dusts. I believe that there is ample information available on the issue of prevention of combustible dust explosions. Three examples come to mind:

- “Dust Explosions in the Process Industries” by Rolf K. Eckhoff
- NFPA Standard 654 for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids, 2006 Edition
- “Guidelines for Safe Handling of Powders and Bulk Solids” Center for Chemical Process Safety of the American Institute of Chemical Engineers, 2004 Edition

While I was working as a Staff Consultant to the Center for Chemical Process Safety (CCPS) in 2001 and 2002 I managed the writing of the CCPS book “Guidelines for Safe Handling of Powders and Bulk Solids”. The final product, published in 2004, is approximately 800 pages long and it is a very comprehensive survey of techniques available to prevent dust explosions.

Recommendation 5 to OSHA in the November 2006 CSB Combustible Dust Study called on OSHA to “. . . identify manufacturing industries at risk and develop and implement a National Special Emphasis Program on combustible dust studies in general industry.” I agreed with that recommendation. On October 19, 2007 OSHA issued a new safety and health instruction that details OSHA policies and procedures for inspecting workplaces that handle combustible dusts and that may have the potential for a dust explosion.

Question 2. Why did you vote against the Combustible Dust Study in November 2006 that was supported by the Board on a 3–2 vote?

Response. I believe that the Board's staff did an excellent job in researching and writing the November 2006 Study on combustible dust explosions. My vote was *not* against the Study as a whole but against recommendation 1 to OSHA. My vote was motivated because I believed that action needed to be taken sooner than waiting for OSHA to write a standard. Quoting from my remarks at the November 9, 2006 CSB Public Meeting on Combustible Dust Hazard Study Findings and Proposed Recommendations:

"I would just like to reemphasize the major point that I am trying to make and that is realizing and recognizing that there is a hazard right now and we have certainly seen that with the dust explosions that have taken place. We, OSHA, the industry, trade organizations, need to be doing something today. We don't need to be waiting for five years for a regulation to be published. We need to get out there today and start educating people on this to make sure that the sort of tragedies that we've seen don't happen again."

Question 3. Do you continue to support extending EPA and OSHA process safety regulations to cover reactive chemicals and mixtures, as the CSB recommended in 2002?

Response. Yes, I continue to support the 2002 CSB recommendation. If confirmed, I will meet with the leadership of both OSHA and EPA and emphasize the continued interest of the CSB in having them comply with the CSB's recommendation.

Question 4. Do you believe it is preferable to have third-party audits of oil and chemical plants instead of federal inspections by OSHA and EPA personnel? If so, please describe the potential benefits and detriments to this approach?

Response. I believe that third party audits of oil and chemical plants could supplement inspections done by EPA and OSHA. Third party audits would have certain advantages over federal inspections by EPA and OSHA personnel.

Some of the pros of this approach are:

- There is a larger pool of independent personnel with specific expertise in chemical and refinery operations than there currently is within OSHA and EPA
- Audit quality requirements would have to be developed and approved by EPA and/or OSHA
- Audit protocol requirements would have to be developed and approved by EPA and/or OSHA

The possible cons of this approach include:

- The cost to industry would be greater as they would have to bear the costs of the inspections
- Conflict of interest provisions would be needed to assure impartial audits
- The question of the public availability of audit results would have to be resolved.

Question 5. Do you believe that OSHA and EPA's existing process safety programs should be consolidated into a new federal regulatory and inspection program? If so, please describe how such a consolidation would work and what benefits you would foresee from such an approach?

Response. There is considerable similarity between the EPA's Risk Management Program for chemical facilities and OSHA's Process Safety Management of Highly Hazardous Chemicals Standard. The OSHA standard deals with hazards and the prevention of accidents inside the facility and the EPA program deals with the prevention of accidents that would impact the community around the facility. The programs could be combined without a significant effect on the regulated community. However, to combine them would require rewriting the Clean Air Act Amendments of 1990. One of the issues facing both EPA and OSHA in the regulation of oil and chemical plants is a shortage of personnel with expertise in chemical plant and refinery operations. Combining the programs without authorizing the hiring of additional experienced personnel would not, in my opinion, improve the regulatory oversight of the industry.

Question 6a. Could you please explain the "safety case" approach to licensing oil and chemical plants that is used in Europe?

Response. As a result of major industrial chemical accidents in Europe in the 1970s (the Flixborough, England explosion in 1974 and the Seveso, Italy dioxin release in 1976) the Seveso Directive was issued by the European Community in 1982. The regulations implementing the Seveso Directive are the 1984 Control of Industrial Major Accident Hazards Regulations (CIMAH) and the 1999 Control of Major

Accident Hazards (COMAH). To comply with the CIMAH and COMAH regulations operators of certain facilities in the European Community have been required to submit “safety reports” to the “competent authority” (in the United Kingdom the competent authority is both the Health and Safety Executive and the Environmental Agency). Facilities affected by the regulations are typically in the chemical, oil refining, explosives and nuclear industries. Once a facility determines that it is covered by the regulations (based on threshold quantities of dangerous substances) it has the following responsibilities:

- Submit details of dangerous substances on site to the competent authority
- Describe site activities
- Take all measures necessary to prevent major accidents and limit their consequences (this is a general duty standard)
- Prepare and test an on-site emergency plan
- Prepare a safety report which includes the following: (1) a policy on how to prevent and mitigate major accidents (2) a management system for implementing that policy (3) a method for identifying any major accidents that might occur (4) methods to prevent and mitigate major accidents (5) information on safety precautions built into the plant (6) details of measures to limit the consequences of any major accident that might occur (7) information on the site emergency plan, which is also used by the local emergency responders.

The safety report has to be submitted to the competent authority and kept up to date as operating conditions at the facility changes. It must be updated and resubmitted at least every five years.

Several important factors should be noted:

- All costs associated with the development of the safety report are borne by the operating company. These costs include those of the competent authority in assessing and commenting on the safety report.
- With the exception of nuclear installations and off-shore oil facilities, the safety case is not a “permit” to operate.
- Facilities are required in their safety reports to demonstrate that they have reduced risks to “as low as reasonably possible”.

Question 6b. Should the United States adopt a “safety case” approach?

Response. The EPA Risk Management Program (RMP) regulations are similar in some respects to the European safety report rules. However the information required to be submitted in the safety report is much more comprehensive and detailed than in the RMP submittals. For the United States to adopt the European safety case approach changes would require changes in the underlying Clean Air Act legislation. In the United Kingdom there are 750 lower hazard facilities and 375 high hazard facilities covered by the COMAH regulations. The Health and Safety Executive has 150 inspectors applying 45 man-years each year to evaluating safety reports. In the United States there are approximately 15,000 RMP facilities. The option of adopting the European safety report approach in the United States should be looked at in the context of the availability of government personnel with the expertise to evaluate the safety reports.

Question 7a. Do you support specific legislation to provide CSB with investigation authority like the NTSB’s?

Response. CSB needs additional statutory authority to avoid delays in their investigations caused by local authorities blocking entry to sites and prevent the destruction of evidence during clean-up operations after the emergency response has ended.

A good starting point for discussions on additional authority could be the NTSB statute at 49 USC §§ 1101–1155 and NTSB regulations at 40 CFR 830.10 and 40 CFR 831.5.

Question 7b. Do you support specific legislation to clarify the CSB’s evidence preservation authority?

Response. Because of ongoing issues with evidence preservation at accident sites I believe that the CSB’s evidence preservation authority should be clarified, either by legislation or by regulation. On January 4, 2006 the CSB published a proposed rule in the Federal Register, requiring that facilities having an incident being investigated by the CSB should preserve evidence relevant to the investigation. The CSB received many comments on this proposal and has not published a final rule.

Question 7c. Do you support specific legislation to provide CSB with authority like the NTSB’s to decide on testing procedures for the physical evidence recovered from accident sites?

Response. Yes.

Question 7d. Do you support specific legislation to clarify and strengthen CSB's access to OSHA and EPA personnel and records that are relevant to the CSB's investigations?

Response. CSB's accident investigations often evaluate the roles of EPA and OSHA in regulating the facility or the industry. It has proved difficult at times to get access to EPA and OSHA personnel and records. If discussions with EPA and OSHA leadership cannot resolve these issues in the future, then specific legislation would be warranted.

Question 7e. Do you support specific legislation to provide for a 3–2 party split in appointments to the Board, similar to the NTSB?

Response. I have not given this issue an extensive review. However, in a small agency like the CSB, the most important criteria for Board appointments should continue to be expertise and experience, regardless of party affiliation. I would be interested in discussing this option with the leadership at the NTSB to understand what their experience has been with the 3–2 party split.

RESPONSES BY JOHN S. BRELAND TO ADDITIONAL QUESTIONS FROM
SENATOR LIEBERMAN

Question 1. As you know, there was a dispute last year between the Chemical Safety and Hazard Investigation Board (CSB) and officials of the Massachusetts fire service in the aftermath of an explosion at a chemical plant in Danvers, MA. Fire officials maintain that CSB personnel created tension and confusion at the scene by failing to properly notify state and local officials of their arrival and failing to coordinate with the already established incident command structure. CSB disputes these assertions and complains that local officials improperly denied its personnel access to the incident scene.

Regardless of who is right in this dispute, the very fact that there was such a conflict in Danvers raises concerns that there may be a larger problem in CSB's relationship with state and local officials and first responders. CSB regularly needs to perform its work at scenes at which various federal, state, and local officials may all have responsibilities. We cannot afford to have future disputes that may potentially interfere with both local incident management and CSB's ability to conduct effective investigations.

If confirmed as Chairperson of CSB, what steps will you take to ensure that there is a good working relationship between and among CSB and state and local officials and first responders? Given the problems in Danvers, do you think it might be a good idea to convene a meeting with firefighters (and perhaps other first responders) from around the nation to ensure that everyone understands each other's roles, and that roles and procedures are discussed in advance of future incidents?

Response. The question appears to refer to certain claims made in an unsigned, one-page statement distributed by several representatives of the International Association of Fire Chiefs (IAFC) in September 2007, more than 10 months after the events in question. The CSB has thoroughly refuted those claims in a 16-page letter to the Committee last month, which I include for the record.

The central issue in Danvers was not one of notification or coordination; it was the fact that the fire services did not recognize the CSB's federal investigative jurisdiction under the Clean Air Act. Shortly after the arrival of CSB investigators, the Danvers fire chief publicly declared the CSB to be "uninvited," "unwelcome," "not a piece of the pie," and "a distraction that has taken time away from the real investigators."¹ By contrast, a number of other fire chiefs have complimented the CSB's investigative work, its professionalism, and its coordination with local authorities, as noted in an article² published by a regional Massachusetts newspaper, the Salem News, during the unfortunate situation in Danvers.

Overall, the CSB enjoys excellent relationships with state and local fire and emergency preparedness and response officials, and in most cases there has been effective coordination at accident sites. My goal as chairman will be to continue those valuable relationships for the next five years. The success of the CSB's interactions with fire officials over the past five years is reflected in the endorsements I have received from the nation's leading fire safety organizations, including the National Association of State Fire Marshals (NASFM), the National Fire Protection Associa-

¹ See AP Domestic News, November 26, 2006 "Probers Look for Clues in Mass Blast," *Boston Globe* November 26, 2006. "Dispute besets blast probe U.S. investigators barred from site by Danvers chief," Salem News, November 27, 2006, "Investigators probe blast cause, feds fight to get access."

² See Salem News, November 29, 2006. "Others Welcomed Chemical Safety Board," by Paul Leighton.

tion (NFPA), the International Code Council (ICC), the National Association of SARA Title Three Program Officials (NASTTPO), and other response and preparedness officials.

State and local fire authorities benefit from the CSB's work, and they take our safety recommendations seriously. For example, in 2005 we recommended that the State of Kentucky identify and inspect industrial facilities at risk for catastrophic dust explosions, following an accident in 2003 that killed seven workers. The state promptly adopted the recommendation, gaining additional funding from the legislature for the state fire marshal to make the inspection of facilities with combustible dust hazards a high priority and to develop remediation plans. In 2003, the CSB called on New York City to reform its antiquated 85-year-old fire code, following a chemical explosion in Manhattan that injured dozens of people including several firefighters. Following the CSB's recommendation, the city is now nearing completion of a three-year effort to adopt a modern fire safety code, a step that will help protect the lives of millions of New York City residents, workers, and visitors.

On April 27, 2005, then-CSB Chairman Carolyn Merritt testified before the Senate Homeland Security and Government Affairs Committee, which you now chair, on deficiencies in local emergency preparedness for chemical releases. Such deficiencies put the lives of police and firefighters at risk due to inadequate funding, planning, or protective equipment—as in the case of a 2004 chemical accident in northwest Georgia where 15 responders were injured by exposure to toxic chemical vapor. Chairman Merritt and I were pleased when S. 2145, the bipartisan Collins-Lieberman chemical security bill that followed the hearing, included extensive new provisions for improving planning and preparedness for chemical emergencies.³ As you noted to Chairman Merritt at the April 2005 hearing:

“You may know that Senator Collins and I were successful in amending the budget resolution in the Senate to restore a considerable amount of funding, I guess about \$550 million, for the coming year for first responders, and obviously we have to make sure the money is well spent. But you point to a very urgent need which will not be met unless we give the first responders money. Then once we do that, we have to help them use it for that purpose. I thank you.”

Communities and responders benefit from the CSB's thorough, independent investigations of chemical accidents, but it remains a significant challenge for the CSB to be known by all fire departments throughout the country. The CSB is currently a \$9 million, 40-person agency with only a handful of staff focused on outreach. By contrast, the U.S. has more than 30,000 fire departments, served by more than 1.1 million firefighters, both career and volunteer.

The CSB's board and staff have made numerous presentations to fire safety organizations over the past five years, including the NFPA, NASFM, NASTTPO, and the RFC. We have also published articles describing the CSB's mission, investigations, and safety products in a number of fire-related magazines and websites, including the International Association of Fire Chiefs On Scene newsletter, Industrial Fire World, Firehouse.com, Fireengineering.com, and many others. Our safety videos are also featured on the website of the U.S. Fire Administration. We have received more than 400 individual requests for our safety video DVD's from fire chiefs, officers, and other emergency responders—many accompanied by strong words of praise for the agency's investigations and efforts at reaching out to the fire community. If confirmed as chairman, I intend to continue and increase the CSB's vigorous outreach to the emergency response community.

Question 2. In another context, that of homeland security, the issue of how myriad federal, state and local officials all work together in an incident, is a prominent concern. We saw the need for such coordination in the response on 9/11, and we saw the challenges that can arise in the response to Hurricane Katrina—including the tragic consequences that can result when all the players are not prepared to work together.

³Senate Report 109-332, which accompanied the legislation, credited the CSB's independent safety investigations with establishing the importance of improving chemical emergency preparedness throughout the country: “During the Committee's four chemical security hearings, witnesses highlighted the importance of emergency preparedness in dealing with a chemical release as well as weaknesses in the current state of preparedness of many facilities and communities. In particular, Carolyn Merritt, Chairman of the U.S. Chemical Safety and Hazard Investigation Board (CSB), and Gerald Poje, a former member of the CSB, were critical of chemical plant preparedness across the country. Both Merritt and Poje emphasized in their testimony that effective emergency response planning and capabilities can mitigate the consequences of a terrorist attack on a chemical facility.” (See Senate Report, p. 20) The legislation was reported from committee but not acted upon by the full Senate.

One of the key ways through which federal, state and local responders work together is through the National Incident Management System—or “NIMS”—which utilizes a unified command structure. The Homeland Security Act gives the Department of Homeland Security, through the FEMA Administrator, responsibility for maintaining NIMS, and relevant federal agencies are all required to comply with NIMS in responding to incidents. FEMA has developed courses and approves courses to train individuals in the federal government and in the states on NIMS.

Does CSB provide for NIMS training for its employees? If so, who receives training? Is the training through the Department of Homeland Security or does CSB do it's own training? Do you have any plans for future changes in, or expansion of, NIMS training at CSB?

Response. All of our career investigators, including investigation supervisors and investigation managers, have had thorough training on the National Incident Management System (NIMS). Most of our investigators received their NIMS training in an eight-hour course presented by Maryland Fire and Rescue Institute (MFRI) in 2005 and were registered with FEMA. Those who did not take the MFRI course completed an online independent study course (IS-00700) and were also registered with FEMA. We plan to continue providing comprehensive NIMS training for all our investigators, as we have done for the past several years.

However, I must point out that the situation in Danvers was not directly related to NIMS, which is designed to promote the fast integration of federal, state, and local efforts to respond to major disasters. NIMS is a system for emergency response and recovery and is not a system for investigating the causes of disasters. Where emergency response and investigations may overlap, emergency response must come first. In the case of Danvers, however, the fires had been extinguished, the neighborhood had been searched for victims and evacuated, and the emergency had ceased on November 22, two days prior to the arrival of CSB investigators. In that sense the “incident” was already over.

Homeland Security Presidential Directive 5 (HSPD-5) and NIMS are not intended to, and do not, interfere with the CSB's authority to carry out its investigative mission. Paragraph 5 of HSPD-5 states unambiguously that “nothing in this directive alters, or impedes the ability to carry out, the authorities of Federal departments and agencies to perform their responsibilities under law.” In fact under NIMS, the responsibility of the local incident commander in Danvers was to rapidly integrate the CSB into the existing command structure so that the Board's lawful functions could proceed. Had they done so all parties could have more effectively coordinated their respective responsibilities, but regrettably this did not happen.

During the recent public comment period on the National Response Framework (NRF) this month, the Chemical Safety Board asked DHS to incorporate the specific HSPD-5 language above into the NRF and to emphasize that incident commanders should seek to coordinate with federal safety investigations, such as those conducted by the CSB and the NTSB. These federal safety investigations are vital for protecting communities around the country from possible future accidents.

Question 3. I understand that CSB hired a public relations firm in connection with the Danvers incident. On its web site, that firm, Crawford Strategies, says it was charged with “upholding CSB's public image” and claims credit for, among other things, having “generated substantial press and editorial coverage aimed at setting the record straight” on the Danvers situation. Two examples cited by the firm are an editorial and a column in the Boston Globe that portray the dispute in a light favorable to CSB and very unfavorable to local fire service officials.

Did CSB, through Crawford Strategies or otherwise, undertake a public relations strategy designed to generate criticism of state and local officials? If so, isn't it likely that such actions could further damage the relationship between CSB and state and local officials, and ultimately lead to further distrust of CSB? Do you think CSB's use of a public relations firm for this purpose is appropriate? As a Board member, were you aware of the “public relations” activities undertaken in Danvers?

Response. The premise of these questions is not accurate. Like many government agencies that interact with the public, the CSB employs public affairs contractors who specialize in media relations. Because the CSB does not operate field offices, we frequently employ local public affairs firms to identify and contact the news media on our behalf, particularly during the early stages of investigations. It is simply not possible for the CSB's limited staff to maintain media contacts simultaneously in several hundred regional markets around the country.

During the deployment to the Danvers accident site, the CSB hired Crawford Strategies, a local Boston area firm, to compile media lists, distribute advisories, and make initial contacts with journalists, who can then follow up with CSB board members and staff directly on more specific and substantive issues. This particular

contractor performed only a modest amount of work for the CSB, with a total value of less than \$3,100.

As a board member, I was aware of the public affairs work done in the connection with the Danvers case, and that work was authorized and approved by then-Chairman Carolyn Merritt. However, I emphasize that there was no “public relations strategy” of the kind suggested in the question. What occurred in reality was that on Saturday, November 25, 2006, after blocking the access of CSB investigators to the accident site and refusing to recognize the agency’s jurisdiction under the Clean Air Act, the Danvers fire chief proceeded to hold a public news conference where he declared the CSB to be “uninvited,” “unwelcome,” “not a piece of the pie,” and “a distraction that has taken time away from the real investigators.”⁴

The CSB had said nothing publicly about the dispute to that point and had certainly not criticized the fire chief or other local officials. Rather, we had worked behind the scenes in an effort, we hoped, to quickly resolve the issues, but this effort was fruitless. On Sunday, after a news cycle where the Danvers chief’s striking comments were widely reported, Mr. Crawford made initial contacts with staff from the *Boston Globe* for follow-up later in the day by the CSB’s director of public affairs. The public affairs director, in consultation with the CSB chairman, was the official spokesperson for the agency and discussed the substantive issues with *Globe* reporters and writers. The purpose of the contacts was, first and foremost, to explain our mission to the community in Massachusetts and to discuss the value of independent safety investigations, following the fire chief’s pointed criticism.

The CSB believed that it was urgent to access the accident site—particularly since the state and local fire services were in the process of clearing large portions of the site using heavy equipment, causing the irreparable loss of potential evidence.

It is curious to suggest that the CSB or any other party has an ability to control the editorial content of the *Boston Globe*, one of the nation’s oldest and most respected newspapers. The CSB simply explained to the *Globe* our statutory authority and mission, our proven expertise in handling and analyzing complex accident sites, and our history of promoting the safety of communities nationwide against chemical accidents. The *Globe*’s reporters, editors, and columnists then formed their own opinions about the confrontational public position taken by the state and local fire services.

Senator BOXER. Thank you so much, Mr. Bresland.

Mr. Shearer of Delaware, to be a member of the Chemical Safety and Hazard Investigation Board for 5 years.

STATEMENT OF C. RUSSELL H. SHEARER, NOMINEE FOR BOARD MEMBER, U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Mr. SHEARER. Thank you, Madam Chairman and members of the Committee. I appreciate the opportunity to appear before you today.

With me today is my wife, Michelle, and my 1½-year-old daughter, Eliza, upon whom I may call to answer questions, because nobody can be mad at a little girl with a smile such as hers.

I am grateful and honored by the President’s nomination to serve as a member of the Chemical Safety and Hazards Investigation Board. I appreciate this opportunity to appear before the Committee today.

I likewise appreciate having had the counsel of the Committee members, their staff and of other Congressional staff. Understanding their views has been instructive and I will continue these communications if confirmed.

I look forward, if confirmed, to working closely and collegially with the Chairman and board members. They have wisely hewn

⁴See AP Domestic News, November 26, 2006 “Probers Look for Clues in Mass. Blast;” *Boston Globe*, November 26, 2006. “Dispute besets blast probe U.S. investigators barred from site by Danvers chief;” *Salem News*, November 27, 2006, “Investigators probe blast cause, feds fight to get access.”

fast to Congress's mandate to investigate events, to devise lessons learned and recommendations from them and to communicate that information to workers, the public, industry and government agencies. That mandate is an important one, because in it Congress recognized that investigating and communicating lessons learned is the first step to building safety performance.

Industry, in a perfect world, would uniformly recognize the wisdom of that fact and universally act on it, performing this function on its own and sharing the operating experiences. But it has not and, so Congress created the Board to fill that void.

My experience is in high hazard chemical and nuclear operations as a program manager and as a chief environment, safety and health officer. I routinely use the Board's products. The Board's expertise in conducting investigations and devising lessons learned and recommendations is, in my assessment, outstanding. The challenge is to ensure that the lessons are effectively communicated in a timely fashion to the intended audience.

I therefore intend, if confirmed, to work with the Chairman and Board members to build on that excellent progress already made, and to promote the following three objectives. First, the Board should continue to build the base of safety knowledge by expanding the number of investigations it conducts. Each investigation is an opportunity to learn new information, to gain additional insights into mechanical system, management system and human behavior. This safety knowledge, I believe, is critical in this post-9/11 operating environment because safer plants provide the defense-in-depth required to prevent or mitigate the acts of potential malevolent actors.

Second, the Board should adopt additional cost effective methods for outreach to and awareness among the public, workers, industry and government agencies. I believe that communication is vitally important, because it builds accountability and transparency. It ensures that the lessons learned are translated into actions that improve safety performance.

Third, the Board should continue to analyze operating experience data that identify adverse and little-understood trends, and that point out generic safety issues with broad applicability across the chemical industry.

I will bring to the Board, if confirmed, the commitment I have demonstrated in prior civil service to safe and reliable operations, to identifying and working with stakeholders and to sharing information openly and conducting affairs transparently. I will also bring to the Board, if confirmed, hands-on experience, including the following: understanding and respecting worker and public safety as a foremost consideration. Conducting performance-based investigations. These investigations have included typical chemical events, such as process safety management, chemical fires, failure to follow procedure and equipment failure, as well as common industrial accidents, such as arc flashes and the failure to use fall protection.

I also have experience in developing and implementing an operating experiences program that is a formal process of sharing information. Promoting the development and use of specific tools beyond simple lagging metrics to enhance operational awareness of real-

time facility-level safety and promoting the development of expectations that integrate safety throughout a facility's life cycle.

Madam Chairman, I appreciate the opportunity to testify before this Committee and its consideration of my nomination. I will seek to answer any questions that the Committee members may have, and I have submitted my complete testimony for the record. Thank you.

[The prepared statement of Mr. Shearer follows:]

STATEMENT OF C. RUSSELL H. SHEARER, TO BE A BOARD MEMBER, U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Madam Chairman, Ranking Member Inhofe, and Members of the Committee, thank you for the opportunity to appear before you. With me today are my wife, Michelle, and my one and a half year old daughter Eliza, upon whom I may call to answer questions because nobody can be mad at a girl with her smile.

I am grateful for and honored by the President's nomination to serve as a member of the Chemical Safety and Hazards Investigation Board ("Board"), and I appreciate this opportunity to appear before your committee today. I likewise appreciate having had the counsel of the committee members, their staff, and of other congressional staff. Understanding their views has been instructive, and I will continue these communications if confirmed.

I look forward, if confirmed, to working closely and collegially with the Chairman and Board Members. They have wisely hewn fast to Congress's mandate to investigate events, to devise lessons learned and recommendations from them, and to communicate that information to workers, the public, industry, and government agencies. That mandate is an important one because in it Congress recognized that investigating and communicating lessons learned is the first step to building safety performance. Industry in a perfect world would uniformly recognize the wisdom of that fact and universally act on it, performing this function on its own and sharing the information and operating experiences both within and without the chemical industry. But it has not and so Congress created the Board to fill that void.

The Board, then, has a critical national safety function in executing a performance-based investigation program that seeks out root and contributing causes, the solutions to which may require technical, managerial, policy, or regulatory solutions, or a mix of each. Congress and the Board have thus taken an important step beyond traditional, limited-scope assessments of simple compliance with existing regulations, and into the more important function of building from events a good base of safety knowledge, lessons learned, and operating experience. I therefore view the Board's mission to be similar to—albeit an imperfect analogy—a high-performing corporate safety office whose responsibility is to use events as learning tools that change behavior in order to prevent the recurrence of that or similar events.

My experience is in high-hazard chemical and nuclear operations—as a program manager and as a chief corporate environment, safety, and health officer—and I routinely use the Board's products. The Board's expertise in conducting investigations and devising lessons learned and recommendations is, in my assessment, outstanding. The insights gained from these investigations serve a critical role in fostering excellence in chemical-safety performance because they form the technical basis to help the industry and the appropriate regulatory agencies identify and formulate corrective actions. The challenge is to ensure that the lessons are effectively communicated in a timely fashion to the intended audience. I therefore intend, if confirmed, to work with the Chairman and the Board Members to build on the excellent progress already made and to promote the following three objectives:

- First, the Board should continue to build the base of safety¹ knowledge by expanding the number of investigations it conducts in a manner, of course, that maintains the excellence for which these investigations have become known. Each investigation is an opportunity to learn new information, to gain additional insights into mechanical-system, management-system, and human behavior. Indeed, enhanced safety performance begins with building safety knowledge, including developing les-

¹I view the generic term "safety" to encompass public safety, worker safety and health, plant safety, and protection of the environment, and I am a firm believer that a high performing environment, safety, and health (ES&H) program will include each of these components. I believe, moreover, that performance in any one aspect of an ES&H program—whether it is environment, safety, or health—is a good indicator of performance in each of the others.

sons learned, operating experiences,² and best practices.³ This safety knowledge, I believe, is critical in this post 9–11 operating environment because safer, more robust, and better and more intelligently designed and engineered plants provide the defense-in-depth required to prevent or mitigate the effects of potential malevolent acts.

Building this base of safety knowledge is also an important national asset because companies with good safety records are profitable companies. These companies have learned the truism that integrating safety into production yields safe and reliable operations that, in turn, produce excellent products. This is true because the focus is on quality—quality in safety, quality in worker health, quality in environmental performance, and quality in production—rather than production alone. The integration of these attributes is the pillar of an overall Quality Assurance program, which studies have time and again shown to be the foundation of a competitive enterprise. These companies have therefore come to the enlightened self-interest that safety is not only morally right; it is a good business practice.

- Second, the Board should adopt additional cost-effective methods for outreach to and awareness among the public, workers, industry, and government agencies. I believe that communication of information learned from events to all of these groups is vitally important. It builds accountability and transparency and ensures that lessons learned are translated into actions that improve safety performance.

The Board, for example, should establish forums to learn, share, and consider state-of-the-art and best practices from diverse stakeholders, including the public, labor unions, workers, industry associations, corporate representatives, national consensus-standard setting groups, environmental groups, the public, and others. These meetings should not be mere press events but gatherings where technically- and not-so-technically-minded people can share information and insights with the explicit objective of improving safety performance. An important lesson learned over the last two decades is that institutions must be technically inquisitive for a safety culture to flourish, and that they must be open to new ideas and practices from outside their experiences in exercising that inquisitiveness.

The Board might also build on the Institute for Nuclear Power Operators' "Prevent Events" model in preparing talking points that synopsise its reports. These talking points would then be available for industry to use at plan-of-the-day or daily "tool box" meetings so that it could explain to its workers exactly how an event at another facility applies to them personally. It is a tool, in short, that makes abstract events personal to the workers and helps them understand how to behave more safely.

The Board should also seek out successful companies that have demonstrated an understanding of, and put into practice, the concept of integrating safety with production. The experience and practice of these companies can then be used as case studies to communicate the concept and to form the basis of best practices.

- Third, the Board should continue to analyze operating-experience data that identify adverse—and little understood—trends and that point out generic safety issues with broad applicability across the chemical industry. In 2002, for example, the Board analyzed 150 accidents involving uncontrolled-chemical reactions with the objective of improving reactivities-hazard management. This report resulted in several recommendations to the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA).

I will bring to the Board, if confirmed, the commitment I have demonstrated in prior civil-service positions to safe and reliable operations, to identifying and working with stakeholders, and to sharing information openly and conducting affairs transparently. I will also bring to the Board, if confirmed, hands-on experience that will be useful in understanding the precursors that cause accidents, recognition of business- and safety-management systems that influence an organization's safety culture, and techniques that may resolve those issues, including the following:

- Understanding and respecting worker and public safety as a foremost consideration;
- Conducting performance-based accident investigations that focus on underlying root causes and employ innovative methodologies, such as Human Performance Improvement, which seeks to ferret out latent organizational defects that lead to most human error;

²Lessons learned is the data collected from an event or events, which is stored in a database or other less formal method; operating experiences is that same data when applied to operations in order to improve safety or reliability or some other attribute of plant function.

³A "best practice" is a description of process proven to generate favorable results written in a way that others may apply it with equal success.

- Developing and implementing an operating-experiences (lessons-learned) program that is not a mere data-collection exercise but a process that shares those experiences among the corporate specialists and executives who make decisions about capital investments in vital plant systems, infrastructure, and technical-staff development that ensure continued safety and reliability;
- Building a well-developed operating experiences program that looks beyond the parochial experiences of a particular industry to analyze analogous events in others, such as the Columbia Space Shuttle accident and the Davis-Besse nuclear power plant event (involving reactor-vessel head corrosion), in order to derive comprehensive and balanced operating experiences, recommendations, and operational requirements;
- Promoting operational rigor through procedures in a program previously guided by ad-hoc, expert advice, sometimes known as “tribal knowledge;”
- Promoting the development and use of specific tools, beyond simple lagging metrics, to enhance, throughout an organizational structure, operational awareness of real-time, facility-level safety and production performance, which, in turn, promotes information sharing about and accountability for that performance; and
- Promoting the development of expectations (standards) that integrate safety throughout a facility’s life cycle, including site selection, design (especially, early design stages), construction, operation, and dismantling and decommissioning.

Madam Chairman, I appreciate the opportunity to testify before this Committee, and its consideration of my nomination. I will seek to answer any questions that the Committee Members may have. Thank you.

RESPONSE BY RUSSELL H. SHEARER ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. Involvement in Activities that Occurred in Anniston, Alabama. Please provide me with all records held by the Department of Defense, yourself, or from other people that you can readily obtain, including all emails, memos, letters, electronic files and other records relating to your involvement in an effort by employees of the Department of Defense to plan exercises designed to prepare for a possible accident or incident at the Anniston Army Depot in Alabama, when it was known that local officials lacked key equipment to participate in such exercises.

Response. I have attached to this submission all records that I could obtain responsive to this request.

Attachment 1, All e-mails of which I retained a printed copy.

Attachment 2, Complete set of the e-mails, including those on which I was neither addressed nor copied. These e-mails were originally and are now attached to a letter from Senator Shelby sent to my principal, the Assistant Secretary of the Army (Installations & Environment). These e-mails have had names on the “To” and “CC” list redacted, which is the manner in which I received them from Senator Shelby’s office. This set is also the sole complete set of e-mails now available.

Attachment 3, Letter from Congressman Bob Riley.

Attachment 4, E-mails and talking points discussing intent of leaked e-mails.

Attachment 5, Calhoun County Chamber of Commerce Resolution adopted after e-mail leak (August 19, 2003) commending my principal for work in bringing Anniston plant on-line.

My detailed response regarding the news reports of my involvement in the Anniston, Alabama, event appears in my response to Senator Lautenberg’s QFRs 1 and 2 below.

Question 2. Involvement in Department of Energy’s Beryllium-Associated Worker Registry—Please describe your involvement, including any past involvement, in the Department of Energy’s Beryllium-Associated Worker Registry.

Please include any formal evaluations of the program conducted by the Department of Energy or independent offices, including Inspector Generals, of this Registry while you were associated with it.

Please also provide any evaluation of your work performance while at the Department of Energy, including any evaluation of your performance related to the Registry.

Response. The President appointed me to serve as the Principal Deputy Assistant Secretary of Energy for Environment, Safety & Health in August 2004. I served in that role until March 2006, when I became the Acting Assistant Secretary of Energy for Environment, Safety & Health (“EH”).

From August 2004 until March 2006 my portfolio did not include the Beryllium-Associated Worker Registry because that function resided in the Office of Worker Health, a sub-office within EH. The Assistant Secretary managed the affairs of that

office, except for adoption of the Worker Safety Rule (10 C.F.R. Part 851), an action on which we both worked.

In March 2006 I became the Acting Assistant Secretary for EH and, at that time, was made aware of the ongoing audit by the Department of Energy's (DOE) Inspector General's office. Shortly thereafter my staff briefed me on the Inspector General's audit findings and on April 5, 2006, less than a month after becoming the Acting Assistant Secretary, I signed and transmitted EH's response to the Inspector General's findings.

I have attached as Attachment 6 the audit report of the registry, U.S. Department of Energy-Office of Inspector General, Audit Report: Implementation of the Department of Energy's Beryllium-Associated Worker Registry (DOE/IG-0726) (April 2006). The EH response is included in the Audit Report at page 10.

I have attached as Attachment 7 my job performance reviews assessing my performance during the period August 2004 to October 1, 2006, the most recent rating that I have received. Please continue to accord these documents the confidentiality of the Privacy Act and manage them as Official Use Only.

[The referenced documents may be found in committee's file.]

RESPONSES FROM RUSSELL H. SHEARER TO ADDITIONAL QUESTIONS FROM
SENATOR LAUTENBERG

Question 1. In 2002, you were reportedly part of an effort by the Pentagon to challenge local officials in Alabama to participate in emergency response exercises, knowing that they would refuse, so that the Pentagon could send out press releases shifting blame over lack of local preparedness for a potential release from a chemical weapons incinerator.

Response. News reports concerning the incident you describe were incorrect in suggesting that the Army's effort was geared toward embarrassing local officials and shifting blame. To the contrary, as I explain in detail below, our efforts were aimed at encouraging the Anniston communities to engage in more emergency-preparedness exercises and to help them obtain the funding for the resources that these communities needed.

Five years ago, several newspapers in Alabama reported on a string of e-mails, in which two of mine appeared, that evaluated an idea for inviting the communities around the Anniston Chemical Agent Disposal Facility to engage in emergency-preparedness exercises. These e-mails were written to execute the instructions of my principal,¹ who had three broad objectives: (1) Prepare the communities for emergency-preparedness, which my principal and I held as essential to beginning operations; (2) Begin operations because the chemical weapons in storage in the communities presented a safety risk, especially in light of September 11, 2001; and (3) Break a long-standing deadlock in which some communities refused to engage in emergency-preparedness exercises until all emergency-preparedness funding had been provided, even though the Army had already provided more than \$100 million in funding. The e-mails also articulated an additional legal and business rationale, which was to document the Army's efforts at building readiness in the likely event that Congress, the Office of Management and Budget, or a lawsuit sought evidence of it.

The true object then, contrary to the news reports, was to build emergency-preparedness and community safety in order to destroy chemical agent, which would also enhance community safety.

The newspapers also reported that these e-mails reflected a so-called "plan." The fact is, however, that they merely related our preliminary thinking on how best to build emergency preparedness and the staff's internal debate on it. Neither the e-mails nor the news reports reflect any final decisions or hard-and-fast plans. We were, in short, trying to figure out what to do.

But the preceding discussion is no slight-of-hand to avoid responsibility for my involvement in the e-mail discussion of how to engage the communities. It simply sets out the mitigating circumstances of that involvement. Our execution was flawed and I regret that.

Intergovernmental communication is an art not a science, and our communications plan should have focused on meeting with the communities and engaging them, rather than on worrying about what we would do in the event they declined to engage with us. A corollary to this principle is that we should have been more careful about tone. Rather than inviting the communities, which may be perceived as an ultimatum even if it is not intended that way, we should have, again, engaged

¹Please see Attachment 12, the end of paragraph 3.

at the local level. We should have, in short, worked more closely with local communities and their Congressional delegations, even in devising this preliminary path forward.

I had come to this conclusion myself as a consequence of the intense internal debate. Indeed, throughout the process of exchanging views on this matter I was learning, and coming to the conclusion that my principal should not “invite,” “drive,” or “challenge” the local community to emergency preparedness. I had not formulated an alternative to break the deadlock that the idea then under consideration was to address, yet my focus was turning in that direction. But before I could advise my principal that the idea was unwise, someone leaked the e-mail chain and the learning became moot.

The incident and the lessons it taught were a hard knock at the time, but they have positively influenced me and my work has concretely benefited from them. I believe that I possess a full suite of tools to address even the most vexing circumstances. I therefore believe my career and my record substantiate that I have been dedicated to protecting worker and public safety and health and the environment. This is the true nature of my professional work—not the abstractions of a few news reports based on two e-mails trying to focus staff work on developing proposals to solve a problem.

BACKGROUND

In approximately December 2001 my principal, the Assistant Secretary of the Army (Installations & Environment), was assigned, by the Secretary of the Army, to take control of the chemical demilitarization program, which had the mission of destroying the Nation’s stockpile of chemical weapons. By this time, it had come under increasing scrutiny from Congress and the Office and Management and Budget for repeated cost overruns, from the communities for emergency preparedness, and from the international community for compliance with a multilateral treaty mandating the destruction of all chemical weapons. The technologies for destroying the agent that was under the jurisdiction of this program² had been selected and the plants, such as that in Anniston, were built, or very nearly built, and undergoing the final steps necessary to bring them on-line. September 11, 2001, moreover, had created a palpable, almost physical, imperative to destroy the agent and rid the communities of the potential threat and terrorist target it presented.

The Assistant Secretary, who maintained day-to-day management of the program due to the safety management and operational challenges it presented,³ adopted a phased approach to the plants. That is, he evaluated the issues at each facility and addressed those at the operating plants first (Johnson Atoll and Tooele, Utah), the plants closest to beginning operations next (Aberdeen, Maryland; Umatilla, Oregon; and Newport, Indiana); and the plants scheduled to begin operations thereafter third (Pine Bluff, Arkansas; Anniston, Alabama). All the while, we were also involved in an operation known as “Roving Osprey” to place the chemical agent and weapons in more hardened storage facilities and to work with the communities to accelerate the disposal schedules.

CIRCUMSTANCES AT ANNISTON

June and July 2002 found the Assistant Secretary progressively more interested in events at Anniston due to its impending startup date and the need for it to operate in order to eliminate the safety risk presented by the weapons in storage there. Briefing on briefing painted a consistently challenging situation: Some of the local governments worried that the Army’s funding had been insufficient for *some* emergency-preparedness equipment, and so they were disinclined to participate in emergency-preparedness activities until the funding for that equipment was provided.⁴ For its part, the Army compounded the situation (prior to my principal inheriting the program) by failing to observe all of its commitments.

The entire issue was further compounded by a technical debate, which tied into the first concern set out above, among the Army staff and some of the local commu-

²The agent located at two other sites (Pueblo, Colorado, and Blue Grass, Kentucky) had been segregated from the program and made part of another program utilizing alternative technology; i.e., technology and other than incineration or neutralization.

³I served as his Special Assistant from November 2001 to August 2004, and as the Acting Deputy Assistant Secretary of Chemical Demilitarization from September 2002 to February 2003. While I seek to deflect no attention from my own involvement in this incident, the fact is that I received my instruction from the Assistant Secretary. Please see Attachment 12, the end of paragraph 3.

⁴Not all of the local communities shared this concern and were therefore disengaged. Several key communities were engaged in exercising their emergency-response systems.

nities about which emergency-preparedness equipment was necessary, how it could be used, and whether it could be maintained.⁵ It, in turn, was exacerbated by the practice of the separate agencies responsible for emergency-preparedness exercises to engage in once yearly exercises that tested the entire emergency-preparedness program with no “run-up” exercises on the parts.

GOAL WAS TO ENSURE THE COMMUNITY’S SAFETY AND ENGAGE IT BETTER IN
EMERGENCY-PREPAREDNESS PLANNING

All of this swirling argument prevented the two most important things: (1) preparing the community for operations, and (2) operating the plant to destroy the agent, which, again, had a visceral importance in the very recent wake of September 11th. The Assistant Secretary and I viewed the community’s emergency preparedness as an *absolute requirement*—a condition precedent—for the safe startup of the agent-destruction plant. But the startup of that plant was also an absolute requirement, in our minds, for the safety of that community because without it the community would be left living with the chemical weapons, which was a potential terrorist target and safety hazard in light of September 11, 2001.

Neither he nor I were thus satisfied with the Army’s emergency-preparedness activities in the community or with some of the community’s engagement in that planning. More palpable as all of this bureaucratic bickering was going on was the worry of the people in the community, which was fueled, in part, by the frequent negative press that did not always seek out the factual details but instead appeared to rely on overly simplistic, sometimes misleading “talking points.”

We perceived that our job was to engage the communities, encourage them to participate in fruitful and regular training exercises, provide those training exercises, obtain the resources for the remaining necessary equipment, and, through media reports on those fruitful exercises, build public confidence in emergency preparedness. The Assistant Secretary and I therefore fundamentally wanted to engage the communities in emergency preparedness drills and to ensure their safety, which, again, we believed, was our foremost responsibility in preparing for the destruction of chemical agent.

He then directed me to evaluate with my staff the idea of sending an invitation to the communities and asking them to participate in a series of emergency-preparedness exercises. These exercises and the equipment for emergency preparedness would be funded by the Army, which would also announce those communities that elected to participate and those that did not. I was to return to him “shortly” with a draft of a letter or memorandum and with a discussion of staff views. He would then make the determination whether to execute.⁶

The objective, then, was to encourage more emergency-preparedness exercises and training, obtain the funding for the resources that the community’s needed, and encourage the participation of all the local communities. The objective *was not* to bully, coerce, or embarrass any of the local communities in order to shift blame from the Army for any of its own shortcomings.

These points are set out in detail in the e-mail exchange, but the newspapers elected not to report on them. In the first e-mail of the exchange, dated August 28, 2002, Mr. Lawrence Skelly, who worked for me, recited the objective to encourage more emergency-preparedness: “We wholeheartedly support the exercise [of emergency-preparedness systems] described below. It is imperative that we begin building trust and confidence in the Anniston region emergency response system that the Army, through CSEPP [Chemical Stockpile Emergency Preparedness Plan], has pumped over \$100M into the last twelve years.” Skelly to Distribution (Aug. 28, 2007).

Mr. Skelly further elaborated on our commitment to preparing the community for safe operations, stating that current methods of encouraging preparedness had not worked well:

In summary, we have a responsibility to the community to help it get ready [for operations]. Clearly, the current CSEPP approach for conducting a once-a-year exercise is not working in Anniston. The public is nervous and we are troubled by the recent refusal of certain county agencies to participate in exercises. The community is not ready [emergency preparedness] for toxic operations [introducing chemical

⁵The debate, in many regards, illustrated the phenomenon described by Mr. Timothy R. Gablehouse, President of the National Association of SARA Title III Program Officials, at the July 10, 2007, Subcommittee on Transportation for emergency-preparedness exercises to engage in once yearly exercises that tested the entire emergency-preparedness program with no “run-up” exercises on the parts.

⁶Please see Attachment 12, the end of paragraph 3.

agent into the plant], despite the millions of dollars poured into emergency management in the region. We must change that status.

Id. He laid out the concept of “*looking at* taking an aggressive, proactive approach to conducting a series of exercises . . . beginning in the very near future and continuing until the community declares itself adequately prepared for a CSEPP emergency.” *Id.* (emphasis supplied).

Mr. Skelly also laid out an *idea* for exercising more frequently than once a year:⁷ “What we *envision* is a monthly exercise paradigm that focuses on specific response activities. One exercise might drill the medical component of the response system. The next exercise might focus on command and control. Each exercise could work more than one CSEPP functional component.” *Id.* The point here, of course, was to be forward leaning, to show leadership in *proposing* a series of exercises to enhance community safety and engage it in emergency preparedness planning.

My own e-mail of August 28, 2001, the first of two in the exchange, also emphasized that point, stating that “I did not read Larry’s e-mail [of August 28, 2001] to imply that anyone in the Army (or FEMA) [Federal Emergency Management Agency] performed poorly but to reflect the reality that Anniston is refusing to cooperate in preparedness activities.” Shearer to Lantzer (Aug. 28, 2001).⁸ I emphasized that point again in another e-mail of September 9, 2001, the second of the two in the exchange, stating that the “objective of the Army’s invitation, to be issued by Dr. Fiori (ASA(I&E)) [Assistant Secretary of the Army for Installations & Environment], is to encourage Anniston to participate in the very drills that it has heretofore declined.” Shearer to Conklin (Sept. 9, 2001).

Some of the newspapers reported that the objective of this concept was to issue a “challenge” or “invitation” that we knew would be rejected. The Army, the newspapers asserted, would then attempt to shift the blame for delayed operations from itself to the communities when the “challenge” or “invitation” was rejected. The newspapers predicated this contention on the well-known fact that the communities had been funded for some, but not all, of the necessary emergency-preparedness equipment.

The facts and the plain statements in the e-mails, however, belie the newspaper assertions. Mr. Skelly recognized the vital importance of funding the remaining necessary emergency-preparedness equipment in his very first e-mail proposing the idea and seeking comment on it. He noted that the Army had an obligation to “ensure” that the community had sufficient resources and support to carry out the proposal: “We will begin developing the *proposed program* with SBCCOM [Soldier Biological and Chemical Command], AMC [Army Material Command], and FEMA to *ensure* the Anniston *community* has *sufficient resources and support to carry out this proposal*.” Skelly to Distribution (Aug. 28, 2001) (emphasis supplied). Obtaining funding for the remaining equipment was thus an integral part of the idea from the very start.

Mr. Skelly’s e-mail proposing the idea, moreover, laid out a phased approach so that exercises would take place with the resources on hand and progress as more became available: “A *range of drills falling between basic tabletop exercises and full up field exercises* with deployment hot lines, field response teams, and so forth, probably would accomplish the objective of providing the Anniston CSEPP community with a *variety of exercise opportunities*.” *Id.* (emphasis supplied). Tabletop exercises, for example, require no field equipment because they simulate command-and-control responses. They require, instead, tables, paper, telephones, and people, which were in ready supply. The inclusion of these type exercises flatly rebuts some newspaper claims that the Army’s intent had to be malevolent because the community did not have field equipment, such as first responder suits. One can participate in a tabletop exercise without first responder suits.

In addition to our very serious concern about community safety, our second objective was to document the Army’s obligations to exercise and prepare the local communities. We sought also, as part of this, to document the Army’s due diligence in adhering to that preparation obligation in the likely event that Congress, the Office

⁷This concept of exercising more than once a year and exercising parts in addition to the whole had worked elsewhere and so we believed it would also work at Anniston: “This model has worked exceptionally well at the Umatilla [Oregon] site and we believe it will work in Anniston too.” Skelly to Distribution (Aug. 28, 2002).

⁸Lt. Colonel Lantzer, of the Soldier Biological and Chemical Command (SBCCOM), to whom my e-mail was addressed, was offended that our office, which had policy, guidance, and oversight responsibilities, was stepping into her turf to execute. Yet we were seeking to do just that: Begin the process of developing the policy on engaging communities and Mr. Skelly’s e-mail was the very first step in that process.

SBCCOM was not part of my office or of my principal’s office. It was a separate Army organization in the military, not civilian leadership, portion of the Army.

of Management and Budget (“OMB”), or a lawsuit sought evidence of it. The program at that time received a significant amount of guidance from the Congress, OMB, and occasional lawsuits, and we had an obligation under the Administrative Procedures Act and good-business practices to document our efforts and to build an administrative record.

I stated this need to build a record: “He [Mr. Skelly] is doing so at my request, which is predicated on our . . . need to build a record showing that the Army has exercised all due care in preparing for operations.” Shearer to Lantzer (Aug. 28, 2001). But I also emphasized that the primary purpose was to encourage emergency preparedness: “The objective of the Army’s invitation, to be issued by Dr. Fiori (ASA(I&E)), is to encourage Anniston to participate in the very drills that it has heretofore declined. The further purpose of the invitation is to create a record demonstrating that the Army has exercised due diligence in preparing for operations, including encouraging Anniston to participate in exercises intended to prepare it for a potential emergency.” Shearer to Conklin (Sept. 9, 2001). I concluded that “[i]n sum, the Army seeks to document the invitation and to document the response or lack thereof.” *Id.*

The objective underlying each of the preceding two, and perhaps among the most important, was obtaining the funding necessary to provide the community with all the resources it needed. Mr. Skelly pointedly focused on that need in his first articulation of the idea to engage the local communities: “We will begin developing the proposed program with SBCCOM, AMC, and FEMA to ensure the Anniston community has sufficient resources and support to carry out this proposal.” Skelly to Distribution (Aug. 28, 2007). Contrary to the newspaper reports, then, obtaining the funding for the resources was as much a part of the initial thinking as planning an exercise schedule and documenting Army due diligence.

So, in sum, the initial thinking on how to engage the local communities included three crucial objectives: (1) encourage more emergency-preparedness exercises and training and the participation of all the local communities; (2) document the Army’s efforts at building readiness; and (3) obtain the funding for the resources that the community’s needed.

E-MAILS AND NEWS REPORTS REFLECT PRELIMINARY THINKING—NOT FINAL DECISIONS

While the newspapers reported that these e-mails reflected a so-called “plan,” the fact is that they merely related our preliminary thinking on how best to build emergency preparedness and the staff’s internal debate on it. Neither the e-mails nor the news reports reflect any final decisions or hard-and-fast plans. We were, in short, trying to figure out what to do.

My principal directed me to prepare a draft letter that reflected his notion on how to proceed and that also reflected the thinking of his staff, both that favoring and disfavoring the proposal. My mission was to transmit his objectives to the staff and to manage the compilation of a draft path forward and comments favoring and disfavoring it. He then intended to review the draft path forward, debate it with staff, and make a decision about whether to proceed with it or some other course.

Indeed, this internal thinking then represents a snapshot in time of the staff’s thinking about the facts, procedures, and external pressures. It does not represent a final product, my recommendation to my principal, or my principal’s decision.

The e-mails show that there was great, sometimes acrimonious, debate among the staff working this issue, and that I was seeking to articulate the preliminary objectives and focus staff energy on preparing a proposal and recommendations. They also show some poorly chosen words, which I address below. But more than anything, they show that we were thinking through an idea:

- “We would greatly appreciate your comments. We will begin developing the proposed program with SBCCOM, AMC, and FEMA to ensure the Anniston community has sufficient resources and support to carry out this proposal.” Skelly to Distribution (Aug. 28, 2007) (emphasis supplied).
- “We are looking at taking an aggressive, proactive approach to conducting a series of exercises . . .” *Id.* (emphasis supplied).
- “What we envision. . .” *Id.* (emphasis supplied).
- “One exercise might drill . . .” *Id.* (emphasis supplied).
- The next exercise might focus . . .” *Id.* (emphasis supplied).
- “He [Mr. Skelly] has sought comment among action officers at his level in order to obtain the information necessary to prepare my request for the requisite staffing. Larry [Skelly] and I will staff the action [i.e., provide it for concurrence] to come to you because you have the resources to conduct the activities.” Shearer to Lantzer (Aug. 28, 2001) (emphasis supplied).

- “The attached *draft*” Skelly to Distribution (Sept. 3, 2002) (emphasis supplied).
- “I recommend a *phased review process*” *Id.* (emphasis supplied).
- “[P]lease let them [the Acting Deputy Assistant Secretary of the Army (“DASA”) for Chemical Demilitarization (Russell Shearer) and the Deputy Assistant Secretary of the Army for Environment, Safety & Health] know this is just the *first review* and that we *still need to send it* to SBCCOM, AMC, and FEMA before we bring it back to them for [the two DASA’s] final approval and signature [before a draft and recommendation could go to the Assistant Secretary.]” *Id.* (emphasis supplied).
- “I assume that this will be staffed with OGC [Office of General Counsel], OCLL [Office of the Chief of Legislative Liaison], SAFM [Office of the Assistant Secretary of the Army for Financial Management and Comptroller], OCPA [Office of the Chief of Public Affairs], etc.” Ray to Skelly (Sept. 4, 2002).
- Yes, the proposed memo needs to go through full staffing, including AMC and SBCCOM.” Skelly to Ray (Sept. 5, 2002).
- “Thanks for the *opportunity to comment* on your exercise *proposal*.” Conklin to Distribution (Sept. 9, 2002) (emphasis supplied).
- “I believe he would appreciate *red-line edits* to the original document or *detailed comments* that he could easily input. I encourage you and any others who *perceive an issue* with the current draft to provide him with any *specific comments* you might have.” Shearer to Conklin (Sept. 9, 2002) (emphasis supplied).
- “I appreciate your thoughts on the *proposal*” *Id.* (emphasis supplied).
- “They have also sought to *obtain comments* on the *proposed invitation*” *Id.* (emphasis supplied).
- “I invite all those to whom this e-mail is addressed to consider the following concern: Many people copied on this and prior e-mails in this chain were unnecessary, and we should be more circumspect in addressing our correspondence. I believe we would all enjoy the courtesy of *debating the relative merits of a point* outside an audience of General Officers, SESs [Senior Executive Service], and Army Secretariat.” *Id.* (emphasis supplied) (The point here is that, in my experience, the inclusion of General Officers, SESs, and Army Secretariat in a debate tended to curtail the debate, which some in the e-mail chain sought. My principal and I wanted a full and vigorous debate on the idea so he could reach an informed decision.)

These statements show that we were weighing a proposal and trying to determine a path forward. They also demonstrate that the consideration of that idea would follow a robust comment procedure, including the Army Staff, both at the senior and staff levels; the Soldier Biological and Chemical Command; the Army Material Command; and the Federal Emergency Management Agency. It also shows that my principal and I would be at the end of the process and would have the benefit of staff views to evaluate whether to undertake the idea. To the extent that I injected myself into that process—or was brought into it—it was to keep the staff work moving so that we had a recommendation on a proposed path forward.

Mr. Skelly states in one e-mail, contrary to all of the above, that “Dr. Fiori wishes that we move out quickly on this project So we don’t have time for the usual deliberate staffing within the Army or the usual FEMA snail’s pace to accomplish anything.” Skelly to Ray (Sept. 5, 2002). This comment, however, must be understood in context. In this same e-mail, September 5, 2002, Mr. Skelly had already committed to full staffing, which was the expectation of my principal and me: “Yes, the proposed memo needs to go through full staffing, including AMC and SBCCOM.” Skelly to Ray (Sept. 5, 2002). I believe his intent (I was not copied on this particular e-mail) was to impart the sense that the consideration process, although very important, was also time-critical because the longer we delayed, the greater the schedule would slip for operations and the longer the community would be left living with a potentially attractive terrorist target.

Neither my principal nor I, moreover, was copied on this particular e-mail or we would have directed that it be fully vetted in accord with my prior written instructions.⁹ The staffing of whatever document was produced also had to come through me before being transmitted to my principal. I would not have permitted a document to reach my principal unless it had been fully vetted and, especially, vetted

⁹“He [Mr. Skelly] has sought *comment* among action officers at his level in order to obtain the *information* necessary to prepare my request for the *requisite staffing*. Larry [Skelly] and I will *staff the action* [i.e., provide it for concurrence] to come to you because you have the resources to conduct the activities.” Shearer to Lantzer (Aug. 28, 2001) (emphasis supplied).

by our general counsel's office and by our public affairs office. This vetting was our standard operating procedure, and one from which I would not deviate then or now.

Finally, my e-mail of September 9, 2002, states a due date of approximately September 20, 2002, for a draft letter inviting the community to engage in emergency preparedness activities: "The Army intends to send the invitation to Anniston by the middle of next week, and so a draft must be prepared by close-of-business for Thursday of this week." Shearer to Distribution (Sept. 9, 2002). That due date is a managerial driver to focus energy and produce a straw-man document that could be debated with my principal. It is also a series of dates that accorded to the expectations my principal held of me for when such a discussion would occur. Without such a driver, in my experience, staff debate would draw on without end. The due date thus was not a date certain on which some preconceived notion would be executed but, instead, a date on which I expected to be able to advise my principal.

Perhaps I might have articulated this point better, but, as with all of the statements, this statement must be considered in the context of the statements from numerous individuals and individual e-mails, interspersed throughout the entire chain of e-mails, all of which demonstrate that we were trying to figure out what to do. They also demonstrate that we were in the midst of that process and that the staff understood it to be a deliberative process—not that we were marching toward some inexorable, preconceived end point. We were evaluating an idea, trying to produce a straw-man document (variously referred to as a "memo" or "letter" or "invitation") so that staff could comment and debate it, and so that we could then present that information (the straw-man and the views favoring and disfavoring it) to my principal for his decision. These e-mails thus represent a snapshot in time of the staff's thinking about the facts, procedures, and external pressures. It does not represent a final product, my recommendation to my principal, or my principal's decision.

In addition, the date of my last e-mail was September 9, 2002, and my principal received a letter from Senator Shelby on September 20, 2002, advising him that the thinking reflected in the e-mail chain was unwise. The news reports appeared on September 21, 2002. A letter of the sort contemplated in the e-mail chain was not sent and did not appear before or after September 20, 2002.

No letter was ever sent because no letter or other document was ever brought to me to review or to my principal.¹⁰ This, of course, reflected the fact that the staff exhibited intense feelings disfavoring the idea. This disfavor and, more importantly, the rationale expressed for it had changed my own thinking about approaching the situation. Indeed, throughout the process of exchanging views on this matter I was learning, and coming to the conclusion that my principal should not "invite," "drive," or "challenge" the local community to emergency preparedness. I had not formulated an alternative to break the deadlock the idea then under consideration was to address, yet in the eleven days between September 9, 2002, and September 20, 2002, my focus was turning in that direction. But before I could advise my principal that the idea was unwise, someone leaked the e-mail chain and the learning became moot.

I GAINED VALUABLE AND UNCOMMON EXPERIENCE THROUGH INTERNAL DEBATE AND AS CONSEQUENCE OF NEWS REPORTS

The preceding discussion is no slight-of-hand to avoid responsibility for my involvement in the e-mail discussion of how to engage the communities. I accept responsibility for it. The preceding simply sets out the mitigating circumstances of that involvement.

I gained valuable and uncommon experience through that internal debate five years ago. I gained additional valuable and uncommon experience as a consequence of the e-mail leak and the concern its disclosure prompted in the communities. I admittedly would have preferred that the learning would have come through the educational process of the internal debate alone instead of jointly with the hard knock of the e-mail leak, congressional interest, and news reports. But that preference is another lesson learned that I do not have to repeat.

Intergovernmental communication is an art not a science and in this instance we failed to appreciate how the source of an idea and tone can dramatically impact relations. The e-mails of Mr. Skelly and me interchangeably use the terms "chal-

¹⁰E-mails that transmitted a draft were exchanged at the staff level, and I was not included on them.

lenge”¹¹ and “invitation.”¹² Later e-mails recognize that an invitation is a better approach than a challenge, but, in the end, that is immaterial, too. We should have sought to work from a “ground-up” perspective rather than a “top-down” perspective. That is, we should have consulted with the local communities even in developing an initial proposal.

While we perceived the idea to be a genuine invitation, with resources attached, such an invitation from on high might be understood as an ultimatum. Quiet discussions at the local level might have a more productive impact. This was a fine point, a key distinction, that staff debate¹³ made to me and that I had accepted as the news reports broke.

Our idea to issue a “challenge” or “invitation” was a product of the poor relations that existed when my principal assumed management of the program. But we should not have assumed that an adversarial rapport with the community would flow from our efforts. The newspapers accurately reported that Mr. Skelly commented that the Army would record and make known those who elected to participate and those who did not: “To support this robust exercise program we would launch a media campaign that informs the public about the purpose if the drills, who we hope to have participate and what our objectives are. We would also make it known what agencies refused to participate and their excuses.” Skelly to Distribution (Aug. 28, 2007).

Our objective was not to embarrass the community but to encourage—perhaps strongly encourage—the communities to participate in emergency preparedness. Indeed, the centerpiece of the thinking was not a public relations battle against the local and state agencies but to devise a method that caused them to be engaged in emergency-preparedness and allowed us to destroy the chemical stockpile and the risk it presented. But that, as before, is immaterial. Our communications plan should have focused on meeting with the communities and engaging them, rather than on worrying about what we would do in the event they declined to engage with us.

While I present these as lessons learned, the fact is that I was learning this information as staff debate progressed. I could not act on this information because the e-mails were leaked before I had an opportunity to take action. Learning from an event, accepting responsibility, and using the lessons taught by the event, I believe, is the mark of maturity and the desire to improve. In my situation, I learned that inter-governmental communication is complex, and I now work more closely with local communities and their Congressional delegations, even in devising preliminary paths forward. I believe that this experience and sensitivity to the complexity of inter-governmental communication is far from ubiquitous and so I have gained an important asset.

My record shows that I have engaged in effective communication with local communities both before the event and after:

- I worked with the local community at the Aberdeen Proving Ground and the Maryland congressional delegation, principally Senator Mikulski and her staff, to change radically the plan for destroying mustard agent there and thereby safely expedite the agent destruction schedule by several years (January–August 2002).
- I worked with the Confederated Tribes of the Umatilla Indian reservation to prepare them for the safe operation of the Umatilla Chemical Agent Disposal Facility (December 2001–February 2003).
- I reversed, along with my principal, a prior DOE Assistant Secretary’s policy to centralize worker-health screenings and instead kept them at the local level. Working with workers and their representatives at the local level was essential to structuring a program that was most useful to them (August–September 2004).
- I worked with local worker groups to devise methods to provide them with operating-experience data more efficiently (January 2006–October 2006).
- I am currently working with individual workers and worker groups to address beryllium monitoring and reassignment to non-beryllium areas (July 2007–current).

¹¹See *e.g.*, Shearer to Lantzer (Aug. 28, 2002) and Skelly to Distribution (Sept. 3, 2002).

Mr. Skelly also stated in an e-mail, which he later corrected, that the “attached draft is my effort to toss the gauntlet on the ground without attacking the State or the counties for inaction.” Skelly to Distribution (Sept. 3, 2002). He later corrected his statement to note that the “[i]ntent is not to ‘tell’ the State but to ‘invite’ them to participate.” Skelly to Ray (Sept. 5, 2002).

¹²See, *e.g.*, Shearer to Conklin (Sept. 9, 2002) and Skelly to Ray (Sept. 5, 2002) (“Intent is not to ‘tell’ the State but to ‘invite’ them to participate.”).

¹³Conklin to Shearer (Sept. 9, 2002).

My career and my record thus substantiate that I have been dedicated to protecting worker safety and health and the environment. This is the true nature of my professional work—not the abstractions of a few news reports based on two e-mails trying to focus staff work on developing proposals to solve a problem.

As a final footnote to the Anniston event, the Calhoun County Chamber of Commerce of Calhoun County, Alabama, the location of the Anniston Chemical Agent Disposal Facility (ANCDF), adopted a Resolution commending my principal for his work in bringing the ANCDF on-line. (Attachment 5).

Question 2. Could you explain to the Committee what your role was in this controversy?

Response. See Response to Question 1.

Question 3. Please provide the Committee with all of the emails or other documents relating to this matter in your possession, or the possession of the Department of Defense.

Response. I have included these documents in my response to Senator Boxer's QFR 1.

Question 4. Why did you leave the Department of Defense? Please provide any evaluation of your work performance while at the Department of Defense, including any evaluation of your performance in relation to the issues at Anniston described above.

Response. I resigned my appointment at the Department of Defense because the President promoted and appointed me to serve as the Principal Deputy Assistant Secretary of Energy (Environment, Safety & Health).

I have attached as Attachment 8 my job performance reviews assessing my performance during the period November 2001 to August 2004. Please continue to accord these documents the confidentiality of the Privacy Act and manage them as Official Use Only.

[The referenced documents may be found in committee's file.]

RESPONSE BY RUSSELL H. SHEARER TO AN ADDITIONAL QUESTION FROM
SENATOR LIEBERMAN

Question. As was discussed at the hearing, it has been reported that you were involved in an incident in September 2002 in which the Army was having a dispute with officials in Anniston, Alabama concerning participation in a training exercise related to a chemical weapons incinerator. According to news reports, local officials were unwilling to join in the exercise until they had received certain relevant equipment. Unable to resolve the dispute, certain Army officials apparently came up with a plan to issue a challenge to local officials that was certain to be rebuffed and then use that refusal as the basis for a series of press releases blaming the local officials for any lack of preparedness. According to the Birmingham News, there was an email from you indicating you had been the one who had directed that the challenge be issued. At the hearing you acknowledged the email and your involvement in this incident.

The Chemical Safety and Hazard Investigation Board frequently needs to work with state and local officials who also may be responding to or investigating the scene of a chemical incident. If confirmed, will you commit to working to resolve disputes with state and local officials in a cooperative manner and to refrain from using your position to conduct public relations battles against state and local officials.

Response. I am absolutely committed to working with state and local officials in a cooperative manner to resolve disputes and to refrain from using my position to conduct public relations battles against state and local officials.

I have set out my involvement in the Anniston, Alabama, event in my response to Senator Lautenberg's QFRs 1 and 2.

RESPONSE BY RUSSELL H. SHEARER TO AN ADDITIONAL QUESTION FROM
SENATOR CARDIN

Question. You do not appear to have relevant private sector experience in chemical safety processes. What specific knowledge do you bring to this position that is directly relevant to the subject matters that the Chemical Safety Board considers?

Response. My professional career has focused on high hazard operations including chemical and nuclear operations. I have had the opportunity to work for programs and companies involved in chemical refining, distillation, blending, blend-down, catalytic regeneration, rework, and destruction operations. I have also had the opportunity to work for programs involved nuclear reactor testing, nuclear weapons

production, cleanup of nuclear weapons facilities, sophisticated national laboratories, and chemical weapons destruction facilities, all of which employ numerous chemical processes in their operations.

True, some of the experience is not from the “private sector,” but that is because I have dedicated more than three-fourths of my professional career to public service. Looking exclusively at private-sector experience in my case would be misleading for three reasons. First, all of the government agencies for whom I have worked employed chemical processes that are either the same, similar, or directly analogous to processes employed by the private sector. Second, all of the government agencies for whom I have worked contract with the very best and brightest private-sector companies to operate their facilities. I have been responsible for setting the standards of process-safety management (“PSM”) with which these private sector companies must comply, for providing technical expertise to help them comply, and for enforcing against them when they fail to comply. Third, the private sector employs a less rigorous PSM methodology than that in which the Government has trained me for many years.

I can therefore bring technical competency in a more rigorous approach to PSM.¹⁴ I explain some aspects of that more rigorous approach below in my comments on how the standard should be improved. But for the purpose of explaining my skill set, I will lay out the standard briefly and show examples for each of its steps.¹⁵

The Occupational Safety and Health Administration’s Process Safety Management Rule¹⁶ generally requires that once a plant has been built or significantly modified the employer must (1) gather process safety information; (2) prepare a process hazard analysis for each process at the plant; and (3) prepare operating procedures. The rule mandates (4) employee participation as part of gathering process safety information and preparing the process hazard analysis. It further requires before startup (5) preparation of a pre-startup review; (6) training of the operators; (7) preparation of a mechanical integrity plan, including a quality assurance process; and (8) preparation of a management of change process. The rule finally requires (9) investigations when a safety incident occurs, and (10) periodic auditing of whether the plant is in compliance with the rule.

PROCESS SAFETY MANAGEMENT EXPERIENCE

(1) Process Safety Information¹⁷

- Led effort and developed design guidance (Department of Energy (“DOE”) Standard 1189) for integrating safety into design throughout the lifecycle of the facility; includes as a keystone element PSM at each stage and especially PSM for selection of safety class and safety significant systems, structures, and components;
- Also applicable to Process Hazard Analysis, Operating Procedures, Employee Participation, Pre-Startup Review, Training, Mechanical Integrity, and Change Management;
- Developed Dissenting Professional Opinion (“DPO”) process whereby professional opinions on technical matters are entered into a formal system and evaluated through an appeal process by progressively more senior levels of management (retaliation for DPOs prohibited);

¹⁴In fact, Admiral Hyman G. Rickover, often cited as the “Father of the Nuclear Navy,” is credited with implementing and employing the most careful and exacting process-safety management standard known. THEODORE ROCKWELL, *THE RICKOVER EFFECT: HOW ONE MAN MADE A DIFFERENCE* (2002). The Navy, as a consequence, has safely steamed more than 133 million miles on nuclear power. It is in this strict standard of process-safety management in which I have been trained.

The Atomic Energy Commission developed similar criteria for safety analysis in the 1960s, a more refined and codified version of which is still used by the Nuclear Regulatory Commission to license commercial nuclear facilities.

¹⁵In addition to the following technical PSM expertise, my credentials also demonstrate experience in accident analysis and reconstruction, human factors, and professional standing, which the Chemical Safety and Hazard Investigation Board’s organic statute lays out as alternate means of qualification.

¹⁶29C.F.R. § 1910.119 (1997); 29 C.F.R. § 1926.64 (1997).

¹⁷Some of the following pigeonholing is not how I would typically characterize my work because the process-safety management methodology in which I am trained is more robust, integrated with much better feedback loops, and casts as overarching functions some of the individual steps in the OSHA process. I have therefore listed some skill sets twice in order to reflect the fact they fit more than one place.

- Also applicable to Process Hazard Analysis, Operating Procedures, Employee Participation, Pre-Startup Review, Training, Mechanical Integrity, Change Management, Investigations, and Audits;
 - Principal author of practical guide to facility and activity walk downs, which teaches management and employees to walk the spaces and ask knowledgeable questions designed to “pull-the-thread” on key issues indicative of safety performance.
 - Also applicable to Process Hazard Analysis, Operating Procedures, Employee Participation, Pre-Startup Review, Training, Mechanical Integrity, Change Management, Investigations, and Audits;
 - Established safety-research office to examine important safety issues that cross-cut program offices; created system to coordinate research among offices so that results could be centralized and available to all; digested past research work and maintained it in database so that research could be easily searched and obtained, even though span of operations was nation- and, in some instances, world-wide.
 - Also applicable to Process Hazard Analysis, Operating Procedures, Employee Participation, Pre-Startup Review, Mechanical Integrity, Change Management, and Investigations;
 - Developed guidance on reviewing process-safety information documents;
- (2) Process Hazard Analysis
- Conducted hazard analysis and advised senior management on numerous facilities, including:
 - Wet chemical and metallurgical facility;
 - Manufacturing facility for pyrophoric metals;
 - Manufacturing facility for mixed-oxide fuels from pyrophoric metals;
 - National laboratory complex including wet and dry chemistry laboratories;
 - High-intensity lasers and neutron sources;
 - Dangerous metals;
 - Chemical- and radioactive-waste processing facility;
 - Two chemical refineries producing specialized metals; and
 - Five chemical incinerators and two neutralization facilities.
 - Developed guidance on reviewing process-hazard analysis documents;
 - Drafted risk-assessment guide for undertaking probabilistic and deterministic risk-assessment methodologies used in assessing process hazards;
 - Developed program to identify, collect, and analyze un-reviewed safety questions; i.e., safety questions not already analyzed in existing process hazard analyses or that arise due to changes in operations.
 - Assessed hazards of DOE chemical and nuclear facility operations to determine whether they exhibit characteristics of high-consequence—low-probability events, such as Columbia Space Shuttle accident;
 - One of key senior officials responsible for establishing Central Technical Authorities (“CTAs”); CTAs grew out of analysis of Columbia Accident Investigation Board findings, coupled with recommendation from Defense Nuclear Facilities Safety Board, that large, complex organizations often require centralized authority responsible for tracking day-to-day compliance with operating limits and any variance from those limits; CTAs help ensure compliance with process-safety documents and operating limits;
 - Familiarized with design basis threat (“DBT”) analysis, uncommon skill that analyses facility’s ability to withstand attacks of various sorts, such as well-armed terrorist squad or detonation of explosive device; DBT analysis cross-cuts safety because safety systems must be sufficiently robust to withstand DBT but cannot create threat to the workers; with the Department of Homeland Defense focusing on ensuring that commercial chemical and other high-hazard facilities can withstand DBT, increasingly important to ensure protection methods do not create un-mitigated or unreasonable risks to workers or public;
 - Implemented integrated safety management system (ISMS) that utilizes a quality assurance methodology and feedback loop to perform work safety: (1) define scope of work; (2) analyze hazards; (3) define hazard controls; (4) conduct work in accord with hazard controls; and (5) provide feedback on performance of the work and the ISMS system and analysis; system applies not only at macro level of process information, process hazard analysis, writing procedures, pre-startup reviews, training, mechanical integrity and quality assurance, change management, and incident investigations but also at individual worker

level, whether that work is turning a spade or dirt or loosening the bolts to change-out a valve;

- Determined proper national consensus standards to be incorporated in standards and, therefore, analyses.

(3) Operating Procedures

- Revised existing operating procedures to reflect best practices and changes for improvement, such as new operating-experiences program;
- Developed new safety procedures, such as nanotechnology safety policy and best practices;
- Created system of reports to alert facilities of operating experiences that may mandate change in procedures or incorporation of best practices;
- Developed special-emphasis safety programs to enhance safe operations, including electrical safety, laser safety, rigging and hoisting, and Lock out/Tag (LOTO) out;
- Implemented, educated, and championed conduct-of-operations (also called rigor-in-operations), in order to bring disciplined operations to chemical and nuclear facilities; successfully changed the safety culture of these facilities and thereby reduced events that could affect safe and reliable operations.

(4) Employee Participation

- Engaged employees and labor unions to find means of communicating operating experience, such as incident investigation findings, directly to workers in timely manner.
- Established training and special-emphasis safety programs to educate workers on procedures with which they were having difficulty (as reflected in safety-performance metrics).

(5) Pre-Startup Review

- Developed guidance under which pre-startup review plans were undertaken and analyzed;
- Reviewed pre-start-up review plans and results.

(6) Training

- Devised and managed safety-training programs for workers and management, such as Federal Technical Competency Panel, which prepared and evaluated (by examination) individuals from shop floor through senior management possessed adequate skills, and Nuclear Executive Leadership Training, which trained and evaluated (by written examination) management to ensure they understood and could perform process-safety management and other key safety functions.

- I was also trained by the course and certified by written examination;

- Managed training program for conduct-of-operations (also called rigor-in-operations) in order to educate plant managers and bring better discipline of operations to their facilities;

- I was also trained by the course and certified by written examination.

(7) Mechanical Integrity Plan & Quality Assurance

- Developed program to identify, collect, and analyze un-reviewed safety questions;
- Managed sophisticated Quality Assurance and Quality Control program for chemical and nuclear facilities, which included:

- Designing facilities and safety systems, structures, and components (“SSCs”);
- Procuring materials;
- Construction, including welding, pouring concrete, and other key tasks;
- Component changes, including in-kind changes or for new or different equipment;
- Plant software to operate key systems, including key safety systems; managed development of the standard (procedure) governing preparation of quality assurance programs for software;
- Suspect/Counterfeit Items and Defective Items (SCI/DI) program, which communicates information to facilities about under-rated or defective parts so that parts will be removed from service and, thereby, prevent accident or event;
- Safety quality Assurance (Integrated Safety Management System);
- Environmental quality assurance (ISO 14001);
- Nuclear quality assurance (ASME NQA-1);
- Product quality assurance (ISO 9000);

- Integrating all of the quality assurance systems (safety, environment, nuclear, and product);
 - Managed enforcement program with civil penalty authority for violations of quality assurance and quality control programs;
 - Built team to assist field with maintenance issues in order to better understand how structures, systems and component reliability can be improved to avoid safety issues, functional failures, minimize equipment and facility downtime, maximize component life, identify critical failure modes, and maximize asset performance.
- (8) Change Management
- Managed effort to regain configuration control of chemical facilities so that they existed in a known and analyzed condition and so that the Piping and Instrumentation Diagrams (“P&IDs”) reflected the true physical state of the plant (ball valves had been swapped out for gate valves, for example, and change was undocumented on P&IDs and unanalyzed for safety and function impact);
 - See also Mechanical Integrity Plan & Quality Assurance.
- (9) Incident Investigations
- Managed and conducted more than thirty accident and event investigations and analyses that employ root-cause and other methodologies only recently adopted by Chemical Safety and Hazard Investigation Board:
- 4 Investigations and analyses include typical chemical events, such as failure to follow elements of process-safety management (failure to follow procedure and equipment failure, for example), chemical fires, contamination, chemical exposure, and vapor inhalation, as well as common industrial accidents, such as arc flashes and failure to use fall protection;
- Directed use of new root-cause analytical technique, “Human Performance Improvement,” which ferrets out latent organizational defects that lead to most human error, rather than focusing on “blaming the worker;”
 - Chemical Safety and Hazard Investigation Board recently applied methodology in its BP Texas City report;
- Conducted detailed analysis of data, including events inside and outside my company or agency to ascertain whether they contained insights for our safety performance; this analysis included, among others, the National Aeronautics and Space Administration’s Columbia Space Shuttle accident, the Davis-Besse nuclear power plant event (involving reactor-vessel head corrosion), and Chemical Safety and Hazard Investigation Board findings on chemical sector events;
 - Developed set of leading corporate safety performance metrics;
 - Aggregated data to seek out broad (generic) implications and operational improvements; devised a sophisticated analytical tool to promote operational awareness of real-time, facility-level safety and production performance;
 - Created system of reports to alert facilities of operating experiences that may mandate change in procedures or incorporation of best practices, including:
 - Daily Operating Experience Reports—daily reports of events in near real-time;
 - Operating Experience Summaries—monthly reports digesting issues across complex to assess trends and other important insights;
 - Special Operations Reports—analyses that drive action to prevent event recurrence;
 - Alerts—analyses that initiate immediate action on significant safety issues;
 - Bulletins—analyses share information and recommend actions on safety issues [See Attachment 9 for Bulletin on Chemical Safety and Hazard Investigation Board report on Delaware City event; See Attachment 10 for Bulletin on Texas City];¹⁸ and
 - Safety Advisories—analyses provide information on potentially significant safety or health issues [See Attachment 11 for Advisories on Texas City and on Chemical Safety and Hazard Investigation Board report];¹⁹
 - Communicate best practices in all of the preceding documents;
 - Implemented technique known as “Prevent Events,” which supplies talking points synopsising an analysis in a manner immediately useful to workers on shop floor;
 - Managed report and recommendations prepared by my office designed to address recurring chemical incidents.
- (10) Auditing

¹⁸These reports were prepared at my direction and using the focus that I provided.

¹⁹These reports were prepared at my direction and using the focus that I provided.

- Trained in concept of oversight and self-assessment, which is more robust process than simple compliance auditing; oversight and self-assessment are constant, ongoing processes that continuously evaluate the state of safety performance—not just compliance with the rules—to ensure that performance exceeds mere compliance; oversight and self-assessment also seek out and correct potential safety issues before they become a near miss or event; it also includes setting standards of excellence against which performance is measured;
- Managed program reviews to evaluate whether they met basic safety-system standards and thus complied with requirements; also evaluated extent to which programs excelled beyond mere compliance;
- Implemented new integrated oversight procedure, that includes safety, environment, and health oversight;
- Oversaw development of safety performance assessment guide;
- Oversaw development of extent of condition review guide, which explains how to assess the prevalence and persistence of an issue across a facility, operation, or entity.

BROADER PROCESS SAFETY MANAGEMENT EXPERIENCE

I also possess additional experience that overarches the entire process-safety management regime:

- Served as the Acting Assistant Secretary and as the Principal Deputy Assistant Secretary for Environment, Safety & Health, which function as Chief and Principal Deputy Chief Safety Officers, respectively, of the Department of Energy (DOE, if it were a private entity, would be among the largest manufacturing corporations in the world);
 - Directed a \$100M annual, 200-person safety, environment, and health program;
 - Ran DOE's chemical safety program, including oversight of DOE's chemical hazard characterization and analysis process, annual chemical management conference, and development of chemical management best practices;
 - Educated and certified (by written examination) by DOE as senior manager qualified to oversee and manage process-safety management functions.
 - Managed, oversaw, and advocated for DOE's promulgation of the Worker Safety and Health Program rule (10 C.F.R. Part 851), which is DOE's equivalent of the OSHA regulations; I also resolved key issues associated with its implementation, such as incorporation of national consensus standards;
 - Brought new corporate focus to building an assessment-driven, rather than event-driven, complex through emphasizing translation of lessons learned into operating experiences used at the facilities, through enhanced oversight, through enhanced self-assessment, through promulgation of new evaluative techniques, such as Human performance Improvement, and through assessing extent of problems rather than merely studying the problem at-hand;
 - Former manager of a program operating five thermal destruction and two neutralization facilities to destroy chemical weapons;
 - Embedded elements of process-safety management in program; brought concept of conduct-of-operations to program; improved safety performance record;
 - Trained in Emergency Planning and Community Right-to-Know Act ("EPCRA") and served as Savannah River Site's EPCRA attorney.
 - Advised at length on pollution prevention in order to minimize the emissions, discharges, and hazardous waste reportable on Form R; applied process-safety management as part of this advice to encourage clients to incorporate less hazardous constituents in process, engage in closed-loop recycling, and adopt operating procedures that result in less off-specification material.

I have also attached the independent evaluations of my skills by Dr. Mario P. Fiori, a consulting engineer (Attachment 12); Mr. Frank B. Russo, Senior Advisor for Environment, Safety & Health to the Administrator of the National Nuclear Security Administration; and Mr. David B. Amerine, Senior Vice President of Parsons.

My long-term involvement has allowed me to become competent in both standards of process-safety management—that employed in the hazard operations in which I have been engaged and that adopted by OSHA. I have viewed the OSHA rule as a vital component in safe commercial operations but it is only a floor, and a floor that contains elements that I believe should be strengthened. I will therefore seek, if confirmed, to work with the Chairman and Board Members to issue recommendations and provide practical recommendations on improving the PSM rule in a sen-

sible manner that does not create safe, but ultimately un-operable, inefficient, and un-economic facilities. Safety is foremost but it must be—and can be—executed in a manner that does not break the backs of small and large operations alike.

I will accordingly lay out seven safety management principles that influence my preliminary views on improving the PSM rule, which follow those principles.

SAFETY MANAGEMENT PRINCIPLES

1. Safety is a foremost consideration.
 - Companies have a moral and legal duty to ensure worker safety.
 - Governmental inspections and internal auditing alone will not drive safe behavior.
 - Employers must set and abide by high standards in order to encourage and create a good safety culture.
2. Safety is Free.
 - Safety is a good business practice.
 - Safety investments must be integrated with production throughout a facility's life.
 - Safety will become part of routine operations if it is integrated.
 - Integrated safety will drive reliability, efficiency, and productivity.
 - Safety is not an add-on cost when integrated: "Safety is Free."
3. Involve the worker.
 - No safety management program—process management or otherwise—works unless the worker on the shop floor understands safety and is engaged in its promotion.
 - Good safety records can be aided—but not created—by management.
 - Workers on the shop floor create good safety records.
 - Managers create the environment for such a record to flourish by providing attention to and support for safety.
 - The purpose of a procedure, in fact, is to allow a worker to perform his duties in a safe and productive manner that will result in overall safe and reliable operations.
4. You can't tell what's wrong unless you know what's right.
 - Subjective judgments and "pencil-whipping" a problem do not create a safe working environment.
 - Adherence to proven, accepted, and applied national consensus standards²⁰ can create a safe working environment.
 - Plant personnel must be technically competent and inquisitive.
5. What management does speaks louder than what management says.
 - Managers need to talk about the importance of safety.
 - But it will only be "talk" unless managers also demonstrate a commitment to safety by, for example, walking engineering spaces, participating in hazards and safety analyses, and attending tool-box briefings or plan-of-the-day meetings where forthcoming work is discussed.
6. Experience is the best teacher.
 - People make mistakes and equipment fails.
 - Operating experience takes the information from those events and applies it to ongoing operations in order to avoid repeating the same mistake.
 - A critique program is essential, especially at new facilities with new equipment that lack operating experience, in order to review the events as a whole rather than individually so that insights and trends can be deduced.
7. Conduct-of-Operations is critical to safe operations.
 - Conduct-of-Operations is a defined process by which rigor in operational safety is imbued in all aspects of a process, and it includes, as a minimum, the following elements:
 - Configuration control;

²⁰The American Society of Mechanical Engineers, National Fire Protection Association, Institute of Electrical and Electronics Engineers, International Standards Organization (commonly known as "ISO"), among others, are good sources for proven, applied national consensus standards.

- Maintaining the facility in a known and analyzed state is a key linkage between the hazards analysis, which sets out safe operating limits, and operation of the facility;
- Verbatim compliance with procedures and no ad-hoc procedures developed for “special occasions” or “on-the-fly;”
 - Procedures are another key linkage between the hazards analysis, which sets out safe operating limits, and operation of the facility;
 - A change or deviation in procedure must be evaluated in advance in order to determine its affect on safety systems and operations;
- Command and control;
 - No bifurcation of control;
 - Hold the senior control-room manager accountable for activities at the entire facility or process during the shift.

OPPORTUNITIES FOR IMPROVEMENT IN THE PROCESS-SAFETY MANAGEMENT RULE

The preceding principles constitute my “acceptance criteria” for evaluating the PSM rule, and based on them I find several opportunities for improvement. I have also sought to lay out these opportunities for improvement with an eye to the results that I believe should be sought.

- The PSM rule should use its elements as analytical tools that can assist the design and construction process.

The PSM rule is, generally, retrospective (i.e., it applies once the facility is built and operating) and thus misses the best opportunity to influence the formulation of the safety envelope. Gathering process safety information, preparing process hazard analyses, writing procedures, setting up a change management process, implementing a mechanical integrity program, building a quality assurance and quality control system, designing an accident investigation program, formulating an audit program, and beginning training only begins when a full up plant is waiting to be operated. The PSM rule misses an opportunity for process safety information and process hazard analyses, for example, to influence design and construction.

- I recognize that the appendix to the rule offers up using some process-hazard analysis as a “good practice,” but this information is far too critical to be considered merely a “good practice.” I believe therefore the PSM rule should integrate these elements into the entire lifecycle of the plant, including conceptual and final design, systematization (turn-over from engineering to operations), operations, and decommissioning.²¹

- The PSM rule should adopt more rigorous analytical techniques.

The PSM rule currently provides no direction on the application of the process-hazard analytical techniques it provides as “safe harbors.” It does not, for example, mandate more robust techniques for more complex facilities; even the guidance in the appendix and the enforcement guide focus the rigor of analysis on the size—not complexity—of the plant. The rule therefore provides no substantial check on applying a less-rigorous method, such as a check-list approach, to a complex facility. The PSM rule should specifically mandate a “graded approach” that directs more complex or hazardous facilities to employ more rigorous means of process safety analysis.

- The PSM rule should adopt a more robust approach to procedures.

The PSM rule currently requires only that operating procedures be readily accessible. It does not require that operating procedures be used and followed verbatim. The Chemical Safety and Hazard Investigation Board’s report on the BP Texas City, Texas, explosion found that failure to follow procedures after a turnaround was an important cause of the event. The PSM rule should require use of and verbatim compliance with procedures. It should also endorse a conduct-of-operations approach to operations.

- The PSM rule should adopt an overarching approach to quality assurance and quality control.

The PSM rule and appendix refer to quality assurance in the mechanical integrity context, and even then only in the context of construction materials, fabrication, inspection, and installation. It refers to quality control only in the operating procedures context, and it is limited to quality control of raw materials and hazardous chemical inventory levels.

²¹I further recognize that the PSM rule also applies to existing facilities where these elements can be applied only to the as-built facility.

The PSM rule should, instead, establish quality assurance and quality control as the overarching management system and gate keeper, respectively, that they should be when undertaking high-hazard operations. It should express some fundamental expectations about a quality assurance and quality control processes. It should also endorse integrating quality assurance into all the other necessary processes, such as the conduct of work itself, configuration control, procedure development, and change management, among others. It should endorse integrating quality assurance systems with one another, such as Integrated Safety Management (“ISMS”) for safety, ISO 14000 for environment, and ISO 9000 for products. The PSM rule should, lastly, endorse more than a mere compliance audit. Utilizing a graded approach, the rule might endorse a self-assessment and oversight program that seeks more than just mere safety compliance.

- The PSM rule should show a strong linkage between its safety-management focus and technical standards that lay out the methodology for conducting analyses, determining adequacy of design or operation, or managing risks.

The PSM rule shows no linkage between process-safety management and technical standards. It lists some potential sources of those standards in the appendix but it does not cull out or mandate particularly important standards even for conducting a process-hazard analysis. This lack of interface between the rule and the standards makes it very difficult to assess the objective “reasonableness” of an analysis, design, and operating procedures, among others.

The PSM rule should point to, incorporate by reference, adopt, or even refer to specific national consensus standards that are typically the benchmark by which “reasonableness” is assessed. I believe that anything would be better than simply leaving the question wide open because certain disciplines have hard-and-fast tests for reasonableness. The American Society of Mechanical Engineers standards for pressure vessels are, for example, the benchmark for assessing that equipment. Even some local codes reference these national consensus standards; the PSM rule, which is, in a sense, a national safety code, should do likewise.

Question 2. What evidence can you point to in the last two years that demonstrates your independence and willingness to press a reluctant Administration into action?

Response. My record demonstrates numerous instances where I have taken unpopular actions to ensure that environment, safety, and worker health are properly protected. The examples provided below demonstrate my willingness to take the necessary steps to protect worker safety and health and the environment.

- The Department of Energy (“DOE”) regulates itself for occupational safety. Until 2006, DOE had no regulation governing occupational safety and no means of enforcing against its contractors for violations of the Department’s expectations regarding occupational safety. It relied, instead, on a Department of Energy Order. I managed, oversaw, and advocated for DOE’s promulgation of the Worker Safety and Health Program rule (10 C.F.R. Part 851), which is DOE’s equivalent of the OSHA regulations. I also resolved key issues associated with its implementation, such as incorporation of national consensus standards. The rule had previously failed to be adopted under a prior Assistant Secretary because of internal disagreements about the incorporation of national consensus standards and even the need for such a rule, despite Congressional direction to adopt one. My principal and I provided the leadership in the Department to accomplish the task, and I provided technical guidance to my staff to resolve key issues.

- I have spent much of the last three years at DOE expressing the need for Federal employees to spend time out of their offices and in the field where work, such as high-level waste transfer operations, is conducted. Because the office of environment, safety, and health has no authority to direct program activities outside its own office, I was unable to direct Federal employees in other programs to spend more time in the field. My observations and recommendations, thus, met with notable resistance, principally from senior career staff who felt they spent enough time in the field. I continued in making this recommendation, including at senior staff calls, and achieved some success in encouraging a greater field presence.

- I conceived of the need for and established the general parameters of a departmental “design and build” standard, DOE Standard 1189, currently under review, which provides binding guidance for integrating safety into design throughout the lifecycle of a facility. The standard includes as a keystone element PSM at each stage and especially PSM for selection of safety class and safety significant systems, structures, and components. The need for such a standard was not widely

agreed upon, even among my own staff, and I had to exercise considerable leadership within the Department in order to win its development.

Question 3. Do you believe that Community Right-to-Know laws are a help or a hindrance or simply irrelevant to the safe functioning of chemical plants in America?

Response. The answer to this question, from any safety professional's perspective, is emphatic: Community Right-to-Know laws are critical.²² These laws, and specifically EPCRA, require emergency planning, emergency notification in the event of a release of a reportable quantity, hazardous chemical storage reporting requirements, and toxic chemical release inventory (Form R).

The emergency planning requirements of EPCRA are the lynchpin by which local responders know what sorts of events and chemical to which they may potentially have to respond. It is also the mechanism by which evacuation plans are developed and by which emergency responder training takes place.

The emergency notification requirement is the mechanism that causes the facility that is the source of the release to notify the local and state emergency responders and planning commissions. It also requires the facility to report key information about the release that is helpful to responders and commissions in addressing that release.

The hazardous chemical storage reporting requirements inform the community about the sorts of hazardous materials stored by a facility in that community. The requirements, equally importantly, mandate that the facility provide the state and local emergency planning commissions with information about the chemicals stored at the facility (either on a Materials Safety Data Sheet (MSDS) or on a detailed list of MSDSs). Finally, it requires that facilities submit an inventory of hazardous chemicals stating the maximum amount held at the facility, the daily average amount, and the location of the chemicals.

Finally, EPCRA requires annual submission of the Form R, or Toxics Release Inventory ("TRI"). This Form R informs the public and local governments about releases from the facility, both those permitted under the pollution-control statutes, such as the Clean Air Act, or those that occur accidentally. It provides, in my experience, an important forcing function to require facilities to aggressively seek out the pollution prevention required by other statutes, such as the Resource Conservation and Recovery Act.

Collectively these provisions provide the tools that state and local communities and facilities require to respond in the event of a chemical event. I therefore view them as critical to safe operations in the chemical sector.

Question 4. Finally, can you cite an instance in which you have promoted additional legislation or regulations to increase public and/or worker safety in any of your previous positions?

Response. I am able to cite several instances in which I have promoted additional legislation in order to promote both worker and public safety:

- I managed, oversaw, and advocated for the Department of Energy's ("DOE") promulgation of the Worker Safety and Health Program rule (10 C.F.R. Part 851), which is DOE's equivalent of the OSHA regulations;
- I issued binding recommendations for the improvement of safety-management functions at DOE. These recommendations resulted from a review I managed and participated in that evaluated the safety insights presented by the reports on the Columbia Space Shuttle Accident Investigation and the corrosion of the Davis—Bessie Reactor Pressure Vessel Head;
- I have managed and conducted more than 30 accident and event investigations, which have resulted in numerous recommendations to change DOE and other agency procedures, standards, or rules in order to improve safety performance;
- I wrote an article advocating adoption of the Basel Convention governing international hazardous waste transfers and the Bamako regional convention (Africa) on the same subject; I observed while a volunteer law clerk for the United Nations Environment Programme in Nairobi, Kenya, that the international waste trade resulted in some notable injury to public health when the receiving nation was not well prepared to store or manage those wastes; and
- I volunteered as a law clerk in the Natural Resources Defense Council air program analyzing clear-air law for legislative and regulatory opportunities for improvement (1994).

²²I understand this question to inquire about my views of the Emergency Planning and Community Right-to-Know Act, which is also known as SARA Title III and became law through the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

•Finally, I was a plaintiff in a lawsuit challenging a state supreme-court rules change. The rules change adversely affected the ability of law clinics to represent indigent and moderate-income clients in environmental matters, and thus to protect the safety and health of the public.

Senator BOXER. Thank you.
Mr. Gilliland, welcome.

STATEMENT OF THOMAS C. GILLILAND, NOMINEE FOR BOARD MEMBER, BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY

Mr. GILLILAND. Madam Chairman, thank you for your leadership in today's hearing, and to the members of the Committee, I want to thank you for giving me the opportunity to appear before you in this confirmation process.

I also want to thank Senator Isakson, Senator Chambliss and Congressman Deal for their recommendation, and to the President, my thanks for this nomination. I am grateful to all of them and humble for their confidence in me that this nomination represents.

I also want to thank my wife, Candy, who is here with me today. I am grateful for her encouragement and support in undertaking the responsibilities and time that will be necessary to serve as a director of the Tennessee Valley Authority if I am confirmed.

Our home is in a small community in the mountains of north Georgia, where generations of my family have lived. Until the late 1930s, this area, as well as much of the Tennessee Valley, was without electricity. The Tennessee Valley Authority not only brought light, it brought economic growth, flood control and environmental stewardship to our region. In the late 1930s, my father graduated from law school at the University of Kentucky. His first job was at the TVA, handling land acquisitions for reservoirs and power generating facilities in the mountains of north Georgia. There he met my mother, so in many ways I appear before this Committee today because of the Tennessee Valley Authority.

Although I have never held public office, over the years I have had the privilege of serving on numerous boards and committees, having been appointed from both sides of the aisle. I have always taken these tasks and responsibilities with the utmost seriousness and commitment to the challenge at hand. For the past 8 years, I have served on the board and chair of the authority which oversees one of the largest metropolitan parks in America. My service includes overseeing both the financial management of Georgia's largest tourist attraction and the maintenance of the environmental integrity of over 3,000 acres of this largely undeveloped scenic park.

I have also had the opportunity to guide a public regional banking company through the implementation of the Sarbanes-Oxley legislation, a rule, statutes and regulations which I support and applaud.

With the structural changes to TVA created by Congress in 2005, the agency has progressed quickly to embrace a more efficient and open business structure, all the while remaining true to its original mission of energy, environment and economic development. I am proud to offer my experience, both from the public and private sector, as a lawyer and a banker. I am confident that my experience

will be helpful to the Nation's largest power producer as I seek to become Georgia's first representative on the TVA board.

If confirmed, I look forward to offering my time and energy to this very important and vital component of our economy and our Nation's responsibility to its citizens. Once again, thank you for your time and the opportunity to address the Committee. It is an honor to be with you, and I look forward to any questions you may have.

[The prepared statement of Mr. Gilliland follows:]

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I also want to thank Senator Isakson, Senator Chambliss and Congressman Nathan Deal for their recommendation, and to the President. My thanks for this nomination. I'm grateful to all of them, and humbled, for their confidence in me that this nomination memento.

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For the past eight years, I have served on the board and as Chair of the authority which oversees one of the largest metropolitan parks in America. My service includes overseeing both the financial management of Georgia's largest tourist attraction, and the maintenance of the environmental integrity of over 3,000 acres of this largely undeveloped scenic park.

I've also had the opportunity to guide a public regional banking company through implementation of the Sarbanes-Oxley legislation; a statute, rules and regulations which I support and applaud.

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If confirmed, I look forward to offering my time and energy to this very important and vital component of our economy and our nation's responsibility to its citizens. Once again, thank you for your time and the opportunity to address the Committee. It's an honor to be with you and I look forward to your questions.

RESPONSES BY THOMAS GILLILAND TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. TVA is one of our nation's largest emitters of carbon dioxide, emitting over 100 million tons annually. As the U.S. Senate Environment and Public Works Committee (EPW) looks at addressing global warming, please explain what strate-

gies TVA is implementing to reduce carbon emissions and what additional policies you would support to reduce TVA's greenhouse gas emissions.

Response. I am committed to working with my fellow board members, TVA management and staff to explore ways to reduce CO₂ emissions through increased efficiency. As I suggested in the hearing on October 2, I am eager to learn more about advanced technologies like Integrated Gasification/Combined Cycle (IGCC), carbon sequestration and advanced nuclear that may help TVA reduce and avoid future carbon dioxide emissions. As a longtime resident of the TVA service region I have a keen interest in enacting policies that result in cleaner air for the Tennessee Valley.

Question 2. Does TVA have any plans to retire any older inefficient coal units in the Agency's current business plan? If so, what units and/or locations are being considered?

Response. I am unaware of any specific plans to retire coal units at this time. I know that TVA is investing in pollution-control equipment at their coal plants. I anticipate a full briefing on the matter if I am confirmed by the United States Senate to the TVA Board.

Question 3. Has TVA looked at fossil fuel electricity with carbon sequestration technology for the TVA system? If so, what units and/or locations are being considered?

Response. It is my understanding that TVA is investigating technologies of the future including Integrated Gasification/Combined Cycle (IGCC), participating in the Coal Fleet of the Future project, and supporting additional research on the issue of Global Climate Change through participation in the Electric Power Research Institute (EPRI). I am not aware of an evaluation of specific units and locations at this time.

Question 4. Besides nuclear power what other technologies is TVA actively pursuing to control carbon emissions?

Response. I am familiar with the TVA Green Power Switch program, which enables customers to purchase some of their energy from non-emitting sources such as solar, wind and methane gas generation in the Valley. Beyond the Green Power Switch program, I am not yet familiar with all of the efforts TVA is making to control carbon emissions. It is something I look forward to learning should I become a TVA board member.

Question 5. Does TVA support a renewable energy standard? If yes: Please explain how this fits into TVA's plan to reduce carbon emissions. If no: Why not?

Response. I am not aware of TVA's position on a renewable energy standard. I do know that in its new 2007 Strategic Plan, TVA recognizes that renewable energy will play an increasingly important role in TVA's future generation.

Question 6. A recent TVA funded study by the University of Tennessee ("Resources and Employment Impact of a Renewable Portfolio Standard in the Tennessee Valley Authority Region") indicated significant job creation in the TVA service area if a renewable energy standard was enacted. Specially, the study found that under a Federal RPS requiring 10% by 2020 would produce nearly 45,000 jobs in the TVA service area. The majority of the requirement could be met by co-firing biomass at existing TVA coal-fired power plants. Are the members of the TVA Board aware of this study? Does this study affect TVA's view of a renewable energy standard? If so how?

Response. I have not yet read the report but will ask for a copy and briefing from TVA staff, should I be confirmed.

Question 7. TVA has a strong history in doing research on bio-energy opportunities. What is the current state of your programs looking at using biomass for power generation, including co-firing at your existing facilities as the above study identified as an opportunity.

Response. I am not yet familiar with TVA's bio-energy activities, but if confirmed will commit to you that I will research the matter and learn what TVA is doing in this area.

Question 8. TVA has a voluntary program for customers to support renewable energy called the Green Power Switch. What plans does TVA have to develop renewable energy other than the voluntary Green Power Switch program in the near future? Please explain any plans in detail.

Response. It is my understanding that TVA has been successful signing up residents of the Tennessee Valley with the Green Power Switch Program and continues its marketing efforts. If confirmed, I look forward to working with my fellow board

members, TVA management and staff to help develop strategies for utilizing available renewable energy sources in the Valley.

Question 9. TVA announced a new commitment to energy efficiency in its most recent strategic plan. Will you share with us the details of the specific energy efficiency goals in this plan and how they will be met?

Response. As part of the Strategic Plan developed over the last year, TVA stated that it “will strive to be a leader in energy efficiency improvements and peak demand reduction over the next five years.” It also stated in the Strategic Plan that becoming a leader in energy efficiency will require a cooperative effort between TVA, its distributors and the end use consumer along with its direct served customers.

If I am confirmed I will commit to working with TVA staff and our stakeholders in the Valley on energy efficiency measures to reduce energy consumption.

Question 10. Many utilities are now viewing energy efficiency as an important recourse to meet new demand. What are your views on advancing energy efficiency investments at TVA? Do you view TVA as a leader in this effort?

Response. As I mentioned in my opening statement on October 2, TVA has served residents of the Tennessee Valley well for nearly 75 years by promoting economic development, serving as a steward of the environment and providing affordable, reliable electricity. If confirmed, I look forward to working with this committee, TVA leadership and my colleagues on the Board to ensure that TVA as an agency of the federal government carries its share of responsibility in areas such as energy-efficiency and conservation.

Question 11. A recent utility industry collaborative produced a National Action Plan on Energy Efficiency. It concludes that utilities with “best practices” spend about 1% of their annual revenues on energy efficiency investments. TVA recently announced a \$20 million dollar annual investment toward energy efficiency, yet TVA’s annual revenues for 2008 are expected to be \$9.7 billion dollars. One percent would exceed \$97 million dollars annually. Can you explain this shortfall? What are your thoughts on increasing TVA’s investment?

Response. As a nominee, I have not been privy to TVA’s spending priorities, nor have I had the opportunity to review the National Action Plan on Energy Efficiency. However, if confirmed by the Senate, I will commit to participate fully in Board-level discussions and decisions about energy efficiency investments at TVA.

Senator BOXER. Thank you very much, sir.

I don’t have any questions for you, which I am sure you are greatly relieved to know.

[Laughter.]

Senator BOXER. Mr. Bresland, I know that my staff spoke to you about the Contra Costa regulations that we have, our chemical plant safety program there. Have you gone over them? Are you familiar with them?

Mr. BRESLAND. Yes, I am, I am very familiar with what happens in Contra Costa County.

Senator BOXER. What is your feeling about what they do? They have a very strong community protection plan. I just wondered how you felt about it.

Mr. BRESLAND. Contra Costa County is just east of San Francisco, as you know.

Senator BOXER. Yes.

Mr. BRESLAND. It probably has the strongest environmental and chemical process safety program in the United States. In Contra Costa County, there are 50 chemical plants and oil refineries, I think 6 or 7 oil refineries, the rest are chemical plants. They have a very strong program there that is headed up by Mr. Sawyer, Randy Sawyer. He has five engineers who work in the program. They do audits of their facilities every 3 years. It is an excellent program.

Senator BOXER. All right. I think that is important. I have a number of questions that I would love for you to answer, none of which are trick questions, they are just pretty straightforward. But this is such an important position and it means so much to all of us. We are very hopeful with you taking the lead on these that we will make some progress.

Mr. Gilliland, I am going to send you, for you to answer in writing, because it is too complicated, really, asking you what strategies you believe TVA should be using to reduce its carbon emissions. But I am very interested, as you know, in that issue, and look forward to your written response on that. Because it is a longer issue.

And then I have a question to ask Mr. Shearer from Senator Lautenberg. In 2002, you were reportedly part of an effort by the Pentagon to challenge local officials in Alabama to participate in emergency response exercises, knowing that they would refuse, so that the Pentagon could send out press releases shifting blame over the lack of local preparedness for a potential release from a chemical weapons incinerator.

I am going to place in the record, unless there is any dissent here, a list of the articles that ran at that time in the *Birmingham News*, the first paragraph: "The Army intends to embarrass Aniston officials and shift public scorn over the chemical weapons incinerator away from itself with a strategy revealed in recent e-mails exchanged at the Pentagon." This is kind of a sorry situation that our military got themselves into and I wondered if you were part of that plan, what role you played in it.

[The referenced material follows:]

Mr. SHEARER. Madam Chairman, it was indeed a sorry state of events, and given the opportunity to do that over, that is one that I would do differently.

Senator BOXER. So you were involved in it?

Mr. SHEARER. Yes, ma'am, I was part of the e-mail chain that was disclosed, that was leaked from the Army to the Aniston News, which first broke the story. Our intentions in that instance were quite good, and that was to get Aniston prepared for the operation of that facility, emergency management being part of that. Our execution, however, could have been better.

The situation also involved two Army staffers, one of whom directly worked for me, the other who was, through a variety of memoranda of understanding, also worked for us, and they were adversarial. Unfortunately, our intent didn't get properly translated to either of them and as a consequence, they engaged in a rather adversarial e-mail exchange that founded the basis of what was disclosed to the Aniston newspapers.

But from that experience I have learned, and would in a similar circumstance endeavor to work far more closely with the Congressional delegation of the State and also work to ensure that my staff had a better understanding of what it is that my boss and I sought to do.

Senator BOXER. Well, let me just simply say that, a lot of us would like to have do-overs in our life, OK? All of us, every one of us, there is no one that I know lived a perfect life or made every decision. But I think the troubling thing about this, and Senator

Lautenberg is the one who brought this to my attention, is, it goes to the heart of who you are. There is an e-mail here from you that essentially, it is right here in the Birmingham News, where you directed this whole thing, you directed Skelley to issue the challenge.

I just think this is a problem for me. I don't know if anyone else feels this way. But again, when Senator Shelby says that this plan was perverse and irresponsible, this isn't a partisan hit from me at all. I am glad you said you wouldn't do it again, but the fact that you did it is very concerning to me. So I just want you to know that is where I am coming from.

Senator Isakson, did you have any questions?

Senator ISAKSON. Yes, I do, Madam Chair.

Senator BOXER. Please go forward.

Senator ISAKSON. I wanted to discuss with Tom Gilliland just for a second two or three points for the record. One of the concerns of the TVA, back under the old operational model, which has now changed, and during the 1990s was the tremendous amount of debt, would you share with the Committee what the cost of debt is to TVA today versus what it was in that decade?

Mr. GILLILAND. Yes, Senator Isakson, I had an opportunity to look into that. In 1997, 34 percent of the revenue, that is revenue, generated by TVA went to pay interests costs. This year, 13 percent of revenue is applied to interest cost. I think that is a significant improvement.

Senator ISAKSON. On the question that Senator Boxer is going to send to you, I would like to just talk to you about it in this five minutes about renewable energy. When we had the energy debate, we had a provision on requiring at least 15 percent of energy to be replaced with renewable energy sources being either wind or solar. We have difficulty in the southeast with both, we don't have enough wind in particular.

What are our other sources of renewable energy in the south, other than carbon-based improvements?

Mr. GILLILAND. Hydro, improvements to hydro, of course nuclear. We have 60 percent of our power production at TVA is fossil fuel, 30 percent is nuclear, 10 percent are alternate sources. Nuclear is, well, for instance, in August, we reached record load demands multiple times during the month of August. Of course, you have to have the nuclear in order to have the reliability as well, at least in this system, as well as to meet those peak loads.

The issues relative to carbon, I was pleased to see that the May 2007 strategic plan for TVA incorporated addressing global climate issues. I know they are spending a million dollars a day on carbon emission issues. They have already spent \$5 billion, and those initiatives continue.

Senator ISAKSON. On the hydro, too, amount to which we can go from coal to hydro is limited by any number of factors in impoundment, not the least of which is wetland destruction.

Mr. GILLILAND. We are experiencing a 100-year drought right now. Hydro only represents 5 percent or so of the total production. An when you don't have the water in the reservoirs, obviously you don't have the capacity.

Senator ISAKSON. This next question is going to seem silly to you, because you and I have already talked about it. But it is important

to the people of Georgia. One of the issues that caused this whole concern about a lack of representation of the State of Georgia on the TVA board was the concern that their voices of those people in those 10 counties in Georgia would not be heard. I know your answer to this already, but for the record, will you pledge yourself to be sure that those 10 counties in north Georgia get the representation on the TVA they deserve, both from the standpoint of their lake levels as well as the costs and reliability of their energy?

Mr. GILLILAND. Yes, I will, for the people of the State of Georgia as well as the other seven States.

Senator ISAKSON. Thank you for your willingness to serve, and thank you both, I am going to give you all a pass, just like Senator Boxer gave Tom as pass.

Thank you, Madam Chairman.

Senator BOXER. Thank you so much.

So we are at the end of this, so I am going to ask the same questions, but I will do it one and then two together. Well, let's see, we will do the TVA first.

Do you agree, if confirmed as a member of the Board of Directors of the TVA to appear before this Committee or designated members and other appropriate committees and provide information subject to appropriate and necessary security protection with respect to your responsibilities as a member of the Board of Directors of the Tennessee Valley Authority?

Mr. GILLILAND. Yes.

Senator BOXER. Sir, do you agree when asked to give your personal views, even if those views differ from the Administration in office at the time?

Mr. GILLILAND. Yes.

Senator BOXER. Do you agree to ensure that testimony, briefings, documents, electronic and other forms of communication or information are provided to this Committee and its staff and other appropriate committees in a timely fashion?

Mr. GILLILAND. Yes, I do.

Senator BOXER. Do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed as a member of the Board of the TVA?

Mr. GILLILAND. No, I do not.

Senator BOXER. Thank you, sir.

And so the next two, if you could just answer together, do you agree, if confirmed as chairperson and a member of the Chemical Safety and Hazard Board to appear before this Committee or designated members of this Committee and other appropriate committees, provide information subject to appropriate and necessary security protection with respect to your responsibilities as chair and a member of the Chemical Safety and Hazard Investigation Board?

Mr. BRESLAND. I do.

Mr. SHEARER. I do.

Senator BOXER. OK. Do you agree, when asked, to give your personal views, even when those views differ from the Administration in office at the time?

Mr. SHEARER. Yes.

Mr. BRESLAND. Yes.

Senator BOXER. Do you agree to ensure that testimony, briefings, documents, electronic and other forms of communication or information are provided to this Committee and its staff and other appropriate committees in a timely fashion?

Mr. BRESLAND. Yes.

Mr. SHEARER. Yes.

Senator BOXER. Do you know of any matters which you may or may have not disclosed that might place you in any conflict of interest if you are confirmed as chair and a member of the Chemical Safety and Hazard Investigations Board?

Mr. BRESLAND. No.

Mr. SHEARER. No.

Senator BOXER. Thank you very, very much, all of you, for being here today. The hearing stands adjourned.

[Whereupon, at 12 o'clock p.m., the committee was adjourned.]

[Additional statements submitted for the record follow.]

STATEMENT OF HON. JOSEPH LIEBERMAN, U.S. SENATOR FROM THE
STATE OF CONNECTICUT

Thank you, Madame Chairman. We have a number of nominations before the Committee today. I would like to speak briefly about one of those—the nomination of Mr. Bresland as Chairman of the Chemical Safety Board.

As you know the Chemical Safety Board is an independent Federal agency that is tasked with the important role of investigating industrial chemical accidents. Through their in-depth analysis they can locate deficiencies in the management system, engineering, equipment failure or human error that was the cause of an accident. These root cause investigations allow the Chemical Safety Board to make corrective recommendations to the plants involved in the accidents, to the industry at-large, and to regulatory agencies such as the Occupational Safety and Health Administration and the Environmental Protection Agency.

The Chemical Safety Board's staff is composed of specialists in chemical and mechanical engineering, as well as other industry specialists. Mr. Bresland's extensive experience in the chemical industry, specifically with Honeywell International, makes him a highly qualified and appropriate selection for membership on the Chemical Safety Board. I have no doubt of his commitment or ability to fulfill the missions of the Chemical Safety Board, ultimately improving chemical plant process safety, and in turn saving lives and protecting the environment.

Nonetheless I have some serious concerns about how well the Chemical Safety Board is working with state and local officials during its investigations. In a well-publicized incident in Danvers, Massachusetts last year, the CSB wound up in a full-blown clash with state and local responders. If Mr. Bresland is confirmed as Chairman of the Board he will be establishing the tone of its interactions with other agencies and with state and local officials. I hope to hear from Mr. Bresland about how he intends to improve the cooperation and coordination of the Chemical Safety Board with the state and local officials and first responders. We all have an interest in seeing that investigations of incidents at chemical facilities are thorough and professional and that any findings made are complete and accurate to help us prevent similar incidents in the future. Regardless of the cause of a chemical incident—whether from terrorism, natural disaster, or accident—it is essential that all levels of government work hand in hand in the response and any investigation.

October 25, 2007

Dear Senator Boxer,

Thank you for the opportunity to respond to the questions you had following the hearing on October 2. The answers to your questions are attached.

I very much appreciate your interest in energy efficiency, the reduction of carbon dioxide and alternative energy sources. I share your interest and can assure you that these issues are a priority for me and my colleagues on the TVA Board.

In fact at our last Board meeting, TVA's CEO announced the appointment of a Vice President of Energy Efficiency and Demand Response. This person will be responsible for developing TVA's five to ten year energy efficiency and demand response plan. TVA's new strategic plan also recognizes that energy efficiency and renewable energy will play an increasingly important role in TVA's future generation.

In my first year on the Board, I chaired the Community Relations Committee whose first priority was to tackle land conservation issues. After gathering a tremendous amount of public input, our Committee recommended and the Board adopted a policy to protect the land over which TVA has stewardship. It was a landmark decision and I am proud to have been a part of it.

TVA is a complex and dynamic agency staffed by bright and hard-working people. I am proud to serve on the new Board and hope to be confirmed and continue my service.

Thank you again for the opportunity to respond. I appreciate your consideration.

Sincerely,

A handwritten signature in cursive script, reading "Susan Williams".

Susan R. Williams

RESPONSES BY SUSAN RICHARDSON WILLIAMS TO ADDITIONAL QUESTIONS
FROM SENATOR BOXER

Question 1. TVA is one of our nation's largest emitters of carbon dioxide, emitting over 100 million tons annually. As the U.S. Senate Environment and Public Works Committee (EPW) looks at addressing global warming, please explain what strategies TVA is implementing to reduce carbon emissions and what additional policies you would support to reduce TVA's greenhouse gas emissions.

Response. As a long-time resident of Tennessee, a current TVA board member and a grandmother of two, I have a tremendous interest in seeing that the air is cleaner for the next generation of citizens in the Tennessee Valley. The new nine-member, part-time board of TVA serves to function as a high-level policy setting entity, and in that capacity the board strives to articulate strategies that guide TVA management and staff in their day to day business operations. I can assure you that the current board is committed to implementing strategies to reduce greenhouse gas emissions.

In 1995, TVA was the first utility to partner with the Department of Energy to participate in its newly created program, Climate Challenge. As a result of this program, TVA has reduced, sequestered or avoided more than 305 million tons of CO₂.

TVA has also been a participant in the President's Climate VISION program, which calls on the electric utility sector to help meet a national goal of reducing the greenhouse gas intensity of the U.S. economy by 18% from 2002-2012.

Going forward, the TVA board has expressed interest in pursuing voluntary actions in two pivotal areas to reduce carbon emissions: notably expanding the diversity in our electric generation mix with safe, clean, zero-emission power; and reducing emissions through increased energy efficiency.

In June, TVA restarted Unit 1 at Browns Ferry Nuclear Plant in northern Alabama, the first U.S. nuclear unit to be brought on-line in the 21st century. Browns Ferry Unit 1 is expected to initially provide additional generating capacity of approximately 1,150 megawatts and eventually will produce 1,280 megawatts.

In addition, the board recently approved the completion of Unit 2 at the Watts Bar Nuclear Plant in Spring City, Tennessee. The operation of Watts Bar Unit 2 would add another 1,170 megawatts of non-CO₂ emitting generation to the TVA system.

As we increase capacity, the board is mindful of the need to increase energy efficiency and conservation. TVA has begun this effort at home, so to speak, in TVA buildings with the use of energy efficient lighting, temperature set-backs, high efficiency motors, occupancy sensors, heat pumps, passive solar heating and automatically turning off lights in office spaces.

I assure you that I will remain a strong voice for these issues should I be confirmed.

Question 2. Does TVA have any plans to retire any older inefficient coal units in the Agency's current business plan? If so, what units and/or locations are being considered?

Response. Existing coal assets play a large and important role in meeting the energy needs of the Tennessee Valley, and in supporting energy needs and energy independence for the entire United States. TVA's long-term capacity plan includes a "placeholder" for retirement of one of the older, less efficient fossil plants in the post 2020 timeframe.

The board has said before that it is committed to retiring higher emitting fossil plants if energy efficiency efforts result in lower demand than currently forecasted. If demand continues to grow, retirements of existing generating assets would have to be replaced by investments in new generating assets to meet the growing needs of the Valley.

Next year, TVA will celebrate its 75th anniversary, a significant milestone. As a board member, I will continue to encourage adding clean energy sources to the generation portfolio and encourage energy efficiency, all the while preparing for the continued demands on our system with projected growth of two percent each year for the foreseeable future.

Question 3. Has TVA looked at fossil fuel electricity with carbon sequestration technology for the TVA system? If so, what units and/or locations are being considered?

Response. TVA is a member of the Southeast Regional Carbon Sequestration Partnership, one of seven teams participating in this Department of Energy-sponsored program. TVA also supports the sequestering of greenhouse gases through the UtiliTree and PowerTree Carbon Companies, which are developing reforestation projects in the Lower Mississippi River Valley and elsewhere.

Additionally, TVA participates in the Coal Combustion Products Partnership program. This program is a cooperative effort that promotes the beneficial use of coal combustion products to reduce greenhouse gases and the amount of material sent to disposal.

I will continue to encourage TVA management and staff to make decisions that give strong consideration to fuel mix and generation assets that are low or zero carbon emitting resources, continue to invest in research and development on low carbon generation options, carbon reduction, carbon capture and sequestration technologies.

Question 4. Besides nuclear power what other technologies is TVA actively pursuing to control carbon emissions?

Response. TVA is exploring the possibilities of reducing carbon intensity by increasing renewable generating capacity. Solar, wind, incremental hydro, biomass, and landfill gas are among the renewable sources that would be considered. Additionally, advanced clean and renewable technologies, such as low-head hydro, heat recovery systems, and end-user generation offsets will also be considered. TVA also continues to monitor the status of emerging technologies such as hydrogen, fuel cells, micro-turbines, and energy storage technologies.

TVA participates in organizations such as the Coal Utilization Research Council (CURC), EPRI's Coal Fleet for Tomorrow program, and the Gasification Technologies Council (GTC). These organizations promote the research and development of clean coal technology.

Question 5. Does TVA support a renewable energy standard? If yes: Please explain how this fits into TVA's plan to reduce carbon emissions. If no: Why not?

Response. In the 2007 Strategic Plan, the TVA board recognizes that renewable energy will play an increasingly important role in TVA's future generation. TVA staff is currently developing a long term strategy to reduce the carbon intensity of the TVA generation fleet. This includes evaluating potential Valley resources, technologies and opportunities that will help us and our power distributors meet potential RES requirements.

Question 6. A recent TVA funded study by the University of Tennessee ("Resources and Employment Impact of a Renewable Portfolio Standard in the Tennessee Valley Authority Region") indicated significant job creation in the TVA service area if a renewable energy standard was enacted. Specially, the study found that under a Federal RPS requiring 10% by 2020 would produce nearly 45,000 jobs in the TVA service area. The majority of the requirement could be met by co-firing biomass at existing TVA coal-fired power plants. Are the members of the TVA Board aware of this study? Does this study affect TVA's view of a renewable energy standard? If so how?

Response. I have not been briefed on the report. However, I look forward to hearing the results of the study and how it may impact TVA's long term strategy addressing renewable assets in the Valley.

Question 7. TVA has a strong history in doing research on bio-energy opportunities. What is the current state of your programs looking at using biomass for power generation, including co-firing at your existing facilities as the above study identified as an opportunity.

Response. TVA is currently conducting commercial-scale, low-level biomass co-firing at Colbert Fossil Plant in North Alabama. Co-firing at Colbert has provided TVA with benefits in the area of fuel diversity and fuel cost management. We are evaluating the feasibility of expanding wood waste co-firing at other TVA fossil plants.

In addition to the wood waste co-firing, TVA is co-firing biogas methane at the Allen Fossil Plant located in Memphis, Tennessee. The biogas is a product of wastewater treatment anaerobic digestion at the municipal treatment facility for the City of Memphis. The generation from this installation is part of TVA's Green Power Switch generation mix.

We are also involved in advanced bio-energy research including a joint biomass demonstration project with EPRI and Southern Company and an animal waste project where the resulting biogas will be utilized to fuel a Stirling engine for power generation.

Question 8. TVA has a voluntary program for customers to support renewable energy called the Green Power Switch. What plans does TVA have to develop renewable energy other than the voluntary Green Power Switch program in the near future? Please explain any plans in detail.

Response. The Green Power Switch program has helped us learn more about the potential for solar, wind and methane gas generation in the Valley. TVA's ongoing

hydro modernization efforts and biomass co-firing projects have helped position TVA to optimize the use of the Valley's available renewable sources.

The TVA Strategic Plan promotes the increase in renewable generation beyond the Green Power Switch. TVA staff is currently developing a long term strategy to reduce the carbon intensity of the TVA generation fleet.

Question 9. TVA announced a new commitment to energy efficiency in its most recent strategic plan. Will you share with us the details of the specific energy efficiency goals in this plan and how they will be met?

Response. As part of the Strategic Plan which we developed over the last year, we stated that "TVA will strive to be a leader in energy efficiency improvements and peak demand reduction over the next five years." We also stated in the Strategic Plan that becoming a leader in energy efficiency will require a cooperative effort between TVA, its distributors and end-use consumers, along with direct-serve customers.

If I am re-appointed I will work with the TVA staff and our stakeholders in the Valley to develop a detailed five year plan that has a goal to reduce energy consumption by approximately 1,200 MW by the year 2013. This plan will also explore additional reductions in the years beyond 2013. In addition, we expect to reduce energy consumption by 64 MW in FY08 by enhancing existing energy efficiency programs and developing new pilot programs.

Question 10. Many utilities are now viewing energy efficiency as an important recourse to meet new demand. What are your views on advancing energy efficiency investments at TVA? Do you view TVA as a leader in this effort?

Response. TVA's load is expected to grow approximately two percent each year over the next 10 years. That equates to about 750 MW per year. In order to meet that type of demand growth TVA will not only need to add additional generation but will have to aggressively develop, promote, and implement programs to slow that growth. Those programs will require a significant investment in resources to achieve. The plan that TVA is currently developing for energy efficiency and demand response will outline the resources required to meet our goals.

Over the years TVA has had a number of programs designed to improve energy efficiency and reduce load growth. With energy demand in the Valley at an all-time high, the board has made a renewed commitment to position TVA as a leader in energy efficiency and demand reduction. Addressing energy efficiency is also a personal priority of mine.

Question 11. A recent utility industry collaborative produced a National Action Plan on Energy Efficiency. It concludes that utilities with "best practices" spend about 1% of their annual revenues on energy efficiency investments. TVA recently announced a \$20 million dollar annual investment toward energy efficiency, yet TVA's annual revenues for 2008 are expected to be \$9.7 billion dollars. One percent would exceed \$97 million dollars annually. Can you explain this shortfall? What are your thoughts on increasing TVA's investment?

Response. The \$22 million is not intended to reflect TVA's long term commitment to reduce load growth. For FY2008 the energy efficiency budget has two objectives. The first is to work with our stakeholders to develop a 5-year plan with a reduction goal of about 1,200 MW over that time period. The second objective is to meet our current business plan goal of reducing demand by 64 MW through enhancement of TVA's existing efficiency programs and developing new pilot programs.

TVA is a member of the National Action Plan for Energy Efficiency with the participation of our Vice President for Energy Efficiency and Demand Response on its Leadership Group.

October 25, 2007

Dear Senator Boxer,

Thank you for the opportunity to respond to your questions regarding my re-nomination to the TVA Board. I am pleased to address your inquiries and have attached my responses for your review.

My background as a pastor and as Bishop of the Christian Methodist Episcopal Church gives me a profound appreciation for TVA's mission. That mission is based on improving the quality of life in the Tennessee Valley.

It is a worthy mission indeed, and I will use all my faculties, my strength, and the power that is in me to consider the challenges facing TVA and make sound and careful decisions.

Throughout my professional life, I have worked with people from all walks of life. As a Board Member of Memphis Light, Gas & Water, TVA's largest single customer, I learned much about the challenges facing TVA as a power provider keeping pace with the exuberant growth of our region's economy.

I am personally invested in every decision we make as members of the Board. I would consider it a great honor and a humbling challenge to continue to serve the people of the Tennessee Valley.

Thank you again for the opportunity to respond. I appreciate your consideration.

Sincerely,

Bishop William H. Graves

RESPONSES BY WILLIAM H. GRAVES TO ADDITIONAL QUESTIONS FROM
SENATOR BOXER

Question 1. TVA is one of our nation's largest emitters of carbon dioxide, emitting over 100 million tons annually. As the U.S. Senate Environment and Public Works Committee (EPW) looks at addressing global warming, please explain what strategies TVA is implementing to reduce carbon emissions and what additional policies you would support to reduce TVA's greenhouse gas emissions.

Response. As a resident of Memphis, Tennessee and a current TVA board member, I have a tremendous interest in seeing that the air is cleaner for the next generation of citizens in the Tennessee Valley. The new nine-member, part-time board of TVA serves to function as a high-level policy setting entity, and in that capacity the board strives to articulate strategies that guide TVA management and staff in their day to day business operations. I can assure you that the current board is committed to implementing strategies to reduce greenhouse gas emissions.

In 1995, TVA was the first utility to partner with the Department of Energy to participate in its newly created program, Climate Challenge. As a result of this program, TVA has reduced, sequestered or avoided more than 305 million tons of CO₂.

TVA has also been a participant in the President's Climate VISION program, which calls on the electric utility sector to help meet a national goal of reducing the greenhouse gas intensity of the U.S. economy by 18% from 2002–2012.

Going forward, the TVA board has expressed interest in pursuing voluntary actions in two pivotal areas to reduce carbon emissions: notably expanding the diversity in our electric generation mix with safe, clean, zero-emission power; and reducing emissions through increased energy efficiency.

In June, TVA restarted Unit 1 at Browns Ferry Nuclear Plant in northern Alabama, the first U.S. nuclear unit to be brought on-line in the 21st century. Browns Ferry Unit 1 is expected to initially provide additional generating capacity of approximately 1,150 megawatts and eventually will produce 1,280 megawatts.

In addition, the board recently approved the completion of Unit 2 at the Watts Bar Nuclear Plant in Spring City, Tennessee. The operation of Watts Bar Unit 2 would add another 1,170 megawatts of non-CO₂ emitting generation to the TVA system.

As we increase capacity, the board is mindful of the need to increase energy efficiency and conservation. TVA has begun this effort at home, so to speak, in TVA buildings with the use of energy efficient lighting, temperature set-backs, high efficiency motors, occupancy sensors, heat pumps, passive solar heating and automatically turning off lights in office spaces.

I assure you that I will remain a strong voice for these issues should I be confirmed.

Question 2. Does TVA have any plans to retire any older inefficient coal units in the Agency's current business plan? If so, what units and/or locations are being considered?

Response. Existing coal assets play a large and important role in meeting the energy needs of the Tennessee Valley, and in supporting energy needs and energy independence for the entire United States. TVA's long-term capacity plan includes a "placeholder" for retirement of one of the older, less efficient fossil plants in the post 2020 timeframe.

The board has said before that it is committed to retiring higher emitting fossil plants if energy efficiency efforts result in lower demand than currently forecasted. If demand continues to grow, retirements of existing generating assets would have to be replaced by investments in new generating assets to meet the growing needs of the Valley.

Next year, TVA will celebrate its 75th anniversary, a significant milestone. As a board member, I will continue to encourage adding clean energy sources to the generation portfolio and encourage energy efficiency, all the while preparing for the continued demands on our system with projected growth of two percent each year for the foreseeable future.

Question 3. Has TVA looked at fossil fuel electricity with carbon sequestration technology for the TVA system? If so, what units and/or locations are being considered?

Response. TVA is a member of the Southeast Regional Carbon Sequestration Partnership, one of seven teams participating in this Department of Energy-sponsored program. TVA also supports the sequestering of greenhouse gases through the UtiliTree and PowerTree Carbon Companies, which are developing reforestation projects in the Lower Mississippi River Valley and elsewhere.

Additionally, TVA participates in the Coal Combustion Products Partnership program. This program is a cooperative effort that promotes the beneficial use of coal combustion products to reduce greenhouse gases and the amount of material sent to disposal.

I will continue to encourage TVA management and staff to make decisions that give strong consideration to fuel mix and generation assets that are low or zero carbon emitting resources, continue to invest in research and development on low carbon generation options, carbon reduction, carbon capture and sequestration technologies.

Question 4. Besides nuclear power what other technologies is TVA actively pursuing to control carbon emissions?

Response. TVA is exploring the possibilities of reducing carbon intensity by increasing renewable generating capacity. Solar, wind, incremental hydro, biomass, and landfill gas are among the renewable sources that would be considered. Additionally, advanced clean and renewable technologies, such as low-head hydro, heat recovery systems, and end-user generation offsets will also be considered. TVA also continues to monitor the status of emerging technologies such as hydrogen, fuel cells, micro-turbines, and energy storage technologies.

TVA participates in organizations such as the Coal Utilization Research Council (CURC), EPRI's Coal Fleet for Tomorrow program, and the Gasification Technologies Council (GTC). These organizations promote the research and development of clean coal technology.

Question 5. Does TVA support a renewable energy standard? If yes: Please explain how this fits into TVA's plan to reduce carbon emissions. If no: Why not?

Response. In the 2007 Strategic Plan, the TVA board recognizes that renewable energy will play an increasingly important role in TVA's future generation. TVA staff is currently developing a long term strategy to reduce the carbon intensity of the TVA generation fleet. This includes evaluating potential Valley resources, technologies and opportunities that will help us and our power distributors meet potential RES requirements.

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**U.S. Chemical Safety and
Hazard Investigation Board**2175 K Street, NW • Suite 650 • Washington, DC 20037-1809
Phone: (202) 261-7800 • Fax: (202) 261-7650
www.csb.gov**Hon. William E. Wright**
Board Member**Hon. Gary L. Visscher**
Board Member**Hon. William B. Wark**
Board Member

September 27, 2007

Senator Barbara Boxer, Chairman
Senator James M. Inhofe, Ranking Member
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Boxer and Senator Inhofe:

Yesterday an unsigned document, appearing on the letterhead of the International Association of Fire Chiefs (IAFC), was circulated to the staff of the Senate Environment and Public Works Committee. The document makes a variety of claims concerning the investigation by the U.S. Chemical Safety and Hazard Investigation Board (CSB) of a major chemical accident that occurred last year in Danvers, Massachusetts.

The CSB is an independent federal agency that investigates and determines the causes of chemical accidents. The agency is headed by five members appointed by the president and confirmed by the Senate and employs a professional staff of engineers, safety specialists, and other technical personnel who conduct the investigations. We issue public reports and safety recommendations designed to prevent future accidents. These reports are distributed throughout the U.S. and around the globe in an effort to prevent further loss of life and environmental damage from chemical disasters.

I write to inform the Committee that the IAFC document that surfaced yesterday contains a number of significant errors of both fact and law.

The chemical explosion that shook Danvers in the early morning hours of November 22, 2006, originated in a chemical factory that produced printing inks and paints. The explosion damaged or destroyed more than 100 homes and businesses off-site. It exposed a number of Danvers families to life-threatening dangers as their houses literally collapsed around them while they slept.

As authorized and required under 42 U.S.C. § 7412(i)(6), the federal Clean Air Act, the CSB began a federal investigation to independently determine and make public the causes of the accident.¹ The

¹ The IAFC document states with evident disapproval that "the CSB attempted to initiate an investigation independent of the ongoing federal, state, and local investigation." In fact, the Clean Air Act provisions establishing the Board and the accompanying legislative history make absolutely clear the requirement for CSB investigations to be separate and independent of other investigations. The CSB authorization was patterned on the National Transportation Safety Board; see 42 U.S.C. § 7412(i)(6) and Senate Report 101-228, stating that "the

Clean Air Act clearly states, “In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.”

The IAFC document states that “Unfortunately, there were a number of problems with [the CSB’s] arrival on scene, including the fact that the incident commander and state fire marshal were not informed of their arrival ...” This statement is simply false.

On November 22, 2006, a few hours after the explosion, then-CSB Chairman Carolyn Merritt made the decision to deploy CSB investigators to the site in Danvers. Consistent with the CSB’s standing protocols and with the National Incident Management System (NIMS), the CSB General Counsel prepared letters of authority and introductions for specific CSB personnel stating the applicable U.S. statutes, for presentation at the accident site. The CSB investigator-on-duty that day, Mr. James Lay, P.E., promptly contacted the executive assistant to the Massachusetts State Fire Marshal and requested that she notify the marshal of the planned deployment on November 24. He further requested that the state fire marshal relay back the name and contact information of the incident commander to the CSB lead investigator, Mr. John Vorderbrueggen, P.E.²

The CSB incident screener on duty on November 22, Ms. Katherine Leskin, further notified the Danvers Fire Department, the U.S. Environmental Protection Agency, and the U.S. Coast Guard of the planned deployment two days later on November 24. A CSB public affairs officer, Ms. Jennifer Jones, contacted the state offices of Senator Edward Kennedy, Senator John Kerry, and U.S. Representative John Tierney to inform them of the pending deployment of CSB investigators and to schedule briefings for November 24 at the various members’ local offices. She further contacted the Danvers Town Manager’s office to inform authorities of the deployment and was subsequently referred to the town’s director of public health, with whom she scheduled a briefing for November 24.

Finally, in the late afternoon of November 22, the CSB issued a news release stating our plan to begin an investigation. The CSB news release was widely reported by statewide news media including the *Boston Globe*, the *Boston Herald*, the Associated Press, and others on November 22-23.

The CSB investigative team arrived at the site at approximately noon on November 24, and I was the board member accompanying the team. Consistent with both the CSB’s standing protocols and with the National Incident Management System (NIMS), my first action on arriving in Danvers was to formally log in at the command center established by the state and local fire services and the state police, in an effort to further introduce the Board and team.

A short time later, my assistant and I were told that a coordination meeting was about to begin and it was made clear to us by an official in the command center that we were not welcome to attend. We left the command center to meet the town manager. In the meantime, the CSB lead investigator duly arrived at the command center and was instructed to talk to Detective Lieutenant Martin Foley, the state police arson investigation team operations commander, who reported directly to the state

independence of the Board in its official duties (finding the cause or probable cause of chemical accidents and recommending requirements or orders which will prevent accidents in the future) is essential for several reasons” and noting that “the independence of the Board was strengthened by amendments adopted during Committee markup.”

² So far as is known, the state fire marshal never responded to this request.

fire marshal. Mr. Foley acknowledged that the arrival of the CSB team was expected and assembled the incident command team for a short presentation by Mr. Vorderbrueggen.

Mr. Vorderbrueggen gave a brief introduction of the CSB and our mission to the incident command team, which included the state fire marshal, arson team operations commander, the Danvers fire chief, the deputy fire chief. Mr. Vorderbrueggen further reiterated that the CSB team would closely coordinate their activities with the ongoing state activities. However, the arson team commander immediately disputed the Board's authority to conduct an investigation and then dismissed both Mr. Vorderbrueggen and CSB investigator Johnnie Banks from the command center.

From that point forward, the arson team operations commander repeatedly denied the CSB team access to both the destroyed chemical facility and the surrounding damaged neighborhood over the next five days, until Wednesday, November 29, when the site was turned over to the EPA.

On Saturday, November 25, the Danvers Fire Chief conducted a news conference where he stated that the Board was "uninvited," "unwelcome," "not a piece of the pie," and "a distraction that has taken time away from the real investigators." He further stated: "We have a team that knows how to work together, they've been working together for years, and they're not part of our team."³ At the same time, the CSB made restrained public statements, characterizing the situation as a "misunderstanding" which we were hopeful of quickly resolving.

Over the next several days, the CSB's lead investigator, Mr. John Vorderbrueggen – a highly experienced mechanical engineer who has led many CSB investigations – made several further personal attempts to approach Mr. Foley and constructively discuss the situation. Mr. Vorderbrueggen was unsuccessful in establishing any dialogue and was told he was interfering with and disrupting the investigation and was summarily and repeatedly dismissed from the site.⁴ Mr. Vorderbrueggen was also threatened with removal from the police-controlled area if he continued "to interfere."

The September 25 IAFC document states that local fire and law enforcement officials were engaged for some period of time in determining if the explosion was caused by a criminal act. However, at no time since November 22, 2006, did local or state officials offer any evidence, either in private or in public, that the explosion in Danvers was anything other than a process-related chemical accident, clearly subject to the CSB's investigative jurisdiction. Further, CSB investigators have worked on numerous incidents in which concurrent civil and criminal investigations were conducted in the initial days following the incident, and CSB investigators are trained and acknowledged as experts in evidence preservation at chemical accident sites.

³ See AP Domestic News, November 26, 2006, "Probers Look for Clues in Mass. Blast;" *Boston Globe*, November 26, 2006, "Dispute besets blast probe US investigators barred from site by Danvers chief;" *Salem News*, November 27, 2006, "Investigators probe blast cause, feds fight to get access."

⁴ The IAFC document is accurate in stating that the CSB sent a video crew to Danvers prior even to the arrival of investigators. The purpose of the video crew was to document the extensive damage to the community before structures collapsed or were either razed or repaired. The crew carried appropriate contractor credentials issued by the CSB. Although the CSB regrets that the crew arrived before CSB investigators, there is no indication whatsoever that this small, professional crew was in any way disruptive or discourteous to state or local officials. The crew remained outside a police checkpoint and eventually left the area after it proved impossible to arrange access. The CSB never sought to have the crew enter the destroyed facility or its immediate vicinity. The sole purpose of the video crew was to attempt to document the blast damage to the community which extended up to a mile away from the destroyed CAI/Arnel facility.

As already indicated, CSB recognizes and follows the NIMS system. The NIMS system was established in February 2003 by Homeland Security Presidential Directive #5 with the purpose to “prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies.” In the case of Danvers, the fires had extinguished, the community had been searched and evacuated, and the emergency had ceased on November 22, two days prior to the arrival of CSB investigators.

NIMS is designed to promote the fast integration of federal, state, and local efforts to respond to major disasters – a goal which the CSB clearly supports. NIMS is a system for emergency response and recovery and is not a system for investigating the causes of disasters. Where emergency response and investigations may overlap, emergency response must come first. But HSPD-5 and NIMS are not intended to, and do not, interfere with the CSB’s authority to carry out its investigative mission. Additionally, we do not view these as mutually exclusive functions. Paragraph 5 of HSPD-5 states unambiguously that “nothing in this directive alters, or impedes the ability to carry out, the authorities of Federal departments and agencies to perform their responsibilities under law.” In fact under NIMS, the responsibility of the local incident commander in Danvers was to rapidly integrate the CSB into the existing command structure so that the Board’s lawful functions could proceed. Had they done so all parties could have more effectively coordinated their respective responsibilities, but regrettably this did not happen.

Between November 25 and 27, while the CSB continued to be blocked, it became clear from media reports that the Danvers accident site was being irrevocably damaged by the state-led investigation. State and local authorities brought heavy equipment, such as front-end loaders, into the site to rapidly clear the debris field, without apparent regard to the possible evidentiary value the debris and damaged equipment might have in establishing the causes of the accident. The modification and destruction of the accident site by state and local fire services is clearly documented in the accompanying photographs (see attachment).

Facing an intractable and rapidly changing situation on the ground, the CSB chairman personally authorized the CSB general counsel to seek the intercession of the U.S. attorney for the District of Massachusetts to protect the Board’s interest in the accident site. The CSB further sent a letter on the morning of November 27 to the state fire marshal, citing the CSB’s authority under the Clean Air Act to “enter the accident site and ‘do all things therein necessary for a proper investigation’ including inspecting ‘records, files, papers, processes, controls, and facilities’ and taking relevant samples.”⁵ The letter stated that the CSB was not seeking to preempt the Massachusetts investigation and, despite all that had occurred, asked state authorities to “work cooperatively with the CSB to ensure that relevant evidence is preserved from alteration or destruction.” The CSB received no response to the letter.

The CSB chairman further authorized the CSB director of congressional, public, and board affairs to contact state and federal elected officials and other stakeholders – including Governor Romney, Senator Kennedy, Senator Kerry, and Representative Tierney – to describe the current situation in Danvers and the ongoing destruction of the physical evidence. The CSB chairman authorized the director to speak to the news media, including the *Boston Globe* and others, concerning the serious situation in Danvers and the need to provide the Board’s experts with immediate access to the site and the physical evidence before it was lost.

⁵ Letter dated November 27, 2006, from CSB Lead Investigator John Vorderbrueggen to Massachusetts State Fire Marshal Stephen Coan (see attachment).

Following extensive editorial criticism of the position taken by Massachusetts fire authorities, chiefly by the *Boston Globe*,⁶ those authorities backed down on November 28 and allowed the CSB to enter the accident site the following day. However, it is misleading to suggest, as the IAFC document does, that “the U.S. District Attorney [sic] finally worked out an arrangement to bring peace to the situation” as though the U.S. attorney had valiantly inserted himself into a lawless conflict. In fact, the CSB had contacted the U.S. attorney’s office the previous day in an effort to protect the Board’s interest in the accident site under federal law.

Unfortunately, the accident site had been extensively disturbed during the preceding several days by the state-led investigation. Key pieces of physical evidence could never be found, including the steam valves on a large solvent tank that was later believed to have overheated on the night of the accident and released the flammable vapor that exploded. Despite the loss of evidence, CSB investigators and blast experts worked for weeks at the accident site and for months afterward to conduct the most thorough investigation possible under the circumstances.

On May 9, 2007, the Board held a large community meeting in Danvers, which was attended by approximately 200 residents, government officials, safety experts, and journalists, where the CSB investigative team presented its preliminary findings. Among other conclusions, CSB investigators determined that the CAI/Arnel facility had not complied with existing Massachusetts state fire codes for the use of flammable liquids, that the facility had not been thoroughly inspected in several years, and that the facility had not sought or received state-required permits for handling flammable substances.

At the public meeting, the CSB received overwhelmingly positive comments from the residents and officials about the quality and thoroughness of our investigation in Danvers.⁷ Massachusetts has since established a program to improve its inspection of chemical plants for code compliance and is considering additional state legislation.

The Board remains fully committed to effective coordination with federal, state, and local officials during all stages of its investigations – as it always has been. The CSB has a notable record of successful, concurrent civil/criminal investigations at incident sites throughout the country. We have conducted such concurrent investigations at many major accident sites, including the massive, fatal explosions at the BP Texas City refinery; the West Pharmaceutical facility in Kinston, NC; and the CTA Acoustics facility in Corbin, KY, to cite just a few examples.

Finally, I note that U.S. firefighters benefit greatly from accurate, thorough, independent investigations of chemical accidents. A number of fire chiefs have complimented the CSB’s investigative work, as noted in an article published by the *Salem News* during the unfortunate situation in Danvers.⁸ Firefighters’ lives are ultimately on the line when chemical disasters occur, and the Board has made a number of safety recommendations aimed at improving emergency preparedness, equipment, and training around the country. Additionally, the CSB has received numerous requests from fire departments, officers, and trainers around the country seeking the use of CSB investigative products in educational efforts for firefighters, and we always assist in any way possible.

⁶ See *Boston Globe* column, November 27, 2006, “No time for turf war,” by Adrian Walker; *Boston Globe* editorial, November 28, 2006, “Another Danvers Blowup” (see attachment).

⁷ A transcript of the public meeting is available at CSB.gov.

⁸ See *Salem News*, November 29, 2006, “Others Welcomed Chemical Safety Board,” by Paul Leighton (see attachment).

If you have any questions or require further clarification on any point raised in this letter, please contact the CSB's Director of Congressional, Public, and Board Affairs, Dr. Daniel Horowitz, at (202) 261-7613. Thank you for your ongoing support of the Board and its mission.

Sincerely,



William E. Wright
Board Member and Interim Executive Authority

Attachments:

Photographs of Danvers accident site documenting evidence disturbance
Editorial articles from the *Boston Globe*
Salem News, November 29, 2006, "Others Welcomed Chemical Safety Board"
CSB letter to the Massachusetts state fire marshal, November 27, 2006

Cc: Senator Frank R. Lautenberg
Senator David Vitter
Senator Edward M. Kennedy
Senator John F. Kerry
Representative John F. Tierney
The Honorable Deval L. Patrick, Governor of Massachusetts
Kevin Burke, Massachusetts Secretary of Public Safety
Stephen Coan, Massachusetts State Fire Marshal
Wayne Marquis, Danvers Town Manager
James Tutko, Danvers Fire Chief
Jim Harmes, IAFC President
Mark W. Light, IAFC Executive Director
The Honorable Gary L. Visscher, CSB Board Member
The Honorable William B. Wark, CSB Board Member
The Honorable Carolyn W. Merritt, CSB Chairman (2002–2007)

Figure 1a. Aerial photograph of Danvers, Massachusetts, explosion site taken on Friday, November 24, 2006, two days after the explosion. The photograph was taken after the emergency had ceased but before the removal of debris/evidence by state and local fire services. Yellow-enclosed area includes key evidence zones that were disturbed over the next several days before the CSB was given access to the site on November 29.

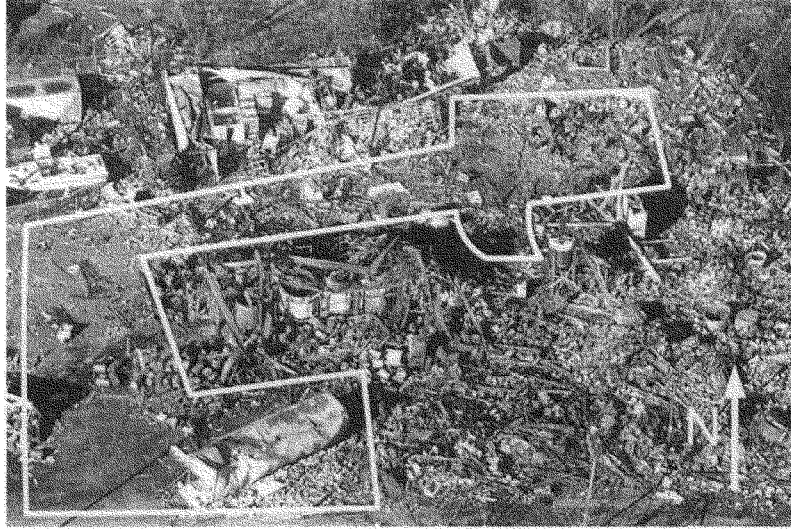


Figure 1b. Aerial photograph of Danvers, Massachusetts, explosion site taken on December 6, 2006, showing the area (outlined in yellow) that was disturbed and cleared of debris/evidence by Massachusetts fire services between November 24 and November 29, 2006.

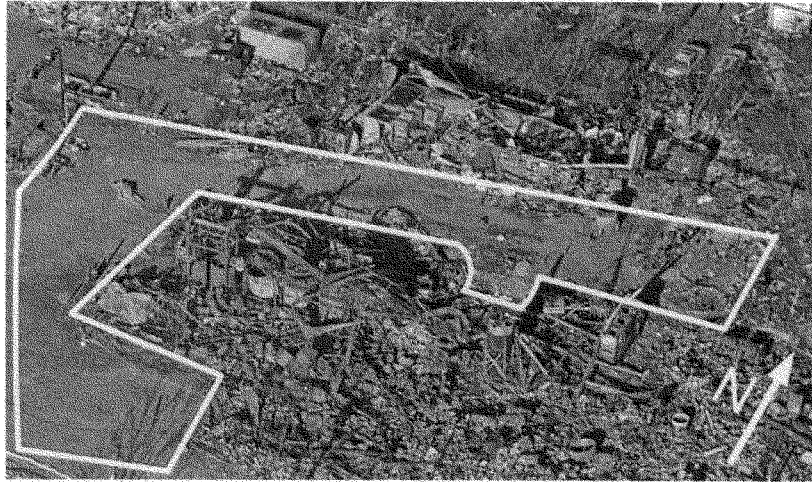


Figure 1c. Close-in photograph taken from a manlift basket on December 15, 2006, showing the extent of the evidence disturbance that occurred between November 24 and 29 (area that was cleared of debris/evidence using heavy equipment is outlined in yellow).



ADRIAN WALKER

No time for turf war



11923A
If James Tutko, the Danvers fire chief, really wants to do something to aid the investigation into the stunning explosion last week, there is one step he could easily take: Get out of the way.

It is absurd that the federal Chemical Safety Board can't get onto the site to investigate the cause of the blaze, because the fire official has decided they aren't needed.

Tutko said Saturday that he already has a team investigating the blaze — made up of State Police and local and state fire officials — and the federal investigators are not part of it. He described the feds as a "distraction." Speculation that good sense would quickly bring the dispute to bay has not borne out.

Daniel Horowitz, a spokesman for the safety board, said yesterday, "We're in a holding pattern right now and still seeking cooperation from state and local authorities so our work can go forward." His frustration was palpable.

The national board is a fire equivalent of the National Traffic Safety Board. Its role is to go into scenes such as this and assess the cause of the fire and, just as important, what steps might be taken to prevent such disasters.

It is the second of those duties that sometimes causes friction with local officials. The feds may find, for example, that inadequate local fire codes contributed to a fire. They may find that inspections were not up to par in some regard. They may also produce findings that differ from those of local officials, who are accustomed to investigating fires together — and, in some cases, covering each other's backs.

"Our role is to determine the root causes and make those public, so other communities in Massachusetts and elsewhere are protected from this kind of devastating accident," Horowitz said.

While conflicts sometimes occur, they seldom develop into the type of standoff that is going on in Danvers, Horowitz said. This kind of stubbornness is unusual, as well as counterproductive.

He insisted that under federal law the safety board does not need local permission to do its job.

"We have the full authority to gather evidence, subpoena whatever witnesses we need to, and convene public hearings, and we will use whatever legal authority we need to carry this investigation forward."

While that may be true, it matters that the safety board is, at this point, locked out. Its investigators need to see evidence before it has been picked over by several other investigators. Otherwise, the safety board investigators' ability to reconstruct the fire could be severely compromised.

One of the last things anyone needs at this point is a turf battle. A fire has displaced hundreds and wrecked the peace of a city. When a plane crashes, local investigators do their work, and federal investigators do theirs. That is the way to serve the public interest, and frankly there's no good reason any of this should be up to the Danvers fire chief.

The collapse of the Big Dig ceiling made one fact clear: There can never be enough competent review of a tragic accident. The locals should investigate the fire, the state should investigate the local officials, and the federal government should keep an eye on everyone.

Instead of that, we have a bureaucrat jealously guarding his turf, his little piece of power.

One would think the absurdity of that would be obvious to Tutko, whose town is living every day with the wreckage wrought on Wednesday morning.

Other than assisting the residents who bore the brunt of the damage, nothing should be a higher priority than learning what happened.

But Tutko takes a different view. He has his team, and, according to him, they have it covered. That someone else would have something to contribute seems barely to have crossed his mind.

That's why the federal investigators need to be allowed in — and why he shouldn't be making these decisions.

Adrian Walker is a Globe columnist. He can be reached at walker@globe.com.

Another Danvers Blowup

November 28, 2006

Whether the danger is a chemical explosion on the North Shore or an eruption of gang violence in Boston, the public is never well-served by turf battles among federal, state, and local officials. Efforts by the Danvers Fire Department to keep federal investigators away from the site of Wednesday's blast at a paint and ink manufacturing site is an egregious case in point.

The cause of the early-morning blast, which damaged about 70 homes and businesses, is unknown. Answers may be harder to come by because Danvers officials closed the site to investigators from the federal Chemical Safety Board. Since 1998, teams of experts from the board have conducted independent investigations into the causes of hazardous spills, fires, and other chemical accidents. While confusion at accident scenes results in occasional delays, the blockade by Danvers Fire Chief James Tutko is "unprecedented," according to safety board spokesman Daniel Horowitz.

It's understandable that local firefighters who risk their lives responding to chemical explosions might take a proprietary approach to such sites. But cooler heads, such as those from the State Fire Marshal's office, are supposed to recognize the immediate value of a federal team that includes chemical and mechanical engineers with decades of investigative experience, blast modelers, and combustible dust experts. And unlike local officials, federal investigators not only examine the factors contributing to the blast but also analyze and publicize their findings to

prevent similar explosions across the country. Stiff-necked local fire officials have no cause to interfere with such work.

Limited access to the site may be provided this morning. But local officials maintain they don't want federal investigators tramping through a potential crime scene. That doesn't make sense. The Chemical Safety Board has conducted 40 investigations concurrently with local officials nationwide. People in this line of work respect the need to give wide berth to criminal investigators. They aren't likely to pollute a crime scene.

Those who lost their homes and narrowly escaped death or serious injury deserve an independent federal probe that examines whether state and local failures might have contributed to the blast. Despite the presence of hazardous materials, it appears the plant wasn't inspected by state authorities for several years. Federal authorities also will need to look closely at enforcement of local fire codes.

Federal investigators have served notice to the governor's office that they intend to access the entire site this morning. Anyone who interferes with that effort is harming, not protecting, public safety

Aftershocks in Danvers

THE POWERFUL explosion last year at an ink manufacturing plant in Danvers exposed massive defects in the inspection of local businesses that use and store dangerous chemicals. The blast that damaged or destroyed 270 homes and businesses yielded many lessons on how to avoid such accidents, but it is unclear who, if anyone, has the authority and qualifications to apply such lessons in the future.

Last week, a team from the federal **Chemical Safety Board** determined that the likely cause of the blast at CAI Inc. was the ignition of flammable solvent vapor that accumulated after workers turned off the building's ventilation system at the end of the day. The federal investigators also charged that the company failed to follow standards for the safe storage, handling, and use of flammable solvents. Failure to detect those problems, according to the agency, falls on the Danvers Fire Department, the state fire marshal's office, and the federal Occupational Safety and Health Administration.

The company flatly disputes the Chemical Safety Board's findings. That question should be resolved as the investigation deepens. But the most worrisome aspect of this case is that both the state fire marshal's office, which provides technical assistance to fire departments, and the Danvers Fire Department deny responsibility for inspection of such hazardous workplaces. Westwood Fire Chief

William Scoble, president of the Fire Chiefs' Association of Massachusetts, adds that it is the rarest firefighter who is competent to assess chemical processes. The result, says Scoble, is a "black hole of authority."

State fire prevention regulations state clearly that it is the "duty and responsibility of the marshal or the head of the fire department" to enforce the fire code. But it is not so clear about who is responsible for finding the violations in the first place. A lack of specific permitting instructions for workplace chemicals clouds matters even more. The fire regulations, in fact, offer better guidance on permits needed to refinish bowling alleys or burn Christmas trees.

The fire chiefs make a point. But it shouldn't require a doctorate in chemistry to notice the absence of floor-level ventilation or automatic shutoff valves, and other dangers in Danvers cited by the federal officials. People living near hazardous workplaces want to know that their chiefs are taking all reasonable steps to protect them. And there is no ground for such confidence now.

The National Fire Protection Association in Quincy boasts chemical experts capable of training local fire officials how to spot workplace dangers. The group trained fire officials to recognize pyrotechnic dangers after the 2003 Rhode Island nightclub fire that killed 100 people. Similar exercises in chemical safety might help to quiet the effects of the Danvers blast.



Salem News

Published: 11/29/2006

Chemical Safety Board welcomed by other towns



Ona Ridenour helps her mom with clearing out some of her garbage at 12 Riverside St. yesterday as homeowners worked to repair their damaged homes. Photo by Paul Bilodeau/Salem News.

By Paul Leighton
Staff writer

Public safety officials from other communities affected by chemical explosions say the federal agency that was barred from the Danvers site for almost a week was a big help with their investigations.

Officials from North Carolina, Texas and Mississippi said they had no problems with the U.S. Chemical and Safety Hazard Investigation Board, a federal agency authorized by Congress to look into major chemical accidents around the country.

"Not a bit. They were very helpful, actually," said Mark Haraway, fire chief of Apex, N.C., where an explosion at a hazardous waste company forced the evacuation of 16,000 residents Oct. 5. "They kept us apprised of everything. They didn't do anything we didn't want them to."

Until yesterday, Danvers fire Chief James Tutko and state Fire Marshal Stephen Coan prohibited investigators with the Chemical Safety Board from entering the site of last week's chemical plant explosion on Water Street.

Coan said the five members of the federal agency were kept off the site because they are not trained to carry out criminal investigations, which the Danvers case is considered until foul play has been ruled out. A spokesman for the Chemical Safety Board said this was the first time in the agency's eight-year existence that its investigators had been barred from a site in the first few days after an explosion when access to evidence is critical.

Other public safety officials around the country said the Chemical Safety Board has provided valuable expertise in the aftermath of devastating explosions in their communities.

Fire Chief Gerald Grimm of Texas City, Texas, praised the board's investigators for their work after a series of explosions at an oil refinery in his city killed 15 workers and injured about 170 on March 23, 2005. It was the biggest industrial accident in the United States in 15 years, according to the Chemical Safety Board.

"We found them not to be an impediment but of great assistance to the city," Grimm said. "Their report was very conclusive, very comprehensive. They held a number of forums that were well-attended by the public. Of all the things that happened here, theirs was most often in the light of day and therefore the most credible to the public."

Grimm said the Chemical Safety Board investigators had the kind of expertise in industrial accidents that local officials lacked.

"They bring with them a wealth of talent in that area," he said. "That is their niche in life. They came in unvarnished and unbiased, and they left with that image."

Mark Tolbert, the public safety chief in Morgantown, N.C., said he can understand how local authorities would be wary of a little-known federal agency. Like many state and local officials here, Tolbert said he had never heard of the Chemical Safety Board until it showed up in his town of 17,300 people on the day of the blast.

But he said authorities worked out jurisdictional issues among the 53 agencies that descended on Morgantown after a chemical plant explosion Jan. 31 killed a worker and injured a dozen.

"Let's just say we had some issues (with the Chemical Safety Board) early on, and they were resolved," Tolbert said. "They got what they needed and we cooperated. We entered into a gentlemen's agreement. We sat down and opened up the lines of communication a little bit and did a better job of trying to pull from the agencies as to what they needed and the timetable."

Kevin Butler, the emergency management director for Smith County in Mississippi, said local authorities had no problems with the Chemical Safety Board investigating an explosion June 5 at an oil field in the small town of Raleigh, Miss., that killed three people.

"They wanted to interview all the people involved, and we set up the interviews for them," Butler said. "They were very accommodating. They didn't just come in and exert authority and push people around. They came in and did their job."

**U.S. Chemical Safety and
Hazard Investigation Board**

2175 K Street, NW • Suite 400 • Washington, DC 20037-1809
Phone: (202) 261-7600 • Fax: (202) 261-7650
www.csb.gov

Office of Investigations



November 27, 2006

Stephen D. Coan
Massachusetts State Fire Marshal
Massachusetts Department of Fire Services
P.O. Box 1025 State Road
Stow, Massachusetts 01775

By Facsimile and First Class Mail

Dear Fire Marshal Coan:

As you know, the U.S. Chemical Safety and Hazard Investigation Board (CSB) is conducting an investigation, pursuant to the authority of 42 U.S.C. § 7412(r)(6)(C)(i), of the incident that occurred at the CAI, Inc. and Arnel Company, Inc. facilities in Danvers, Massachusetts, and the surrounding community that was damaged in the incident (collectively the "accident site"), on November 22, 2006. This letter serves as formal written notice to the Massachusetts State Fire Marshal and Department of Fire Services, the Danvers Fire Chief, and their agents (collectively "Massachusetts authorities"), that physical evidence at the accident site is relevant to the CSB investigation and will be inspected and/or tested by the CSB, under the authority of 42 U.S.C. § 7412(r)(6)(L)(ii). This letter also serves to outline CSB expectations with respect to the site and relevant evidence related to this incident.

Federal law authorizes the CSB to enter the accident site and "do all things therein necessary for a proper investigation," including inspecting "records, files, papers, processes, controls, and facilities" and taking relevant samples. 42 U.S.C. § 7412(r)(6)(L)(ii). The law of the Commonwealth in no manner precludes the CSB from exercising this authority. Moreover, the CSB is not seeking custody of any physical evidence at this time or to otherwise preempt the Commonwealth's investigation.

Up to this point, however, Massachusetts authorities have denied CSB investigators unrestricted access (including photographic documentation of blast damage) to the site areas determined by the EPA to be clear of chemical hazards and have publicly challenged the CSB authority to conduct an investigation as provided in the CSB statute. Therefore, it is important that Massachusetts authorities immediately acknowledge federal jurisdiction at the accident site and work cooperatively with the CSB to ensure that relevant evidence is preserved from alteration or destruction. Federal authorities, Massachusetts authorities, and the victims of this incident share a common objective that physical evidence is handled in a manner that respects the concerns of all interested parties.

CSB investigators will be present at the accident site to continue their investigation according to CSB statutory authority on Tuesday, November 28, 2006, at 9:00 a.m. Specifically, CSB

investigators intend to take photographs to document the scene, collect relevant samples, map debris, and to outline CSB concerns to Massachusetts authorities regarding possible alteration of the CAI and Arnel companies' property during the origin and cause investigation by the Massachusetts authorities. The CSB intends to continue to work to the best of its ability to conduct its investigation in a manner that respects the important role of the Massachusetts authorities in determining the cause of the incident. Likewise, the CSB anticipates that Massachusetts authorities will respect the role of the CSB. Our primary purpose in this investigation is to expand beyond the cause and origin elements of the incident to report fully on what operational, maintenance, training, or other company activities may have led to this incident. The CSB intends to make appropriate recommendations to involved parties and similar industries in order to help prevent a similar tragedy from happening again, either in the Commonwealth or elsewhere in the U.S. In order to achieve this important mission, we ask for your fullest cooperation from this point forward.

Accordingly, the CSB requests that Massachusetts authorities take no further action to alter the CAI and Arnel companies' property from its as-found state until CSB investigators are afforded full access to the accident site and the full cooperation of Massachusetts authorities, including direct involvement in the remaining evidence collection and site cleanup decision process.

The CSB investigation team is immediately available to work with the site response team. If an emergency necessitates the further alteration of the CAI and Arnel companies' property before our arrival on Tuesday, as noted above, please notify the CSB contact designated in this letter. Such notice should be provided before the alteration occurs so that the CSB may document the pre-alteration condition of the companies' property.

The designated CSB contacts for all notifications described in this letter are as follows:

<u>Primary Contact:</u> John Vorderbrueggen, P.E. Investigator-in-Charge (202) 261-7618 (office) (202) 378-3518 (cell) john.vorderbrueggen@csb.gov	<u>Alternate Contact:</u> Stephen J. Selk, P.E. Investigation Manager (202) 261-7623 (office) (202) 378-3515 (cell) steve.selk@csb.gov
---	--

If you have any questions concerning the jurisdiction of the CSB, please contact our General Counsel, Christopher Warner, at 202-261-7624. Thank you for your anticipated cooperation with the CSB's investigation. We look forward to working with you in a professional and respectful manner.

Sincerely,

/s/
John Vorderbrueggen
Investigator-in-Charge

Cc: Steven Rourke, General Counsel, Department of Fire Services
Wayne P. Marquis, Danvers Town Manager
Michael C. Lehane, Esq., Danvers Town Counsel

Shearer, Russell SES ASA-I&E

From: Shearer, Russell SES ASA-I&E
Sent: Monday, September 09, 2002 8:37 PM
To: 'Conklin, Craig'
Cc: Skelly, Lawrence E Mr ASA-I&E; Civis, Daniel; Correa, Joe; Dries, James E Mr ASA-ILE; Fisher, Denzel L Mr ASA-I&E; Holmes, Charles M Mr ASA I&E; Hanline, Jay Mr OASA(I&E); Church, Kelli Ms ASA-I&E; Ray, Nancy M COL ASA-I&E; Legel, Dennis R SBCCOM; Carnithan, Paul T SBCCOM; Abrams, Mike ANNISTON CHEMICAL, DEMILITARIZATION FIELD OFC PAO; Fiori, Mario P Dr ASA-I&E; Brielich, Richard W SBCCOM; Bunch, Delbert F PMCD; Davis, Henry J COL SBCCOM; Jones, Robert E LTC SBCCOM; 'brodersend@anad.army.mil'; 'Lantzer, Paula K LTC SBCCOM'; Doesburg, John C MG SBCCOM; Peterson, Craig A BG Army G8-FD; Parker, Michael A SBCCOM; Ferriter, John M Dr. SBCCOM; Newing, Edward W COL SBCCOM; Fatz, Raymond J Mr ASA-I&E; Fiori, Mario P Dr ASA-I&E; Skelly, Lawrence E Mr ASA-I&E
Subject: Invitation to Anniston to Participate in CSEPP Drills
 Mr. Conklin,

Thank you for your e-mail earlier today. I appreciate your thoughts on the proposal to invite Anniston County to participate in several CSEPP exercises. The objective of the Army's invitation, to be issued by Dr. Fiori (ASA (I&E)), is to encourage Anniston to participate in the very drills that it has heretofore declined. The further purpose of the invitation is to create a record demonstrating that the Army has exercised due diligence in preparing for operations, including encouraging Anniston to participate in exercises intended to prepare it for a potential emergency. In sum, the Army seeks to document the invitation and to document the response or lack thereof.

The Army intends to send the invitation to Anniston by the middle of next week, and so a draft must be prepared by close-of-business for Thursday of this week. The content of that draft is less important so long as it contains one basic element: an invitation to Anniston to engage in CSEPP exercises in advance of the scheduled start of operations. Mr. Jim Dries, who is now responsible for preparing the letter, would appreciate any specific assistance he could obtain on the draft (I understood from your e-mail that you have reviewed a copy of the draft). For example, I believe he would appreciate red-line edits to the original document or detailed comments that he could easily input. I encourage you and any others who perceive an issue with the current draft to provide him with any specific comments you might have.

You also mentioned in your note that "floating ideas" is not an optimal manner for coordinating work on CSEPP issues. I agree. But I do not perceive that Larry Skelly "floated" the idea to invite Anniston to engage in preparedness activities. Rather, Mr. Skelly carried out an instruction that I gave him and for which I will not fault him. The Army has a responsibility, as I explained previously, to build a record documenting its efforts to prepare for operations. The invitation to Anniston is part of that effort, and Mr. Skelly, and now Mr. Dries, have sought to assist me in building that record. They have also sought to obtain comments on the proposed invitation to Anniston, and I appreciate your interest and the interest of those to whom I have copied this note.

I invite all those to whom this e-mail is addressed to consider the following concern: Many people copied on this and prior e-mails in this chain were unnecessary, and we should be more circumspect in addressing our correspondence. I believe we would all enjoy the courtesy of debating the relative merits of a point outside an audience of General Officers, SESs, and Army Secretariat. Thank you for considering my views, and for your commitment to assist Dr. Fiori in inviting Anniston to become more prepared. I am

Sincerely,

Russell Shearer

C. Russell H. Shearer
 Acting Deputy Assistant Secretary (Chemical Demilitarization) and Special Assistant to the Assistant Secretary of

9/20/2002

RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today" Page 2 of 2

the Army (I&E)
110 Army Pentagon (2E613)
Washington, DC 20310-0110

Voice: (703) 692-9800
Facsimile: (703) 692-9808
Russell.Shearer@hqda.army.mil

This Internet e-mail message contains legally PRIVILEGED and CONFIDENTIAL information intended for the use of the addressee only. Please contact the undersigned by telephone or e-mail and report that you have received this message if you are not the intended recipient. Thereafter, please delete this message from your system.

9/20/2002

Shearer, Russell SES ASA-I&E

From: Conklin, Craig [Craig.Conklin@fema.gov]
Sent: Monday, September 09, 2002 11:49 AM
To: 'Lantzer, Paula K LTC SBCCOM'; Doesburg, John C MG SBCCOM; Peterson, Craig A BG Army G8-FD; Parker, Michael A SBCCOM; Ferriter, John M Dr. SBCCOM; Newing, Edward W COL SBCCOM; Fatz, Raymond J Mr ASA-I&E; Fiori, Mario P Dr ASA-I&E
Cc: Skelly, Lawrence E Mr ASA-I&E; Conklin, Craig; Civis, Daniel; Correa, Joe; Shearer, Russell SES ASA-I&E; Dries, James E Mr ASA-ILE; Fisher, Denzel L Mr ASA-I&E; Holmes, Charles M Mr ASA I&E; Hanline, Jay Mr OASA(I&E); Church, Kelli Ms ASA-I&E; Ray, Nancy M COL ASA-I&E; Legel, Dennis R SBCCOM; Carnithan, Paul T SBCCOM; Abrams, Mike ANNISTON CHEMICAL DEMILITARIZATION FIELD OFC PAO; Fiori, Mario P Dr ASA-I&E; Britsch, Richard W SBCCOM; Bunch, Delbert F PMCD; Davis, Henry J COL SBCCOM; Jones, Robert E LTC SBCCOM; 'brodersend@anad.army.mil'
Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

To All,

Thanks for the opportunity to comment on your exercise proposal. I have taken some time to think about the exercise proposal and have the following concerns.

First, I think such a headquarters level, top-down mandated approach would not be very successful in Anniston. There is one thing I have learned in the short I have been here at FEMA it is that in order to be effective we must develop good relationships with the State and local officials. This approach does not lend itself to that. We need to include them up front if we expect to get their buy-in.

Second, the exercise proposal would place a significant burden on State and local officials without consulting them. I think we need to include them in any decision about changing the way we examine the ability of the State and local governments to respond to an accident/incident at the facility. I think this type of action will not be well received by the State and local officials unless we can provide the additional funds it would take to conduct these extra exercises.

Third, it is my understanding that a recent hazmat exercise showed that the community was capable of responding. I believe that we are developing a strong emergency preparedness foundation in the Anniston community and that we can build on the partnership that is beginning to develop between Federal, State and local officials. While there are improvements that can be made in the level of preparedness, we need to recognize that improvements have been made and the community is better prepared than it was when the program started. So any change in exercise activities must value added.

Lastly, I would like to comment on this method of floating ideas. It is not one I prefer. It basically circumvents what I would consider normal CSEPP channels of communication. If someone has an idea for improving the program, then that person should contact the other stakeholders directly so the idea can be discussed. Using the courtesy copy on emails is not a good way to develop support for an idea, especially when it involves an area that has been under someone else's direction.

Craig Conklin, FEMA

-----Original Message-----

9/20/2002

RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today" Page 2 of 4

From: Lantzer, Paula K LTC SBCCOM [mailto:paula.lantzer@SBCCOM.APGEA.ARMY.MIL]
Sent: Wednesday, August 28, 2002 11:21 AM
To: Doesburg, John C MG SBCCOM; Peterson, Craig BG SBCCOM(N); Parker, Michael A SBCCOM; Ferriter, John M Dr. SBCCOM; Newing, Edward W COL SBCCOM; Fatz, Raymond ASA-I&E; Fiori, Mario Dr. ASA(I&E)
Cc: Skelly, Lawrence ASA-I&E; Lantzer, Paula K LTC SBCCOM; 'Craig Conklin (craig.conklin@fema.gov)'; 'Dan Civis (daniel.civis@fema.gov)'; 'Jose Correa (Joe.Correa@fema.gov)'; Shearer, Russell ASA(I&E); Dries, James HQDA; Fisher, Denzel HQDA; Holmes, Charles M Mr ASA I&E; Hanline, Jay Mr OASA(I&E); Church, Kelli Ms ASA-I&E; Ray, Nancy COL HQDA; Legel, Dennis R SBCCOM; Carnithan, Paul T SBCCOM; Abrams, Mike ANNISTON CHEMICAL DEMILITARIZATION FIELD OFC PAO; Fiori, Mario Dr. ASA(I&E); Brlitich, Richard W SBCCOM; Bunch, Delbert F PMCD; Davis, Henry J COL SBCCOM; Jones, Robert E LTC SBCCOM; 'brodersend@anad.army.mil'
Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"
Importance: High

Sirs,

This is the first that I have heard about this initiative. Please note that I, the Army's PM, am only a cc on the distribution; my exercise team leader is not on the address line at all; and the message is directed towards Mike Abrams, the ANCDF PAO. To my knowledge, this has not been coordinated with FEMA.

While I am always in favor of using any opportunity for demonstrating, assessing and improving capabilities and agree that we should exhaust every opportunity to assist ALL of our CSEPP communities, this clearly indicates that the office charged with CSEPP policy, guidance and oversight intends to run the Alabama exercise program, to include directing the number of exercises that the depot and our off-post partners are expected to execute. Once again, the organizations charged with the management and execution of CSEPP are being told how and whom to suck eggs!

If I am doing such an inadequate job that HQDA must step in, why has this not been brought to the attention of my chain of command?

The imperial "we" is used throughout the message below. I don't know who that is?

V.R., Paula

-----Original Message-----

From: Skelly, Lawrence E Mr ASA-I&E [mailto:Lawrence.Skelly@hqda.army.mil]
Sent: Wednesday, August 28, 2002 8:18 AM
To: 'Abrams, Michael'; 'paul.carnithan@sbccom.apgea.army.mil'; 'Dennis Legel (dennis.legel@SBCCOM.APGEA.ARMY.MIL)'
Cc: 'Paula Lantzer (paula.lantzer@SBCCOM.APGEA.ARMY.MIL)'; 'Craig Conklin (craig.conklin@fema.gov)'; 'Dan Civis (daniel.civis@fema.gov)'; 'Jose Correa (Joe.Correa@fema.gov)'; Shearer, Russell SES ASA-I&E; Fatz, Raymond J Mr ASA-I&E; Dries, James E Mr ASA-I&E; Fisher, Denzel L Mr ASA-I&E; Holmes, Charles M Mr ASA I&E; Hanline, Jay Mr OASA(I&E); Church, Kelli Ms ASA-I&E; Ray, Nancy M COL ASA-I&E
Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

Folks,

We wholeheartedly support the exercise discussed below. It is imperative that we begin building public trust and confidence in the Anniston region emergency response system that the Army, through CSEPP, has pumped over \$100M into the last twelve years.

9/20/2002

We are looking at taking an aggressive, proactive approach to conducting a series of exercises in the Anniston CSEPP community beginning in the very near future and continuing until the community declares itself adequately prepared for a CSEPP type emergency. We define that community as comprising the depot, all the CSEPP counties and the Alabama state agencies. What we envision is a monthly exercise paradigm that focuses on specific response activities. One exercise might drill the medical component of the response system. The next exercise might focus on command and control. And each exercise could work more than one CSEPP functional component. This model has worked exceptionally well at the Umatilla site and we believe it will work in Anniston too.

This will require the Anniston Chemical Activity to plan and conduct monthly CAIRA-type exercises, although they do not have to be full blown CAIRAs. A range of drills falling between basic tabletop exercises and full up field exercises with deployment of hot lines, field response teams, and so forth, probably would accomplish the objective of providing the Anniston CSEPP community with a variety of exercise opportunities. These drills also would provide excellent opportunities to improve on post capabilities, if properly planned and executed.

To support this robust exercise program we would launch a media campaign that informs the public about the purpose of the drills, who we hope to have participate and what our objectives are. We also would make it known what agencies refused to participate and their excuses.

In summary, we have a responsibility to the community to help it get ready. Clearly, the current CSEPP approach for conducting a once-a-year exercise is not working in Anniston. The public is nervous and we are troubled by the recent refusal of certain county agencies to participate in exercises. The community is not ready for toxic operations, despite the millions of dollars poured into emergency management in the region. We must change that status.

We would greatly appreciate your comments. We will begin developing this proposed program with SBCCOM, AMC and FEMA to ensure the Anniston community has sufficient resources and support to carry out this proposal.

Michael, please forward this email to your new commander. I do not have his email address.

Thanks.

Larry Skelly
Room 1A875, Pentagon
phone: 703.695.1042
fax: 703.614.5822

-----Original Message-----

From: Abrams, Michael [mailto:mabrams@ancdf.org]

Sent: Wednesday, August 28, 2002 7:23 AM

To: Abrams, Michael

Subject: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

The Anniston Star - Page 1B - Wednesday - August 28, 2002

Cleburne County tests preparedness today

by Matthew Creamer, Star Staff Writer

(<http://www.annistonstar.com/news/2002/as-cleburne-0828-mcreamer-2h28a1908.htm>)

Sirens and tone-alert radios will be tested in Cleburne County today as part of a local exercise to

9/20/2002

prepare for a chemical weapons accident at the Anniston Army Depot.

The drill will measure the response of officials working in the county emergency operations center as well as that of residents, who have been asked to rehearse their shelter-in-place plans.

"Exercising your plans during the drill will help families to test their plans and to discover possible oversights one might not realize if the plan were not practiced," said Steve Swafford, director of the Cleburne County Emergency Management Agency.

For Cleburne residents, this involves going indoors, closing windows and doors, turning off heating, cooling and ventilation systems and remaining in an interior room.

Cleburne will be only one of the six counties in the emergency preparedness program to perform a drill this year. A full-scale exercise was cancelled earlier this year because of disputes between the federal government and Calhoun County and state officials.

"We're calling this a local exercise," said the Federal Emergency Management Agency's Terry Madden, who's in Cleburne County to evaluate the exercise.

Depot officials will support the exercise electronically by notifying county officials of a staged mishap at the chemical stockpile.

--- 30 ---

<<Anniston Star 28aug02 Exercise.doc>>

Shearer, Russell

From: Conklin, Craig [Craig.Conklin@dhs.gov]
Sent: Thursday, October 25, 2007 1:04 PM
To: Shearer, Russell
Subject: FW: Alabama Drill/Exercise Initiative

Importance: High

Russell,

I am forwarding this email in response to your request. Additional emails will follow. I think this will be easier than trying to put them into one document.

Craig Conklin, Director
Sector Specific Agency Executive Management Office
Office of Infrastructure Protection
Department of Homeland Security
Crystal City Office 703-605-1228
Glebe Road Office 703-235-5065
Craig.Conklin@DHS.GOV

From: Conklin, Craig
Sent: Wednesday, September 18, 2002 7:51 AM
To: 'Dries, James E Mr ASA-ILE'; Conklin, Craig; 'Ferriter, John, SBCCOM'
Cc: Cavis, Daniel
Subject: RE: Alabama Drill/Exercise Initiative
Importance: High

Gentlemen, I apologize for the length of time it has taken for me to respond to the Army's drill proposal for the Anniston depot and surrounding communities. After discussing the proposal with FEMA headquarters staff, I would like to provide the following comments.

First, based on the recent lack of participation by some of the communities surrounding the Anniston depot, questions about the level of preparedness can be expected, so we (FEMA and Army) need to take positive action to get the communities re-involved.

Second, the initiative needs to be coordinated in a partnership-like manner by both FEMA and Army personnel from Headquarters. However, it needs to have the buy-in from the community IPT. Therefore, we need to visit with the IPT and lay out our proposal and get their input on how to make it valuable and efficient for them. Obviously it would be best if we did not have to be heavy handed in order to get them to participate.

Third, we need to be able to address any concerns of theirs with regard to resources. Since this is a new initiative, we will need to address the funding issue that will come with this previously unplanned activity. Who will pay, which contractor to use, etc. I recommend we use the FEMA contractors that currently work on the exercise program for the offsite portions of these drills since FEMA has the lead role per the MOU for offsite preparedness. I don't want to make any changes in how we operate with regard to the program, until those changes are incorporated into a revised and agreed upon MOU.

Fourth, I want to make it clear, that I do not think the exercise program as a whole is broken because one community decided not to participate in an exercise. The program is working quite well at other sites. I think the cause of the non-participation was more to do with the funding fights we were having than anything else.

Fifth, we can not let this initiative evolve into an us versus them situation. There may be some very reasons for their wanting to modify our proposal. I think we will need to be flexible, listen to their concerns and adapt as necessary to make this work. Any disagreements that might arise should be handled by the IPT and should not be played out in the media.

If you have any questions, please feel free to email or call me. I look forward to working with ya'll on this initiative.

Craig Conklin

-----Original Message-----
From: Dries, James E Mr ASA-ILE [mailto:James.Dries@hqda.army.mil]
Sent: Wednesday, September 11, 2002 5:54 PM
To: 'Craig Conklin (craig.conklin@fema.gov)'; 'Ferriter, John, SBCCOM'
Subject: Alabama Drill/Exercise Initiative

Gentleman, As you are aware, Dr. Fiori would like to take us to take a more active engagement posture with Alabama. This office is proposing a series of one day "drills" that focus on a small aspect of the emergency response procedures. We recognize that our organizations and the communities cannot expend a considerable amount of resources on a monthly drill. Accordingly, these small, focused drill events should be developed so that several can be conducted in one day--ensuring a high degree of success by the end of the drill. At the same time, the drills should build to a successful annual exercise. The attached document is my attempt to put this proposal before the governor--it does not have Army secretariat approval nor has not been out for staffing, and I would appreciate your insights/suggestions before formal staffing.

Thanks <<Alabama exercise letter 9-11.doc>>

James Dries
ODASA(ESOH)
Pentagon, Room 1A875
Phone: 703-695-1020
Fax: 703-614-5822

Shearer, Russell

From: Conklin, Craig [Craig.Conklin@dhs.gov]
Sent: Thursday, October 25, 2007 1:06 PM
To: Shearer, Russell
Subject: FW: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"
Importance: High

Email from Skelly on the exercise effort.

Craig Conklin, Director
Sector Specific Agency Executive Management Office
Office of Infrastructure Protection
Department of Homeland Security
Crystal City Office 703-605-1228
Glebe Road Office 703-235-5065
Craig.Conklin@DHS.GOV

From: Skelly, Lawrence E Mr ASA-I&E [mailto:Lawrence.Skelly@hqda.army.mil]
Sent: Wednesday, August 28, 2002 8:18 AM
To: 'Abrams, Michael'; 'paul.carnithan@sbccom.apgea.army.mil'; 'Dennis Legel (dennis.legel@SBCCOM.APGEA.ARMY.MIL)'
Cc: 'Paula Lantzer (paula.lantzer@SBCCOM.APGEA.ARMY.MIL)'; 'Craig Conklin (craig.conklin@fema.gov)'; 'Dan Civis (daniel.civis@fema.gov)'; 'Jose Correa (Jose.Correa@fema.gov)'; Shearer, Russell SES ASA-I&E; Fatz, Raymond J Mr ASA-I&E; Dries, James E Mr ASA-I&E; Fisher, Denzel L Mr ASA-I&E; Holmes, Charles M Mr ASA I&E; Hanline, Jay Mr OASA(I&E); Church, Kelli Ms ASA-I&E; Ray, Nancy M COL ASA-I&E
Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

Folks,

We wholeheartedly support the exercise discussed below. It is imperative that we begin building public trust and confidence in the Anniston region emergency response system that the Army, through CSEPP, has pumped over \$100M into the last twelve years.

We are looking at taking an aggressive, proactive approach to conducting a series of exercises in the Anniston CSEPP community beginning in the very near future and continuing until the community declares itself adequately prepared for a CSEPP type emergency. We define that community as comprising the depot, all the CSEPP counties and the Alabama state agencies. What we envision is a monthly exercise paradigm that focuses on specific response activities. One exercise might drill the medical component of the response system. The next exercise might focus on command and control. And each exercise could work more than one CSEPP functional component. This model has worked exceptionally well at the Umatilla site and we believe it will work in Anniston too.

This will require the Anniston Chemical Activity to plan and conduct monthly CAIRA-type

exercises, although they do not have to be full blown CAIRAs. A range of drills falling between basic tabletop exercises and full up field exercises with deployment of hot lines, field response teams, and so forth, probably would accomplish the objective of providing the Anniston CSEPP community with a variety of exercise opportunities. These drills also would provide excellent opportunities to improve on past capabilities, if properly planned and executed.

To support this robust exercise program we would launch a media campaign that informs the public about the purpose of the drills, who we hope to have participate and what our objectives are. We also would make it known what agencies refused to participate and their excuses.

In summary, we have a responsibility to the community to help it get ready. Clearly, the current CSEPP approach for conducting a once-a-year exercise is not working in Anniston. The public is nervous and we are troubled by the recent refusal of certain county agencies to participate in exercises. The community is not ready for toxic operations, despite the millions of dollars poured into emergency management in the region. We must change that status.

We would greatly appreciate your comments. We will begin developing this proposed program with SBCCOM, AMC and FEMA to ensure the Anniston community has sufficient resources and support to carry out this proposal.

Michael, please forward this email to your new commander. I do not have his email address.

Thanks.

Larry Skelly
Room 1A875, Pentagon
phone: 703.695.1042
fax: 703.614.5822

-----Original Message-----

From: Abrams, Michael [mailto:mabrams@ancdf.org]
Sent: Wednesday, August 28, 2002 7:23 AM
To: Abrams, Michael
Subject: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

The Anniston Star - Page 1B - Wednesday - August 28, 2002
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"We're calling this a local exercise," said the Federal Emergency Management

Agency's Terry Madden, who's in Cleburne County to evaluate the exercise.

Depot officials will support the exercise electronically by notifying county officials of a staged mishap at the chemical stockpile.

--- 30 ---

<<Anniston Star 28aug02 Exercise.doc>>

Shearer, Russell

From: Conklin, Craig [Craig.Conklin@dhs.gov]
Sent: Thursday, October 25, 2007 1:07 PM
To: Shearer, Russell
Subject: FW: Alabama Drill/Exercise Initiative



Alabama exercise
letter 9-11.d...

This email from Jim contains the attachment that is missing from the first email I sent you. I do not think the attached draft was ever signed.

Craig Conklin, Director
Sector Specific Agency Executive Management Office
Office of Infrastructure Protection
Department of Homeland Security
Crystal City Office 703-605-1228
Glebe Road Office 703-235-5065
Craig.Conklin@DHS.GOV

From: Dries, James F Mr ASA-ILE [mailto:James.Dries@hqda.army.mil]
Sent: Wednesday, September 11, 2002 5:54 PM
To: 'Craig Conklin (craig.conklin@fema.gov)'; 'Ferriter, John, SBCCOM'
Subject: Alabama Drill/Exercise Initiative

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Thanks <<Alabama exercise letter 9-11.doc>>

James Dries
ODASA(ESOH)
Pentagon, Room 1A875
Phone: 703-695-1020
Fax: 703-614-5822

The Honorable Don Siegelman
Governor
State Capitol
Room N-104
600 Dexter Avenue
Montgomery, AL 36130

Dear Governor:

We invite the State of Alabama and the counties participating in the Army's Chemical Stockpile Emergency Preparedness Program (CSEPP) to join the Anniston Army Depot workforce this October in a series of chemical emergency response drills to maintain the state of readiness with the community. We believe that regular joint training exercises are the best way to demonstrate that the Army, the State and the counties are adequately trained and ready to protect the community.

These self-evaluation drills will offer the Anniston Army Depot and the surrounding communities the opportunity to focus on specific response activities during each exercise. For example, one event could focus on the medical component of the response system. Another might focus on command and control, including hazard analysis, selection of a protective action strategy, and initiation of community warning protocols. Still another could focus on the protective actions to be taken by special needs facilities such as schools, hospitals, and retirement communities. These will lead up to the Anniston Full Scale Exercise in March. Drills after March would be used to strengthen and reinforce the March exercise.

If the Alabama CSEPP participants accept our invitation to participate in these drills, then we recommend that the community Integrated Process Team (IPT) serve as the overarching planning and evaluation mechanism for these exercises. The IPT could set out strategic objectives for the exercise series, develop performance measures and success criteria, map out individual exercise objectives, and identify where changes to plans or procedures are indicated.

The Army will provide contractor support to the IPT and the response agencies to assist in all aspects of the drill planning, coordination, execution and documentation. The contractor will coordinate and integrate the efforts of all participating agencies, provide simulation support, assist in developing performance measures and success metrics, document the results of each exercise drill and recommend areas for improvement. Of course, the Army Materiel Command and the Soldier and Chemical Biological Command also will support this effort.

We believe the citizens deserve our best efforts to demonstrate that we are collectively prepared for any accident involving the chemical stockpile. These drills and the annual exercise will give our first responders and emergency response agencies the opportunity to excel. The ultimate payoff will be a well-prepared community that is better able to respond to natural disasters as well as any accident at the Depot.

We invite you to join us in showing the citizens of the Anniston community we are serious in our pledge to protect them from the consequences of a chemical accident at Anniston Army Depot. We look forward to the participation of your agencies as well as the county agencies in our monthly drills. Larry Skelly, our project officer at Headquarters, Department of the Army, will work closely with your staff and the Anniston IPT to implement this program. His phone number is (703) 695-1042. His email address is: lance.skelly@hqda.army.mil.

Draft

Thank you for your strong support of the Chemical Stockpile Emergency Preparedness Program.

Sincerely,

Raymond J. Fatz
Deputy Assistant Secretary
(Environment, Safety and
Occupational Health)
Department of the Army

Bruce P. Baughman
Director
Office of National Preparedness
Federal Emergency Management Agency

Date: _____

Date: _____

Copy furnished:
Director, Alabama Emergency Management Agency
Chairperson, xx County Commission (each county)
Director, xx County Emergency Management Agency (each county)
Director, Region IV, Federal Emergency Management Agency
Chairperson, Alabama Citizens Advisory Commission

Senator Shelby
Senator Sessions
Representative Riley

Draft



Richard Shelby

United States Senator * Alabama

Committees:
Vice Chairman - Senate Select Committee on Intelligence
Committee on Appropriations
Ranking Member, Subcommittee on Transportation
Committee on Banking, Housing, & Urban Affairs
Committee on Energy and Natural Resources
Special Committee on Aging

Addresses:
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(202) 224-5744 E-Mail: senator@shelby.senate.gov
Website: <http://www.senate.gov/~shelby/>

State Offices:
1800 Fifth Ave., North, 321 Federal Building, Birmingham
AL 35203 (205) 731-1384 fax: (205) 731-1386

Huntsville Int'l Airport, 1000 Glenn Hearn Blvd., Box 20127
Huntsville, AL 35824 (256) 772-0460 fax: (256) 772-8387

113 St. Joseph St., 308 U.S. Courthouse, Mobile, AL 36602
(251) 694-4164 fax: (251) 694-4166

15 Lee St., B28 U.S. Courthouse, Montgomery, AL 36104
(334) 223-7303 fax: (334) 223-7317

1118 Greensboro Ave., #240, Tuscaloosa, AL 35401
(205) 759-5047 fax: (205) 759-5067

FAX TRANSMISSION SHEET

Date: 9/20 Page 1 of 22

To: C. Russell H. Shaarer

Fax Number: 703.692.9803

From:
Phone: (202) 224-5744
Fax: (202) 224-3416

Message: _____

The information contained in this fax is legally privileged and confidential intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution or copy of this fax message is strictly prohibited. If you have received this fax in error, please contact us immediately by telephone. Thank you.

09/19/02 17:38 FAX

002

RICHARD SHELBY
ALABAMA
COMMITTEE ON APPROPRIATIONS
CHAIRMAN—SUBCOMMITTEE ON TRANSPORTATION
COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
CHAIRMAN—SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SPECIAL COMMITTEE ON AGING

110 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-0103
(202) 224-5744
<http://shelby.senstate.gov/>
E-mail: senator@shelby.senate.gov

United States Senate
WASHINGTON, DC 20510-0103

September 19, 2002

The Honorable Thomas E. White
Secretary of the Army
101 Army Pentagon
Washington, DC 20310-0101

Dear Mr. Secretary,

I write to relay very troubling information concerning the administration and leadership of the Army's Chemical Demilitarization Program. I have included as an attachment information that I believe deserves your personal attention.

Regarding those attached messages, I would first state that I wholeheartedly agree with Mr. Larry Skelly, OASA (I&E), in his first message dated August 28 that "it is imperative that we [the Army] begin building public trust and confidence in the Anniston region." I believe, however, this information paints a very disturbing picture of how the Army seeks to "begin" to right the ship. This information goes to the heart of numerous letters in which I have questioned the leadership, operational effectiveness and focus of the Army's Chemical Stockpile Emergency Preparedness Program (CSEPP).

I, along with the state and local emergency officials in Alabama, welcome CSEPP exercises, but a "challenge" in the form of an "invitation" as directly expressed within this information, is ill-conceived at best.

Mr. Secretary, I would submit that "improving the Army's image" in this area would best be achieved by respecting the state and local officials' concerns and communicating with them regarding the adequacy of CSEPP as it exists in Alabama, not by "challenging" the community in an effort to make "the community declare[s] itself adequately prepared for a CSEPP-type emergency." An iron fist approach is wrong and, as pointed out in the attached by several officials who are most familiar with the administration and operation of the CSEPP program, will not work.

This effort is nothing more than a perverse and irresponsible attempt to deflect attention away from the Army's failures by employing a totally inappropriate strategy which is, by the comments of those who have created it, designed to set up the community and, apparently, give the Army cause to withhold future CSEPP funding. This effort to "toss the gauntlet on the ground" amounts to a media stunt with the desired outcome being "improvement of the Army's image" at the community's expense.

STATE OFFICES:

- 1900 FIFTH AVENUE NORTH
371 FEDERAL BUILDING
BIRMINGHAM, AL 35203
(205) 731-1384
- HUNTSVILLE INT'L AIRPORT
1000 GLENN HEARN BOULEVARD
BOX 20127
HUNTSVILLE, AL 35824
(256) 772-0660
- 113 ST. JOSEPH STREET
445 U.S. COURTHOUSE
MOBILE, AL 36602
(251) 664-1164
- 15 LEE STREET
828 U.S. COURTHOUSE
MONTGOMERY, AL 36104
(334) 223-7303
- 118 GREENSBORO AVENUE #240
TUSCALOOSA, AL 35401
(205) 755-2047

State and local officials in Alabama have worked diligently with the Army for years in an effort to have the Army take their valid safety concerns seriously. As an example, a look back at the funding requests made by the Calhoun County Emergency Management Agency reflects a significant concern for the safety of "special needs" citizens in the community as well as for "collective protection" of schools within the IRZ. Years of funding requests have passed and the issues remain unresolved.

Now the Army intends to "take the offensive in Alabama," by "challenging the site." I am not sure what this means considering the Army has given FEMA, by MOU, responsibility of all off-post CSEPP execution. Yet, the Army chemical demilitarization program leadership seeks to "tell" FEMA and the Army's own CSEPP apparatus exactly how this exercise campaign will be carried out with little or no consultation. The fact is, despite the Army having "pumped over \$100 million" into Alabama the last twelve years, much work remains to be done. The Army and FEMA are well aware of the remaining safety concerns.

The attached information, however, clearly outlines the Army leadership's strong desire to concoct and force "challenge" exercises on the community through which they hope to "improve the Army's image" rather than to do the real job with which they have been tasked - to work with FEMA and state and local emergency professionals in Alabama to make sure "maximum protection" is provided to the people who live and work in and around the Anniston Chemical Destruction Facility (ANCDF).

I have long asked for greater oversight, leadership and reform within this program. Surely this information proves the basis for my concerns and those of emergency officials in Alabama who have sought to work with the Army.

Thank you for your time and attention to this letter and the attached information. I look forward to your response.

Sincerely,


Richard Shelby
United States Senator


09/19/02 17:38 FAX

004

-----Original Message-----

From: Lantzer, Paula K LTC SBCCOM

Sent: Thursday, September 11, 2002 12:53 PM


Subject: DASA(ESOH) Alabama Exercise Proposal
Importance: High

Sir,

09/19/02 17:38 FAX

005

We received the e-mails below today. They are the background on DASA(ESOH)'s proposal for the Anniston exercises. The referenced memo must have been cleaved off in the forwarding process. While Mr. Skelly is very careful to use the word "recommend," it is apparent that there is no intention of providing AMC, SBCCOM or FEMA any real opportunity to participate in the decision making process.

While I have the greatest respect for the professionalism and abilities of Madhu Beriwal and the entire staff at IEM, Mr. Skelly's comments regarding the use of IEM as the support and integration contractor raises a number of issues. First, it sounds like the fox guarding the henhouse. If they've developed all the plans (which is grossly misleading), then should there not be an independent agency evaluating them? Second, while IEM is running the show in Oregon, they do not enjoy the same relationship with Alabama. Finally, though not stated, Mr. Skelly believes that having IEM conduct exercises in Oregon is saving money. In fact, it costs an additional \$100-250K, and they are only evaluating the State of Oregon and 2 counties, are not responsible for scenario development and planning and do not use the holistic approach that we've developed with the Integrated Performance Measure (IPE) process. They strictly observe and assess against individual performance measures. Since we (SBCCOM and FEMA) still have the responsibility to conduct the UMCD, Washington State and Benton County portions, this means that we have multiple evaluation methodologies being used. IEM can not be given responsibility for evaluation of the storage sites, so there would always be at least 2 methodologies. For Alabama, the evaluation involves ANCA, the State and 6 counties. I, and I'm certain FEMA, don't have that programmed in the FY03 budget. I suspect that he intends to withhold that amount from me or maybe that's what the \$4.1M withheld last year is intended for.

I've attached the previous e-mails that addressed this issue.

While this was received thru PAO channels, I would appreciate anything that can be done to protect COL Nancy Ray.

V.R., Paula

-----Original Message-----

From: Ray, Nancy M COL ASA-I&E [mailto:Nancy.Ray@HQDA.army.mil]

Sent: Thursday, September 05, 2002 2:42 PM

Subject: FW: Alabama Site Exercises - 2d Attempt

FYI--this can cause big publicity (negative!) for the program and for the Army.
Nancy Ray

-----Original Message-----

From: Skelly, Lawrence E Mr ASA-I&E

Sent: Thursday, September 05, 2002 10:37 AM

09/19/02 17:38 FAX

006

[REDACTED]

Subject: RE: Alabama Site Exercises - 2d Attempt

Nancy,

Yes, the proposed memo needs to go through full staffing, including AMC and SBCCOM. But I wanted you to review it first and run it by Mr. Fatz and Mr. Shearer before we started the formal staffing process.

Intent is not to "tell" the State but to "invite" them to participate. And to widely announce in media releases that we have invited them to join us. Yes, we will do the monthly drills - tasker from ASA (I&E) or DASA (ESOH) through ARSTAF to AMC will be necessary to cause this series of drills to occur, since it is more than AR 50-6 requires. But Dr. Fiori believes it is essential to improving the Army's image that we show initiative and leadership.

I already explained to Dr. Fiori I thought it highly unlikely the State or Calhoun County would participate but the other counties might, as evidenced in Mike Abram's news clipping last week. Dr. Fiori understands the probable outcomes. When either the State or Calhoun County say "no" he wants a series of press releases directed at their "no" telling the public is their agencies, not the Army, that is unwilling to help improve emergency preparedness at the Anniston site.

Jim Dries has some ideas on how we might try to make this a Fatz-FEMA joint letter. Please discuss your concerns with him.

Dr. Fiori wishes that we move out quickly on this project. And, in fairness to the Depot, if we are going to require these monthly exercises to start in October, then we need to give them as much planning time as possible. Also need to coordinate within the site IPT to get their buy-in and participation. As well as the site CAC. So we don't have time for the usual deliberate staffing within the Army or the usual FEMA snail's pace to accomplish anything.

Thanks.

Larry Skelly

---Original Message---

From: Ray, Nancy M COL ASA-I&E
Sent: Wednesday, September 04, 2002 3:46 PM

[REDACTED]

Subject: RE: Alabama Site Exercises - 2d Attempt

Larry,

I understand the goal here, and I know it is a worthy one. I assume that this will be staffed with OGC, OCCL, SAFM, OCCPA, etc. before sending out. I doubt that the governor will commit to a cooperative arrangement with the Army just before an election...I am just wondering since he has sued us recently and with much publicity. Can the Army implement this plan without the state's participation? (para 2 "we will begin conducting the monthly CSEPP exercises in October.") I know that we can do on post exercises as often as we please, but if we need communities to play, we should probably ask them, not tell them.

09/19/02 17:39 FAX

007

My thoughts for what they are worth,
Nancy Ray

Nancy M. Ray
COL, QM
Executive Officer, DASA (Chem Demil)
phone: 703.604.2303
fax: 703.604.2344
e-mail: nancy.ray@hqda.army.mil

-----Original Message-----

From: Skelly, Lawrence E Mr ASA-I&E
Sent: Tuesday, September 03, 2002 3:57 PM

Subject: Alabama Site Exercises - 2d Attempt

Folks,

A week ago Dr. Fiori directed me to prepare a letter to the Alabama Governor "challenging" the site to a series of exercises to demonstrate the site's emergency readiness. He understands that Calhoun County probably will refuse to play. Nevertheless, Dr. Fiori wishes to take the offensive in Alabama and become proactive rather than reactive to the negative media coverage the last year.

The attached draft is my effort to toss the gauntlet on the ground without attacking the State or the counties for inaction.

I recommend a phased review process for this letter. First, review within OASA (I&E). Get agreement at the action officer level between our two offices. Then present to Mr. Fatz and Mr. Shearer for their initial approval. Then blast out to AMC and SBCCOM. Finally, to FEMA for review. However, I recommend we make it clear to SBCCOM and AMC we are not asking for their approval of the concept espoused in the letter. Given the opportunity, I am quite certain SBCCOM (LTC Lantzer) will make every effort to kill this approach. AMC should have no difficulty supporting this concept since it requires relatively few additional resources. All we are doing is increasing the quarterly CAIRAs to monthly. And we are further reducing the scope of each drill by focusing on specific components of the response system.

FEMA also is not likely to like this approach, since it flies in the face of the so-called exercise program they have set up. However, the exercise program, as currently structured, accomplishes very little in Alabama. We need to change our approach. Note that the focus of this effort is at the local IPT. Let the community be in charge of its destiny.

I recommend using IEM to be the support and integration contractor. IEM has conducted all of the emergency management studies at the site. IEM also prepared the county Planning Guides. Finally, we have a contract in place with IEM that we should be able to add this effort to.

09/19/02 17:39 FAX

008

I am flying to Washington today. Stopping in Salt Lake City to change flights. I hope to email this to you at that time. I will check my email later this evening when I check in at my motel (after COB your time). I would appreciate your feedback today. I would like for us to provide to the two DASAs tomorrow, if at all possible. If you are comfortable with the letter as written, feel free to give to them today. However, please let them know this is just the first review and that we still need to send it to SBCCOM, AMC and FEMA before we bring it back to them for final approval and signature.

Thanks.

Larry Skelly

<< File: Alabama exercise letter 9-02.doc >> << Message: Undeliverable: Alabama Site Exercises >>

Message-ID: <876D38F61109514A85ACA5772B7B07BB238ED1@MAILSVR1.apgea.army.mil>
 From: "Lantzer, Paula K LTC SBCCOM" <paula.lantzer@SBCCOM.APGEA.ARMY.MIL>

Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests

preparedness today"
 Date: Thu, 29 Aug 2002 07:46:26 -0400
 MIME-Version: 1.0
 X-Mailer: Internet Mail Service (5.5.2653.19)
 Content-Type: multipart/alternative;
 boundary="-----=_NextPart_003_01C25B43.6DAAED10"

Sirs,

After Larry's diatribe AGAINST centralized exercise control at the last 2 program review sessions, I find it hard to believe that this is true.

This incident, coupled with his attempted embarrassment of me in front of my staff last Tuesday (before Dr. Ferriter's arrival), his and Denzel's overtures to Dennis Legel to come work at the Pentagon as a "liaison" and the numerous rude and unprofessional e-mails and conversations that I am subjected to on a recurring basis, make this an untenable situation for me.

V.R., Paula

09/19/02 17:39 FAX

009

-----Original Message-----

From: Shearer, Russell SES ASA-I&E [mailto:Russell.Shearer@hqda.army.mil]

Sent: Wednesday, August 28, 2002 8:27 PM

Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

Paula,

Larry explained in his e-mail that we (Dr. Fiori and I) are seeking to challenge Anniston to several drills in anticipation of operations beginning there. He is doing so at my request, which is predicated on our (Dr. Fiori and I) need to build a record showing that the Army has exercised all due care in preparing for operations. I did not read Larry's e-mail to imply that anyone in the Army (or FEMA) performed poorly but to reflect the reality that Anniston is refusing to cooperate in preparedness activities. Indeed, this very fact is the reason for my request to him.

He has sought comment among action officers at his level in order to obtain the information necessary to prepare my request for the requisite staffing. Larry and I will staff the action to come to you because you have the resources to conduct the activities. Thanks for your help.

CRHS

P.S. ASA(I&E) is seeking no egg sucking. This office is full of sensitive, environmental types and our deep concern about botulism prohibits it. I do favor the imperial "we," however, because it possess a certain panache, but only so long as I am included among it; I am otherwise a pluralist.

C. Russell H. Shearer
Special Assistant to the Assistant Secretary of the Army (I&E)
110 Army Pentagon (2E613)
Washington, DC 20310-0110

Voice: (703) 692-9800
Facsimile: (703) 692-9808

09/19/02 17:39 FAX

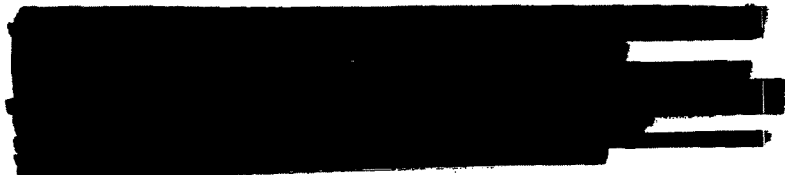
010

Russell.Shearer@hqda.army.mil

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-----Original Message-----

From: Lantzer, Paula K LTC SBCCOM [mailto:paula.lantzer@SBCCOM.APGEA.ARMY.MIL]
Sent: Wednesday, August 28, 2002 11:21 AM



Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"
Importance: High

Sirs,

This is the first that I have heard about this initiative. Please note that I, the Army's PM, am only a cc on the distribution; my exercise team leader is not on the address line at all; and the message is directed towards Mike Abrams, the ANCDF PAC. To my knowledge, this has not been coordinated with FEMA.

While I am always in favor of using any opportunity for demonstrating, assessing and improving capabilities and agree that we should exhaust every opportunity to assist ALL of our CSEPP communities, this clearly indicates that the office charged with CSEPP policy, guidance and oversight intends to run the Alabama exercise program, to include directing the number of exercises that the depot and our off-post partners are expected to execute. Once again, the organizations charged with the management and execution of CSEPP are being told how and when to suck eggs!

If I am doing such an inadequate job that HQDA must step in, why has this not been brought to the attention of my chain of command?

The imperial "we" is used throughout the message below. I don't know who that is?

V.R., Paula

09/19/02 17:40 FAX

011

-----Original Message-----

From: Skelly, Lawrence E Mr ASA-I&E [mailto:Lawrence.Skelly@hqda.army.mil]

Sent: Wednesday, August 28, 2002 8:18 AM

[REDACTED]

Subject: RE: "The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

Folks,

We wholeheartedly support the exercise discussed below. It is imperative that we begin building public trust and confidence in the Anniston region emergency response system that the Army, through CSEPP, has pumped over \$100M into the last twelve years.

We are looking at taking an aggressive, proactive approach to conducting a series of exercises in the Anniston CSEPP community beginning in the very near future and continuing until the community declares itself adequately prepared for a CSEPP type emergency. We define that community as comprising the depot, all the CSEPP counties and the Alabama state agencies. What we envision is a monthly exercise paradigm that focuses on specific response activities. One exercise might drill the medical component of the response system. The next exercise might focus on command and control. And each exercise could work more than one CSEPP functional component. This model has worked exceptionally well at the Umatilla site and we believe it will work in Anniston too.

This will require the Anniston Chemical Activity to plan and conduct monthly CAIRA-type exercises, although they do not have to be full blown CAIRAs. A range of drills falling between basic tabletop exercises and full up field exercises with deployment of hot lines, field response teams, and so forth, probably would accomplish the objective of providing the Anniston CSEPP community with a variety of exercise opportunities. These drills also would provide excellent opportunities to improve on past capabilities, if properly planned and executed.

To support this robust exercise program we would launch a media campaign that informs the public about the purpose of the drills, who we hope to have participate and what our objectives are. We also would make it known what agencies refused to participate and their excuses.

In summary, we have a responsibility to the community to help it get ready. Clearly, the current CSEPP approach for conducting a once-a-year exercise is not working in Anniston. The public is nervous and we are troubled by the recent refusal of certain county agencies to participate in exercises. The community is not ready for toxic operations, despite the millions of dollars poured into emergency management in the region. We must change that status.

We would greatly appreciate your comments. We will begin developing this proposed program with SBCCOM, AMC and FEMA to ensure the Anniston community has sufficient resources and support to carry out this proposal.

09/19/02 17:40 FAX

012

Michael, please forward this email to your new commander. I do not have his email address.

Thanks.

Larry Skelly
Room 1A875, Pentagon
phone: 703.695.1042
fax: 703.614.5822

-----Original Message-----

From: Abrams, Michael [<mailto:mabrams@ancdf.org>]
Sent: Wednesday, August 28, 2002 7:23 AM
To: Abrams, Michael
Subject: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

The Anniston Star - Page 1B - Wednesday - August 28, 2002
Cleburne County tests preparedness today
by Matthew Creamer, Star Staff Writer
(<<http://www.annistonstar.com/news/2002/as-cleburne-0828-mcreamer-2h28a1908.htm>>)

Sirens and tone-alert radios will be tested in Cleburne County today as part of a local exercise to prepare for a chemical weapons accident at the Anniston Army Depot.

The drill will measure the response of officials working in the county emergency operations center as well as that of residents, who have been asked to rehearse their shelter-in-place plans.

"Exercising your plans during the drill will help families to test their plans and to discover possible oversights one might not realize if the plan were not practiced," said Steve Swafford, director of the Cleburne County Emergency Management Agency.

For Cleburne residents, this involves going indoors, closing windows and doors, turning off heating, cooling and ventilation systems and remaining in an interior room.

Cleburne will be only one of the six counties in the emergency preparedness program to perform a drill this year. A full-scale exercise was cancelled earlier this year because of disputes between the federal government and Calhoun County and state officials.

09/19/02 17:40 FAX

013

"We're calling this a local exercise," said the Federal Emergency Management Agency's Terry Madden, who's in Cleburne County to evaluate the exercise.

Depot officials will support the exercise electronically by notifying county officials of a staged mishap at the chemical stockpile.

-- 30 --

<<Anniston Star 28aug02 Exercise.doc>>

Message-ID: <99AABCC30084D4118C4700508B6927E6018A3A2B@MWEXHQC01>
From: "Conklin, Craig" <Craig.Conklin@fema.gov>

[REDACTED]

Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"
Date: Mon, 9 Sep 2002 11:48:55 -0400

.09/19/02 17:40 FAX

014

MIME-Version: 1.0
X-Mailer: Internet Mail Service (5.5.2653.19)
Content-Type: multipart/alternative;
boundary="-----=_NextPart_003_01C25B43.6DAAED10"

To All,

Thanks for the opportunity to comment on your exercise proposal. I have taken some time to think about the exercise proposal and have the following concerns.

First, I think such a headquarters level, top-down mandated approach would not be very successful in Anniston. If there is one thing I have learned in the short I have been here at FEMA it is that in order to be effective we must develop good relationships with the State and local officials. This approach does not lend itself to that. We need to include them up front if we expect to get their buy-in.

Second, the exercise proposal would place a significant burden on State and local officials without consulting them. I think we need to include them in any decision about changing the way we examine the ability of the State and local governments to respond to an accident/incident at the facility. I think this type of action will not be well received by the State and local officials unless we can provide the additional funds it would take to conduct these extra exercises.

Third, it is my understanding that a recent hazmat exercise showed that the community was capable of responding. I believe that we are developing a strong emergency preparedness foundation in the Anniston community and that we can build on the partnership that is beginning to develop between Federal, State and local officials. While there are improvements that can be made in the level of preparedness, we need to recognize that improvements have been made and the community is better prepared than it was when the program started. So any change in exercise activities must value added.

Lastly, I would like to comment on this method of floating ideas. It is not one I prefer. It basically circumvents what I would consider normal CSEPP channels of communication. If someone has an idea for improving the program, then that person should contact the other stakeholders directly so the idea can be discussed. Using the courtesy copy on emails is not a good way to develop support for an idea, especially when it involves an area that has been under someone else's direction.

Craig Conklin, FEMA

-----Original Message-----

From: Lantzer, Paula K LTC SBCCOM [mailto:paula.lantzer@SBCCOM.APGEA.ARMY.MIL]
Sent: Wednesday, August 28, 2002 11:21 AM



09/19/02 17:41 FAX

015

Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"
Importance: High

Sirs,

This is the first that I have heard about this initiative. Please note that I, the Army's PM, am only a cc on the distribution; my exercise team leader is not on the address line at all; and the message is directed towards Mike Abrams, the ANCDF PAO. To my knowledge, this has not been coordinated with FEMA.

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V.R., Paula

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09/19/02 17:41 FAX

016

and confidence in the Anniston region emergency response system that the Army, through CSEPP, has pumped over \$100M into the last twelve years.

We are looking at taking an aggressive, proactive approach to conducting a series of exercises in the Anniston CSEPP community beginning in the very near future and continuing until the community declares itself adequately prepared for a CSEPP type emergency. We define that community as comprising the depot, all the CSEPP counties and the Alabama state agencies. What we envision is a monthly exercise paradigm that focuses on specific response activities. One exercise might drill the medical component of the response system. The next exercise might focus on command and control. And each exercise could work more than one CSEPP functional component. This model has worked exceptionally well at the Umatilla site and we believe it will work in Anniston too.

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To support this robust exercise program we would launch a media campaign that informs the public about the purpose of the drills, who we hope to have participate and what our objectives are. We also would make it known what agencies refused to participate and their excuses.

In summary, we have a responsibility to the community to help it get ready. Clearly, the current CSEPP approach for conducting a once-a-year exercise is not working in Anniston. The public is nervous and we are troubled by the recent refusal of certain county agencies to participate in exercises. The community is not ready for toxic operations, despite the millions of dollars poured into emergency management in the region. We must change that status.

We would greatly appreciate your comments. We will begin developing this proposed program with SBCCOM, AMC and FEMA to ensure the Anniston community has sufficient resources and support to carry out this proposal.

Michael, please forward this email to your new commander. I do not have his email address.

Thanks.

Larry Skelly
Room 1A875, Pentagon
phone: 703.695.1042
fax: 703.614.5822

-----Original Message-----

From: Abrams, Michael [mailto:mabrams@ancdf.org]
Sent: Wednesday, August 28, 2002 7:23 AM

09/19/02 17:41 FAX

017

Subject: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

The Anniston Star - Page 1B - Wednesday - August 28, 2002
Cleburne County tests preparedness today
by Matthew Creamer, Star Staff Writer
(<http://www.annistonstar.com/news/2002/as-cleburne-0828-mcreamer-2h28a1908.htm>)

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"We're calling this a local exercise," said the Federal Emergency Management Agency's Terry Madden, who's in Cleburne County to evaluate the exercise.

Depot officials will support the exercise electronically by notifying county officials of a staged mishap at the chemical stockpile.

--- 30 ---

<<Anniston Star 28aug02 Exercise.doc>>

Message-ID: <640C95674D781840982E1A00B1018A200122223E@DADC131>
From: "Shearer, Russell SES ASA-I&E" <Russell.Shearer@hqda.army.mil>



09/19/02 17:41 FAX

018

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Subject: Invitation to Anniston to Participate in CSEPP Drills
Date: Mon, 9 Sep 2002 20:36:39 -0400
MIME-Version: 1.0
X-Mailer: Internet Mail Service (5.5.2653.19)
Content-Type: multipart/alternative;
boundary="----=_NextPart_003_01C25B43.6DAAED10"

Mr. Conklin,

Thank you for your e-mail earlier today. I appreciate your thoughts on the proposal to invite Anniston County to participate in several CSEPP exercises. The objective of the Army's invitation, to be issued by Dr. Fiori (ASA(I&E)), is to encourage Anniston to participate in the very drills that it has heretofore declined. The further purpose of the invitation is to create a record demonstrating that the Army has exercised due diligence in preparing for operations, including encouraging Anniston to participate in exercises intended to prepare it for a potential emergency. In sum, the Army seeks to document the invitation and to document the response or lack thereof.

The Army intends to send the invitation to Anniston by the middle of next week, and so a draft must be prepared by close-of-business for Thursday of this week. The content of that draft is less important so long as it contains one basic element: an invitation to Anniston to engage in CSEPP exercises in advance of the scheduled start of operations. Mr. Jim Dries, who is now responsible for preparing the letter, would appreciate any specific assistance he could obtain on

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019

the draft (I understood from your e-mail that you have reviewed a copy of the draft). For example, I believe he would appreciate red-line edits to the original document or detailed comments that he could easily input. I encourage you and any others who perceive an issue with the current draft to provide him with any specific comments you might have.

You also mentioned in your note that "floating ideas" is not an optimal manner for coordinating work on CSEPP issues. I agree. But I do not perceive that Larry Skelly "floated" the idea to invite Anniston to engage in preparedness activities. Rather, Mr. Skelly carried out an instruction that I gave him and for which I will not fault him. The Army has a responsibility, as I explained previously, to build a record documenting its efforts to prepare for operations. The invitation to Anniston is part of that effort, and Mr. Skelly, and now Mr. Dries, have sought to assist me in building that record. They have also sought to obtain comments on the proposed invitation to Anniston, and I appreciate your interest and the interest of those to whom I have copied this note.

I invite all those to whom this e-mail is addressed to consider the following concern: Many people copied on this and prior e-mails in this chain were unnecessary, and we should be more circumspect in addressing our correspondence. I believe we would all enjoy the courtesy of debating the relative merits of a point outside an audience of General Officers, SESs, and Army Secretarial. Thank you for considering my views, and for your commitment to assist Dr. Fiori in inviting Anniston to become more prepared. I am

Sincerely,

Russell Shearer

C. Russell H. Shearer
Acting Deputy Assistant Secretary (Chemical Demilitarization) and Special Assistant to the Assistant Secretary of the Army (I&E)
110 Army Pentagon (2E613)
Washington, DC 20310-0110

Voice: (703) 692-9800
Facsimile: (703) 692-9808
Russell.Shearer@hqda.army.mil

This Internet e-mail message contains legally PRIVILEGED and CONFIDENTIAL information intended for the use of the addressee only. Please contact the undersigned by telephone or e-mail and report that you have received this message if you are not the intended recipient. Thereafter, please delete this message from your system.

Message-ID: <876D38F61109514A85ACA5772B7B07BB238ECC@MAILSVR1.apgea.army.mil>
From: "Lantzer, Paula K LTC SBCCOM" <paula.lantzer@SBCCOM.APGEA.ARMY.MIL>

09/19/02 17:42 FAX

020

Subject: Contractor Concerns
Date: Wed, 28 Aug 2002 16:01:28 -0400

MIME-Version: 1.0
X-Mailer: Internet Mail Service (5.5.2653.19)
Content-Type: multipart/mixed;
boundary="----=_NextPart_002_01C25B43.6DAAED10"

Bob,

They strike again!

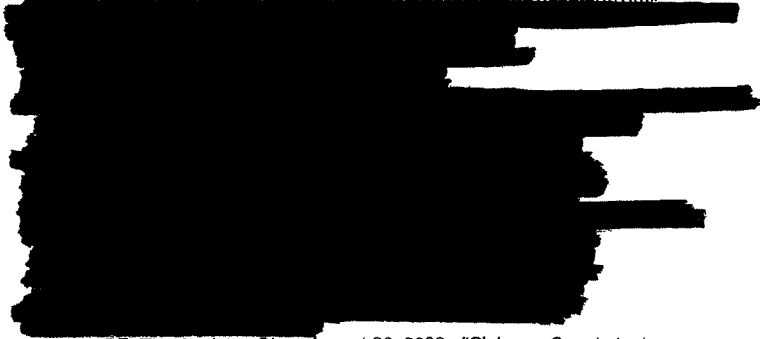
One of my contractors has voiced concerns that the Battelle employs under contract to DASA(ESOH), but not IPAs, are using ASA(I&E) office symbols in e-mails and when registering for conferences. Quoting from DA MEMO 17 August 1999 Subject: Contractors in the Government Workplace. "When drafting service contracts, Government agencies will include a requirement that contractor personnel must identify themselves as contractors when attending meetings, answering Government telephones, or working in situations where their actions could be construed as official Government acts. The Government manager or COTR must ensure that the contracted employee displays his or her name and the name of the company while in the work area, wears and displays a building pass at all times, and includes the company name in his or her email display."

I've attached a recent e-mail from Larry Skelly that includes Jay Hanline and Charles Holmes with ASA(I&E) addresses.

Paula

<<RE: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today">>

Message-ID: <640C95674D781840982E1A00B1018A2001332456@DADC131>
From: "Skelly, Lawrence E Mr ASA-I&E" <Lawrence.Skelly@hnda.army.mil>



Subject: RE: The Anniston Star - August 28, 2002 - "Cleburne County tests

09/19/02 17:42 FAX

021

preparedness today"
 Date: Wed, 28 Aug 2002 08:17:53 -0400
 MIME-Version: 1.0
 X-Mailer: Internet Mail Service (5.5.2653.19)
 Content-Type: multipart/alternative;
 boundary="-----=_NextPart_005_01C25B43.6DAAED10"

Folks,

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Thanks.

Larry Skelly
 Room 1A875, Pentagon

09/19/02 17:42 FAX

022

phone: 703.695.1042
fax: 703.614.5822

-----Original Message-----

From: Abrams, Michael [<mailto:mabrams@anCDF.org>]

Sent: Wednesday, August 28, 2002 7:23 AM

Subject: The Anniston Star - August 28, 2002 - "Cleburne County tests preparedness today"

The Anniston Star - Page 1B - Wednesday - August 28, 2002
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... 30 ...

SEP. 20. 2002 4:45PM

NO. 3257—P. 1



Fax Transmittal Notice

OFFICE of Congressman Bob Riley
Third District of Alabama
322 Cannon HOB
Washington, D.C. 20515

ph: (202) 225-3261
fax: (202) 225-5827

TO: Dr. Mario Fiori
NUMBER: 703.672.9808

FROM: Dan Gans-Chief of Staff Robert Turner-Legislative Assistant
 Shana Jones-Legislative Director Brett Smith-Legislative Assistant
 Debby McBride-Office Manager/
Tour Coordinator/ Caseworker Jeff Ringier-Legislative Assistant
 Anne Casality-Legislative Assistant Intern
 Tanya Morrison-Executive Assistant/
Assistant Press Secretary/Scheduler

DATE: 9.20.02

Number of Pages (including cover): 3

COMMENTS: Copy of letter mailed today.

If you do not receive all the pages included in this fax, or if the transmission is illegible, please call Brett at (202) 225-3261.

SEP. 20. 2002 4:45PM

NO. 3257 P. 2

BOB RILEY
3RD DISTRICT, ALABAMA
ASSISTANT MAJORITY WHIP

312 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0103
PHONE: (202) 225-3281
FAX: (202) 225-3927

bob.riley@mail.house.gov
www.house.gov/riley



Congress of the United States
House of Representatives
Washington, DC 20515-0103

September 20, 2002

Dr. Mario Fiori
Assistant Secretary of the Army,
for Installations and Environment
110 Army Pentagon
Washington, DC 20310-0110

Dear Dr. Fiori,

It is with great disappointment that I recently learned of the actions and intentions of your department regarding the Army's Chemical Demilitarization Program in Anniston, Alabama. *The Birmingham News* reported today that the Army "intends to embarrass Anniston officials and shift public scorn over the chemical weapons incinerator away from itself with a strategy revealed in recent e-mails exchanged at the Pentagon." I am discouraged because this effort appears to be yet another troubling chapter in the Anniston aspect of Army's Chemical Stockpile Emergency Preparedness Program (CSEPP).

The primary reason that this recent string of e-mails dismays me is that the effort to embarrass Anniston officials is wholly unsuitable for a serious situation such as CSEPP. Instead of devising a public relations strategy to harm the public image of state and local officials, the Army should be concentrating instead on working with the relevant leaders to develop solutions to the many outstanding problems related to CSEPP in Alabama. To date, the issues of collective protection of schools, provisions for "special needs" residents, toxicity data remain unresolved. Furthermore, and perhaps most importantly, the Army does not have a firm resolution regarding the rate and order with which the weapons stockpiled at Anniston will be destroyed. It would please me greatly to see the employees of your department in the Army devise a strategy to proactively engage state and local officials in efforts to find solutions to these issues rather than formulate designs to discredit others.

Secondly, I am truly concerned about the clandestine manner with which this information has been made public. It is irresponsible for Pentagon employees to convey e-mails concerning such strategies. It would have been more appropriate for your office to simply express your concerns with local and state leaders to me or my staff. If that had occurred, I may have been able to broach a compromise between the two sides. Sadly, this is often how information has been communicated during the entire CSEPP process. For several years I have seen the Army's unwillingness to actively engage the Alabama Congressional delegation in constructive dialogue in many aspects of this issue. Unfortunately, this episode is another example of the Army's reluctance to interact with Alabama's leadership regarding CSEPP.

1129 NODLE STREET
POST OFFICE BOX 2042
ANNISTON, AL 36602
PHONE: (256) 228-1455
FAX: (256) 237-9200

701 AVENUE A
3027 FEDERAL BUILDING
DREHKA, AL 36901
PHONE: (204) 745-6221
FAX: (204) 745-6129

702 SECOND AVENUE NORTH
P.O. BOX 922
CLAYTON, AL 36008
PHONE: (205) 735-1922
FAX: (205) 735-1181

ARMED SERVICES COMMITTEE
Vice Chair
MILITARY READINESS
MILITARY RESEARCH AND DEVELOPMENT
HOUSE DEPT CAUCUS
SPECIAL OVERSIGHT PANEL ON MORALE,
WELFARE AND REEDUCATION

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HOUSING AND COMMUNITY OPPORTUNITY

AGRICULTURE COMMITTEE
GENERAL FARM COMMITTEES AND RISK
MANAGEMENT
LIVESTOCK AND HORTICULTURE

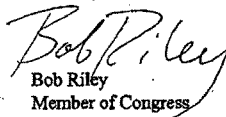
SEP. 20. 2002 4:45PM

NO. 3257 P. 3

To that end, I request that you brief me personally within the next two weeks on this recent string of e-mails regarding the Army's public relations effort for CSEPP in Anniston. I would like an explanation as to why this apparent strategy to embarrass local and state officials was undertaken by your staff. Finally, I would welcome the opportunity to discuss the many outstanding CSEPP issues remaining in regards to Anniston.

I thank you for your time and consideration to this matter. I anticipate your response to my request for a personal briefing. Please do not hesitate to contact me, or have your staff contact my office, at (202) 225-3261. As always, I remain,

Sincerely,



Bob Riley
Member of Congress

RRR/bss

Shearer, Russell SES ASA-IE

From: Begines, Tom J COL OCPA
Sent: Friday, September 20, 2002 5:31 PM
To: Ray, Nancy M COL ASA-I&E
Cc: Begines, Tom J COL OCPA; Burwell, Rudolph L MAJ OCPA; Fatz, Raymond J Mr ASA-I&E; Shearer, Russell SES ASA-I&E
Subject: HOT - Responses to Anniston Media
Importance: Low

Nancy,
 The four Alabama region media below are pressing for responses today to their queries. Our sensing is they will file their stories today whether we respond or not. Those stories will likely be a repetition of the Birmingham News story (except for Mary Orndorff's story, which will be a follow up). If we do not respond today, we'll get "Army had no comment" statements in the coverage and will lose our opportunity to shape the coverage.

REQUEST APPROVAL FROM OASA(I&E) leadership to provide ON THE RECORD to the four outlets that have inquired the suggested responses below OR WHATEVER RESPONSES THE OASA(I&E) leadership prefers.

Thanks,
 Col. Tom Begines
 Chief, Media Relations Division
 Army Public Affairs

-----Original Message-----

From: Burwell, Rudolph L MAJ OCPA
Sent: Friday, September 20, 2002 5:16 PM
To: Begines, Tom J COL OCPA
Subject: Anniston Inquires
Importance: Low

Sir,
 Proposed responses.

Birmingham News (Mary Orndorff): Does the Army plan to conduct the preparedness exercises as outlined in the e-mails from the I&E Leadership? What comment do you have about Calhoun County officials calling for the dismissal or reassignment of Mr. Jim Skelley? (202.383.7837)

We will continue to work with FEMA to prepare for additional Chemical Stockpile Emergency Preparedness Program (CSEPP) exercises that involve each of the local communities. The Army has as its highest priority in the Chemical Demilitarization program the goal of providing maximum protection to the public, the environment and the workforce. The suggested motivations and tactics detailed in the e-mails do not reflect the intent of the leadership of the Office of the Assistant Secretary of the Army for Installations and Environment. Mr. Skelley remains in his current assignment.

Anniston Star (Matt Creamer): 1st question: Same as above. If yes, then his follow-up is do we believe this plan is at odds with the FEMA plan (who are quoted as basically saying that it is). His next question is: Are we mostly concerned only with "public appearances" as mentioned in the e-mail string? What comment do you have about Calhoun County officials calling for the dismissal or reassignment of Mr. Jim Skelley (256.235.3550)

We will continue to work with FEMA to prepare for additional Chemical Stockpile Emergency Preparedness Program (CSEPP) exercises that involve each of the local communities. The Army has as its highest priority in the Chemical Demilitarization program the goal of providing maximum protection to the public, the environment and the workforce. The suggested motivations and tactics detailed in the e-mails do not reflect the intent of the leadership of the Office of the Assistant Secretary of the Army for Installation and Environment. Mr. Skelley remains in his current assignment.

AP (Kyle Wingfield): Are we going with the exercise schedule as outlined in the e-mails? Also, what is our response to Governor Slegeman's comment that we were more concerned with "covering our butts" than with public safety?

(800.821.3737)

We will continue to work with FEMA to prepare for additional Chemical Stockpile Emergency Preparedness Program (CSEPP) exercises that involve each of the local communities. The Army has as its highest priority in the Chemical Demilitarization program the goal of providing maximum protection to the public, the environment and the workforce. The suggested motivations and tactics detailed in the e-mails do not reflect the intent of the leadership of the Office of the Assistant Secretary of the Army for Installation and Environment.

AP (Jeff McMurray): Basically same as above. Is our strategy to put pressure on the county? (202.776.9542)

We will continue to work with FEMA to prepare for additional Chemical Stockpile Emergency Preparedness Program (CSEPP) exercises that involve each of the local communities. The Army has as its highest priority in the Chemical Demilitarization program the goal of providing maximum protection to the public, the environment and the workforce. The suggested motivations and tactics detailed in the e-mails do not reflect the intent of the leadership of the Office of the Assistant Secretary of the Army for Installation and Environment.

*Major Rudy Burwell
Weapons, Environment and Technology Media Relations
Army Public Affairs
703-697-7591
rudolph.burwell@hqda.army.mil*

Shearer, Russell SES ASA-IE

From: Sohl, Jill M PMCD [jill.sohl@pmcd.apgea.army.mil]
Sent: Friday, September 20, 2002 5:25 PM
To: Fatz, Raymond J Mr ASA-I&E; Shearer, Russell SES ASA-I&E
Cc: 'dbunch1941@aol.com'
Subject: Talking Points

Suggested Talking Points
Army's Priorities

1. We subscribe to the maximum protection standard.
2. We have no intent to start up Anniston until Counties and State are fully ready and have worked with us in planning and exercises to feel comfortable with both its role and that of the Army.
3. We have been working with FEMA and Army elements to assure funding needs are identified and can be met. Staff dialogue continues.
4. We recognize it will take time to improve the CSEPP situation. During this time, we are taking steps to further reduce the risk posed by the existing stockpile.
 - lightning protection
 - storage configuration
5. Anniston start up is not a priority until the above items are done.

Shearer, Russell SES ASA-IE

From: Ray, Nancy M COL ASA-I&E
Sent: Thursday, September 19, 2002 7:27 PM
To: Burwell, Rudolph L MAJ OCPA; Shearer, Russell SES ASA-I&E
Subject: FW: Anniston CSEP Query

-----Original Message-----
From: Finegan, Janis Civ AMC G5
Sent: Thursday, September 19, 2002 6:09 PM
To: Ray, Nancy M COL ASA-I&E
Subject: FW: Anniston CSEP Query



-----Original Message-----
From: Daughdrill, Marilyn J PMCD
[mailto:marilyn.daughdrill@pmcd.apgea.army.mil]
Sent: Thursday, September 19, 2002 5:42 PM
To: 'Finegan, Jan'; Morales, Miguel L Mr. SBCCOM
Subject: FW: Anniston CSEP Query

Jan & Mickey: I'm forwarding this heads up to you -- realized that since I have warned Nancy that you both needed a warning as well. I got no answers when I tried to call the CSEP office, so I'm not sure who Mary will finally track down. As I noted below, I don't have the e-mails that she was talking about, although I have heard rumors. Mike Abrams is also aware of this query and was trying to locate Cathy Coleman to give her a heads up. Hope I'm not out of my lane. Marilyn

> -----Original Message-----
> **From:** Daughdrill, Marilyn J PMCD
> **Sent:** Thursday, September 19, 2002 5:33 PM
> **To:** Bunch, Delbert F PMCD; Burnett, Donald J LTC PMCD; Lesniak,
> Christopher F COL PMCD; 'dbunch1941@aol.com'
> **Subject:** Anniston CSEP Query
>
> I received a query from Mary Orndorf, Birmingham News, this afternoon
> concerning the CSEP program. It appears that she is the recipient of a
> faxed copy of a string of e-mails dealing with an Army proposal to conduct
> monthly exercises in the Anniston community. Apparently some of the
> language in the e-mails is controversial, with the intent to publicize the
> county's refusal to prepare themselves. She recognized that PMCD is not
> responsible for the CSEP program, she was just looking for a referral to
> the appropriate office. Since I was not aware of these e-mails, I
> suggested she try either the Army CSEP PAO or the Army public affairs
> office. I did contact Nancy Ray to give her a heads up that this will be
> news tomorrow in Alabama. Ms. Orndorf had already shared these messages
> with the state/counties and indicated that they were not at all happy with
> Dr. Fiori and the Army. The Army public affairs office has been alerted
> -- the CSEP PAO is out of the office until Monday. Marilyn

Shearer, Russell SES ASA-IE

From: Michelini, Mark A Mr ASA-ILE
Sent: Tuesday, September 24, 2002 3:55 PM
To: Shearer, Russell SES ASA-I&E
Cc: Ray, Nancy M COL ASA-I&E; Heilig, Gregg J Mr ASA-ILE; Yates, Kathryn E Ms ASA-I&E; Sears, Cynde Ms ASA (I&E); 'Cynde Sears (ICF)' (E-mail)
Subject: Draft reply to Anniston Star Editorial
Importance: High

 Anniston editorial.doc
 Anniston Star 24sep02 Editoria...

Draft reply for consideration, also attached is the Editorial as published.

V/R
Mark

Mark Michelini
ICF Consulting
Office of the Deputy Assistant Secretary of the Army,
Chemical Demilitarization
Phone (703) 604-2323
Fax (703) 604-2344

The Army has as its highest priority in the Chemical Demilitarization Program the goal of providing maximum protection to the public, the environment and the workforce while proceeding to rid our communities of these outdated weapons. The suggested motivations and tactics detailed in the e-mails do not accurately reflect the intent of the leadership of the Office of the Assistant Secretary of the Army for Installation and Environment. The internal Army emails that were released outside official channels were records of "conversations" that can best be described as brainstorming, and clearly reflect some frustration with the issues that have beset this program. They also reflect the level of attention the Alabama CSEPP program commands.

The Army remains committed to engaging state and local officials in ensuring the safe storage and disposal of the chemical stockpile in Anniston, Alabama, as well as at the other stockpile storage sites. Only through a renewed level of effort in working collaboratively can we safely and efficiently reduce the risk posed by the continued storage of the chemical stockpile at Anniston.

Page 1 of 2

The Anniston Star - Page 4A - Editorial - Tuesday - September 24, 2002

Army ambush

In our opinion

(<http://www.annistonstar.com/opinion/2002/as-editorials-0924-editorial-2i23q1850.htm>)

What exactly are the people in charge of chemical demilitarization at the Army doing these days? Certainly not their job, that's clear.

What else is clear is that the only work the decision-makers in Washington have been doing lately is hatching a plot to try to ambush the Calhoun County Commission and the local emergency management agency with a public relations ploy.

It is the height of arrogance, it is irresponsible and it shows that the people who are in charge of the program in Washington have their priorities about as confused as they could possibly be.

Someone, maybe several people, ought to take his or her lack of talents elsewhere.

Here's the problem: An internal email exchange between top Army personnel dealing with chemical demilitarization found its way to the press at week's end. The exchange, first revealed by the Birmingham News' Washington correspondent, left no doubt the Army intended to set local officials up for a very bad PR job.

The scheme called for the Army to hold a number of exercises designed to prepare for a possible accident or incident at the Anniston Army Depot. When the local EMA and County Commission would refuse to cooperate (what the Army anticipated them doing) the Army would then launch into a frontal public relations assault.

Pentagon employee Larry Shelly described the plan in his email as an attempt to "take the offensive in Alabama and become proactive rather than reactive to the negative media coverage the last year."

Mr. Shelly is mighty busy conjuring up ways to slam the local EMA and the County Commission. If he and his colleagues turned all that energy and attention into solving the problems of emergency preparedness and the existing stockpile maybe we could rid ourselves of the problem.

But this isn't just about Mr. Shelly, this is about a new culture that seems to have crept into the Washington side of this operation. Shelly's email exchange is with Russell Shearer, an assistant to the director of the chemical demilitarization program, Assistant Secretary of the Army Mario Fiori.

It is clear in the exchange that all three men know about and approve of the scheme. So it isn't just a lone bureaucrat who is engaging more of his time and energy in whacking local authorities than getting rid of the deadly nerve agent stockpile, but the leadership of the organization.

That, good people of Anniston, stinks to high heaven and demands that changes be made high up if this community is to regain the respect of the chemical demilitarization leadership.

This is a serious turn of events, but it is just the latest. A look over the past few weeks and months gives one the impression that Mr. Fiori has the attitude that the community is not nearly as important as the program.

(More)

**Page 2 of 2 -- *The Anniston Star* - Editorial - Tuesday - September 24, 2002
Army ambush (... continued)**

Note that not long ago we learned that again the Washington crowd was pushing a new plan for the disposal of the stockpile, even though it actually slightly increased the risk to the community. The word from Washington was that the changes were needed because it would eliminate the stockpile a few months sooner.

That was and remains a bad idea, one that is not supported by this community, but for some odd reason — perhaps we are again in the public relations realm again — is championed by a cluster of apparent eggheads in the head office.

As long as the stockpile sits there it poses a danger to this community. It must be destroyed and the best way to do that is by proven incineration methods. The Army certainly does not need to ambush the local authorities to get that point across.

What it does need to do, however, is to start involving itself in a good faith dialogue with the community and our leaders.

The truth can make for some good public relations.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
INSTALLATIONS & ENVIRONMENT (I&E)
110 ARMY PENTAGON
WASHINGTON DC 20310-0110



REPLY TO
ATTENTION OF C. Russell H. Shearer
Special Assistant to the Assistant Secretary
of the Army (I&E) (3E461)
(703) 692-9817

MEMORANDUM

To: Honorable Mario P. Fiori
From: C. Russell H. Shearer
Date: September 19, 2002

Re.: Senator Shelby's Concerns Regarding Anniston CSEPP

Senator Shelby raised several concerns in his letter of September 19, 2002, regarding the CSEPP program at Anniston, Alabama. I have set out the points below that I believe we should emphasize:

- **The Army is committed to providing maximum protection, and training for emergency preparedness is an essential element of that protection.**
- **The e-mails reflect no intent to subvert the chemical demilitarization process, the CSEPP preparedness process, or the CSEPP funding process.**
- **The e-mails reflect the agency-deliberative staff work searching for a fair and cooperative means of preparing the local communities for operations.**
 - They also reflect some frustration with the issues that have beset this program.
 - More fundamentally they reflect the sincere desire of the Army to seek out the assistance and cooperation of the Army's CSEPP PMs and FEMA's CSEPP PMs to draft a plan to ensure the Anniston community's preparedness.
 - They reflect inter-agency deliberation on how to encourage more CSEPP exercises and training, obtain the sources of funding for those exercises, and encourage the participation of all the local communities.
 - They explain the Army's obligation to exercise and document due diligence in adhering to its operations schedule and in preparing the communities for operations.

- **The e-mails reflect the Army's earnest desire to work collaboratively with FEMA and its Regions.**
 - This is demonstrated by the e-mail exchanges between Army and FEMA.

- **The e-mails reflect the Army's earnest desire to work collaboratively with the local communities.**
 - The e-mails explain that the communities were to be invited to participate in additional CSEPP exercises once logistics, funding, and other planning matters had been completed.

- **No intent to withhold, now or in the future, CSEPP funding from Alabama that has been programmed.**
 - To the contrary, the e-mails discuss the potential that funding would be diverted in this Fiscal Year from other efforts (or used from prior Fiscal Years) to fund the additional Anniston CSEPP exercises.
 - This matter is under deliberation, just as it was when it was discussed in the e-mails.

- **The Army regrets that the Army's staff work could be misinterpreted.**
 - Nature of inter- and intra-agency deliberative staff work is that it is not intended for release outside the Government, and that it is intended to encourage the free flow and discussion of ideas.
 - Deliberative elements of staff work when released, and especially when released prematurely, fail to present the final product that results from the deliberative process and much less the decision maker's determination.
 - Instead, those elements represent various snapshots in time of the staff's consideration of facts, procedures, external pressures, and even frustration.

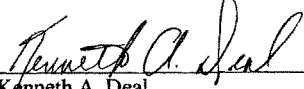
- **The Army will continue to prepare for operations at Anniston and, more importantly, to ensure that safety is paramount.**
 - We will also continue to work with FEMA to prepare for additional CSEPP exercises that involve each of the local communities.
 - Meetings with FEMA to discuss this matter had been planned prior to Senator Shelby's letter and will take place shortly.

RESOLUTION

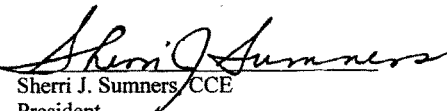
- WHEREAS: The presence of a the chemical stockpile has presented a risk to area residents for over forty years, and
- WHEREAS: Incineration is a proven means of safely destroying chemical agent as evidenced in Johnston Island Atoll, and
- WHEREAS: Anniston Chemical Demilitarization Facility (ANCDF) provides a safe and effective means of ridding the area of the dangerous weapons, and
- WHEREAS: Area residents have been provided opportunities to receive equipment and training, and
- WHEREAS: The beginning of operation to destroy the weapons took the cooperative effort of many agencies and organizations, as well as that of individual elected and appointed officials, and
- WHEREAS: As the process moves forward, area residents become safer each day, rocket by rocket, agent by agent,

BE IT THEREFORE RESOLVED THAT The Calhoun County Chamber of Commerce commends The Honorable Dr. Mario Fiori for his work

Duly approved and Adopted by vote of the Calhoun County Chamber of Commerce Board of Directors on the Nineteenth day of August, 2003



Kenneth A. Deal
Chairman



Sherri J. Summers, CCE
President





U.S. Department of Energy
Office of Inspector General
Office of Audit Services

Audit Report

Implementation of the Department of
Energy's Beryllium-Associated
Worker Registry

DOE/IG-0726

April 2006



Department of Energy

Washington, DC 20585

April 20, 2006

MEMORANDUM FOR THE SECRETARY

FROM:

Gregory H. Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Audit Report on "Implementation of the Department of Energy's Beryllium-Associated Worker Registry"

BACKGROUND

The Department of Energy (Department) has a long history of beryllium use due to the element's broad application to many nuclear weapon and reactor operations and processes. Exposure to beryllium can cause beryllium sensitization or even Chronic Beryllium Disease, which is an often debilitating, and sometimes fatal, lung condition. In January 2000, the Department established a Chronic Beryllium Disease Prevention Program in part to reduce worker exposure to beryllium at Energy facilities.

A key component of the Prevention Program was the establishment of a Beryllium-Associated Worker Registry (Registry), designed to aggregate beryllium-associated worker information, such as exposure and medical data, from all Department sites. The Department's Office of Environment, Safety and Health (EH) planned to use the Registry as an occupational health research tool to assist it in determining the exposure profile and disease status of beryllium-associated workers and to better understand the nature of the disease. Registry policy and direction were the responsibility of EH. However, implementation was the responsibility of the individual facilities, with the Department's program offices ensuring compliance for sites under their cognizance. Operation of the Registry is a complex effort requiring the close coordination of EH, the program offices, and the Department's field sites. The Department required sites to begin submitting information to the Registry by January 2002. The objective of this audit was to determine whether the Department had established, maintained and effectively used the Registry to evaluate worker health effects associated with beryllium exposure.

RESULTS OF AUDIT

The Registry was established as planned. Yet, the Department had not maintained data completeness or accuracy; used the Registry to evaluate health effects of beryllium exposure; nor, used the Registry as initially envisioned to examine the prevalence of beryllium disease. Specifically:

- The Registry was not complete. For example, the Fernald and Miamisburg Closure Sites and Portsmouth and Paducah Gaseous Diffusion Plants had not reported any data for inclusion in the Registry. Yet, at least two of these sites had workers with known Chronic Beryllium Disease;



- A number of required data fields in the Registry had not been populated. One such field concerned the use of a respirator by workers, an important tool in preventing beryllium exposure; and,
- The Registry did not always contain accurate information. Some of the required data fields, for example, contained obvious discrepancies, such as inaccurate beryllium exposure information. These and other such fields appeared essential to the effectiveness of the Registry.

In addition, the Department had not used the Registry to evaluate the health effects of beryllium exposure or the prevalence of beryllium disease. In fact, since the January 2002 implementation, the Department had not issued even one report which relied on the data from the Registry.

We found that not all of the Department's sites had determined the applicability of the Registry reporting requirements to their operations. Further, not all of the sites involved with the Registry had corrected known data errors and deficiencies. Although EH stated that it had contacted some Department sites regarding errors in the sites' Registry submissions, EH had not followed up with Department program offices to ensure that the errors had been corrected. In addition EH had not established an implementation plan that included identifying the specific analyses, supporting data, and reports needed to use the Registry as intended as an occupational health research tool. We concluded that this was the most likely reason that occupational health reports had not been generated using data in the Registry.

The question of worker health and safety has been of primary concern to the Department for a number of years, especially given the vulnerabilities associated with the processes and materials in use throughout the complex. Since assuming agency leadership, your Administration has placed great emphasis on making the Department's work environment as safe as possible. In this vein, the Registry, from its conception, was intended to assist in the overall effort of ensuring worker health and safety. However, the audit results showed that Registry program implementation did not meet its own expectations nor was it as helpful as it could have been in achieving the worker safety objectives that you have established. While EH program officials informed us that they are committed to improving the effectiveness of the Registry, the audit report includes several recommendations to assist efforts in restructuring the Registry and, as a consequence, to advance the state of worker health and safety in the Department.

MANAGEMENT REACTION

Management concurred with the report's findings and recommendations with the exception of recommendation number four, for which it proposed an acceptable alternative. Management indicated that it will implement changes to the management of the Registry based on the recommendations to improve the quality of data submitted to the Registry. Management also noted that it completed the first report on the prevalence of beryllium sensitization and Chronic Beryllium Disease using registry data, subsequent to the completion of our audit. Management's verbatim comments are included in Appendix 3.

155

3

Attachment

cc: Deputy Secretary
Under Secretary for Energy, Science and Environment
Administrator, National Nuclear Security Administration
Chief of Staff
Acting Assistant Secretary for Environment, Safety and Health

**REPORT ON IMPLEMENTATION OF THE DEPARTMENT OF
ENERGY'S BERYLLIUM-ASSOCIATED WORKER REGISTRY**

**TABLE OF
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Implementation of Beryllium Registry

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Implementation of Beryllium Registry

Maintenance and Use of Registry

The data in the Department of Energy's (Department) Beryllium-Associated Worker Registry (Registry) was neither complete nor fully accurate. Further, the Department had not used the Registry to evaluate health effects of beryllium exposure or the prevalence of beryllium disease, two of the objectives of the Chronic Beryllium Disease Prevention Program (Prevention Program).

Complete and Accurate Data

The Department had not maintained the Registry to ensure the data's completeness and accuracy. Specifically, the Registry did not contain data from all of the Department's sites falling under the reporting requirement, nor had all of the required data fields been populated. In addition, many of the records in the Registry were inaccurate.

Completeness

The Registry did not contain data from all of the Department's sites falling under the reporting requirements. Currently, 20 of the Department's sites have submitted data to the Registry. While the scope of audit focused primarily on the completeness of the data within the Registry, we identified additional sites that had not reported any relevant data to the Registry. Specifically, two of the Department's closure sites, Fernald and Miamisburg, had not reported any data to the Registry despite the potential for beryllium exposure based on legacy Department operations at those sites. Further, available records document the existence of beryllium-associated workers at Miamisburg. Also, there was evidence of Chronic Beryllium Disease at the Department's two leased gaseous diffusion plants at Paducah and Portsmouth; however, none of this information was reported to the Registry. A prior Office of Inspector General (OIG) report (OAS-L-05-08, June 2005), referenced concerns that the Department needed to determine the extent to which the Prevention Program was applicable to Paducah and Portsmouth. At the time, the Department informed the OIG that it recognized these issues and had initiated action to address these concerns.

In addition, not all of the required data fields in the Registry were populated. We reviewed the records from the Kansas City Plant (Kansas City), Los Alamos National Laboratory (Los Alamos), Pantex Plant (Pantex), Y-12 National Security Complex (Y-12), and Rocky Flats Closure Project (Rocky Flats), and found required data fields that were unpopulated for all of the sites. For example, none of the records tested for Kansas City, Pantex, or Rocky Flats

indicated whether respirator protection was used. In addition, medical data was missing for all of the worker records tested for Rocky Flats, as well as 20 of the 29 records tested for Los Alamos. Both respiratory protection and medical data are essential if the Office of Environment, Safety and Health (EH) is to provide complete and meaningful analyses of beryllium related issues. For instance, trend and correlation analysis cannot be made between exposure data, including the use of respiratory protection, and medical results, if data is missing from either of the fields.

Accuracy

Not all of the data reported in the Registry was accurate. We reviewed the records for Los Alamos, Pantex, and Y-12, and all had required data fields containing inaccurate data. For example at Y-12, 18 exposure records included data relating to the protective use of a respirator. However, the same set of records in another data field contained conflicting and irreconcilable information. Also, 26 records for individual workers at Pantex had a work termination date of January 1900, obviously prior to the workers' dates of birth. These exceptions were brought to the attention of representatives from both sites and we were told that efforts were being made to take corrective action. It is vital for EH to ensure the accuracy of these records, since each record is critical to tracking the beryllium work history and performing the analyses needed to mitigate further beryllium exposure.

In addition, duplicate records were found in the Registry for four sites reviewed: Y-12, Rocky Flats, Los Alamos, and Pantex. In fact, since the implementation date of January 7, 2002, one Rocky Flats exposure record was repeated 192 times in the Registry. For the same period at Pantex, 386 of the 1,805 work history records were identified in multiple sets, including one record that occurred 40 times.

Use of the Registry

Though the Registry was implemented several years ago, EH had not used it for at least one of its intended purposes, an occupational health research tool to determine the prevalence of disease and to document health effects associated with beryllium exposures. In fact, in the past four years EH had not generated any reports using the data from the Registry. EH is currently in the process of developing such a relevant health report; however, its usefulness may be limited given the questions that have been raised regarding Registry data quality.

**Data Conversion
and Programmatic
Oversight**

Despite the fact that the Prevention Program was a Department priority, not all Department sites, including closure sites and leased facilities, had determined the extent to which the Registry reporting requirements were applicable to them. Further, the sites that had submitted data to the Registry had not corrected known data errors and EH had not followed up with Department program offices to ensure that the sites complied. Finally, EH had not established an implementation plan that included identifying the specific analyses, supporting data, and reports needed to use the Registry as an effective occupational health research tool. Consequently, the Registry effort had not resulted in the generation of a single report to assist the Department in its worker health and safety program.

Responsible EH officials indicated that they were aware of data errors in the Registry and that they had directly contacted some of the sites, such as Rocky Flats, about the sites' errors. However, we found that EH had not followed up with the appropriate program offices to ensure that the data errors submitted by field sites had been corrected. The Department worked with the Oak Ridge Institute for Science and Education (ORISE) to establish the Registry. As part of its responsibility, ORISE performed logic checks on the data received from each site to validate its credibility. Details of data errors identified in the submissions were provided by ORISE in writing to the reporting sites and to EH. However, EH did not have a comprehensive program in place to follow up with the Department program offices to ensure site compliance with Registry protocols.

In addition, EH did not have an implementation plan to ensure that the Registry was useful as an occupational health research tool. One of EH's performance measures was to maintain the Registry to determine the prevalence of beryllium disease and document the progression of health effects associated with beryllium exposure. However, EH had not designed an implementation plan that identified the frequency and type of analyses, the specific information needed to conduct such analyses, or the method of reporting results to the sites. The Department recently incorporated its Beryllium-Associated Worker Registry Data Collection and Management Guidance into a Department Technical Standard effective January 2006. However, the Technical Standard did not directly address the areas of concern noted above, nor was the use of the Technical Standard mandatory.

Ensuring Worker Health and Safety

The 2003-2006 Strategic Plan for EH states that maintaining the Registry to determine the prevalence of disease and document the progression of health effects associated with beryllium exposures is important to ensuring the safety and health of the workers at Department facilities. As a result of not being able to make full use of the Registry, four years of data had not been analyzed, data that may have assisted the Department in assuring the safety and health of its workforce.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Environment, Safety and Health direct the Office of Epidemiology and Health Surveillance to:

1. Work with the appropriate Departmental program offices in order to ensure that sites:
 - a. Identify whether they are required to report to the Registry; and,
 - b. Correct existing errors and omissions.
2. Establish procedures to ensure that subsequent corrections are made in a timely and accurate manner.
3. Revise the Department's current Technical Standard to incorporate language pertaining to the Registry that defines the following:
 - a. Analyses and trends to be completed, including the required relevant data to complete the analyses; and,
 - b. Methods of summarizing and reporting the data to the sites.
4. Work with Departmental program offices and sites to adopt the revised Technical Standard in the sites' individual Chronic Beryllium Disease Prevention Programs.

MANAGEMENT REACTION

Management concurred with the findings and recommendations, with the exception of recommendation number four. In a draft of this report, we had recommended that management pursue making the revised Technical Standard mandatory for sites that are

required to report to the Registry. Instead, management proposed an acceptable alternative by suggesting that EH will work with Departmental program offices and sites to adopt the revised Technical Standard in the sites' individual Chronic Beryllium Disease Prevention Programs. EH stated that this will make the Technical Standard enforceable and mandatory under a new Worker Safety and Health Program Rule being pursued by EH. This will also allow EH the flexibility to change the Technical Standard as needed to respond to changing conditions and events.

In response to the other recommendations, management indicated that EH will become proactive in working with the appropriate Departmental program and Field Offices in the attempt to identify sites needing to report to the Registry as well as correct existing Registry errors and omissions. EH also intends to establish procedures to ensure that subsequent corrections are made in a timely and accurate manner. In addition, EH will analyze and report on the Registry data through the implementation of analysis and data reporting plans, with the presentation of the findings at annual scientific meetings. Management also stated that since the completion of this audit, EH had completed the first report on the prevalence of beryllium sensitization and Chronic Beryllium Disease, including exposure information, based on data submitted to the Registry.

**AUDITOR
COMMENTS**

Management's comments are responsive to our recommendations and its actions, when fully implemented, should improve the Department's ability to use the Registry as an effective occupational health research tool. We agreed with management's proposed modification to recommendation number four and we have revised the report accordingly. Management's comments are included in their entirety in Appendix 3.

Appendix 1

OBJECTIVE

The objective of this audit was to determine whether the Department had established, maintained and effectively used the Registry to evaluate worker health effects associated with beryllium exposure.

SCOPE

The audit was performed between June and December 2005, at the Oak Ridge Institute for Science and Education (ORISE) and the Y-12 National Security Complex (Y-12), both located in Oak Ridge, Tennessee. Testing procedures were performed on the data from Kansas City Plant, Kansas City, Missouri; Los Alamos National Laboratory (Los Alamos), Los Alamos, New Mexico; Pantex Plant (Pantex), Amarillo, Texas; and, Rocky Flats Closure Project, Golden, Colorado.

We also conducted interviews and obtained information relating to other sites in the Department:

- Brookhaven National Laboratory, Upton, New York;
- Fernald Closure Project near Ross, Ohio;
- Hanford Site, Richland, Washington;
- Knolls Atomic Power Laboratory, Niskayuna, New York;
- Lawrence Berkeley National Laboratory, Berkeley, California;
- Miamisburg Closure Project, Miamisburg, Ohio;
- Oak Ridge National Laboratory; Oak Ridge, Tennessee;
- Oak Ridge Operations Office, Oak Ridge, Tennessee;
- Paducah Gaseous Diffusion Plant, Paducah, Kentucky;
- Portsmouth Gaseous Diffusion Plant, Piketon, Ohio;
- Southwestern Power Administration, Tulsa, Oklahoma; and,
- Stanford Linear Accelerator Center, Menlo Park, California.

The audit covered the Office of Environment, Safety and Health's (EH) efforts to meet the Chronic Beryllium Disease Prevention Program's goal of determining the prevalence of disease and health effects associated with beryllium exposure.

METHODOLOGY

To accomplish the audit objective, we:

- Reviewed laws, regulations, policies, procedures, and contract requirements relevant to the Department's Registry;

Appendix 1 (continued)

- Held discussions with officials from EH, ORISE, and Department sites;
- Obtained and reviewed site-specific Registry data from both ORISE and Department site offices;
- Selected a judgmental sample of five of the twenty Department sites reporting Registry data to determine if the records were complete. These sites were selected based on analysis of the sites with a Prevention Program; the sites currently reporting to the Registry; and, the sites with reported beryllium operations. The completeness test was performed on the reported beryllium activities beginning January 7, 2002, and ending July 2005; and,
- Selected 30 records from Los Alamos, Pantex, and Y-12, respectively, to determine if the records were accurate. This encompassed testing whether the 1) information contained in the required data fields in the Registry was factually accurate in comparison to the information maintained at the individual Department sites that report to the Registry, and 2) existing data was reliable.

The audit was performed in accordance with generally accepted Government auditing standards for performance audits and included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit.

We reviewed and assessed performance measures in accordance with the Government Performance and Results Act of 1993 and concluded that EH had established a performance measure to maintain the Registry, but that the metric had not been met. In order to meet that performance measure, we included recommendations for EH to work with the appropriate program offices to ensure that sites meet the Registry requirements, and to update the current Technical Standard to include the methods of analyzing data in the Registry and summarizing and reporting the results to the sites.

We relied on computer-processed data to accomplish our audit objective. Our procedures included gaining an understanding of the process for inputting information into the sites' databases and incorporating it into the Registry at ORISE, as well as the security access to the Registry to determine if the data was sufficiently

Appendix 1 (continued)

reliable. Based on this, we decided to perform additional tests of Registry data to accomplish our objective. Various computer assisted audit tools were used to perform queries and testing of the databases received from both ORISE and the Department sites. The completeness and accuracy of the data is addressed in the body of the report.

Management waived an exit conference.

Appendix 2

Prior Audit Report

- *Occupational Safety and Health - Government Responses to Beryllium Uses and Risks* (GAO/OCG-00-6, May 2000). The Government Accountability Office (GAO) was asked to obtain information on beryllium as a hazardous material and report on the health and safety controls over its use. GAO found that from the 1960s to the 1990s, the Department of Energy had taken action to assess and to respond to risks associated with exposure to beryllium. Specifically, the Department improved working conditions at its facilities and implemented medical testing for its current and former workers during the 1980s and 1990s after new cases of Chronic Beryllium Disease were identified during the 1980s. From 1984 through 1999, 149 Department workers had been diagnosed with definite or possible Chronic Beryllium Disease. In 1999, the Department issued a rule that established new worker safety controls, such as increased use of respirators and assessing hazards associated with work tasks, for its facilities that use beryllium. The Department also proposed a compensation program for its workers affected by Chronic Beryllium Disease, which had been introduced as legislation in the Congress.

Appendix 3**Department of Energy**

Washington, DC 20585
April 5, 2006

MEMORANDUM TO: GEORGE W. COLLARD
ASSISTANT INSPECTOR GENERAL FOR PERFORMANCE AUDITS
OFFICE OF INSPECTOR GENERAL

FROM: C. RUSSELL H. SHEARER *C. Russell H. Shearer*
ACTING ASSISTANT SECRETARY FOR
ENVIRONMENT, SAFETY AND HEALTH

SUBJECT: Response to Audit Report on "Implementation of the Department of Energy's Beryllium-Associated Worker Registry"

The Office of Epidemiology and Health Surveillance (EH-53) has reviewed the recommendations cited in the Inspector General (IG) audit report on the "Implementation of the Department of Energy's Beryllium-Associated Worker Registry." The Beryllium Registry was developed as an occupational health research tool to help us understand the complex development of and risk factors for chronic beryllium disease. As with other longitudinal databases, it is the accumulation of data over time that differentiates this database from others. The significance of analytic findings will increase as the database accumulates depth over time. Issues arising in the operation of the Registry are being worked and resolved. We will implement changes to the management of the Beryllium Registry based on these recommendations to improve the quality of data submitted to the Registry. Our response to the report and each recommendation listed follows.

Recommendation 1: The Office of Environment, Safety and Health (EH) agrees with this recommendation. The Chronic Beryllium Disease Prevention Program (CBDPP) Final Rule title 10, Code of Federal Regulations, part 850.10 (10 CFR 850.10) states that "the responsible employer at a DOE facility must ensure that a CBDPP is prepared for the facility..." Only the responsible employer (i.e., the site contractor) has the knowledge of activities and operations at a given Department of Energy (DOE) site needed for implementing *all* aspects of the Rule, including self-reporting and sending accurate and complete data to the Registry. The head of the Field Element has primary responsibility for assuring contractors comply with requirements of 10 CFR 850. EH cannot identify all sites falling under the reporting requirement. However, to encourage the self-identification of sites that are required to submit data to the Registry, EH will become proactive in working with the appropriate departmental program and site offices. As such, EH-53 will undertake the following action plan: all Departmental Elements and site offices will be formally contacted and reminded of the requirements under 10 CFR 850 within 3 months of this response. Departmental Elements and site offices will be asked to ensure that the responsible employers are in compliance with the Registry reporting requirements. EH will provide each Departmental Element and site office with semiannual progress reports pertaining to the quality of data submitted as indicated by excessive numbers of errors, omissions, or nonresponse to Data Center inquiries. A point of contact to resolve Registry concerns will be solicited in order to help resolve existing errors and omissions. This action will be completed within 6-8 months from the response to this audit. We expect the promulgation of 10 CFR 851 (effective May 2007) to have a positive impact on the submission and quality of the data. EH will be better able to hold the responsible employer accountable with enforcement through potential civil penalties under 10 CFR 851.

The report indicates that the leased gaseous diffusion plants at Paducah and Portsmouth did not report data to the Registry. It should be noted that 10 CFR 850 applies only to: (1) DOE offices responsible for operations; (2) DOE contractors; and (3) current DOE employees or other workers at a DOE facility. The



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Appendix 3 (continued)

2

Portsmouth and Paducah Gaseous Diffusion Plants are United States Enrichment Corporation facilities that are covered by the Occupational Safety and Health Administration standards (29 CFR 1910.1000); DOE has no jurisdiction over them. While we encourage the submission of data from these facilities, we cannot compel them to submit data or follow the requirements of 10 CFR 850. The report also states that Fernald and Miamisburg (Mound) had not reported data to the Registry. We will make that specific point in our notification of Departmental Elements.

Recommendation 2: We agree with this recommendation. CBDPP 10 CFR 850.39 (Recordkeeping and the use of information) states that the responsible employer must semiannually transmit electronic records to the EH-53 Data Center. The responsible employer is required to provide accurate and reliable data to the Registry in a timely manner. To improve the quality of the data and to ensure that corrections are made in a timely manner, the following action will be undertaken: EH-53 will establish a procedure to ensure that subsequent corrections will be made in a timely and accurate manner. This procedure will be established within 6-8 months after the submission of this response. Under this procedure, Departmental Elements and site offices will be provided with the technical guidance standard for data submission to the Registry. The data center will conduct logic and error checks within 2 months of receiving data. Registry data coordinators at each site will continue to receive e-mail notification regarding the quality of the data, including errors, illogical data, and omissions. The data coordinator will have 1 month to respond either by submission of the corrected data, or through a resolution of the problem with the data center. After that 1-month period, the responsible Departmental Element and site office will be notified to ensure that corrective action is completed. To enhance data collection efforts, EH-53 will convene a regular meeting of all the site contractor data coordinators to review the data reporting requirements in the technical standard. The first meeting is scheduled for the end of April 2006.

Recommendation 3: We agree with this recommendation. EH will develop an analysis plan for the data as a supplemental document to the Technical Standard which we expect to be completed within 6 months of this response. The supplemental document will include descriptive measurements, such as disease incidence and prevalence, as well as statistical measurements using epidemiologic methods to examine trends and the association between exposure and disease prevalence. A data reporting plan will be developed to report the analytic findings back to the sites, and include methods to distribute the information to Environment, Safety and Health program managers and staff, workers, and the public. This plan will be complete between 6-8 months after this response has been submitted. Summaries of our findings, including methods and data reports, will also be presented annually at scientific meetings.

Recommendation 4: We disagree with this recommendation. The Beryllium Registry Technical Standard (DOE-STD-1187-2005) was developed to provide nonmandatory guidance for contractors in order to minimize ambiguities and to recommend reporting requirements for data submitted to the Beryllium Registry. The IG has recommended that the technical standard become mandatory (i.e., through incorporation in a rule) in order to improve the quality of the data submitted by the contractors. Using the rulemaking process for this activity would reduce EH's flexibility to change the technical standard as needed to respond to changing conditions and events. As an alternative, EH will work with the Program and Field Offices (as part of 851 Rule Implementation and Workshops) to demonstrate the value of adopting DOE-STD-1187-2005 in the site CBDPP. We expect this activity to take 1 year. Adoption of the Technical Standard in the site's CBDPP makes it enforceable and "mandatory" under the new Worker Safety and Health Program Rule (10 CFR 851).

Since the completion of the IG audit, EH-53 has completed the first report, "Beryllium Worker Health Surveillance through 2004," based on data submitted to the Registry. The report is descriptive in nature; it provides information about the prevalence of beryllium sensitization and chronic beryllium disease, and exposure information across the DOE complex. The data from the report will be sent to the sites, posted on the EH Web site, and presented at a scientific meeting within 2 months of this report response.

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Washington, DC 20585

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Your comments would be appreciated and can be provided on the Customer Response Form attached to the report.

Mario P. Fiori - 7835 Belleflower Drive -- Springfield, VA 22152
Cell: 703-850-1331 -- Mariof3609@aol.com

24 October 2007

Senator Joe Lieberman
U.S. Senate
Washington, DC Office
706 Hart Office Building
Washington, DC 20510

Dear Senator Lieberman,

I am writing to you to endorse a particularly talented presidential appointee nominated to be a Member of the Chemical Safety and Hazard Investigation Board, Mr. C. Russell H. Shearer.

I have known Mr. Shearer since he joined my DOE staff in 1994 at the Savannah River Site, a DOE nuclear weapons facility. He was the youngest lawyer on my staff. He quickly demonstrated drive, talent, and a strong desire to get the job done. He supported me on numerous employee safety and environmental issues with well thought out plans and actions to meet the numerous requirements of both the federal and state environmental laws. He worked diligently to present his arguments to the South Carolina and Federal regulators and achieved a level of recognition of exceptional competence.

He left government service in 1997 and worked for a law firm in Washington DC. When I was confirmed as the Assistant Secretary of the Army for Installations and Environment (this also included Safety and Health although not in the title) in August 2001 I petitioned the White House to assign Mr. Shearer as my special assistant. He became a Presidential appointee assigned to my Army staff in November 2001. I always relied on him to do a thorough and complete job and, I assigned him to be my Acting Deputy Assistant Secretary for Chemical Weapons Demilitarization in September 2002. Again he demonstrated skill, knowledge and dedication to work with his staff to drive our Chemical Weapons program to a successful conclusion. I note that he has done an excellent job in responding to the questions of your Committee on Environment and Public Works, and specifically he did an excellent job in explaining the Anniston incident, for which I was responsible. He and I learned many lessons and I know he is better prepared for his future assignments in public service from that experience.

When he transferred to the Department of Energy as the Principal Deputy Assistant Secretary for Environment, Safety and Health, in August 2004, he rapidly provided outstanding assistance to his principal, the Assistant Secretary.

Based on my experience, I consider him one of the most qualified leaders in the areas of safety, environmental, and health issues. He has a total grasp of the safety and health issues relating to high-hazard operations, including chemical manufacturing systems, nuclear power, nuclear weapons, and chemical weapons destruction.

Mario P. Fiori - 7835 Belleflower Drive – Springfield, VA 22152
Cell: 703-850-1331 – Mariof3609@aol.com

I strongly recommend that the Committee on Environment and Public Works report Mr. Shearer's nomination to be a Member of the Chemical and Safety and Hazard Investigation Board. He will make significant positive contributions to ensure the safety of our national infrastructure relating to chemical processes.

Thank you for your consideration of this important issue. As always, I am ready to assist you on this particular issue and on the broader issues relating to the New London Submarine Base. I continue to follow the activities there and am delighted that Governor Rell has hired Mr. Justin Bernier, the outstanding staffer who assisted Representative Rob Simmons in saving the Submarine Base from the BRAC axe.

Very respectfully,

A handwritten signature in black ink, appearing to read 'Mario Fiori', with a long, sweeping horizontal stroke extending to the right.

Mario Fiori

FRANK B. RUSSO
43517 MONARCH BEACH SQ
LEESBURG, VA. 20176
October 25, 2007

The Honorable Barbara Boxer
Chairman, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-5175

The Honorable Frank R. Lautenberg
United States Senate
Hart Senate Office Building
Suite 324
Washington, D.C. 20510

The Honorable Benjamin L. Cardin
United States Senate
Hart Senate Office Building
Suite 509
Washington, D.C. 20510

Dear Madam Chairman, Senator Lautenberg, and Senator Cardin:

I am writing to you on behalf of Mr. C. Russell H. Shearer who has been nominated by the President to serve on the Chemical Safety Board.

My name is Frank Russo and I am currently the Senior Advisor for Environment, Safety, and Health in the National Nuclear Security Administration within the Department of Energy. I advise the Administrator on all matters involving environment, safety and health at our nuclear weapons laboratories and production sites. Prior to this assignment, I served as the Deputy Assistant Secretary for Corporate Performance Assessment in the Department of Energy Office of Environment, Safety and Health. Mr. Shearer was my supervisor while I held that position.

As you know, the Department of Energy and the National Nuclear Security Administration conduct some of the most hazardous nuclear and chemical operations in the world. Since Mr. Shearer joined the Department, he has consistently demonstrated outstanding ability to understand

all facets of these complex operations and to ensure the safety of our workers the public, and the environment.

While I worked with Mr. Shearer, he provided leadership to achieve significant improvements in environment, safety and health of the entire Department of Energy complex. Here are a few examples:

- Leader for development and implementation of lessons learned from the NASA Columbia Space Shuttle Accident and the Reactor Vessel Head Corrosion Event at the Davis Besse commercial nuclear power plant in Ohio. These important lessons have been implemented with a reinvigorated operating experience program in the Department of Energy.
- Champion for the Department of Energy Integrated Safety Management System which parallels the Chemical Industry's Process Safety Management principles and best practices. In this venue, Mr. Shearer presented detailed and comprehensive analyses of the accident at the Army's Chemical De-militarization site in Utah.
- Leader for improvement in the Department's Quality Assurance Programs including significant changes in the management of software quality assurance. This is critical to not only our nuclear operations, but also to chemical process safety, and non-nuclear operations including most recently electrical power grid reliability.

In summary, Mr. Shearer would bring a wealth of knowledge and experience in safety management in chemical process safety and many other safety disciplines. He knows the fundamental tenets of nuclear safety, including hazard analysis, proper hazard controls, and limiting conditions of operation to establish a facility's Authorization Basis, all of which parallel the tenets of chemical process safety. Mr. Shearer is also a leader in the Department's accident investigation program, and he has a solid background in the conduct of serious investigations of safety, health and security accidents.

Mr. Shearer would be a great asset to the Chemical Safety Board, and I highly recommend your confirmation of him as a Chemical Safety Board member.

Sincerely



Frank B. Russo

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October 25, 2007

The Honorable Barbara Boxer
Chairman, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-5175

The Honorable Frank R. Lautenberg
United States Senate
Hart Senate Office Building
Suite 324
Washington, D.C. 20510

The Honorable Benjamin L. Cardin
United States Senate
Hart Senate Office Building
Suite 509
Washington, D.C. 20510

Dear Madam Chairman, Senator Lautenberg, and Senator Cardin:

The President nominated Mr. C. Russell H. Shearer to be a Member of the U.S. Chemical Safety and Hazard Investigation Board. I am writing to recommend his confirmation and to tell you something about his skills in process safety management. The Department of Energy (DOE) process safety management system includes all of the elements of the Occupational Safety and Health Administration (OSHA) process safety management rule, but does so in a more demanding manner.

I met Russell in 2004 when he took over the function of deputy chief safety officer for the DOE (the title within the Department is "Principal Deputy Assistant Secretary of Energy for Environment, Safety & Health"). I was at the time the Energy Facility Contractors Group (EFCOG) Chair; I am still an EFCOG Director. EFCOG consists of over sixty companies ranging from very large to small who do work in the DOE Complex. Its focus is to collectively work with the Department to improve safety and efficiency in how DOE's mission is accomplished.

Russell and I have worked together closely since that time on a variety of issues, many of them focusing on the Department's requirements for its contractors to engage in a process safety management system. Most recently, Russell and I worked together on the Department's efforts to adopt a "design standard" that spells out its expectations for integrating safety, environment, and health concerns at an early stage of facility conceptual design and continuing on throughout the lifecycle of that facility.

Russell has demonstrated a keen understanding of the process safety management method, and perceived the Department's lack of a "design standard" as an opportunity to improve its performance of process safety management. In doing so, he engaged the

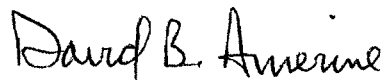


contractors who work for the Department, the program managers within the Department, and employees to bring about a standard that was not only protective but one that could practically be applied.

Russell also reoriented the focus of his office from simply telling people what was wrong to also helping them correct the identified deficiencies. This was a very important shift in focus for this office because it contained important resources to help the facilities be more successful with their safety management processes but, in its past, had not sought to provide technical assistance. As a consequence of this work, EFCOG presented Russell with its Certificate of Appreciation plaque in recognition of his work to improve safety and efficiency throughout the DOE complex.

I am therefore pleased to recommend Russell's confirmation to the Committee. Thank you.

Sincerely,

A handwritten signature in black ink that reads "David B. Amerine". The signature is written in a cursive, slightly slanted style.

David B. Amerine
Parsons Senior Vice President
Salt Waste Processing Facility Project Manager

The Honorable Barbara Boxer
Chairman, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-5175

The Honorable Frank R. Lautenberg
United States Senate
Hart Senate Office Building
Suite 324
Washington, D.C. 20510

The Honorable Benjamin L. Cardin
United States Senate
Hart Senate Office Building
Suite 509
Washington, D.C. 20510

October 25, 2007

Dear Madam Chairman, Senator Lautenberg, and Senator Cardin:

The purpose of this letter is to provide you with my recommendation for C. Russell H. Shearer to be a Member of the U.S. Chemical Safety Board. I understand that he has been nominated by the President for this position and is currently going through the confirmation process. Since I am currently the Deputy Assistant Secretary of the Navy for Safety, I am compelled to say that this letter represents my personal opinions and does not reflect the views of the Department of Navy. As you will see in the following paragraphs, I think Mr. Shearer is well qualified for this position and would be a real asset to the Chemical Safety Board.

I first met Mr. Shearer in 2004 when he assumed the duties of the Principal Deputy Assistant Secretary of Energy for Environment, Safety and Health. At that time I was a senior executive (SES) in his organization. I was immediately impressed by his technical grasp of nuclear and radiological issues, his inquisitiveness and quest for technical understanding, and his commitment to safety. I recall one of my first interactions with him was to brief him on some incident involving Plutonium – I do not recall the specifics except that it had to do with a little known chemical property of Plutonium. Mr. Shearer was not satisfied until he had talked with DOE's most knowledgeable expert in Plutonium operations to understand every thing he could about the phenomenon. Whether a chemical property of a transuranic element or the latest safety management model, Mr. Shearer used every day at work as a learning opportunity.

In 2005, Mr. Shearer assigned me to be the Director of the Department of Energy's Nuclear Safety Research Office. We began building that office in order to improve the Department's ability to collect data helpful in its Documented Safety Analysis Process (DSA), which includes hazard analysis, accident analysis, and analysis of safety controls. This DSA process is similar to, but more rigorous than, the OSHA process safety management rule components requiring process safety information and hazard analysis. It was for us a key component to operating our facilities safely and in accord with analyzed and known safe practices.

Prior to establishing this Office of Nuclear Safety Research, the Department's efforts were fragmented and stove-piped. There was little coordination between the various program offices on the sorts of safety research performed or sharing it among offices. We created this office to examine any issue affecting nuclear safety, whether from a chemical perspective (such as a

chemical process in the Department's chemical refineries that create nuclear materials) or any other potential risk to safe operations. And it was successful in consolidating data and making it widely available and in planning a future research program focusing on cross-cutting safety issues.

Mr. Shearer has been well trained in the field of process safety management, in part, because he is a dedicated student constantly seeking to expand his knowledge, understanding, and technical competence. The fact that he has been intensively trained in a process safety management standard that is far more demanding than the OSHA standard means, in my opinion, that he has the knowledge and skills to help improve the safety performance of the Nation's chemical industry.

Thank you and I hope the Senate will confirm Mr. Shearer's nomination.

Very respectfully,



Tom Rollow, P.E.
7818 South Valley Dr.
Fairfax Station, VA 22039
(w) 703-614-5179



Environment, Safety and Health Bulletin

Hazards of Nitrogen Asphyxiation in Confined Spaces

DOE/EH-0697

2005-17 - UPDATE

December 2005

Special Operations Reports are issued to initiate management actions in response to events whose subject matter represents significant Departmental safety concerns.

Environment, Safety and Health Alerts are issued to initiate immediate action on potentially significant safety issues.

Environment, Safety and Health Bulletins are issued to share information and recommend actions on potential safety issues.

Safety Advisories are issued to provide information to the DOE Complex on potentially significant safety or health issues.

PURPOSE

This Safety Bulletin is being issued to alert readers to the potential hazard of nitrogen asphyxiation following the November 6, 2005, fatality of two contractor maintenance workers at the Valero Energy Corporation's Delaware City, Delaware refinery.

Nitrogen gas, inert under most conditions, is widely used as a barrier to prevent unwanted reactions with oxygen or water. Most people are aware that breathing air contains about 78 percent nitrogen. However, higher concentrations of nitrogen in air replace necessary oxygen, and can cause physiological problems, coma, and death.

Section 146 of the OSHA Standard for General Industry (29 CFR 1910) requires employers to evaluate workplaces to determine if any spaces in which their employees will be working are confined spaces necessitating a permit.

Examples of atmospheres that require a permit include:

- those having an oxygen concentration equal to or less than 19.5 percent;
- those having an oxygen concentration equal to or greater than 23.5 percent;
- the presence of toxic gases in concentrations equal to or greater than the 8-hour time-weighted average for the gas; or
- the presence of explosive or flammable gases equal to or greater than 10 percent of the lower flammable limit.

BACKGROUND

The U.S. Chemical Safety Board (CSB) is investigating the accident at the Valero refinery. Preliminary information indicates that the two workers were reattaching piping to a process vessel while performing maintenance activities.

Because the vessel contained a catalyst that is sensitive to oxygen and moisture, the vessel was filled with a nitrogen blanket to prevent moisture from reaching the catalyst.

Investigators believe that one of the workers became disoriented, passed out, and fell into the vessel after he breathed nitrogen near the manhole on top of the vessel. Witnesses stated that one worker appeared to fall into the vessel while reaching inside. The second worker then entered the vessel, most likely trying to save his coworker. Both workers died from nitrogen asphyxiation. At this time, it is not known whether or not the two workers were aware that the vessel contained nitrogen. A Valero spokesperson stated that the workers were authorized to work near, but not in, the vessel, explaining that personal protective equipment, including breathing apparatus, would have been required.

In June 2003, the CSB issued a [Safety Bulletin](#) on the hazards of nitrogen asphyxiation. The Board's study identified 85 incidents involving nitrogen in the United States between 1992 and 2002 that resulted in 80 deaths and 50 injuries. Almost half of the incidents involved contractors, who accounted for more than 60 percent of the fatalities. The main causes were failure to detect nitrogen-enriched atmospheres, mistaking nitrogen gas for breathing air, and being inadequately prepared for rescue efforts.

IMPLICATIONS

Breathing oxygen-deficient air can have immediate, life-threatening effects. Rescuers should never attempt to rush into an oxygen-deficient space to retrieve fallen workers without first connecting to a supplied breathing air source.

RECOMMENDED ACTIONS

Facility managers should ensure that their personnel know how to work safely in the presence of nitrogen, particularly in confined spaces where they can be quickly overcome.

Questions concerning this Safety Bulletin should be directed to Tom Williams by telephone at (301) 903-4859 or by e-mail at thomas.e.williams@eh.doe.gov.


John Spitzer Shaw
Assistant Secretary for
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PREVENT EVENTS

Learning from Industry Experience

PREVENT EVENTS is intended for use by personnel during morning meetings, pre-job briefings, and work unit meetings to communicate key industry experience.

Management

1. In areas where liquid or gaseous nitrogen are used, are there processes for continuously monitoring oxygen levels and alerting workers of oxygen levels less than 19.5 percent?
2. Does our process for work in confined spaces include a provision for placing a trained, equipped worker nearby to observe, communicate with, and, if necessary, retrieve overcome workers?
3. Do we flow down our safety expectations for working in confined spaces or potential oxygen-deficient atmospheres to subcontractors?
4. Do we have positive controls in place to prevent other workers from inadvertently coming into confined or oxygen-deficient spaces?
5. Are our existing confined spaces appropriately placarded?

Training

1. Are our training programs for the correct usage of personal protective equipment and ventilating work areas sufficiently comprehensive?
2. Does our training program for confined spaces include a discussion about how temporary confined spaces can be inadvertently established by, for example, hanging a temporary barrier over an opening?
3. Is there a provision for annual refresher training for confined-space workers?

Individual Worker

1. Do I understand what constitutes a confined space, and do I know how to work safely in one?
2. Do I use appropriate PPE (self-contained breathing apparatus, backup breathing air supplies) when working around nitrogen gas?
3. Do I use the "buddy system" when entering a confined space?
4. Do I know to stop work if I see a potentially dangerous situation?
5. Do I understand the procedures for worker retrieval should a worker lose consciousness while working in a confined space?



SAFETY & HEALTH BULLETIN

Assistant Secretary for Environment, Safety & Health • U.S. Department of Energy • Washington, DC 20585

Vigilance in New or Infrequent High-Hazard Operations

DOE/EH-0697

Issue No. 2005-09

July 2005

Special Operations Reports are issued to initiate management actions in response to events whose subject matter represents significant departmental safety concerns.

Environment, Safety and Health Alerts are issued to initiate immediate action on potentially significant safety issues.

Environment, Safety and Health Bulletins are issued to share information and recommend actions on potential safety issues.

Operating Experience Summaries are issued to share lessons learned information, operating experience information, and best practices from significant events or important individual DOE activities.

PURPOSE

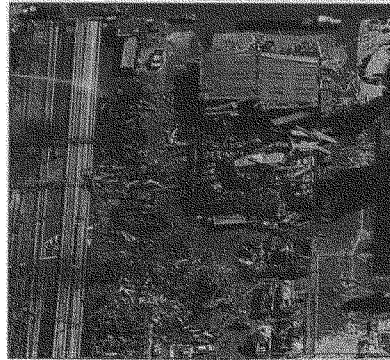
This Bulletin provides information about several serious events caused by a lack of vigilance and attentiveness on the part of those involved in conducting first-time or infrequently performed high-hazard activities. Failure to identify the hazards, develop appropriate actions, and remain alert to the possible dangers involved in such activities could lead to potentially catastrophic outcomes at DOE sites.

DISCUSSION

In March 2005, a large explosion killed 15 workers and injured over 150 at the BP Texas City Refinery. The unit was undergoing a phased restart operation following isomerization catalyst replacement, which is performed every 10 years. The explosion occurred during the restart of the Isomerization Unit and was caused by an ignited hydrocarbon vapor cloud that was inadvertently released from a raffinate splitter that was overfilled and overheated. The pressure in the splitter column increased rapidly and exceeded the set pressure of the overhead line relief valves, overloading the stack with vapors and liquid. An unknown ignition source from one of numerous sources in the uncontrolled area ignited the resulting vapor cloud and triggered the explosion.

BP Products North America, Inc. published an interim investigation report on the Texas City Refinery explosion on May 12, 2005 that identified many deficiencies and

safety concerns. For example, the 1950s-designed vent system on the blowdown drum was antiquated and did not tie into a flare system to safely combust flammable vapors during a release. Also, temporary office and work trailers were sited only 150 feet from the blowdown drum and vent stack, tragically placing their occupants in the blast area. The report also identified various conduct of operations deficiencies and inadequacies.



Explosion site at BP Texas City Refinery in March 2005

Although DOE does not operate refineries, this event demonstrates the dangers associated with performing first-time or infrequent high-hazard operations. A review of the interim investigation report from the perspective of DOE facility operations reveals similar causal factors seen in the following DOE occurrences:

April 2005: During the replacement of a conveyor belt in a casting line glovebox at the Y-12 Site, Enriched Uranium Operations personnel failed to apply a job-specific hazard analysis, which should have been required based on the criteria for breaching a boundary of a hazardous system. The task had not been performed in several years, and no work planning review protocols for potentially high-hazard

work were used. (DNFSB Site Representative Weekly Reports dated April 1 and April 15, 2005)

July 2004: During reactor restart at the Idaho National Laboratory's Advanced Test Reactor following a shutdown, a second shutdown on high coolant pressure occurred. The facility was minimally staffed and faced a very limited recovery time. The procedure used to perform a quick reactor restart did not address possible operational difficulties, and command and control personnel did not identify error precursors before conducting critical, time-sensitive evolutions. (ORPS Report ID--BBWI-ATR-2004-0007)

December 1999: While a crucible in a furnace was being changed out at the Y-12 Plant after 6 years of use, an explosion injured 11 workers when a new procedure, which was found to have numerous deficiencies, was used. The procedure had unreviewed, unapproved handwritten changes and was missing a key step vital to preventing an explosion accident. (Type A Accident Investigation, *Multiple Injury Accident Resulting from Sodium-Potassium Explosion in Building 9201-5 at the Y-12 Plant*, dated February 2000)

Causal factors for these events reveal similar inadequacies in work performed.

Procedures

- omitting steps
- using an incorrect or unapproved procedure
- allowing operators' process knowledge to override procedural compliance

Hazards analysis

- not recognizing the potential for multiple failure modes
- failing to comply with existing safety requirements
- ineffective emergency management planning

Operational oversight

- less than adequate command and control during an unfamiliar operation and during upset conditions
- insufficient communication of process activities

RECOMMENDATIONS

Below are recommendations for conducting infrequent or first-time applications when performing potentially high-hazard work.

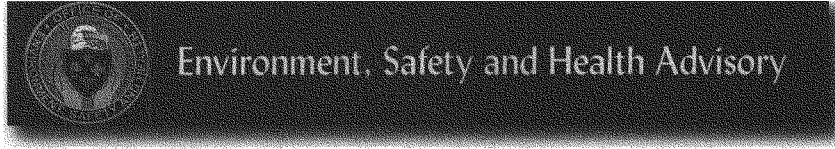
- Perform a hazards evaluation and operational assessment that are commensurate with the activity's complexity and associated safety risks.
- Conduct a detailed briefing with all parties involved in the project evolution. Discuss expected responses and necessary actions if problems occur.
- Always follow all of the procedures.

- Ensure that procedures used are current and incorporate system or equipment modifications and ensure that operators are trained on any changes.
- Conduct a tabletop review or walkthrough of procedures for first-time or infrequent evolutions.
- Ensure safety systems, instrumentation, and alarms are functional.
- Practice, from start to finish, all activities involved in the project evolution.
- Ensure that all personnel, including supervisors, have the required levels of experience and that training or certifications are current.
- Ensure that the command and control authority is clearly understood by all parties and is present during the evolution.

Questions regarding this Safety Bulletin should be directed to Rolland Sigler at (301) 903-4658 or by email at Rolland.Sigler@eh.doe.gov.



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Environment, Safety and Health Advisory

Texas City Refinery Update: The Price of Safety Complacency

DOE/EH-0699

2006-01

January 2006

ES&H Safety Bulletin 2005-09 (July 2005) discussed the Texas City Refinery accident in the context of the need for vigilance in conducting infrequent, high-hazard operations. This advisory presents financial, regulatory, and legal impacts of the accident.

The Occupational Safety and Health Administration (OSHA) fined BP Products North America, Inc. (BP) \$21,361,500 on September 22, 2005 following the agency's investigation of the March 23, 2005 explosion at BP's Texas City refinery. That explosion fatally injured 15 workers and significantly injured hundreds more. The fine against BP is the largest ever levied by OSHA. OSHA issued citations to BP for 303 willful safety violations, 26 serious safety violations, and 3 other-than-serious safety violations. OSHA's report cited BP's failure to:

- Use intrinsically safe electrical equipment;
- Record and compile written process safety information;
- Ensure employees receive refresher training at regular intervals;
- Correct deficiencies in equipment operating outside acceptable limits;
- Adequately identify and evaluate potential risks before facility operation;
- Adequately evaluate the safety and health impact of catastrophic events;
- Ensure that operators follow safe and consistent startup procedures; and
- Warn employees of developing conditions that could threaten safety.

OSHA classified several of the willful violations as "egregious," a term the agency only uses when violations occur in multiple instances across a range of activities. BP agreed to pay the multimillion-dollar fine as part of an agreement with the agency to improve safety conditions at the plant. OSHA, in conjunction with the Department of Labor, referred the Texas City refinery case to the Department of Justice on December 9. The managers and owners of BP now face not only monetary penalties, but also potential criminal penalties for poor safety oversight.

The fallout from the Texas City refinery explosion demonstrates the high cost of ignoring routine maintenance, process safety oversight, and opportunities for improvement at an aging facility. As a result of infrastructure downtime and repairs following the explosion, BP has lost an opportunity to invest approximately \$1 billion of business capital into new programs and budget items. BP must instead deploy that capital to compensate for asset damage, facility downtime, lost product, and the administrative disruption that follows in the wake of a major catastrophe and a Federal accident investigation.

Secretary Bodman stated in February, 2005 that "when it comes to our collective safety, we must never lapse into complacency...complacency is safety's enemy." BP has learned this lesson the hard way, and now faces years of unexpected setbacks that will hobble the company's productivity and growth. DOE and its contractors must often address safety conditions that parallel those that existed at the Texas City refinery prior to the explosion. The routine use of steadily decaying infrastructure poses an escalating probability of an event if managers and operators are unwilling to adopt an inquisitive safety posture and adjust their habits to reflect changing conditions.

As the principal trustee for the American public in a wide range of high-risk, high-consequence endeavors, it is the duty of the Department of Energy to build and maintain a sterling safety culture that will methodically eliminate accident precursors before they develop. The violations at BP's Texas City refinery represent the most common precursors for accidents that have occurred across the complex in the recent past. Any one of these safety violations, on its own, may justify a "stop-work" order and should be addressed immediately. Together, these violations can only co-exist if both management and operators consciously ignore opportunities to halt operations in an increasingly threatening environment.

The Office of Environment, Safety and Health requests that all DOE employees and contractors pay special attention to their colleagues' safety and security in the wake of this tragedy by reviewing the safety practices BP failed to implement (listed above) in its own operations and by reflecting on routine activities in their own workplaces. Facilities, equipment, and processes cannot adopt an inquisitive safety posture – only people can foresee and prevent accident precursors. With everyone's help, the Department can enhance its strong safety record and wholly eliminate the potential for catastrophic accidents.



Office of Health, Safety and Security

Safety Advisory



No. 2007-02

April 2007

Safety Culture Weakness Cited in BP Accident

PURPOSE

This Advisory provides information and recommendations from an independent safety review of BP U.S. refineries following one of the most serious U.S. workplace disasters in the past two decades that resulted in 15 fatalities and more than 170 injuries at the BP Texas City refinery. The independent review cited weaknesses in corporate safety culture and process safety management, areas that are important to safe operations at Department of Energy (DOE) facilities.

In response to an urgent safety recommendation from the U.S. Chemical Safety Board (CSB), BP's Board of Directors formed the *BP U.S. Refineries Safety Review Panel* to assess and report on the effectiveness of BP North America's corporate oversight of safety management systems at its five U.S. refineries and its corporate safety culture. An 11-member panel of experts was formed and chaired by former Secretary of State James A. Baker, III.

SUMMARY

The Baker Report points out that BP failed to adequately implement many important attributes of a sound safety program. Many of these parallel the 7 Guiding Principles of Integrated Safety Management that DOE established 10 years ago as a new approach to enhance safety awareness, upgrade formality of operations, and improve safety performance. DOE and its contractors have had to address safety conditions similar to those that were ultimately precursors to the Texas City refinery disaster. It is therefore important that DOE and its contractors identify with, and learn from, the findings and recommendations from BP's independent safety review.

BACKGROUND

On March 23, 2005, a tremendous explosion occurred during an infrequent startup of an octane-boosting isomerization unit that produces components for unleaded gasoline. During the startup, operators accidentally overfilled a distillation tower and attached blowdown drum with highly flammable liquid hydrocarbons. The blowdown drum, which vented directly to atmosphere, spewed flammable liquid and vapor onto the grounds of the refinery, causing a series of explosions and fires. All of the fatalities occurred in and around temporary work trailers that were placed too close to the process units; areas that should have been evacuated before startup.

Alarms and gauges that could have warned operators of the overfilled equipment failed to operate from lack of repair. The CSB investigated the accident and will release its final report

on March 20, 2007. An investigation by OSHA resulted in fines of more than \$21 million.

DISCUSSION

BP tended to have a short-term focus, and their decentralized management system and entrepreneurial culture delegated substantial discretion to their U.S. refinery plant managers without clearly defining process safety expectations. The Panel's findings are divided into three categories: corporate safety culture, process safety management systems, and performance evaluation, corrective action, and corporate oversight.

Corporate Safety Culture

BP did not ensure its management and workforce understood what was expected of them regarding process safety; emphasizing personal safety over process safety. They relied on personal injury rate data as a process safety performance indicator, which created a false sense of confidence that process safety risks were adequately being addressed. Their employees were not empowered with a positive, trusting, and open environment with effective lines of communication between management and the workforce. Process safety was not incorporated into management decision-making and management was not held accountable for process safety. The safety culture at BP's five U.S. refineries was not unified and was fraught with a lack of operating discipline, tolerance of serious deviations from safe operating practices, and complacency toward serious process safety risks.

Process Safety Management Systems

BP's programs for analyzing process hazards did not ensure adequate identification and rigorous analysis of those hazards. Their corporate safety management system did not ensure timely compliance with internal process safety standards and programs for managing process risks, nor did it ensure timely implementation of external good engineering practices that could improve process safety performance. BP did not effectively define the level of process safety knowledge or competency required of senior management, refinery personnel, and contractors. Their corporate safety management system did not translate corporate expectations into measurable criteria for management of process risk.

Performance Evaluation, Corrective Action, and Corporate Oversight

BP's use of injury rates to measure process safety performance hindered their perception of process risk. Although they tracked some metrics relevant to process safety, they didn't understand or accept what these data



indicated about the risk of a major accident. BP did not have effective root cause analysis procedures to identify systemic causal factors; therefore, corrective actions only addressed immediate or superficial causes rather than the true root cause, which could contribute to future accidents. BP's process safety audit system relied on internal auditors that focused primarily on compliance and legal issues rather than safety performance or assessing against industry best practices. They also failed to track process safety deficiencies to completion. BP's "bottom-up" reporting system allowed refinery-specific data to be aggregated and lost as it moved up the reporting chain. Executive management either did not receive refinery-specific information regarding process safety deficiencies or didn't effectively respond to the information it received.

RECOMMENDATIONS

The Baker Panel was charged with making recommendations to improve corporate safety culture, corporate oversight of process safety, and process safety management systems. As a result of the Panel's findings, they prepared the following ten recommendations for BP's Board of Directors. The Panel also developed commentary that is integral to the implementation of these recommendations. The complete commentary can be read in the Baker Panel Report <http://www.bp.com/bakerpanelreport>.

1. **Process Safety Leadership** – BP's Board of Directors, executive management, and other members of BP's corporate management must provide effective leadership and establish appropriate goals for process safety.
2. **Integrated and Comprehensive Process Safety Management System** – Establish and implement an integrated and comprehensive process safety management system that systematically and continuously identifies, reduces, and manages process safety risks.
3. **Process Safety Knowledge** – Develop and implement a system to ensure that executive management, refining line management, and all U.S. refining personnel, including managers, supervisors, workers, and contractors possess an appropriate level of process safety knowledge and expertise.
4. **Process Safety Culture** – Have relevant stakeholders develop a positive, trusting, and open process safety culture within each U.S. refinery.
5. **Clearly Defined Expectations and Accountability for Process Safety** – Clearly define expectations and strengthen accountability for process safety performance at all levels in executive management and in the refining managerial and supervisory reporting line.
6. **Support for Line Management** – Provide more effective and better coordinated process safety support for the U.S. refining line organization.

7. **Leading and Lagging Performance Indicators for Process Safety** – Develop, implement, maintain, and periodically update an integrated set of leading and lagging performance indicators to more effectively monitor process safety performance at its U.S. refineries.
8. **Process Safety Auditing** – Establish and implement an effective system to audit process safety performance.
9. **Board Monitoring** – BP's Board should monitor the implementation of the Panel's recommendations and the ongoing process safety performance at their U.S. refineries.
10. **Industry Leader** – Use the lessons learned from the Texas City tragedy and from the Panel's report to transform the company into a recognized industry leader in process safety management.

MESSAGE TO DOE

In order to achieve continuous improvement in the operation of DOE facilities, it is important to foster a safety culture that sets and maintains high standards; identifies and resolves problems and deficiencies; is open to criticism and recommendations for improvement; and promotes effective communication between line managers and independent oversight. This can only be achieved if management is fully committed to safety. Guidance for implementing the OSHA Rule for Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119) can be found in [DOE-HDBK-1101-2004, Process Safety Management for Highly Hazardous Chemicals](#) and in [DOE-HDBK-1100-2004, Chemical Process Hazards Analysis](#).

Safety culture has to be inherent in the thoughts and actions of all individuals within your organization. The decision to ensure workers have a safe working environment should not be based solely on the consequences if you don't, but because it's the right thing to do.

ADDITIONAL SOURCES OF INFORMATION

- [Safety Advisory 2006-01: Texas City Refinery Update: The Price of Safety Complacency](#)
- [Safety Bulletin 2005-09: Vigilance in New or Infrequent High-Hazard Operations](#)
- [OE Summary 2006-05: Preliminary Findings on Fatal Explosion at Texas Refinery](#)
- [OE Summary 2005-11: Refinery Explosion Involved Infrequently Performed, High-Hazard Work](#)

If you have any questions, please contact Tom Williams at 301-903-4859 or by e-mail at thomas.e.williams@hq.doe.gov.

