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S. HRG. 110–1240

A HEARING ON THE PRESIDENT'S PROPOSED EPA BUDGET FOR FY 2009

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

FEBRUARY 27, 2008

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

Available via the World Wide Web: http://www.access.gpo.gov/congress.senate

U.S. GOVERNMENT PRINTING OFFICE

85–522 PDF WASHINGTON : 2014

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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ONE HUNDRED TENTH CONGRESS
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HEARING ON THE PRESIDENT'S PROPOSED EPA BUDGET FOR FY 2009

WEDNESDAY, FEBRUARY 27, 2008

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

The full committee met, pursuant to notice, at 10:30 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (chairman of the full committee) presiding.

Present: Senators Boxer, Inhofe, Baucus, Carper, Lautenberg, Cardin, Klobuchar, Whitehouse, Voinovich, Isakson, Barrasso, Craig, Alexander

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

Senator BOXER. The Committee will come to order.

My understanding is Mr. Johnson is in the building so he will be here shortly. If it is all right with you, I thought we could hold our opening statements to 3 minutes. Does anybody object to that?

Senator VOINOVICH. Could we make it four?

OK. For you, it is four. Yes. And I understand Senator Inhofe has so many obligations at the Armed Services Committee with Senator McCain and Senator Warner being away, so we are hoping he will come or come in and out.

Welcome, sir. We are just about to get started. I will start. We are here today to review the Administration's proposed 2009 budget for the Environmental Protection Agency. Since this is the Bush administration's final budget proposal, I think we need to ask ourselves a simple question: is the Environmental Protection Agency able and willing to protect people and communities from serious public health and environmental problems? I would say the answer is no. The Bush administration's proposed budget for 2009 represents a 26 percent decline in overall EPA funding since the Administration's first budget was enacted, when adjusted for inflation.

Budgets are about priorities. This shows the low priority the Bush administration has placed on environmental protection. And environmental protection is about protecting our families. One in four people lives within four miles of a Superfund site, including 10 million children. And yet, this budget represents a 16 percent decline in the total Superfund budget since 2002, when we adjust for inflation. So in terms of protecting our kids, 10 million kids living within 4 miles of a Superfund site, this is very disturbing.

Over the last 7 years, the pace of cleanups has declined by 50 percent compared to the last 7 years of the prior Administration. That is one problem, Superfund. Second, leaking underground storage tanks pose a serious threat to groundwater quality in communities across the Nation. This budget would cut funds to clean up and prevent contamination from these tanks.

More than 100 million people rely on groundwater for drinking water. What could be more basic than making sure that they have clean, safe drinking water? This budget does not do it. It cuts more than $134.1 million from the Clean Water State Revolving Fund.

The budget also proposes cutting $9.8 million from the Diesel Emissions Reduction grant program. According to EPA itself, diesel pollution causes 15,000 premature deaths every year. This program pays to retrofit diesel engines. Yet it is cut. It is the last thing we ought to be doing, if we really care about the people we represent.

Despite the Administration's claims of a commitment to global warming, this budget proposes to cut funding for several actions to curb global warming, including eliminating funding to implement a greenhouse gas registry. So there is lots of talk around here, but when it comes to acting, there are cuts. This comes on top of the EPA's denial of the California waiver, and I will have further questions about that later.

The Bush administration's budget undermines EPA's ability to carry out its mission, it leaves the agency less able to protect public health than it was when the Bush administration first entered office. The American people deserve better.

Senator VOINOVICH.

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

Senator VOINOVICH. Thank you, Madam Chairman.

First of all, I want to thank the Administrator for being here and thank you for your service to this Country. You have one of the most difficult, if not the most difficult, jobs in the Administration trying to balance all these competing interests.

As a former Governor and mayor, I know firsthand the enormous challenges you face in putting a budget together. It is a process that requires responsible prioritizing and fiscal discipline. This leads me to a point that I have made time and time again: we must find a way to balance our Nation's environmental, energy and economic policies.

Unfortunately, in many areas, EPA is precluded from balancing these various issues, and partly why the economy of the State of Ohio is in trouble today. It might make us feel good to set lofty environmental goals, but those goals do little good when they are not achievable due to practical or economic considerations. They are even less good when they impose economic hardships to those who can't comply.

The issue of unfunded mandates is a problem that is pervasive throughout the Federal Government, but nowhere more than in environmental regulation. At best, standards are set with little consideration to as how they will be met. At worst, standards are set without regard to the cost of compliance. The National Ambient Air Quality Standards and the Clean Water Act are prime examples of

this disconnect between our policy objectives and a case study of unintended consequences.

Leaving a discussion of those standards aside, I think that we ought to look at this budget I share the Chairwoman's concern about DERA funding in this budget. The DERA program was designed to meet our Nation's air quality standards by reducing emissions from the Nation's legacy fleet of 11 million diesel engines. It was the most supported environmental program I have had anything to do with. It was supported by Republicans and Democrats, by business, labor, and environmental groups.

The fact that it was such a good program is that we got it done in 45 days. I have never seen anything pass as quickly as the DERA bill. It authorized a billion over 5 years, $200 million a year. And as the Chairwoman mentioned, DERA has the potential to contribute up to a 70,000 ton reduction in PM emissions and generate $20 billion in economic and health benefits. You have requested $49.2 million for 2009. It will be the third year of this program, and I would like you to look at this again. I think in terms of leveraging, it is an amazing program.

When you look at your budget, and you have something that you can put a dollar in and get two or three dollars from other sources, it seems to me that it ought to be higher on the priority list. I would like to have—maybe not here—an explanation on how the agency looks at programs that leverage. When you look at the money that you are prioritizing, how many instances do have that money allocated to one issue generates money outside and, it is a twofer, threefer, fourfer.

The other thing I am concerned about is the Great Lakes Legacy Act which received $35 million in your budget, decreased from $50 million that the Administration proposed 2 years ago. This program results in hundreds of thousands of cubic yards of contaminated sediments being removed from the Great Lakes. I strongly encourage you to work to increase the funding in that program.

Also, Administrator, I would like to remind you of the Great Lakes Collaboration. You worked to help to make restoration and protection of the Lakes a priority at EPA. I am anxious, as cochairman of the Great Lakes Task Force, with my friend, Senator Levin, from Michigan, for you to look at the levels of funding for what we are trying to do with the collaboration. The funding levels just don't meet the needs at all.

Also, as in previous years, the EPA's budget is wholly inadequate in dealing with the Nation's wastewater infrastructure needs. In fact, your request represents the lowest funding level in the program's history. Did you hear that? The lowest level in the program's funding history. Continued cuts in the SRF, when EPA estimates the Nation's need for wastewater collection and treatment at $193.5 billion, makes no sense. This especially concerns me because in the State of Ohio, the needs are estimated to be $11.7 billion.

And I am not going to give you the examples of community after community that can't afford to pay the rates. They just can't do it. The city of Defiance, with a population of 17,000 and recently lost 950 auto industry jobs, is required to spend $60 million to fix the city's combined sewer overflow problems. We have community after community in Ohio that you are forcing to do this, and they can't

pay it. I had a group of them in this morning that have 15 percent, 20 percent rate increases each year.

Does anybody in your agency ever take into consideration whether they can do it or not? Does anybody take into consideration that some of them can't do it in 15 or 10 years, and it is going to be 30 years if you want them to get the job done? It seems like sometimes your agency is in a cocoon. It doesn't understand what is going on out on the streets.

We pass stimulus bills to try and help people right now because the economy is so darn bad, and at the same time we are pulling money out of their back pocket because we have these gigantic increases in their sewer and water costs. Somebody ought to start putting these things on a piece of paper and paying attention to them.

Madam Chairman, thank you very much for the time that you have given me.

[The prepared statement of Senator Voinovich follows:]

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

Mrs. Chairman, thank you for calling this hearing on the budget of the Environmental Protection Agency. I would like to thank Administrator Johnson for being here.

As a former Governor and Mayor, I know firsthand the enormous challenges that you have to address when crafting a budget. This is a process that requires responsible prioritizing and fiscal discipline to avoid breaking the bank.

And this leads me to a point I've made time and time again: We must find a way to balance our nation's environmental, energy and economic policies. It might make us feel good to set lofty environmental goals, but those goals do little good when they are unachievable due to practical or economic considerations. They are even less good when they impose economic hardship to those who can't comply.

The issue of unfunded mandates is a problem that is pervasive throughout government, but nowhere more so than in environmental regulation. At best, standards are set with little consideration as to how they will be met. At worst, standards are set without regard to the costs of compliance. The national ambient air quality standards (NAAQS) and the Clean Water Act are prime examples of this disconnect between our policy objectives and a case study in unintended consequences.

Leaving a discussion of the standards setting process to another day, I will simply say that if we set environmental standards, we must be ready, as a government, to help communities meet those standards.

In regard to this year's budget proposal, I am concerned about funding for the Diesel Emissions Reduction Act (DERA). DERA was designed to help meet our nation's air quality standards by reducing emissions from the nation's legacy fleet of over 11 million diesel engines. DERA authorized $1 billion over a 5-year period ($200 million annually). Properly funded, and leveraging match requirements for State and local governments at a ratio of $2 to $1, EPA estimated that DERA had the potential to contribute to a 70,000 ton reduction in PM emissions and generate $20 billion in economic and health benefits.

You have requested $49.2 million for fiscal yea— in what will be the third year of a 5-year program. I can't stress enough the need for increasing DERA funding as we begin the appropriations process. DERA is a well balanced policy to reduce air emissions and it would be a shame to let the program sunset before its benefits can be fully realized.

I am also disappointed to see that the administration's proposed funding for the Great Lakes Legacy Act is $35 million for fiscal year 9. This is a significant decrease from the $49.6 million that the administration proposed 2 years ago. This program shows results—hundreds of thousands of cubic yards of contaminated sediments have been removed from the Great Lakes—and I strongly encourage you to work to increase funding for this program.

Administrator, working with the Great Lakes Regional Collaboration, you have worked to make the restoration and protection of the lakes a priority at EPA. As co-chair of the Senate Great Lakes Task Force, I am eager to find ways to improve

the Collaboration's efforts and ensure the Great Lakes programs, like the Legacy Act, receive the funding they need to be successful.

As a member of this Committee, I have sought to bring attention to the nation's wastewater infrastructure needs. But as with previous years, EPA's budget is woefully inadequate. In fact, your request represents the lowest funding level in the program's history!

Continued cuts to the SRF program—when EPA estimates the nation's need for wastewater treatment and collection at $193.5 billion—makes no sense. This especially concerns me because my State of Ohio has one of the largest needs in the Nation at $11.7 billion.

Here are a number of examples from Ohio alone: The city of Defiance, which has a population of 17,000 and recently lost 950 auto industry jobs, is required to spend $60 million over 20 years to fix the city's combined sewer overflow problems. In response, the city is being forced to double its rates. The city of Fostoria, population of 14,000, is facing a $35 million project. This city has lost 10 percent of its jobs over the past 2 years, in part due to their increasing water rates. They are being forced to increase their rates by $100 per year over the next 15 years. EPA is requiring the city of Fremont, population of 26,000 people (49 percent are considered low-income), to spend $63 million. Their rate increases will be 150 percent.

EPA is simply not stepping up to the plate to assist the thousands of communities across the country facing substantial costs to comply with EPA orders. I must tell you that from my experience as a former mayor, county commissioner, and Governor, I consider this to be an unfunded mandate.

Administrator, we are asking our communities to do the impossible. If the Federal Government is going to impose these costly mandates on struggling State and local governments, then it should provide funding and flexibility for compliance with those mandates.

Again, I would like to thank you for your attendance today, and I look forward to hearing your thoughts on these issues. Thank you, Mrs. Chairman.

Senator BOXER. Well, I loved what you said.

Senator Lautenberg.

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

Senator LAUTENBERG. Madam Chairman, I assume that asking for equal time would not be——

Senator BOXER. You can have 4 minutes.

Senator LAUTENBERG. Just the same, if I may, Madam Chairman, by our distinguished colleague, whose words I liked.

Senator BOXER. Go ahead.

Senator LAUTENBERG. For the past 7 years, President Bush has had an opportunity to create a budget that protects the environment and for 7 years has failed to do so. He had neglected our water infrastructure, which keeps our drinking water clean. He has neglected our Superfund sites, and allowed toxic chemicals to languish while our children play nearby. He has neglected to fight global warming, to help us fight global warming, the most serious environmental threat that our planet faces.

This year's budget is no exception. It is a continuation of the same under-funding that we have seen in the past. This year's budget in many ways sets us back even more than we have been. Over the next 20 years, there will be a gap of over $250 billion between what this Administration is spending and what is truly needed for our clean water and drinking water infrastructure. Yet, President Bush's budget cuts this funding by 20 percent.

This is brought on by an overt decision within this Administration not to have the polluters pay in the first place. Now we are suffering the results of that. The President is denying States the resources to remove untreated sewage, other contaminants from the water we use for drinking, swimming, and recreation. The

budget also fails to show commitment to getting the Superfund program back on track. Ten years ago, more than 80 sites were cleaned up each year. But in 2007, the Bush administration only finished cleaning 24 sites. Incredible, that we are so in need of space to build on, to play on, to work on, and here we are reducing it by permitting it to continue its poisonous representation.

Well, finally, we need a budget that advances our fight against global warming. And the President has come around to talking about global warming, but the actions do not match the words. This budget provides no funding for a greenhouse gas registry, which allows the Federal Government to track sources of greenhouse gas emissions. That is putting our head in the dirt, for sure. And the Energy Star program, which in 2005 reduced consumer energy bills by $14 billion, and reduced emissions by the equivalent of taking 25 million cars off the road, it is going to be cut by more than 8 percent.

Madam Chairman, on issue after issue, from weakening right to no laws to denying States the right to regulate tailpipe emissions, the Administration has dropped the ball. And this, the last budget that we are going to see from President Bush, adds insult to injury. We need an EPA that acts on its mission to provide our children with a safer and healthier world. Since President Bush and Mr. Johnson, this EPA has failed to leave.

I look forward to trying to work with this Committee to provide some vision.

Finally, Madam Chairman, I would like to note that as we debate our environmental future in this room, across the street, in the Supreme Court, an oil company raking in record profits is refusing to own up to the damage that was caused in the past. The *Exxon Valdez* oil spill was a disaster and almost two decades later, the region is still paying an environmental and economic price. Even though courts found Exxon liable for punitive damages, the company continues to fight while making over $170 billion in profits since the year 2002 alone.

As the Supreme Court considers Exxon's latest appeal, I hope that the company will do what is right and take full responsibility for their actions in 1989 and give victims of the spill the peace of mind and closure that they deserve. And I think that represents their reluctance and the lack of enforcement by the Bush administration to appeal to Exxon and say, for crying out loud, go ahead and pay the fine that you originally had imposed on you instead of fighting in the courts, reducing the $5 billion to just over $2 billion and then making over $10 billion in each quarter. It is outrageous.

Thank you very much, Madam Chairman.

Senator BOXER. Thank you so much, Senator Lautenberg.

Senator Isakson, welcome.

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

Senator ISAKSON. Thank you, Madam Chairman.

Welcome, Administrator Johnson, and I am looking forward to your visit to Atlanta on Friday. We are looking forward to having you.

Although I know this is a hearing on your budget, I would like to discuss a couple of issues and the economic impact on decisions made by EPA. First is on MSMA and the cancellation of that registration and the tremendous effect it is having on the cotton growers of our State. MSMA is critically important to cotton farmers, and there is no economically feasible alternative to it. Weeds, particularly pigweed, that are invasive to cotton are resistant to other herbicides that are available. Without that being re-registered, the MSMA, we face some serious deterioration in terms of our cotton crop.

Deputy Administrator Gulliford visited Georgia last year, saw first-hand the impact on our farmers. Unfortunately, EPA still took the step of canceling the registration. I would appreciate your addressing that, either in your remarks or when we have a chance for questions and answers following that.

Second, talking about water for a second, it is my understanding that at the end of June, the Rural Water Contract Funding program will be canceled. That is what I have been told. That is an invaluable program to rural Georgia. When you talk about Georgia, most people think about Atlanta. But our State is a very agricultural State, has a large rural area and it is absolutely essential to have the technical assistance for these small communities to be able to comply with EPA regulation. Many of them, quite frankly, don't have either the budgets or the sophistication to deal with those regulations without the Rural Water Assistance program, and I would appreciate your addressing whether or not that contract is going to be extended.

Then last, I wish we could drag a horse in, because I know I am beating a dead horse on this, but I do have to bring up again the problem we have where we have some rural counties in our State who through no fault of their own have fallen in non-attainment and come under that designation, and with restrictions on the very needs they have to improve transportation and transit in their communities. We talked about Walker and Catoosa County before that just happened to fall below Chattanooga and north of Atlanta and have an interState going through them. But they're severely impacted by the non-attainment designation, yet have no control over the pollution that comes to their community because of the wind currents that come from the north.

So I would appreciate, if you have time, your addressing that. Thank you for your service to the Country and again, I look forward to seeing you in Atlanta on Friday.

Senator BOXER. Thank you, Senator.

Senator KLOBUCHAR.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Thank you, Madam Chair, for holding these hearings. Welcome, Administrator Johnson. I know this is the first of several hearings that this Committee will have on the President's budget.

It is important to have these hearings because the budget is not just about dollars and cents. It is a reflection of priorities and values. After reviewing the President's budget, it is pretty easy to see

what the priorities are and what the priorities are not. Protecting the environment and maintaining our national infrastructure in the way that I believe we need to simply doesn't seem to be on the list. As Senator Voinovich so eloquently talked about protecting the Great Lakes, it doesn't seem to be on the list.

Administrator Johnson, while the world is gearing up to confront the greatest environmental challenge of our time, the President's budget actually cuts funding for the Environmental Protection Agency by more than $300 million. In Minnesota, we like to remember that phrase, put your money where your mouth is. I am afraid that this budget doesn't put its money where its mouth is, because as we know, in the State of the Union address, the President actually announced that "The United States is committed to strengthening our energy security and confronting global climate change." That is what he said in the State of the Union.

But when the President's released budget is actually examined, you see a 38 percent cut in the climate science and technology program from what was appropriated in 2008. You see an almost 10 percent cut to the climate protection programs from what was appropriated for 2008. And you see a 100 percent cut to the Department of Energy's Renewable Energy Production Incentive program. This is a program that is designed to create incentives for renewable energy. I have a difficult time understanding how zeroing out such a program demonstrates a commitment to strengthening our energy security.

Mr. Johnson, just last year at a press conference on the release of the IPCC report, the International Panel on Climate Change, you stated that "The Bush administration has built a solid foundation to address the environmental challenges of the 21st century." Madam Chair, I ask that this press release from that press conference be included in the record.

Senator BOXER. Without objection, so ordered.

[The referenced material was not received at time for print.]

Senator KLOBUCHAR. Mr. Johnson, the claim that this Administration has built a solid foundation just isn't supported by this budget. The first step in addressing climate change, which is the environmental challenge of the 21st century, is to accurately measure greenhouse gas emissions. But the President's budget says nothing about the importance of a greenhouse gas registry, which you are supposed to be setting up this year with congressionally directed funds. How can you claim that a solid foundation has been built when your agency, the Environmental Protection Agency, does not have accurate data on greenhouse gas emissions?

I have been involved in public policy long enough as a prosecutor and when I have been here to know that you can't fix something if you can't measure it. That is why Senator Snowe and I introduced the National Greenhouse Gas Registry, that is why Senator Snowe and I, along with Senators Bingaman, Carper, Lieberman and Chairman Boxer and others offered this registry as a part of the Energy Bill. That is why Senator Feinstein and Chairman Boxer included a very simple provision in Fiscal Year 2008 omnibus appropriations measure directing you to "begin requiring mandatory reporting of greenhouse gases from appropriate sources in all sectors of the U.S. economy. And while I know this registry con-

tinues to need permanent authorization, Mr. Administrator, you and I both know that the President has not hesitated to propose money for unauthorized initiatives during his time in office.

I just think we can't be saying one thing in the State of the Union and then not having a budget that supports it. Thank you, and I look forward to our question period.

Senator BOXER. Thank you very much, Senator.

Senator CRAIG.

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

Senator CRAIG. Madam Chairman, thank you very much.

I do want to associate myself with the remarks of Senator Voinovich that he made in relation to communities. Because the stark reality hit my State just this last week. A beautiful Alpine resort community that is growing quite rapidly has done everything possible to meet their standards and the requirements of the EPA, Mr. Administrator. They filed bankruptcy. Really shook the State of Idaho up. The community had no alternative. After tremendous efforts and expenditures of funds to meet and comply they felt the only course out was to file bankruptcy.

So when it comes to the necessary funds needed for compliance purposes, it really is very difficult to see how you can cut budgets. It is tough enough to sustain current levels of funding, and that is always frustrating to us. I think that is a perfect example of what is happening in my State. As you know, Senator Dorgan and I last year don't mind talking about and offered legislation to deal with arsenic. Not a very popular subject, but a reality of geography and geology sometimes. How you deal with the issues within your regulations of affordable and feasible.

Now, if you are a 100,000 community, 200,000 community, it is one thing. If you are a 5,000 community, you are faced with very burdensome MCL. And this is a community that has been drinking that water for 100 years and is as robust and healthy as any community I know. They are struggling to comply. They can't comply. Being able to work with them and help them is critically important. That is the standard. That is what we decided as a Country.

So you decide the standard and then you say to the community, you comply. And they can't. They could simply double or triple their taxes and probably still could not afford the necessary tools. Now, science is moving in the right direction, I agree, that will help us get there, both the real science and the engineering that will allow compliance in time.

So the issue of affordability and feasibility and critically important, and your flexibility in working with these communities, if the effort is good faith. I don't want to see more Idaho communities simply filing bankruptcy after the fact. That isn't what the Federal Government ought to be forcing upon small communities.

Our National Rural Water Association, the money that is available to them for circuit riders and allowing rural communities to find assistance in compliance remains critical. My State of Idaho, along with California and others, are struggling with large confined animal feeding operations. As you know, they are called CAFOs. I understand the agency is expected to issue their final Clean Water

Act CAFO rule some time this year. I hope you do it. It is time we move along and get there. The livestock industry wants to comply. They need certainty. And that is how you get there, is to do it in a timely and responsible fashion.

I would also like to have the agency look at what we are doing out in Idaho. Idaho is now the third largest dairy State in the Nation, a 10,000 herd dairy, a 5,000 herd dairy is not unusual in my State any more. It has become almost the norm. We are developing what will be called the Idaho Center for Livestock and Environmental Studies. We are going to spend a lot of money, we are going to focus on it. We want everything to be state-of-the-art. We want it to be clean, we want to comply with your regs and your assistance there is extremely important.

As you know, last, Idaho has been host to a very large Superfund site in the north end of our State. Old mining legacies, I want to tell you that I appreciate the new benchmark the agency I think has created. In my mind, construction completes, only tells half the story. The real standard for excellence is EPA's ability to turn a site into a safe and healthy environment. That is what we ought to be doing much more aggressively with Superfund sites. But that is a matter of cooperation, it is flexibility, it is coordination, it is not litigation, litigation. It is actually sitting down and working out problems that ultimately produce a cleaner and safer environment.

In that regard, this Administration ought to get some marks. I know the heavy hand of Government is sometimes viewed as the only way through an environmental crisis for some. At least it is politically exciting or it appears to be macho politics. But when you sit down and you work it out and you cooperate and you keep it out of the courts and you move it along, that is when we get the results. We have gotten them and I thank you, Madam Chair.

Senator BOXER. Thank you so much, Senator Craig.

Senator Whitehouse, this is your turn and we will give you 4 minutes.

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

Senator WHITEHOUSE. Thank you very much, Madam Chair.

I am here today to continue the questions that have been raised regarding the integrity of the administrative process that the Environmental Protection went through in reaching its waiver determination. When the Administrator was last before us, there were substantial questions then. I found that the testimony that we received was highly evasive, and I asked questions for the record that have still not been answered.

I have litigated in administrative agencies a good deal in my professional life. I have run administrative agencies and I am keenly aware of how important the integrity of the administrative process is to the integrity of the ultimate decision and also how variations from proper procedure can allow political influence and arbitrary and capricious decisionmaking into the province of the administrative agency. What we have seen since that past hearing has raised far more questions than it has answered.

When you get to the point where Committee staff are suggesting that the Department would lose such credibility from taking an ac-

tion that it would lead to irrevocable damage to the agency and might require the Administrator to step down, that is a pretty strongly held view. And it was interesting that when the Administrator was here before, and his discussion of whether consolidated recommendations and options analysis and exactly what all took place that led to his decision was made, nothing along those lines ever came out.

So I encourage the Chair and I applaud the Chair for her efforts to get to the bottom of this. I think at this point, the administrative process stinks to high heaven and needs a good hard look. I look forward to contributing to that effort.

And I thank the Chair.

Senator BOXER. Senator, thank you very much.

Senator Inhofe, Senator Barrasso has graciously said, please proceed.

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

Senator INHOFE. Thank you, Madam Chairman. I just want to be sure, I know you know this but I want to make sure the rest know that I am Ranking on the Armed Services Committee, so I had to be down there, and I have to be going back and forth between these two committees.

For the record, since it was brought up by one of the other members, I had a couple of interesting articles that I want to put into the record on our favorite subject, Madam Chairman. One is the National Post article 2 days ago entitled Forget Global Warming: Welcome to the New Ice Age, by Lauren Genter of the National Post. The other is the NASA analysis as to what is happening right now with this, it is really some pretty good material that I would encourage my colleagues to read, talking about Baghdad sees its first snow and America is now the most snow-covered in 50 years. Anyway, all this is as a part of the record, if you would.

Senator BOXER. We will absolutely put those in and we will go back now to 3 minutes.

[The referenced material follows:]

NATIONAL POST

Monday, February 25, 2008

Forget global warming: Welcome to the new Ice Age
Lorne Gunter, National Post
Published: Monday, February 25, 2008

Snow cover over North America and much of Siberia, Mongolia and China is greater that at any time since 1966.

The U.S. National Climate Data Center (NCDC) reported that many American cities and towns suffered record cold temperatures in January and early February. According to the NCDC, the average temperature in January "was - 0.3 F cooler than the 1901-2000 (20th century) average."

China is surviving its most brutal winter in a century. Temperatures in the normally balmy south were so low for so long that some middle-sized cities went days and even weeks without electricity because once power lined had toppled it was too cold or icy to repair them.

There have been so many snow and ice storms in Ontario and Quebec in the past two months that the real estate market has felt the pinch as home buyers have stayed home rather than venturing out looking for new houses.

In just the first two weeks of February, Toronto received 70 cm of snow, smashing the record of 66.6 cm for the entire month set back in the pre-SUV, pre-Kyoto, pre-carbon footprint days of 1950.

And remember the Arctic Sea ice? The ice we were told so hysterically last had melted to its "lowest levels on record? Never mind that those records only date back as far as 1972 and that there is anthropological and geological evidence of much greater melts in the past.

The ice is back.

Gillied Langis, a senior forecaster with the Canadian Ice Service in Ottawa, says the Arctic winter has been so server the ice has not only recovered, it is actually 10 to 20 cm thicker in many places than at this time last year.

OK. so one winter does not a climate make. It would be premature to claim an Ice Age is looming just because we have had one of our most brutal winters in decades.

But if environmentalists and environment reporters can run around shrieking about the manmade destruction for the natural order every time a robin shows up onGeorgian Bay two weeks early, then it is at least fair game to use this winter's weather stories to wonder whether the alarmist ate being a tad premature.

And it's not just anecdotal evidence that is pilling up against the climate-change dogma.

According to Robert Toggweiler of the Geophysical Fluid Dynamics Laboratory at Princeton University and Joellen Russell, assistant professor of biologeochemical dynamics at the University of Arizona—two prominent climate modellers—the computer models that show polar ice-melt cooling the oceans, stopping the circulation of warm equatorial water to northern latitudes and triggering another Ice Age (a la the movie The Day After Tomorrow) are all wrong.

"We missed what was right in front of our eyes," says Prof. Russell. It's not ice melt but rather wind circulation that drives ocean currents northward from the tropics. Climate models until now have not properly accounted for the wind's effects on ocean circulation, so researchers have compensated by over-emphasizing the role of manmade warming on polar ice melt.

But when Profs. Toggweiler and Russell rejigged their model to include the 40-year cycle of winds away from the equator (then back towards it again), the role of ocean currents bringing warm southern waters to the north was obvious in the currentArtic warming.

Last month, Oleg Sorokhtin, a fellow of the Russian Academy of Natural Sciences, shrugged off manmade climate changes as " drop in the bucket." Showing that solar activity has entered an inactive phase. Prof. Sorokhtin advised people to "stock up on fur coats."

He is not alone. Kenneth Tapping is our own National Research Council, who oversees a giant radio telescope focused on the sun, is convinced we are in for a long period of severely cold weather if sunspot activity does not pick up soon.

The last time the sun was this inactive, Earth suffered the Little Ice Age that lasted about five centuries and ended in 1850. Crops failed through killer frosts and drought. Famine, plague and war were widespread. Harbors froze, so did rivers. and trade ceased.

It's way too early to claim the same is about to happen again, but then it's way too early for the hysteria of the global warmers, too.

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Temperature Monitors Report Worldwide Global Cooling

Michael Asher (Blog) - February 26, 2008 12:55 PM

World Temperatures according to the Hadley Center for Climate Prediction.

Note the steep drop over the last year. A twelve-month long drop in world temperatures erases global warming.

Over the past year, anecdotal evidence for a cooling planet has exploded. China has its coldest winter in 100 years. Baghdad sees its first snow in all recorded history. North America has the most snowcover in 50 years, with places like Wisconsin the highest since record-keeping began. Record levels of Antarctic sea ice, record cold in Minnesota, Texas, Florida, Mexico, Australia, Iran, Greece, South Africa, Greenland, Argentina, Chile -- the list goes on and on.

No more than anecdotal evidence, to be sure. But now, that evidence has been supplanted by hard scientific fact. All four major global temperature tracking outlets (Hadley, NASA's GISS, UAH, RSS) have released updated data. All show that over the past year, global temperatures have dropped precipitously.

Meteorologist Anthony Watts compiled the results of all the sources. The total amount of cooling ranges from 0.65C up to 0.75C -- a value large enough to erase nearly all the global warming recorded over the past 100 years. All in one year time. For all sources, it's the single fastest temperature change every recorded, either up or down.

Scientists quoted in a past *DailyTech* article link the cooling to reduced solar activity which they claim is a much larger driver of climate change than man-made greenhouse gases. The dramatic cooling seen in just 12 months time seems to bear that out. While the data doesn't itself disprove that carbon dioxide is acting to warm the planet, it does demonstrate clearly that more powerful factors are now cooling it.

Let's hope those factors stop fast. Cold is more damaging than heat. The mean temperature of the planet is about 54 degrees. Humans -- and most of the crops and animals we depend on -- prefer a temperature closer to 70.

Historically, the warm periods such as the Medieval Climate Optimum were beneficial for civilization. Corresponding cooling events such as the Little Ice Age, though, were uniformly bad news.

Inhofe. Thank you very much.

We have done it again, I say to my real good friend, Administrator Johnson. It seems like every time we go through this budget thing, every time, not some times, but every time, we go through and they make cuts and they make cuts in the programs that they know we are going to restore, the SRF programs and things that will be right out in front and be the first ones to get restored. So it seems to me this is kind of a bureaucratic thing that we go through every year, and that is there are some programs that could be targeted out there, but they don't do that, they just get the ones, or you get the ones that you know will be restored. Maybe you can address that in your comments.

One place we could exercise some budgetary restraint would be with the voluntary programs the EPA has created that have not been authorized by Congress. Some of these may have very laudable goals, but at a time when the agency is proposing to cut clean water funding by over $300 million, it may not be the first time they administratively created programs.

So I raise the same concern about the agency's international grants. I know that's not a large item but nonetheless, we have talked about that.

As you know, I have been in communication with your office about the rules that we are operating under and their impact on Oklahoma. Some of us who are conservatives are big spenders in the three major areas. One is defending America, the other is our infrastructure, which we have done a good in trying to address, and the third is unfunded mandates. That is what is killing us in Oklahoma. I don't think that we, I know we passed a law several years ago that was prospective. But we are going back now to things that are having to do, there are just not the resources to do that. I think that we should be addressing that in a better way in this budget.

So Madam Chairman, one last thing I want to mention, as you all know too well, the solutions to the Tar Creek Superfund site have long been my top priority. I know that Senator Craig may disagree with this, that Tar Creek is the most devastating Superfund site.

Senator CRAIG. I would agree with it now. Ours is about cleaned up.

Senator INHOFE. And ours is, too. But anyway, I would say this, that Richard Green, Susan Bodine and Sam Coleman, along with many others, have done an incredible job in prioritizing this. We have language put in the last WRDA bill that allows us to go in there without going back each time for some of the buy-outs that are necessary.

When that first happened, I thought it was more of a subsidence problem. Now we find out everybody has to be moved, there's no way of resolving it. So I want to compliment the EPA and in particular those individuals at that level who are doing and have done such a great job.

Thank you, Madam Chairman.

[The prepared statement of Senator Inhofe follows:]

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

Welcome, Administrator Johnson. I am pleased to have you testify before the Committee today on President Bush's Fiscal Year 2009 budget proposal for the Environmental Protection Agency.

The Administration has proposed $7.14 billion for the EPA for fiscal year 2009. This is a $330 million, or 4.4 percent, cut from the 2008 level. Given the continuing global war on terror and the large deficit, I think it is necessary to make some tough choices and cut wasteful spending out of the Federal budget. I'm getting tired of saying this, but once again the budget does not make enough tough choices.

Over half of the total proposed cut comes from the Clean Water SRF, regional water programs, and other congressional priorities that the Administration knows Congress will likely restore. It seems as if the determining factor for cutting a program's funding was if Congress increased funding for that program above the Administration's 2008 budget request or directed spending. These priorities are summarily dismissed as wasteful earmarks and stripped from the budget. Since the Administration knows Congress will restore many of the proposed cuts, this allows the Administration to increase other programs; and at the end of the day, no hard decisions are made.

Despite all the hoopla and criticism from the Democrats, after 7 years the Bush administration has failed to find any meaningful savings or wasteful spending in the EPA budget. I find it hard if not impossible to believe there are no programs that should be cut. The only significant cuts the Administration ever proposes are the ever-popular and much needed SRFs and congressional earmarks. I feel we have squandered the opportunity to make the EPA budget more cost effective and efficient. I hope you spend the final year of this Administration carefully examining EPA programs to determine which are truly environmentally beneficial and cost effective and which are wasteful.

For instance, one place to exercise some budgetary restraint would be with the voluntary programs EPA has created that have not been authorized by Congress. Some of these may have very laudable goals, but at a time when the Agency is proposing cutting clean water funding by over $300 million, it may not be the time for Administratively created programs. I raised the same concern about the Agency's international grants previously, and while these programs may not add up to much money, they are a good starting point.

As I have indicated, I will once again be supporting efforts to restore the large cut you proposed to the critical Clean Water SRF program. There is a nationwide crisis and a need for more water infrastructure money that is acknowledged by this Administration. In the recent Clean Watershed Needs Survey, you calculated over $200 billion in need for publicly owned treatment works. While I continue to disagree with your cuts to the SRF, I am pleased to see that the Administration has again proposed lifting the cap on private activity bonds for water and wastewater infrastructure projects. I look forward to working with the Administration to see if using the tax code through private activity bonds would help fill some of the infrastructure gap, given the shortage of appropriated dollars. While public-private partnerships are not the sole solution, we need to do everything we can to encourage them since we will never be able to fully fund our infrastructure needs.

Compounding this lack of water infrastructure funding are the many costly new regulations imposed on localities. In Oklahoma, we continue to have municipalities struggling with the arsenic rule and with the Disinfection Byproducts (DBP) Stage I rule. Small systems who purchase water from alternative systems and have not had to test, treat, or monitor their water must now comply with DBPII. In EPA's most recent drinking water needs survey, Oklahoma identified $4.8 billion in infrastructure needs over the next 20 years. $107 million of that need is to meet Federal drinking water standards. This does not include costs imposed by Oklahoma communities to meet Federal clean water requirements, the new Groundwater rule, the Disinfection Byproducts Stage II rule or the Long Term 2 Enhanced Surface Water Treatment Rule. As you know, I have been in communication with your office about these rules and their impact on Oklahoma. I am looking forward to continuing to work with you to devise ways to assist these communities in reaching these drinking water standards.

One of those ways is through compliance assistance. This year, the President's budget requests the highest level of funding ever for the enforcement program, including its Compliance Assistance Centers to help people comply with the SPCC and Disinfection Byproduct rules. I appreciate the Administration's work to assist the regulated community to comply with often confusing and burdensome rules. This year, the EPA has helped 1,228,000 entities with compliance assistance. EPA's web-

based compliance centers have reached millions more. I applaud EPA for continuing build on these kind of successes.

Within the air program, there are three specific areas that I would like to address. First, I want to commend you for continuing to support the clean diesel grant program funding. I was a co-sponsor of clean diesel legislation and fully support this program which significantly improves air quality for a fraction of the cost of trying to achieve these reductions through regulatory mandates. I also want to commend you for continuing your agency's support for the Asia-Pacific Partnership. EPA's contribution is a very small, but necessary funding of this important program. Last, I would remind you that I have long supported a strong and improved monitoring network for particulate matter. Two years ago, funding was cut from this program that has yet to be restored. Monitors that measure not just mass, but types of particles, will enable us to better tailor our health laws in the future so that we reduce the unnecessary burden on the regulated community while simultaneously achieving superior health benefits. Without these funds, there is a strong incentive for states to cut vital speciation monitors, which are comparatively expensive to maintain

As you are well aware, solutions to the Tar Creek Superfund Site have long been on my list of top priorities. EPA has long ranked Tar Creek as one of the most severe superfund sites in the country. Last week, EPA announced a new plan addressing not only clean-up, but also acting upon a provision I placed in WRDA to provide voluntary relocation assistance to area residents. I appreciate the work of key EPA officials Susan Bodine, Richard Greene, and Sam Coleman, along with many others working on this site. I look forward to continuing to work with you to implement this new plan and thank you for all your help to date on this important issue.

My staff has continued to investigate EPA regions and how they vary in their implementation and enforcement of environmental regulations. We have learned that of the ten EPA regions, there is often little uniformity in how the same program is managed in different regions. Inconsistency in the application of environmental laws creates enforcement uncertainty for the courts and for citizens who are trying to follow the law. I look forward to continuing to work with you on this problem.

Finally, Mr. Administrator, I am deeply interested in the EPA's implementation of the overly aggressive bio-fuels increase mandated by the Energy Independence and Security Act of 2007 passed in December. These mandates allow no room for error in a fuels industry already constrained by tight supplies, full capacity, environmental regulation, and volatile market conditions. As you know, Congress imposed a nearly fivefold expansion of the Renewable Fuels Standard mandate despite mounting questions surrounding ethanol's effect on livestock feed prices, its economic sustainability, its transportation and infrastructure needs, its water usage and numerous other issues. On that note, I look forward to working with you to determine if these new mandates are even achievable and to explore the many potential ramifications.

Administrator Johnson, I look forward to your testimony.

Senator BOXER. Thank you, Senator Inhofe.

And we really all know the stress you are under with the two ranking memberships, we are just very happy to have you here.

Senator BAUCUS.

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

Senator BAUCUS. Thank you, Madam Chairman, and thank you for calling this hearing.

Administrator Johnson, as you will recall, in August of last year, you attended a town hall meeting in Libby, Montana. And I asked at that meeting, I asked you to work with me and let me know if EPA needs more resources, more help with respect to all the issues revolving around Libby, Montana. Clearly, your budget request is an opportunity to do just that.

But as I look at all this, I am frankly a bit disappointed, to say the least, the people of Libby are depending on you to devote the resources necessary to right the terrible wrong committed by W.R. Grace. For decades, the W.R. Grace vermiculite mill in Libby spewed toxic tremulite asbestos into the air. Over 200 people in

Libby have died from asbestos-related disease because of W.R. Grace. There is currently a criminal trial in Montana. The question is whether the Libby officials violated criminal law. My personal view is they did.

More people are getting sick every day. The stakes could not be higher.

But as I look at EPA's work plan for Libby this year, and frankly, all across EPA's budget, I am left wondering why the Administration is not asking for more. From the Superfund program to the Clean Water State Revolving Fund, EPA's 2009 would make cuts, not just cuts in the rates of increase, but actual cuts, cuts endangering the health of Montanans and compromising our Country's economic competitiveness.

The Omnibus Appropriations Bill Congress passed in December included $1.253 billion for Superfund. That is a $9 million increase over the President's 2007 budget request. Yet I was recently informed that EPA has decided not to perform emergency removals of asbestos from a golf course in Libby this year. Fifteen thousand rounds of golf are played on this course every year, many of them by the Libby High School golf team.

In the past, EPA used emergency removal dollars to clean up the school and baseball field. This year, EPA will use emergency removal dollars to clean up something called Flour Creek, which is downtown Libby. I am wondering why emergency funds could not be used to clean up the golf course as well. Again, there are a lot of kids that use that golf course, a lot of kids work at the golf course, they are groundskeepers, they mow the fairways and the greens. A lot of people play that golf course. Yet EPA has decided not to use emergency funding to address the golf course this year, as I know they could.

People are sick, they are dying in Libby. Yet EPA asked the community to choose between the Flour Creek cleanup or the golf course. The reality is that as long as one of them remains contaminated with asbestos, the children of Libby will continue to be put at risk.

The Administration's 2009 budget request would only continue to shortchange the people of Libby and other communities across the Country dealing with Superfund sites. The Administration's request for Superfund's remedial budget represents a $5 billion decrease from last year, not a reduction in rate of increase, but an absolutely decrease. the overall trend is even more concerning, not just the emergency remedial but overall concerning. In 2004 dollars, the EPA spent about $1.8 billion on the Superfund in 1993. If you take a look at 2004 dollars, about $1.8 billion was spent in 1993. But only $1.2 billion were spent in 2004. EPA, in my judgment, has taken the Superfund program in the wrong direction.

Furthermore, turning to clean water and wastewater, why isn't the EPA asking for more funding for water and wastewater infrastructure? This Country's water and wastewater infrastructure is crumbling before our eyes. EPA's own Clean Water and Drinking Water Infrastructure Gap Analysis found that the Nation would face a backlog of $535 billion in water infrastructure projects by 2019 if additional investments are not made, or in other words, if spending remains constant, by 2019, according to EPA's own anal-

ysis, it would be a backlog of $535 billion in water infrastructure projects.

A lack of clean water clearly compromises the health of our families, our outdoor heritage of hunting and fishing, our economic competitiveness. Furthermore, and we have many examples of this already in Montana, companies will not invest in communities that cannot provide adequate water infrastructure for factories and workers.

The Administration's budget request would cut the Clean Water State Revolving Fund by $134 million from the 2008 enacted levels, again, a cut. Not a cut in the rate of increase, but an absolute cut. Clearly, short-sighted.

The State of Montana currently makes about $14 million in loans per year from this program, from the revolving loan fund, about $14 million a year. The demand in my State in the next 5 years is expected to be as high as $25 million per year. Given rising demand for Clean Water State Revolving loan funds, why is the Administration slashing funding for the program? Not just Montana, it's nationwide.

Administrator Johnson, given the needs our Country is facing, why isn't the EPA asking for more funding? Budgets might be tight, but what could be more important than clean water and protecting our children from Superfund sites? I look forward to your answers.

Senator BOXER. Thank you so much, Senator.

Senator BARRASSO.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. I thank you very much, Madam Chairman, add welcome, Mr. Johnson. We appreciate your being here.

Mr. Johnson, Wyoming is blessed with many natural resources, and has been a major leader in energy production. But at the same time, any resource extraction can have unintended consequences that impacts our environment. It happens in many industries and is certainly a critical issue that we are trying to address here today.

Wyoming has also played a major part in our Nation's security. The Department of Defense has used Wyoming because of its rural and rugged countryside for national security activities like missile silos. These activities have had unintended environmental consequences as well. We have a proud history, but I will tell you that Washington has an obligation to leave Wyoming as environmentally sound as Washington has found it before doing these other activities. We all have local projects in our States that need further help and further assistance from the EPA.

Senator Inhofe talked about the growing problem of unfunded mandates. The cost on Wyoming of implementing new and existing rules continues to go up. At the same time, Federal assistance that is supposed to help the States when we try to implement the regulation goes down. In this year's budget, we see it in the State and Tribal Assistance grant program, that has been cut 14.4 percent.

So I hope you will address that, and I look forward to the questions and answers. I do want to work with the Administration to

provide the assistance our State needs to address these issues. Thank you for being here, and thank you, Madam Chairman.

Senator BOXER. Thank you, Senator.

Senator CARPER.

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

Senator CARPER. Thank you, Madam Chair.

Mr. Johnson, welcome. I don't have a formal statement, I would just like to use this opportunity to telegraph a couple of things that I would be particularly interested in hearing from you. One is the level of funding for DERA, the Diesel Emission Reduction initiative. A number of us are interested in it. I want to say that I am pleased to see the level that the Administration has committed to fund that.

Second, I know you are under a lot of pressure to go one way or the other on ozone and the National Ambient Air Quality Standards and again, I would encourage you to shoot low rather than high.

Third, we have had, as you well know, a Federal court decision on mercury rule. And a number of us have an interest in taking a different approach and getting started on that. I would be interested in hearing what you have to say.

I have a couple of other areas to explore with you, but those are some of them. We welcome you. Thanks for coming.

Senator BOXER. Thank you so much, Senator.

Senator ALEXANDER.

OPENING STATEMENT OF HON. LAMAR ALEXANDER, U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator ALEXANDER. Thanks, Madam Chairman.

My late friend Alex Hailey's favorite words were, find the good and praise it. So I have one thing I would like to praise, as you get started. And that is the new agreement between the State of Tennessee and the State of Virginia and the EPA to protect the Clinch and the Powell River.

I was a staff member here when the Clean Water Act was written. It has been described as the most important urban renewal act ever, because it cleaned our rivers up and restored our cities. People began to move back down to the banks of the rivers as the cities originally were.

The same thing can be true of the rivers that run through the more rural areas. The Clinch and the Powell, which begin in Virginia and run into Tennessee, are two rivers that are not yet spoiled. But they need protection, and what you have done, your Regions 3 and Region 4 have an unprecedented agreement with two Virginia agencies and one Tennessee agency to restore and protect those two rivers. The Clinch River is named that because as tradition goes, an Irishman, a pioneer was going down the river and he fell overboard, and he cried out, clinch me, clinch me, and they named the river Clinch. That is a true story.

So I want you to know that the people in east Tennessee, most of whom are Republican, like clean water. And they like for those

two rivers to be clean and appreciate very much the special effort that the EPA has made. I would like to specifically commend Governor Phil Bredesen of Tennessee, who has taken the initiative on this, working with Virginia and with the EPA to do it.

Thank you.

Senator BOXER. Thank you, Senator. I think that concludes our statements. Mr. Johnson, the floor is yours.

STATEMENT OF HON. STEPHEN L. JOHNSON, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. JOHNSON. Thank you, Madam Chairman, and members of the Committee. I am pleased to be here to discuss the President's Fiscal Year 2009 budget request for the Environmental Protection Agency.

This marks the eighth and final budget introduced by the President during his tenure. As the Bush administration sprints to the finish line, I believe this budget will keep EPA on course for a cleaner tomorrow.

At EPA, we are proud our Nation's air is cleaner, our water is purer and our land is healthier than just a generation ago. So we appreciate the President's $7.14 billion proposal, which will help EPA keep pace with the environmental challenges of tomorrow.

One important challenge is in the arena of clean and affordable energy. With both demand and cost on the rise, innovators are moving forward to advance the clean power solutions. At the same time, industry is searching for new domestic energy supplies to help reduce the Nation's dependence on foreign oil. In doing so, we estimate the industry will explore thousands of new oil and gas wells on tribal and Federal lands alone, as well as proposing many energy projects.

To ensure these projects move forward in an environmentally responsible manner, this budget requests $14 million to hire additional technical experts and provide grants to our partners to increase their capacity to review and assess proposed projects.

In addition, the budget contains sufficient funding to meet our commitment to addressing the serious challenge of global climate change. In order to advance clean air technologies, the President requested $49 million for EPA's diesel retrofit grant programs.

Another challenge is to improve our Nation's aging drinking water and wastewater infrastructure. The budget requests $842 million to fund Drinking Water State Revolving Fund grants, an increase of $13.1 million from last year. This will help meet the President's commitment to achieve a $1.2 billion revolving level by 2018.

For Clean Water State Revolving Funds, the President proposes an investment of $555 million in Fiscal Year 2009. This will enable the program to meet its long-term revolving target of $3.4 billion by 2015.

In addition, we once again propose to create water enterprise bonds, an innovative financing tool for our State and local partners to cost-effectively provide for their residents' water needs. As we continue to address our water infrastructure, the budget continues to support EPA's collaborative work to protect America's great water bodies. It provides $35 million for the Great Lakes, $29 mil-

lion for the Chesapeake Bay, and $4.6 million for the Gulf of Mexico.

As you know, EPA is not only a guardian of our environment, it is a guardian of our homeland. I am proud of our response to Hurricanes Katrina and Rita and to a number of other natural events in recent years. However, we recognize the need to expand our capabilities to respond to multiple, simultaneous catastrophic events.

So this budget requests an extra $32 million for a total investment of $170 million to train staff volunteers, increase decontamination capabilities and fully fund five water infrastructure security pilots. This additional funding also includes a $5 million increase to support our biodefense research.

In order to keep pace with the environmental challenges of tomorrow, we have a responsibility to advance the State of our science. In this budget, the President requested $15 million to help EPA study nanotechnology as well as an additional $15 million for computational toxicology. At EPA, we are working with our community partners to pass down a healthier, more prosperous future. The President's budget provides over $1.2 billion for the Superfund program, to continue transforming contaminated hazardous waste sites back into community assets. This is a $10 million increase from Fiscal Year 2008.

The President also requested a $165.8 million for our successful brownfields program. We project that grantees will help assess the renovation of 1,000 properties and create leverage for more than 5,000 jobs. But while cooperative initiatives are important, we must continue to vigorously enforce our Nation's environmental laws. This budget proposes the highest dollar amount for enforcement in EPA's history: $563 million, an increase of $9 million over Fiscal Year 2008.

As EPA works to fulfill our responsibilities to the American people, I am pleased that this budget not only continues to deliver environmental results today, it keeps EPA on a course to deliver a cleaner, healthier tomorrow. Bottom line, this budget represents good government, it helps EPA meet our environmental goals while being responsible stewards of taxpayer dollars.

Thank you, and Madam Chairman, I request that my full written statement be submitted for the record.

[The prepared statement of Mr. Johnson follows:]

STATEMENT OF STEPHEN L. JOHNSON, ADMINISTRATOR,
U.S. ENVIRONMENTAL PROTECTION AGENCY

Madam Chairman and Members of the Committee, I appreciate the opportunity to discuss our proposed Fiscal Year (FY) 2009 Budget request for the Environmental Protection Agency (EPA) budget.

The President requests $7.14 billion for fiscal year to support EPA's mission to protect human health and the environment both directly and through EPA's state, local and tribal partners nationwide. Since its founding, EPA has laid a strong foundation of environmental progress. Our air, water and land are cleaner today than they were just a generation ago. This budget continues this progress, supports the environmental commitments that the President and I have made and institutionalizes EPA's major management and performance improvements.

In particular, the budget meets the major priorities that I've set for my final year of service:

- Advancing clean, affordable and safe energy,
- Safeguarding our nation through stronger homeland security,

• Encouraging stakeholder collaboration to address energy and climate change issues,
• Improving our water infrastructure and programs,
• Continuing Superfund remediation of the most highly contaminated hazardous waste sites,
• Encouraging economic development through revitalization with our successful Brownfields program,
• Ensuring full compliance with the nation's environmental laws,
• Building a stronger EPA for my successor — including strengthening our protection of human health and the environment through best available science, and
• Demonstrating fiscal responsibility for all our successors.

ADVANCING CLEAN, AFFORDABLE AND SAFE ENERGY

We all know that our nation faces multiple challenges to assure a future of clean, affordable and safe energy. With both demand and costs on the rise, innovators are moving forward to propose cleaner power solutions that are good for our environment and good for our energy security. Industry is searching for many new domestic alternatives to help reduce our dependence on foreign energy. We estimate that over the next several years industry will propose drilling thousands of new oil and gas wells on Federal, state, and Tribal lands, apply to renew up to 100 nuclear plant licenses, consider building dozens of new liquefied natural gas terminals, and propose many other projects. This budget recognizes that industry's increased efforts will mean a larger workload in our existing air and water permitting programs as well as our enforcement programs—especially out West.

This budget includes an additional $14 million to help ensure environmentally sound decisionmaking—with proper permitting and review and in full compliance with the law. The $14 million will support our State and tribal partners' efforts to increase their capacity to review and assess all the proposed energy projects and pay for the additional technical experts the Agency needs to meet permitting, technical review, and NEPA requirements.

One related clean energy initiative that I'm glad that we and the appropriating committees agreed upon is the Diesel Emission Reduction Act (DERA) program grants. In fiscal year 9, $49 million will fund 250–300 diesel retrofit grant programs that target older diesel engines which are not subject to the new regulations. A combination of strategies including engine retrofits, rebuilds or replacements, switching to cleaner fuels, and idling reduction strategies can reduce particulate matter emissions by 95 percent, smog forming hydrocarbon and nitrogen oxide emissions by up to 90 percent and greenhouse gases by up to 20 percent. These strategies will allow us to make continued progress in five sectors: freight, construction, school buses, agriculture and ports.

HOMELAND SECURITY

Homeland Security continues to be one of EPA's top priorities. EPA has responded to five major disasters and catastrophic incidents in recent years, including response actions to the 9/11 terrorist attacks, the anthrax terrorist incidents, the Columbia Shuttle disaster and recovery efforts, the Ricin incident on Capitol Hill, and the Gulf Coast hurricanes. Our experience from these responses, coupled with EPA's externally driven mandates such as Homeland Security Presidential Directives and Emergency Support Function mission assignments, lead me to propose that EPA heighten its preparedness.

This budget ensures that we can meet these commitments by proposing an additional $32 million over last year's enacted budget for a total of $170 million to advance the EPA's capabilities to respond to multiple incidents, strengthen bio-defense research, and continue to support the Water Security Initiative.

As a part of this request, we remain committed to funding five Water Security Initiative pilots to secure a broad range of data so water utilities across the country will have the necessary information to install and enhance contamination warning systems. With the fiscal year request we will have initiated all five pilots and expect to complete them by 2012. EPA is also advancing its preparedness to respond to multiple, large-scale, catastrophic incidents, and in particular, potential chemical, biological and/or radiological agent terror attacks.

CLIMATE CHANGE

For fiscal year 9, EPA requests a total of $114.7 million to continue to achieve real reductions of carbon dioxide, methane, per fluorinated compounds (PFCs) and

other greenhouse gases, and continue research to better understand climate change and its ramifications.

EPA will continue to achieve real reductions in greenhouse gases by promoting energy efficiency through partnerships with consumers, businesses and other organizations. We will continue to see real results in the home, building, industrial and transportation sectors by spurring our partners' investments in energy efficient and greenhouse gas saving technologies, policies and practices. Based on a historical analysis, we estimate that for every dollar spent by EPA on its climate change programs, greenhouse gas emissions are reduced by up to the equivalent of one metric ton of carbon.

One cornerstone of our partnerships is the ENERGY STAR program, which has helped speed new lighting technologies to market, fostered development of more energy efficient computers, and increased Americans' understanding of how they can help the environment by purchasing cleaner and more efficient machines. To give one example, ENERGY STAR qualified light bulbs use 75 percent less electricity and last up to 10 times longer than traditional bulbs. If every American household switched just one traditional bulb to a high-efficiency ENERGY STAR bulb, America would save enough power to light more than three million homes save $600 million in energy costs and prevent greenhouse gas emission equal to more than 800,000 cars annually.

A Washington Post article 2 weeks ago on how pollution can be blown to the U.S. from overseas reminded me that our international programs are essential to realizing American ecological goals. If we don't help China, India and other developing countries build energy efficient technologies into their infrastructure, their increases in greenhouse gas emissions will far out-weigh any reduction that we achieve here. That is why it remains essential that we move forward with the Asia Pacific Partnership, Methane to Markets and other international programs.

In climate change research, EPA will invest $16.4 million to continue to better understand climate change and its ramifications. EPA will investigate how climate change affects air and water quality to protect the gains in public health made by the Agency. We will explore opportunities to anticipate the impacts and incorporate climate change considerations into regulatory processes. We will use research findings to support the development of a proposed rule on the geological sequestration of carbon dioxide to ensure that underground sources of drinking water are protected. We will continue to reach out to all our potential 300 million "green" partners by making available free, online decision support tools to enable resource managers to incorporate climate change considerations into their day-to-day operations.

COOPERATIVE PROGRAMS

Our cooperative programs also provide an outstanding example of how we can find "win-win" solutions that make sense both environmentally and economically. They allow us to work with businesses and individuals to achieve environmental results while improving the bottom line. They allow EPA to start addressing environmental challenges as soon as we recognize them and give us the opportunity to test innovative approaches to meet today's challenging environmental problems. To date, our conservative estimate is that over 20,000 businesses and other groups across America have participated in cooperative programs. We are proud of the record of success of these programs and want to encourage our talented employees to continue to use their creativity in finding innovative ways to improve environmental results.

WORKING WITH FEDERAL PARTNERS

Cooperation with Federal partners is also crucial for EPA to meet its mission. In the fiscal year budget, I want to highlight our efforts to work with Federal partners to better understand the environmental impact of the almost $2 trillion worth of imported goods coming into the U.S. annually. To meet this challenge, the President directed agencies with import/ export responsibilities to work together to create an International Trade Data System (ITDS) within an expanded Automated Commercial Environment (ACE). EPA's $3.1 million investment in fiscal year will help build the linkage with ITDS to identify, track and confirm vital environmental details about imported goods in 6 areas: 1) vehicles and engines, 2) ozone depleting substances, 3) fuels, 4) pesticides, 5) toxic substances, and 6) hazardous waste.

This is not a pie-in-the-sky dream. It builds on a successful pilot test by our Office of Enforcement, which showed that accessing useable records lead to timely action. One pilot test identified imported engines in several planned shipments that did not meet US specifications and allowed us to block their entrance. One bad engine can make a big difference in emissions of particulate matter. Another pilot test proved

that even child's play can be harmful to the environment. Detailed records highlight many batches of innocent-looking "silly string" which contained banned chlorofluorocarbons (CFCs). These tests make clear that prompt data retrieval translates into prompt protection.

This is also an example of how our long term planning has paid off. EPA can efficiently link to ITDS because of the Agency developed a Central Data Exchange, a standard set of IT systems and protocols for sharing information among multiple partners.

WATER INFRASTRUCTURE AND PROGRAMS

This President's budget meets our commitments to finance State revolving funds, proposes new financing options, continues WaterSense and other collaborative water-efficiency projects, strengthens our wetlands and watershed protection, and furthers our successful geographic initiatives.

We propose $842 million for Drinking Water State Revolving Fund (DWSRF) grants, an increase of $13 million. This funding will help achieve the target of 445 additional infrastructure improvement projects to public water systems—and help reach a long term target $1.2 Billion revolving level. The DWSRF program supports states by providing low-interest loans and other assistance to water systems to help provide safe, reliable water service on a sustainable basis, protect public health and achieve or maintain compliance with the Safe Drinking Water Act (SDWA).

For Clean Water State Revolving Funds (CWSRFs), we propose a fiscal year investment of $555 million to help meet the program's long term revolving target of $3.4 Billion. This program is able to meet EPA's $6.8 billion total capitalization goal for FYs 2004–2011 with a reduced budget request due to higher than anticipated funding levels in previous years. The CWSRF program provides funds to capitalize State revolving loan funds that finance infrastructure improvements through low interest loans for public wastewater systems and other water quality projects.

The President's fiscal year budget continues to support the Water Enterprise Bond Initiative that proposes financing wastewater and drinking water infrastructure projects using Private Activity Bonds (PABs) that are exempt from unified State PAB volume caps. We estimate this initiative will increase capital investment in the nation's water infrastructure by up to $5 billion per year over time through public-private partnerships. These bonds will complement local efforts to move toward full-cost pricing for wastewater and drinking water services, help localities become self-financing and minimize the need for future Federal expenditures.

These financing proposals work together with our continuing efforts to increase efficiency, protect our wetlands and watersheds, accurately monitor the condition of our waters and wetlands and target vital geographic areas.

For example, in June 2006 EPA launched the WaterSense program to reduce water use across the country by creating an easy-to-identify label for water-efficient products. The WaterSense label certified that products had been independently tested to meet strict efficiency and performance criteria. In less than 2 years, WaterSense has become a national symbol for water efficiency among utilities, plumbing manufacturers, and consumers. More than 125 different models of high-efficiency toilets and 10 bathroom faucets have earned the label and more than 600 manufacturers, retailers, utilities and professionals have joined the program as partners. In fiscal year EPA will continue supporting development of new products and working with utilities, retailers, distributors, and the media to educate consumers on the benefits of switching to water-efficient products.

EPA's Wetlands Program supports the Administration's goals to achieve "no net loss" of wetlands in the Sec. 404 regulatory program and an overall increase in wetland quantity and quality. Wetlands provide numerous ecological and economic services: they help to improve water quality; recharge water supplies; reduce flood risks; provide fish and wildlife habitat; offer sites for research and education; and support valuable fishing and shellfish industries. In fiscal year 9, EPA will work with its State and Tribal partners to promote up-to-date wetlands mapping tied with GIS (Geographic Information Systems) analysis, strengthen monitoring and assessment programs to report on wetlands condition, and improve data to better manage wetlands within a watershed context. Two key activities will be implementing the 2006 Supreme Court decision in the Rapanos case, and working with our Federal agency partners to accelerate the completion of the digital Wetlands Data Layer within the National Spatial Data Infrastructure (NSDI).

Watershed protection runs through our budget and strategic plan as one of the overarching principles for clean and healthy communities. Our strategic plan, our daily activities and our proposed fiscal year budget all reflect the importance of core regulatory and stewardship programs prevent water pollution and protect source

waters. With our partners we launched a Green Infrastructure Strategy on January 17, 2008 to reduce sewer overflows and storm-water runoff. We also continue to urge Congress to enact targeted, bipartisan clean water legislation to encourage "Good Samaritan" cleanup of abandoned hard rock mines. This simple step will remove legal and bureaucratic obstacles, keep environmental safeguards in place, save tax payer dollars and help cleanup watersheds.

We continue to place a high priority on improving the states' ability to accurately characterize the condition of their waters. In fiscal year 9, we will continue our water quality monitoring initiative by providing grant funding totaling over $18.5 million to states and tribes that participate in collecting statistically valid water monitoring data and implement enhancements in their water monitoring programs.

The fiscal year budget continues funding for geographic initiatives, including:

• In the Great Lakes, EPA's $35 million investment in the Great Lakes Legacy Act will give priority to working with states and local communities to achieve improvements in water quality and reducing the number of toxic "Areas of Concern". "Areas of Concern" include areas with damaged fish and wildlife populations, contaminated bottom sediments and past or continuing loadings of toxic and bacterial pollutants.

• In the Chesapeake Bay, the $29 million investment will be committed to substantially accelerating the restoration of the Bay's aquatic habitat and achieving the pollution reduction targets for 2010.

• For the Gulf of Mexico, EPA's $4.6 million investment will continue to support efforts to reduce nutrient loadings to watersheds. We will identify the top 100 nutrient-contributing watersheds in the Mississippi River Basin and use a computer model determine the location of major sources of nitrogen and phosphorus and where to target hypoxia-reduction efforts.

SUPERFUND REMEDIATION OF HIGHLY CONTAMINATED HAZARDOUS WASTE SITES

The President's budget requests a $10 million increase for a total of $1.264 Billion for the Superfund program to continue our progress cleaning up contaminated sites and strengthening our emergency preparedness and response capabilities. The vital goals of the Superfund program remain assuring the health and safety of neighboring citizens during cleanups and protecting human health and the environment in the long-term. Within this budget request, funding for Superfund clean-up remains at essentially the same level as enacted in fiscal year 8.

EPA takes seriously its responsibility to take actions to protect human health by controlling exposure to hazardous substances during cleanups. Before or during long-term remedial action, the Superfund program often completes removal actions to mitigate immediate health threats prior to completing investigations and starting long-term cleanup construction. For example, to date, EPA has provided more than two million people living near contaminated sites with alternative sources of drinking water, has completed more than 9,400 removals at hazardous waste sites to reduce the immediate threat to human health and the environment, and has conducted 351 emergency response and removal cleanup actions in fiscal year alone.

Developed more than a decade ago, EPA's construction completion measure continues to show substantial progress in the Superfund program. As of the end of fiscal year 7, cleanup construction had been completed at 1,030 of the National Priorities List (NPL) sites—66 percent of the sites listed on the NPL. EPA plans to complete cleanup construction at 30 sites in fiscal year 8, and 35 sites in 2009. This will keep EPA on track to complete construction at 165 sites during the fiscal year to fiscal year time period—EPA's goal in the current Strategic Plan.

To better measure long-term progress, the program added a Site-Wide Ready for Anticipated Use measure in 2007. This measure tracks the number of NPL sites where the remedy is constructed (construction complete) and all of the controls are in place to ensure that the land is protected for reasonably anticipated uses over the long term. EPA expects to make at least 30 sites ready for anticipated use in 2009, building upon its 2007 achievement of doubling the original goal of 30 by making 64 Superfund sites ready for anticipated use.

BROWNFIELDS AND LAND REVITALIZATION

The President's fiscal year budget request provides $165.8 million for the Brownfields program, including $93.6 million to fund program assessment, cleanup, revolving loan fund, and job training grants. This will fund 129 assessment grants, 96 cleanup grants, 7 revolving loan fund grants, and 12 job training grants.

Through this work, we project that Brownfields grantees will assess 1,000 properties, cleanup 60 properties, leverage 5,000 cleanup and redevelopment jobs, and leverage $900 million in cleanup and redevelopment funding.

Experience has taught us that one of the best ways to clean up contaminated sites and to address blighted properties in communities is to expressly consider the future uses of this land. The country has accepted the economic and ecological importance of recycling various consumer products—and our understanding of sound resource management must now also embrace the recycling of contaminated properties. In addition, by incorporating "green" and sustainable approaches into Brownfields redevelopment, we can further increase the environmental benefits from land revitalization. We remain committed to the goal of restoring our nation's contaminated land resources and enabling America's communities to safely return these properties to beneficial economic, ecological, and societal uses.

ENFORCEMENT

Experience has also shown that we cannot always rely on collaboration to attain all our goals. This budget doesn't neglect that lesson. Once again I request the largest enforcement budget in history, $563 million—an increase of $9 million—to maintain our vigorous and successful enforcement program.

These dollars will prove to be a wise investment. Last year, EPA's enforcement programs succeeded in:

- Having defendants agree to $10.6 billion in investments to reduce pollution;
- Achieving private party reimbursements of $252 million for Superfund; and,
- Reducing water pollution by 178 million pounds and air pollution by 427 million pounds.

This all-time record budget request includes a $2.4 million increase to a total budget of $52.2 million for criminal enforcement. These dollars are vital to help us increase the number of criminal investigators.

STRONGER EPA—SOUND SCIENCE

As a 27-year Agency veteran, one of my most solemn duties is to leave behind an EPA that is stronger than when I came in. As both a scientist and a long time manager—I am convinced that the only way that a technical, regulatory agency can meet its mission is by doing a lot of hard thinking to ensure that we keep our technical, legal and scientific base strong—and that we hone our management goals and measures to guide our efforts. This budget builds on the progress we've made by strengthening our workforce, sharpening our management and performance measurement and increasing our scientific knowledge.

First, as a scientist, I want to continue to provide strong support for research addressing our nation's and our world's critical and increasingly complex environmental issues. In fiscal year 9, I propose that EPA invest extra resources to understand two critical, growing areas: nanotechnology and computational toxicology.

For nanotechnology, I ask for an additional $4.5 million, for a total budget of $14.9 million to strengthen understanding of health and ecological implications arising from new routes of exposure and/or toxicities associated with exposure to these novel materials. We must identify and develop risk assessment methodologies for use by risk assessors, and evaluate the adequacy of current exposure assessment approaches. We will coordinate this research closely with the President's National Nanotechnology Initiative (NNI), which emphasizes the need for the government to understand which processes govern the environmental fate of nano-materials and what data are available or are needed for accurate nano-material risk assessment. This includes determining the release potential of nano-materials in the environment, researching the State of science for sampling and measuring nano-materials in environmental media. We must also study effects on human and ecological receptors and determine which technologies and practices minimize risk.

I also remain strongly committed to improving our computational toxicology work and ask for a $2.7 million increase—for a total budget of $14.9 million for this vital area. In fiscal year 9, we want to improve EPA's ability to more efficiently understand chemicals' toxicity through advanced modeling. One aspect of this work that is particularly important is that it can reduce the need to use animals for toxicity testing.

To help further these initiatives and ensure EPA's ability to attract and retain the highest caliber scientists, the budget proposes expanded special authority that will allow EPA to hire up to 40 scientists quickly and competitively.

STRONGER EPA—PERFORMANCE AND MANAGEMENT

As a manager, I want to make sure that we focus on something we can all take pride in—delivering results. And I'm proud to tell you about what we've accomplished to date in the planning and management fields. EPA:

• Scored "green" in the President's Management Agenda on all initiatives in the first quarter of fiscal year—one of only a few agencies to reach that goal, and
• Improved outcome measures to more directly link the results of our work and resources to environmental, on-the-ground, results.

We've addressed specific challenges as well. For the first time in 10 years we've succeeded in removing grants management as a "management challenge" or "material weakness". We've fixed problems identified by the Government Accountability Office (GAO) and the Office of Inspector General (OIG) and built a system of internal controls fully integrated into the grants management process that includes:

• Improved mandatory training,
• Heightened grants performance standards,
• Quarterly management close-out reviews,
• New post-award monitoring orders, and
• EPA's new grants management system.

Finally, as I conclude my tenure at EPA, I want to fulfill my responsibility to cultivate the next generation of EPA leaders. This budget includes funding for a Leadership and Professional Development rotation program to ensure that our talented GS–13, 14 and 15 employees can expand knowledge and expertise, develop leadership skills and enhance professional growth through short term rotational assignments. For more senior leadership, we propose to continue our SES mobility program to make sure that we populate the highest levels of the agency with proven managers.

CONCLUSION

Madam Chairman, when I look at the candidates who are getting the opportunity to broaden their skills in these programs, I am heartened that I'll be leaving the agency in good hands. I look forward to working with you to enact this budget.

I am confident that this budget gives them an excellent basis on which to build. I hope that together we can see prompt action on these budget proposals so that we can implement your funding decisions.

Thank you. I will be happy to respond to any questions you may have.

Senator BOXER. Thank you very much.

We are going to give 7 minutes to each Senator. Before my clock starts, I want to put into the record, since I always try to go toe to toe with my friend here, my dear friend, I have two particular clips, we are going to have some more. This one says, Fisheries, Climate Change Threatens Vital Fishing Grounds. That is from a new U.N. report. And Warming Tipping Points Could Thaw Greenland Ice Sheet and Kill the Amazon Rain Forest, Scientists Say. So that is just a sample. If Senator Inhofe puts in four articles, we will put in four articles and the debate will continue in a very dignified manner.

Let me say that I want to place into the record a letter that I sent, with Senator Inhofe, to the Budget Committee. Mr. Johnson, I just want you to know it reflects the comments that we made. All of the items that I detailed in my opening statement, the State Revolving Fund, the Superfund, which you were bragging about, which is under-funded, the brownfields, preventing and cleaning up leaking underground storage tanks, and other EPA programs. The only one we didn't agree on was the greenhouse gas one, surprise, surprise. So we didn't have that in there.

But outside of that, we have come together strongly on this. I am going to place that into the record at this time. We really do agree.

[The referenced material was not received in time of print.]

Senator BOXER. So Administrator Johnson, I am going to start off with budget questions, and then I am going to turn to the waiver. If my time runs out, we can all do second rounds, if we wish.

I want to enter into the record several EPA documents that we received after the Committee requested records concerning the Superfund program. These documents show that EPA has known for years about a shortfall in cleanup funding at the Nation's most heavily contaminated toxic waste sites. I think we have some charts here, which you won't be able to read, but a chart from 2002 says that there was an estimated shortfall. This is your Administration saying there was an estimated shortfall for fiscal years 2003 to 2005 of $1.1 billion in 2005. A document from 2003 states that 18 New Start projects at 16 sites will not be funded in Fiscal Year 2003. A chart from 2005 shows a projected cleanup backlog extending until 2017.

[The referenced material follows:]

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Superfund Remedial Program Initiatives and Disinvestments for FY 2008
(3/27/2006)

Since FY 2001, OSRTI has maintained a backlog of remedial construction projects that the program has not had sufficient resources to fund. To assure continued progress in the face of shrinking budgets, OSRTI has implemented numerous efforts to improve efficiency, to more carefully manage resources, and give highest priority to reducing human health risks at NPL sites. OSRTI will continue to strive to increase its efficiency and refine its priorities through FY 2006 and beyond. We will dedicate any resource savings to fund high priority remedial cleanup activities.

In recent years, OSRTI has implemented a number of major efforts to improve management of Superfund remedial resources. These include;

- Using the National Risk-based Priority Panel process to recommend priorities for projects to fund, and to recommend funding amounts for new construction
- Using NPL Prioritization Panel to prioritize NPL eligible sites for AA/OSWER's approval
- Pacing large-scale new and ongoing projects over multi-year periods to maximize current year resources for current year needs
- Aggressively deobligating old unliquidated resources and requiring Regions to contribute 75% of deobligated resources to a national pool for construction
- Actively managing four hundred interagency agreements the regions have assigned to the Corps of Engineers and aggressively deobligating old unliquidated resources from them
- Issuing site-specific funding plans for ongoing RA and LTRA projects based on regional work planning meetings
- Continuing dialogues with Regions regarding priorities for using Pipeline resources in light of significant Pipeline budget reductions
- Setting a goal to spend approved cleanup resources within two years of obligation

Other high priority initiatives, some of which are included in the 120 Day Study recommendations as well as OSRTI's Cost Management Strategy, are underway to improve cleanup program efficiency and achieve cost savings. These include:

- Increased use of CLP
- Superfund Workload Assessment project
- TRIAD
- CSTAG
- Updating Remedy Decisions
- Priority Site Remedy Reviews
- Third Party Reviews for Fund Lead Remedial Design
- Groundwater Cleanup Optimization
- National Remedy Review Board

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Many of the initiatives we are currently undertaking have received endorsement from the recommendations of the 120 Day Study, and we have incorporated these initiatives into our 120 Day Study Action plan. We continue to implement these activities and expect them to improve efficiencies and achieve cost savings. Some of the OSRTI-led initiatives are to:

- Determine adequacy of RCRA financial assurance to prevent RCRA regulated facilities from becoming part of the Superfund universe
- Evaluate Financial Assurance for non-RCRA Facilities
- Share work across the Regions
- Conduct benchmarking studies of regional performance
- Improve characterization of potential mega-sites prior to adding to NPL
- Encourage Regions to adopt the "One List" approach to help ensure that EPA and the State resources are used to achieve maximum benefits
- Reemphasize the need for value engineering
- Continue to assess State core funding needs given the Section 308 program and the original goal of the program to build State capacity
- Implement FASTAC approach to ensure cost-effective analytical support

Finally, OSRTI is also working to institute mechanisms to more closely track site-specific progress, documentation, and financial information that enhance our accountability and promote identification of cost-saving opportunities. Priorities include:

- Superfund Enterprise Management System (SEMS), which will modernize and integrate three priority systems:
  - SDMS
  - CERCLIS modernization
  - ICTS
- Superfund Efacts Financial Module
- Special Accounts Management Report
- Ongoing RA Funding Plan Tracker
- Unliquidated Obligation Reports

OSRTI has also made strategic decisions to disinvest in projects traditionally funded by HQ to respond to shrinking overall budgets as well as to provide additional support to regional remedial construction projects. These disinvestments include:

- Descoped ERT REAC contract
- Descoped and franchised ERT training program
- Descoped HRS stand alone contract
- Reduced ESAT and tapped Regional Pipeline resources to expand CLP
- Eliminated CCTS and SNAP data systems
- Deferred enhancements to ICTS
- Eliminated funding for Hazardous Substance Research Centers
- Reduced funding for ASTSWMO; eliminated funding for TASWER and NTEC

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Prepared 09/09/05 by BPEB

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Slides for Mike Cook

2007 OMB Hearing Preparation

09/09/05

History of Superfund Appropriations

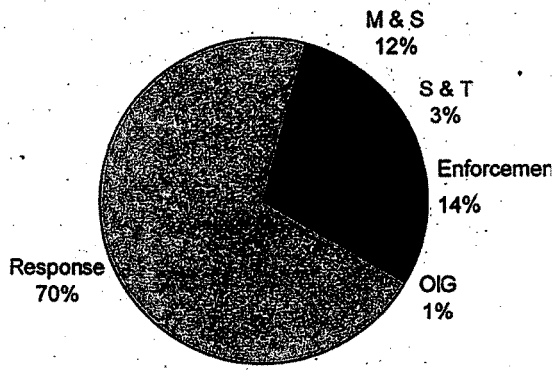
Superfund Appropriations FY 2001-2004

$ in millions	2001	2002	2003	2004
Enacted Appropriation in Current Year Dollars	$1,270	$1,270	$1,265	$1,258
Enacted Appropriation in Constant 2003 Dollars	$1,314	$1,291	$1,265	$1,242

Source: GAO report (GAO-04-787R); excludes FY 2002 Homeland Security supplemental

FY 2005 Superfund Appropriation by Function

$1,247.3 Million



Source: BAS Operating Plan OPP (v7)

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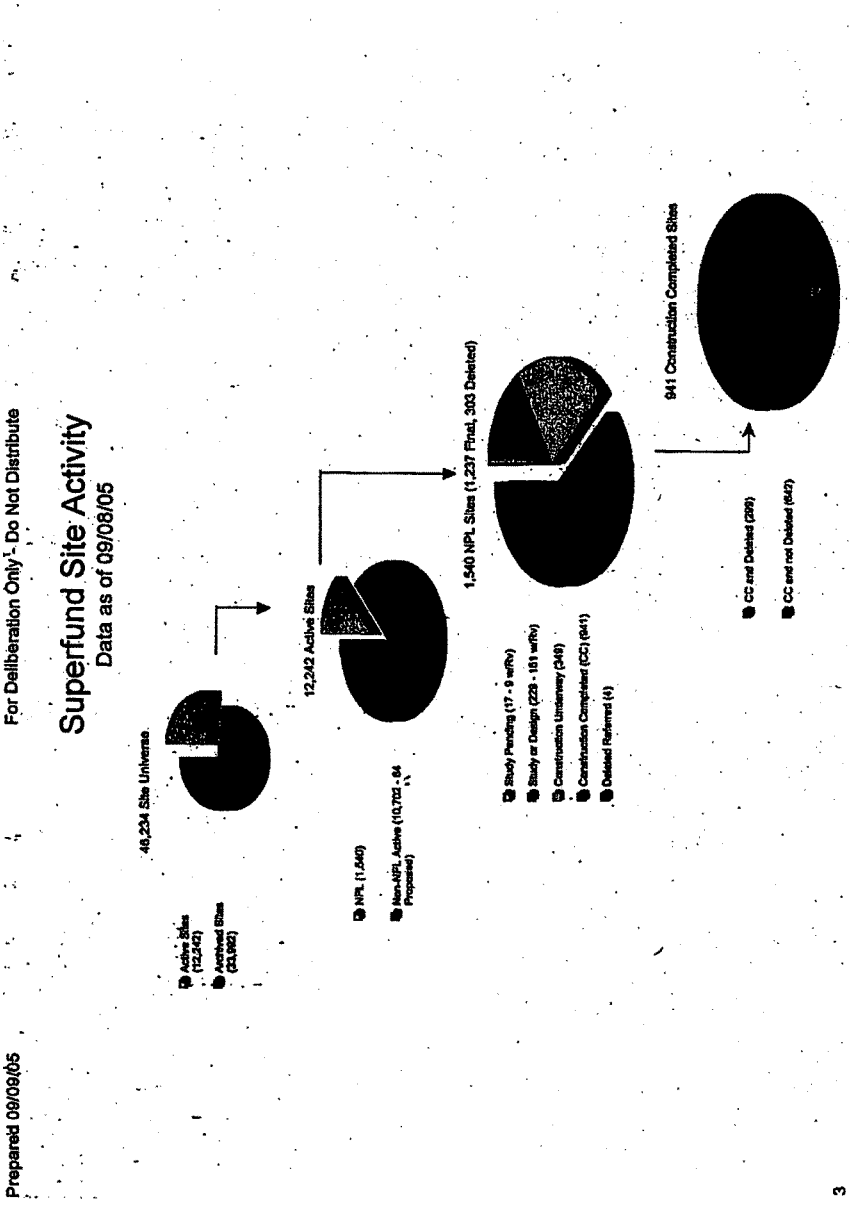

Superfund GPRA Measures at a Glance

Measure	FY02 Cumulative	FY03 Target	FY03 Actual	FY03 Cumulative	FY04 Target	FY04 Actual	FY04 Cumulative	FY05 Target	FY05 Actual	FY06 Target	FY07 Target	FY08 Target in Strategic Plan
Construction Complete	846 / 1,498 NPL sites (56%)	40	40	886 / 1,498 NPL sites (59%)	40	40	926 / 1,498 NPL sites (62%)	40		40	40	1,066
Final Site Assessment Decisions	37,869	475	917	38,586	500	548	39,134	500		500 400	500	~~41,068~~ 40,086
Human Exposures Under Control	1,189 / 1,495 HE NPL sites (80%)	10	28	1,227 / 1,493 HE NPL sites (82%) *Note baseline adjustment*	10	15	1,242 / 1,493 HE NPL sites (83%)	10		10	10	1,259
Ground Water Migration Under Control	772 / 1,275 GW NPL sites (61%)	10	54	826 / 1,275 GW NPL sites (65%)	10	18	875 / 1,308 GW NPL sites (67%) *Note baseline adjustment*	10		10	10	832
Final Remedy Selections	1,103 / 1,498 NPL sites (74%)	None	None	973 / 1,498 NPL sites (65%) *Note correction to cumulative baseline*	20	30	1,003 / 1,498 NPL sites (67%)	20		20	20	1,093

Superfund eFacts

Data as of: June 7, 2005

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678 CONSTRUCTION ACTIONS UNDERWAY AT 441 SITES (As of 9/30/2004)

Lead	FY 2002	FY 2003	FY 2004
Fund-Lead Actions (# of Sites)	156 (121)	151 (116)	149 (117)
RP-Lead Actions (# of Sites)	330 (257)	314 (245)	309 (239)
FF-Lead Actions (# of Sites)	228 (79)	226 (84)	220 (85)

Source: CERCLIS EOFY 2004; includes RA projects only, including projects started in the given year or continuing from prior years

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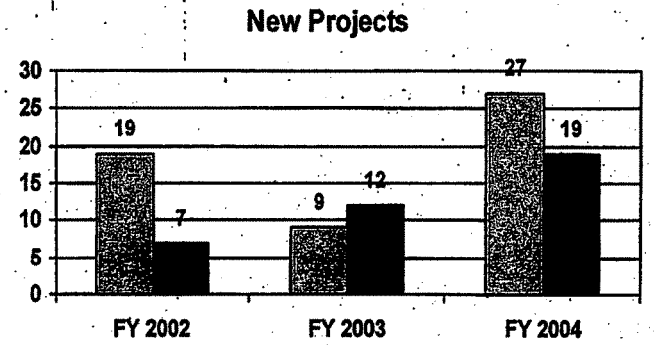
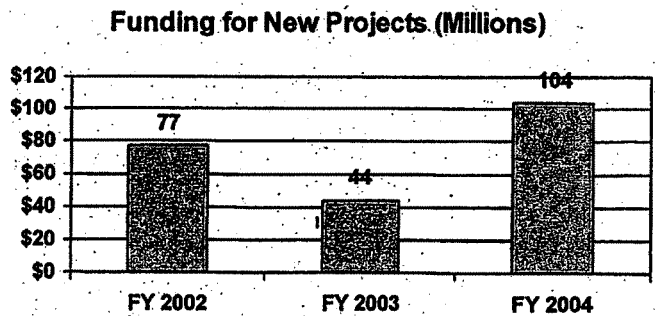
Backlog of Unfunded Construction Projects Remains





Source: CERCLIS and internal EPA data

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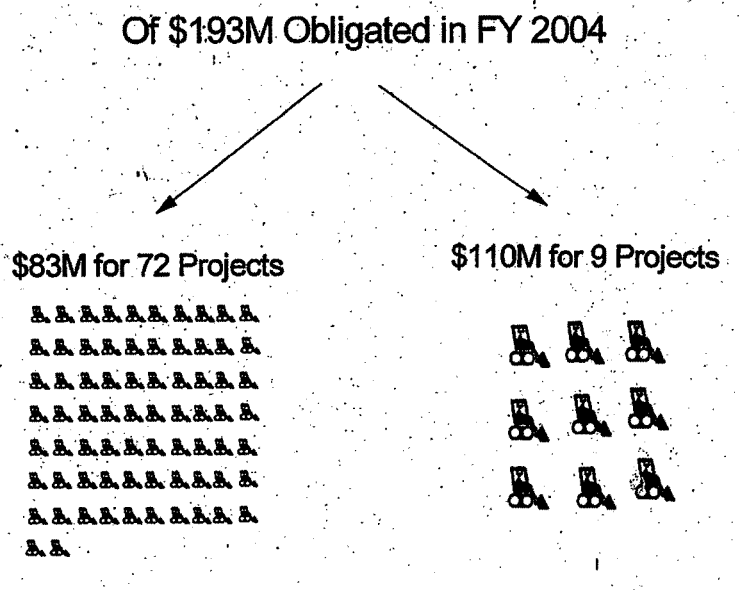
Over 50% of Budget For Ongoing Construction Is Dedicated to Large, Complex Projects



7 Source: CERCLIS EOFY 2004; includes only current year appropriated resources for ongoing construction projects

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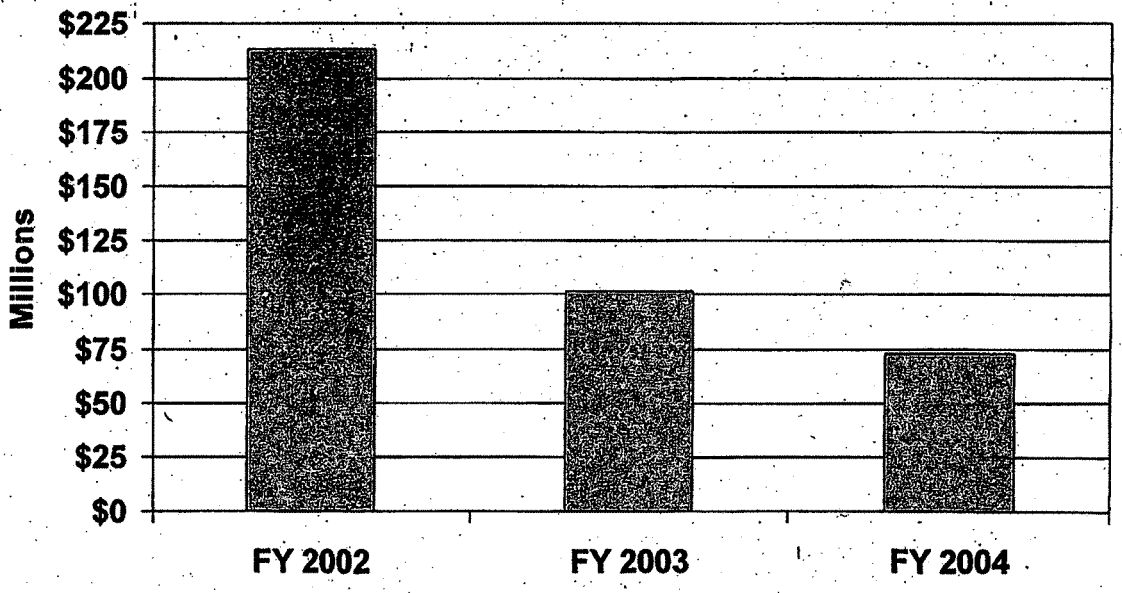
Past Successes in Achieving Deobligations Are Not Likely Sustainable



Source: Internal EPA data; includes all recertifications within the Response program

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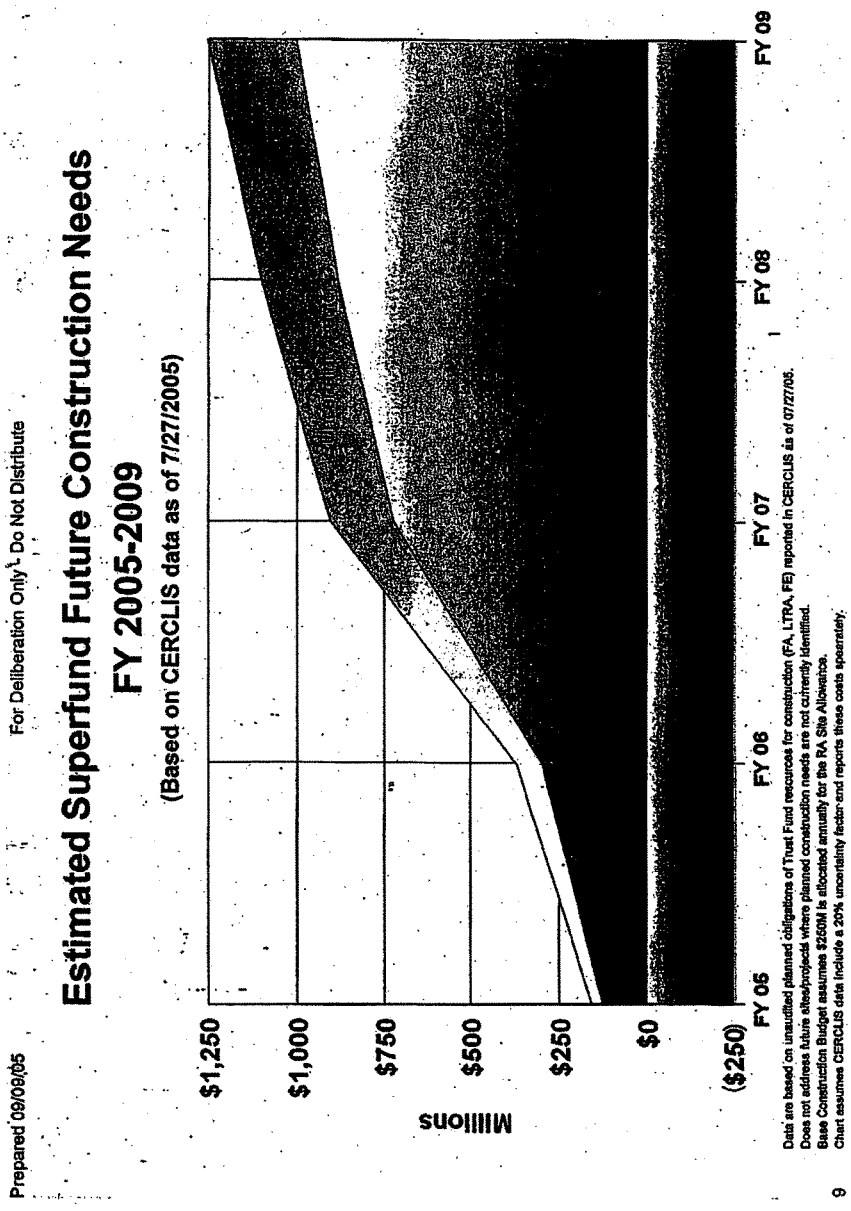

Estimated Superfund Appropriation Distributions for the Regional Superfund Remedial Program FY 2003-2007

($ in Millions)	FY 2003 Operating Plan	FY 2004 Operating Plan	FY 2005 Operating Plan	FY 2006 President's Request	FY 2007 OMB Submission
Superfund Budget By Function					
Response	$ 881.7	$ 886.2	$ 882.7	$ 898.2	$ 893.9
Management & Support	$ 134.1	$ 139.0	$ 143.7	$ 153.6	$ 165.2
Enforcement	$ 170.5	$ 174.7	$ 172.3	$ 182.4	$ 186.2
Science & Tech Transfer	$ 65.6	$ 44.3	$ 36.7	$ 30.6	$ 30.0
Inspector General	$ 12.7	$ 13.1	$ 12.9	$ 13.6	$ 13.6
Superfund Response Function Budget					
Regions	$ 705.6	$ 719.6	$ 714.2	$ 711.1	$ 707.5
OSRTI	$ 114.6	$ 114.3	$ 114.9	$ 118.5	$ 117.5
OSWER	$ 15.7	$ 9.2	$ 9.4	$ 10.0	$ 9.8
OFAs	$ 10.6	$ 10.6	$ 10.6	$ 9.7	$ 8.7
FFRRO	$ 4.4	$ 4.8	$ 4.7	$ 4.6	$ 4.6
OEPPR	$ 8.7	$ 26.4	$ 26.8	$ 43.0	$ 43.6
OAR	$ 2.2	$ 2.3	$ 2.0	$ 2.4	$ 2.3
Superfund Regional Response Function Budget by Program Project					
Homeland Security Program Site Allowance (SA)	$ 24.8	$ 5.0	$ 4.4	$ 5.0	$ 5.0
Remedial/Pipeline Program SAs	$ 397.0	$ 414.2	$ 402.8	$ 398.4	$ 386.8
Removal/Removal Support Program SAs	$ 139.8	$ 146.6	$ 146.6	$ 145.8	$ 148.5
Federal Facilities Program SA	$ 13.4	$ 13.8	$ 11.7	$ 13.0	$ 12.6
EPA Emergency Preparedness SA	$ -	$ -	$ 1.0	$ 0.1	$ 0.1
Homeland Security Program Salary/Expenses/WCF	$ 1.0	$ 6.4	$ 6.9	$ 7.8	$ 7.8
Remedial Program Salary/Expenses/WCF	$ 85.5	$ 88.2	$ 92.5	$ 93.8	$ 96.6
Removal Program Salary/Expenses/WCF	$ 27.5	$ 29.1	$ 30.7	$ 30.4	$ 31.7
Federal Facilities Program Salary/Expenses/WCF	$ 13.4	$ 14.0	$ 16.1	$ 14.0	$ 14.9
EPA Emergency Preparedness Salary/Expenses/WCF	$ 3.2	$ 3.3	$ 3.4	$ 3.8	$ 3.8
Superfund Regional Remedial Program/Project Budget				Est. OP	Est. OP
Pipeline Operations SA	$ 181.8	$ 155.0	$ 153.8	$ 153.8	$ 131.8
Remedial-Action SA	$ 227.8	$ 251.8	$ 242.0	$ 236.6	$ 242.0
Lab Support	$ 4.2	$ 4.3	$ 4.2	$ 4.2	$ 4.2
Other Response	$ 3.1	$ 3.1	$ 2.8	$ 2.8	$ 2.8
Payroll	$ 80.1	$ 82.6	$ 87.4	$ 90.6	$ 97.3
Travel	$ 2.7	$ 2.8	$ 2.7	$ 2.7	$ 2.7
WCF	$ 2.7	$ 2.8	$ 2.8	$ 2.8	$ 2.8
Superfund OSRTI Extramural Budget					
Homeland Security Program (72)			$ 2.7		
Removal Support Program (C6)			$ 13.9		
Remedial Program (D2)			$ 74.0		
OFAs (D3)			$ 4.1		

Notes:
FY 2003 Operating Plan (OCFO Final Decisions Document & OSWER Controls) adjusted to reflect investment in Removal Support
FY 2004 BAS Operating Plan (OPP v7 as of 5/5/2004) with OSWER post-OP internal corrections but not post-OP modifications
FY 2005 BAS Operating Plan (OPP v7 as of 3/7/2005); excludes OSWER post-OP internal m Excludes OSWER Post-OP internal adjustments
FY 2006 BAS President's Request (v2 as of 9/8/2005); includes assumed $2m shift from extramural to payroll
FY 2007 BAS OMB Request (FY 2007 OMB Request v1as of 9/8/2005); assumes continued shift of $2m from extramural to payroll from FY 2006, additional shift of $2m to payroll for FY 2007, FY 2007 rescission, $22m redirect from Pipeline to RA

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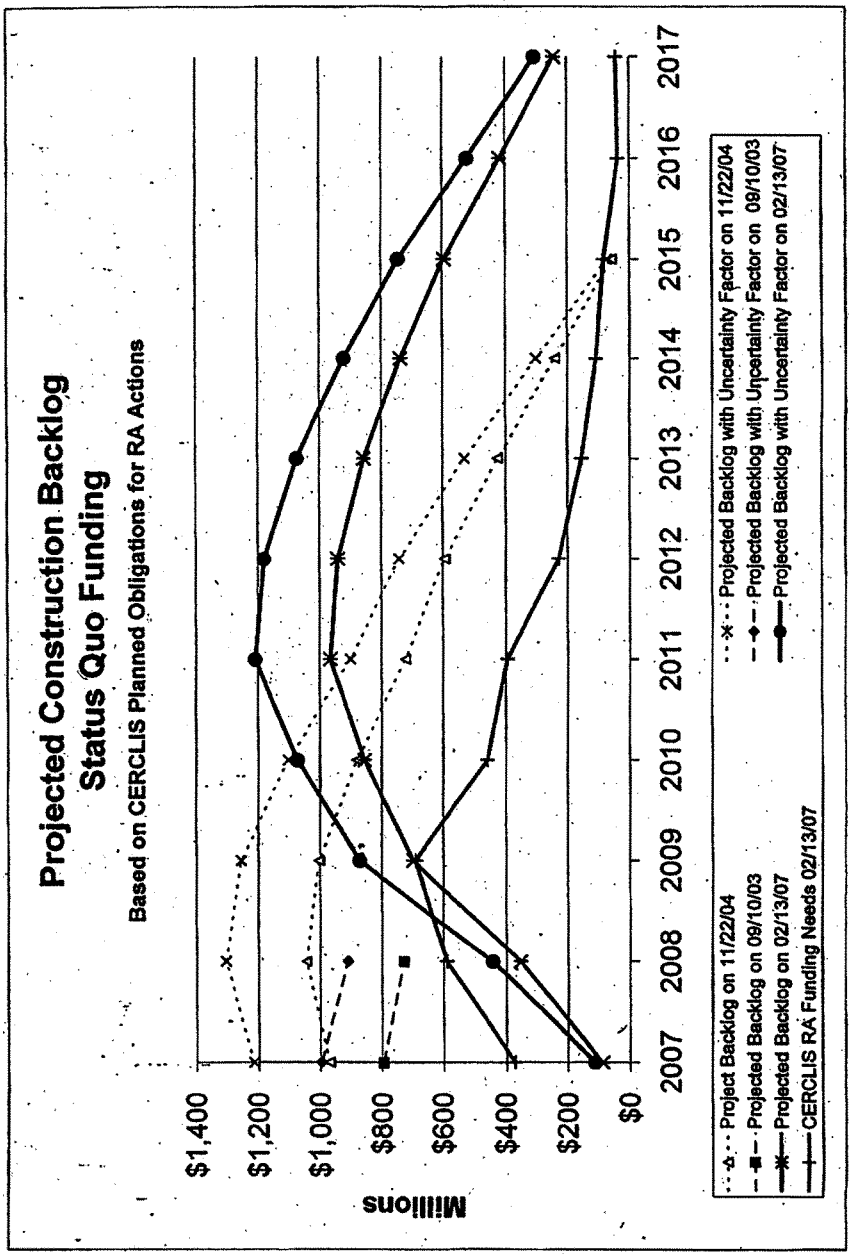

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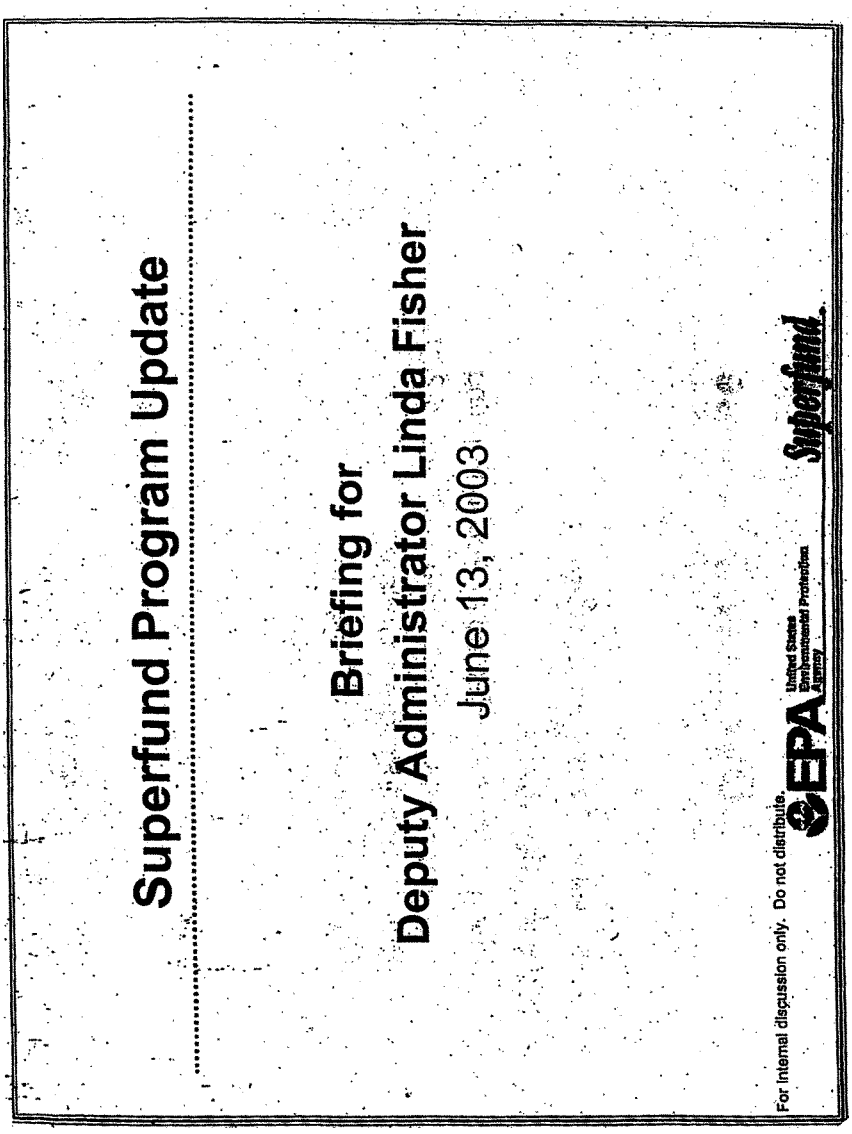

Overview/Purpose

- Summary of Program Progress
- Noteworthy Issues
  - Fiscal Year 2003 Remedial Action Funding
  - Looking Ahead to Fiscal Years 2004 and 2005
  - Enforcement Program Update
  - Communication Activities

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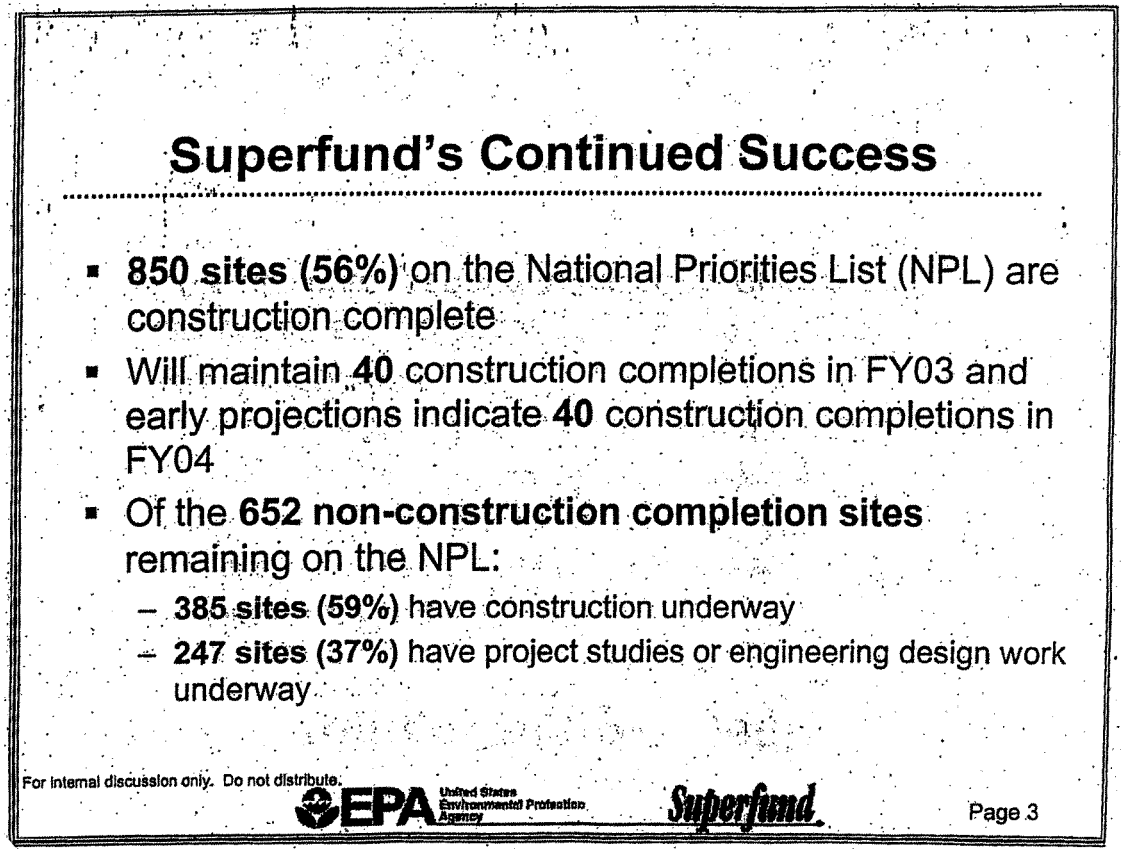

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Program Improvements

- One Cleanup Program
  - Emphasis on ensuring cleanup programs work together
  - Unified phased site assessments
  - Piloting an Institutional Controls tracking system
- Site-specific plans under development to complete work at pre-SARA sites
- Core Emergency Response program is strengthening EPA's ability to respond to incidents of national significance

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NACEPT Superfund Subcommittee

- Next meeting June 17 – 19, New Bedford, MA
- Draft report recommends EPA should:
  - Not consider financial concerns when placing sites on the NPL
  - Continue to consider transferring some Superfund responsibilities to other authorities
  - Consider breaking sites into smaller components for funding
  - Not include NPL-equivalent sites in program progress reports
  - Develop performance measures that encompass the entire scope of the Superfund program, including implementation of the Site Performance Profile concept

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Fiscal Year 2003 Remedial Action Funding Situation

Available Resources	Funding Request
RA Advice of Allowance* (AOA) = $227 million Projected deobligations = $45 - $50 million Total = $277 million (approximately)	Ongoing construction projects = $232 million Total cost to complete 35 new ranked projects = est. $325 million

*Includes $8 million Enforcement Fairness and $10 million shifted from the Pipeline AOA

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EPA United States Environmental Protection Agency

Superfund

Fiscal Year 2003 Remedial Action Funding Strategy

- "Ongoing" projects require most of the construction budget, leaving limited funding for "new start" projects
- Fund "ongoing" projects with reduced funding at 5 sites
  - Federal Creosote, New Bedford Harbor, Roebling Steel, Welsbach & General Gas Mantle, and Libby
- Fund "new start" projects with highest relative risks and FY 2003/2004 construction completion candidate sites
  - 11 new cleanup construction projects will be funded

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Fiscal Year 2003 Remedial Action Funding Strategy *(continued)*

- Of the projected $277 million, $180 million has already been distributed to the Regions for "ongoing" and "new start" projects
- 18 "new start" projects at 16 sites will not be funded in FY 2003 including 6 of the 7 projects not funded in FY 2002.
  - 7 to 8 ranked projects will not be ready to start in FY 2003

Summary FY2003 RA Funding Allocation
(in Millions)

Ongoing Long Term RAs	$32
Large ongoing RA projects	$90
Other ongoing RA projects	$110
Sub-Total	**$232**
High ranked new start projects	$26
Construction Completion Candidates	$19
Total	**$277**

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EPA United States Environmental Protection Agency Superfund

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Preparing for the Future

- Resource needs for construction will continue to grow in FY 2004 and 2005
- HQ and the Regions reviewing the scope and estimated costs of selected large, "ongoing" construction projects
- The reviews evaluate alternative funding approaches which allow work to continue within available resources
- While work will continue, site completion will take longer and costs will increase

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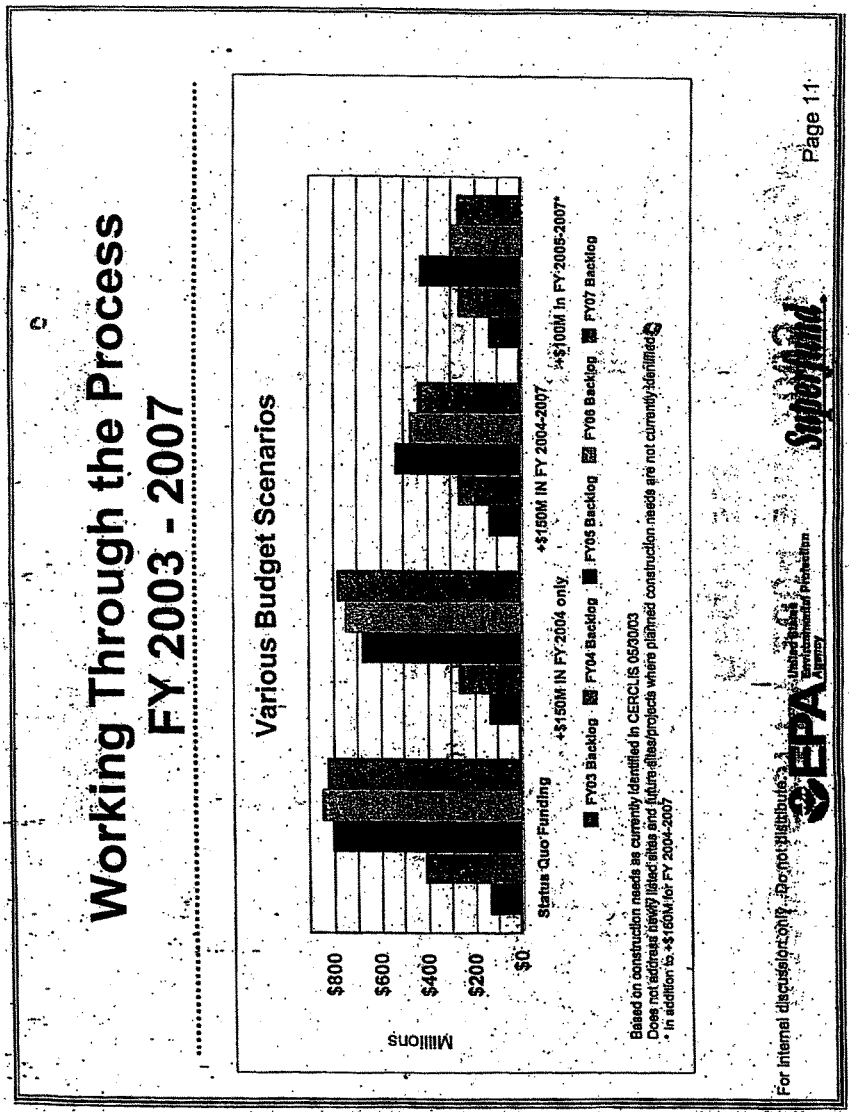

Analysis of FY 2004 and 2005 Budget Requests

- If enacted, the FY 2004 $150 million increase will allow the program to address limitations on new start construction (work begins at an additional 10 - 15 sites)
- OSWER will propose a second increase of $100 million above the FY 2004 request for FY 2005
- The combined increases, if approved, will allow Superfund to begin construction at both the high risk and construction completion candidate sites, plus clear the FY 2003 backlog of construction projects by FY 2005

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SUPERFUND PROGRAM MANAGEMENT
REGIONAL ADMINISTRATORS' MEETING
DECEMBER 10, 2002

Superfund Funding Process Creates Significant Management Challenges

- Pipeline Management Review indicates remedial action (RA) funding needs will not be met this year or in future years
- Regions have been asked to look further out in identifying funding needs, and break down costs incrementally
- Enforcement screening must take place early to ensure PRP options are exhausted prior to asking for RA funding

Despite Increased Data Demands, Data Quality Must be Ensured to the Extent Practicable

- Current Process involves regional submission of funding needs to HQ
- HQ and Regional panel evaluates and makes recommendations for funding
  - panel first looks at risk to human health/environment
  - other factors are considered include program concerns such as construction completion targets and environment justice
  - panel also evaluates which projects within a site are ready for remedial action
- Regional estimates tend to err towards overstating immediate funding needs
- While regions may be trying to be prudent in their analysis, i.e. not understating needs, the resulting funding decisions are subject to misinterpretations
  - Sites are provided to the panel by the regions that in fact are not ready for construction, and are put aside; these have been picked up by the press as "sites at which EPA is stopping funding."
  - Sites for which regions submit a higher-than-necessary cost request, that get funded at less than the requested level, have become "sites at which EPA is cutting funding."
  - Example:
    - In April, 33 sites were proposed by regions as ready for funding
    - by the end of the fiscal year, 21 did receive funding, 5 did not need funding and 7 did not receive funding.
- What should the regions need to do differently, given this scenario:
  - Better vet the sites being considered for remedial action funding

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  - they must be ready for construction
  - the funding request should only cover the project costs needed for that fiscal year
- Attempt accurate project planning for current and outyears, so future funding needs can be considered as well

Superfund Construction Workload Will Continue to Increase

- Total Regional request for cleanup construction funding is approximately $700M
  - Regional requests for projects already underway is approximately $240M
  - Projected needs for new start construction candidates is approximately $460M
- Without intervention the backlog of deferred work will continue to grow:

	FY 2003	FY 2004	FY 2005
RA Need by FY	$700 M	$630 M	$470 M
Shortfall Need		+470 M	+870 M
RA AOA	-230 M	-230 M	-230 M
Estimated Shortfall	$470 M	$870 M	$1,110 M

Actions are Underway to Balance the Superfund Pipeline

- Construction Completions will be Impacted by Budget Constraints
- OSWER has shifted funding emphasis to "re-balance" the Pipeline & increase funding for cleanup construction within the FY 2003 response budget
- The deobligations policy will be revised to increase funding for cleanup construction and to continue emphasis on deobligating unexpended funds
- OSWER will work with OCFO to review the allocation and use of Superfund resources ($1.3B) across the Agency to ensure funds are directed at the highest program priorities
- Continue to maximize cost savings and efficiencies in the program (e.g., LTRA/groundwater, sediments sites review, remedy review board)
- $150 M increase pending in House Appropriations Bill

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- Request $200 M increase for cleanup funding in FY 2004
- Increase emphasis on "Enforcement First" to maximize PRP funding for projects, particularly early PRP searches so as to increase PRP involvement at the RI/FS stage

Better Project Planning and Forecasting Will be Explored

- Congressional staff are seeking more detailed outyear analysis of costs for individual site projects
- CERCLIS can provide much of this where a remedy has been selected
- Where no remedy, issue is whether to look at a default amount
- Fear that specific site information may result in earmark appropriations for specific sites

Sites Being Considered for the National Priorities List (NPL) Must Undergo Stricter Scrutiny to Ensure they are Appropriate for Federal Funding

- Most NPL sites were listed in the early years of the program; 80% of all listings were in the first 10 years, 20% since; 19 final and 9 proposed in FY2002; one so far in FY2003
- Even the small number of recent listings helps to leverage many other cleanups; States say the threat of the NPL is essential to their own enforcement and voluntary cleanup programs
- Listing PRP-lead sites is critical for leverage in PRP negotiations and to back up the threat of treble damages. Continuing to list PRP-lead sites should be pursued as they do not raise the same funding implications.
- Will be requiring better documentation of consideration of other cleanup options
- Emphasize 1992 OSWER Directive: NPL priorities are most serious health threats
- Will involve regional executives in listing decisions
- OSWER is working with NACEPT (under One Cleanup Program) to develop a long-term listing policy, particularly for "mega sites"
- OSWER has asked regions to revise site assessment practices to better define NPL sites

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earlier and provide better information for redevelopment

Superfund Needs to Improve its Communications

- At the beginning of FY02, Regional remedial action funding requests exceeded the RA budget. At the same time, FY02 construction completion targets were lower than previous years.
- Congressmen Dingell and Pallone requested EPA Inspector General (IG) report on site funding. This Report was a snapshot as of May 2002, and showed 33 sites were not being funded. In fact, some were not ready for funding, and others subsequently received funding.
- Nonetheless, there was negative national and local press about sites being unaddressed followed release of IG report.
- A Superfund Communication Strategy has been developed to communicate all the work Superfund is doing to clean up sites.
- Regions are continuing to publicize release of cleanup dollars, construction completions, and start of cleanup work (e.g., construction completion event at DuPont site in Delaware on September 26, 2002; Administrator attending Chemical Insecticide Corp. site in Edison, NJ Oct. 1 to announce funding decisions for sites in NJ; New Bedford Harbor funding decision.)
- Congressional offices are being notified as dollars are released for site cleanup.
- Regions should continue to look for opportunities for press events.

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Superfund Tax Reinstatement: Principles and Options
Draft - April 26, 2002 (OCFO additions)

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Issue **Internal Deliberative**

- The Administration may consider the issue of Superfund tax reinstatement within the context of its FY 2004 Budget Request.

- Legislation reinstating the tax has been introduced in Congress. Rep. Pallone (D-NJ) has introduced H.R. 4060. An amendment has been filed by Sen. Torricelli (D-NJ) to amend Senate energy legislation, however, no stand-alone Superfund tax reinstatement bill has been introduced. A recent press story described the amendment as reinstating the expired taxes with some reduction in the rate of the corporate environmental tax.

- An Administration proposal for the reinstatement of the tax could be linked to FY 2004 Superfund funding initiatives.

Guiding Principles

- Any tax, must at a minimum, support the polluter pays principle.

- The former Superfund taxes were last authorized more than a decade ago. As the program has matured, needs have changed (e.g., more complex mega-sites, greater need for orphan share/mixed funding, etc.) any new tax should be tailored to future programmatic needs (i.e., possibly develop a dedicated tax for mega sites only).

- Any new tax should provide for a predictable and reliable source of funding, particularly given RFF study findings and mega-site challenge. Replenishing the Superfund Trust Fund through the reinstatement of taxes could help ensure future funding for the program by providing an incentive for Congress to use the collected taxes for their intended purpose.

- Any tax should include a shut-off trigger, so more taxes aren't collected than needed, or are only collected at an amount necessary to meet annual Superfund appropriation needs.

- The Superfund program has entered into its third decade. New tax mechanisms may be more appropriate. New taxes should consider both a broad-based tax (i.e., hazardous waste-end tax or corporate tax) and a narrowly based tax (i.e., excise tax).

- Firms profiting from the use of hazardous substances or hazardous byproducts, should contribute to the cost of cleaning up these substances/byproducts through a broad based tax.

- A portion of a new tax (which provides a congressional budget PAYGO credit) should be made available for greater orphan share/mixed funding.

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- Taxes need not be linked to Superfund reform, especially if reform dilutes PRP cleanup that now generates approximately 70 percent of non-federal site cleanups.

FY 2004 Budget Implications **Internal Deliberative**

- Any Superfund initiative for FY 2004 could require an increase in funding over the $1.3 billion in the FY 2002 and FY 2003 budgets. A proposal to reinstate taxes could be used to promote new initiatives, both within the Administration, and with Congress.

Options Under Guiding Principles

- Option 1 - Do not propose any changes at this time. Do not propose reinstatement of Superfund taxes.

Pros	Cons
- Funding for program is maintained through annual appropriations. - Taxes are not increased to directly pay for program.	- No dedicated tax is established.

- Option 2 - Reinstate the Expired Taxes so that revenue returns to levels above $1 billion (Pre-1995 levels)

Pros	Cons
- Maintains funding of the program through industry, not general taxpayers. - Returns to traditional source of funding.	- Changes in tax code (Alternative Minimum Tax repeal) make exact reinstatement of taxes impossible. - More total revenue could be generated than needed.

- Option 3 - Modify Original Tax (e.g., types and/or number companies taxed), raise enough revenue for a new funding percentage, for example a 50/50 trust fund/general fund split.

Pros	Cons
- Modifications in types/number of companies taxed could take into account changing nature of SF sites. - Requires less tax revenue.	- The 50/50 split (used in FY 2000, 2001 and 2002) shifts burden to general taxpayer as compared to original tax, which was 85/15 split.

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Internal Deliberative

- Option 4 - Special Purpose Tax (e.g., mega-sites, increase completions, remedy failures, teenager sites, combination of these)

Pros	Cons
- Could link the tax to results, e.g., accelerated cleanup of mega-sites. - Targeted, smaller tax more viable for FY 2004.	- Difficult to allocate trust fund for one set of activities and general revenues for another set of activities. - Mega-sites may be disproportionately industry specific; tax burden may not be manageable for narrow industry sectors.

Option 5 - Hazardous Waste End Tax

Pros	Cons
- Strong polluter pays message. - Tax creates incentives to reduce hazardous waste.	- Focus on too narrow an industry sector may result in disproportionate or too high a tax burden. - May not be reliable source of funding because revenues diminish as waste is reduced. - Focuses tax on industries that generate hazardous waste that may currently dispose of this waste in a responsible manner

Additional Background

- SF Trust Fund originally financed 85% SF tax, 15% general revenue (from 1992 to 1998 the general fund provided $250 million). 1980 passage of CERCLA imposed excise taxes on petroleum and certain chemicals. A corporate environmental tax based on a percentage of a corporation's alternative minimum taxable income was added to the excise taxes in the 1986 SARA amendments to CERCLA. 1991 Omnibus Budget legislation extended taxes.
- Taxes Expired December 1995. H.R. 4060 reinstates the expired excise taxes and corporate environmental tax. (The bill does not address the repealed AMT).
- Projected unappropriated Fund Balance as reflected in the FY 2003 budget appendix is $28 million by the end of FY 2003.
- Without a Superfund Tax, nearly all of the Superfund program appropriation in FY 2004 will be funded from general revenue. However, approximately 70 percent of non-federal Superfund sites will continue to be cleaned up by PRPs.

- The petroleum industry has, since 1980, paid disproportional share of excise taxes in consideration of a statutory petroleum exclusion.
- In its last year (1995) tax generated $612M from corporate environmental tax (14,527 companies), $576M from crude oil & petroleum excise (443 companies) and $291M chemical excise (702 companies).
- Other sources of revenue have been interest on Trust Fund principal balance and cost recoveries.

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Superfund Performance:

Why Construction Completions Have Declined and What We Are Going to Do about It

Briefing for Administrator Whitman
April 11, 2002

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Why We Are Here

- We will explain why the FY 2001 construction completion achievements were lower than expected, and why we don't expect near-term improvements in the pace of completions
- We will describe several strategies we have underway to improve resource management and report program progress, including:
  - Using NACEPT to consider the long-term role of Superfund
  - Developing a FY 2004 budget plan to address our backlog of unfunded needs
  - Conducting a pipeline management review to prioritize and allocate resources for maximum benefits
  - Designing new indicators of program achievement to complement construction completions
- We would like your reactions to the strategies we are developing and the direction we are taking

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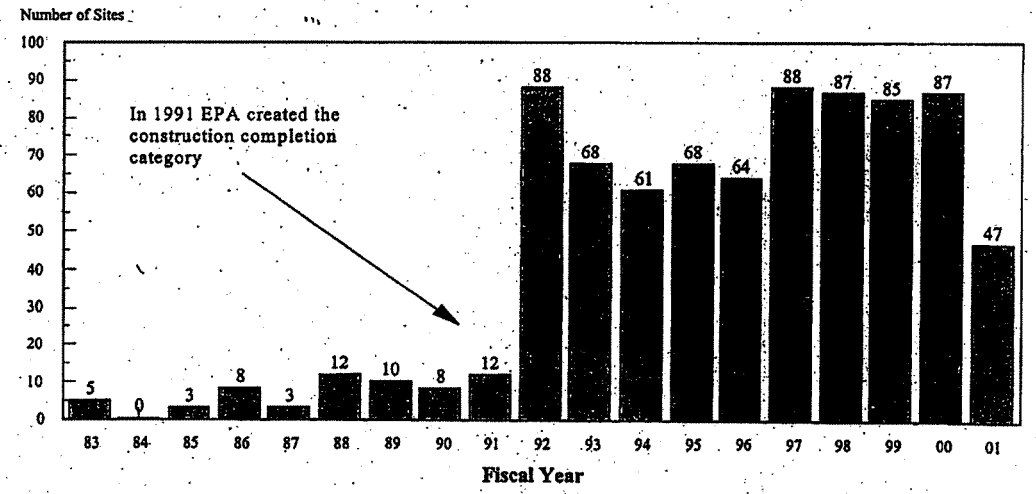
Construction Completion Achievements

- The Superfund program's key measure of accomplishment has been construction completions
- By 2000, we knew we couldn't sustain the pace of previous years' performance
- For FY 2001, we set a higher than achievable goal to encourage maximum accomplishment, but did not meet our goal



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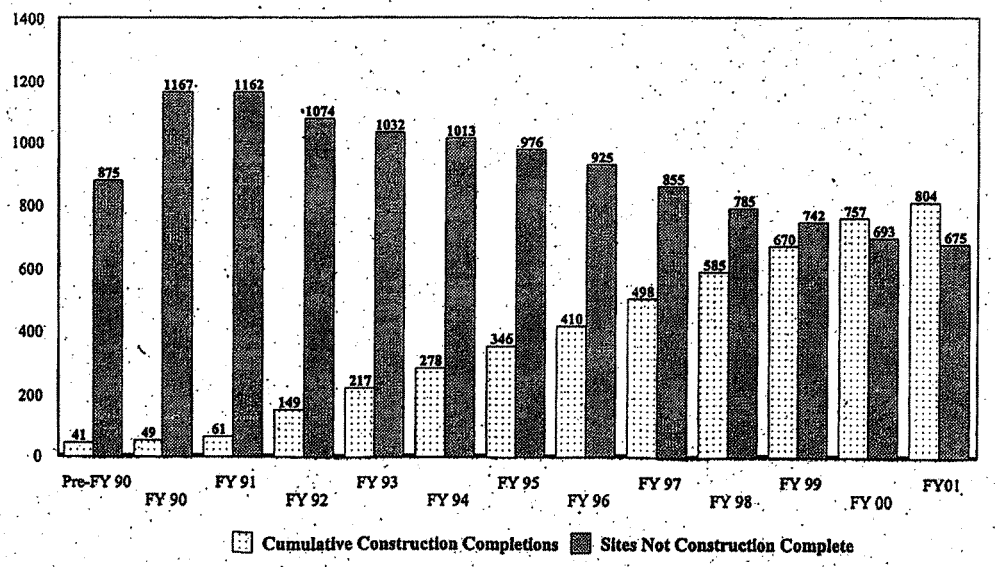
The Universe of Construction Completion Candidates Has Become Smaller

- In 1992, 12% of the NPL was complete; now more than 54% is construction complete
- More than 20% of the sites remaining on the NPL were added since 1995 and are unlikely near-term construction completion candidates



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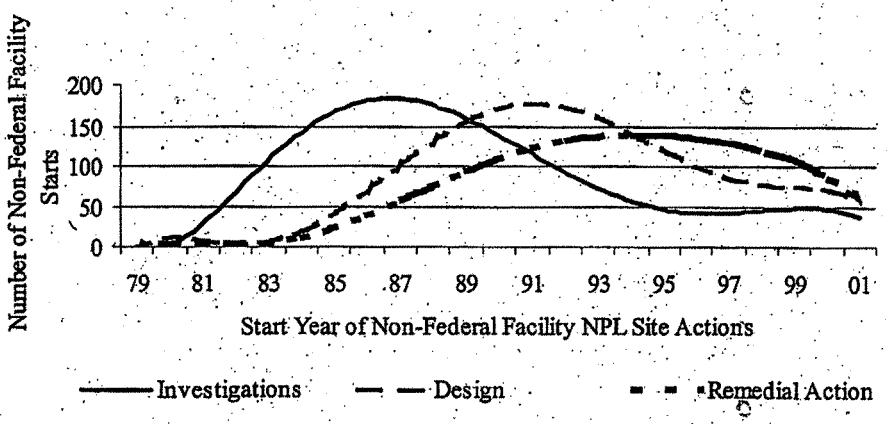
The Historical Pattern of Superfund Activity Predicts The Downturn in Completions

- 80% of Superfund sites were added to the NPL by 1990
- Peaks in the successive work phases (investigations, design, remedial action) have followed Superfund's NPL listing history
- The surge in construction completions in the mid to late 1990s follows the surge in remedial action start activity during the early to mid 1990s



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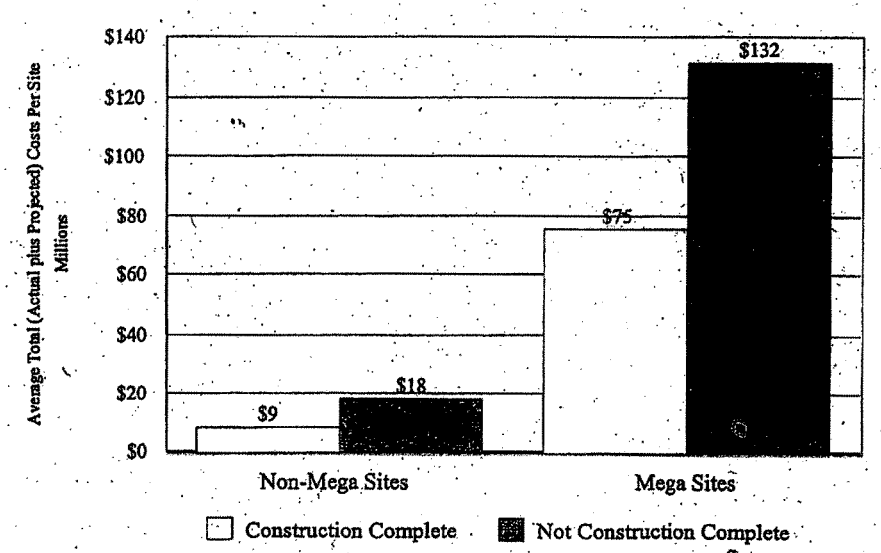
earlier and provide better information for redevelopment

Superfund Needs to Improve its Communications

- At the beginning of FY02, Regional remedial action funding requests exceeded the RA budget. At the same time, FY02 construction completion targets were lower than previous years.
- Congressmen Dingell and Pallone requested EPA Inspector General (IG) report on site funding. This Report was a snapshot as of May 2002, and showed 33 sites were not being funded. In fact, some were not ready for funding, and others subsequently received funding.
- Nonetheless, there was negative national and local press about sites being unaddressed followed release of IG report.
- A Superfund Communication Strategy has been developed to communicate all the work Superfund is doing to clean up sites.
- Regions are continuing to publicize release of cleanup dollars, construction completions, and start of cleanup work (e.g., construction completion event at DuPont site in Delaware on September 26, 2002; Administrator attending Chemical Insecticide Corp. site in Edison, NJ Oct. 1 to announce funding decisions for sites in NJ; New Bedford Harbor funding decision.)
- Congressional offices are being notified as dollars are released for site cleanup.
- Regions should continue to look for opportunities for press events.

Remaining Sites Will Cost More
(another indicator of complexity)

- The average projected cost of cleanup per current non-federal facility Fund-lead NPL site is 75% to 100% greater than the cost for comparable construction complete sites



Average Actual and Projected Costs for Non-Federal Facility Fund Lead NPL Sites

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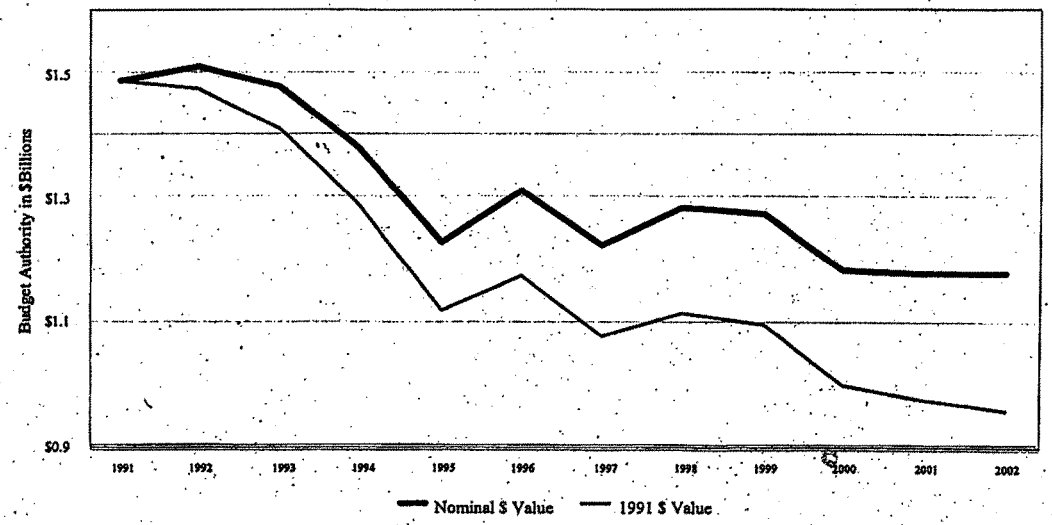
Annual Superfund Appropriations Have Been Declining

- Congressional appropriations for Superfund have generally declined since 1991
- The purchasing power of the program has declined by an additional 18.7% since 1991



Budget Authority excludes Brownfields, and NIEHS and ATSDR, which have received separate appropriations since 2001

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Funding Shortfalls Will Affect Future Site Work and Construction Completions

- Since construction completion accomplishments rely on prior year appropriations, the developing funding gap is a growing factor in the construction completion decline
- Projected appropriations do not meet projections of future needs
  - FY 2001 was the first year that resources affected the number of construction projects that we could start
  - Regional requests for FY 2002 resources were almost twice the available budget
  - Analysis of Resources For the Future data indicates that EPA's cumulative needs will be $1.9 billion greater than projected appropriations by 2009
- Future funding shortfalls in the response and enforcement programs will further:
  - Reduce the initiation and completion of fund-lead construction projects
  - Hinder the pursuit of Potentially Responsible Parties to conduct cleanups
  - Impede the Agency's ability to recover costs from Potentially Responsible Parties

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Can We Improve Construction Completions Performance in the Short Term?

- Increasing the pace of construction completions above current targets is unlikely
- Short-term funding decisions will significantly affect FY 2003 and FY 2004 completions
- Ground water issues will continue to affect future completions

Fiscal Year	Currently Projected Number of Construction Completions	Comments
2002	41	The FY 2002 GPRA target is 40
2003	31	9 additional sites may achieve construction completion with new or additional funding in FY 2002 or FY 2003
2004	38	18 additional sites may achieve construction completion with new or additional funding in FY 2002 or FY 2003

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What We Are Doing to Improve Construction Progress

- We are working with NACEPT to re-evaluate the long-term role of Superfund
- We are designing new indicators of Superfund performance to complement completions
- We are conducting the pipeline management review that will:
  - Redirect resources for new and existing construction projects based on a multi-year strategy toward construction progress, and away from risk reduction, and return to beneficial use
  - Improve national quality control of the current NPL listing decision-making process to ensure consistency in listing decisions
  - Further enhance the "enforcement first" approach to increase early Potentially Responsible Party (PRP) involvement and increase use of PRP-funded special accounts
  - Engage the States on policy changes that will enhance our ability to reach construction complete
- We are developing a FY 2004 budget plan to address the existing construction backlog

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We Have No Silver Bullets for Communicating Superfund Success

- We are considering new construction accomplishments measures:
  - Incremental site progress accomplishments (Operable Units, Actions, Source Control, Ground Water)
  - Actions at NPL-Equivalent sites
  - Site Deletions
- For FY 2002, we have new environmental results accomplishments:
  - Human exposure under control
  - Ground water contamination under control
- We are considering/developing additional environmental indicators:
  - Sites with action taken to protect human health
  - Number of people protected by action at site
  - Acres cleaned up
  - Redevelopment successes (sites available for use, jobs located on-site)

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Boxer. Now, you come here and you say you are so pleased with the Superfund program. Does your budget take care of all this backlog?

Mr. JOHNSON. Madam Chairman, indeed, the budget is $10.2 million over enacted. So we are very pleased——

Senator BOXER. How much of that is for homeland security, sir?

Mr. JOHNSON. Again, our ability to, or our need to train staff and make sure that they are prepared is obviously an important aspect for our Nation.

Senator BOXER. Well, sir, if I just may, I am asking you a question. My understanding is that that increase, a lot of that has to do with homeland security. Can your staff tell us what of that is for homeland security versus cleaning up these sites? We understand that there is a $5 million cut from cleaning up these sites. Are we correct on that?

Mr. JOHNSON. I will have to ask my staff for the specifics on that. Susan Bodine.

Ms. BODINE. Thank you, Senator Boxer.

The cleanup funding for our cleanup accounts in the Superfund program between the 2008 enacted and the 2009 President's budget request is level. The difference is $711,000, less than a million dollars in difference. That is for our——

Senator BOXER. So you are cutting how much?

Ms. BODINE. Seven hundred 11 thousand is the difference between the 2008 enacted cleanup funding and the——

Senator BOXER. So I am asking you, you are cutting the budget for the cleanup, we show $5 million, but let's say it is somewhere in between the two.

Ms. BODINE. May I explain that?

Senator BOXER. Let's say it is in between the two. I am asking you, is that budget enough to cure the shortfall that your own agency cited? Yes or no?

Ms. BODINE. We have had unfunded New Starts for a number of years, in 2004, 2005, 2006. In 2007, we were able, we eliminated the backlog of unfunded New Starts. And we were able to start all of the sites that were ready——

Senator BOXER. Is the cleanup fund which you now have stated is cut, and we have it, we will put it in the record, it is $4.5 million cut from the enacted budget——

Ms. BODINE. May I explain——

Senator BOXER. So we're talking about a cut from the enacted budget. It is a $4.958 million cut. So this is the Superfund Remedial program. Do you agree with that?

Ms. BODINE. The remedial funding is the, it is less than the remedial funding in the enacted.

Senator BOXER. That is what I am trying to get at.

Ms. BODINE. Because Congress cut the removal funding.

Senator BOXER. No, no, no.

Ms. BODINE. So when you look at all of our cleanup programs together, we have level funding for cleanup.

Senator BOXER. I am talking about cleaning up these sites.

Ms. BODINE. We cleanup these sites with removal funding, with——

Senator BOXER. Let me just say, because this is my first question and we have gone on a long time. The fact is, there is a $4.958 million cut in Superfund remedial. Those are the funds that are used to clean up these sites. So clearly, this budget, with all the hoopla about how great it is on Superfund, it is a problem. That is why Senator Inhofe and I have agreed and sent this letter. You are not going to clean up any backlog. Those millions of children who live within a few miles of the sites are going to continue to be exposed to great danger. Let's call it what it is.

Now, Administrator Johnson, the budget proposes to cut $134 million in funding from the Clean Water State Revolving Loan Fund program. This program prevents pollution from reducing water quality in our Nation's lakes. Do you know what EPA reported in terms of how many of our Nation's lakes and rivers are too polluted to allow such things as swimming or to support wildlife? Can you give us that percentage, how many, the percent of our Nation's lakes and rivers that are too polluted to swim in or support wildlife? Do you know the percentage?

Mr. JOHNSON. I don't know that percentage off the top of my head, Madam Chairman. But I do know——

Senator BOXER. Well, EPA numbers——

Mr. JOHNSON [continuing].—the needs survey that we did for both clean water as well as drinking water. I have those numbers.

Senator BOXER. Well, EPA, your own numbers show that 45 percent of our Nation's lakes and rivers are too polluted to allow such things as swimming. And then we see a cut in this program. This is not right for the American people, and that is why we are going to restore this in a bipartisan way.

Now, I have to say, in terms of greenhouse gas registry, I am going to leave that to Senator Klobuchar, because that is her initiative. But it is an outrage to hear all the talk about how you are supporting cutting greenhouse gases and then you just go ahead and cut the budget, $7 million to develop the clean automotive technology program, $3 million in cuts to research a future greenhouse gas rulemaking, $1 million to research carbon sequestration. Ridiculous cuts, when you are saying you really care about global warming.

Administrator Johnson, the budget proposes to cut more than $4 million from the Energy Star program. In 2005, Jeff Holmstead, then EPA Assistant Administrator for Air, was speaking about the Energy Star program when he said "Improved energy efficiency provides one of the greatest opportunities for cost-effective reduction in pollution and greenhouse gases and improvement in energy security." Do you agree with Mr. Holmstead's statement?

Mr. JOHNSON. I am a full supporter of the Energy Star program. I think it is an outstanding partnership program that is delivering results.

Senator BOXER. So why would you cut it by $4 million?

Mr. JOHNSON. Again, our budget meets our environmental goals while being responsible stewards of our taxpayer dollars.

Senator BOXER. Well, that surely is not something that any of us up here that I know of agree with, listening to all my colleagues' opening statements.

In my last question here, and then I am going to get to the waiver in my second round, the budget proposes to cut more than a million dollars in research that supports air quality standard setting. According to the American Lung Association, "Over 93 million Americans live in areas where they are exposed to unhealthy levels of particulate pollution." Do you believe the EPA should reduce its commitment to help protect the health of more than 90 million people in this Country?

Mr. JOHNSON. We are continuing to invest in important new research, particularly computational toxicology, for example, which is the additional dollars. Focus on that will help children, in particular. So again, we think our air research program is an important program. We are continuing to invest in air research. But we also have two areas that we think are higher priority, one of them is computational toxicology, the other one is nanotechnology.

Senator BOXER. Well, all I can say is, you say one thing and then you do another in your budget. It is not acceptable. The emperor has no clothes in this budget, no matter what words you put around it.

Senator INHOFE.

Senator INHOFE. Thank you, Madam Chairman.

Based on information that came out yesterday from the majority press briefing on the California waiver, it is my understanding that the EPA staff resources were used to write talking points for former Administrator Reilly to lobby you on the California waiver issue. If this is true, at a minimum it is highly improper use of the agency funds and possibly a violation of the Hatch Act. I would ask you if you are aware of this. Maybe you saw the article in this morning's Wall Street Journal. If so, is it proper and what do you intend to do?

Mr. JOHNSON. Senator Inhofe, I became aware of the piece of paper as part of, I was not aware of it when it was developed. I became aware of the paper as part of our response to Members of Congress in being open and transparent in the California waiver decision. Again, as Administrator, in my career, I have always encouraged our staff to provide me candid and open advice. I still believe that.

So I became aware of it as part of that process.

Senator INHOFE. When would that have been?

Mr. JOHNSON. I am not sure when, but it was during the document production phase of responding to Senator Boxer and Chairman Waxman.

Senator INHOFE. Let us know, refer back to us, if you would, on what you do find on this and what your intentions are.

Mr. JOHNSON. OK.

Senator INHOFE. As you are all aware, the oil and natural gas industry is extremely significant in Oklahoma. We are the second largest producer, in the State of Oklahoma, of natural gas. We have 120,000 wells in operation at the present time.

Recently, the EPA asked for comments on the ICR, that is the information collection request regarding the activities of coal-bed methane operators to reevaluate Clean Water Act guidelines. A survey published by the Federal Register requested detailed information regarding company ownership, cost, earnings, liabilities, ex-

penses. Now, I have this report here, I can't even tell you how many pages, but the requests for information, it says here, if no business confidentiality claim accompanies the information when it is received by the EPA, the EPA may make the information available to the public without further notice.

Now, what would keep a person from going ahead and making that confidential claim with each request that comes in? Is that something that could be a way out of this burdensome thing? Does each one have to be verified? Can it be just a blanket request?

Mr. JOHNSON. Senator, I don't know, I would have to get back to you for the record. Let me just turn to Ben Grumbles. Do you know the answer?

While Ben is coming to the table, again, as you point out, in part of the budget, we recognize that there are going to be a number of explorations and opportunities for additional energy sources. That is precisely why the President is asking for $14 million more to help us to staff up to make sure that as this exploration occurs, that it will be in a responsible way.

Senator INHOFE. We will let Ben answer that question.

Mr. GRUMBLES. Senator, we take the CBI provision seriously, as a way to ensure confidentiality. As we make these information collection requests for this particular, this detailed study, we will be working with the General Counsel's office to look at it very carefully.

I would say that, rather than going forward directly with a new national effluent guideline on coal-bed methane, we felt it was important to get as much information as we could first on the practices and the range of procedures and safeguards for clean water and ensure responsible coal-bed methane mining operations. We think that this, in addition to the safeguards for confidentiality, are going to give us the information so we can make an informed decision on whether or not a Federal clean water effluent guideline might be needed in the future.

Senator INHOFE. I would just ask that the EPA commit to work with the regulating community to narrow this request. This is just really pretty obscene here in some of the things that they are asking, confidential information.

In my opening statement, I talked about that we have the municipalities in my State of Oklahoma struggling with the arsenic rule, with the disinfection byproducts stage one rule. Now smaller systems who are purchasing water from alternative systems and have not had to test, treat or monitor their water will now have to comply. What are you doing to assist these communities in being able to comply with all this stuff?

Mr. JOHNSON. That is an important question, because we too are concerned about helping the small communities meet new standards, for example, in arsenic. In the case of arsenic, I have been working with the States and communities to adopt new practices and new technologies to help. In fact, our current estimate as of August last year is that 2,400 of the estimated 4,100 affected systems are now meeting the new standard. We have an ongoing research effort which is showing results. We have demonstrated projects in 37 sites that new treatment systems have been——

Senator INHOFE. What might be interesting for us to have, I don't think I am the only one at this table who has this problem. Maybe it is more severe in Oklahoma. But I would kind of like to see, since you have all that stuff, Mr. Administrator, if you could share with us, I would like to know if my State of Oklahoma is in a lot worse shape than some of the other States. I seem to be the only one voicing concerns all the time about this.

Mr. JOHNSON. I would be pleased to provide that information for the record and also the next steps of what we are doing on the disinfect byproducts as well.

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

Senator INHOFE. That would be good. I would appreciate that.

Now on the renewable fuel standards, the mandate, the fivefold expansion, the mandate despite mounting questions surrounding ethanol's effect on livestock, feed prices, that is what I hear most about in Oklahoma. Its economic sustainability, its transportation infrastructure needs, pollution and water usage are just—and many other issues. Aside from implementation of this new standard, how does the EPA consider these negative consumer impacts and guard against them? Are you really looking at these and trying to do something to address these problems?

Mr. JOHNSON. Yes. Obviously we want to, and in fact have already begun writing the regulation that would implement the new Energy Independence and Security Act provision for the renewable fuel standard. We have taken the first step. In fact, on February 14th we issued the requirement for 2008 renewable fuel standard. And second, we are beginning to work with all our stakeholders, the ag community, Department of Energy and others to devise a regulation that would meet the 36 billion gallon requirement that is in the Energy Independence and Security Act.

Recognizing that clearly, we all are concerned about the potential impact on food, food prices, that is why certainly new technologies like cellulosic ethanol and some of the new biofuel processes are going to be very important.

Mr. JOHNSON. I know they will be. I am thinking about the here and now. My time is expired, but it is gratifying that if you are looking at the effect this is having on the livestock feed, which translates into costs for all consumers all over America, then, I just want to be sure that is on your screen.

Mr. JOHNSON. We are certainly aware of the issue, sir. As we put together the regulation, we know that that is going to be an important consideration.

Senator INHOFE. Good, thank you.

Senator BOXER. Senator Lautenberg.

Senator LAUTENBERG. Mr. Johnson, are you satisfied with the budget as presented, that you can accomplish the goals that are set out for EPA?

Mr. JOHNSON. Yes, sir, I do support——

Senator LAUTENBERG. You are?

Mr. JOHNSON. I do support the President's budget.

Senator LAUTENBERG. Do you protest it at all? Do you object? Or do you just say, OK, OMB and fine, we will just cut wherever you want?

Mr. JOHNSON. My responsibility as Administrator is to present and work and develop a budget and work within the Administration.

Senator LAUTENBERG. So was this your budget development?

Mr. JOHNSON. This is my budget and I defend it.

Senator LAUTENBERG. Well, you have a way with words, Mr. Johnson, and we have great respect for you as a person, character, knowledge, et cetera. I don't know that your choice of words, you say in your statement, for Clean Water Revolving funds, we propose an investment in 2009 of $555 million to help meet the program's long-term target of $3.4 billion. Is that the same as last year?

Mr. JOHNSON. Last year's enacted budget is about $134 million less.

Senator LAUTENBERG. No, the budget last year.

Mr. JOHNSON. Last year was more.

Senator LAUTENBERG. Yes. It was substantially more, it was $689 million last year. And you are proposing $555 million this year. So you call it an investment. You don't say there is a decline, that there is less. Was money wasted last year? Is that what happened?

Mr. JOHNSON. No, sir. Again, there are I think several things to keep in mind. One is that as EPA over the years, certainly in my 27 years through multiple Administrations, we do not carry over congressionally directed programs, the so-called earmarks, as we present budgets. A second is, in the case of the Clean Water as well as Drinking Water State Revolving Loan funds, the needs are great. There is no question about that.

Senator LAUTENBERG. Would you consider them earmarks?

Mr. JOHNSON. And that again——

Senator LAUTENBERG. Would you consider that an earmark?

Mr. JOHNSON. Again, the needs are great. We have established, and certainly the President——

Senator LAUTENBERG. But it doesn't bother your conscience to ignore a decline there? Is it a good program?

Mr. JOHNSON. What I was getting to is what——

Senator LAUTENBERG. Can you get to it quickly, please?

Mr. JOHNSON [continuing].—set a goal and a goal for the Clean Water State Revolving Loan fund is to have it revolving at $3.4 billion a year. This budget helps us meet that goal. And that is the——

Senator LAUTENBERG. So we were in excess funding last year, if that is—you are satisfied with reaching the objective now?

Mr. JOHNSON. Again, higher than anticipated levels and enacted prior year budgets, yes, sir.

Senator LAUTENBERG. So it doesn't bother you at all?

Mr. JOHNSON. Again, we have a lot of priorities——

Senator LAUTENBERG. Yes or no, please.

Mr. JOHNSON. No, it doesn't bother me, because we are achieving what our long-term objectives are.

Senator LAUTENBERG. Mr. Johnson, if there was a fire in a building and an employee screamed out for help, would that be considered lobbying under the Hatch Act in a Federal building?

Mr. JOHNSON. I am not a Hatch Act expert, sir.

Senator LAUTENBERG. I just wanted to know whether that is considered lobbying.

How do you feel about global warming, climate change? Are the areas that are now snow-covered at record levels, does that challenge the fact that we are concerned about global warming and should do more to reduce it?

Mr. JOHNSON. As I have stated previously, and I continue to believe——

Senator LAUTENBERG. I'd like you to State it again.

Mr. JOHNSON. Global climate change is a serious problem.

Senator LAUTENBERG. OK. So the fact that there is snow in some areas doesn't really tell you that there is no concern about, or there is less concern about global warming?

Mr. JOHNSON. Again, there is a variety of, and many would describe it as global climate change, which means in some parts of the world there may be lower temperatures, in other parts of the world, there may be higher temperatures.

Senator LAUTENBERG. Right.

Mr. JOHNSON. Again, I believe global climate change is a serious problem.

Senator LAUTENBERG. OK, fine, thank you. So that change is what we are looking at. So some areas got lots of snow that hadn't had that kind of volume before, and there are other areas where there is a drought in place or other changes that change the total character of the weather in other areas. Climate change, some are getting snow, some are not getting enough water. Fair?

Mr. JOHNSON. That is the concern.

Senator LAUTENBERG. Yes. So that doesn't suggest that we don't have to worry about global warming or that it is a hoax or anything like that?

Mr. JOHNSON. I believe it is a serious issue.

Senator LAUTENBERG. I wanted to ask, we discussed briefly the questions that were submitted to you or the statements that were submitted to you by Bill Reilly, former Administrator. Your decision on the waiver, do you think that has hurt morale, credibility of the career employees at EPA?

Mr. JOHNSON. No, I don't. Our agency has been identified as one of the top among the top employers in the Federal Government.

Senator LAUTENBERG. What do you mean top, volume? Are you talking about numbers of people?

Mr. JOHNSON. No, top places to work——

Senator LAUTENBERG. Is that DHS?

Mr. JOHNSON. No, one of the best places to work in the Federal Government, EPA is one of them. My staff know that they have an open, and I cherish the ability to have candid comments to me. They also know that for a number of these decisions, the decision rests with me. Certainly the California waiver was my decision under the Clean Air Act and mine alone. I made the decision, I made it independently, I carefully considered all the comments and I made that decision.

Senator LAUTENBERG. Well, do you think that there's any disagreement within your senior staff people about your decision, your sole decision on the waiver?

Mr. JOHNSON. My experience for other decisions that I face is that I hear a range of opinions. I also am presented typically with a range of options.

Senator LAUTENBERG. You hear, but do you listen, then?

Mr. JOHNSON. Yes, and I make my decision.

Senator LAUTENBERG. You are quite content with things as they are, I take it, then?

Mr. JOHNSON. I am never content, because I always want to take steps to improve our agency, whether it be in the science area, whether it be in our personnel, human resources are or the activities——

Senator LAUTENBERG. You have been a professional in the field, Mr. Johnson, for a long time. And it surprises me, to say the least, that you haven't issued one word of protest about all these cuts, whether it is Superfund, whether it is the Energy program, whether it is the revolving fund, all of them substantially reduced in budget from previous years, which were not heavily supported at that time, that it doesn't seem to concern you that I almost feel like we're talking to the Chairman of Budget when our assignment really is to make this world of ours a healthier place for the people who inhabit it.

Thank you.

Senator BOXER. Thank you, Senator, very much.

We are going to go to Senator Voinovich and then Senator Baucus.

Senator VOINOVICH. Thank you, Madam Chairman.

Mr. Johnson, the Clean Water State Revolving Fund, your agency has identified almost $6.3 billion of improvements, this is in a letter I have just written to you, as necessary to address the CSO problems in over 100 communities in Ohio. city officials in Akron, Ohio proposed spending $426 million over 30 years to fix their city's CSO problems.

Here again, EPA is not stepping up to the plate to assist a community's substantial costs needed to mitigate the environmental health effects brought about by their system. I must tell you that most communities consider this to be an unfunded mandate. Many of my communities are facing significant economic woes with major employers leaving or threatening to leave because they have to take these costs into consideration in the manufacturing of their products. The ratepayers can't afford to pay them.

EPA requires an almost one size fits all implementation schedule for all wet weather combined sewer overflows related improvements. How is EPA actually incorporating affordability as a component of CSO agreements and has the agency made any adjustments in the process or timeframe for compliance in light of recent economic challenges in communities in Ohio and for that matter, across the Country?

I noticed you have this borrowing thing—we are going to borrow the money. I think back to when we really made a difference in terms of sewers, was back in the beginning of the 1970's, with the 75/25 program. And that was the major effort in this Country to really get something done.

I sometimes think to myself that the money that we have saved because the Federal Government got involved in this program in

terms of not having to borrow the money to pay for it—ultimately you pay for that. As I mentioned in my statement, what are you doing to look at the practical ramifications of these orders on these communities? What kind of flexibility are you willing to get involved with where communities can't afford the rate increases? The one in northeastern Ohio—think about this—over the next 20 years, every year, a 12 percent increase in their sewer rates. Hear that? Twelve percent.

Mr. JOHNSON. Senator, I agree that it is a very serious issue across the Nation. In fact, putting it in perspective, our clean water needs survey identified $202 billion of capital needs costs. Drinking water, $277 billion, these are approximate numbers. So given a $7.14 billion total budget, EPA's total budget is not going to solve the Nation's needs in drinking water or safe drinking water. So the State Revolving Loan funds are a portion, ratepayers are a portion, and a lot of other steps, including the steps we have taken for, and certainly encouraging you to consider the private activity or water enterprise bonds, because we think that is another mechanism, the steps we have taken in launching a WaterSense program, akin to——

Senator VOINOVICH. But the bottom line is that the contribution of the Federal Government to this "unfunded mandate" has been putrid, to say the least. And this budget that you submitted is an insult.

I don't know whether you sat down with the Director of OMB and he said, Brother Steve, here is the budget, you figure it out. Now, that may be the case. Senator Lautenberg was commenting, why aren't you speaking out? Well, you are working for the team, you keep your mouth shut. But the fact of the matter is that that is an insult to us, when we know what the needs are out there in this Country.

The other issue is the question of the staffing that you have at the Department, actual workers in 2007, 17,000 something, and enacted, 17,324, present budget 17,217. In January, we asked, I sent a letter to you, along with Congressman Boehner, to work at a transfer of the State of Ohio's National Pollution Discharge, NPDS program, for concentrated animal feeding operations, CAFO, from the Ohio EPA to the Department of Agriculture. ODA formally submitted it, as I mentioned, on January 5th, 2007. We haven't heard anything on that for over a year. Your Region 5 person said it takes 6 months.

The question I have is, do you have the number of people that you need to have to get the job done in your agency? And if you haven't, you should be speaking up. Because if you don't, then what you say to the people who work with you, we don't think very much of the job we are asking you to do because we are not giving you the budget to get the job done or the tools to get the job done.

While I am at it, we were after you to come back with the impact statement on the Lieberman-Warner bill. I want to know, when are we going to get that? And when you do your evaluation, are you going to give us some idea of how many people the EPA is going to have to hire and the quality of the applicants that you are going to have in order to implement this legislation?

Mr. JOHNSON. On your first question, we are working with the State on the transfer of the NPDS program. There were five major areas of concern that were identified. Then there were 27 other aspects dealing with statutory and regulatory authority. We are committed to working with the State and we want to make sure that it meets the mandate of the Clean Water Act. We are actively working, so yes, we do have enough staff. We are working through the issues to ensure that the State and we are in compliance with the Clean Water Act.

With regard to evaluating the piece of legislation, we are actively doing that. I expect within the next four to 6 weeks, perhaps even sooner than four to 6 weeks, that we will have that analysis. Of course, in that, there are a number of assumptions that one has to make, and then obviously we believe, I believe that it helps inform the debate by Members of Congress on legislation as to what approach or not what approach you want to consider.

Senator VOINOVICH. Are you going to have an estimate of the number of people that you will need to hire to implement the legislation?

Mr. JOHNSON. No, sir. We don't, for very piece of possible legislation, we don't do a staffing program for that. We certainly want to provide you all the information necessary to evaluate the options of a climate change legislation. Then once you have debated what it should be, we will be happy to evaluate what the staffing needs would be.

Senator VOINOVICH. I sure think that should be in the consideration when you are dealing with anything.

Senator BOXER. Thank you, Senator.

Senator BAUCUS.

Senator BAUCUS. Thank you, Madam Chairman.

Mr. Johnson, I earlier spoke to you about Libby, Montana. You have seen Libby, you have been there. Assistant Administrator Bodine has been there. You know the travesty, the destruction that W.R. Grace has caused to the people of Libby, Montana, and frankly, people across this Country, because those products are distributed across the Country. As you also know, this is not ordinary asbestos, so called chrysotile asbestos, this is tremulite asbestos, which is much, much worse, more pernicious, gets more deeply embedded in your lungs, harder to detect, and the death rate is much higher. Over 200 people died in Libby, Montana, it is a small town, and many, many more are suffering from asbestos-related diseases.

I pledged to a man named Les Scramstead, who I met about 8 years ago in the living room of a friend, who is dying from mesothelioma, that I would do all I could to bring justice back to the people of Libby, Montana. When I made that pledge, and he looked at me straight in the eye and said, Senator, I am going to be watching you, because many people have given him many promises. That was riveting. I want to do all I can to help Les and others.

Les died last month. He died of mesothelioma. And I have a photograph of Les on my desk in my office. I gave a copy to Ms. Bodine, she has a copy of it, I hope she has it on her desk. I think I even sent you a copy of that photograph, I hope it is on your desk.

My question of you is, can't you just find $2 million to clean up the golf course? We have $17 million dedicated to clean up Libby's 160 sites. You have $2 million in emergency funds going to clean up Flour Creek there in town, in emergency funds. I am just asking you to find $2 million to clean up the golf course. I am not going to harangue about all this, but I am just making a very urgent request. When you look at Les Scramstead, and when Ms. Bodine looks at Les Scramstead on her desk, I just hope it helps you find a way to find that $2 million.

Mr. JOHNSON. You are absolutely right, it is a tragic, tragic situation. Obviously, we are continuing to actively pursue W.R. Grace, but also in cleaning up.

I did want to also comment that I appreciate the opportunity to visit in the town hall meeting. It certainly leaves a lasting impression of the tragic situation there. I wanted to also comment to you that Secretary Leavitt and I are continuing to have discussions.

Senator BAUCUS. I appreciate that. Here is this guy, he is just a good soul. He worked up at the mine, he came off the mine, caked with asbestos dust. The company didn't tell him anything was wrong. He would go home, embrace his wife, his kids would jump into his lap. Good father. He is dead now. His wife is dying from asbestos diseases. Three of his kids are dying. That is what is happening at Libby.

I am just asking you to not let other kids die in Libby. Clean up that golf course. Clean up the golf course, this year. Two million dollars is all it is going to take. You can do it. It is the right thing to do. I am asking you to do it. And I expect a commitment from you today, if you can't give it to me today, I am going to have to keep asking you to give me that commitment. You are going to clean up the golf course as well as Flour Creek.

My time is limited——

Ms. BODINE. I would welcome a dialog with you about the relative risk. Because the highest priority that we have at Libby is looking after the residents.

Senator BAUCUS. I am asking for both. Ms. Bodine, I am not going to get into that. I am asking you to do it, and I want you to do it. The people of Libby want you to do it. I expect you to do it.

My next question has to do with why are you making such a deep cut in your IG spending? It is my understanding that the request is to cut the EPW Superfund Program, the Inspector General's oversight of the Superfund Program by about 40 percent from 2008 levels. If you look back a few years, that is about a 50 percent cut from enacted 2005. Frankly, it is the Inspector General that is enabling the American public to have some confidence, some reassurance that their taxpayer dollars are being well spent. In fact, it is the IG office that criticized the Environmental Protection Agency for failing to conduct a comprehensive asbestos toxicity assessment that would be necessary to determine the effectiveness of the Clean Air Program. That is, you needed some kind of a baseline, and you didn't do it. The IG found out that deficiency and mentioned that deficiency to EPA, finally they are doing it.

So I am appalled, frankly, that you are cutting the Superfund Program IG's office by at least, since 2004, by 50 percent. You are cutting it by 40 percent since 2008.

Mr. JOHNSON. I respect the independence of the IG's office. If Bill could come up.

Senator BAUCUS. Why the cut? I am asking you why the cut? Especially of such magnitude.

Mr. RODERICK. Sir, this represents a reduction in the amount of people we have working on Superfund. Before——

Senator BAUCUS. Why fewer people?

Mr. RODERICK. When I first got there in 2006, I found there were many more, in the summer of 2006, we had to come up with a bunch of work to do in Superfund to meet the requirement of spending that much money.

Senator BAUCUS. Well, let me tell you that your IG office, I compliment them in shining a glaring light on EPA for failure to do that baseline toxicity assessment test. I appreciate your doing that. You have to trust your gut sometimes. And when I look at my gut and ask my gut, what in the world is going on with EPA, I have a feeling a lot more could be going on, that is, it could be doing a much better job than it is. It is kind of slack in many areas. One of the areas is the golf course I am talking about right now. I just feel, frankly, that the American taxpayers are not getting some of their dollars worth, when enough dollars are going to the IG operation to make sure that the agency is doing its work.

I am asking for some way for us to restore that. I think we in the Congress were quite disappointed, frankly, that you cut the IG operation over 1 year by 40 percent. It doesn't sound right. Something doesn't sound right about that.

Final question, and we have talked about it many times here, and that is EPA's Clean Water and Drinking Water Gap Analysis. It was found that the Nation would face a $535 billion backlog by 2019 if you just spent at current levels. Huge backlog. The United States has to be competitive in the world. When you don't spend enough on clean water, wastewater and States match this, as you know, I guess around 20 percent, the United States is going to decline, it is going to deteriorate. Infrastructure is so, so important to the economic well-being of our Country, let alone the health and safety of our people.

Sure, there is a war in Iraq going on. Too much money is being spent in that war. I am just appalled, frankly, that the Administration and you, because you speak for the Administration here today, are not standing up for the American people who need more dollars spent on the clean water systems, wastewater systems, et cetera, even though your agency tells you you have to. I am just stunned, frankly, and very disappointed. Thank you.

Senator BOXER. Thank you, Senator.

Senator ISAKSON.

Senator ISAKSON. With regard to Senator Baucus' focus on asbestos, I might point out, this is not really a question, this Committee and the Senate passed Senator Murray's and my bill that banned asbestos in the United States last December, thanks to the help of the Chairman. Unfortunately, it is still bottled up in the committee in the House. I think it would be appropriate if both Senator Bau-

cus, because of your personal experience—this won't help the people in Libby, but it would certainly help prevent that from ever happening again somewhere else—might weigh in with the committee and Representative Dingell on the importance of getting that bill moving so we can finally do what we have tried to do for 38 years, and that is ban asbestos in this Country because of mesothelioma and all the other things that come along.

So it might help if you would do that. We would appreciate it.

My questions, MSMA. Are you canceling the registration?

Mr. JOHNSON. At this point, sir, we are continuing to look at it. As you correctly point out, we did propose to cancel. The concern is a concern that it can transform to a more toxic form of inorganic arsenic, which may get into the soil and may get into the water. For this particular use, it is subject to the Food Quality Protection Act, which does not allow us, and the Federal Food, Drug and Cosmetic Act, which does not allow us to take into consideration benefits. So we are right now looking at, is there a way to meet our statutory requirements under the Food Quality Protection Act and FFDCA.

At the same time, is there a way to provide this use. And we are very much in the throes of trying to sort that out. As you pointed out, Jim Gulliford, our Assistant Administrator, went out to your State to try to better understand. We are looking at that right now.

Senator ISAKSON. Is there a timetable on that decision?

Mr. JOHNSON. I will have to turn to Jim.

Mr. GULLIFORD. I don't know the exact timetable, but over the next 6 months.

Mr. JOHNSON. Within the next 6 months.

Senator ISAKSON. OK. I am not a scientist, I am not a physician, I am not an expert. I have looked into this issue and listened intently to the arguments. Based on some other things, I know arsenic is a naturally occurring element in the soil and can occur naturally. I was somewhat impressed by the questions that were raised by the cotton farmers as to challenging the scientific information that EPA was using in making that determination. I am not a scientist, I can't tell, but I do know this. There is not currently a substitute. The pervasive pigweed will destroy or greatly reduce the cotton production in the fields. Our farmers are getting ready to go to the fields in April and late March to plant. And if EPA is going to make a decision, at least it should be a decision that is beyond the current season coming up in terms of what they are going to do. But hopefully, we will make that consideration, making sure the scientific data is absolutely iron-clad, fool-proof and not just an opinion. Because this is real money, it is real livelihood. It is a significant part of the agri-business in our State. So hopefully take into consideration both the timing of it, vis-a-vis what these people are getting ready to risk by putting the seed into the ground, and second, make sure that the data is conclusive, I would appreciate both those considerations.

With regard to the Rural Drinking Water program that expires in June, will it expire?

Mr. JOHNSON. It so turns out I am actually meeting with the National Rural Water Association today. Depending on the schedule of the hearing, I suppose.

Senator ISAKSON. I will rush my questions up, then, I don't want you to miss that meeting. I think Senator Craig and some others made the comment about the resources that many of our small communities have to actually meet the complex demands of the Clean Water Act. This program has been essential in providing the technical assistance to help these communities comply. It is not a matter of people not wanting to comply. It is a matter of being able to understand and execute how to do it.

So I would encourage you to do everything you can to continue that program. This is of tremendous value to our rural communities in Georgia.

Mr. JOHNSON. Thank you.

Senator ISAKSON. Last question. I got a bunch of mail recently, after we passed the Energy Bill, about the mercury content of fluorescent bulbs. In the Energy Bill we passed, we are accelerating and encouraging the use of the fluorescent bulbs rather than the incandescent bulb. Does EPA have any number on what the content of mercury is in fluorescent bulbs, and a way to keep that from getting into landfills and subsequently, the water table?

Mr. JOHNSON. We do have information, and in fact, on our website, we do have recommended disposal procedures. Two things are happening. One is, we are continuing to learn more about proper handling and doing additional investigation to make sure that those are handled properly. Second is that we are certainly aware that the industry itself is looking for the next step, if you will, beyond mercury, which we think is good as well.

I should note that as you mentioned earlier, I am going to be in your State, and we are actually going to be taking out the millionth mercury auto switch out of an old automobile. That represents, the total that we believe is out there is on the order of approximately 75 tons of mercury that would have gotten into scrap metal, that would have gotten into the air that we would have had to deal with. Having a program that we have all been able to work together to just physically take it out in the beginning, as these old cars are scrapped, is a great collaborative achievement. I am looking forward to our visit and taking that millionth switch out.

Senator ISAKSON. The Cogan family are recyclers, Madam Chairman, in the State of Georgia and have been really proactive in this effort and have really contributed to the reduction, in cooperation with EPA, to the reduction of mercury going into the environment tremendously. We are looking forward to having you.

Mr. JOHNSON. Good. Thank you.

Senator BOXER. Thank you, Senator.

Senator KLOBUCHAR.

Senator KLOBUCHAR. Thank you, Madam Chair, and thank you, Administrator Johnson, for being here.

To try to make a segue from Senator Isakson's comments, I appreciate the work you have done with these auto switches. But if we can count in the EPA our millionth auto switch, I hope we can count our millionth ton of carbon. I am very concerned that there isn't funding in this budget, the President has not put funding in the budget for this carbon registry. I know the last time we had the hearing on the California waiver that Senator Carper and others, we talked to you about the progress made this carbon registry,

the fact that we don't really have the national registry going yet. At the same time, we have 24 States starting their own. Can you tell me what progress has been made?

Mr. JOHNSON. Yes, I would be happy to, Senator. As I mentioned at our last hearing, as you are all well aware, we had $3.5 million as part of our 2008 Omnibus Appropriation, and that we are using those moneys to establish a greenhouse gas registry. It is my intent that we will meet the schedule that is part of the Omnibus Appropriation, which is approximately to try to have a draft in the May timeframe, and then a final by next year in 2009.

This is 2-year money. We expect to use these moneys to actually establish a registry. I will note that the money that we do have for these next few years would not be sufficient for the operation of a registry. Certainly that is going to be a needed budget consideration for beyond 2009.

But for purposes of this and next, we intend to use that $3.5 million to create and do what the Omnibus Appropriation directed us to do: to create a greenhouse gas registry.

Senator KLOBUCHAR. And are you using third-party verification? Do you have any of the details of it?

Mr. JOHNSON. I know that we have begun to work with States. I know that there is California and seven other States that have or are developing greenhouse gas registries. Again, part of the encouragement by you all was to do that. I think that is good government and that is what we are doing.

The specifics of what that registry will look like, we are still in the early stages of putting together and assessing what all the States are doing and how we can bring this together. But we are doing it.

Senator KLOBUCHAR. Do you not believe that in EPA's mission that you could have started doing this yourself? Why would it take Congress to push you to get to this point, when courts and others have said that you do have the jurisdiction over trying to do something about these greenhouse gas emissions? And I guess my next question would be, why didn't the President put it into his budget to continue this funding?

Mr. JOHNSON. Let me, if I may, Senator, I want to get the dates correct. The draft rule within 9 months of enactment is actually September. Then the final rule, not later than 18 months, which is May, June 2009.

The second is that we believe that the $3.5 million for this and next are sufficient, based upon what we know, to develop the greenhouse gas registry.

Senator KLOBUCHAR. But there is no funding to actually enact it or keep it going.

Mr. JOHNSON. Again, we don't know what the registry will look like or what will be required to keep it going. So we think that it is prudent——

Senator KLOBUCHAR. To zero it out?

Mr. JOHNSON. No. We think that it is prudent to first of all, work our way through to establish it. Obviously we want to be able to establish in a way that meets the intent of Congress of having a mandatory registry. At the same time, we want to make sure that

we are doing it, and the maintenance of that will be done in the most cost-effective way.

At this point, we don't know what it is going to look like, so we don't know what the costs are. That is why I highlighted the issue for out-budget years of the need for the maintenance.

Senator KLOBUCHAR. OK. I would just point out that other countries have been able to do these registries and put it together. You have plenty of examples to look at. Again, I am concerned that it just keeps taking acts of Congress, and Senator Feinstein and Senator Boxer and others to push this funding, that your own agency won't come with requests for this funding, won't come saying that this is something we have to do to start moving on greenhouse gases.

Then at the same time, not only is the President talking about it in his State of the Union, but you are issuing these press releases. This one was, the first time I saw it, it is dated February 2d, where you actually praised the IPCC report and talked about how it is a great day for the scientific body of knowledge on climate change. And we know what that report says, it says that we can't keep waiting, that we have to act. Again, this budget is just not consistent with praising this report, which is telling the world that we have to act on greenhouses gases.

That really ties into what we were talking about last time with the California waiver, where we went through the standards, and I think you said the standard that applies here, or the reason that you denied the waiver was that California does not need such State standards to meet compelling and extraordinary conditions, I think we have gone through that. I am just wondering, given that you have now issued this press release praising the IPCC report, I go back to my argument before that this report contains the information that you need to grant California's waiver.

Mr. JOHNSON. First, the issue on the California waiver is not whether there is or isn't global climate change. And I am directed under Section 209, as we discussed, to look at the criteria. That is what I did. I evaluated it, I made the decision, I have committed to both Chairman Boxer and the Governor to have that documented completed by the end of this month, which means Friday. And I intend to meet that deadline.

Second is that we have staff who are active participants as part of the IPCC process. It is a very good process, a group of highly qualified scientists. And in fact, as you will see later this week, the scientific rationale for my decision, which I believe is the right decision on the California waiver, I understand that Members of Congress and others disagree with that decision. As I said, I will have my final decision out, the documentation out by the end of the week. Then we can continue the debate. But it is time to move on.

Senator KLOBUCHAR. We have been debating a long time, Administrator Johnson. You also said in this press release how you are proud of the Bush administration's unparalleled efforts. I had trouble saying that word, because I just don't agree with it. Unparalleled efforts to reduce global greenhouse gas emissions. I am thinking of what some of these other countries have done with greenhouse gases. I am thinking about what these States have done. I don't understand how you can say it is unparalleled when in fact

in this Country the States have been taking the lead instead of the Administration.

Mr. JOHNSON. Again, I would be happy to recite the statistics: $37 billion of investment, no other nation in the world has invested that kind of money in addressing both the science as well as technology, addressing it, and we——

Senator KLOBUCHAR. Where have the greenhouse gas emissions gone, reductions, vis-a-vis where they were in 1990?

Mr. JOHNSON. Again, when you look at economic growth and global climate change, we are making progress, and that is good.

Senator KLOBUCHAR. But what are the results of the reductions compared to what we are trying to do with our Lieberman-Warner bill, where we are saying by 2050 we will have the reductions to 70 percent reduction? I am just asking, you guys have been in now for 8 years. So what is the reduction?

Mr. JOHNSON. I would be happy to share with you the results that we have been tracking.

Senator KLOBUCHAR. It doesn't look to me that there have been reductions, it looks to me like we have been adding to the problem.

Thank you.

Senator BOXER. Thank you very much, Senator.

What we are going to do is have Senator Carper, then I am going to go, because I maybe need two more rounds. So I am going to go, then we are going to go to Senator Cardin, Senator Whitehouse and then as people come in.

So, Senator Carper, the floor is yours.

Senator CARPER. Just very briefly to followup on what Senator Klobuchar was saying at the end. As Governor of Delaware, we worked a whole lot on education reform, raising student achievement. And there was a time when we were intent, as we looked at progress in our schools, we judged, we tended to look at prior, like how much we are spending in our schools, the inputs. We weren't measuring the results we were getting in terms of the improvement in student achievement. I think a little bit that, I am reminded of that situation as we look at the subject the two of you were just discussing.

Let me hit a couple of positive notes to start off with. Again, thank you very much for joining us today and for your testimony.

I am pleased, again, with the level of funding that is in the President's budget for diesel emission reductions. I have a question that relates to that, but I am pleased that you have come in at, I think $49 million.

Someone raised the issue of EPA Star, the energy efficiency program. I think the mentioned a $4 million cut below current levels. That is not a huge cut, but it probably does a whole lot of good. I have seen it with my own eyes, including in our schools. We have a number of schools in our State who figured out, maybe it is smarter to be able to conserve energy in our schools and use that money to put in the classroom. Smaller class size, better teachers, better trained teachers, it actually works. So there is a lot of good going on in that program. I hope we can find that $4 million and put it back in.

As you know, early this month, I think it was the D.C. Circuit Court that vacated EPA's mercury rule and determined that EPA

should have regulated mercury as a hazardous substance and imposed, I think they didn't just remand the rule, I think they vacated the rule. Basically, sent it back and said, start all over again. For me, that is a welcome decision. I think for a number of my colleagues, it is too. I thought the initial rule was flawed when it was promulgated. I still believe it doesn't go far enough to protect public health.

I would just like to know, how does EPA plan to respond to the court's decision?

Mr. JOHNSON. At the moment, EPA and the Department of Justice are reviewing the opinion to decide what the next steps are. Obviously I am disappointed that the court has rolled back the first-ever regulation of mercury for coal-fired power plants. But at this point, we are still reviewing, we are reviewing the opinion with the Department of Justice to determine our next step.

I might point out that the other regulation that I did put in place, the Clean Air InterState Rule, which addresses SOx and NOx, we recognize that because of the use of technologies to address those, we also get some early reductions of mercury, which is obviously good.

Senator CARPER. Senator Alexander is not here ta this time, but he and I have worked for some time, along with our colleagues, on the multi-pollutant legislation involving power plants. Part of it was mercury, we called for a 90 percent reduction in mercury emissions by 2015. When we started calling for that, roughly five, 6 years ago, I don't know that we had the technology to do the job then. We have the technology today. It is there, it is doable. We have introduced legislation with some of our colleagues since the court decision to call for a 90 percent reduction in mercury emissions by 2012. My hope is that, I don't know if we are going to be able to do this during your watch, but at least we want to move in that direction in the months ahead.

I telegraphed earlier in my comments one of the questions I wanted to raise, and that is the National Ambient Air Quality Standards. You are going through a process for gathering a lot of input, some for strengthening the provisions and standards, others I think are pushing back saying no, maintain the status quo. Just give us an update, if you will, where do we stand in the process? Have you made your recommendations to OMB? Is the ball in their court? Where are we?

Mr. JOHNSON. My final decision will be issued and released on March 12th, which is the court-ordered deadline, on or before, I should say, before March 12th. I am fully aware in establishing a primary standard, the law requires me to establish a standard that is requisite to protect public health with an adequate margin of safety. As you noted, I think, in the last hearing, that I propose to lower the standard, because I did not feel that the current standard was requisite to protect public health with an adequate margin of safety. So we have now assessed all the comments and I am prepared to make my final decision, have my final decision announced on or before that date.

Senator CARPER. I look forward to March 12th, and I would urge you to follow your heart and your commitment to sound science,

and to protecting human health. We will see what March 12th brings.

Mr. JOHNSON. Thank you.

Senator CARPER. Last question I want to raise, as part of EPA's National Clean Diesel campaign, I think you all set a goal to retrofit some 11 million diesel engines that are in use today with clean diesel technology, I want to say by 2014, something like that. I think that is a laudable goal. How does the agency plan to achieve its 11 million by that target and what can we do here in this Committee and the Senate and the Congress to help?

Mr. JOHNSON. Certainly, in the budget request, as you point out, we have a request, the President is requesting $49.2 million for the diesel retrofit program, which we think is really important. We are certainly encouraging communities really around the Nation to take that step to either retrofit or replace or rebuild, a statistic that I think really characterizes the importance or the opportunity for environmental protection.

If 100 bulldozers were retrofitted with the new technology, those 100 bulldozers would eliminate 16 tons of pollution every year. So the opportunity for making a difference environmentally with diesel, either retrofitting or rebuilding or replacing them, is significant. We certainly are encouraging anyone and everyone to do all that they can to make that commitment, and certainly the President's budget also supports that.

Senator CARPER. The last thing I would like to mention, going back to mercury emissions, you have heard me say, we talked about this, I just think Americans have waited too long to be safer from unhealthy mercury emissions. I said earlier, cost-effective technology exists today that did not exist when I started working on this stuff six, 7 years ago.

I want to ask you a favor. I want to ask you and ask the agency to provide me and I would ask to my colleagues as well, we will say by April 1st, some people say that is April Fool's day, but we will go with it anyway, provide us by April 1st a formal plan on how the agency intends to proceed with the mercury rule. I would ask that and urge you, finally, I would urge you not to appeal the court's decision, to find a way to start over and to find a way that will do a better job of protecting us against harmful mercury pollution. But I would make that request.

Mr. JOHNSON. OK.

Senator CARPER. Thank you very much. Thank you, Madam Chair.

Senator BOXER. Thank you, Senator.

Senator CRAIG.

Senator CRAIG. Madam Chairman, thank you. I am glad Senator Voinovich is back with us, because the course of questions I would like to take you through, or at least one, Administrator Johnson, is unique because it appears by the dialog that you and Senator Voinovich had that the State of Ohio is attempting to take over, through their department of agriculture, the inspection of the large Confined Animal Feeding Operations.

EPA in Idaho is party to an MOU with the State for the State monitoring the environmental compliance of beef cattle and dairy

CAFOs. We have done that since 2000. Here is an interesting statistic.

Since 2000, Idaho has conducted over 3,400 inspections of beef cattle and dairy large operations. In the 5-years prior, Senator Voinovich, to the MOU, EPA had conducted 102 inspections. So it sounds like, or one would think that Idaho was being substantially more thorough than EPA had been in the past five. Despite this record, it appears now that EPA is critical of the State's effort and is going so far as to engage in duplicative enforcement actions.

So I guess my question is, if EPA's goal is compliance, can you tell me why the agency is, for example, increasing the enforcement budget while at the same time failing to honor existing successful cooperative agreements with States like Idaho?

Mr. JOHNSON. I know that we have been working very closely with the State of Idaho and a number of other States on the implementation of our CAFO and ultimately what will be the final regs, which I expect later this summer.

With regard to the enforcement piece of it, I will turn to Granta Nakayama, who is the Assistant Administrator for our Office of Compliance Assistance.

Mr. NAKAYAMA. I appreciate your question. I did travel out to Boise and met with Celia Gold, your Secretary of Agriculture, out there. I think there has been a renewal of the working relationship, frankly, between Region 10 and Idaho to work together.

Senator CRAIG. Good, because it was deteriorated.

Mr. NAKAYAMA. It was. And I think we are on a new track. I will say there are some authorities that we have under the Clean Water Act federally that are not present in the State's law and therefore, with particular types of facilities and particular types of violations, there really is no choice but to address them federally. Though in our first instance, we prefer the State to move forward and the State has moved forward.

I think they have made a lot of progress. We also met with the cattlemen out there, and I think there is a better understanding on both sides. I think there is a renewed spirit on the part of the industry to move into compliance, move forward and get a good final CAFO rule here later this year.

Senator CRAIG. Stay at the table, then, because you mentioned the regulations that are coming out. We hope they do come out. I said earlier in my opening comments, we want them, we need them, we need to get our industry moving toward full compliance and the State to have sound footing. However, considering the later than expected release of the new regs, can you tell me if EPA is considering pushing back the compliance date to give our livestock industry and the folks involved with it a reasonable period to make the necessary changes in our operations to bring them into compliance?

Mr. NAKAYAMA. I do work closely with our Office of Water. They are the lead office with respect to the regulations, so I am going to have to defer to Mr. Grumbles here.

Mr. GRUMBLES. Senator, Ben Grumbles, Office of Water.

Senator CRAIG. Yes, Ben.

Mr. GRUMBLES. Since March 2002, actually 2003, we have had the regulations out on the books. We have been working with the

cattle industry and livestock producers over the years to follow through on the basics and standards. We have gone back to the drawing board. The plan is to finalize the rule by July.

Earlier last year, we extended a compliance date to February 27th, 2009. Right now, our current intention is to get this rule finalized, the finishing touches on it, so that we do not have to move that compliance date. It is very important to us to work with the States and others to hear what needs they will have in order to assure compliance. But right now, that date was put there quite a while ago to let everyone on notice that that would be the compliance date.

So we will hear, take comment from folks as to the ability to meet that date. But that is an important date that we are going to be focusing on.

Senator CRAIG. We will obviously be focused on it, too, so that there is a cooperative effort as these large operations move forward to get into compliance. There is a timeline of that kind of investment in the capability of making it and having the resources to make it. All I guess I would say to you, Senator Voinovich, is be careful what one asks for.

Having said that, Madam Chairman, let me just pose this interesting problem we have. Probably last summer was the worst air quality summer my beautiful State of Idaho had. In the greater Boise valley, we were probably out of compliance more days, not because we hadn't strived to meet the standards, but because another Federal agency was mismanaging a very major resource in my State.

We burned 2 million acres of timberland in Idaho last year, and we achieved a summer of smoke as a result of it. I am only saying this for the record, Madam Chairman, because I find it really very fascinating. We have one Federal agency saying, here are the standards that you must comply with, and frankly, another Federal agency not dealing with their problem and polluting at a greater level than anyone in Idaho can possibly deal with.

I don't ask you to comment on it, Administrator Johnson. I just find that sometimes, we catch ourselves in catch–22s. And in the west, in certain areas of the west last summer, after probably one of our worst fire seasons in history and more to come, probably, there may be a day when we are going to have to ask for reasonable flexibility on the other side of the Federal equation. Thank you.

Senator BOXER. Thank you, Senator.

When Senator Lautenberg asked you if you were satisfied with the agency, you were very, I think, gave a good answer, you said no, we can always improve things. Well, I want to give you some unsolicited advice, I think it is good advice, of how you can improve things. First, you should go back to the President and be an advocate for your agency. And tell him, there is bipartisan support for almost every one of the programs that he has cut, give him the letter that I signed with Senator Inhofe on that. And basically say to the President, the EPA is about protecting the health of the American people, Mr. President, for goodness sakes, all the cuts to the EPA that are causing such angst in the Senate, they add up to $330 million. That is equal to 1 day's spending in Iraq, Mr. Presi-

dent. One day's spending in Iraq equals all the cuts that are causing all this angst.

So I think you could really improve morale around there, now you say morale is good. That is not the story I have.

I can also tell you want to improve the agency. Then say yes to Senator Baucus. Don't bring your bureaucrat up here to tell him about something about risk. He is asking for $2 million to save lives. Say yes. That is 10 minutes in Iraq. I think you should find it in your heart to do that.

And listen to your own employees. I ask unanimous consent to place into the record a letter from these employees.

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

Senator BOXER. They say, as per the waiver, we lament your decision. We lament it. It is perceived by many as having been politically motivated, and it has prompted congressional investigations and it has cast a negative light on our agency. To some degree, your actions have placed us in a negative light through guilt by association.

Grant the waiver, if you want to improve the agency, grant the waiver.

Now, I want to make a point. You are the first one to say no. Fifty years of granting waivers, and you are wasting taxpayer money on lawsuits, it is an outrage. You are not listening to the people in your agency, it is a complete outrage.

Now, I want the rest of those documents on behalf of this Committee. We have to do oversight. Where are the documents, the ones we are waiting for? You said, I asked you at the last hearing, "Will those documents include, as we were told, e-mails between you and your staff and the White House and the executive branch or the White House and the Vice President's office?" And I continue, "Your staff tells us that there were those documents. As far as you know, will you get all the information by February 15th, is that right?" You said, "That is my understanding, that is correct."

Well, the Committee doesn't have those e-mails. And I know you went to the White House. I have that. That I have. You went to the White House particularly for the California waiver conversation. And I want to know what happened at that meeting. I think it is the right of the people to understand who influenced your decision.

So I would like to ask you again, at any time, did you receive advice from the President, the Vice President, the White House staff, anyone over there in terms of the waiver? And I would like to have a yes or no decision and I would like to know when I am going to get those e-mails.

Mr. JOHNSON. As I said at the last hearing, it was my decision and my decision alone. It is my responsibility under the Clean Air Act and I made the decision. I made the decision as Administrator of the EPA.

With regard to the documents, as I said at the last oversight hearing, and I will quote from page 55 of the transcript, "I commit to provide you those documents as quickly as possible, according to the guidelines that our staff have discussed." These commitments and deadlines are best described in the January 18th letter which I would ask be placed in the record.

Senator BOXER. OK. Are you getting me, you said to me, I asked you for the e-mails between the White House, the Vice President and your agency. You committed to do it. Are you now telling me you will not produce those e-mails, or will you?

Mr. JOHNSON. No, I just merely quoted from the last hearing.

Senator BOXER. When will we have them? Let's stop quoting. I will stop quoting. New question: when will we get those e-mails?

Mr. JOHNSON. We are consulting with various parts of the executive branch about the documents that involve their interests as we speak.

Senator BOXER. Do you have an answer as to when I am going to get those e-mails? Those documents are not privileged.

Mr. JOHNSON. Again——

Senator BOXER. We have a right to have those documents. When can we get them?

Mr. JOHNSON. We are consulting with them about the ones that involve their interests and would be happy to provide you an update. We have been updating——

Senator BOXER. I don't want an update. I want the documents.

Mr. JOHNSON. As I said——

Senator BOXER. I want them on behalf of this Committee. We have to do our oversight and I want them on behalf of the people of California and the 19 other States that are involved. This is a big deal. You denied the first waiver ever under the Clean Air Act. I want the information. This is my job. That is why I am sent here. I can't do my job if I don't have the information.

So there is no answer now. We originally were told February 15th. Now we're getting a dance. Well, those documents will be subpoenaed. I assure you of that.

Now, you keep saying there were, you didn't deny, you denied the waiver because California didn't face compelling and extraordinary circumstances. Let's look at what your own people told you about that. This was redacted, we had to type it up, but we are going to put it into the record now.

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

Senator BOXER. I will just read a little bit.

This is your own staff: "California has submitted an extensive record concerning the impact of climatic conditions on California, including coastal resources and erosion, saltwater intrusion on delta areas, levee collapsing and flooding, decrease in winter snow pack, reducing spring and summer runoff from municipal and agricultural uses. California has submitted justifications based on impact on high ozone. EPA traditionally looks broadly at whether California conditions," and so on and so forth.

Congress wanted California to be afforded the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare. Now, that is your staff. You didn't listen to your staff. We are putting this into the record.

The fact of the matter is, you are forcing the State of California and 19 other States, which I might say for the record including more than half of the American people, more than half of the American people, that is who you are forcing to sue you.

Now, it isn't as if you have a great track record on lawsuits. Let's take a look at your track record on lawsuits. Sometimes I thank

God that we have the courts, given what you have done or tried to do. We can go to Massachusetts v. EPA, Supreme Court rejected EPA's argument that greenhouse gases are not air pollutants. We can go to New York v. EPA, EPA's interpretation that substantial plant modifications did not come within the scope of any physical change, would make sense only in a Humpty-Dumpty world. Humpty-Dumpty world, that is what you caused them to say.

New Jersey v. EPA, EPA rules seeking to reverse controls on mercury from power plants was unlawful on its face. EPA's explanation deploys the logic of the Queen of Hearts, substituting EPA's desires for the plain text of the section. Northeast Maryland Waste Disposal Authority v. EPA, D.C. Circuit, chastised EPA for taking an unlawful approach to emissions standards, based on precisely the rationale rejected previously by the same court in Maryland.

Mossville Environmental Action NOW v. EPA, EPA's effort, this is all the court quotes, from the courts. EPA's effort to exempt whole categories of toxic pollutants from regulations violated its clear statutory obligation to set emissions for each listed pollutant. Here is one from California. It says, portions of EPA smog rule unlawfully evaded the plain language of the Clean Air Act, which Congress purposely crafted to limit EPA's discretion. Sierra Club v. EPA, these are all in the last 2 years, if EPA disagrees with the Clean Air Act's requirements for setting emissions standards, it should take its concerns to Congress. If EPA disagrees with this Court's interpretation of the Clean Air Act, it should seek further review. In the meantime, it must obey the Clean Air Act as written by Congress and interpreted by the courts.

NRDC v. EPA, EPA incinerator rules violated the clear and unambiguous language of the statute. EPA acknowledges as much when it objects to a literal reading of the definition's language. And the last one I will cite, NRDC v. EPA, EPA's attempt to create a low-risk subcategory of manufacturing facilities exempted from Clean Air Act standards was an unlawful attempt to sidestep what Congress has plainly prohibited.

You have a rotten track record and the courts have upheld the law and protected the American people. Now you are starting a whole new brouhaha. And I want to say to you now, because you haven't made your decision yet, you are writing it, you are going to sign off on it in a couple of days, I am asking you to reconsider. Why are you putting half the people in the United States of America, A, at risk, because the pollution that we want to clean up can't be cleaned up until the court's suit is resolved, B, having them spend a fortune on these lawsuits when you have a horrible track record and C, when Senator Obama, Senator Clinton and Senator McCain said their administrations are going to sign this waiver?

So for all of those reasons, I ask you to reconsider. And I ask you to get us the materials you promised us the last time you were here. And I am just saying, Mr. Johnson, for me, as someone who got into politics, I got into them for three reasons. One of them was the environment. I am so appalled at the record that you have established here. Just reading the cursory opinions here, you see how you have gone against the laws that are supposed to protect the American people.

So I am simply asking you to reconsider your position on the waiver, restore some integrity to the EPA, stop us from having to expend all this money on lawsuits for something that you are going to be reversed on very, very quickly. I hope you will consider that.

Senator VOINOVICH.

Senator VOINOVICH. Madam Chairman, I think you took an extra 4 minutes. I don't expect to take 11, but I would like to have some more time, since you brought the subject up.

Senator BOXER. You got it.

Senator VOINOVICH. OK. The Chairman of the Committee is——

Senator BOXER. Let it be noted, everyone will have as much time as I took.

Senator VOINOVICH. The Chairman of the Committee made mention of the fact that this redacted information is going to be put in the record. Would anyone from your shop want to comment on what that does to your court case? It is just the kind of information that, from what I understand, should not be in the public record, it is redacted information. Would you like to comment on that, sir?

Mr. JOHNSON. Senator, thank you. It is true that a certain number of our documents contain confidential, deliberative attorney-client or attorney work product information. We would ordinarily assert a privilege in litigation. Obviously I and the Government needs the ability to defend its actions. In a spirit of transparency and a spirit of being top priority, I made the information available to the Committee so that you could see everything. And we have just as a note in the last 2 months, we have spent 2,000 hours of staff time assembling and putting together the approximately 5,000 documents, that were otherwise made available as part of this process.

Senator VOINOVICH. And the propriety of putting this into the record?

Mr. JOHNSON. Again, I think it impedes the Government's ability to defend its actions. I think that is something that should be preserved. While recognizing the Committee has oversight responsibilities, and that is the balance that I believe we struck in providing the information so that everyone could see that information.

Senator VOINOVICH. I would like to talk to the Chairman, not at this hearing, but perhaps privately about information that we requested that we are supposed to see and the propriety of taking that information and sticking it into the record.

Senator BOXER. If I might, would you halt the clock for the Senator? Let me say, I have stopped the clock, and let me just be clear, the law requires Mr. Johnson to turn over this information. This is not in the spirit of this, that or the other. This is, the law requires under our oversight. Now, the fact is, this is not privileged information. And the fact is, you are complaining about 2,000 hours, a lot of that time was spent looking over the shoulders of my staff, who had to copy down every word because you wouldn't turn over the documents to us.

So let's be clear, and we will put in the record the law that pertains to the rights of the American people to see this information and the rights of this Committee to get this information.

Senator VOINOVICH. Thank you.

We talked about DERA and I would like to know, if it is proprietary in your own department, but I would like to get an idea of

whoever does your budget for you, do you take into consideration the leveraging that Federal money has on a particular issue? For example, with DERA, my information is that for every dollar you put in, you leverage another two to three dollars. I don't know if that is the case or not, that was the representation made. But is that taken into consideration? Sometimes the Federal money—I call it the yeast that raises the dough. In this particular case, the DERA money is yeast, and I would like to know, when you are calculating your budget, if you take into consideration what other money will be generated, because you have made the appropriation?

Mr. JOHNSON. It certainly is part of our budget justification. When we have that information we certainly like to highlight it, because we think that that certainly adds a weight of evidence to why it is a good investment.

Senator VOINOVICH. I would like to sit down and have my staff people sit down and look at that. The other thing is that I had a wonderful meeting with Ben on the geological sequestration of CO2 and you proposed or requested $115 million to continue research in voluntary and technology based programs in climate change. The question is, what part of these funds will be used to assist in the rulemaking process and what resource dollars and FTEs are necessary to have a final rule in place not later than 2011? And where do these resources appear in the budget?

Mr. JOHNSON. Senator, one of the places that I do know that they appear in the budget is part of the $14 million that the President is asking for permitting for energy production. There is about, a little over $2 million that is part of the carbon sequestration rule development. I am looking to see where else it might appear.

I will have to get back to you for the record. As I said, I am aware that it is part of the $14 million, it is certainly part of that, and maybe other places as well, which we will have to get back to you on for the record.

Senator VOINOVICH. Going to another subject, in terms of FTEs and I mentioned the numbers that you had before and what you are asking for, do you have anything on paper that I could look at or my staff could look at that shows how many are being assigned to one job and then the next year being assigned to some other job? In other words, I want to get a sense of whether or not you have the people that you need to get the job done. And I know, I was a mayor and a Governor and we got X number of dollars, folks, and do the best you can. But I am really concerned that we have loaded a lot more stuff on the Environmental Protection Agency than we have in the past. I would like to get a feel of whether or not you have the people that you need to do the work that we are asking you to do. It may be more than what you asked for, but I would like to know, just what does it take for you to do your work?

Mr. JOHNSON. Senator, if I might ask my Deputy, Marcus, to respond.

Mr. PEACOCK. Senator, in fact we have a human capital plan that was put into place in 2003. One of the objectives was to look to the future and determine what skills the agency would need, compare those to the skills we have, then we could identify the

gaps and then fill those gaps. We have gone pretty far down the road to doing that.

We have identified, for instance, I think initially six skills that we will need more of in the future, and looking to make sure we either have those skills coming into the agency or already have them in the agency. We can certainly provide more information on that.

Senator VOINOVICH. I would really appreciate it. And what you just said tickles me a lot, because as you know, I have been working on human capital a long time with Senator Akaka on another committee. The successful and transition were not part of many of the agencies' plans for the future. It is nice to know that you are doing it.

I would like to even see it.

Mr. PEACOCK. I don't think it is something we would be doing without your leadership n the past on this issue.

Senator VOINOVICH. Good. That is one of the reasons why I am here, to make a difference.

The President's executive order on the Great Lakes, and we really were happy with it, a national treasure, Steve, your predecessor Mike Leavitt spent 6 months on it, and I thought he did a bang-up job of bringing everybody together and so on.

But I am concerned that we are not getting the kind of coordination among the various Federal agencies that we had hoped to get. The Inter-agency Task Force includes nine Cabinet departments, as well as the Council on Environmental Quality. I have been concerned about coordinating Federal activities and getting the most out of taxpayer dollars. The thought I had was that if we could get these people all in a room, look at the dollars that they are spending on their respective responsibilities and seeing if there isn't some way you could meld some of them together to get a bigger return on your dollar.

And the question I have is any effort being made to ensure that the agencies consult and coordinate Great Lakes work? I would love to be able to say, because this was put together, the money that we are allocating—which as you know, I don't think is enough to get the job done—giving us the best return and are we getting a better return on our dollar because somebody's looking at these agencies and coordinating them? Or are they just continuing to do their own thing?

Mr. JOHNSON. They are not continuing to do their own thing and the simple answer is, yes, we are, both for me personally as the Chair of the Inter-Agency Task Force, Ben Grumbles, of course, our Great Lakes National Program Office. That is one of the key responsibilities to help ensure that we are coordinating in that.

I am pleased that the President's 2009 budget is requesting $57.3 million for the Great Lakes for EPA. That is actually $1.1 million over the 2008, in addition, over the 2008 enacted budget. So there is a request for more money, and that is to help support the Great Lakes Legacy Act, as well as additional work by our Great Lakes National Program Office.

So we take the coordination very seriously and are working toward the same thing of making sure that we across Government are working hand in hand. Because the last estimate where we

went through the budget is, as a Nation, we are spending about $500 million among all the Federal agencies on the Great Lakes, and we want to make sure that we are using those moneys wisely.

Senator VOINOVICH. I would like to know how much of the budget is going toward supporting the coordinator for the Great Lakes?

Mr. JOHNSON. Barry?

Senator VOINOVICH. Yes. How much money does he have allocated to him?

Mr. JOHNSON. He has in fact, I know it was $22 million and for the Great Lakes National Program Office, as part of the $1.1 million, the President is asking for $600,000 more for that office.

Senator VOINOVICH. If you could give me that, I would appreciate it.

Mr. JOHNSON. Yes.

Senator VOINOVICH. Has anybody calculated that we have been able to get a better return on our dollar if you got, I would like specific examples, or in the alternative anecdotal stuff that says, because we have done this, it is making a difference.

Mr. JOHNSON. I believe it is making a difference. We certainly have some great results, whether it is the Black Lagoon or some other of our Great Lakes projects that have, in our lifetime, in fact in our tenure, my tenure as Administrator, have begun, have been cleaned up and ended. And I think that speaks volumes for the great work of the entire team.

Senator VOINOVICH. Thank you.

Senator BOXER. Thank you very much, Senator.

Senator Cardin.

Senator CARDIN. Thank you, Madam Chair.

Mr. Johnson, thank you for being here. I just wanted to make a couple comments on issues that have been covered. I strongly support the Chairman's position in regard to the California waiver. Obviously it affects my State of Maryland that would also seek a waiver based upon the California request, and it affects about half the population of this Country.

I quite frankly don't understand why there is a resistance here. It seems to me, yes, it is your decision, but it should be based upon good information. I do think Congress has a responsibility to oversee how that decision was made. I would hope we could find a way that is consistent with your responsibilities as the Administrator and our responsibilities as the legislative branch of Government.

On a second point, on the Clean Water State Revolving Fund, as I travel through Maryland, one theme I hear more and more from my local government officials is how long it is taking them to get the type of help they need to modernize their waste treatment facilities. Each year, your budget comes in at a lower number on this fund. I look at the money that is in there and look at the needs just in the Chesapeake region. We could use every dollar of the entire national fund in the Chesapeake region to upgrade our wastewater treatment facility plants, which is the, I guess the most recognized way in which we can help the Chesapeake Bay. There is total agreement that upgrading our wastewater treatment facilities will have a major impact on improving the quality of the water in the Chesapeake Bay.

So if the budget request you submitted was just for the Chesapeake Bay region, I would say good work. But as I understand it, it is for the whole Country. So again, I don't understand the priority that you are placing either on air and water, when your budgets don't reflect that.

So let me just go to a couple specific programs in the time that I have. Let me talk about the small watershed grant program. I am being sincere when I thank the people at EPA for their help on this program. I think they are administering this program in the best way possible. The awardees of these grants are non-profit entities or local governments that leverage a very small amount of money to get much more education and actual work to clean up our watersheds, our rivers, which are very important to the overall strategy dealing with the cleanup of the Chesapeake Bay.

I appreciate when they are there for our public events, front and center, with pride as to the work we are doing on these small watershed grant programs. My question to you, it would be nice if there was at least one budget year where you don't zero out that program. I just don't understand how you can have the pride with what that program is doing, but then on the other hand come in with budgets that zero it out. It seems to me an inconsistent message and particularly for the people to work in this area. If you can help me on that, fine. And I will give you a chance to respond.

Let me ask you a specific question on the underground storage tank program. Do we know how many leaking underground storage tanks there are in America?

Mr. JOHNSON. I believe we do, I don't know the number off the top of my head.

Senator CARDIN. It looks like you are getting help from a staffer.

Mr. JOHNSON. Yes, I am looking to Susan Bodine, our Assistant Administrator.

Senator CARDIN. She looks ready to answer that question.

Ms. BODINE. I do have that number, but I am not finding it. So I would like to get back to you for the record on that. But we do have, in fact, how many reported releases we have and how the release, both the new releases are going down and the number of unaddressed releases are going down. So the data is trending well in that area.

Senator CARDIN. I am being given a note, I don't know how accurate this is, it says 108,000. Would that seem like it is an approximate number, backlog?

Ms. BODINE. I would have to get back to you for the record.

Senator CARDIN. Could you tell us how long it would take, at $72 million a year, which I believe is what is in the budget, to remedy the backlog and deal with the number of underground storage tanks that are leaking?

Ms. BODINE. You have to understand that the funding in the budget primarily funds the State programs, as in the people. The vast majority of funding that is expended each year, and it is over $1 billion, it is coming out of State funds that are set up to do cleanup of underground storage tanks. Those State funds are funded both by fees on the tank operators as well as on State gas taxes.

Senator CARDIN. How much money is in the Federal underground tank trust fund?

Ms. BODINE. The balance in the trust fund currently is, I have it, I am just not seeing it. As of September 30th, 2007, the fund balance was $2.941 billion.

Senator CARDIN. Two point nine billion, and the budget, that fund is supposed to be used for underground tanks cleanup?

Ms. BODINE. The funding is for the program, for the leaking underground storage tank program.

Senator CARDIN. And appropriated is $72 million?

Ms. BODINE. Out of that trust fund, yes.

Senator CARDIN. And the needs are pretty great, and the history of the trust fund balance doesn't dictate the amount of appropriated funds and the history. I understand that. But it seems to me that when we oppose fees to be used for a certain purpose and there is a tremendous need out there to deal with it, and so little money is appropriated, it is an appropriate question for us to be asking.

And as you are asking yourself that question, I would certainly ask you to look at the question which we have also posed, and that is that we recognize the need for inspections. Certainly directed as part of the Energy Policy Act of 2005. We believe, and certainly talking with a number of our State counterparts, that there is an alternative way to achieve that inspection, and we think there is a more cost-effective way. Certainly we would ask that an alternative approach be considered as well. We just want to get the most bang for the buck.

Senator CARDIN. I agree with that, I agree with that completely. But if the information given to me is correct and the backlog is $108,000, then we have work to be done, we have funds that are in a trust fund, we don't have the support to appropriate the resources to deal with the backlog. That is what it seems like it adds up to me.

Let me move to my final point, which deals with stormwater, which is a major problem in water quality in the Chesapeake Bay and throughout our Country. As I understand it, you are funding an effort by the National Research Council to give it expert scientific advice on this issue. That report is due in October. I also understand that you are engaged in expedited rulemaking that could very well compromise environmental impacts of runoff that could be contrary to the scientific information that will be made available to you in October. It doesn't seem like this is the right process to be following if you are funding a study, going forward with a rule that could be damaging on the effectiveness of runoff.

Mr. JOHNSON. I have asked Ben to come up and talk about the specifics of the reg. But I want to note that we have launched a number of activities, because of the opportunity for green infrastructure, whether it is green roofs or porous pavement or other types of technologies, working in a collaborative, cooperative way with both local communities as well as environmental public interest communities and industry to see what we can do to get those green infrastructures more widely adopted. Because it has tremendous opportunities, whether it is energy or the environment, particularly in the runoff arena.

Senator CARDIN. I agree with you. We have had bipartisan support in Congress on that, and I am pleased for Government to be

a leader on dealing with the runoff issues, not only during construction, but past construction, make sure that our buildings are sensitive to the runoff issues. We are using, a lot of the land that used to filter our water is now cement. What we can do as far as a green strategy on this should incorporate runoff. Our bill here did that, with the support from both sides of the aisle.

Now we are concerned that as you are going forward with this rulemaking, you might very well be reversing some of the progress we are making, and waiting for the best scientific information we have on the impact of runoff on such issue as the quality of the water in the Chesapeake Bay.

Mr. GRUMBLES. Senator, I want to thank you for your leadership in terms of Federal agencies and facilities in the recently enacted Energy Act about site design and low impact development. We are doing three or four different types of activity on stormwater, while we are also eager to get the update from the National Academy of Sciences. One of them is to re-issue the construction general permit. The other one is to work with localities and States across the Country on their MS4, municipal separate storm sewer system programs. We need to continue to do that, because we recognize stormwater is one of the greater challenges, and the goal is to make it all consistent with the Administrator's vision on the green infrastructure.

But the third one, which you are really focusing on, is the need to promulgate an effluent guideline under the Clean Water Act for construction and development, we are in litigation over that. The issue is the schedule. What we have been focused on is trying to get the rule finalized, re-proposed and finalized, because we think it can add to, not detract from, but add to the progress by providing information for permit writers across the Country, including in the Chesapeake Bay, to have the latest scientific information on the best management practices for stormwater.

Senator CARDIN. It is our concern, if it is inconsistent with the scientific information that comes out in October.

Mr. GRUMBLES. The key is going to be an adaptive management program, and that is for the permits as well as for the effluent guidelines, is to be able to incorporate that information as we get it.

Senator BOXER. Senator, I am very pleased that you asked this line of questioning. Before you came, a lot of us mentioned this program. We know that the biggest threat to drinking water are these underground tanks. We are looking at a huge backlog here.

By the way, I keep thinking about what we are spending in Iraq, $10 billion a month. For $12 billion, we could cleanup the whole backlog. They are putting $70 million into a program, that is what they are putting into a program. So I wanted to thank you.

Before I call on Senator Whitehouse, just briefly I want to place in the record the documents we have gotten from EPA that we requested, along with a CRS opinion, CRS 46. It is well established by congressional practice that acceptance of a claim of privilege before a committee rests in the sound discretion of that committee. And the committee can deny the claim, simply because it believes it needs the information sought to be protected in order to accomplish its legislative functions.

So we are going to put all that into the record.

[The referenced material fwas not received at time of print.]

Senator BOXER. Again, keep that in mind, because we want the rest of the documents.

Senator WHITEHOUSE.

Senator WHITEHOUSE. Thank you, Madam Chair. Welcome, Administrator Johnson.

Was there or was there not White House contact regarding the California waiver decision?

Mr. JOHNSON. As I testified previously, I have routine conversations with a lot of colleagues across the Administration, including the White House.

Senator WHITEHOUSE. Was there or was there not contact from the White House regarding the waiver decision?

Mr. JOHNSON. As I said, I have routine contacts with members of the Administration, including the White House.

Senator WHITEHOUSE. And did that routine contact include contact regarding the waiver decision?

Mr. JOHNSON. Again, I have routine conversation on a wide range of topics that I believe is good government and indeed, it included what our status was on the issue of the California waiver.

Senator WHITEHOUSE. Did it go beyond you reporting on the time status of the waiver decision? Was there in fact White House input into that waive decision through this routine conversation?

Mr. JOHNSON. Again, as I have stated and will State again, the decision was mine, solely mine. I heard a wide range of comments from inside the agency, outside the agency, I was presented with a range of options. I made the decision. It was my decision and my decision alone.

Senator WHITEHOUSE. I wasn't asking whose decision it was. I was asking whether the White House had input into that decision. I seem to be having trouble with that question, I don't know why. It's a very straightforward question.

Mr. JOHNSON. Again, I have a lot of conversations with a lot of people, again, across the Administration. I think that is good government.

Senator WHITEHOUSE. We are talking about the waiver here.

Mr. JOHNSON. I believe, I like to preserve those conversations, I like to have candid input as I make my decisions. But as I said here, this is a decision that was mine and mine alone. I made the decision, I know that a number of Members of Congress disagree with that decision and I understand that. But it was mine and mine alone and you will see the rationale for my decision on Friday, on or before Friday, I should say.

Senator WHITEHOUSE. Why won't you answer whether or not there was White House input into that decision?

Mr. JOHNSON. I did answer the question.

Senator WHITEHOUSE. No, you didn't.

Mr. JOHNSON. You don't like the answer.

Senator WHITEHOUSE. No, you didn't answer the question. It is not a question of not liking it. You answered very different questions. You spoke after my question, but you didn't answer my question. Nobody in this room could tell us based on what you said

whether or not there was White House input into the waiver decision.

Mr. JOHNSON. As I said, I have routine conversations with the White House on a variety of subject.

Senator WHITEHOUSE. I understand, routine conversations. But did those routine conversations involve input into the waiver decision?

Mr. JOHNSON. The exchange of information, I prefer to keep, because it was candid conversations and candid input to me. As I said——

Senator WHITEHOUSE. I am not asking for the content of it at this point. I am simply asking if there was it. Can I infer from the fact that you are protecting content that there was in fact input and content to you from the White House about the waiver decision?

Mr. JOHNSON. I wouldn't infer anything, other than I have stated and will State that I have had routine conversations with the White House and other members of the Administration on a wide range of issues, including the California waiver. The decision was mine and mine alone. I made the decision. It is the right decision. I know you disagree with it, but it is the right decision.

Senator WHITEHOUSE. Well, we can explore all that later, and I am sure we will, over time. But the immediate question I am trying to get at, as you know, has been the integrity of the decisionmaking process that you went through. There are formal means for input into that decisionmaking process. It concerns me that you can't tell me that there were not improper informal means of communication from the White House into that process.

Mr. JOHNSON. I have not violated any laws or regulations in the decisionmaking process. And as I said, my decision, my decision alone, I made the decision and you will see it on or before Friday.

Senator WHITEHOUSE. But you won't disclose whether or not the White House influenced your decision or communicated with you regarding the substance of your decision? You cannot say no to that?

Mr. JOHNSON. As I said, I have routine conversations——

Senator WHITEHOUSE. We heard that, I know, I know. You already said that. You don't have to say it again. I am trying to get at things you haven't said, which is, whether or not the White House contacted you regarding the substance of this decision, up or down, just whether or not that did. It's a yes or no question. And you have said, yes, there have been routine contacts.

Mr. JOHNSON. I have routine conversations——

Senator WHITEHOUSE. Yes, yes, we got all that.

Mr. JOHNSON [continuing].—on all kinds of issues, including the California waiver.

Senator WHITEHOUSE. So you did discuss the California waiver with the White House?

Mr. JOHNSON. I already said it, I will say it again, I have routine conversations with the White House on a wide range of subjects. It included the California waiver. The decision on the California waiver was mine and mine alone. I made the decision.

Senator WHITEHOUSE. What was the nature of the discussion regarding the California waiver?

Mr. JOHNSON. As I have said, I regard conversations with my staff, with members within the Administration, of candid conversations and I value the ability to have those candid conversations and ultimately, the decision is mine. I made the decision and——

Senator WHITEHOUSE. If there is an agency process for gathering information that is a public process is there——

Mr. JOHNSON. As I said, I did not violate any laws, nor did I violate any regulations. We have already discussed the roll-out, which I have already described as being unique. But other than that——

Senator WHITEHOUSE. You understand the predicament that it leaves us in when you make a conclusory statement like, I haven't violated any laws or regulations, but won't share with us the facts that would allow us to draw an independent conclusion about that.

Mr. JOHNSON. As I said, we have been sharing the documents. It has been historic and it has been a priority. We have been as transparent as possible. I have also commented to Chairman Boxer that we are consulting with various parts of the executive branch about documents that involve their interests and said we will be providing an update on that.

Senator WHITEHOUSE. The last time we spoke about this, you said that sometimes the EPA staff gave you a single consolidated recommendation, Mr. Administrator, this is what we think you should do, and sometimes they gave you an array of options, Mr. Administrator, we think these are your options. You have testified that in this case, they gave you an array of options, not a single, consolidated opinion, correct?

Mr. JOHNSON. That is what I remember, yes.

Senator WHITEHOUSE. Who made the decision to give you not a single consolidated decision, but a range of options? Was that your call? Was that what you asked for? Or was that somebody else's call, and if so, who?

Mr. JOHNSON. Typically I look for what is the range of legal options and what are the pros and cons of each of those, so that I can make the best informed decision. And in this case, and I don't recall whether it was the then-acting head of our Air Office or who, but certainly I was presented with a range of options.

Senator WHITEHOUSE. Did you discuss with anyone or request from anyone that you be presented with a range of options rather than a single, consolidated agency recommendation?

Mr. JOHNSON. I don't recall specific to the California waiver. Generally, I like to see what is the full range of options that are legally defensible and what the science and policy issues are associated with that, so that I can make the best informed decision.

Senator WHITEHOUSE. Did anyone at the agency, well, let me ask you first, when and where was this options analysis presented to you? Was it in a meeting in your office?

Mr. JOHNSON. What I recall was that there were formal briefings. I don't recall the specific dates of those, but they were obviously before I made the final decision.

Senator WHITEHOUSE. But presumably before you made the final decision there was sort of a final meeting where the staff said, here are your options sir, and was that meeting spread out over time?

Mr. JOHNSON. I recall having a series of meetings that, one, which I think, as I recall, began with an informational briefing on

the nature of the California waiver and past practices. Then briefings following that on, here is the analysis of the public comments and here is the analysis of our assessment and here are the options. So it was a series of meetings.

Senator WHITEHOUSE. But the point where the options were presented to you, was that in a meeting or was that in writing?

Mr. JOHNSON. As I recall, it was both, in writing and in a meeting.

Senator WHITEHOUSE. Did anyone advise you that the administrative record that had been developed to date would support a decision to deny the waiver?

Mr. JOHNSON. I don't recall the specifics of administrative record. What I do recall is that again, there was a wide range of options, ranging from granting the waiver to denying the waiver. Obviously you know what the decision that I intend to formalize on or before Friday.

Senator WHITEHOUSE. But at the moment, you do not recall anyone advising you that the administrative record would support a decision to deny the waiver?

Mr. JOHNSON. Again, I don't recall that specific question at this point.

Senator WHITEHOUSE. Did anyone advise you that denial of the waiver would withstand arbitrary and capricious standard review?

Mr. JOHNSON. I had, again, a wide range of opinions and options. The options that were presented to me, including denial of the waiver, was a legal, viable option.

Senator BOXER. Senator, I want to give you another 5 minutes, if you would like that.

Senator WHITEHOUSE. OK. By what means did the staff communicate to you that denial of the waiver would be, I forget the words you just used, legally viable option, or was it legal and viable option? I didn't hear you very clearly.

Mr. JOHNSON. Again, all the options that were presented to me were presented as options, legally viable options for me to consider. Obviously with anything that we do in the agency, there is litigation risk. Again, I have to make my decision based upon what the law directs me to do and that is what I said that I have done.

Senator WHITEHOUSE. In the course of that, were there analyses given to you over which choices would be more likely to withstand arbitrary and capricious standard review or would be more likely to be viewed on review as being supported by the administrative record?

Mr. JOHNSON. As I recall, I was presented with a range of options which included both science and policy and litigation risk.

Senator WHITEHOUSE. And did the agency rank or otherwise evaluate among that range of options which would be most likely to withstand review, either as supported by the administrative record or as not arbitrary and capricious under administrative law?

Mr. JOHNSON. I recall that there were opinions on that range. But again, the ultimate decision still rests with me as to in face of whatever the science presented, whatever the litigation risk, whatever the policy implications, I had to follow what the law said under Section 209 and that is what I did. I made the decision and

I was presented with a wide range of options and I certainly appreciate the hard work that our staff put into it.

Senator WHITEHOUSE. What would you list? You said a wide range of options? Can you specify what those options were?

Mr. JOHNSON. As I have said, a range from approving the waiver to denying the waiver.

Senator WHITEHOUSE. That is not a range, that is two.

Mr. JOHNSON. Well, there were other options in between and——

Senator WHITEHOUSE. Such as?

Mr. JOHNSON. I was trying to recall. I don't recall the specific options in between but that certainly is a matter of record.

Senator WHITEHOUSE. Do you recall any of the specific options in between?

Mr. JOHNSON. As I said, the options ranged from approval to denial and included other options in between. I don't recall how they were entitled or the specifics.

Senator WHITEHOUSE. Without their title, their fundamental nature, do you recall?

Mr. JOHNSON. Again, there was a range of options and I don't recall the specifics of the intermediate ones.

Senator WHITEHOUSE. Should it be of any concern to those of us who exercise oversight over your agency that on a matter of this significance that affects more than half of the population of the Country, so recently decided, you can't remember one of the options that you were presented, other than approve or deny?

Mr. JOHNSON. Well, when I make the decisions and then I move on, I have before me now whether to change the NAAQS standard for lead, whether to change the NAAQS standard for ozone. I am in the midst of defending the budget before Members of Congress. I have a few things on my plate. Once I make a decision, I move on.

So it wouldn't be unusual in my mind that once you have made the decision and move on that you may not remember the specifics. But as I have said, it is a matter of record. I have made the decision.

Senator WHITEHOUSE. We shouldn't take it as a signal that you never took a serious look at those options in the first place?

Mr. JOHNSON. Not at all.

Senator WHITEHOUSE. They never sunk in?

Mr. JOHNSON. Not at all.

Senator WHITEHOUSE. It is a—how long ago did you make this, when did this take place?

Mr. JOHNSON. December.

Senator WHITEHOUSE. December. And it is now February 25th. And a meeting that you knew was going to end in significant litigation with the State of California, the Governor of California, Arnold Schwarzenegger, no less, up against you, and——

Mr. JOHNSON. I respect all——

Senator WHITEHOUSE [continuing].—you don't recall what your options are?

Mr. JOHNSON. I respect all Governors and Members of Congress. As I said, I carefully considered all the options that were presented to me. It is a matter of record. I have made the decision. I made the decision and you will see my rationale on or before Friday.

Senator WHITEHOUSE. Do you recall where the decision to deny the waiver fell in the range of potions that you looked at vis-a-vis its likelihood of withstanding arbitrary and capricious scrutiny or being viewed as supported by the administrative record? Among the range, was it the top, was it the bottom, was it somewhere in the middle? Do you recall?

Mr. JOHNSON. Again, we are in litigation on that issue of the California waiver. So whether it is in this part or that part of the range, it is a legally defensible option and it was an option that I chose after carefully considering the comments, the record, what the law directs me to do and I made the decision.

Senator WHITEHOUSE. I think my time is expired.

Senator BOXER. Senator Whitehouse, before you leave, I wanted to followup on a couple of things you said, and I thank you very much. I thought for the first 4 minutes it sounded like Mr. Johnson was taking the equivalent of the Fifth Amendment. Every question was, oh, I had a full range, I had a full range. I don't know what you are hiding, but it certainly is difficult for us when we hear that you are going to turn over all the documents and now all of a sudden you are in discussion with the executive branch about it, backpedaling from what you told me.

And then you say, it is historic, the number of documents that are turned over. That is not historic, it is the law. I read you the law. You have no choice, sir. You have to turn these over, because we need to do our job and that is our role, and your attorneys told you that. That is why we got the documents.

What is historic is the way you are giving them to us, staring over our shoulder and wasting taxpayer dollars and trying to hide this. They are not going to be hidden. Everything I get the public is going to see. Because you don't have a privilege here. There is no national security.

But I want to go to Senator Whitehouse's point about who you talked with at the White House specifically. Let's put up, this is what we got from your people. We know that on May 1st, 2007, you were briefed by your staff from 11 to 11:45 on the California waiver. Then you departed for the White House at 2:15 and you were there for an hour. You attended the principals meeting. Who are the principals?

Mr. JOHNSON. One is, I have a lot of meetings, as I have said, and a lot of discussions with members of the Administration, including the White House.

Senator BOXER. Well, who were the principals at the meeting? How many people were at that meeting?

Mr. JOHNSON. I don't recall that meeting.

Senator BOXER. Do you have any staff here who could fill us in, since your memory is bleak?

Mr. JOHNSON. I doubt that any of them would know, either, but again——

Senator BOXER. Would the Vice President be a principal?

Mr. JOHNSON. I have a lot of meetings over at the White House.

Senator BOXER. I am not asking you about a lot of meetings, I am asking you about this meeting. It is a big deal. You start off at 11 o'clock, and you don't finish with this work until 3:30. And it is about the California waiver. Who do you think it could mean,

the principals? Give me a sense of it. Who could it be? Because this is your staff's description, principals. Was the Vice President there? Was the President there or his chief of staff? Who was there?

Mr. JOHNSON. As I said, I don't recall. I don't even recall the subject of it, so I don't——

Senator BOXER. Well, the subject of it says very clearly.

Mr. JOHNSON. It does?

Senator BOXER. It says briefing on California vehicles, California waiver.

Mr. JOHNSON. The subject of the principals meeting is that?

Senator BOXER. That is our understanding, yes.

Mr. JOHNSON. I don't know what, I have no idea what the subject was or recall who the principals were.

Senator BOXER. Well, we will get further records on that. Do you have something on that now? That is what we were told by your staff, that this was all about—we asked them the question and we were told that is what it was. Did you have any meetings at the White House about the waiver?

Mr. JOHNSON. As I said, I have had routine discussions and——

Senator BOXER. No, no, specific meetings about the waiver.

Mr. JOHNSON. As I said, I have routine discussions with members of the White House——

Senator BOXER. Did those routine discussions occur at the White House sometimes?

Mr. JOHNSON. Sometimes yes.

Senator BOXER. Did you have any specific meetings about the waiver at the White House?

Mr. JOHNSON. Again, I don't recall——

Senator BOXER. Or at the Old Executive Office Building or with the Vice President?

Mr. JOHNSON. As I said, I have routine conversations with members of the Administration. I think that is good government.

Senator BOXER. Yes, I am asking you, since you think it is good government, tell us, since it is great government, who did you meet with? It is not good government if you can't remember a thing that happened at the meeting?

Mr. JOHNSON. Senator, that was May 1st of 2007.

Senator BOXER. About the waiver.

Mr. JOHNSON. I would ask you the same question, do you remember what you were doing on Tuesday, May 1st of 2007?

Senator BOXER. If I saw my calendar, yes, I would. And I would also have notes about it. Don't you have notes about this meeting that you went to?

Mr. JOHNSON. I don't recall.

Senator BOXER. Does your staff keep notes about the meetings that you went to?

Mr. JOHNSON. Again, I don't recall if——

Senator BOXER. Is there any record of what you talked about at this particular meeting?

Mr. JOHNSON. I don't recall, no.

Senator BOXER. You don't recall the meeting. Do you not have a routine where somebody takes notes about meetings that you attend at the White House?

Mr. JOHNSON. Sometimes there are or are not. Again, I don't, as I said, at this point in time, I don't even recall that particular meeting.

Senator BOXER. OK. Will you go back, and we will certainly talk to your staff about it, we would like to find out who was at that principals meeting. I mean, that is a definition by your staff, principals at the White House. Who would that be? Let's say it had nothing to do with the waiver. Let's say it was a discussion about something else. Who does your staff mean? Who in your staff wrote principals meeting? Who keeps your record? Who keeps your schedule?

Mr. JOHNSON. I don't know on that particular meeting.

Senator BOXER. You don't know who keeps the schedule?

Mr. JOHNSON. No, not on that particular date, I don't.

Senator BOXER. There was white tape over those meetings, by the way. We had to pull the tape off to find out about these meetings. You don't know who keeps your schedule?

Mr. JOHNSON. No, I have a number of people who keep my schedule, and obviously people do come and go when there are additional opportunities.

Senator BOXER. People?

Mr. JOHNSON. Yes.

Senator BOXER. OK. You have a big turnover of staff in your personal office?

Mr. JOHNSON. Actually, we don't. We have a very stable staff at EPA. People really enjoy working at EPA.

Senator BOXER. All right. Let me explain something. We asked to get information that dealt specifically with the waiver. This is what came over. Your staff provided this. We didn't ask for other things. We didn't ask about meetings about Superfund or anything else. So I am asking you one more time, when someone in your staff, and I trust that you will go back and find out who it is, if you would, keeps your schedule and writes your notes, when they write down principals meeting, what do you think they meant? Who would a principal be at the White House?

Mr. JOHNSON. Again, I don't know the specifics of that. I can ask Roger Martel.

Senator BOXER. Roger, what do you do there?

Mr. MARTEL. Senator, if I could——

Senator BOXER. What do you do?

Mr. MARTEL. I am sorry, Senator. I am the General Counsel.

Senator BOXER. OK, well, I was asking for the person who does the schedule.

Mr. MARTEL. If I can maybe help clarify perhaps to some of the confusion here. It is my understanding the reason we provided you a copy of that document was because it identifies the Administrator. At 11 in the morning, the Administrator was briefed by his staff on the California waiver. I think it was a preliminary briefing, that is my recollection.

Later that day he had a meeting at the White House. I think there were other items on his calendar as well. These items were redacted as non-responsive, because we did not have information his White House meetings were related to the California waiver.

Therefore, they were not relevant to your request. That is the reason they were covered up as non-responsive information.

Senator BOXER. OK. Were there meetings at the White House about the waiver?

Mr. MARTEL. Senator, you will have to ask the Administrator.

Senator BOXER. I am asking you. You came up and wanted to talk about it. Let's go.

Mr. MARTEL. I can rely on what the Administrator says, which he engages in conversations——

Senator BOXER. Well, you came up and told us that this wasn't about the waiver. What meetings were held that were about the waiver? You can't have it all ways. You can't come up to the microphone and tell me you can clarify that this meeting was not about the waiver, and then when I ask you what meetings were about the waiver, you don't have an answer.

Mr. MARTEL. Senator, I am trying to clarify your point on a piece of paper——

Senator BOXER. That doesn't clarify a thing.

Mr. Johnson, you were told by your staff pretty unequivocally that they would almost certainly be a lawsuit by California if you denied the waiver. Do you agree with that?

Mr. JOHNSON. Senator, what I do agree with, every decision that I make and that the agency makes tends to draw lawsuits. So it is not a question of whether there will be a lawsuit, it is what is the risk in that litigation.

Senator BOXER. Didn't your staff tell you EPA is likely to lose that lawsuit?

Mr. JOHNSON. Again, there is a range of opinions as to litigation risk and success.

Senator BOXER. Well, we have all the papers you sent us. There was only one here, only one conclusion, that is all we saw, almost certainly a lawsuit by California, EPA likely to lose the lawsuit. Another document, it is obvious to me that there is on legal or technical justification for denying this, the law is very specific.

So what you say doesn't match with what we received here. And that is a big problem for us. So I would just say this. Please don't believe you are doing something historic by handing over these documents. Please. I hope your General Counsel will direct you to the appropriate language that the CRS gives us. This is your responsibility. By making it difficult for us to read these documents and standing over our shoulder, that is what is historic. That is what is shocking.

And I hope that you will again, because we always have hope, and we have a couple of days maybe before you make this decision, rethink this decision. Because everyone except the automobile makers, that is what we know from the documents, everyone on your staff, legal, scientific, technical, all told you to grant it. We have two groups, well, one group and one individual. The individual was Bill Wehrum, before he left. He is a political appointee. We refused to nominate him for, what was it again? Assistant Administrator for Air. That was how bad his record was. He told you to deny it. But he said you should talk to your other compatriots. I think that was his—his brethren, he said, talk to your other brethren.

That political advice was one, and the other was the automobile makers. Otherwise, it was 100 percent the other way. We hope you will think about it, you will think about taxpayers, you will think about half the people in this Country who need clean air and we thank you for coming today. I know it is not pleasant for you, it certainly isn't pleasant for me.

Thank you, and we stand adjourned.

[Whereupon, at 1:10 p.m., the committee was adjourned.]

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

Thank you for holding this hearing today.

The President's budget request fiscal year cuts EPA's budget by $330 million, including a cut of $134 million in the Clean Water State Revolving Loan Fund alone. The President's budget of $7.14 billion represents a cut of more than $1.2 billion since Fiscal Year 2004. And that figure does not include any adjustments for inflation.

Administrator Johnson's testimony seems to be drawn from a different budget than the one the President submitted.

The Administrator asserts that this budget, which has been cut by 15 percent in the last 5 years, meets the environmental needs of this Nation.

In Maryland, more than 90 percent of our population lives in areas that are in non-attainment for ozone pollution or soot pollution. Our air quality is not healthy, especially for our most vulnerable citizens, the sick, the elderly and the very young. Yet this budget seeks to cut $31 million from State and local air quality grants. This budget also cuts almost $10 million from the diesel emissions reduction program.

Our waters are not healthy either.

According to the most recent report from the EPA's own Chesapeake Bay Program Office, only 30 percent of the Chesapeake Bay meets water quality standards in 2006.

Across the watershed more than 400 wastewater treatment plants need to be upgraded to remove the excess nitrogen and phosphorus pollution that is harming our Bay. We estimate these facilities, including 70 in Maryland, will need $4.5 billion dollars for these upgrades alone. Yet this budget that the Administrator is touting cuts the Clean Water SRF to $555 million. $555 million dollars will not meet the needs for wastewater nutrient removal in the Chesapeake, never mind the entire country.

Madame Chairman, our lands are not healthy either.

The Superfund program, which is in line for a very modest increase in funding, is falling far behind in the rate of cleanups it completes annually. The annual pace of cleanups has declined from roughly 80 per year to 40.

Human exposure to potentially dangerous chemicals and others substances is not yet under control at 111 Superfund sites in 33 states. Maryland has 2 such sites: Ordnance Products (Cecil County) and Aberdeen Proving Ground—Edgewood (Harford County).

Leaking underground petroleum tanks are contaminating both our soils and our groundwater. There is a national backlog of more than 100,000 such sites, and the GAO estimates that it will take $12 billion in public funds to clean them all up. Yet this budget cuts the Federal program by one-third, to just $72 million.

And the list goes on: cuts to

- Children's health programs
- Environmental education
- Environmental justice
- And stunningly, a $3.4 million cut in funds to develop and implement a Greenhouse Gas Registry.

EPA is charged with protecting human health and the environment.

From the air we breathe, to the waters we use, to the lands we live on, this is a budget that retreats from the Agency's core mission.

The people of Maryland and the people of this nation deserve better.

Thank you, Madame Chairman.

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