

**NOMINATION OF CHRISTINE TODD WHITMAN**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
**ONE HUNDRED SEVENTH CONGRESS**  
**FIRST SESSION**

ON

THE NOMINATION OF HON. CHRISTINE TODD WHITMAN TO BE  
ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

—————  
JANUARY 17, 2001  
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ONE HUNDRED SEVENTH CONGRESS, FIRST SESSION

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**NOMINATION OF HON. CHRISTINE TODD  
WHITMAN**

**WEDNESDAY, JANUARY 17, 2001**

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

The committee met, pursuant to notice, at 9:30 a.m. in room 406, Dirksen Senate Building, Hon. Bob Smith (chairman of the committee) presiding.

Present: Senators Smith, Warner, Inhofe, Bond, Voinovich, Chafee, Graham, Lieberman, Boxer, Carper, Clinton and Corzine.

Senator SMITH. Good morning, everyone.

I have the distinction and the pleasure of presenting this gavel to the chairman of the Environment and Public Works Committee. I would just say I have a tracking device on this and it looks like it's going to bounce back here in 3 or 4 days but I'm pleased and honored to present you this gavel and look forward to working with you in both capacities over the next few years.

**OPENING STATEMENT OF HON. HARRY REID,  
U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. (assuming the chair). Senator Smith, thank you very much.

Bob Smith and I have worked very closely together for many years in capacities we would rather not have worked. We were the lead Democrat and lead Republican on the Ethics Committee for a number of years where we worked to try to bring peace and quiet to the Senate. We also worked together on the MIA/POW Select Committee.

I want to welcome President-elect Bush's nominee for Administrator of the Environmental Protection Agency.

I want to do this with kind of an outline of what we are going to do here. I'm going to give a brief statement; Senator Smith will give a statement. We are going to then have Governor Whitman introduced by Senators Torricelli and Corzine and Representative Frelinghuysen. After that, we will have statements from members of the committee. After that, the reason we are all here is to see how well Governor Whitman responds to all these questions.

We look forward to this hearing. As you can see, there is tremendous interest—this is a very important position for our country.

I want to welcome your family. I had the pleasure this morning, Governor Whitman, of meeting your husband. It's obvious that ev-

everything that has been indicated about how supportive he has been of you and you of him is certainly valid from our conversation.

I can't begin this hearing without saying how great it is sitting here as chairman of this committee for a couple more days. This is a committee that I've served on since I came to Washington as a member of the U.S. Senate. It is with fond memory that I reflect back on the days of Chairmen Stafford, Burdick, Moynihan, Chafee, Reid and the great work of Senator Baucus.

The record should reflect that my short tenure has nothing to do with my ability. I'm really happy to have my first hearing as chairman of this committee to be the consideration of the nominee for the head of the Environmental Protection Agency. This agency has great responsibility. My reason for being on this committee are multitudinal but I was born and raised in a little community in southern Nevada and one of the things we did once in a while was go to a place about 30 miles from Searchlight called Paiute Springs. It was truly an oasis in the desert.

It was in this very dark desert that out of the side of a mountain gushed a spring, a place that was so interesting that there was an Army fort there to protect the mail in the 1860's. It had things I'd never seen before—water lilies, cattails, things that didn't grow in Searchlight.

During my childhood I went there probably eight or nine times. It was hard to get there—it was a dirt road—but after I married and got my education, I always told my wife about what a great place this was. She, recognizing what was in Searchlight, I don't think believed me.

After I got out of school and settled down a bit, I took my wife to Paiute Springs. What a disappointment. Over the years, it had been ruined. The fort was torn down, it was just an absolute mess. The places where you could throw a rock down this canyon and the birds would take off and it sounded like an airplane taking off, they were gone and it was really a mess from people that had trashed this natural treasure.

So, Governor Whitman, always think if Paiute Springs in your job because we need the environment protected and there is no better example of that than near the place of my birth, Paiute Springs.

The EPA has had a great record over the years of improving the quality of our air and our water.

I want to also welcome Senator Carper. We have two other new members—Senator Corzine who we will hear from in a minute and of course, Senator Clinton, new members on the democratic side. We welcome you.

Senator Carper, you and I came to Washington together in 1982 with Senator Boxer, who is quiet and whom we rarely hear from, but she was in our class. I always say about our service on the Foreign Affairs Committee, it was like going to school and not having to take the test.

During the last 8 years under the Clinton Administration, I think we have made some significant progress. The recent diesel sulfur rule, for example, will greatly improve air quality. Governor Whitman, if confirmed, I am confident you will be committed to taking us forward in environmental protection and not roll back

the important gains we have made. I hope the hearing does nothing to discourage my vision of the EPA that's directed and guided by Governor Whitman.

As leader of the State of New Jersey for 7 years, you have many advocates for you based on how well you have done your job as Governor. We have letters and they will be placed in the record at a subsequent time, but conversely, there are some who have expressed concern. This information has been supplied to us—the good and not so good—and we will have you answer either orally or in writing.

This committee, on confirmation, doesn't allow separate panels as in some other committees unless something extraordinary is developed by this hearing or the work of our investigative staff.

You have had a distinguished career as Governor of the State of New Jersey and I am pleased you are willing to take on the challenge of protecting both the health of our citizens and our environment, two things that are interchangeable.

It is also my hope that we can work closely together, not only on national environmental issues, but from a very parochial perspective in problems unique to the State of Nevada as well as unique to the West. There are a number of members of the committee from my part of the country. We have big States, not many people but still have many, many environmental problems that are not all rural in nature. Many are urban in nature as we discussed when you came to my office.

I know you've visited the West, I know you know how beautiful it is and how important it is to protect the resources we have. I do hope as soon as you get your feet on the ground and do some traveling around the country, that you'll come to Nevada, and accept my invitation to not only see the beauty but some of the challenges we face.

I look forward to hearing from you.

We will now hear from my colleague, Senator Bob Smith of New Hampshire.

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

Senator SMITH. Thank you, Mr. Chairman.

Good morning, Governor.

Chairman Reid, I want to thank you and your staff for the courtesies you have extended in the last several weeks. We have worked well together, as you indicated, on other committees, specifically Ethics and POW/MIA.

I also would like to welcome back into the fold Senator Lieberman. I can't tell you how good it is to see you back here.

Senator LIEBERMAN. I am warmed by your welcome.

Senator SMITH. I also would like to welcome Senator Campbell, who is not here yet. There still is one possible addition to the committee on our side. Certainly, Senator Carper, Senator Corzine and Senator Clinton, welcome and we're glad to have you on the committee.

We've had a lot of bipartisan results in the last few months since I've been the chairman and I think we will continue to do that in

the future because with a 50–50 Senate, unless it's bipartisan, obviously we are not going to pass very much.

Again, Governor, a warm welcome to you. Perhaps there is some irony in the fact that a guy born in Trenton, New Jersey gets a chance to be both the Ranking Member and the chairman during your confirmation hearings. I think that's kind of nice. My grandfather's family was Elderidges and they were the Elderidge Park and all that area around Trenton which I'm sure the two Senators are also familiar with.

I look forward to hearing from you not only today but often after you take the reins at EPA. Since you've served your State well, we will focus specifically on your environmental record. It has been a top priority for you. During 7 years as Governor, more open spaces and farmland has been preserved than in the previous 32 years. So that's a tribute to you.

With the establishment of the Garden State Preservation Fund and providing tax incentives for land and conservation donations, your conservation legacy will continue long after you leave. Of particular interest to me is shoreline protection. As one who for many years as a young guy at Seaside Heights and Long Beach Island, I remember not too many years ago when we heard the stories of the hypodermic needles and syringes and in a bipartisan way, many of you have been involved in that cleanup which is certainly appreciated by many of my family who still live in New Jersey.

You've also made great strides in the redevelopment of brownfields which will be a top priority of this committee this year. We look forward to working with you on that.

I also appreciate the ideas that you put forth in terms of looking at these environmental problems in a holistic manner, an entire ecosystem, an entire river, looking at all the sources of pollution as opposed to end-of-pipe regulation without really any end to it. We will work together on that.

The air, water and land are cleaner in New Jersey because of your efforts and I congratulate you. I know you'll bring that same type of enthusiasm and results to the EPA.

I would ask unanimous consent that my statement with more detail regarding Governor Whitman be inserted in the record.

Senator REID. Without objection.

Senator SMITH. I'll stop there, Mr. Chairman, and look forward to moving forward with the witnesses.

Senator REID. If I could have everyone's indulgence, Senator Warner is going to have to conduct a hearing regarding General Powell in just a few minutes and he has asked to be able to say a few words at this time. Senator Warner?

**OPENING STATEMENT OF HON. JOHN W. WARNER,  
U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA**

Senator WARNER. Thank you very much and thank you, Senator Smith.

I join in welcoming our distinguished nominee. I commend the President and most of all, I commend you for your willingness, together with that of your family, to continue in public service.

Mr. Chairman, we welcome your chairmanship here today. I remember when you were chairman of a subcommittee and you and



I dealt together. I was ranking on the subcommittee and I know your record for fairness and thoroughness.

If I may say just one word and that is balance. I've served on this committee for many years now and it is the balance between the 50 States and the Federal Government. Our environmental laws, in large part, are in place because pollution knows no bounds, for example. Air transits many States. Water originates in one and flows through many States. Therefore, it is essential we have a framework of the Federal laws that cross the State boundaries and affect all States.

We have got to remember that the States are very proud of their own environmental programs. You bring to this office the experience of a chief executive of a very important State, one that has complex environmental problems and you have worked through many of those with great expertise.

Now the other 49 States will be looking to you to have that same leadership as they struggle to do their very best with regard to the environment.

In conclusion, one of the main problems you are going to have is the Department of Defense which I'm not sure but has a reputation of being a very significant polluter. I have a small hand in that responsibility here in the Senate as chairman of the Senate Armed Services Committee.

I want to work with you, I want to make greater strides with the Department. I know the Secretary of Defense-designee very well. We've been together in public life together for many, many years. I know in his heart is the desire to have that department's image and that department's record improved.

I'm going to hold up here an agreement between the Department of Defense, the Commonwealth of Virginia, and the Environmental Protection Agency, the first in history. It was just executed. It reads as follows: "The pollution prevention partnership between the Commonwealth of Virginia and the U.S. Department of Defense shall be a State/Federal partnership that exists to identify opportunities, develop solutions and promote success in pollution prevention. The partnership will help enhance the pollution prevention missions of participants, conserve resources and improve the quality of Virginia's environment."

I comment that to you. I hope you can have many more like it.

I thank the Chair, the Ranking Member and my colleagues. I have the privilege of introducing Colin Powell in a few minutes before the Senate Foreign Relations Committee.

Senator REID. We are now going to hear an introduction of Governor Whitman from Senators Torricelli and Corzine and Representative Frelinghuysen.

Senator Torricelli?

**STATEMENT OF HON. ROBERT G. TORRICELLI, A UNITED STATES SENATOR FROM THE STATE OF NEW JERSEY**

Senator TORRICELLI. Thank you, Mr. Chairman.

Before Senator Warner leaves, I also want to extend thanks on behalf of all my colleagues. Last year, Senator Warner provided leadership on an issue that was very important to the people of southern New Jersey. That was a generation-long fight to have the

battleship New Jersey returned to our shores. Senator Warner singularly is responsible for that judgment. For that, we are very grateful.

I also want to say in keeping with your comments about military facilities, indeed, Senator Warner, we have several that have environmental problems and more than that, the ocean terminal in the harbor of New York and New Jersey with enormous economic potential which also has environmental difficulties and your leadership in that is equally appreciated.

Mr. Chairman, I'd like to congratulate you on your rein as chairman of the committee and predict that in the long environmental history of this Nation, in these 48 hours, you will be the only chairman probably to serve without any serious environmental controversy or degradation. For that, you are to be congratulated.

I would congratulate the members of the committee on their return and our two neighbors from New Jersey, the Governor of Delaware, who now serves on this committee and so ably will represent the southern shores of New Jersey; and Senator Clinton who will serve with distinction representing those areas to the east of Jersey City and Newark.

[Laughter.]

Senator TORRICELLI. Mr. Chairman and Senator Smith, I can only imagine pride that Christine Todd Whitman, her husband, John, and children, Kate and Taylor must feel at this new stage of what has been a brilliant career of public service. It is a great honor for me to introduce to you the Governor of the State of New Jersey, Christine Todd Whitman, the President-elect's designate for the Environmental Protection Agency.

During her years as Governor, we have waged many fights together on important issues from her leadership in preserving open space to the ending of ocean dumping, so vital to preserve both our economy and the environment, critical not only to our State, but as Senator Warner has pointed out, to the beaches that range all the way from Virginia to Delaware and New York.

President Bush has made a very wise selection. The EPA and the country will be getting an Administrator who is qualified, tested and ready to tackle the challenges that lie ahead for this agency. With this nominee, there will be absolutely no learning curve. There are few training grounds that could better prepare someone for this position than the Governorship of New Jersey.

As chief executive of our State, Governor Whitman has had the managerial and administrative experience of running an agency as large as the EPA but more importantly, no State has had a better sampling of the issues facing the incoming Administrator of the EPA than New Jersey. With 127 miles of shoreline, Governor Whitman has dealt extensively with issues of clean water and nonpoint source pollution. She knows firsthand the threats to the economy and the environment from ocean dumping.

Indeed, Governor Whitman has increased funding for beach cleanups and under her administration, beach closings have dropped from 800 in 1989 when many families in our State were denied the simple pleasure of an afternoon at the shore with their children, to just 11 in 1999.

New Jersey has been praised by the Natural Resources Defense Council for having the Nation's most comprehensive beach monitoring system. With more Superfund sites than any other State in the Union, with 111, she knows what works and what doesn't work in the Superfund Program. We have indeed experienced all the triumphs of when that program works and lived with its frustration when ample resources and community need have not been met with sites being cleaned.

She has seen the value of a concerted effort to turn urban brownfields into productive industrial and commercial sites. Indeed, the Mayor of New Jersey's largest city, Sharpe James, has written to this committee to praise her efforts to take brownfield areas of Newark and turn them into working, productive, industrial and residential areas.

During her tenure as Governor, Christie Whitman brought innovative technologies to the New Jersey Department of Environmental Protection to improve efficiency within the Department's permitting processes. This investment has paid off. For example, it has allowed for the expedited remediation of brownfield sites in New Jersey's urban centers.

In the many dense urban centers in New Jersey, she has dealt with the complex funding and regulatory issues of upgrading dilapidated sewer systems and controlling combined sewer overflow. As the Governor of our Nation's most developed State, she initiated and passed a landmark \$1 billion bond measure to preserve open space. By the time this program is finished, New Jersey will have preserved 1 million acres of farmland, forests, watershed and urban parkland. Few elected officials in the Nation, yet alone this Cabinet, have a better understanding of what is needed to curb urban sprawl and to protect our open spaces.

More than a record of environmental progress, what makes Governor Whitman uniquely qualified for this position is her understanding that economic and environmental progress are not mutually exclusive. For example, our beaches alone provide the best understanding of this in the Nation. Travel and tourism generate \$28 billion in revenue in New Jersey and employ 800,000 people in central and southern New Jersey. No issue is more important to preserving this industry than a clean ocean.

The Port of New York and New Jersey is also a vital component of economic growth and employment in the northern part of New Jersey, contributing \$20 billion annually to the economy and supporting 200,000 jobs.

Both of these issues, our beaches and tourism and the Port of New York and dredging are examples of where economic growth and a clean environment must be made compatible.

The job for which Governor Whitman has been nominated is by no means an easy one. The challenges facing the next Administrator are both numerous and difficult. Some have proven in recent years intractable. The Superfund, Clean Water and Clean Air Acts have not been reauthorized in a decade and there are new challenges for each.

Our urban centers have sewer systems that were built at the turn of the 19th Century but continue to operate now stretching their engineering limits into the 21st Century. They frequently

back up and endanger public health and water quality because they are incapable of handling overflow which is the largest source of pollution in the Delaware Bay and the Port of New York and New Jersey. Having solved most other point solution problems, these remain the single difficulties in our combined water systems.

The next Administrator must make a priority of closing the gap between available funds and infrastructure needs and ensuring that environmental justice is more than a thinktank slogan. The poorest citizens among us, those who live in neighborhoods with economic deprivation, must not have to be forced to bear the burden of housing industries that are otherwise not safe or compatible with urban and suburban living.

I am confident that Governor Whitman will bring this balance and be fair and recognize that with a single exception of Paiute Springs, these are the most important environmental issues in the Nation.

Mr. Chairman, the challenges are many—protecting our water, purifying our air, preserving our open space and reforming Superfund. I'm here simply to tell you as one who has known Governor Whitman for many years, watched her administration closely, been an ally and a critic, on balance, I'm here to tell you the President-elect of the United States has chosen well. This is a good nomination and she will be an excellent Administrator of the EPA. This committee should have confidence in this nomination and I believe in listening to her answers, confidence in approving it and sending it to the Senate.

Thank you.

Senator REID. We will now hear from Senator Jon Corzine, Senator from the State of New Jersey.

**STATEMENT OF HON. JON S. CORZINE, A UNITED STATES  
SENATOR FROM THE STATE OF NEW JERSEY**

Senator CORZINE. Thank you, Chairman Reid. It's an honor for me to be here today. It's a distinct pleasure which I am extremely enthusiastic about, and serving on this committee and with all the members. I look forward to the prospect of working with you, with soon to be Chairman Smith and with all the members of the committee.

Today, I am pleased to join my distinguished colleague, the senior Senator from New Jersey, Senator Torricelli, in introducing our Governor to the committee. Let me begin by publicly congratulating Governor Whitman on her nomination to head the Environmental Protection Agency. It is a great honor for our State and a truly vital role for the Nation. The Garden State is proud.

As Senator Torricelli has explained, Governor Whitman has a long and distinguished record of public service and has made many, many important contributions to our State. As you will see, Governor Whitman is highly articulate and extremely persuasive. She genuinely cares about the issues and the issues of the environment. She knows how to make an impact.

She has been a leader in protecting New Jersey's 127 mile shoreline and fighting for cleaner air, fighting against the kind of pollution that knows no State boundaries. As an individual and as a Governor, she has demonstrated a strong commitment to preserv-

ing open space. Given the Governor's record on matters of conservation, I'm not sure I would not have preferred to see her nominated for Secretary of the Interior.

As you know, the Administrator of the EPA has the primary responsibility for ensuring that our air and water is clean, our natural resources are preserved and our public health protected. It is a difficult job that often requires a careful evaluation of highly complex scientific data and an ability to translate that data into detailed policies. It needs someone who will fight internal battles to make environmental protection a budget priority. It need someone who will work with local communities and business to find mutually acceptable solutions to environmental problems. It needs someone who, when necessary, will be tough on polluters and require them to do the right thing.

Mr. Chairman, I believe Governor Whitman has the background, the experience and the skills necessary to do the job. Of course these are not the only requirements for an EPA Administrator. These qualities must be matched by a determination to stand firm for the environment, to fully enforce our environmental laws and to fight for justice and equity for all.

I know that you and other members will want to ask the Governor for details about her views on specific environmental policies. Once I get on the other side of the table, I'll have a few questions of my own.

Having spoken privately with the Governor, I believe that she will be able to effectively articulate her positions on specific issues and demonstrate a real commitment to environmental protection.

Without rushing to conclusion before the hearing starts, I fully expect that she will convince the committee not only that she deserves to be confirmed but that she had the tools to be a n outstanding Administrator.

With that, Mr. Chairman, I would simply congratulate the Governor on her nomination and I thank you for the opportunity to introduce her.

Senator REID. Senator Corzine, I appreciate your statement. Welcome to the committee.

Representative Frelinghuysen?

**STATEMENT OF HON. RODNEY P. FRELINGHUYSEN, U.S.  
REPRESENTATIVE FROM THE STATE OF NEW JERSEY**

Mr. FRELINGHUSEN. As someone who has worked very closely with Governor Whitman, both as a member of the House Appropriations Committee and as a former New Jersey State legislator, I'm honored to be here to support her nomination and to further introduce her to you and your colleagues.

President-elect Bush has made a wise choice in selecting her to lead our Nation in the development of America's environmental policies for the 21st Century. Governor Whitman is an extremely capable executive. Throughout her tenure as New Jersey's Governor and as a former county-elected official, she has championed clean air and clean water and has been without question the strongest proponent of open space in our State's history.

As New Jersey's chief executive, her leadership has left New Jersey residents feeling proud of their State and of their natural resources which I may add are cleaner and more protected than ever.

Governor Whitman's effective stewardship, as has been mentioned, of our coastline on the Atlantic has left our beaches pristine and our waters among the cleanest in the Nation. As one might expect in the Nation's most densely populated State, the preservation of undeveloped land has been a top priority of hers. Again, Governor Whitman rose to the challenge of combating urban sprawl and has implemented a State initiative to protect over 1 million acres of open space.

She has also strengthened New Jersey's record in cleaning up hazardous waste under the Superfund and outside of Superfund and has partnered with the EPA to actually clean up sites. She has made polluters pay whenever they can be identified and she has worked to implement an excellent brownfield strategy.

Drawing on that experience, I am certain that she will be an advocate for streamlining our Nation's Superfund Program, ensuring more effective expenditures, more accountability and most importantly, getting the cleanup done.

These are just a few examples of her strong leadership. For your close examination of her record, I am confident that she will be dedicated to the health and safety of all our Nation's citizens, a true advocate for our environment.

Finally, I've known Governor Whitman all her life. I have proudly watched her as Governor handle every conceivable type of challenge. At every turn, she's balanced competing interests in order to make decisions that have served New Jersey's best environmental and economic interests. She will do likewise for our Nation.

Mr. Chairman, I urge your support and that of your colleagues of her nomination.

Thank you.

Senator REID. I appreciate very much the bipartisan introduction of the Governor and I hope it bodes well for a bipartisan relationship for the EPA during the years that you are the Administrator.

I would excuse the Senators and the Representative at this time unless they want to stay. They are welcome to do so. Senator Corzine, we expect you back after you go to the Banking Committee and work on the nomination there for head of Housing.

Governor Whitman, as I explained, we are going to have statements from members of the committee. I would say to the members of the committee, we are not going to have any time limit on your statements but we would appreciate it if you would try to keep them to around 5 minutes. We will have the time clock on for the series of questions that will be asked.

After the Governor has given her statement, we will have a series of questions from members based on when they got here, the early bird rule going from side to side, Democrat, Republican, back and forth.

We are not going to take a lunch break; we're going to work through as I explained to the Governor. Always keep in mind, I say to my committee members if you feel you don't have time to ask all your questions, certainly you can submit them in writing. The

Governor understands she would have the responses to us by Monday of next week. So we would appreciate everyone's cooperation. The first statement will be from Senator Boxer.

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

Senator BOXER. Thank you very much.

Welcome, Governor. I really enjoyed our meeting we had yesterday.

I wanted to note that I do have General Powell also appearing before Foreign Relations so I will be running back and forth as is usually the case.

First of all, congratulations on the introductions that you received. I thought they were quite eloquent. It's almost like if you quit now, I think you'd be in good shape considering the very strong support of your nomination.

I also want to add my warm welcome to our new colleagues on the committee. Senators, we really welcome you and we need your help and we are delighted.

I understand that Senator Campbell has been added to the committee and I think he is going to add a great perspective to our work. I'm looking forward to this year.

New Jersey had made tremendous contributions to this committee. I think about Senator Lautenberg and the hard work he did on behalf of your State and the whole Nation in terms of Superfund and brownfields, issues I know you care about. I am also excited that Senator Chafee and I will be working together on that Superfund Brownfields Subcommittee and will work very closely with you on that. With you and Senator Corzine, we continue the New Jersey tradition of contributions to this committee.

I want you to know I think your position is so important. I'm going to be introducing a bill to make it a full Cabinet level agency. I spoke to you about it, it's something I've wanted for a long time, whether a Democratic or Republican Administration. I think you ought to have that full level Cabinet position. I'd like to be calling you Madam Secretary instead of Administrator, so perhaps we can get that done.

Why do I feel that way? Because the Administrator of EPA can literally save thousands of lives by strengthening a single clean air rule. He or she can protect all the Nation's drinking water by taking a single action to ban a few additives, i.e., MTBE that Senator Smith and I have worked so hard on.

You can protect all of our children by restricting the use of a single pesticide. This is an incredible job that you have. You can ensure that low income and minority populations, those who are disproportionately affected by pollution, are brought a cleaner and healthier environment by making civil rights a top priority in every program at the EPA.

The Administrator must have a strong sense of purpose and engage in the nearly singleminded pursuit of these goals if you ever hope to achieve them for the American people because in any Administration, be it Republican or Democratic, the EPA Administrator often runs into tough opposition within the Administration when dispatching her charge of protecting the public health.

The Secretary of Energy, the Secretary of Transportation, Agriculture, the Director of OMB, none of these officials have as their primary charge the protection of this Nation's public health. So if the issue is MTBE, for example, which Senator Smith and I feel so strongly about, and others on this committee, the Secretary of Energy may argue that you can't ban it because it will disrupt the fuel supply.

If the issue is clean air, the Secretary of Transportation and OMB may argue you can't tighten standards and protect thousands of lives because it cost too much. The debate on the air standard will probably be about how much a human life is worth. The OMB Director has a different view usually than the Administrator of EPA.

If the issue is pesticides, the Secretary of Agriculture may tell you not to restrict a pesticide that's harming kids because perhaps they don't feel there is a cost effective alternative.

It is the job, in my view, of the EPA Administrator to argue forcefully with her colleagues in the Cabinet and to firmly pursue protection of the environment and public health in those debates. I think it's a sacred trust. I feel you're going to do that and I know the rest of the Cabinet will fight just as strongly for their mission. In the end, it's going to be a compromise but if you don't have that strong voice in those meetings, we won't make any progress.

I told you yesterday when we met that I have a particular role in the Senate which is to really push hard for the toughest environmental standards for our kids, for Superfund, et cetera. I know that sometimes you and I will not agree and it will never be personal, it will just be on substance.

I worry about some of the issues that are out there. I worry about the issue of letting companies self police. I worry about the fact that we'll say comply if you can and I think it's important for this committee to note that comply if you can sounds great but that isn't what the Clean Water Act says, the Safe Drinking Water Act, the Clean Air Act. They provide for civil and criminal penalties if those requirements aren't met.

I will ask that the rest of my statement be placed in the record and close with this. I have a series of questions I'll be asking. I talked to you about them yesterday. My particular interest will be Superfund and brownfields, MTBE, environmental justice, and I'm going to talk to you about affirmative action at the EPA.

Administrator Browner was called before the House Committee to answer questions about problems that minorities and women are having in the agency, so I think it very appropriate we talk about that.

I want to talk to you about methamphetamine labs that are polluting some farms and the poor farmers had no idea this would happen. We need to help them.

Finally, on the issue of children, the Children's Environmental Protection Act that I authored, how important it is to protect our vulnerable populations.

Again, welcome and I am very proud as a woman to see you in this position. I think you will do us proud.

Thank you.

[The prepared statement of Senator Boxer follows:]



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

Thank you, Mr. Chairman.

I am pleased to be here today to welcome Governor Christine Todd Whitman to the committee. I am also pleased to welcome the new members to the committee.

The Administrator of the Environmental Protection Agency is, in my view, this nation's guardian of the environment and public health. The agency he or she oversees is so important that I will soon introduce a bill to make it a cabinet level department.

The Administrator of EPA can literally save thousands of lives by strengthening a single clean air rule. The Administrator can protect all of the nation's drinking water by taking a single action to ban one fuel additive. The Administrator can protect all of our children by restricting the use of a single pesticide.

The Administrator can ensure that low-income and minority populations—those who are disproportionately affected by pollution—are brought a cleaner and healthier environment by making civil rights a top priority in every program at EPA.

But the Administrator must have a very strong sense of purpose and engage in a nearly single-minded pursuit of these goals if he or she ever hopes to achieve them for the American people.

Why?

Because in any administration—whether Republican or Democratic—the EPA Administrator often runs into tough opposition within that administration when dispatching his or her charge of protecting the public health and the environment.

The Secretary of Energy, the Secretary of Transportation, the Secretary of Agriculture, the Director of the Office of Management and Budget—none of these officials have as their primary charge the protection of this nation's environment and public health.

If the issue is MTBE, the Secretary of Energy may argue that you can't ban it because it will disrupt the fuel supply.

If the issue is clean air, the Secretary of Transportation and OMB may argue that you can't tighten standards and protect thousands of lives because it costs too much. The debate on that air standard will probably be about how much a human life is worth.

The OMB Director typically has a different view from the Administrator.

If the issue is pesticides, the Secretary of Agriculture may tell you not to restrict a pesticide that's harming our children because farmers may have to use a less effective alternative.

It is the job of the EPA Administrator to argue with her colleagues in the cabinet. It is her job to firmly pursue the protection of the environment and public health in those debates. To be sure, the rest of the cabinet will do the same with respect to their agency's mission.

I also want to note that I have serious concerns about some of the environmental approaches President-elect Bush advocated on the campaign trail and in Texas.

In particular, President-elect Bush and his Interior Secretary nominee Ms. Norton have said that voluntary approaches to environmental protection are preferable to strongly enforcing the mandatory requirements of our environmental laws.

For example, for years while Ms. Norton was the Attorney General of Colorado, she was locked in a dispute with EPA over Colorado's "self-audit law."

The law basically said, if a polluter came forward and reported a pollution violation, the State wouldn't enforce against it. The law also kept all information about the violation secret, so that the public couldn't find out the extent of the violation or the remedy.

EPA rightly thought this was a spectacularly bad idea. The agency said this State law was contrary to the Federal environmental statutes Colorado was charged with implementing, and threatened to revoke Colorado's ability to implement those laws. EPA was only able to resolve the dispute after Ms. Norton left her post.

The point of this story is this: our Federal environmental laws don't say—"comply if you can."

You won't find that in the Clean Water Act, the Safe Drinking Water Act or the Clean Air Act.

Those laws set requirements and they provide for civil and criminal penalties if those requirements aren't met.

That's the philosophy enshrined in our laws. It is the role of the EPA Administrator to give effect to that philosophy. It is the role of this Committee to consider whether it is a good idea to radically change that philosophy.

In the 1970's, we wrote our environmental laws with these firm requirements and penalties for a reason. It was because our air was increasingly too dirty to breathe and our rivers were catching fire—such was the legacy of voluntary approaches to environmental protection.

I am, for one, very skeptical that voluntary approaches will bring this nation's people a cleaner and healthier environment.

In closing, I look forward to your testimony today. I will have a series of questions I would like to ask and submit for the record.

Thank you.

Senator REID. Thank you very much, Senator Boxer. Congratulations on your new committee assignment, the Commerce Committee. I am very happy that you stayed on this committee.

Senator BOXER. I wouldn't leave this committee.

Senator REID. We will now hear from Senator Inhofe.

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

Senator INHOFE. Thank you, Mr. Chairman.

I want you to know, as I told you, I was very excited when President-elect Bush came up with your name. I think we all came up with some informal suggestions as to profiles that we'd want. Mine was to have someone who had experienced the other side of it which clearly you have.

You're going to have to draw on all of your skills because you're going to inherit quite a few problems that I think are going to make your job one of the most important jobs in this new Administration.

Senator Smith talked about ballots a few minutes ago and I have said quite often that I really only want two things—one to have regulations and rules based on sound science and to have some type of cost benefit analysis so we can see the price we're paying for the various rules and regulations we are initiating.

In the case of sound science, when we went through some of the air regulations, we have in our statutes, CASAC, the Clean Air Scientific Advisory Commission, that is there, 21 well informed professional scientists and yet they have been ignored in the last few years. I think we need to base that on sound science.

I think the States have become second class citizens and the Enforcement Office has been more concerned about penalties and fines instead of compliance with the laws. The EPA has even been in the practice of funding lawsuits against itself and then turning around and entering into consent decrees. This isn't something that needs to be done.

Midnight regulations, I had a news conference last April when I said I know what's going to come up, we're going to have these regulations coming out and sure enough, this has happened. The sulfur diesel regulation, for example, is one we needed to have more hearings on, we needed to have more time and deliberation to see just what the results were going to be.

It may come as a shock to you but I don't always agree with Senator Torricelli on everything. However, when he said there is no better training ground for this job than to have been a Governor of a State, I do agree with that, so you know the problems that come with various enforcements.

In complying with our time, I just want to mention a couple of things. Back 30 years ago when this all started, the States didn't

have any experience in environmental issues but now they do. I hope we are going to be accepting the States not just as partners but with recognition that they are closer to the problem.

I can remember when this committee was concerned about a Superfund problem in Louisiana in Bolger City, Oxy USA. They put together a program and went to the State of Louisiana, went to all the parishes, went to Bolger City, went to the environmental groups and they all agreed this was going to be a cleanup they'd be responsible for and we would have it become a reality in 2 years. The EPA came along and said, no, we want to do it. Their experience was it would take from 7 to 9 years. I would like to see a greater reliance upon the experience that has been gained by the States.

I would like to have be concerned with how the EPA is working not in a vacuum but the regulations and how they affect the military, energy. I think you are going to be working closely with Secretary Rumsfeld as well as Senator Abraham in terms of the military and I think Senator Warner alluded to this briefly.

The cost of compliance with some of the environmental regulations on our training bases has become very, very expensive. In fact, I chair the Readiness Subcommittee of the Senate Armed Services Committee and we had a hearing where testimony came in and we drew the conclusion that they are spending more money complying with the various environmental regulations than they are in training.

In the area of energy, as we impose more regulations on the refining industry, which is already 100 percent in the United States, any additional regulations—supply and demand—goes directly into the cost of energy to heat our homes and to drive our vehicles. These things have to be taken into consideration.

I have no doubt that you will do that. I'm looking forward to working with you. While we need to ensure the utilities continue to clean up their emissions, I'm committed to work with Senator Voinovich and Senator Smith on that issue, some of the out of control enforcement actions are not the answer. Too many times the EPA has acted without regard to the consequences for their actions.

I know as Governor, as a former Governor, you bring that experience with you. You're fully aware of this and I'm looking forward to your confirmation and to working with you for a cleaner and healthier America.

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

Senator CARPER. Thank you for the warm welcome to those of who are new, and thank you, Senator Reid, for what is sure to be known as the Reid Era, the period of time when you led this committee.

It's a special privilege to be here with the First Lady and our new colleague, Senator Boxer and Senator Reid and Torricelli. We all started in this business 18 years ago and served with Senator Smith and Senator Inhofe. I see Senator Voinovich who has been my chairman in the National Governors Association, and chairman of one of the committees I serve on here.

Senate Chafee, I greatly admired and had a warm affection for your dad. It's great to be here with you and Senator Lieberman who led us through the Democratic Leadership Council.

It's a pleasure to be here today to welcome my former seatmate at the National Governor's Association whom I sat alongside for 7 years. It's a pleasure to welcome you. Others have said wonderful things and I'll to that list.

Over her shoulder, is her husband and John, having applied and got through Senate confirmation a time or two myself, I have some idea what you've had to go through in terms of disclosure for the privilege of this day. That's a true test of one's affection for your wife. The fact that you're both here speaks volumes for each of you.

As Governor I think the question most asked of me during my 8 years when I led your neighboring State was, what's it going to be, Governor, the economy or the environment? I responded, it ought to be both. I always felt you could have a cleaner environment and a strong economy. I think we've proven that in our State. I think we've proven that in our country. I believe you've proven that to be the case in New Jersey.

You have a fellow who works for you there, Bob Shin—he's here somewhere—one sharp cookie and very creative, a very innovative thinker. I want to say I have no question that you'll be a superb Administrator.

The only question I have is the extent that you will have freedom to select the top people around you. That is the key. They are wonderful people in the ranks of EPA. I think there are wonderful people at the top of EPA. Some of them will leave at the end of this Administration.

One of the questions I want you to be thinking about is the kind of people you'll surround yourself with at the very top going forth.

Whether it's working to develop creative automobile emissions in New Jersey, testing standards so our region would enjoy cleaner air, fighting to protect horseshoe crabs in the Delaware Bay from overharvesting, I believe Governor Whitman has the ability to find workable solutions without a diminished resolve for a cleaner environment.

I look forward to working with you, Mr. Chairman and Senator Smith, our colleagues on this committee and our new Administrator to modernize but never to weaken our Nation's commitment to clean air, to clean water, to open space and a rich environmental legacy for our children.

While we have made important strides in the past three decades, we have an obligation to try to do better and I know we will. Whatever the challenge, whether it's global warming, nuclear waste, polluted coastal waters, urban sprawl, we've got to put our heads together and work hard across party lines to develop consensus.

As we begin this new century, it's time to examine our Nation's environmental successes and challenges, the laws and regulations we've put into place in three decades since the Environmental Protection Agency was created. While it's crucial that the EPA Administrator enforce existing environmental laws, you must also support and encourage innovation and cooperation as industries achieve and move beyond current requirements.

It's also important we work to fully exploit the partnerships between EPA and the States with regard to environmental management. In short, there is still plenty of work to do.

I could be accused of a certain bias in believing that a Governor might be the right kind of person to administer the EPA, but viewing Governor Whitman's nomination as objectively as I can, here is what I see. I see someone who has had to learn the fine art of working within all branches, all levels and all parties of government; someone who understands the power of properly inspired corporate resources; and who has seen firsthand the intimate relations between environmental quality and the wisdom of our energy, transportation, growth management and agricultural policies.

I know her as a fellow Governor and as a friend and as a good neighbor. She's an independent thinker, surrounds herself with excellent people, possesses a strong intellect and has demonstrated a propensity to think outside the box in preserving the natural resources of her State.

I believe she will bring the power of her State experience to EPA into our environmental well being. I am pleased the President-elect has nominated Governor Whitman for this post. I consider it a privilege to support her nomination and welcome her here today.

Senator REID. Thank you.

We will now hear from Senator Chafee.

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

Senator CHAFEE. Thank you. Welcome, Governor Whitman. I again commend President-elect Bush for this appointment.

Governor Whitman will bring to the EPA the ability to find solutions to complex problems and to solicit and consider all points of view. I am very enthusiastic about her nomination.

The position of the Administrator of the EPA requires special skills because of the frequently competing interests, the controversy that has surrounded environmental issues in recent times, and the importance of getting it right. Governor Whitman has had a long record of success in New Jersey and I look forward to her speedy confirmation as Administrator of the Environmental Protection Agency.

Although there will be many challenges ahead, I am confident that she will steer a steady course and serve the environment and the Nation well.

I'll join Senator Boxer in shuttling back and forth for the Foreign Relations Committee and the General Powell hearing.

Senator REID. I think the example you set for the length of your speech is exemplary.

Senator CHAFEE. I believe hearings are made to be heard.

Senator REID. Senator Lieberman?

**OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN,  
U.S. SENATOR FROM THE STATE OF CONNECTICUT**

Senator LIEBERMAN. A tough act to follow.

Thanks for your warm welcome back to the committee.

I was thinking of the witness—a great Governor of a great State whose people are noted for their goodness and wisdom. I wanted

to express my gratitude for the wisdom their voters showed last November. If there had been just a little more of that, I might not have the thrill of being here with my colleagues this morning.

It is good to be back. It's been a great committee and I look forward to a very productive year.

I welcome the new members very warmly and envy them for the experience they are going to have here.

I did want to briefly say that I think Governor Whitman you enter the leadership of the environmental protection area at a time when your particular leadership is going to be very necessary. In recent years, I've found both in the State of Connecticut and as I've had the opportunity to travel around the country and read public opinion surveys that there is a growing bipartisan consensus in favor of both protecting our natural resources and protecting us from environmental pollution that may affect our health.

Unfortunately, here on Capitol Hill the recent years have not been, notwithstanding the good efforts of members of this committee, very productive years. We haven't produced a lot of new environmental legislation. For some that may be good news but I think it's not good news for the public. There are major pieces of environmental law that await reauthorization. So your arrival here presents an opportunity and challenge to try to mediate the gaps that have existed to overcome the environmental gridlock that has existed on Capital Hill and to take us forward in a balanced and progressive way.

During this same period of time, the Clinton Administration has, in my opinion, taken some very significant steps forward in both protecting our natural resources and protecting us from the adverse effects of environmental pollution to our health. I think here you have a special opportunity to protect those gains and advances.

I must say many of us are concerned about the suggestion that the new Administration will undo a number of environmental initiatives of the Clinton Administration, particularly several of those that have been finalized in the last several months. From my perspective, obviously it's personal, these are by and large critical needed protections that were not just rushed through at the end but have been carefully debated and considered for years.

For example, the new regulations limiting sulfur content in diesel fuel and emissions from diesel engines were initiated years ago before they were promulgated in December. These regulations will reduce smog-causing emissions from trucks and buses by 95 percent and soot emissions by 90 percent below current levels.

I'd note with appreciation for the record that the State of New Jersey supported that rulemaking, so I know you're aware of the great need to control these emissions. I hope that your testimony today and your service in office will reassure us that you will not abandon but rather will vigorously enforce this new standard which again is not to be enforced just because it was done but because it will protect the health of millions of Americans.

Second, I want to pick up on Senator Boxer's excellent statement that you have an opportunity to be an advocate within the new Administration for environmental protection. I specifically want to focus on what is a cloud on our horizon which is the threat of cli-

mate change. Although I know the debate continues, global warming is real and distressing.

I was interested that two of our colleagues, Senator Hagel and Senator Craig both attended the meeting last November in the Netherlands where they didn't agree with the specifics that were being proposed amid statements they'd reached a conclusion based on the science that there was a real problem here. I hope you will use your position in this Administration to also bring about a consensus that will enable us to take at least some steps forward to stop this problem.

At the international negotiations in the Netherlands last November, there were a number of positive signs that an acceptable agreement is possible in the context of the Kyoto protocol. I hope you will play an active role in helping Congress and the new Administration take some sensible steps forward in that direction.

Finally, although I recognize you're now moving to a national office, I hope you will not lose sight of the particular environmental problems of the northeast. Since the passage of the Clean Air Act amendments in 1970, transported pollution in our States in the northeast—yours, mind, New York and others—has continued to be a problem. In Connecticut, for instance, transported pollution has measured at levels that exceed the public health standard by 80 percent. Under the stewardship of the Clinton Administration, the EPA began to take steps to address this problem through regulations such as the NOx SIP which will help reduce smog in the northeast.

I remember some good political advice I got when I took a first step forward in politics in Connecticut from a salty old New Haven politician who said to me, "Kid, never forget where you came from." So I hope environmentally speaking, as you assume the leadership of EPA, that you will not forget where you came from.

I look forward to your testimony today. Thank you for your willingness to serve in this position.

Senator REID. Thank you, Senator Lieberman.  
Senator Voinovich?

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

Senator VOINOVICH. Thank you.

I too would like to welcome back Senator Lieberman and look forward to working with him in this committee and also in Governmental Affairs.

I'm pleased that my longtime and good friend, Senator Carper, is going to be on this committee and looking forward to working with you, Tom.

Senator Clinton, we've worked together on children's issues and I look forward to working with you, and all my other colleagues here.

I'd like to make a short statement and then ask unanimous consent that a longer statement be put in the record.

Senator REID. That will be the order.

Senator VOINOVICH. First, Governor, after the statements of all us here today, you're going to realize what a tough job you have. Governor Whitman and I have been friends for a number of years.

I can still remember how pleased I was to support her candidacy for Governor of New Jersey when I was chairman of the Republican Governors Association.

We worked together in the National Governors Association where she was a very, very active member. I know of her interest and commitment to the environment because I appointed her to serve as chairman of the NGA's Committee on Natural Resources, a long-standing interest in the environment.

Though we have had some regional differences, we have collaborated on many issues, giving our States greater control of overflow control and out-of-state waste. We didn't make it but we sure worked at it. I know your record of outstanding accomplishments in protecting public health and the environment. We have heard about that and we will hear more from you.

I think you further understand being a good environmental steward can be done responsibly, that there's a balance that can and must be maintained between economic progress and environmental protection. It's that balance, Governor, that I will work to achieve with you when you're confirmed as I think you will be, as the Administrator.

An issue of concern to me and millions of Americans, and I'm surprised I haven't heard it yet this morning, is today's high energy prices and what we are now seeing in the West and the need for reliable energy supply. With electricity, natural gas and home heating oil prices skyrocketing and gasoline prices remaining high, we've got to address our country's lack of a comprehensive energy policy.

Not only that, we need to be concerned about the growing solidarity among the oil-producing nations and the unrest in the Middle East. I just came back from visiting with President Mubarak and meeting with leaders in Israel. That situation is very, very critical and could explode.

Since at least the mid-1970's, Congress and the Presidential administration of both parties have been unwilling, unable, unmotivated to implement a long term energy policy. As an aside, it seems like *deja vu* to back in the 1970's as we sit here today awaiting the outcome of another OPEC meeting being held to determine what production levels are going to be provided by the oil cartel. Three dollars a barrel today, God knows what it is going to be tomorrow.

We import more oil now than at any other time in history but we can't increase production here in the U.S. even if we wanted to. We haven't built a refinery in 25 years; we shutdown 36 during the Clinton years. As a result, gasoline prices are high and could go higher.

Home heating oil, I talked to somebody yesterday and it's going to have a devastating impact not only on the people in that part of the country but on the businesses there. Fifty-six million American homes use natural gas. Unfortunately, supply and demand of this clean fuel is driving prices through the roof. Just ask my wife, Janet. Look at this bill and I said, you know, we can afford it but what about the poor in this country, what about the elderly who are going to give up eating or other things they need to have because they have to pay their energy costs.



We shouldn't forget we have other energy resources like coal. I know it's a dirty word today at the EPA, fossil fuel, let's get rid of it. We have new technologies that are making coal an increasingly cleaner source of electricity and it's abundant. It's an abundant resource, 250 years of supply of coal we have in this country.

I think it's time the Government, industry and environmentalists and consumer groups together start talking to one another on the best approach to meet our long-term energy needs. I'd be interested in your thoughts, Governor, on the need for a comprehensive energy policy and the role of the EPA. It's not only in the Energy Committee, it's in the EPA. Energy and EPA have to work together.

I'm also interested in brownfields. I'm pleased to know you've done so much in your State about it. I had legislation in last year that would allow States to go forward with their brownfield program but many States cannot get the signoff from the EPA. For some reason, they think they care more about the environment than Governors and state legislators, mayors and city council members and commissioners in our respective States. We need to get on with that brownfield legislation. I can tell you in Ohio we have cleaned up a lot more sites with our law than the Federal Government has under their program.

The other thing—and you and I have talked about it and I think it's a subject all of us in this committee ought to be concerned about—is the upcoming human capital crisis in this country. A lot of people are unaware of the fact that one-third of the people working in our Federal agencies are going to retire before 2004 and another 22 percent of them are eligible for retirement. We could lose almost half the Federal work force by 2004. That's going to impact your agency. You've got a tremendous problem there. You need the best and brightest people to do research, do the enforcement, you need scientists and lawyers.

I'm going to be interested in knowing some of your recommendations on how you can deal with that. I would hope you'd bring that problem back to this committee and others in Congress so that we can be responsive.

Last month I released a report to help the new Administration respond to this crisis before it reaches crisis. I gave you a copy when you were in the office.

Mr. Chairman, all of us agree we need to protect the environment and the health of our citizens. Congress and the Administration need to do a better job of ensuring the cost of laws and regulations bear a reasonable relationship with their benefits to public health and the environment. We need to do a better job of setting priorities and spending our resources wisely. How we do that will affect our ability to create a national energy policy, secure our national defense and economic competitiveness in the world marketplace and respond to the need to maintain a reliable source of energy as well as address the soaring cost of energy in this Nation and its reliability, as I said before, costs that are impacting on those least able to pay.

The unrest that is occurring in the Middle East and the soaring cost of energy in the United States means that this Nation's lack of a cohesive and comprehensive energy policy will be on the front

burner and generate a lot of heat for sometime. I think it's going to be the issue for sure this year.

Governor Whitman, you and President-elect Bush are in the kitchen and we're in there with you. We look forward to working with you.

[The prepared statement of Senator Voinovich follows:]

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

Good morning, Mr. Chairman, and thank you for holding this hearing on the nomination of Governor Christine Todd Whitman to be the next Administrator for the Environmental Protection Agency.

Governor Whitman, I would like to welcome you to our Committee this morning.

Christine Whitman and I have been good friends for a number of years, and I can still remember how pleased I was to support her candidacy for Governor back in 1993 when I was chair of the Republican Governors' Association.

Governor Whitman and I have worked closely together in the National Governors' Association where she was a very active member. I know of her interest in and commitment to the environment because I appointed her to serve as the chairperson of the NGA's Committee on Natural Resources.

Even though we had some differences because of the regions of the country that we represent, we collaborated on many issues, including giving states greater control over waste flow control as well as shipments of out-of-state waste.

Throughout her term in office, Governor Whitman has been interested in protecting public health and the environment, and has made it one of her priorities.

To point out a few of her accomplishments, Governor Whitman has provided nearly \$675 million in loans and over \$17 million in grants for a variety of clean water and drinking water infrastructure projects in New Jersey; she has worked to clean up New Jersey's waters, making 100 percent of the state's beaches "swimmable" and increasing the acreage in her state available for shellfish harvesting; and she has fought to preserve farmland and other open spaces including approving \$11 million to preserve Sterling Forest in New York a major watershed region for millions of residents of northern New Jersey and New York City.

As Governor, Christine Whitman has understood that being a good environmental steward can be done responsibly; that there is a balance that can and must be maintained between economic progress and environmental protection.

It is that balance that this Senator will work to achieve with Governor Whitman when she is as I believe she will be confirmed by the Senate.

Governor Whitman, an issue that is of concern to me and millions of Americans is the high price of energy, coupled with the need to maintain a reliable energy supply. With electricity, natural gas and home heating oil prices skyrocketing and gasoline prices remaining high, it has become apparent that our country's lack of a comprehensive energy policy must be addressed. Since at least the mid-1970's, Congress and Presidential administrations of both parties have been unwilling, unable and unmotivated to implement a long-term energy policy.

As an aside, it seems like *deja vu* as we all sit here today awaiting the outcome of another OPEC meeting that is being held to determine what production levels will be imposed by this oil cartel.

Today, the United States relies on more foreign sources of oil than at any other time in history. However, even if we wanted to increase the production of crude oil in this country, there has not been a new refinery constructed in 25 years due, in part, to changes in U.S. environmental policies. Additionally, 36 refineries have closed since the beginning of the Clinton Administration, in part, because of strict environmental standards.

Last year, the existing refineries were running at 95 percent capacity or higher for much of the year. With our refineries running at these levels, even if a greater oil supply was available, there would be no capability for refineries to turn it into useful products. As a result, we must rely on overseas supplies at an astronomical cost from a region fraught with instability. Until new refining capacity is available, even minor supply disruptions will continue to lead to drastic increases in fuel prices.

In addition, natural gas heats 56 million American homes and provides 15 percent of the nation's electric power, for nearly one-quarter of our energy supply. Because natural gas burns so cleanly, it is easier to obtain the environmental permits necessary to build natural gas-run energy plants. Thus, it is easy to see why up to 95

percent of all new electric generation plants that are currently being built are expected to use natural gas for fuel.

The popularity of natural gas is good for the environment, but the high demand for it is beginning to pinch the pocketbook, resulting in soaring costs. We should not forget that other energy resources are available which can provide additional sources of clean, low-cost power.

New technologies are making coal an increasingly cleaner source of electricity. We shouldn't forget this valuable, abundant natural resource with an estimated domestic supply of 250 years as we move forward with an energy policy that not only protects our environment, but also continues to meet consumer's needs for power.

During this energy crisis, it is critical that we restructure our country's disjointed energy policy into a national plan that is comprehensive, cohesive and cost-efficient. This is a goal that we cannot accomplish without considering the role environmental regulations play in our energy infrastructure, and Governor Whitman, I would be interested in hearing your views on what we should do to forge a comprehensive energy policy, and the role that the EPA should play in developing that policy.

One other area that I am interested in, and which I know Governor Whitman cares about, is the need to enact brownfields legislation. In fact, I introduced legislation last year to provide incentives to clean up abandoned industrial sites across the country, put them back into productive use and save our greenspaces.

The main impetus behind my legislation was my view that we need to create more certainty in the brownfields cleanup process. Parties that clean up non-NPL sites under state cleanup laws need to be certain about the rules that apply to them, particularly that their actions terminate the risk of future liability under Superfund.

We need to create that certainty by allowing states to release parties that have cleaned up sites under state laws and programs from Federal liability.

Again, I intend to reintroduce my legislation once the Senate re-convenes, but, Governor Whitman, I would like to hear your views as to what the administration will do with respect to implementing a fair and reasonable brownfields policy that does not impede progress onsite clean-ups that have been conducted via state standards.

Finally, I would like to talk about an issue that I believe to be very important; one that affects all Federal agencies and departments the human capital crisis.

By 2004, 32 percent of all Federal employees will be eligible for regular retirement, and 21 percent more will be eligible for early retirement. Taken together, more than half the Federal work force 900,000 employees will be eligible to leave government service in just 4 years.

While I don't expect such a mass exodus, it's certain that we will lose a lot of good people who have the experience and know-how necessary to meet the expectations of the American taxpayer.

For instance, at the EPA, the loss of scientists could affect attempts to revise environmental standards, while the loss of lawyers could have an impact on enforcement action timetables.

All in all, fewer qualified Federal employees could have a tremendous economic and societal impact.

Last month, I released a report titled "Report to the President: The Crisis in Human Capital," a guide for the Bush administration to respond to this crisis while it can still be reasonably addressed, and before it reaches critical mass.

I am ready to work with the administration in helping to resolve this impending crisis and to create greater awareness among my colleagues in order to pass legislative remedies. In the meantime, Governor Whitman, I hope you quickly familiarize yourself with the human capital needs at the EPA and I would be interested in hearing how you intend to respond to this challenge.

Mr. Chairman, everyone in this room agrees that we need to protect the environment and the health of our citizens. I believe that Congress and the Administration need to do a much better job of ensuring that the costs of laws and regulations bear a reasonable relationship with their benefits to public health and the environment, and we need to do a better job of setting priorities and spending our resources wisely.

How we do that will have an enormous impact on our ability to create a national energy policy, secure our national defense and economic competitiveness in the world marketplace, and respond to the need to maintain a reliable source of energy as well as address the soaring cost of energy in this nation costs that are impacting most severely on those least able to pay, primarily, seniors on fixed incomes and low-income families.

The unrest that is happening in the Middle East and the soaring cost of energy in the United States means that this nation's lack of a cohesive and comprehensive

energy policy will be on the "front burner" for quite some time. And Governor Whitman, you and President-elect Bush will be in the kitchen.

Senator REID. As usual, you give an important statement.

**OPENING STATEMENT OF HON. HILLARY RODHAM CLINTON,  
U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator CLINTON.

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

I'm pleased to be joining my colleagues as a new member of this committee. It has a strong tradition of New York presence and leadership because of Senator Moynihan's work on behalf of the environment and public works and his service as the chairman of this committee.

I'm looking forward to working on behalf of the issues that this committee is concerned with—protecting and preserving our environment, protecting and furthering public health, and providing communities with much needed infrastructure.

I'm delighted to be here with Governor Whitman and her husband, whom I have shared many spousal events with, so it's a particular pleasure to see you here and to see you in this position.

The points that have already been raised by previous opening statements are all ones that are of concern to the State that Senator Torricelli described as being east of Jersey City and Newark because New York has a number of environmental challenges, partly because of our long tradition of industrialization which we share with New Jersey, Delaware, Connecticut and other States in the Northeast; partly because of transported pollution. We have particular issues that will need the concern and attention of the Administrator of the EPA.

That is why this hearing is important to me because as I've traveled New York from the Adirondacks to Lake Onondaga to the Hudson River to the Long Island Sound and the New York shoreline, I've certainly seen the extraordinary environmental treasures but also the problems that have come over the decades that have not yet been addressed.

I too believe that a clean and healthy environment go along with a growing and expanding economy. Today we enjoy the cleanest air, cleanest water and strongest economy in a generation. It is my hope that through new tax credits and other incentives, we can further reduce pollution and improve the environment while continuing to grow the economy, particularly in areas like upstate New York, and other urban areas in New York and elsewhere that have not yet realized the full benefits of economic growth.

I know that we can continue to improve the environment and provide new opportunities for job creation and economic development through an increase in brownfields cleanup and redevelopment. EPA's brownfields initiative has already proven successful across the country and in many areas in New York State including Buffalo, Rochester and Niagara Falls.

I believe that an effective, voluntary and incentive-based program needs to be backed by strong environmental and public health standards, and by rigorous enforcement where compliance with such standards is lacking. These efforts need to be supported by adequate resources in the agency's budget.

I look forward to learning more about Governor Whitman's ideas of how best to enforce environmental standards.

Perhaps even more important than the link between the environment and the economy is the link between the environment and public health. In the work that I have done on behalf of children's health, as many of you, including members of this committee have done, we know and we're becoming increasingly aware of the link between environmental degradation and harmful pollutants and diseases that children and adults suffer. I would particularly point to the extraordinary increase in asthma as one example of that.

In children particularly, environmental damage can lead to long-term learning disabilities and other health problems. So this link between the health of our citizens and the health of our environment makes it all the more important to continue expediting the cleanup of toxic waste sites under the Superfund Program, establishing the strongest standards for the quality of our air, and ensuring that communities, particularly communities of color, have the resources they need to adequately treat their water and clean up the toxic wastes that are in their environment.

Equally important are effort to provide the public with information about the food we eat, the water we drink and the air we breathe so that we all can make our own decisions about how best to protect ourselves and our families from potential environmental health risks. I would hope we would continue to work to make certain the same protections are afforded to all communities regardless of who lives in a community, the race or ethnicity, or income level of those citizens.

In New York, as in New Jersey, the environment has been an area in which Republicans and Democrats have worked together. It is my great hope that we will make similar progress at the national level with the new administration by working in a bipartisan, even non-partisan way.

I think we can all recognize significant progress has been made in improving and protecting public health and the environment, but there is much more to be done. In addition to the issues that I've mentioned, I certainly join my colleagues' comments about everything from the energy crisis to climate warming and know these are the challenges that will have to be tackled with Governor Whitman's leadership in this Administration.

I look forward to discussing these issues and challenges with you this morning and in the weeks and months ahead.

Senator REID. Thank you, Senator Clinton. We appreciate your patience.

Senator Bond?

**OPENING STATEMENT OF HON. CHRISTOPHER S. BOND,  
U.S. SENATOR FROM THE STATE OF MISSOURI**

Senator BOND. Thank you.

It's a real pleasure for me to welcome a friend I've known for over 40 years. She was a very, very, very young person when I first met her.

It's also a pleasure to welcome two other new members to the committee, Senator Clinton and Senator Carper whom I first got to

know in the Governors Association and following several Governors.

I have to tell you, Christie, there are a lot of adjustments you have to make from being Governor to being in Washington, D.C. The first thing you need to know is that when they say hearing, don't believe we're here to hear the witnesses. You have spent about a hour and 15 minutes and you're not through yet.

Senator REID. Would the Senator yield his time?

[Laughter.]

Senator BOND. No. I'm not going to submit my statement for the record either because I know nobody reads it. It makes us feel better but it doesn't do any good.

[Laughter.]

Senator BOND. On a serious note, I want to echo what Senator Voinovich said about the energy crisis. We are seeing in our part of the world the natural gas prices going through the roof because of some very short-sighted policies. One, we pushed our all other forms of energy so we are now building new electrical generation facilities utilizing natural gas. I happen to think that's a very, very outrageous waste of a scarce resource. We ought to be using other sources.

I'm not going to tickle the fancy of our chairman by mentioning one particular resource but there are other sources of energy and natural gas should not be the primary source of electrical generation. Natural gas itself is higher because of the restrictions and limitations put on the development of sources. That's something again that's going to come into this energy discussion.

On the question of your responsibilities, as a Missouri Republican outdoorsman, everything from hunting, fishing, to native grasses and wildflowers, I'm very proud of the tradition we have in our State of conserving, preserving and protecting our environment. I want to save it for my son who happens to be a temporary resident of your State right now.

I think we both know that the issue is not whether we are going to preserve and protect our environment, but how we go about it and make it a sustainable, continually progressive effort. I don't accept the status quo simply because bureaucrats think it works but there are a lot of people on main street who know it doesn't work.

I reject the notion that to seek reform and improvement in the environmental laws and regulations is tantamount to a rollback of environmental protections. That kind of easy characterization won't work, that dog won't hunt anymore.

I hope you will agree to seek flexibility to seek improved methods of cleaning up the environment, not rollbacks or letting polluters off the hook. A targeted fix to improve the environment in a cost effective way is not a stealth attack. I would hope that we both agree that flexibility needs to be protected, partnerships need to be formed and we need to measure environmental progress, not in the bean counter numbers of how many enforcement actions and how many people have been sued solely but in how much the environment itself has been improved in the various areas.

Our environmental statutes are like stovepipes that require us to look only at one element in many of the activities. We need to be

looking at the broad impact our actions have across the media which are affected by environmental statutes.

I look forward to working with you on this committee on streamlining some of the environmental regulations. We do transportation out of here as well and transportation is vitally important. Yet we see in our State when we are building a bridge of road, instead of taking two or 3 years, NEPA drives it up to eight, nine or 10 years. There are some people who want to use the environmental laws to cut out barge traffic and navigation in this country. One barge tow takes about 880 trucks, 18 wheelers off the highway and that is a significant environmental problem.

Senator REID. How many?

Senator BOND. 880 18 wheelers. A normal barge tow with 25 towboats on it. That's why I have imposed upon my colleagues, particularly my colleague the chairman, in seeking to maintain the flexibility to have river transportation as one of our alternatives for transportation.

We look forward to streamlining the process so we can protect the environment and keep transportation moving.

I look forward to working with you on some other committees, on the Budget Committee, and the Appropriations Committee where you'll have an opportunity to tell us what your priorities are.

I certainly hope we can work to improve environmental progress, one of the areas with which you are familiar with your agricultural background, is how to deal with the problem of nonpoint source pollution. We've done things with the EPA, the hog producers and the Clean Water Foundation.

We think agriforestry has a means of providing natural filter strips to lessen nonpoint source pollution from agricultural runoff. We look forward to working with you on that.

Finally, I do have one more committee and that's the Small Business Committee and Superfund liability is a tremendous problem for many innocent small businesses. We've had the dickens of a time trying to rationalize that to make sure we can clean up Superfund sites and not hold small businesses who have neither the resources nor the guilt for superfund sites from being held liable.

We have a lot of work to do and maybe before lunchtime you'll have an opportunity to make your opening statement.

I thank you for your indulgence and I thank the chairman.

Senator REID. Thank you, Senator Bond.

The final statement will be made by Senator Graham. I say to you, you and Senator Smith are an example of being able to legislate things that really matter. The work you did last session on the Everglades is something that will long be remembered when history is written as to good things that have happened dealing with things environmental. Both of you are to be congratulated for getting that piece of legislation through the Senate, through the House and signed by the President.

**OPENING STATEMENT OF HON. BOB GRAHAM,  
U.S. SENATOR FROM THE STATE OF FLORIDA**

Senator GRAHAM. Thank you very much, Mr. Chairman. That's typical of your thoughtfulness and courtesy as well as depth of wisdom in terms of what is really important.

I want to also extend my congratulations and best wishes to our two newest members, Senator Carper and Senator Clinton. We know that you bring a great deal of wisdom and experience to these issues and we will look forward to benefiting by your participation.

In light of the fact that I am the last and also to try to follow your admonition for brevity, I would just like to mention two policy issues that I think are significant.

One is a continuation of what Senator Voinovich and Senator Bond both previously referred to and that is the issue of energy. I met last week with a member of an energy commission that has been established by our Governor Bush to look at the future in Florida. One of the things that stunned me was the fact that today of the approximately ten new plants that are in some stage of development in Florida, every one of them is a natural gas plant. They are not being used as they had been in the past, just for peaking power, but rather they are going to be a part of the base load.

So the degree of dependence to which we have come on that one source of energy I think has very serious ramifications. One of the reasons we've become so dependent on natural gas is that all the other alternatives had become very difficult to get permitted. One area that our State had a good experience with is nuclear. We have three nuclear farms in Florida. They used to provide over 20 percent of our total energy. Now they are under 15 percent and going further south.

That is going to particularly involve your agency in terms of how can we have a rational national policy of diversification of energy sources for electrical generation. I'd look forward to working with you on this committee and also on the Energy and Natural Resources Committee to see if we can come to an accommodation.

The second issue which was highlighted by a recent Supreme Court opinion on wetlands, is that many environmental issues involve a degree of Federal jurisdiction; then outside that Federal jurisdiction is what the States will do. I think it is important that we increasingly look at our Federal policy not as if it were a unilateral policy but rather a partnership with the States.

I believe this recent Supreme Court opinion which apparently is going to restrict the jurisdiction of the Federal Government relative to wetlands protection offers an opportunity for us to explore how that partnership might be crafted.

With your background as a Governor and a citizen in one of our major States, I think you bring special competencies to both of those issues of energy and a new Federal/State environmental partnership. I know the members of the committee, including myself, look forward to working with you toward that end.

Thank you very much and congratulations.  
Senator REID. Governor Whitman?



**STATEMENT OF HON. CHRISTINE TODD WHITMAN, NOMINEE  
FOR ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PRO-  
TECTION AGENCY**

Governor Whitman. Thank you, Mr. Chairman.

I'd start by offering my thanks to Senators Torricelli and Corzine and Congressman Frelinghuysen for their very kind introductions and frankly, to each of you for your statements; to you, Senator Reid and Senator Smith, for allowing me to be here today and appear before you.

I do want to echo what you said, Senator Reid, about the importance of family and support and I am delighted that my husband is here along with my sister. I would have loved it if our son, Taylor, and our daughter, Kate, could be here but the fact that one is attending to studies and the other is earning her keep are both very good things. As a parent, I will forgive them for not being a part of this today.

Senator REID. Would your sister and husband stand and be recognized?

Thank you.

Governor Whitman. It is an honor to come before this committee today as President-elect Bush's designee for Administrator to the Environmental Protection Agency. I am truly grateful for the opportunity that President-elect Bush has given me.

Over the past several weeks, I have enjoyed the opportunity to sit down with almost all of you—Senator Graham is the only one I haven't had that opportunity with yet and I trust we will close that loop very shortly—to talk about what we can do together to preserve this Nation's environment. I'm especially looking forward to your kind invitations to visit your States. I intend to take you up on that as early as possible. While I look forward to seeing the sights you wish to show me relative to the environmental challenges you face, I hope we can spend some time in some of your States on a trout stream because I have a particular place in my heart for that, to talk about what we can do to protect our environment.

It was on the banks of a very small trout stream that goes through our farm that my father first introduced me to the beauty of nature and obviously, I've been hooked ever since, having had the fortunate experience of being raised on a farm.

We stand today I believe at a place of enormous opportunity. Over the past three decades, our Nation has won so many important victories in our common mission to preserve this Nation's environment, to protect America's environment.

We have seen a radical transformation in the way that we look at our air, our water, and our land. Today, there is universal, and I truly believe it is universal, agreement that our natural resources are valuable, not just for the economic prosperity they help create, but for what they add to our quality of life. No longer do we debate about whether we need to act to protect our environment. Instead, we discuss how we can keep America green while keeping our economy going.

In fact, we have reached a stage of realization where we recognize we need a strong economy in order to help us have the resources to spend on some of the more expensive clean-ups that we

need to do, and to promote some of the more expensive answers to environmental challenges that we face.

Due to the progress that we have made, both in our actions and in our attitudes, America is at the cusp of yet another transformation. We are ready to enter a new era of environmental policy; an era that requires a new philosophy of public stewardship and personal responsibility.

To discover what this new era will look like, I believe one only has to look to the states. Since I happen to quite familiar with one particular state, I would like to tell you a little bit about what we have done in New Jersey over the last 7 years.

In my home state, we are moving beyond the "command and control" model of mandates, regulations, and litigation. We are, instead, working to forge strong partnerships among citizens, governments, and business, built on trust, cooperation, and shared mutual goals. Those partnerships are producing results: clear, measurable results. I would like to share some of them with you.

Our air is cleaner. For example, the number of days New Jersey violated the Federal 1-hour air quality standard for ground level ozone has dropped from 45 in 1988 to four last year. We are doing a better job of monitoring our air quality, with more air monitoring stations around the state. We are on target to reduce greenhouse gas emissions below 1990 levels through incentives to encourage voluntary reductions, promote energy efficiency and renewable technologies, and reduce landfill gas emissions.

Our water is clearer in my home state. The Delaware River is thriving again, as Senator Carper knows, and the shad population is finally coming back up, further up the river. It has increased by more than 300 percent.

Senator REID. You are not supposed to talk about chad in this committee.

[Laughter.]

Governor Whitman. Not chad, shad; it is the "s." That was my confusion initially, too, in part, I must say.

[Laughter.]

Governor Whitman. But it has increased more than 300 since the 1970's.

New Jersey leads the Nation in opening shellfish harvesting beds. Annual ocean beach closings, as you have heard before, dropped from a high of 800 in 1988 to 11 last year.

Our land is cleaner. We have transformed our brownfield programs into a redevelopment tool, providing \$15 million to help towns clean up sites and market them for re-use. Mine is the only state in America today that provides a program for private citizens to do voluntary clean up sites. We provide reimbursement, and we are the only state to do that.

In addition, in 1998, the voters in New Jersey overwhelmingly approved my plan to preserve one million acres by the year 2010, and we are already 20 percent of the way to doing that.

Only by measuring the quality of the environment, the purity of the water, the cleanliness of the air, the protection afforded the land, can we, I believe, measure the true success of our efforts in everything that we are doing. By those measures, New Jersey is

succeeding: our water and air are cleaner, and our land better protected than it was 7 years ago.

At the same time, New Jersey's economy is stronger than ever. More people have jobs today in my state than ever in our history. As President-elect Bush has emphasized, and as New Jersey has seen, environmental protection and economic prosperity do and can go hand in hand.

The President-elect has articulated a clear set of principles that I will work to implement at the EPA, should I be confirmed. I would like to highlight several of those today.

First, we will launch a new era of cooperation among all stakeholders in environmental protection. Only by including all America can we meet the challenges we face. There is much that government can do, but government cannot do it alone.

Second, we will maintain a strong Federal role, but we will provide flexibility to the states and to local communities. They need that flexibility to craft their solutions to their unique situations. We will also respect state and local authority and rely on their expertise.

Third, we will continue to set high standards and will make clear our expectations. To meet those goals, we will place a greater emphasis on market-based incentives.

Next, we will use strong science. Scientific analysis should drive policy. Neither policy nor politics should drive scientific results.

Finally, we will work to promote effective compliance with environmental standards without, and I repeat, without weakening our commitment to vigorous enforcement of tough laws and regulations. We will offer the carrot first, but we will not retire the stick.

Taken together, these reforms will transform the way we meet EPA's mission. They will also produce real results; results to which we will be able to look when we want to know how far we have come, and how far we have yet to go, in order to meet the desires we all have for a clean and healthy environment.

I am looking forward to the job ahead, should you honor me with your confirmation. The EPA is staffed with some of the finest environmental professionals in the world. I know that they are eager, as I am, to begin our work together.

I also know that the demands I will face as Administrator of the EPA will not be the same that I faced as Governor. The position I hope to assume allows no room for regional favoritism. But I do expect to bring to my job an understanding and an empathy for what it is like to be on the receiving end of mandates from Washington.

Mr. Chairman, one of the first things that my father taught me on that trout stream was something he said which was, "Christie, always leave any place cleaner than when you found it."

He did not know it at the time, but that was awfully good advice for someone who would some day be nominated to serve as head of the our nation's agency for environmental protection.

I pledge to you, Mr. Chairman, and to the members of this committee, that if confirmed, I will do everything that I can as EPA Administrator to leave America's environment cleaner than when I found it. Thank you.

Senator REID. Governor Whitman, thank you very much. The process now is, to remind members of the committee and Governor Whitman, each of us will ask questions for 5 minutes. There is a light up here that indicates when you start. When you have a minute left and the red light comes on, you need to terminate the question and the answer, as soon as possible thereafter.

We will go through as many rounds as necessary to make sure all the members have asked the questions that they feel are appropriate.

Governor Whitman, you have heard a number of statements made by other members of the committee about some of the rules that are now in effect. One of the rules that is going to be somewhat controversial, but of which I am a real backer, is the new rule as it relates to the sulphur and diesel fuel, cleaner diesel engines.

There is nothing more irritating to me, from an environmental perspective, than to be on a street in Los Vegas and have a bus or some other vehicle pouring out this big belching black smoke.

The final rule mandates a 97 percent reduction in sulphur content in fuel in about 5 years, from approximately 315 parts per million. There are other parts of that rule that are important.

Basically my question to you, do you believe that there needs to be something done regarding diesel vehicles, and would you enforce a final rule to get rid of these dirty vehicles?

Governor Whitman. Well, Senator, I share your concern for air quality. We know how much of the degradation does come from motorized vehicles. We certainly face it in our state.

I would say to you that as in the previous administration, coming in, we have the opportunity and I believe the obligation to review all pending rules and all new rules, and we will do that in this case.

But I look forward to working with you and with members of the committee to see what we can do to ensure that we meet the environmental goals that we all share in a way that will ensure that our economy continues to function, but that most importantly, we are providing for the health and welfare of our citizens.

We will be going through that process, should I be fortunate to become the Administrator at EPA.

Senator REID. Are you familiar with the rule about which I just spoke?

Governor Whitman. Yes, I mean, I know it is there.

Senator REID. From a conceptual standpoint, do you believe that there needs to be something done about diesel fuel?

Governor Whitman. I think we need to look at all the ways that we can clean our environment. As I said, motorized transport has been a large part of the problem that we see, particularly in New Jersey, where we have taken several actions to ensure that we clean our air. We need to ensure the balance, and that is what I will look to do.

Senator REID. Governor Whitman, one of the things that we are concerned about is something called environmental justice; making sure that people who have little ability to respond to problems dealing with the environment are protected by others.

I, personally, have had some experiences in Nevada, and across the country, serious concerns have been raised about the dispropor-

tionate impact of environmental policies in decisions on low income, minority communities. One of the examples that has been given is some cement plant in New Jersey. I am not really familiar with it totally, but I am sure you are.

What do you see as the role of the EPA Administrator in promoting the environmental justice in programs administered by the agency?

Governor Whitman. Senator, environmental justice is clearly a very critical area. I would speak to the kinds of things that we have done in New Jersey, but also say that one of the biggest things that we see in environmental justice issues is the number, at least in our state, of situations such as brownfields that are located in our inner cities, where because of fear of retribution and of costly legal suits, there has been no movement to clean those sites up.

That is one of the reasons why we have focused so heavily in New Jersey on innovative processes to encourage non-polluting parties to come in and, in good faith, clean up those sites, so we can at least contain the pollution that is going into the environment and render those as good economic development sites.

The same thing is true with our air. What we have done in New Jersey to clean our air, the disproportionate impact there has been to see a high level of clean air and changes in our inner cities; again, very important.

I believe it is the Agency's responsibility to ensure that we continue to have those balances and to see that no population is singled out as a population that is, shall we say, dumped on.

Senator REID. I am going to submit a newspaper article or articles dealing with a cement plant in Camden, New Jersey, in a neighborhood which overwhelmingly consists of residents who are poor, and a significant number of African Americans/Latinos. I would ask you to respond in writing to that situation.

Governor Whitman. Absolutely; I would be happy to do that.

Senator REID. Before my time is up, I also want to direct your attention to a problem that we have in Nevada, with an Army depot in California, which is polluting a Paiute Indian tribe.

I would ask you, upon getting settled in your job, to make a commitment to work with me to ensure that these Indians and others in Nevada are not exposed to materials that would threaten their health, and that this would be a priority to you.

Governor Whitman. Absolutely, Senator.

Senator REID. Senator Smith?

Senator SMITH. Thank you, Mr. Chairman, and again, welcome to Governor Whitman. Thank you for being willing to serve. This is a tough business that we are all in, and the demands of public life, especially on the families, are very difficult. I think those of us who have been through it and are going through it, understand and appreciate it. I do not think that is said enough.

You know, any time anything negative happens, we hear about it, but there is a lot of personal sacrifice with serving, and we appreciate the fact that you are willing to do it.

There are a lot of good trout streams in New Hampshire, and I think other members would say the same thing.

Governor Whitman. I know.

Senator SMITH. You are welcome any time to our great state.

I want to commend you on your opening remarks. In a very specific way, you have given a good outline, a good insight into where you are coming from, in terms of how you will approach this job.

You did not have to give a lot of detail in order to see that; specifically using such terms as cooperation, as opposed to the command and control technique; state flexibility as opposed to rigid Federal standards; market-based initiatives as opposed to Government initiatives; sound science as opposed to theory; and certainly promoting compliance without environmental damage.

I commend you for that. I think that is an excellent statement, and one that we look forward, here on this committee, to working with you in implementing.

We have had some great successes in working together, the Everglades, the Water Resources Development Act. We can work together, I think, if we think of our environment, not to gain points for the next election, but to look forward to the next generation, and take the politics out. Good environmental policy is not always equal to environmental politics. I know you will work with us in that respect.

Let me just ask you a couple of quick questions. Short term and long term, realizing just now, once you take over the EPA, you will have to work with the new President in terms of setting priorities, but just on a personal level, as one who has been in a state that has dealt forthrightly with environmental problems, nationally, what would you say would be the most immediate short-term and long-term environmental problem that we face today?

Governor Whitman. Well, Senator, where I had hoped that we could come to some early agreement is in brownfields legislation. I recognize the Superfund implications and the need to look at Superfund reauthorization, as well.

But I really would love it if we could come together, and in a collaborative way, reach some agreement on some brownfields legislation that would allow the states to really move forward to clean up these sites, to turn them into productive places, and to stop the contamination and leaching that is going on currently; and at the same time recognizing that we also need to address issues of Superfund legislation.

I certainly look forward to tackling that very difficult problem. I do not think for a minute that that is going to be an easy one.

We also face the challenge of clean air reauthorization. That is something that is very important, as expressed by the concerns of the members of this committee; that we need to have clean air standards that ensure the health that are based on good science, that really reflect what is the best that we can know about how we can address these issues in an effective way, that will result in better health for our citizens.

Of course, another major area that we are seeing rise to the top, particularly as we have done such a good job in many of the states in addressing point source pollution, is nonpoint source pollution. Much of that is traced back to water infrastructure; to old and aging pipes and systems throughout the country that are leaking.

Combined sewer overflow is a big issue for us. It is a big issue in the State of New Jersey. After storms, it has a real impact on our streams. We need to address those.

But in many instances, for the states and the localities, the cost of that is prohibitive. We need to see if we cannot work out a solution that would help the Federal Government be a partner with the states and with the localities to help them address this issue. Because I believe that could go a long way to ensuring that we meet this next level of challenge in clean water, which is moving from point source to nonpoint source.

Senator SMITH. I think you certainly hit on three top priorities with me, and I think with many others on the committee. Of course, another area on the short term that we share similar problems, as do other members of the committee, is the issue of MTBE, which we will also be looking at, as well.

Governor Whitman. Yes.

Senator SMITH. Thank you, Mr. Chairman, and thank you, Governor.

Senator REID. Senator Carper?

Senator CARPER. Thank you, Mr. Chairman.

Governor Whitman, thank you for your testimony. I know your dad would be real proud of you today.

I am going to ask a series of questions. I am going to ask you to answer rather briefly, if you will. The first one is the kind of people you are going to be surrounding yourself with, as EPA Administrator. You have certainly surrounded yourself with terrific folks, back home.

The question that is on my mind, and I know it is on the minds of some others of my colleagues, is will you have the independence to surround yourself with equally good or maybe even better people, as Administrator of EPA?

Governor Whitman. The short answer is yes.

Senator CARPER. Good, we are going to hold you to that; thank you.

Governor Whitman. I will tell you, just to elaborate a little bit, that this Administration has sent a very clear message, at least to me, and I am sure to the other Cabinet designees, that they expect quality people, and they expect us to find them.

Senator CARPER. Good; the second question is, we wrestle with clean air problems, just as you do on the other side of the Delaware River. Among the challenges that we face are pollution put in the air and transported to our states. It comes down to us when it rains. What do you think we ought to be doing about that?

Governor Whitman. Well, as you know, right now there are certain things in place that are somewhat controversial; some regulations in place that would have an impact on that.

I believe that we need to ensure that we continue to clean our air, to see if we can find some innovative ways that will help those who have been designated as being part of the problem, and move forward to clean up their concerns in a way that allows them to continue to be economically competitive.

Again, it gets back to the concern that I have that we understand that it is not an "either/or" on the environment. We need to be forceful in our regulations. We need to be forceful in the implemen-

tation of the regulations, but we need to do it in a way that reaches out to those who are on the receiving end of those regulations, and allow them to be part of the solution. Because very often, then can come up with a lot more innovative ways than those of us sitting in Washington can devise.

Senator CARPER. All right, thank you.

Senator Voinovich and others have spoken to the issue of energy. My wife and I drove yesterday down to Dover for the inauguration of a new Governor and lieutenant Governor, and we rode in someone else's car, not driven by a state trooper.

Governor Whitman. You are still not driving?

[Laughter.]

Senator CARPER. I can drive, and I rather like it.

[Laughter.]

Senator CARPER. But it was a big car. It was a big SUV. It was a stretch SUV. My wife just loved it. I think probably we stopped four times for gas between Wilmington and Dover.

[Laughter.]

Senator CARPER. But she thought the ride was just terrific, and there was plenty of room.

We now import over half the oil that we use in this country. Over half the oil that we use in this country, we use to power the vehicles that we drive.

Just as we were going down the road in that gas guzzler yesterday, I was mindful of other vehicles that are just being introduced and are about to be introduced to the marketplace, that are, in some cases, highway vehicles; in other cases, vehicles powered by fuel cell technology.

I am just wondering what you might have us do, in order to ensure that there is a marketplace acceptance, and not just an acceptance, of those kinds of vehicles with the new technology, cleaner burning, cleaner operating, more fuel efficient; but what can we do to provide incentives to consumers to actually buy those vehicles, if they are indeed produced?

Governor Whitman. Well, Senator, I think you touched on it when you said what kind of incentive can we provide. Because that is really where I believe we are going to have the biggest impact, educating the public and providing incentives and a desire to find more fuel efficient vehicles.

I do not believe that we should mandate from Washington that only a certain kind of car can be produced and that all people can buy. But I do believe we have a very real way and, frankly, when you look at gas prices today, that is one thing that is going to drive consumer choice. But education is also a part of it.

We entered into a contract to have clean fuel vehicles for our state police. As we looked at them, the problem is that they were electric photovoltaic cell driven cars. The problem we ran into is where they could be recharged.

It turned out that, in fact, it was not practical for the state police to use these vehicles, but it was very practical for local police. So we have turned them over to the police departments in the cities of Trenton and Newark, because that is where the fuel stations were that they could receive their clean fuel and be recharged. That makes sense.



I think what we have to do is look at this as a policy that is not going to be answer. It is not going to be the same for the entire country. But we need to educate people, and we need to provide incentives and alternatives, so that they can move to more fuel efficient vehicles.

Senator CARPER. I have one last final statement. In the National Governors Association, one of the best things that we had going for us was the Center for Best Practices, where we use our 50 states as laboratories to figure out what is working, and rather than re-inventing the wheel, steal somebody else's good idea, and we would do that quite frequently.

Governor Whitman. Yes.

Senator CARPER. I would hope that we would be taking a similar kind of attitude in our Federal agencies, whether it is EPA or HUD or any other, to say, how can we better utilize the Federal agencies? That is not just to write rules and regulations, and that is important; but also to be a bit of a clearinghouse to share the ideas of what is working.

That having been said, I am going to submit later on, just for a response in writing if you would, your thoughts on this proposal by the Army Corps of Engineers to dredge the Delaware River to a depth of 45 feet.

Thank you very much.

Senator REID. Senator Carper, thank you very much.

Senator Inhofe?

Senator INHOFE. Thank you, Mr. Chairman.

Governor, as you were responding to us, a term came to my mind that would be a refreshing change. It is compassionate compliance.

[Laughter.]

Senator INHOFE. You have heard from each one of us as to why we believe you would be an excellent Administrator. But why do you think, in your own mind, that you would be a good Administrator of the EPA?

Governor Whitman. Well, Senator, certainly, what I would bring to the office are the strengths and the skills that I have learned as Governor of a very complex state, as many of you have noted.

Most of those skills have been based around, first of all, the ability to manage a large work force of 60,000 in the State of New Jersey and a large budget; to solve some very complex and competing problems through bringing everyone to the table.

I have found that, for some, compromise is looked on as a backing away from principles, and has been denigrated as a tool for problem solving.

I, frankly, find it quite the opposite. I think compromise is what you are doing in bringing everyone to the table, recognizing there is no one right answer to almost any issue we face. I do not care what it is, or in what field that you find it. But it is listening to everybody and crafting a solution that meets the greatest need of the greatest number of people.

I look forward, at EPA, to being very aggressive in reaching out to you, to your constituents. In fact, I would intend, if I were to be fortunate enough to receive the confirmation, to very early on visit all the regions, and ask those regional directors to pull together some stakeholder meetings of those who are most involved

in the most contentious issues that you face in those regions, and for me to sit down and to hear from them what they feel are the problems, and what they see as some of the solutions.

That has been something that we have done in the State of New Jersey. It is something that, as my fellow former Governors know, is very much a part of how we approach problem solving. Besides, as I say, just the obvious task of having managed a large bureaucracy and dealt with a myriad of environmental problems, it is more the approach in this philosophy that I bring, that it is not either/or, either a clean environmental or a health economy; and we have shown that in this country, really. We have certainly shown it in New Jersey. I know it is true in your states as well. We need to understand and accept that.

But we also need to recognize that the best way to come up with a solution that really is going to provide a long-term fix for problems is to bring all the stakeholders together, and to work as partners with the states, and make sure the municipalities and local governments are heard from.

Senator INHOFE. In your state, in your own personal experiences, do you have any oversight experiences with the EPA, where they could have been more helpful to you and your state by focusing on environmental results, or by providing assistance; rather than just listing things they thought the state was deficient in?

Governor Whitman. Well, we recently had last year, or it was 2 years now, a 1999 report, where they had come into the state and they looked at a number of issues, and they issued a report on it.

The thing that was disappointing, while most of the areas where they had concerns were, you know, with the environment nothing is minor, but as minor as it could be in the environment, and we have taken steps to correct them. But there were things such as they held us up and faulted us for not having set certain standards, where they had not already set standards.

There were no standards for us to set. We had not met standards because there were none, and that was not recognized. The work that we were doing to move the environment forward was not recognized.

As I look at what is happening in states, there is a lot of innovation occurring at the state level. But if we are going to insist at the Federal level that we judge only through what was referred to as, I think, by you perhaps, or Senator Smith, I do not remember, the bean counting, only on how many fines are issued or how many dollars have come in penalties; and not, is the air cleaner or the water cleaner, we are making a big mistake.

In this one review that we got, the most recent one, that is really where the emphasis was. It was kind of disappointing that they are satisfied with everything we have done to correct the issues that they highlighted. But I think we could have done a lot of that in a more collegial basis up front, and maybe solved the problems more quickly.

Senator INHOFE. Governor, you heard me mention the energy crisis, and I think Senator Voinovich expanded on that. Have you had occasion yet to meet with Senator Abraham concerning ways you might be able to work together to address this; and if not, do you have some plans to do that?

Governor Whitman. Oh, I will absolutely do that at a very early time. As you know, the President-elect is absolutely committed to an overall national energy policy. The final decisions on that will rest with the Department of Energy, but there is a great deal of involvement from the Environmental Protection Agency.

I look forward to the opportunity to work with the Administration and all of my colleagues, if I do reach that level of being able to call them colleagues, to craft an energy policy that does protect the environment.

Because that, first and foremost, is the responsibility of the Environmental Protection Agency, but also recognizes that people need to be able to live in this country, and to function in this country, and to have access to energy at reasonable cost, and not, as Senator Voinovich pointed out particularly for those on fixed income, sometimes have to make a decision between getting needed medication and paying for their electric bills.

We saw many of those problems last winter. I hope we do not face them to the same degree, although parts of this country are in worse shape this year. We need to have that energy policy.

Senator INHOFE. I have the same question as to what I consider to be a military crisis right now in terms of the compliance with many of these rules and regulations. Are you planning to work with either Secretary Rumsfeld and/or our committee, the Senate Armed Services Committee, and the House Armed Services Committee?

Governor Whitman. Both, absolutely.

Senator INHOFE. Good, thank you.

Senator REID. Senator Lieberman?

Senator LIEBERMAN. Thanks, Mr. Chairman.

Governor Whitman, I appreciated the comments you made about pollution prevention and market-based incentives, in cooperation with regulated entities.

I think, as the comments of some of my colleagues have indicated, you will find a lot of support on this committee and in Congress generally, across party lines for those kinds of steps.

I spoke in my opening statement about what I, at least, perceive as a broad consensus in our society in favor of environmental protection. It seem to me that one of the most encouraging aspects of that, over the last three decades of the modern environmental protection movement, has been the extent to which law has led to an assumption of responsibility by private parties; a kind of environmental ethic.

I see it, and I am sure you see it in your state, among businesses that had previously been sources of pollution, to say that they did not want to be identified as polluters or law breakers, and have taken steps, some at great cost, to make sure that they were living and doing business in an environmentally appropriate way.

But I do think that part of what has helped created that ethic has been environmental enforcement. That will continue to be important, as we move into what some have called a second generation of environmental protection.

So I welcomed your statement, in your opening statement, that while you offer the carrot to regulated entities when appropriate, you are always going to preserve the stick of enforcement. I wanted

to invite you to speak with some more detail on the emphasis that EPA, under your leadership, will place on enforcement.

Governor Whitman. Well, Senator, as I indicated in the opening statement, I believe that enforcement is a critical tool. We must not abandon it, nor walk away from it.

But I have also found in my experience in New Jersey that where we can collegially have relationships with many of the businesses, they will clean up faster and sometimes better, than if it just through the threat of fine and penalty.

So while I think enforcement is important, and it would never be something, as I indicated, the stick, we will never retire, I would and have in the past in New Jersey, approached it in an effort first to see if we cannot find some compliance intelligently up front.

We have worked on, in New Jersey, what we call facility-wide permitting, for instance.

Senator LIEBERMAN. What is that called?

Governor Whitman. Facility-wide permitting.

Senator LIEBERMAN. Yes.

Governor Whitman. It is basically getting to one permit, where we used to come in as the department and permit every single step along the way of a production line.

Senator LIEBERMAN. Right.

Governor Whitman. What we do is, we go in to the business. We will sit down with them. We will go over all their steps. We will go over what they use in their steps. We will come to an agreement as to what the final output is, what is an acceptable level of discharge into the air or to the water.

We will point out to them where we think they can be a little more efficient within their own production cycle; but we will leave it to them to achieve those levels.

What we have found, and then we have added, and I can give you more for the record, if you would like, in writing, of something we call silver and gold track, which has allowed them to voluntarily reach this. We agree upon these standards.

We have allowed for trading. If they do better than those standards, they can then trade the air emissions, the difference there, which allows them to earn a little money, at the same time that they are going beyond what we have agreed upon as the standard for discharge into the atmosphere.

Those kinds of innovations, I believe, you are seeing all around the nation, when states have the ability to do that. While you do not retire the enforcement, if you can come to those kind of incentive-based agreements, we find that the businesses actually are very willing to go beyond that. Oftentimes, they go beyond what we have all agreed is an acceptable level of discharge, in order to have more flexibility.

Senator LIEBERMAN. Well, I hope you will be able to build on that. Also, I am sure you agree that, notwithstanding the movement in the right direction, there are always going to be entities that will simply not obey the law.

Governor Whitman. Absolutely.

Senator LIEBERMAN. There, we have got to enforce the law.

Governor Whitman. Absolutely, I pledge to you that we will do that. There are certainly those, unfortunately, who do not do what is best for everyone.

Senator LIEBERMAN. Let me ask a final question about climate change, which I spoke about briefly in my opening statement.

Here is an area where the slightest steps have been fought in Congress. The late Senator Chafee and I had what we thought was a very modest bill to create a registry where industries that were taking action to reduce greenhouse gases could gain credit for some potential down the road of a system that would require them to take those actions, and that was fought.

I note that in New Jersey, under your leadership, and I presume with bipartisan cooperation, you adopted a state climate change plan. You indicated in your opening statement, if I heard you correctly, that the goal was set to achieve a reduction in greenhouse gas emissions to the 1990 level.

I wonder if you could both speak about that, and speak to what your plans are for speaking and acting to this issue of climate change, as the Administrator of EPA.

Governor Whitman. Well, first, Senator, let me say that I would look forward with you and with Senator Chafee, if the current Senator Chafee assume where his father left off, to see what can be achieved, and with the other members of this committee, to see what can be achieved toward that goal.

We understand this, and I think the science is pretty clear there. There is no one who objects, and the President-elect has indicated that he is very concerned about global warming and what is occurring.

We, in New Jersey, have set goals and targets. We are ahead of our targets, right now. We have agreed with the Environmental Protection Agency. We came to a joint agreement as to attainment, and we are moving forward toward that attainment.

If we can come to more kinds of agreements like that as an agency with the states, where we can come to a voluntary agreement on what the standards are and, again, allow the states the flexibility to put together programs that address their particular industries; because what is causing the problem in states differs, as we know on the East Coast. Some of the challenges that we have are beyond our particular ability to address.

So we need to provide the flexibility to the states to be able to work with EPA, to achieve goals that are mutually agreeable goals.

Again, I would look forward to taking the experience that we have had in New Jersey, but not trying to impose that wholesale on anyone else, but to use it as perhaps a blueprint as to how we can have an interaction between the Environmental Protection Agency and the states to achieve mutually agreed upon goals.

Senator LIEBERMAN. Thank you. This is an area that I think is critically important to our future, and I look forward to working with you on it. Thank you.

Senator REID. Senator Lieberman, I appreciate very much your statements regarding climate change. I look forward to working with you on a continual basis on this. We need to do a lot more work than we have done.

Senator Voinovich?

Senator VOINOVICH. I am anxious to bring you to Ohio for some of the best steelhead fly fishing in the United States of America. Governor Whitman. That sounds fabulous.

Senator VOINOVICH. And I will show you one of the great stories in this country, and that is the clean-up of Lake Erie and our tributaries. There are some wonderful things that have happened over the years, since my days with the Environmental Protection Agency in Ohio.

We have hear Senator Reid talk about the issue of diesel, and the new regs that are out. Last week, I met with a businessman from Ohio, who has come up with new technology that is being used today in Europe, that reduces the pollution from diesel vehicles 40 percent. For some reason, he cannot get the paperwork done in the Environmental Protection Agency to get it on the street.

Now in Europe, they are using it. In fact, they have incentives to encourage firms to use it, but they cannot get it through the agency.

I think that one of the challenges that you are going to have, a big one, is the issue of the kind of people that you have. You need Ph.D.s, you need Masters Degrees, and you probably are going to have to look at your budget, in terms of, do you have the people that you need to get the job done. Of course, we have already talked about the issue of this human capital crisis.

But I know in Ohio, I had to increase the budget of our Environmental Protection Agency 60 percent in order to get the job done. So that is one thing that I hope that you are looking at.

The other is this. Senator Smith and I are very much concerned, and I am glad we have heard some testimony about storm flow, overflows, and combined sewers. It is an unbelievable problem. In my state, because of the new mandates, the sewer bills of people are going to go from \$40 a month to \$100 a month. It is because of the mandates coming out of the EPA.

You may not recall this, but when we got started with cleaning up our waste treatment facilities, we had a 75 percent Federal participation and a 25 percent local. Now we have gone to completely locals.

Last year, I tried to get the SRO, the State Revolving Loan Fund, reauthorized. It fell on some bad times, because there was some problem with Davis Bacon or something.

But the fact of the matter is that we do need an enormous amount of more money to deal with that problem. Senator Smith and I, in the Appropriations Bill, were able to get the Wet Water Quality Act of 2000 passed. That is a bill that requires \$1.5 billion of grants during the next 2 years, but it will not happen unless Congress authorizes more than \$3.5 billion for the SRO program.

So one of the things that I suggest you look at is the issue of the wherewithal and the unmet needs that we have. I have talked with the people that are in this area around the country, and they say we need \$57 billion during the next 5 years, to deal with the problems of storm flow, overflow, and combined sewers.

The President is putting his budget together, and we are all talking about reducing taxes and spending more money on this pro-

gram and that program. I have to tell you, we have enormous unmet needs that we see here on this committee all the time.

The WRDA bill that we worked on last year, that the Everglades were part of it, we have \$39 billion on the shelf of projects that have received design money or some construction, and last year, what did we appropriate; a \$1.5 billion or something like that for WRDA?

Yes, and so you are going to need the team to get the job done. I agree with Governor Carper, that you ought to choose your team.

Too many times, in these Federal agencies, they tell you who is this director and so forth; and I know you are getting a lot of names. But I would insist they are going to be your people. I did that when I was Governor of Ohio. I appointed a director, and you choose your people, because they are your people.

Second of all, I think that you ought to really make a run at getting some money, so you can get the job done in your agency, and also look at these unmet needs. Make sure that as the Director, you get that on the table. I agree with some other people, we ought to make the EPA a Cabinet level department in our Government.

Governor Whitman. Thank you, Senator, and I do want to just compliment you on the focus on human capital, because that is such an overlooked area so often, and it is going to be a challenge.

Although I believe that we have within the Environmental Protection Agency, while there are a number of people who are getting ready to retire, and that will be a real loss and I hope they will not leave entirely but will allow us to pick their brains from time to time; but there are a number at the staff level below that, who are very capable and qualified, and ready to move up and accept responsibility.

But it is an issue that is of concern, as you have pointed out, to every agency in the Federal Government. We need to ensure that we are getting the best and the brightest, particularly in an agency like the Environmental Protection Agency, where science and sound science has got to be the absolute basis of everything that we do, as far as decisionmaking is concerned.

I would look forward to working with you and other Senators, to see what we can do to help provide us with more of the wherewithal to address this issue of waste water and combined sewer overflow, because it is an enormous problem.

Senator REID. Senator Voinovich, I appreciate very much your statement and your question. We have a problem, not with billions, but trillions of dollars in backlogged work that needs to be done with our sewer systems and our water systems. We can talk all we want about having a clean environment, but we have to spend some money to get where we need to get.

So I appreciate very much your very strong statement. We are going to have to do it on a bipartisan basis. As you know, the Clean Water Act, as I recall, started as a result of the Cuyahoga River catching fire on several occasions. I understand that is in Ohio. Is that right?

Senator VOINOVICH. When I was mayor, we had to sanction one of our police officers for fishing in the Cuyahoga River; so things have improved.

[Laughter.]

Senator REID. But that is true?

Senator VOINOVICH. Oh, absolutely; I mean, the truth of the matter is, when I came to legislature, we had people from BBC coming into Ohio. They talked about Lake Erie dying and the eutrophication, and the burning river, and so forth. I mean, it was terrible.

You are right. It was one of the things that people focused on, to move forward with coming up with the Federal Program for waste treatment, and the Clean Air Act.

In fact, I went out and spoke in 1971. Bill Ruckelshaus asked me to go out to Cheyenne, Wyoming, to talk to Rocky Mountain legislatures about preserving their air and water, and not allowing it to deteriorate on the altar of economic development.

That was a real crisis then, and we have made some real progress. But a lot of that, somebody mentioned, is aging today. We have got these new mandates that are coming out of the EPA. If we are going to comply with those mandates, the communities have got to have the money to deal with the problem.

Senator REID. I would hope that in the work that we do here in authorizing things, that we remember there is another step, and that is appropriating the money. I hope that you and others will work with me, to try to get the Appropriations Committee to be generous in trying to meet this tremendous backlog that you have outlined.

Senator VOINOVICH. If we could get the Secretaries and others, the independent agencies, to put those unmet needs on the table, so they could be considered; but what happens is, they just get put in the drawer. Then we go off on a lot of other initiatives, and we have all these problems that need to be dealt with.

Senator REID. We thank you very much, Senator Voinovich.

Senator Clinton?

Senator CLINTON. Well, I certainly want to associate myself with Senator Voinovich's comments. You know, so many of the issues that we will deal with on this committee are somewhat less visible than other pressing problems, and do get put on a back burner.

Certainly, the infrastructure needs for clean, safe waste water treatment are, to me, one of the most important concerns about which I heard a lot, as I traveled around the state, talking with local officials about the needs that they had.

The elimination of the revolving fund was a very serious set-back to our ability to deal with that. So I would certainly look forward to working with the Senator about moving forward to try to provide those resources.

I would like to ask Governor Whitman just a few questions about issues that are particular to New York in terms of their location, but I think have national implications.

The first concern is the Hudson River which, as you know, is the nation's largest Superfund site. It is a national treasure and an American heritage river; but it was, unfortunately, affected by a 30 year period during which about 1.1 million pounds of PCBs were discharged, because of industrial activity by General Electric at its plants in Hudson Falls and Fort Edward.

Last month, the EPA issued its proposed remedial action plan for cleaning up the contamination of the Hudson from those PCBs, which recommends targeted dredging to remove 100,000 pounds of



PCBs from the most contaminated areas in the upper Hudson River.

These proposals by the EPA have been supported by a wide range of New York elected officials, including Governor Pataki. In fact, they were supported by the New Jersey Department of Environmental Protection in the last weeks.

EPA is accepting public comment on the plan until February 16th, and then will issue a final plan in June of this year. I would like to ask the Governor that she not only pay close attention to this issue, but inquire specifically as to your commitment to the EPA's dredging proposal.

I know there are legitimate questions being raised about where to place the dredged material, and I am very concerned that. I would look forward to working with you on that. But will you be committed to a clean-up schedule that is finalized within the time-frame recommended by the agency?

Governor Whitman. Well, Senator, as you know, as you pointed out, that is in the comment period now. So it would be really inappropriate of me to stake out a claim and say definitively what I will do, except to tell you and assure you that, of course, I will look very closely at those comments, as well as the rule.

As we spoke, I indicated to you that Governor Pataki and I signed that estuary agreement with the Environmental Protection Agency and New York Harbor. That is impacted by what is coming down the Hudson.

I have opened canoe and kayak take-out places along the New Jersey side of the Hudson River, and kayaked in it as well. I enjoyed that, and what an extraordinary river it is.

But as to the actual language within the proposed order, it would be inappropriate of me to say anything specific until the comment period is closed, and I have had the opportunity to review all of that; but I certainly will. That will be an issue where I look forward to working with you on it, to see what we can do to protect that very special river.

Senator CLINTON. It is; it is just a fabulous treasure for our nation.

We have another unfortunate distinction with respect to Onondaga Lake, which is outside of Syracuse, which is considered the most polluted lake in the entire country. It has not yet caught fire, but it is a problem that has certainly impacted on the development, both tourism and economic development, as well as recreation opportunities there.

The Army Corps of Engineers is in charge of cleaning up the lake, and currently, the plan is expected to take 15 years to complete. The EPA has been extremely involved in the clean-up process.

Again, Governor, I would like to not only bring this to your attention, but to ask if the EPA, under your leadership, will continue this high level of involvement.

Governor Whitman. Senator, I have to tell you, I am not familiar with that particular issue that you are talking about with the lake. But of course, we will take a very hard look at it.

We will take very seriously our commitment to prioritizing the most serious environmental challenges that we have, and focusing

our attention on solving those problems; working with the local community; working with the state; and, of course, working with the Federal legislators to achieve those goals.

Senator CLINTON. Finally, I just wanted ask about the right to know. I think it is important that we build on the consumer right to know provisions of the Safe Drinking Water Act of 1996 by providing consumers with information more quickly about the quality of our drinking water. I intend to propose legislation that will build on that.

This would be particularly important in areas such as Long Island, where we depend on an aquifer system, and where we need to have accurate, timely information to promote consumer confidence, and also to make knowledgeable decisions about the environment.

I would look forward to working with you and your staff at the EPA in coming up with some legislation, if you would be interested in pursuing that.

Governor Whitman. I would be happy to work with you on those issues.

Senator CLINTON. Thank you.

Senator REID. Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman.

Governor, to get some sense of your priorities, what might we expect to be some of the early legislative recommendations that you will be submitting to us for consideration?

Governor Whitman. Well, Senator, I have to tell you, beyond what I outlined initially in response to Senator Smith's question: brownfields, clean air, the issue of infrastructure of our combined sewer overflow, as immediate issues that need to be addressed.

I really have to, if I, again, become the Administrator of the Environmental Protection Agency, take some time to thoroughly review all those pending legislative issues that are facing the agency, and to sit down with you and the members of the committee, to get your input as to problems and priorities, and where we can move to reach resolution.

I will tell you that one of the things that I am going to focus on is trying to identify those areas where we actually can build a consensus, that is a bipartisan consensus, that can come to some resolution, so we can actually start to solve problems.

As we look at the impact that we are having on the environment, we can measure it, and say that it is, in fact, good; that we are making a difference.

I recognize the importance of having the access to the courts; the importance of always having the availability of lawsuits. But I will say that I do not think that the time and the money spent in court does a whole lot to clean up our environment. Therefore, to the extent that we can reach agreement and consensus on approach, we will be far better off.

I would have to beg your indulgence to ask, beyond those that I have mentioned, that are clearly immediate problems, that I believe where we are close to some agreements, where we could come to some agreements and move some legislation forward, that I have the opportunity to get into the agency and get the benefit of counsel, from those who are there now, as well as from working with

your staffs, to start to identify those priorities that could be legislative priorities, where we think we can come to agreement and move this nation forward.

Senator GRAHAM. I commend you for your emphasis on doing the doable, first. Not only does it allow us to move forward in those areas, but also, it helps to build a relationship of mutual confidence, which can then be drawn upon to deal with the more difficult questions.

So I will personally be looking forward to your recommendations as to what those first tier of issues should be, and see if together we cannot show that bipartisanship can achieve positive results for the environment.

To followup maybe to some degree on Senator Voinovich's questions relative to infrastructure, there is another issue, and that is the issue of infrastructure for water supply. For many particularly eastern and southern states, we have lived with a history of adequacy and even abundance of water.

Now we are beginning to see the fact that there are limits to that water supply, and beginning to ask the question, how can we, in an environmentally appropriate manner, begin to supplement our traditional water supply sources? What do you believe could be EPA's role in working with the states in water supply infrastructure?

Governor Whitman. Well, Senator, there are two parts to that. One is, obviously, the fiscal demands of replacing, and the Senator from New York will know that; that New York City has a water supply system that leaks vast amounts of very valuable water every day. That is an extraordinarily expensive problem to solve, but one that we need to address.

I would also encourage states to move forward in the kind of way that we have. As we have looked at the demands on our water and water table, and we have seen periods where we have had serious droughts in the State of New Jersey, we need to recognize that a lot of that goes very much to planning, to where we grow, and how we grow, to ensure that we are preserving water shed areas, we have moved.

It is an area where I believe the Environmental Protection Agency can be helpful to states; and again, the Federal Government can be helpful in providing some of the resources necessary to do this.

But we have 20 water shed management areas in the state of New Jersey. I have, in the last two budgets, provided additional money to allow for plans to be developed for each of those water shed management areas, based on the local needs and the counties involved, to see how we can best control and direct growth, so that they do not adversely impact the water shed management area.

Also, Senator Carper touched upon information. One of the things that we have done in the State of New Jersey is, we have a GIS system, Geographic Imaging System, that shows not only every brownfield in the site in the State of New Jersey, but it also shows all our water sheds.

It allows for intelligent planning. It allows the counties, and the municipalities to be much smarter when they work with the state, and they work with the constraints of overall water availability,

land availability, to plan and direct development where the land can sustain it.

Those are going to be ultimately some very important tools for us to provide to states and to localities, to allow them to do the kind of planning that they want to do; and at the same time, reminding them that this does have an impact on the water table, on salt intrusion into clean water, which is what we see coming in the State of New Jersey, and the other issues that face us, as a nation, that are different than what the west faces.

I recognize that, and that is why I think it is also very important that we work with partners; work with the states as partners, and work with the other stakeholders, because the solutions to our problems are going to be different than the solutions to the problems in Nevada and Wyoming and Utah.

Senator REID. Senator Corzine, we appreciate your patience. We realize you were here early this morning and had to leave. We appreciate your patience.

Senator CORZINE. Thank you, first of all, I want to also embrace Senator Voinovich with regard to funding for this waste water treatment, which is such an important issue for, I think, all of us, and certainly in New Jersey, as the Governor knows.

I also would embrace some of the remarks and questions that were probably more articulately framed by Senator Lieberman about enforcement, than I might be able to fully articulate. But there are concerns in my mind, and I think among some in New Jersey, about the balance between enforcement and collegiality and consensus building. I think I understand the Governor's response.

But it is also a concern that we saw the Department of Environment reduced in size fairly substantially; certainly in the first term, elimination of the environmental prosecutor. I understand the philosophical arguments that were raised, but I wonder whether some of those same considerations will occur in the initial stages within EPA. But I think the response to Senator Lieberman is relatively clear on how you will look at that.

Maybe more importantly, I would like to ask the question that I think is very much an issue, germane both to New Jersey and across the country. I know you, like all of us, are very desirous of ending the practice of racial profiling, and the concern that a number of our minority communities have with regard to racial justice.

I think in the environmental context, we need to make sure that we have as great a security with regard to environmental justice, as we have concerns about driving on highways.

I know there were questions about citing issues, and how one would address particular considerations. I wonder if you have thought about the Title 6 guidelines and the EPA's commentary on those, and how you might address them; and then also, how you might go about providing assurance to all of our communities that their equity issues would be fully addressed?

Governor Whitman. Well, Senator, I know you had to leave, and we had a little discussion of this earlier. But I am fully committed to ensuring that environmental justice is something that is recognized and at the forefront of decisionmaking.

I look at issues, and we have touched a bit on it, for instance, on hopefully some kind of early recognition and focus on some

brownfields legislation. As you know, in the State of New Jersey, unfortunately, many of our brownfields are located in our cities.

I am very pleased with the accomplishments that we have had in New Jersey, through the legislation that we enacted, that provided some liability coverage for good faith efforts at clean up, which have resulted in an extraordinary number of no further action letters. There have been over 7,000, which represents the fact that we have over 7,000 sites that have been cleaned up, in our inner cities, that are moving forward to be contained, so that they are not continuing to pollute; and to ensure that they are now becoming actually economic development opportunities within our cities.

I can certainly give it to you for the record, if you would like, because I have to confess that using all the terminology in citing all the parts per billion that have changed does not roll off the tip of my tongue right now, but I am sure it will, with a little more exposure in the agency. But the level of impact that our efforts at cleaning the air have had, particularly on our inner cities, it really has been extraordinary.

I mean, it is not just the way we have been able to reduce the number of 1 hour, ground level ozone non-attainment days from over 40 in 1988 to four last year; and, again, our monitoring systems that we have expanded, particularly in our inner cities.

This is an issue that should be at the forefront. It should be part of our planning. It should be part of our assessment. As I know, with Senator Boxer and Senator Clinton, they are particularly concerned on children in the Office of Children's Health, within the Agency. That is something that I, along with the President-elect, pledge to strengthen and continue to ensure that it has an active role in the decisionmaking of the agency.

Senator CORZINE. Do you have any comments on the Title 6 guidelines; whether you feel like EPA's interpretations of those are ones that you would find consistent with your own?

Governor Whitman. Senator, I have to tell you very honestly, I am not totally familiar with EPA's current assessment and analysis of Title 6. That will be something that I will look at immediately upon assuming office, if I get that far.

Senator REID. We are now starting the second round of questions. Let me just build a little upon what Senator Corzine talked about.

One of the concerns I have, Governor Whitman, is voluntary compliance. I think there is a place for voluntary compliance, but I think it takes not long to understand that people are using the system, rather than trying to comply.

I would hope that based upon your experience, and I see from some of the information given to me, that you had a 30 percent cut in the agency budget in the state. A significant number of enforcement positions were eliminated. There was a corresponding drop in enforcement, and we are told that there was an 80 percent reduction in penalties collected across all programs in the first 3 years that you were in office.

I am sure there are reasons for what you did. My only point is that voluntary compliance sounds good, but it is easy if you have, within the first couple years of your being the EPA Administrator,

with a reputation that we do not have to comply; that she will not do anything to enforce the law, I would hope that that is not a legacy that you are going to leave.

I think it is great that you are going to try to work things out with people. But I think you have to have, as you have indicated, the carrot, but also let everybody know that you have a very powerful stick.

Governor Whitman. Well, Senator, let me just clarify some of those things. First of all, there has not been a reduction of 30 percent in financial support for the Department of Environmental Protection in New Jersey. In fact, we have, today, continued to increase the level of support. Yes, there were changes.

Senator REID. Those figures I have been given were wrong?

Governor Whitman. That 30 percent figure is erroneous. The Commissioner is here, and will speak to that. But we continue to increase funding for the Department of Environmental Protection.

Yes, there were changes in staffing patterns. I will tell you that part of that was due to my feeling that we need to do better with what we have, and that we can be more efficient, and do not perhaps require all that we saw in staffing at the time that I came in. Also, it was because I faced a budget deficit of almost \$2 billion, that was awaiting me when I took office. I was forced to cut a little more deeply perhaps across state government than I had initially anticipated.

I will also tell you that the number of inspections in the State of New Jersey have remained relatively stable at over 20,000 annually. So if you are only going to judge by the number of fines and penalties in a given year, then first of all, there are two things. One, I feel the measurement really should be, is the air cleaner; is the water cleaner; is the land better protected? In those three areas, the answer in New Jersey is, yes.

Second, one large fine can raise or lower that number rather dramatically. We took over \$80 million in fines and fees last year collected. That is right about where it has been, at the high. It is just below the high, but it varies from year to year, depending on where we have non-compliance.

What we try to do is ensure that we get voluntary compliance, but we are absolutely ready to use the stick. We have used the stick. Voluntary compliance still does not mean that you do not have regular inspection. With over 20,000 inspections done by the state, by the way, we also have inspections done at the county levels, as well, that add to that.

We believe that the answer, or actually the report card, if you will, is reflected in the fact that the air is cleaner and the water is cleaner, because that is what is most important to me.

Senator REID. But you do believe that enforcement is a powerful tool in environmental issues.

Governor Whitman. Oh, absolutely; of course.

Senator REID. As you may know, the EPA has the statutory responsibility of issuing final public health and safety standards for the protection of the public from releases from radioactive materials stored in the depository at Yucca Mountain in the State of Nevada.

In August, 1999, EPA proposed to limit annual radiation doses to reasonably maximally exposed individuals to 15 milirams, and to four milirams for exposure to ground water. The nuclear industry and the Nuclear Regulatory Commission seemed to think that the standard is too protective of the health of the public.

It is my further understanding that there is being sent from the EPA today, down to the Office of Management and Budget, this standard of 15 milirams and four milirams of ground water standard.

I am wondering, because it does not become final unless it goes beyond the Office of Management and Budget, do you have any feelings about the EPA setting the standards, or do you feel the standards should be set by the NRC.

Governor Whitman. Obviously, I think that is going to be a combined responsibility. The Environmental Protection Agency has the final responsibility for ensuring the environmental health and safety of the public.

That is the kind of resolution that we should achieve in a collegial way, working amongst and between the departments, in a way that ensures that we protect the public health and safety, but allows Government to do what it needs to do in addressing some of these problems.

I am familiar somewhat with your situation with Yucca Mountain. I look forward to working with you further on that, to see if we cannot achieve some level of comfort that the public is being protected, as it needs to be if, in fact, the final decision is made that would locate a facility there.

Senator REID. My only criticism of your statement would be that you feel it is a shared responsibility. I think it is the EPA's responsibility. The NRC is the ultimate licensing agency, and the licensing agency should not be setting the standards. I would hope that you take a close look at that.

Governor Whitman. I certainly will.

Senator REID. Senator Smith?

Senator SMITH. Mr. Chairman, like so many other members who are juggling their schedules, I am now supposed to be over at the Judiciary Committee. So with my apologies to the Governor, I am going to leave now, and yield my time to Senator Inhofe.

I would say also that Senator Reid and I will be working together to try to get this to the Floor some time the middle part of next week, unless there is some unforeseen circumstance that we do not know about. Thank you.

Governor Whitman. Thank you, Senator.

Senator REID. Thank you, Senator Smith.

Senator Inhofe?

Senator INHOFE. I will be very brief, but I need to bring up one last thing that I hope is not going to be too uncomfortable, and certainly it should not be for you.

Governor Whitman, I spent 30 years, prior to coming to Washington, in the real world. I was out hiring people, and trying to make competitive businesses grow. I had some successes, some failures. It seems like all the years that I was out there, the chief adversary that I had was the Federal Government, and the attitude of the Federal Government and many of the regulators.

I think I promised Carol Browner that I would not tell this story again, but you have not heard it yet, so I am.

[Laughter.]

Senator INHOFE. In 1994, I believe it was, I got a call from a guy from Tulsa named Jimmy Dunn. He was the third generation ownership of Mill Creek Lumber Company. He said, "I do not know what to do." At that time, it was my last year in the House. He said, "The EPA has just put us out of business."

I said, "Put you out of business; what did you do?" He said, "Well, I did not think I did anything wrong." He said, "We have been selling our used crank case oil to the same contractors for 10 years now. They are licensed by the State of Oklahoma, and licensed by the County of Tulsa, and they have traced this to a Superfund site. I have received a letter invoking fines on me for \$5,000 a day." He said, "You know, in three or 4 weeks, we are out of business."

I said, "Fax me the letter." I read the letter, and it was written beautifully, as bureaucrat would write, to instill and inflict intimidation into this person, which it did. After I looked at it, it was worded cleverly to say, in the event that this does not happen, we are prepared to do this. All of a sudden, he saw three generations of his family's business going down the drain.

I really feel, and it is not just the EPA, but certainly, it includes the EPA, the attitude toward those people, who are out there in the real world, paying for all this fun we are having here in Washington, the instilling of fear and intimidation in these people, I am hoping this will be something that you will jump on right away, and stop and give them the proper recognition that they are, in fact, the ones that are generating and running this ship that we call our economy.

Governor Whitman. Well, Senator, let me say that I think, in talking with Senator Reid and his concerns about reaching partnerships, we do much better when we do that. Instilling fear does not solve problems, generally. It is important to have the stick. It will always be there.

Senator INHOFE. But I bet you have some examples in the State of New Jersey, where this has happened, too.

Governor Whitman. We have had numerous examples. What happens is that people back away from problem solving, and they get into the defense mode or end up in court. That does not clean up the problem. It does not solve the problem. It does not clean up the issue that is at hand.

I would prefer, and I would hope that the agency would proceed along the lines of identifying what the problem is and sitting down with them. One of the things that we have found, and one of the tools that we had, that we have used really very successfully, when we identify a problem with a business, is sitting down with them.

Rather than giving them a letter or a notice of violation immediately with the fine attached, we go to them saying, these are the problems. This is what is happening. How are you going to clean it up? What can we do to work with you to clean it up? We give them a grace period in which they can resolve the problem, without resorting immediately to the threat of fines and sanctions.



If they do not meet the agreed-upon timetable, then they will be fined, and they know that. There will be sanctions and there will be penalties for that.

But by going in first and talking the problem through with them, we have found that, in fact, they can be very creative in how they solve that problem, and they can do it in a way that will allow them to maintain their economic viability and competitiveness. That really is an approach that we need to have.

Again, it is never saying that you will not ultimately have the sanction of fines, fees, and penalties, or the ability, when necessary, if someone is criminally negligent, to take them to court.

But it does say that first, we want to identify the problem, to see if there is a way that you, within your understanding of your business, your running it, your handling it, whether you can figure out a way to solve this problem to our satisfaction, so that the environmental damage being done is rectified or stopped. That would be the approach that I would like to see the agency adopt.

Senator INHOFE. Compassion compliance; that is good. Thank you very much.

I have one last thing. You had mentioned brownfields, and some of the things that there is consensus on. This is very closely related to the Mill Creek Lumber experience that I shared.

We need to have comprehensive Superfund reform. What I am hoping we will not do is cherry pick, and take those things that are easy to do first, so that leaves maybe retroactive liability, joint and several liability, natural resource damages, some of the tougher issues, unresolved. So I hope you will keep that in mind, as you progress into these areas.

Governor Whitman. Certainly, Senator.

Senator REID. Jim, the one thing I would say to you, though, you know, we have tried. Senator Chafee, when he was chairman of this committee, Senator Baucus, Senator Kempthorne and I, we worked, for example, on Endangered Species. It needs a lot of work done on it.

We came up with a comprehensive new Endangered Species Act. We could not get it out of the Senate. It died a slow death over there.

So I hear what you are saying. I think it would be great if we could have these big bills and re-write them. But I think that we are going to have to try to solve parts of those bills, because I do not think we can get them done anymore with the present climate that we have here.

I hope I am wrong, and I would be willing to work with you and Senator Boxer with the Superfund legislation, but I think we are going to have to do pieces of it. But I look forward to working with you.

Senator INHOFE. I thank the Chair.

Senator REID. Senator Boxer?

Senator BOXER. Thank you so much. I missed you, but I got to hear Colin Powell, which was very interesting. I have a few areas, and will I be allowed to come back for another round?

Senator REID. Of course.

Senator BOXER. Let me start with the Superfund, since that is where we were headed. The first thing I would say to my friend,

Senator Inhofe, is that compassionate compliance is a great idea, but we do not want it to lead to taxpayer's tears.

[Laughter.]

Senator BOXER. Because if you are too compassionate with polluters, and you let them get off the hook, that means the burden falls to the taxpayers. But I do think we can work together to make sure everyone is happy in the end, with a good Superfund bill. Now I agree, we are going to have some problems with that, and that is why I want to ask you some questions on the Superfund.

I know that there are some Governors who fight, getting a site listed on the Superfund list, the NPL list, the National Priorities List, but I understand that you have not taken that position. I want to commend you for that because maybe, yes, it is a little bit bad press when you announce you have a site, but it certainly is great when you clean it up, and you can use it again.

So I wanted to ask you, given your good history, from my perspective, on this, do you support preserving EPA's authority to put new sites on the Superfund list?

Governor Whitman. We have certainly used that ability of the Environmental Protection Agency. You are right, it has been difficult at times, because our new GIS information system also lists all the brownfields in the state.

The fact that we recognize that we have these problems ends up with some bad press at times, but I believe that only by facing them, can we solve them. So I would be very comfortable with continuing that ability.

Senator BOXER. As you know, Superfund is partially funded by a tax on petroleum and chemicals. The tax expired in 1995, and we predict the proceeds of the tax will be used up this year. Would you support reauthorizing that tax?

Governor Whitman. That would be an issue that I would be happy to work with you on, and take a closer look at, in the context of the overall issues that we face.

I will say that since I have been in office in New Jersey, more than \$118 million of the corporate business tax has been directed toward Superfund site clean-up in our state. So I do recognize the very high cost of Superfund clean-up, and the need for the resources to be available. I certainly would be happy to work with you on that legislation.

Senator BOXER. Well, thank you, because I think that is certainly going to be very key to us. We have so many needs in this country. This is one expensive one. We need the resources.

I wanted to pick up on the issue of civil rights. I know that Senator Corzine asked about the issue of environmental justice. I want to associate myself with my concerns on that issue very strongly.

But I also wanted to bring up the issue of civil rights within EPA itself. I have followed, certainly, the debate over racial profiling. This may sound like it is from some other issue, but it is sort of the same, if you have been watching the Ken Burns' documentary on jazz.

Governor Whitman. No, I have not seen it.

Senator BOXER. It is incredible to see what a history lesson it is, and the incredible prejudice that has plagued African Americans.

We need to be reminded of it, and we need to understand that we cannot stand for it.

That is why I think that on every one of these Cabinet positions, I was happy to see a Cabinet that looks like America. I also hope they think like America, because I think that America thinks wisely on the issue of race. I think they really want to see fairness.

So I know that there has been tremendous controversy over the issue of racial profiling, and it has not spared you some pain; nor the blacks in your community pain. So I am not going to get into and dredge up images.

But what I want to tell you, and we did discuss this recently, the House recently held hearings to investigate various claims of employment discrimination at EPA. They asked Carol Browner to come forward. It was a very emotional hearing for her. She was clearly upset about the issue.

We know that under her leadership, women and minority representation has increased to its highest level, under the Clinton Administration; but still there are problems. Employees continue to complain in that agency about harassment and discrimination in promoting.

In the hearing, Administrator Browner announced that preserving the civil rights of all employees requires constant vigilance, and personal oversight by the Administrator of the agency. She pledged to have an independent order to review the agency's procedures for processing civil rights complaints, among other things.

I know in your experience in New Jersey with racial profiling, you had stated that you were not aware of it, and when the Attorney General found out, he did not inform you about it.

So this is a crucial issue. I wanted to get it on the record today, because I do believe you will make this commitment. Will you commit to personally stay vigilant on this issue at the EPA?

Governor Whitman. Senator, I think there is probably nobody else who would pledge to be more vigilant on this issue than I. I think it is absolutely critical.

I believe we need to look very quickly at the backlog of pending discrimination cases that exist at the agency and clean that up, in order to be able to assure the staff that we are taking this seriously; and then ensure that every time there is an allegation of discrimination, that it is dealt with properly, and that everyone understands their responsibilities, understands what is appropriate behavior and what is not, and that we pledge ourselves to that.

Senator BOXER. So will you continue to have this procedure that Carol Browner has started, that she is personally informed, and there is a new procedure, so that people can get their complaints heard? Will you continue what she has started, in terms of this constant vigilance and oversight?

Governor Whitman. I cannot speak to exactly what she started, because I do not know what she has put in place. But I will pledge to you, constant oversight and vigilance.

Senator BOXER. OK, I will just try one more. She pledged to have an independent auditor review the agency's procedure for processing civil rights complaints. I am wondering if that sounds like a good thing to you? I do not know if she has completed that.

Governor Whitman. Off the top of my head, I have no problem with that at all.

Senator BOXER. I would love to know, within the next few days, as you give this more thought and perhaps speak with her, specifically what you think about that. I will hold the rest of my questions for another round. Thank you very much.

Senator REID. Senator Voinovich?

Senator VOINOVICH. Yes, we were talking about brownfields. I think I probably agree with Senator Reid that we ought to get on with it.

One of the things that used to bother me, we have a Department of Health and Human Services, and we are trying to provide training for inner city people on welfare, and provide jobs in the city. We have acres and acres all over this country of land that could be developed, and businesses could expand.

Frankly, I think, in many instances, because of nitpicking, nothing gets done. I think sometimes, you wonder if the left hand knows what the right hand is doing.

I would suggest that maybe you sit down with the folks over at HUD and talk to them, and Health and Human Services, and see how your various agencies relate to each other. We do need to get on with some brownfields legislation.

The other thing that I would be interested in, as Senator Carper talked about, is best practices. In Ohio, every year, when I was Governor, we honored businesses that had done the most to reduce their pollution, voluntarily. That was amazing how well some of them did, and testified that it was not only good for the environment, but good for business. There is a lot of new technology out there.

When we tried to put a program in force in Ohio for volunteer audits, and that basically would have allowed our people to go into businesses and look at them, and comment about how they could improve and be more friendly environmentally, it hit the rocks. Because we wanted to give them the assurance that we would not publish what we found. You cannot do that, because if you do that, then there is a cover up.

I think there is a lot more that could be done, I think, in the area of best practices and voluntary audits. I know we did that with our Ohio Bureau of Workers Compensation, where we said to businesses, let us come in and look at your shop. We are not going to fine you if we see things, but we will tell you how you can do things better to reduce your accidents in your business. There is a whole area there that I think needs to be looked at, you know, going outside the box.

Second is Senator Reid's concern about Yucca Mountain. You know, we have been talking about dealing with nuclear waste. I was a county commissioner in the mid-1970's, when they were talking about storing it in the salt mines under Lake Erie. Of course, I was opposed to that, Senator.

[Laughter.]

Senator VOINOVICH. And the Senator is opposed to, I think, the use of Yucca Mountain.

But we need to look at what other people are doing. You know, nuclear power is very prevalent over in Europe. But how do they

deal with their nuclear waste? I mean, that is the big issue with nuclear power. How do you deal with the waste and, of course, the plants and technology, and so forth?

Hydroelectric power, again, you know, there are people that want to say that we need to get rid of some dams and so forth, because of the environment. They say that the salmon are going upstream and so forth. There is coal and all of these things that I think we need to look at.

I would be interested, how much of a priority are you going to give to harmonizing our environmental policy with our energy policy? What kind of a priority do you think that ought to be given in your agency?

Governor Whitman. Well, Senator, one of the things that the President-elect has indicated to all us, as potential nominees, is the importance of working together. In fact, they have put that down on paper, that the departments and agencies need to work with one another.

I think it is even a problem perhaps within the agency itself, in looking at things in silos. Water is one set of problems; air is another; land is third. Somehow, they do not interact at all. It is clearly true, amongst and between departments and agencies.

I expect to spend a great of time working with my colleagues in the Cabinet to problem solve. It will be different agencies and different issues, but that is the way, as a Governor, that I have organized my Cabinet. I have had a number of committees of the whole cabinet, depending on the issue.

If we are talking about our urban redevelopment, we have an Urban Coordinating Council. In every single agency that has an impact, which was all of them, met together just to discuss the issues of urban revitalization and how we approach those issues.

I think the same applies for environment and environmental problem solving. As someone who had shamelessly stolen from you, when you were Governor for some of my governmental initiatives, I would be more than willing, and in fact welcome whatever we can learn, not just from the states themselves in this country, but from other countries around the world, as we address issues that are frankly shared issues.

I would put that as a high priority: the collegial relationship amongst the Cabinet, to problem solve.

Senator VOINOVICH. What about in terms of priorities? Where will this harmonizing in getting at this policy; where will that be on your list?

Governor Whitman. To me, that would be underlying all of the decisions being made. Again, I need to get into the agency. I have not been into the agency. I have no status at this point. I am simply a nominee. If I get your support to assume the role, that will be something that I will do right away.

But to me, that is something that should be underlying every issue. As you look at an issue, you need to work with the Department of Defense, the Department of Energy. Is this something where Commerce is going to be impacted? Frankly, a lot of the Environmental Protection Agency decisions impact on commerce.

There are a host of decisions that are being made all the time, that impact other departments and agencies. The desire to find

where those nexus are should be part of every decisionmaking that is done at the agency.

Senator REID. Senator Clinton?

Senator CLINTON. Governor, in following up on Senator Voinovich again, which I find myself doing often today, I think the points that he made earlier in the first round about the energy shortage that is being felt in many parts of the country, most acutely in California, are certainly going to be on the forefront of the national agenda and will require a lot of harmonization and cooperative efforts on the part of not only the Administration but the Congress and the private sector as well. One element of that that we have not yet referred to is the whole issue with respect to conservation and trying to make our energy usage more efficient.

I was struck by Senator Voinovich's reference to the voluntary audit being not pursued because of questions about what would be found in a different context. But I would offer any encouragement we can provide to auditing of energy usage. We have become somewhat more efficient in the last decade but there is still an enormous amount of waste in our energy use here in this country, particularly in our industrial plants that are often out of date, using equipment that is not up to standards that could be considered conservation promoting.

Will you see this as a particular issue that you would take to the cabinet and within the Administration so that when energy policies are devised and put forward, perhaps by colleagues of yours, conservation will have a role in whatever policies are promoted?

Governor Whitman. Absolutely. As we have done as we have moved toward deregulation in New Jersey, we disseminate the information to the buyers of energy as to where the sources of energy come from so they can start to make more informed decisions about whether they are buying "clean" energy or energy efficiency. Again, it is an education process. I do not imagine I have much fight within the cabinet, but I certainly would see that as an issue that needed to be raised in the context of discussion of energy policy.

Senator CLINTON. There have been a number of fights over the last several years within the Congress. I do not think any of the major conservation proposals have made it through the appropriations process over the last several sessions, which have made it more difficult to have any kind of balanced energy policy. So, I am sure, given the great public attention that is being focused on our energy issues, there will be a lot of proposals coming forth about drilling or about using fast permitting processes for getting plants up and going. But at the same time, I would hope that conservation would be considered an equally important element of whatever plans are proposed.

I am also interested in your response to the recent Supreme Court decision about implementation and enforcement of the Clean Water Act. I think it came as something of a surprise to some of us to see how far the court went in undermining Federal jurisdiction over clean water. And, again, I think this is one of those penny wise and pound foolish issues, without passing any judgment about which I know nothing of the facts concerning the Illinois example.

Certainly, speaking from a New York experience, watershed protection is absolutely essential to clean water. The water supply for

New York City comes from two different watersheds, the Croton and the Catskill. We are now looking at having to spend billions of dollars to build filtration plants to clean up water that historically had been considered of high quality because we have not done enough to protect the watersheds. So it is an issue of particular concern to me from the New York perspective.

But more generally, how do you view this recent Supreme Court decision? And would the EPA under your leadership take action for making whatever legislative changes might be appropriate to ensure watershed protection in the future?

Governor Whitman. Clearly, the decision stands now as case law and we will have to operate within that framework. It would be one of the functions of the Agency to take a look and see how we can be most effective in that. But it seems to me that that decision argues perhaps as eloquently as anything else for the need for partnership with the States. But to the extent that the regulatory authority of the Agency is restricted by the decision, we cannot stop trying to protect watersheds. Therefore, we need to be aggressive in working with the States and with the localities to identify watershed areas, to identify appropriate approaches to watershed protection and management, and to help people understand that, frankly, Mother Nature does a whole lot better job for a lot less cost of cleaning our water than do filtration plants.

Senator CLINTON. Absolutely.

Governor Whitman. That is something that we have acknowledged in New Jersey and watershed protection and setback is a major part of our Open Space Initiative. It is not just open space for parks, whether they be urban or suburban or rural, it is not just farmland preservation, it is also watershed preservation. That is the kind of thing where the Agency now is going to be challenged to reach out to the States and to reach out to the local communities to help ensure that watershed protection continues in spite of what is seen to be now as a restriction on the ability of the Agency to actually regulate those issues.

Senator CLINTON. Mr. Chairman, could I just followup. Would that include perhaps looking at legislative changes that would provide clearer congressional authority for such action in the event that it was needed?

Governor Whitman. I would be happy to work with you on taking a look at those issues.

Senator REID. Senator Corzine.

Senator CORZINE. Yes. I have heard about compassionate compliance, and I am sympathetic when there is over-reaching by regulators in the private sector. In my own experience, that sometimes has been a problem. But the cost of failure to comply can really be truly serious. As you are well aware, in New Jersey we had a warehouse explosion in Lodi which actually took five lives and interfered pretty seriously with environmental concerns to fire fighters and a whole host of folks that live in the area. And it gets at another version of right-to-know. There are concerns about whether we are aggressive enough, either in the State or, more importantly now, in the Nation about making sure that businesses that store hazardous materials make it known to the public. I wonder if you have observations about that, concerns about maybe the cutback of

those substances in the decisions taken early on in your Administration, or how you feel about it as EPA Administrator.

Governor Whitman. Certainly, Senator. First, let me address the issue of what occurred in New Jersey and right-to-know just to clarify. We have an extensive right-to-know policy. We go beyond the Federal Government in instances of some of the things that we list. We do not, and did not, adopt the U.S. Department of Transportation right-to-know requirements. That is something actually EPA has agreed with as a decision simply because it did not have the same application. Those were applications that dealt with transportation issues.

One of the things I found, and particularly at the Lodi explosion that occurred early on in the Administration, was that, we had right-to-know books, the first responders were faced with right-to-know books that were literally the size of a telephone book. And the ability to go through those and figure out what they were facing in this particular fire was very difficult for them. Plus, they had no idea as to the location of the chemicals. They knew that those chemicals had been stored in this facility but they did not know where they were and what the potential interaction would be.

So one of the things that we have done now in New Jersey is we have required all companies to provide to the local first response teams and to publish and post where they are easily available an actual map of where chemicals are located. We also try to ensure that we prioritize so that those first responders know which chemicals are there in bulk that are going to cause the biggest problem, rather than just if at some point there was some storage of a minor amount which does not really pose a health threat.

We want to have right-to-know be not only do we need to know what is going through our State—and we did do, and again this sometimes gets muddy, we did do a survey of businesses as to what chemicals they had pursuant to the USDOT right-to-know, but that was for us to understand what chemicals were in the State, it was never incorporated into the State right-to-know law—but the important thing is to have this be something that is usable, something that is relevant to those who are responding to an emergency situation. They need to know right away what it is they are facing, in what quantities, what the possible combinations are. In that Lodi fire, that was one of the concerns because of the potential for carcinogens and the potential for volatility in the combination. They did not know whether in fact the drums were stored even in the same building; there were three buildings involved in that particular explosion.

And so we have tried to not only ensure that we have a very thorough right-to-know, but that it is structured in a way that is actually of use to those who have to respond to these emergency situations.

Senator CORZINE. If I might frame this though in the enforcement question. Because without some kind of audit to make sure that the additions as well as the participation of a business is in place, it is nice to have it on the books, but with no audit it can turn out to be actually protection that is falsely embraced by a community.



Governor Whitman. That is why it is important, as we have said at least in our New Jersey experience, inspections continue to be above the 20,000 level annually. So we have not backed off on the inspections. That is the way you ensure compliance. That is what we have to do. And I agree with you, at the Federal level that needs to be part of addressing these issues. No question about it.

Senator CORZINE. If I might, Mr. Chairman, I have a parochial question I might ask. You probably know this one is coming, Governor.

Governor Whitman. I have a suspicion.

Senator CORZINE. Mills Corporation is seeking a permit for the fill-in of 206 acres of wetlands in the Hackensack Meadowlands in order to build a shopping mall and other kinds of facilities. The project has been opposed by the Environmental Protection Agency to date. I wonder if you have reviewed this, have a view on it. I am interested in your view of this in the context of protecting wetlands and protecting water supplies which we have been talking about here in watershed context, but equally important within the context of wetlands.

Governor Whitman. Certainly. First, let me just say as Governor, I have read that I have been in support of this project. I have never taken a public position on this project. So that is simply incorrect.

As far as the issue goes of were it to come before the Agency—well, the EPA has already opined on it, has issued an opinion on it—that would be an issue that I think I would want to discuss with counsel relative to recusal should I be asked to make a further decision, simply because of the level of involvement that I have had to date.

Senator REID. Senator Corzine, thank you very much. And you are welcome to stay if you wish for more questions.

I understand New Jersey has experienced MTBE contamination of some of its important groundwater resources. You may know that Lake Tahoe, this beautiful lake that Nevada shares with California, has also had a problem with MTBE contamination. Carol Browner has supported reducing or eliminating use of MTBE and establishing a renewable fuel standard as a way to prevent further contamination.

Do you have an opinion as to what should be done nationally to deal with this problem? At this time, would you support a ban on MTBE? And, final question, would you pledge to work with this committee, that is an easy one, to get legislation?

Governor Whitman. Of course, you know I pledge to work with you, Senator. There is no question about that. This is an issue of great concern throughout the country. As you know, we have had concerns, ongoing concerns in New Jersey with that additive.

The only thing that I would say, as we look toward a national response to this, is we ought to be sure of what the alternatives would bring. We have to be sensitive to the fact that MTBE was given the blessing of the Environmental Protection Agency because the feeling was that it was going to do good things.

Senator REID. And it did do good things.

Governor Whitman. And it did do good things. It has cleaned the air. But we did not know enough about what its impact was going to be on the water. And that is something that I think we need to

be very careful about as we move to alternative fuels and reformulated gas and other steps that we take to preserve the environment. That is where it comes down to the need for good science with peer review that is meaningful to ensure that we are as conversant as possible with all the potential impacts.

Senator REID. I think what we need to know is what we can do on a short term basis, and I know you cannot give us an answer now, because we have very, very definite problems in the Lake Tahoe area and we cannot wait for a long time for decisions to be made because that lake is not very renewable. It has problems that once water problems develop, they do not go away for decades and decades, unlike most water sources. So we need you to address that very quickly.

Governor Whitman. Senator, I promise you I will. That will be among the first things that I would look at.

Senator REID. I understand that the State of New Jersey under your leadership has actively participated in the legal defense of EPA's new National Ambient Air Quality Standards for ozone and fine particles. Will you continue to support and defend these new standards both in the courts and within the Administration as head of the EPA?

Governor Whitman. Senator, as you know, I have taken a firm position on that as a Governor. My responsibilities as Administrator of the Environmental Protection Agency require a national view and I would review it with that in mind, understanding what the issues are.

My understanding of the problem is not going to go away because I have assumed this role. My responsibility to listen to everyone and to try to work out a solution is there because I will be assuming a different level of responsibility. But I have very real concerns about those issues. What I would like to see us do is to try again to work with those who have been identified as being part of the problem to see if we can't come up with ways to clean the emissions and reduce the emissions that are being put into the atmosphere without totally reducing their ability to function and do business.

Senator REID. Strong scientific evidence continues to accumulate demonstrating the connection between fine particles and premature mortality. You know I am sure that the President directed EPA to make a determination by July 2002 as to whether to revise or maintain the fine particulate matter. Given this proof of public health damage, and it is mounting, would you keep to this timeline for this determination?

Governor Whitman. Senator, I can see no reason at this point why we would draw back from that timeline. But, again, it would be part of the rules and regulations that I would have to review if I were to become the Administrator of the Agency.

Senator REID. President Bush, not George W., President Bush talked about no net loss of wetlands. And we have not done a real good job of that. There has been some progress made. But for a State that is as wet as New Jersey, you may have some trouble understanding why we in the West have very, very few wetlands. And we treasure our wetlands. Do you understand how important wetlands are, and that as one of your main functions as EPA Adminis-

trator is to maintain our marshes, our swamps, the things we used to try to get rid of?

Governor Whitman. Senator, I know why wars are fought in the West, and water is one of the major reasons for that. And I am very sensitive to those issues and very sensitive to the needs to protect our wetlands. That is one of the reasons why we have such an aggressive program in New Jersey to set aside those wetlands permanently and forever so that they cannot be degraded.

Senator REID. Senator Voinovich.

Senator VOINOVICH. I was interested in some of the questions that you asked. I have been particularly interested in the court case before the Supreme Court where we have regional differences. One of the problems that I think we have today, and it may apply to regulations across the board, not only in the Environmental Protection Agency, but throughout the Federal Government, is that not enough emphasis, in my opinion, has been placed on risk assessment, cost-benefit, good science, peer review, alternative regulations, and so on. I would be interested in your view of that issue.

When I, for example, visited with Carol Browner on this issue, she basically said, "Look, Governor, there is not much I can do. I am not to take into account these other issues." Of course, I argued that CASAC and other scientists have said, in terms of the ozone and particulate matter in terms of environment and public health, that some argued that it really did not have the impact that some were saying that it was making. But she basically indicated that, because of the current law, there was not anything that she could do about it.

I have been trying to get some change in that, very much like what we have in the Safe Drinking Water Act that basically says you go through a system of considerations and at the end, if the Administrator still says it is a public health or environment problem, we will go forward with the regulation. I would like to know how do you feel about looking at the cost-benefit, good science, and those issues in terms of your Agency?

Governor Whitman. Well, as I have said, I think good science is the basis for all the decisions that are made at the Agency. That is critical to the credibility of the Agency and to the implementation of the decisions made by the Agency. The things that you have talked about are I would have thought appropriate to be part of the decisionmaking process. I cannot speak to the analysis of the law that I presume counsel gave Carol Browner, so there may be some legal impediment to the more formalizing of those considerations.

Certainly, good science, cost-benefit analysis, those are all appropriate things to be taken into consideration when making some of these decisions. Again, the final decision has to rest on the health of the environment and the population. That is the responsibility of the Agency. But to consider as broad as possible the other factors that impact on that is entirely appropriate.

Senator VOINOVICH. It is interesting that when we first got into this issue of particulate matter that many argued that we were not sure what impact increasing that standard would have on public health and the environment. And simultaneously with the proposal of that regulation, the Agency asked for significant money to do research work on the issue of particulate matter. They are still in-

stalling monitors now around the country to ascertain just what impact particulate matter is going to have on the environment and on public health.

Mr. Chairman, I think we have spent maybe \$200 million so far on going forward with this research work to deal with the particulate matter. It seems to me that we are getting the cart before the horse. And then the Agency, even though it has not been approved yet, moved out and took some enforcement actions in terms of complying with the act and also with the NOx problem, you are familiar with that, that we have. We came back with a proposal that we would reduce NOx by 65 percent. But the Agency just came down and slammed the hammer down that it has got to be 85 percent, that is it. We showed them that we could get the 65 percent before the deadline on the 85 percent and they just said no, you have got to reach the 85 percent.

The point is that it seems to me, and I know some people may not like to hear what you are saying about working with people, most people want to do the right thing but they want to know what the rules are. I think President-elect Bush talked on the campaign trail about the fact that we ought to be able to get together with someone and say this is what you are going to be responsible for, you go to work on it, and 5 years down the road we are not going to come back and change the rules on you; for example, like this new source review problem that we are having.

Those are things that you are going to have to grapple with. And if the Supreme Court rules the other way, you will have to grapple with that problem. But I just hope that you are true to what you are saying, and that is that you want to work with people to get the job done. That does not mean that you are going to let somebody off and clobber them if they violated it. But there seems to be an attitude out of the EPA that they start off that you are bad, that you are a polluter, you do not care about your employees, you do not care about public health, you do not care about the environment. And the fact of the matter is I happen to believe that most people do. And if you work with them, they are going to do the job. Now we know there are some people out there that are bad. But what you do is you nail the bad ones so you set the precedent that you are not going to put up with it.

Senator REID. Senator Boxer.

Senator BOXER. Thank you very much. Our Chairman Reid brought up the issue of MTBE, and Lake Tahoe is truly an incredible issue. I know you are very familiar with it. I want to followup. Also Senator Smith is very well aware of this. So it really is an area where we have strong bipartisan support on this committee. I really think we can get something done. We already passed a ban on MTBE out of this committee but we did not have the time to take it up on the Senate floor. I was proud to author that ban.

I know that the first leakings that were discovered from an underground tank occurred in Rockaway, New Jersey, in 1980 of MTBE. If we had all understood what it really meant, we could have spared the Nation a very costly cleanup problem. Even in California we saw it coming but we were too slow to warn everyone. I came on this committee, I started to kind of let everyone know that this was an emerging major problem. In Santa Monica,

California, we have lost half of our drinking water supply. The thing about MTBE is that it is a probable carcinogen. But beyond that, it has this horrible order even in very, very small quantities. So no one will drink the water if it gets into the water. They just refuse. Even if you tell them this is safe, no one is going to drink water that smells like turpentine or worse and looks like turpentine or worse. So it is an insidious problem.

I had a big argument with EPA on this, just so you know that this is not about being partisan. I called for the phase-out and I felt that EPA was denying that MTBE was a problem for a long time. They told me they did not have the authority to phase it out. We kept showing them parts of the law that they still said that they disagreed. Finally, they did agree that in the Toxic Substances Control Act they could, in fact, phase out MTBE. And much to my delight, a little bit late but they did it, they began a rulemaking to phase out MTBE.

So my question to you is, can I have your commitment that you will continue to move that rulemaking forward?

Governor Whitman. Senator, again, I generally, and we have had a little bit of this conversation, I am generally in favor of limiting the use of MTBE. I will certainly review that rulemaking, as we will review all the rules that are in process. I think that is appropriate to do as a new Administration coming in. But I tell you personally that I am generally in favor of limiting the use, because we have had the same sorts of problems that you are indicating. I am going to review this issue, I look forward to reviewing it with you, and certainly in the context of any other adverse impacts that it may have and causes that it could concern the population.

Senator BOXER. Let me just say there is a difference between limiting the use and phasing it out.

Governor Whitman. I understand that. I am just giving you the first cut.

Senator BOXER. I understand. But I think this is a very key matter. I think using it a little, it still leaks into the water supply. So it is a big problem. So I am very interested in this, and because my subcommittee that I will be the ranking member on with Senator Chafee will deal with waste cleanup and brownfields and Superfund, we will be getting into this. But we do have the support of I want to say both Chairmen for today, that is a fact, this chairman and the new chairman to come, on this question.

There is another issue that I merely want to bring to your attention. And that is the courts are looking at the oil companies culpability in a lot of this. It is very contentious. There was an amendment we defeated in this committee that would have allowed oil companies to get off the hook for the liability. Those who supported the oil companies here said that oil companies had no idea that MTBE would pose such a problem. Discovery in a California suit which was similar to that filed in New Jersey shows that the oil company did know MTBE would pose exactly the problems we are now discovering. Do you agree that Congress should not pass legislation to stop the courts from examining if the oil companies knew about MTBE rather than let them off the hook?

Governor Whitman. I would be surprised, with all due respect to the power of Congress, if they could pass a law that would prevent

anyone from the courts looking at the cases that were brought before it.

Senator BOXER. If we say that they are not liable, then there is no point in anyone suing. That was the question. There were those on this committee who tried to say oil companies had no liability. I will send you that so that you can take a look at it. I know these questions are not easy for you without consulting others. But I just wanted to say this is a contentious one.

I wanted to talk to you about just a couple of other things and then I am actually going to be done. So I will wait until everyone is finished.

Senator REID. If I could say, Governor Whitman has been here since about a quarter after nine. We are going to allow one more round of questions and then we are going to ask that any other questions that people have be submitted in writing.

Senator BOXER. Sure.

Senator REID. She has already agreed to get the questions answered by Monday.

Governor Whitman. Yes, sir.

Senator REID. Senator Clinton.

Senator CLINTON. Governor, we have alluded to the issue of acid rain in several previous questions. But there are precedents certainly to be built on in trying to expand the regulation over the emissions from power plants that affect one part of the country that are based in another part of the country. Certainly in New York and in other parts of the Northeast, we suffer from acid rain that comes from two geographic locations, power plants in the Midwest and then increasingly some power plants in Canada.

With respect to the first, my predecessor, Senator Moynihan was a leading voice on Federal legislation to control the emissions that cause acid rain. The EPA has played a leadership role in holding power plants accountable for the pollution they create that they do not themselves suffer from. But we think that we are going to have to go further and take a hard look at trying to control sulphur dioxide, nitrogen oxide, carbon dioxide, and mercury. It will certainly be up to the Federal Government, because this is not something that the States can do on their own, to play a leadership role in this.

I would like, first of all, for you to respond, if you yet know, what role you would be willing to play to try to either broker agreements or come up with legislation that could pass that would hold domestic power plants responsible. And the second part of the question, which really is entangled with our trade policy, is how we negotiate with neighbors like Canada on our northern border or Mexico on our southern border with internationally caused pollution. And this is a particular issue for northern New York because there is increasing evidence of emissions that come from Canada that are not obviously controllable because of the prevailing winds. But it is one of the reasons why I think that labor and environmental standards should be a part of trade policy and not be left out when we negotiate compacts with our neighbors. In the absence of that, then we may have to look at separate negotiations regarding environmental issues that affect the United States that are really originating in

either Canada or Mexico. So with respect to both of those issues, do you have any comment at this time?

Governor Whitman. Senator, I will tell you that the acid rain program that President Bush established in 1990 I think has been one of the more successful programs of environmental compliance that we have seen with the cap and trade that was put in place. It has had a huge impact. EPA has been very involved in that implementation and has done it with minimal, amazingly, amount of staff because of what is required here. But it really has improved air quality, and there is no question about that.

I think it gives us some idea of where we should go as we look toward the future. We are not finished with this problem, we know that, in spite of all the steps that we have taken and successes that we have achieved. But cap and trade and market-based incentives have worked in this instance. That is something that I believe we can continue to do as we address now the more problematic areas that continue to provide our challenges, as it were, with acid rain. I would look forward to continuing that role and that relationship of the Environmental Protection Agency, its responsibility in this area. But we do at least have an example of a program that was innovative and has actually worked, and that is the kind of thing that I would hope that we would do more of. It is a market-based initiative, cap in trade, and it has made a difference.

As far as the international negotiations are concerned, I think we have seen at the last few international trade meetings that NGO's are going to have a place at the table, that in fact those considerations will be part of future deliberations. And to the extent that we can work collegially with our neighbors on the North and on the South, that we should be part of that. That will not be, obviously, the primary responsibility of the Environmental Protection Agency, but I certainly expect that we would be partners in those kinds of efforts.

Senator CLINTON. I would agree. I would just add though that the 1990 legislation grandfathered in certain of those midwestern plants. And that has been one of the sources of—

Governor Whitman. Which everyone assumed was going to phaseout and they have not. I understand.

Senator CLINTON. Exactly. And there has not been enough of a stick to phaseout the pollution produced by those plants. And the legislation did not cover all four of the major pollutants. So that we do need to look at some legislative changes.

Governor Whitman. I would agree with you on that.

Senator VOINOVICH. Mr. Chairman.

Senator REID. Senator Voinovich, did you have a comment?

Senator VOINOVICH. Yes. I would like to comment on that. First of all, there is a regional difference of opinion on this. I advocated once we could shut down all the power plants in the Midwest and your States would still have a pollution problem. I am proud of the fact, for example, that there is not a county in Ohio that has not achieved the current ambient air standards. When I became Governor none of them had and we have reached the current standards.

I would like to say to this committee that the utilities in the Midwest and in that area that we have been complaining about for so

long are willing to sit down and deal with mercury and NOx and the other issues that are on the table and come up with a reasonable program that will get them to do the job that they need to do. But we just have not been able to sit down and really talk about these things because everyone says you cannot do this and you cannot do that. These people are willing. They are spending billions of dollars. They spent actually a lot more money than your utilities in the Northeast to comply with acid rain provisions of the Clean Air Act.

I think a real challenge would be to see if those of us from different regions could sit down and work something out, lay it out, say here is what we want you to do, get an agreement, and say we are going to stay on your back in order for you to get this done, and let them get to it. But too often the EPA just, as I mentioned earlier in my remarks on the NOx issue, they said it has got to be 85 percent. The Ohio utilities admit that we are having a real impact on Pennsylvania and some other places and they are willing to do these things. But it seems that with the EPA it is just our way or no way. I think it is time for us to sit together and figure out how to get it done and get some consensus and compromise and get on with it. We will be better off and so will your region of the country. I would like to sit down with you, Senator, and some of your colleagues and see if we cannot get to the table and work on something.

Senator CLINTON. Senator, I would be absolutely delighted to do that. I think all of us want to see the results. I would love to take you up to the Adirondacks, I will come visit some of the plants, and we will see if we can bring people together around this so that we can build on the success of the 1990 legislation and keep doing what we need to do to get the cleanest possible air. So we will look forward to that.

Senator REID. I look forward to joining in the Voinovich-Clinton or Clinton-Voinovich bill that will be——

Senator CLINTON. Voinovich-Clinton. I am well aware of seniority here.

[Laughter.]

Senator REID. Senator Corzine.

Senator CORZINE. So am I.

[Laughter.]

Senator CORZINE. I think that there is plenty of room for us to make sure that we establish the facts with regard to this situation. I think this committee may very well be a great place for a full discussion so that it is understood in its complete context so that when you get around to trying to build a consensus there is an understanding of the basis on which the issues are being debated.

Governor Whitman. Can I also say that you will have a partner in the Administration, because during the campaign President-elect Bush did talk about a multi-pollutant strategy to address the issues of the aging energy facilities. And so we will be happy to work together on that.

Senator CORZINE. Governor, following on a question that Senator Voinovich raised, I actually just want to clarify in my own mind, did I hear you say that prioritization of how you would look at regulatory factors or how you built regulation would come from good



science and science rationale in the first instance, and then sort of cost-benefit analyses in the second?

Governor Whitman. Good science I believe is the absolute foundation for decisions made by the Agency. There will be times however, as we all know in having dealt with scientists, that it may be difficult to reach an agreement as to what is the absolute perfect science and the Agency will be required to move ahead in any event. That is something we have to be prepared to do. But without a level of confidence on the part of the Congress and the people of this country that the Agency makes decisions based on the very best science available, I do not believe that we will have the moral authority, much less the legal authority, to really make a difference.

Senator CORZINE. I compliment that ordering. I think it would be the desire of the public to make sure that we are thinking about it in that kind of prioritization.

I wonder if you would mind commenting on another regional issue, the so-called Gore Agreement with regard to ocean dumping, and whether the EPA's evolution of standards is something you embrace or have had a chance to look at in detail. There are a whole series of issues on dredging in various parts of the States and our region and I wonder if you have thought about alternative disposal strategies other than ocean dumping.

Governor Whitman. Senator, as I am sure you are familiar, when I came into office I put a stop to ocean dumping off Sandy Hook until we found other disposal alternatives. Fully understanding the economic impact on our ports and the necessity for dredging, we have been very advanced in the State of New Jersey in developing de-watering plants, in finding beneficial use for dredged spoils, and we continue that.

The new agreement that was made in 1997 I believe it was between the Administration and the EPA and at that point some of the environmental organizations in New Jersey was not one to which I was party, but I did endorse the pledge that was made that it would be sound science that would determine what was category I versus II and III. Subsequent to that, I, in the last year, wrote to the Department asking for an assurance that, in fact, that was going to be the determinant factor. I am not at this point familiar with what their final determination is relative to the science. But I continue my commitment to ensure that we do not dump hazardous spoils that pose a threat to our environment at that site, or anywhere off the United States that is not appropriate for that kind of use.

We have found alternative disposal sites, we have found other uses for de-watered dredge spoil, and I believe there are alternatives that we can find to ocean dumping. I will continue to have an interest in how we address the very real economic needs of our ports for increased dredging while protecting the environment.

Senator CORZINE. The science in this particular area is one where we need to develop a consensus of view. It is one of the more disputed elements of debate in our region.

Governor Whitman. It is, and at one point what was originally agreed to in 1997 was deemed by all to be the best science and what was called category I everyone was comfortable with, and

that changed and we were suddenly no longer comfortable with that. I am not enough of a scientist nor have I had the opportunity to go behind the scientific analysis that was done to determine who is right in that one.

Senator REID. The last questions will be asked by Senator Boxer.

Senator BOXER. Thank you. Governor, I have three areas of interest. I will never get to cover them. So I will go as far as I can and then I will send the rest to you. One is energy efficiency. I want to pick up on some of Tom Carpo's ideas that he mentioned to you. Another one is children's health, that we discussed. And the final one is the dumping of radioactive waste in non-NRC disposal sites, these are the licensed sites, and we have a problem in California there.

We are about to have a very huge national debate/argument over the advisability of drilling in the Alaska Wildlife Reserve. I think it is going to be a very rough debate and I hope that the environmental side wins out on it. But it seems to me there is a much larger question of course about our energy policy. We know, for example, if SUVs had the same fuel economy as regular cars, it would be a million barrels of oil a day that we would save right there—right there. It would make it unnecessary to do a lot of the things that we have to. That is just one way.

On this committee, a gentleman on the other side of the aisle, Senator Bennett, who just left, told me that he had bought a hybrid vehicle and he was just saying how wonderful it is. You fill your car up with gas and it kicks back and forth between gas and electricity. It is very clean and it also gets about 52 miles to the gallon average. Anyway, I bought one of these cars and I think it an amazing thing. It is no sacrifice, by the way, because it is the most comfortable thing and you do not notice any difference. It is a great interim step before people get more used to electric vehicles. I think it just says that if we all started to do more of these things, I think it would be good.

Senator Carpo mentioned to you this notion about changing the kind of vehicles we use in our pool of automobiles. This is not so much a question, but I am asking if you would take a look at this, and EPA itself, what a good idea, take a look at how we can save energy. I am sure that you are going to have lots of other things on your plate. But would you be willing to do that, take a real good look, maybe have an energy audit—I am sure that Carol Browner did some of these things—and get back to me. Because if you will undertake some of these things, then maybe we can get other agencies to do it, and maybe even here in the U.S. Senate.

Governor Whitman. Senator, if you will grant me some flexibility in the timeframe, I pledge to get back to you on that.

Senator BOXER. Yes. You have got flexibility. Six months is a long time.

[Laughter.]

Senator BOXER. That is pretty good. Usually, we want our answers yesterday. So that is 6 months.

On children's health, in my work on this committee, from Superfund to Safe Drinking Water Act, I have worked to ensure, with a lot of my friends here, that our environmental laws are kind to children. And when we talked about this yesterday, we talked

about when you make sure the standards are set to protect children, they also protect pregnant women, the elderly, the disabled, and those with autoimmune diseases. So when you protect children, you are protecting the vulnerable populations.

My first question is, and I think I know your answer to this but I want to get it on the record, will you keep the Office of Children's Health that Carol Browner put in place over at the EPA?

Governor Whitman. Absolutely. President-elect Bush has indicated his desire to see that office function in a very strong advocacy role.

Senator BOXER. I am very happy to hear that. We know that pound for pound children breathe more air and drink more water than adults do. So if that water or air is polluted, the pollution will have a more harmful effect on a child's system because the child is rapidly developing. Senator Clinton came out to San Francisco when I introduced my Children's Environmental Protection Act, and I was very grateful to her, and I know she is particularly interested in this as are other members. So I hope you will work with us.

We did amend the Safe Drinking Water Act right here in this committee so that anything we do with safe drinking water has to protect kids. I am going to ask you, will you support and fully implement that particular law?

Governor Whitman. Again, Senator, I have to plead some ignorance to the extent of that law. But given the predilection of this Administration to protect our children and the most vulnerable populations, I would presume that we would look with a very favorable eye on that.

Senator BOXER. Well, it is the law, so I think you have to.

Governor Whitman. We always enforce the law.

[Laughter.]

Senator BOXER. I was just hoping that you would do it enthusiastically.

Governor Whitman. We always enforce the law.

Senator BOXER. All right. I am glad. And I am sure we will work together on this.

Before the red light goes on, let me quickly state what is happening in California. Through the back door, and I am not pointing any fingers because there is lots of blame to go around, we got a shipment of radioactive material that set down in a hazardous waste site that was not licensed to take radioactive material. Well, that set up a big brouhaha and everyone blamed everyone else—the feds blamed the State, and the State blamed the feds, and I am in the middle of this argument. The initial point that was made in this debate is there is no room in our NRC licensed facilities. Well, again, Senator Bennett of Utah lives in a State where there is lots of room in these facilities.

I am just putting this on your horizon there as you look at other issues because we will be holding hearings on this. I hope that you will take a strong stand on that when you send these nuclear materials out. In this case it came from the Manhattan Project in New York. New York did not want them, I do not blame them, so they sent them out to us at a place called Button Willow and they go into this non-licensed facility. It is very frightening to the commu-

nities. So I am putting it on your radar screen and hope perhaps you will take a look at this and let me know how you feel about sending radioactive materials into non-Nuclear Regulatory Commission licensed facilities.

Governor Whitman. Six months?

[Laughter.]

Senator BOXER. No, not 6 months. This is Monday.

[Laughter.]

Senator BOXER. So if you could do that.

Governor Whitman. OK.

Senator BOXER. Thank you, Mr. Chairman. Again, my fine new colleagues, it is going to be great to work with all of you.

Senator REID. I want to thank members of the committee, especially our two new freshmen members, for your perseverance and patience. I would say just from experience, there are all kinds of things pulling you to do other things, but the more time you spend on your committees the better off you will be. You will just understand the issues better. On our side, we have four great subcommittee chairs—we have Senator Boxer with Superfund, we have Senator Baucus with transportation, we have Senator Graham who is going to lead a committee on clean water, and we have Senator Lieberman dealing with clean air and other things. So you are going to have lots to do. We are going to do much of our work on this committee in our subcommittees, not full committee. So when a subcommittee announcement comes out, I hope you will be as consistent, patient, and persistent as you were today.

Senator Smith has indicated to me that he is going to try to get you reported out next week. We have to wait until your papers are in. We also have to wait until the Republicans fill the other members of the committee. So we are going to try to do that next week.

I also will ask to be admitted into the record some questions submitted by William Orem Neil, Director of Conservation, the New Jersey Audubon Society; also from Jeffrey Rush, from the Public Employees for Environmental Responsibility from the State of New Jersey; also from Jeff Title, New Jersey Chapter of the Sierra Club; also a letter of support from James Sharp, the Mayor of Newark, New Jersey; a letter of support from the City Hall, Hoboken, New Jersey, from Mayor Anthony Russo. Unless there is objection, these will be made part of the record.

To the final obligatory questions that I am required to ask. Are you willing, at the request of any duly constituted committee of the Congress, to appear as a witness?

Governor Whitman. Of course.

Senator REID. Do you know of any matters which you may or may not have thus far disclosed, or questions that were not asked that might place you in any conflict of interest if you are confirmed in this position?

Governor Whitman. No, I do not.

Senator REID. Thank you all very much. Questions for the record should be submitted by today at 5:00 p.m.

The committee stands in recess.

[Whereupon, at 1:20 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

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

Mr. Chairman, I would like to join my colleagues in extending a warm welcome to Governor Christine Todd Whitman, the nominee for Administrator of the Environmental Protection Agency.

The EPA administers and enforces a complex set of laws and regulations protecting public health and the environment. Although I understand you support cooperative efforts with industry to improve compliance with pollution and similar regulations, it is critical that EPA continue to enforce the law and hold violators responsible for their actions. My state has several Superfund sites that continue to require intensive monitoring and massive clean-up efforts. EPA must play a prominent role in preventing these environmental disasters from occurring again, either in my state or anywhere else in the country. Effective and fair enforcement can be used as a powerful tool to achieve this goal.

With that in mind, I think we all agree that the most important tasks of the EPA are to ensure that already contaminated sites are cleaned up and that public health is protected. I hope that you, Governor Whitman, will support creative efforts to ensure that these important priorities are achieved. Based upon your record as Governor of New Jersey, especially your support of Brownfields legislation, I believe that you will.

I look forward to working with you if you are confirmed on the many issues that will come before the Committee in the future and those issues that are unique to Montana. I also hope that you will accept my invitation to visit Montana. We have a few good trout streams.

## STATEMENT OF HON. JON S. CORZINE, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Thank you, Chairman Reid. It is an honor to appear before you today, and to have been selected for membership on this Committee. I am excited and enthusiastic about the prospect of working with you, with Chairman-to-be Smith, and with all the members of the Committee.

Today I am pleased to join my distinguished senior colleague from New Jersey, Senator Torricelli, in introducing Governor Christine Todd Whitman to the Committee. And let me begin by publicly congratulating Governor Whitman on her nomination to head the Environmental Protection Agency. It is a great honor and a truly vital role. The Garden State is proud. As Senator Torricelli has explained, Governor Whitman has a long and distinguished record of public service, and has made many important contributions to our State.

As you will see, Mr. Chairman, Governor Whitman is highly articulate and persuasive. She genuinely cares about the issues. And she knows how to make an impact.

She has been a leader in protecting New Jersey's 127-mile shoreline and in fighting for cleaner air - guarding against the kind of pollution that knows no state boundaries. And as an individual and a Governor, she has demonstrated a strong commitment to preserving open space. Given the Governor's record on matters of conservation, I'm not sure I would not have preferred to see her nominated for Secretary of the Interior.

As you well know, Mr. Chairman, the Administrator of EPA has the primary responsibility for ensuring that our air and water is clean, our natural resources are preserved, and our public health protected. It is a difficult job. It often requires a careful evaluation of highly complex scientific data, and an ability to translate that data into detailed policies. It needs someone who will fight internal battles to make environmental protection a budget priority. It needs someone who will work with local communities and businesses to find mutually acceptable solutions to environmental problems. And it needs someone who, when necessary, will be tough on polluters and force them to do the right thing.

Mr. Chairman, I believe Governor Whitman has the background, the experience and the skills necessary to do the job.

Of course, Mr. Chairman, these are not the only requirements for an EPA Administrator. These qualities must be matched by a determination to stand firm for the environment, to fully enforce our environmental laws and to fight for justice and equity for all. I know that you and other members of the Committee will want to ask the Governor for details about her views on specific environmental policies. And, once I get up on the other side of the dais, I will have questions of my own.

But having spoken privately with the Governor, I believe that she will be able to effectively articulate her positions on specific issues and establish a real commitment to environmental protection. And, without rushing to a conclusion before the

hearing even starts, I fully expect that she will convince the Committee not only that she deserves to be confirmed, but that she has the tools to be an effective Administrator.

With that, Mr. Chairman, I would simply congratulate the Governor on her nomination and thank you for the opportunity to introduce her.

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STATEMENT OF HON. ROBERT TORRICELLI, U.S. SENATOR FROM THE STATE OF NEW JERSEY

I would first like to acknowledge Senator Jon Corzine and Representative Rodney Frelinghuysen, and thank them for joining me here today to introduce Governor Whitman. I would also like to congratulate our Governor - how proud her husband, John, and children, Kate and Taylor must be. It is special honor for me to introduce her to the committee. I have known her and her family for years, and we have worked together on many issues. During her years as Governor we have waged many fights together from open space preservation to ending ocean dumping.

President Bush has made a wise selection. The EPA and the country will be getting an Administrator who is qualified, battle-tested and ready to tackle the challenges that lie ahead for this Agency.

With this nominee, there will be no learning curve.

There are few training grounds that could better prepare someone for this position than the Governor of New Jersey. As Chief Executive of the State, Gov Whitman has the managerial and administrative experience of running an agency as large as the EPA. But more importantly, no state has a better sampling of the issues facing the incoming Administrator of the EPA than New Jersey.

With 127 miles of shoreline, Whitman has dealt extensively with issues of clean water and non-point source pollution. She knows first-hand the threats to the economy and the environment from ocean dumping. Gov Whitman has increased funding for beach cleanups, and under her watch, beach closings have dropped from 800 in 1989 to just 11 in 1999. New Jersey has been praised by the Natural Resources Defense Council for having the nation's most comprehensive beach monitoring system.

With more Superfund sites than any other state in the Union (111), she knows what works and what doesn't in the Superfund program. She has seen the value of a concerted effort to turn urban brownfields into productive industrial and commercial sites. Sharpe James, the mayor of New Jersey's largest city, has endorsed her because of her efforts on brownfields.

During her tenure as Governor, Christie Whitman brought innovative technologies to the New Jersey Department of Environmental Protection to improve efficiency within the Department's permitting processes. This investment has paid off. For example, it has allowed for the expedited remediation of brownfields sites in New Jersey's urban centers.

With the many dense urban centers in New Jersey, she has dealt with the complex funding and regulatory issues of upgrading dilapidated sewer systems and controlling combined sewer overflow.

As Governor of our nation's most developed state, she initiated and passed a landmark \$1 billion bond measure to preserve open space. By the time it is finished, we will preserve one million acres of farmland, pristine forest and watersheds, and urban parkland. Few elected officials in this nation, yet alone, this Cabinet, have a better understanding of what is needed to curb sprawl and protect our open spaces, than Christie Whitman.

But more than her record of environmental progress, what makes Gov Whitman uniquely qualified for this position is her understanding that economic and environmental progress are not mutually exclusive goals. For example, travel and tourism generates \$28 billion in revenue and employs nearly 800,000 people in Central and Southern New Jersey. No issue is more important to those jobs than ocean quality.

Yet the Port of NY/NJ is a vital component of economic growth and employment in the northern part of NJ contributing \$20 billion annually to the economy and supporting nearly 200,000 jobs. I have worked with Gov Whitman to balance these constituencies and develop a policy that ended ocean dumping while still allowing for the continuation of the dredging necessary for the Port's continued growth.

The job for which Governor Whitman comes before this committee is by no means an easy one. The challenges faced by the next Administrator are both numerous and difficult.

The Superfund and Clean Water and Clean Air Acts have not been re-authorized in a decade and there are new challenges on the horizon, especially in our urban areas.

Our urban centers have sewer systems that were built at the turn of the 19th Century. They frequently back-up and endanger public health and water quality because they are incapable of handling overflow.

Too often industries unwanted anywhere else find homes on city blocks because of the jobs they offer and the taxes they pay. The next Administrator must make a priority of closing the gap between available funds and infrastructure needs and ensuring that environmental justice is more than a think tank slogan.

I am confident that Governor Whitman will do this and more.

The challenges ahead are many. Protecting our drinking water and purifying our air, preserving open space and reforming Superfund.

But President Bush could not have selected a nominee with more experience and commitment than Governor Whitman.

I have the utmost confidence that she will do this committee and her home state very proud.

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STATEMENT OF HON. RODNEY P. FRELINGHUYSEN, U.S. REPRESENTATIVE FROM THE  
STATE OF NEW JERSEY

Mr. Chairman, As someone who has worked closely with President-elect Bush's EPA Administrator-designate, as both a member of the House Appropriations Committee and as a former New Jersey State Legislator, I am honored to be here to support her nomination before you and your colleagues.

President-elect Bush has made a wise choice in selecting Governor Christine Todd Whitman to lead our nation in the development of America's environmental policies for the 21st Century.

Governor Whitman is an extremely capable executive. Throughout her tenure as New Jersey's governor, and as a county elected official, she has championed clean air and clean water, and has been, without question, the strongest proponent of open space in our state's history.

As New Jersey's Chief Executive, her leadership has left New Jerseyans feeling proud of their state and its natural resources, which I might add are cleaner, and more protected than ever.

Governor Whitman's effective stewardship of New Jersey's almost 130 miles of Atlantic Ocean coastline has left our beaches pristine, and our waters among the cleanest in the nation.

And, as one might expect, in the most densely populated state in the nation, the preservation of undeveloped land has been a top public priority. Again, Governor Whitman rose to the challenge of combating urban sprawl, and implemented a state initiative to protect one million acres of open space.

She has also strengthened New Jersey's record in cleaning up hazardous waste, and has partnered with the EPA to actually clean up sites. She has made polluters pay whenever they could be identified and worked to implement a Brownfields strategy. Drawing on that experience, I am certain she will be an advocate for streamlining our nation's Superfund program, ensuring more effective expenditures and more accountability, and that there are more cleanups.

These are a few examples of her strong leadership. Through your close examination of Governor Whitman's record, I am confident that she will be dedicated to the health and safety of all our nation's citizens, a true advocate for our environment.

Finally, I have known Governor Whitman for years. I have proudly watched her as Governor handle every conceivable challenge. At every turn she has balanced competing interests in order to make decisions that have served New Jersey's best environmental and economic interests. She will do likewise for our nation.

Mr. Chairman, I urge your support, and that of your colleagues, of her nomination.

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STATEMENT OF GOVERNOR CHRISTINE TODD WHITMAN, NOMINEE TO BE  
ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

Thank you, Mr. Chairman.

It is an honor to come before this committee today as President-elect Bush's nominee to be Administrator of the Environmental Protection Agency. I am grateful for the opportunity the President-elect has given me.

Over the past several weeks, I have enjoyed sitting down with you, the members of the committee, to talk about what we can do together to preserve and protect our nation's environment.

I am especially looking forward to accepting your kind invitations to come to your states—and perhaps even visit some trout streams. It was on the banks of a little

stream that ran through our farm that my father first introduced me to the beauty of nature, and I have been hooked ever since.

Mr. Chairman, we stand today at a place of enormous opportunity. Over the past three decades, our nation has won so many important victories in our common mission to preserve and protect America's environment.

We have seen a significant transformation in the way we view our air, water, and land. Today, there is universal agreement that our natural resources are valuable, not just for the economic prosperity they help create, but for what they add to our quality of life. No longer do we debate about "whether" we need to act to protect our environment. Instead, we discuss "how" we can keep America green while keeping our economy growing.

Due to the progress we have made, both in our actions and our attitudes, America is on the cusp of another major transformation. We are ready to enter a new era of environmental policy—an era that requires a new philosophy of public stewardship and personal responsibility.

To discover what this new era will look like, one need only look to the states. There's one state with which I'm particularly familiar, so let me tell you a bit about what we've done in New Jersey over the past 7 years.

In my home state, we are moving beyond the "command and control" model of mandates, regulations, and litigation. We are, instead, working to forge strong partnerships among citizens, government, and business that are built on trust, cooperation, and shared mutual goals.

Those partnerships are producing results—clear, measurable results. I would like to share some of them with you.

Our air is cleaner. For example, the number of days New Jersey violated the Federal 1-hour air quality standard for ground level ozone has dropped from 45 in 1988 to just 4 last year. We're doing a better job monitoring our air quality, and we're on target to reduce greenhouse gas emissions below 1990 levels through incentives to encourage voluntary reductions, promote energy efficiency and renewable technologies, and reduce landfill gas emissions.

Our water is clearer. The Delaware River is thriving again, with the shad population up by more than 300 percent since the 1970's. New Jersey leads the Nation in opening shellfish beds for harvesting. Annual ocean beach closings have dropped from more than 800 in 1988 to just 11 this past year.

Our land is cleaner. We have transformed our brownfields program into a redevelopment tool, providing \$15 million to help towns clean-up sites and market them for re-use. Mine is the only state in America with a reimbursement program for private parties that voluntarily clean-up sites. In addition, in 1998, the voters of New Jersey overwhelmingly approved my plan to preserve one million acres of open space and farmland by 2010—and we are already 20 percent of the way there.

Only by measuring the quality of the environment—the purity of the water, the cleanliness of the air, the protection afforded the land—can we measure the success of our efforts. By those measures, New Jersey is succeeding: our water and air are cleaner, and our land better protected than it was 7 years ago.

At the same time, New Jersey's economy is stronger than ever—more people have jobs in my state today than ever before in our history. As President-elect Bush has emphasized—and as New Jersey has seen—environmental protection and economic prosperity do go hand in hand.

The President-elect has articulated a set of clear principles that I will work to implement at the EPA, should I be confirmed. I would like to highlight several of them today.

First, we will launch a new era of cooperation among all stakeholders in environmental protection. Only by including all Americans can we meet the challenges we face. There is much government can do, but government cannot do it alone.

Second, we will maintain a strong Federal role, but we will provide flexibility to the states and to local communities. They need that flexibility to craft solutions that meet their unique situations. We will also respect state and local authority and rely on their expertise.

Third, we will continue to set high standards and will make clear our expectations. To meet and exceed those goals, we will place greater emphasis on market-based incentives.

Next, we will use strong science. Scientific analysis should drive policy. Neither policy nor politics should drive scientific results.

Finally, we will work to promote effective compliance with environmental standards without weakening our commitment to vigorous enforcement of tough laws and regulations. We will offer the carrot when appropriate, and always preserve the stick of enforcement.



Taken together, these reforms will transform the way the EPA meets its mission. We will work in a bipartisan fashion to achieve them. They will also produce real results—results to which we will be able to look and know how far we have come—and how much further we need to go.

I am looking forward to the job ahead, should you honor me with confirmation. The EPA is staffed with some of the finest environmental professionals in the world. I know that they are eager, as I am, to begin our work together.

I also know that the demands I will face as Administrator of the EPA will not be the same I faced as Governor. The position I hope to assume allows no room for regional favoritism. But I do expect to bring to my job an understanding—and an empathy—for what it is like to be on the receiving end of directives from Washington.

Mr. Chairman, one of the first things my father taught me, he taught me at that trout stream I mentioned a few minutes ago. I remember him telling me, “Christie, always leave anyplace you go cleaner than you found it.”

He didn’t know it at the time, but that was awfully good advice for someone who would someday be nominated to serve as head of the nation’s agency for environmental protection. I pledge to you, Mr. Chairman and members of the committee, that if I am confirmed I will do everything I can as EPA Administrator to leave America’s environment cleaner than I found it.

Thank you.



**Employment record—continued**

11/82	to	02/88	Somerset County Freeholder
02/76	to	11/82	Homemaker
12/72	to	02/76	National Association of Junior Leagues
12/72	to	02/73	Peace Corps
04/72	to	11/72	Committee for the Reelection of the President
02/71	to	04/72	State of New York, D.C. Office
11/70	to	01/71	Office of Economic Opportunity
07/69	to	11/70	Republican National Committee
04/69	to	07/69	Office of Economic Opportunity

**Honors and awards:**

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Please see attached

**Memberships:**

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
National Council on Crime and Delinquency	Board Member	1978 - 1988
Community Foundation of New Jersey	President of Board	1987 - 1990
Pews Ocean Commission	Chairman	2000 - Present

State fully your qualifications to serve in the position to which you have been named.

Demonstrated commitment to public service as Governor and elected

**Qualifications—continued**

official. Chief Executive of \$21B dollar state budget.

See attached biography.

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**Future employment relationships:**

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will resign as Governor of the State of New Jersey if confirmed.

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2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer business firm, association or organization.

No such plans.

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3. Has anybody made a commitment to you for a job after you leave government?

No.

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4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

willingness or ability to serve for the foreseeable future?

No

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(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

Office of Economic Opportunity in 1970's

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**Financial Statement**

Note: The Office of Government Ethics will provide the Committee with a copy of your Executive Personnel Financial Disclosure Report (SF-278).

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF-278, Schedule A.

None

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2. Are any assets pledged?

No

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3. Are you currently a party to any legal action?

Numerous in my official capacity as Governor of New Jersey

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4. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

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No

**Potential conflicts of interest:**

1. Describe any financial or deferred compensation agreements or other continuing of interest dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

Please see my SF-278. I am working with, and will continue to work with, the Office of Government Ethics and Ethics Office at the Environmental Protection Agency to ensure that I am, and will remain, in compliance with all ethical requirements.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

Please see my SF-278. I am working with, and will continue to work with, the Office of Government Ethics and Ethics Office at the Environmental Protection Agency to ensure that I am, and will remain, in compliance with all ethical requirements.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

Please see my SF-278. I am working with, and will continue to work with, the Office of Government Ethics and Ethics Office at the Environmental Protection Agency to ensure that I am, and will remain, in compliance with all ethical requirements.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

If any business holding conflicts or creates an appearance of impropriety with my duties at EPA, I will take all necessary steps to divest myself from the investment or business transaction.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For

As was the case during my term as Governor, I will fully comply  
with all conflict of interest and ethics laws and regulations and  
will strive to ensure that my staff is held to the highest standards  
of ethical conduct.

**Political affiliation  
and activities:**

List all memberships and offices held in, or financial contributions (in excess of \$1,000), and services rendered to any political party or election committee during the last 10 years.

New Jersey Republican State Committee  
Victory 2000  
Loan to Whitman for Senate (1990)  
Loan to Whitman for Governor (1993-\$25,000) & (1997-\$25,000)  
See Attachment

**Published  
writings:**

List the titles, publishers and dates of any books, articles, or reports you have written.  
(Please list first any publications and/or speeches that involve environmental or related matters.)

Numerous editorial writings as Governor and for the Courier News  
(Bridgewater, New Jersey)  
1990-1993

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

Please see attached biography  
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**Additional matters—continued**

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2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes  
\_\_\_\_\_

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No  
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\_\_\_\_\_  
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**AFFIDAVIT**

Ch. S. Witt ) ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 9<sup>th</sup> day of January, 19-2001

Michael P. Torrey - Attorney-At-Law  
Notary Public  
State of New Jersey



Christine Todd Whitman

HONORARY DEGREES:

5/19/94	Rutgers University	Honorary Degree
5/25/94	Montclair University	Honorary Degree
12/10/94	Stevens Institute	Honorary Degree
2/24/95	Centenary College	Doctor of Laws
5/12/95	Rider University	Honorary Degree
5/20/95	Wheaton College	Doctor of Laws
5/16/96	Fairleigh Dickinson University	Doctor of Laws
5/17/96	Rowan College	Honorary Degree
12/8/96	Yeshiva University	Doctor of Humane Letters
5/12/97	William Paterson University	Doctor of Laws
5/15/97	New York University	Doctor of Humane Letters
5/16/97	College of New Jersey	Doctor of Laws
5/18/97	Colgate University	Doctor of Laws
5/23/97	NJIT	Doctor of Humane Letters
5/24/97	Drew University	Doctor of Humane Letters
11/16/97	Rabbinical College	Honorary Degree
5/20/98	UMDNJ	Honorary Degree
5/6/99	Kean University	Honorary Degree
5/16/99	Dickinson College	Honorary Degree
5/24/2000	Raritan Valley College	Honorary Degree

**AWARDS GOVERNOR WHITMAN HAS ACCEPTED IN PERSON DURING  
HER TERM AS GOVERNOR**

1. Millicent Fenwick Award for Distinguished Service
2. Outstanding Mother of the Year Award
3. Woman of the Year award for the Financial Women's Association of NY
4. Community Leadership Award from District 3 Convention of B'nai B'rith
5. Government Award for NJ Alliance for Action
6. NJ Women's Summit Award
7. ArtPride Arts and Humanities Award
8. Palma E. Formica Women in Medicine Award
9. Glamour's Women of the Year
10. 1<sup>st</sup> Annual Empowerment Award from Empower America
11. University of Medicine and Dentistry of New Jersey World AIDS Day Award
12. NJ Association of Counties Award
13. National Conference of Christians and Jews Award
14. Women Executives in State Government Award
15. Biotechnology Industry Organization Annual Award
16. Mercer County Chamber of Commerce Award
17. Sons of the Revolution Annual George Washington Award
18. Harness Writers Association President's Award
19. Ramapo College Distinguished Citizen Award
20. Holocaust Memorial Observance Yom Hashoah Award

21. Raoul Wallenberg Humanitarian Leadership Award
22. The ARC of New Jersey Humanitarian Award
23. American Legion Auxiliary Woman of the Year Award
24. Trocki Hebrew Academy of Atlantic County Humanitarian Award
25. Boy Scouts of America Distinguished Citizen Award
26. Michael John Buczek Foundation award
27. Commerce and Industry Association of New Jersey Leadership Award
28. NJ Special Olympics Award
29. Fresh Air Fund Award Saluting American Heroes
30. American Women in Radio and Television Communicator of the Year Award
31. New York Republican Lincoln Day Award
32. Partnership for a Drug-Free NJ 5<sup>th</sup> Anniversary Award
33. NJ Agricultural Society Annual Award
34. Integrity in Government Award from the Jewish Community Center of Paramus
35. Philadelphia Union League Lincoln Award
36. Somerset Alliance Award
37. Vietnam Veterans Award
38. NJ World Trade Conference Award
39. International Conference of the Biotechnology Industry Organization Award
40. Sandra Day O'Connor Medal of Honor
41. Nature Conservancy's Government Relations Award

42. Donald B. Jones Conservation Award
43. Jewish National Fund of America Tree of Life Award
44. John H. Ewing "Friend of Deaf Children" Award
45. American Medical Association Award
46. Covenant House "Lizzie" Award
47. American Electronics Association NJ Tech Hall of Fame Award
48. Mike Synar Memorial Public Service Award
49. NJ Motor Truck Association Leamon McCoy Award
50. NAMI Presidential Recognition Award
51. Child Assault Prevention Award
52. Renew America Award for Sustainability
53. American Planning Association Outstanding Planning Award
54. Atlantic County Jewish Community Center President's Award
55. Multiple Sclerosis Society Governor of the Year Award

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BIOGRAPHICAL SKETCH—GOVERNOR CHRISTINE TODD WHITMAN

Christine Todd Whitman, the 50th Governor of New Jersey, was elected November 2, 1993, and re-elected November 4, 1997. She is the first woman to be elected to the state's highest office. Her second term runs until noon, January 15, 2002.

Thirty-eight times during her first 7 years in office, Governor Whitman signed legislation to provide tax relief, most recently through a state earned income credit to complement the Federal credit for low- and moderate-income taxpayers. She fulfilled a campaign promise to cut the state income tax by 30 percent for most taxpayers and signed legislation to eliminate the tax completely for an estimated 700,000 low-income families. Governor Whitman proposed and enacted the New Jersey SAVER program, the state's largest-ever direct property tax relief program.

When fully phased in, New Jersey SAVER will provide households an average of \$600 annually. She also signed bills to reinstate a property tax deduction on the state income tax and to freeze property taxes for low-income seniors and people with disabilities.

Governor Whitman proposed and won voter approval for a stable funding source to preserve 1 million more acres of open space and farmland by the year 2010. Nearly as much land—over 250,000 acres—has already been preserved during her administration as in the previous three decades of the state's land preservation program.

Governor Whitman encouraged greater use of the revised State Development and Redevelopment Plan as a tool for "smart growth," and encouraged redevelopment of cities through programs to streamline cleanups of abandoned industrial "brownfield" sites. She also established a new watershed management program and in 2000 proposed an overhaul of the state's water regulations to direct future development to areas already approved for sewer service.

During Governor Whitman's term, New Jersey significantly increased state funding for shore protection, experienced steep declines in beach closings, and earned recognition by the National Resource Defense Council for the most comprehensive beach monitoring system in the nation. Governor Whitman won voter approval for a plan to break a longstanding impasse over dredging the state's ports in an environmentally acceptable and economically feasible way. The Governor also supplied new funding for projects to clean New Jersey waterways and for new efforts to monitor and improve air quality.

Governor Whitman initiated a \$165 million plan in 2000 to encourage the growth of high-technology industries in New Jersey. Her efforts to spark private-sector job growth also include lowering corporate tax rates for small businesses, creating a business expansion and relocation incentive program, and reforming the state's civil justice system. These initiatives have helped the private sector add more than 420,000 jobs to the state's economy since the beginning of the Whitman administration.

In 2000, Governor Whitman approved an \$8.6 billion school construction bill, by far the largest statewide investment in school infrastructure in the nation. During her tenure, Governor Whitman established new, rigorous standards in seven key academic subject areas for all public schools. She also approved legislation authorizing the establishment of charter schools, which now number more than 50, and creating a new college savings program for New Jersey families.

Governor Whitman approved legislation to reform the juvenile justice system and signed "Megan's Law," which requires community notification when a convicted sex offender is released from prison. She enacted legislation that mandates a life sentence for any violent criminal convicted of a serious crime for a third time. She also signed laws requiring violent criminals to serve at least 85 percent of their sentences before being considered for parole and giving the state Parole Board more discretion in denying parole to dangerous inmates.

Governor Whitman designed and enacted Work First New Jersey, a welfare reform plan that requires most welfare recipients to work and places a 5-year lifetime limit on welfare benefits. Since the program began, New Jersey's welfare rolls have been cut by more than 50 percent. She also initiated efforts to expand and improve child care and established a subsidized health insurance program for low-income children and adults.

Governor Whitman appointed the first African American to serve on the state Supreme Court and the first female Chief Justice of the state's highest court. In 1995, she became the first Governor to deliver the Republican response to a U.S. President's State of the Union Address.

Governor Whitman was born in New York City on September 26, 1946, and was raised in Oldwick Township in Hunterdon County. She attended the Far Hills Country Day School in Far Hills and the Chapin School in New York City. She graduated from Wheaton College in Norton, Mass., with a bachelor's degree in government in 1968.

Upon completing college, Ms. Whitman worked for the U.S. Office of Economic Opportunity and for the Republican National Committee. While with the committee, she instituted a program to attract new party members from groups not traditionally aligned with the Republican Party.

In 1982, Ms. Whitman was elected to the Somerset County Board of Chosen Freeholders. She was re-elected in 1985 and during her tenure on the board served two terms as director and deputy director.

In 1988, Governor Thomas H. Kean appointed Ms. Whitman to fill an unexpired term on the New Jersey Board of Public Utilities and designated her to serve as its president. She was appointed to a full 6-year term on the board in June 1989,

but resigned the following year to run for a seat in the U.S. Senate. Although she lost to Senator Bill Bradley, she defied pollsters by garnering 49 percent of the vote.

The Governor is married to John R. Whitman, a financial consultant. They have two children: Kate, born in 1977, and Taylor, born in 1979.

Governor Whitman is the youngest daughter of the late Eleanor and Webster Todd, both of whom held leadership positions in state and county government and within the Republican Party. Mrs. Todd was a president of the New Jersey Federation of Republican Women, a Republican National Committee Woman, and a vice chairwoman of the New Jersey Board of Higher Education; and the Governor's father served for many years as state Republican chairman. Governor Whitman's two brothers, Webster Todd, Jr. and the late John Todd, and her sister, Kate Beach, have also served in various elected and appointed offices at the local, state, and Federal levels.

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RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR REID

*Question 1.* What priority will you place on reducing the EPA's reliance on animal tests, on assuring that the animal protection community is invited to participate in the development of testing programs, and on devoting EPA resources to researching sophisticated test methods?

Response. I understand that EPA does use animal test data in some of its research and risk assessments. It is important that such testing be as humane as possible without compromising the underlying goals of the research. I further understand that this is an issue that other agencies, such as the Department of Health and Human Services and the Department of Labor, also face. I look forward to learning more about these issues from you and working with you, other Federal agencies and others on these concerns.

*Question 2.* There are currently several in vitro test methods used in other countries which have not been accepted for regulatory use in the U.S. because the U.S. does not accept the European Union's validation assessments. What plans do you have to facilitate the acceptance in the U.S. of methods currently recommended by the European Union and the Organization of Economic Cooperation and Development?

Response. This is an important issue for EPA and many other agencies that conduct research regarding human health. I am not familiar with the European recommendations but look forward to learning more about them.

*Question 3.* What portion of the EPA's research budget will you recommend using for test methods?

Response. I am not familiar with what portion of EPA's research budget currently goes to test methods. Many test methods developed by EPA are used to determine levels of contaminants in soil, water, and other media and are constantly being refined. I will need to review this and other budget matters more thoroughly before making any recommendation.

*Question 4.* In your testimony, you indicate that, under your leadership, EPA will use strong science. This suggests that EPA has not, in your opinion, always relied upon strong science. Could you please provide specific, preferably recent examples of instances in which EPA has not relied upon strong science?

Response. My comment was based primarily on the conclusion of a recent National Academy of Sciences study found that science at EPA "is of uneven quality, and the agency's policies and regulations are frequently perceived as lacking a strong scientific foundation."

*Question 5.* Your testimony also noted that neither policy nor politics should drive scientific results EPA relies upon. Again, this suggests that EPA has allowed policy and politics to drive scientific results. Could you please provide specific, preferably recent examples of instances in which EPA allowed policy or politics to drive scientific results?

Response. As stated above, my comment was based on the findings of a recent National Academy of Sciences (NAS) study found that science at EPA "is of uneven quality, and the agency's policies and regulations are frequently perceived as lacking a strong scientific foundation." If confirmed, I will commit to working to make science the foundation for EPA's policymaking.

*Question 6.* You noted in your testimony your eagerness to find mutually agreeable solutions to environmental problems. You also noted in response to questions that it is often difficult to reach agreement on scientific issues. Given your commitment to have sound science drive EPA's policy, how will you—to develop policies,

or find mutually agreeable solutions to issues, for the Agency, when agreement on the science that underlies them cannot be reached?

Response. I first would seek to bring people together to determine what science there is and what science can be agreed upon. If there is disagreement, then I would rely on advice from the Agency's various internal and external science advisors for their recommendations.

*Question 7.* Is disagreement among scientists over the "science" of an EPA policy or action necessarily indicative of unsound science?

Response. No. Many scientific questions have uncertain answers and disagreement regarding the "right" answer often merely reflects this uncertainty.

*Question 8.* Under what circumstances, if any, do you believe disagreement among scientists should cause an EPA policy or action to be delayed until disagreement is resolved?

Response. Each situation would present unique challenges and would have to be determined individually.

*Question 9.* Some scientists argue that the science of global warming, and that the science behind the ozone and particulate matter ambient air standards, is unsound. Given the position the State of New Jersey has taken on both of these issues, how did you as Governor determine that there was sufficient agreement on, or soundness of, the science of these two issues?

Response. I sought the advice and recommendations of the State agency's leading scientists, professionals and stakeholders.

*Question 10.* Given that uncertainty is inherent to managing natural resources and that it is usually easier to prevent environmental damage than to repair it, do you believe that the burden of proof should be shifted away from those advocating protection toward those proposing an action that may be harmful?

Response. The burden of proof needs to be considered in the context of a scientific assessment of the consequences, magnitude, and likelihood of potential harm. The brunt of the burden should be proportionate to what the risk-based assessment concludes. Where the potential consequences are severe, the magnitude is substantial, and the likelihood of harm is high, those proposing harmful action should bear a greater burden of justification. Where the opposite is true, those opposing action should bear the greater burden. Policies and decisions resulting from this give-and-take ultimately are a matter of risk management.

*Question 11.* The term "sound science" is used commonly, particularly among those who disparage the policies or actions of EPA. How would you define "sound science"?

Response. EPA has adopted "sound science" as one of the 10 goals in the Agency's Strategic Plan. The Agency has defined "sound science" as developing and applying the best available science for addressing specific environmental and health hazards. I support this definition. Science must be credible in order for the Agency to be able to continue to fulfill its mission of protecting human health and the environment. To be credible, it needs to rely on the best data available, represent a prevailing view among respected scientists, and be peer-reviewed.

*Question 12.* What standard will you use to judge whether the science underlying an EPA policy or action is sound?

Response. Consistent with the definition of "sound science" above, I will ask whether the policy or action is based on the best available science.

*Question 13.* What standard should the Committee use to judge whether the Agency, under your leadership, has used sound science in its policies and actions?

Response. I would encourage the Committee to use the same standard that I have outlined above.

*Question 14.* In listing your priorities as EPA Administrator, you mentioned the importance of addressing nonpoint water pollution. Do you believe that there are other sources of nonpoint source pollution, besides the combined sewer overflows (CSOs) you mentioned at your hearing, that should be addressed?

Response. Yes.

*Question 15.* What are these other sources?

Response. By its nature, nonpoint water pollution comes from diverse sources. The specific sources often depend on the characteristics of each watershed. For instance, in rural areas runoff from agriculture operations can be major source of nonpoint source pollution. In urban areas, runoff from parking lots and streets can be a major source of pollution.

*Question 16.* If you believe there are other sources of nonpoint source pollution beside that from CSOs, through what laws or programs do you intend to use to address them?

Response. As a Governor, I have worked to improve our State's water quality by addressing watersheds under current clean water laws, cooperation with local com-

munities and stakeholders, and through voluntary best management practices. If confirmed as Administrator, I would seek to work with states under their own water protection laws and the TMDL program and with other Federal agencies, such as the Department of Agriculture.

*Question 17.* Total Maximum Daily Loads, or “TMDLs,” are tools for specifying the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and allocating pollutant loads among both point and nonpoint sources. EPA’s TMDL program is considered by many as one of the most important tools for achieving the nation’s clean water goals. Do you agree that EPA’s TMDL program is one of the most important tools for achieving the nation’s clean water goals?

Response. Despite its long-standing presence in the Federal Clean Water Act, TMDLs have not been used as a tool until recently. If developed and implemented through a cooperative effort, TMDLs can become important tools.

*Question 18.* Do you believe that, generally speaking, TMDLs are a reasonable approach to addressing water pollution?

Response. Section 303(d) of the Clean Water Act requires states, territories, and authorized tribes to develop TMDLs for impaired waters. If EPA works with these jurisdictions and other stakeholders, TMDLs can be an important tool in achieving clean water goals.

*Question 19.* Will you commit to not rescinding EPA’s recently completed TMDL rule?

Response. If confirmed, I will review this recent rule and then decide how to proceed.

*Question 20.* If you are unable to make such a commitment at this time, will you commit to not delaying, past October of this year, the implementation of this rule?

Response. Before making any decisions about the TMDL rule, I will review the information that Congress has required be prepared, including the study of costs to meet TMDLs that EPA is to prepare by the end of February, as well as the National Academy of Sciences’ report to be prepared on the science underlying TMDLs.

*Question 21.* If you are unable to commit to either, what specific circumstances or facts would cause you to rescind the rule?

Response. I would have to review the rule and the yet-to-be-developed reports before making any decisions.

*Question 22.* What specific circumstances or facts would cause you to delay the implementation of the rule?

Response. I would have to review the rule and the yet-to-be-developed reports before making any decisions.

*Question 23.* There is an important gap in the Drinking Water State Revolving Fund, namely that some small communities simply cannot afford loans and are thus unable to use SRF funds to help them comply with drinking water regulations. This gap has particularly serious consequences for many states including Nevada, which is home to a large number of small communities which will soon have to comply with new drinking water standards for arsenic and radon. Would you support legislation that fills the gap in the Drinking Water SRF by establishing a program to provide grants to communities that cannot afford these loans?

Response. I will need to learn more about the particulars of these communities’ needs, evaluate what options might exist for filling any gap, and determine whether those options are cost effective. I look forward to working with you to learn more about this issue.

*Question 24.* It seems to me that discharging dredge material into a wetland, putting fill into it, or draining it can all have the same effect—harming or destroying the wetland. As a general matter, do you believe that it should be the Federal Government’s policy, to protect wetlands from being harmed or destroyed, regardless of whether the cause is discharges of dredge material to wetlands, adding fill to them, or draining them?

Response. As this is an area that continues to be litigated and changed, as evidenced by last week’s Supreme Court ruling and EPA’s newly revised Tulloch rule, I would need first to be sure of what authority EPA has in this area. As I stated at the hearing, EPA has significant knowledge and expertise in protecting wetlands, and I would, if confirmed, look forward to working with states, communities and stakeholders to develop effective wetland protection measures.

*Question 25.* The Clean Water Act (CWA) lies at the heart of EPA’s authority to the protect water resources of this country. In the Act, “navigable waters” are protected and these waters are defined as the “waters of the United States.” How would you personally define “waters of the United States”?



Response. I recognize that these five words have been fought over for decades, and I would hope to work with you and others to ensure that EPA works to protect these waters consistent with Congress' intent.

*Question 26.* Would your definition include wetlands?

Response. I understand that the courts have long held that this phrase does cover wetlands.

*Question 27.* If your definition includes wetlands, do you believe it is reasonable to conceive of "waters of the United States" as applying to only those wetlands that are next to navigable waters? In other words, do you believe that the CWA should afford protection to only those wetlands adjacent to navigable waters?

Response. I would like to see the Federal Government provide the necessary tools and resources to protect our nation's wetlands and watersheds. I look forward, if confirmed, to ensuring that EPA works with you and others to protect these waters consistent with Congress' intent.

*Question 28.* You may be aware that last week EPA issued rules affecting the permitting of discharges of dredged material and fill to wetlands. This action partially closes a loophole in the so-called "Tulloch" rule created by the courts. It is expected to protect tens of thousands of acres of wetlands from destruction each year. Will you commit to not rescinding EPA's recent clarification of the Tulloch rule?

Response. I will commit to reviewing this recent rule, if I am confirmed as Administrator.

*Question 29.* If you cannot commit to this, what specific circumstances or facts would cause you to rescind this rule?

Response. I would have to review the rule before making any decision.

*Question 30.* If you were to decide to rescind EPA's recent clarification of the Tulloch rule, how would you propose to replace the thousands of acres of wetlands that will be lost due to the current loophole and, at the same time, ensure that the nation's "no net loss" of wetlands goal is achieved?

Response. I would have to review the rule before making any decision.

*Question 31.* At various times in the past, scientists and policymakers have ranked the risk to human health and natural resources from environmental problems. One of the more comprehensive attempts was entitled "Reducing Risk," a project done by EPA with input from many sources including the National Governors Association. During the hearing, you mentioned that you would tackle the problems where there is hope for consensus first, though I'm not sure these are the most serious problems. What do you think are the environmental problems that pose the gravest threat to human health and natural resources and the ones most deserving of Agency attention?

Response. I am not familiar with that study. I believe that the Agency's scientists, together with other scientists, should assist EPA and Congress in defining the risks from various problems, so that we all can be better prepared to identify which are the most deserving of our attention. (see answers to the Sound Science questions above)

*Question 32.* As you mentioned during the hearing, the State of New Jersey, under your leadership, has actively participated in the legal defense of EPA's new national ambient air quality standards for ozone and fine particles. You implied that this strong support may be diluted by the needs of a national office. But, for the record, will you continue to vigorously support and defend these new standards, both in the courts and within the Administration, in your capacity as head of the EPA? Will you do everything you can to see that they are implemented in the same form as they were promulgated and as soon as possible, assuming that the Supreme Court does not overturn them?

Response. I will support, defend and enforce the laws of this land. I cannot speculate how the Supreme Court will rule.

*Question 33.* If your answer to the previous question is not a resounding yes, please elaborate on why your previous support for the ozone and particulate matter NAAQS would change in your role as EPA Administrator. As you know, the NAAQS are to be set at a level of air quality which, in the judgment of the Administrator, is requisite to protect the public health, allowing for an adequate margin of safety. That directive in the Clean Air Act and case law interpretation of it prohibit the Agency from considering costs in setting the NAAQS. Do you think that cost should be considered when the Agency sets a national ambient air quality standard? If so, why?

Response. That is one of the questions at issue in the case pending before the Supreme Court. I will wait to hear how they interpret the Clean Air Act.

*Question 34.* In your testimony, you indicated that you saw no reason not to keep to the schedule outlined by President Clinton for EPA to make a determination by July 2002 as to whether to revise or maintain the fine particulate matter. Will you

follow that determination up with the appropriate regulatory and enforcement actions?

Response. I understand that the Clean Air Act requires EPA to review each current air quality standard to every 5 years. I will review the information and then make a decision.

*Question 35.* During President-elect Bush's campaign, he endorsed an energy policy that included, to quote from the energy policy document itself, "legislation that will require electric utilities to reduce emissions and significantly improve air quality" by establishing mandatory reduction targets for emissions of the four main pollutants from power plants: nitrogen oxides, sulfur dioxides, mercury and carbon dioxide. How shall we go about determining what are the appropriate levels of reductions? Should they be based primarily on public health?

Response. This is a complex issue, one to which the President is committed, one on which this Committee already has begun work, and one which will require great collaboration among Federal agencies and with states, utilities, and concerned citizens. Public health should be the primary concern, but others, particularly the impact on the environment, also are important. I look forward to working with you and others on this important matter.

*Question 36.* As you may know, the Administration has found, pursuant to the Clean Air Act's direction, that it is necessary for public health to control mercury emissions from coal- and oil-fired power plants. The schedule set out in that recent determination requires EPA to propose regulations by December 15, 2003, and issue final regulations by December 15, 2004. Will you honor that schedule and allocate the appropriate resources to ensure that it can be met?

Response. I will first review this recent determination and then make a decision.

*Question 37.* As you may know, the 1999 regional haze rule set regulations for visibility protection in the country's national parks and other scenic areas. The Clean Air Act directs states to require that certain older, larger facilities install the best emission controls available as part of state strategies for meeting the regional haze rule. On January 12, 2001, the Administration issued proposed guidelines for states to use in determining what constitutes the best emission controls, or the "best available retrofit technology" (BART), and which plants must apply them. You may not be familiar with the details of this proposal, but will you commit to finalizing these guidelines by the end of 2001? And, will you notify the Committee, prior to promulgating the final guidelines, whether or not they will depart significantly from the proposed guidelines?

Response. I am not familiar with the BART proposed guidelines but will commit to reviewing them and to informing you if the final guidelines will significantly depart from the proposal.

*Question 38.* You mentioned that we want to be sure that no population bears a disproportionate burden from pollution because our statutes fail to protect the most exposed. Recent studies suggest that people living in urban corridors are exposed to significantly greater amounts of toxic air pollutants than people living elsewhere. EPA has begun, somewhat belatedly, to address urban air toxics with a comprehensive strategy, including a focus on mobile source air toxics. Will you make continuation of a focus on urban air toxics a priority, if you are confirmed?

Response. I understand that the Clean Air Act Amendments of 1990 require EPA to better study and, if warranted, regulate, air toxics, many of which may adversely impact urban dwellers. I will review EPA's current strategy and then determine how to proceed.

*Question 39.* During the hearing, you indicated general support for the final diesel sulfur rule. Effectively implementing this rule will take a fair amount of resources. Will you support, including allocating sufficient resources, strongly enforce and vigorously defend this rule to get rid of dirty diesels and significantly reduce sulfur in diesel fuel?

Response. I share with you the desire to improve the efficiency of vehicle pollution control systems and to make cleaner burning engines. I will review this recent rule and then determine how to proceed.

*Question 40.* As you know, EPA and the Department of Justice have taken administrative and enforcement action against a variety of electric power companies for violations of the New Source Review requirements under the Clean Air Act. Will you encourage and work with the Attorney General to continue the ongoing actions and prosecute any matters still under consideration?

Response. As I stated in my hearing, I believe it is important to first offer the carrot, but not to retire the stick. . Since these proceedings started sometime ago, I will work with the Attorney General as necessary and appropriate.

*Question 41.* Some sources have suggested that New Jersey and other states have not structured their Clean Air Act Title V permitting programs to collect the funds

necessary, as is intended and provided by the Act, to fund those programs in their entirety. What should EPA do to ensure that states are collecting adequate permitting fees to run their Title V programs?

Response. I have been intrigued by occasional sources that claim to better understand New Jersey's programs than New Jersey. One of my priorities, if confirmed, will be to establish better working relationships with the states and hopefully improve the communication and understanding, on both sides, of matters such as this. EPA should afford states flexibility in how they find their programs and work with States to ensure that program requirements and environmental goals are being achieved.

*Question 42.* Several states do not appear to be making a full good faith effort to comply with the terms and schedule outlined in the NO<sub>x</sub> SIP call. Will you use the authority of the Administrator to implement Federal Implementation Plans for these states if they do not comply expeditiously?

Response. If confirmed, I would do all I could to assist the states in meeting the Federal air quality standards, and I would consider whether it would be appropriate in this instance to adopt FIPs.

*Question 43.* During recent Air Subcommittee hearings, the Committee was informed by Governor Bush's representative on the Texas Natural Resource Conservation Commission that federally controlled off-road sources are an increasing portion of state pollution inventories. EPA has a number of initiatives under way to control off-road engines and sources. What kind of emphasis will you place on continuing this work?

Response. Several states face challenges today in preparing state implementation plans to meet various Federal air quality standards for their communities. The states have particular measures they can take on their own, and the Federal Government has several measures that are more under the Federal Government's jurisdiction. I will work to meet the Federal Government's obligations to provide states with the tools they need to meet the Federal clean air standards.

*Question 44.* As you may know, the EPA has the statutory responsibility for issuing final public health and safety standards for the protection of the public from releases from radioactive materials stored or disposed of in the proposed repository at Yucca Mountain in Nevada. In August 1999, EPA proposed to limit annual radiation doses to "reasonably maximally exposed individuals" to 15 millirems and to 4 millirems for exposure from groundwater. What are your views on EPA's responsibility to set strong and protective radiation standards for Yucca Mountain and all sources? And, specifically, what will you do to ensure that this rule will be finalized by the new Administration?

Response. President Bush has indicated that the best science should determine where nuclear waste is permanently stored and in setting regulatory standards that fully protect human health and the environment. The Federal Energy Policy Act currently charges EPA with setting environmental standards for disposal of high-level nuclear waste, and I will ensure that EPA fulfills its obligation.

*Question 45.* For many years, the EPA has lost various battles with DOE and NRC as it has tried to set strong radiation protection standards, and the Agency has seen its budget dwindle on these matters. What will you do to bring new life to EPA's radiation protection program? What would you think about centralizing all radiation standards setting authority in the EPA, so there would be no lingering doubt on this matter and remove the existing duplicative and confusing overlap between agencies?

Response. I am not familiar with those battles or with the programs of the DOE and NRC. I look forward to learning more about this issue.

*Question 46.* You may be familiar with efforts by both NRC and DOE to increase the amount of radioactively contaminated material that is recycled and allowed to enter into public commerce. In an October speech at the National Academy of Sciences, you said that "policymakers need to take a precautionary approach to environmental protection. . . . [and that] We must acknowledge that uncertainty is inherent in managing natural resources, recognize it is usually easier to prevent environmental damage than to repair it later, and shift the burden of proof away from those advocating protection toward those proposing an action that may be harmful." Does it make sense to you to add to the amount of exposure to manmade radioactive materials that the public is already experiencing?

Response. I do not know enough about the particulars of this issue, including what amounts and concentrations the NRC and DOE may have proposed, but I would be interested in learning more about this issue.

*Question 47.* At the hearing, you promised to work with me and the Committee regarding the problem that northwest Nevadans, specifically the Paiute Tribe of Pyramid Lake, have suffered from pollution blowing over from the Sierra Army

Depot in California, which is part of the Department of Defense. You may also know that nearly 90 percent of Nevada is Federal land. Do you think that Federal facilities should be held to the same standards and treated the same way as private sector sources? Does that apply for all our environmental statutes?

Response. President Bush has proposed to hold Federal facilities to the same environmental standards that apply to private facilities. This issue will be a priority for me, if confirmed, and will require significant coordination among Federal agencies and with the states, tribal governments and Congress.

*Question 48.* Assuming you are confirmed as EPA Administrator, will you apply the "precautionary principle," as you succinctly stated it in October 2000, to other environmental statutes, such as the Clean Air Act, FIFRA, TSCA, etc. and related Agency actions, which are focused on public health and not as much on natural resource protection? If so, please provide an example of how this would work. If not, please indicate why not.

Response. Our nation's environmental policy and decisionmaking are based on longstanding traditions of precaution, science-based risk analysis, and sound risk management, including consideration of benefit/cost. I would continue to support these traditions. Precaution is an important component of risk management when making decisions in the face of uncertainty. The extent to which precautionary considerations are employed in risk management decisions is highly context-specific. Precaution, however, should not be used to justify arbitrary decisions.

*Question 49.* Relative to Agency actions, how should we apply the "precautionary principle," as you have stated it, to the threat of global climate change?

Response. As climate change science develops and we gain a better understanding of the climate change threat, precaution will likely be an important element of the overall risk management framework that we employ in developing policy and considering any specific measures to respond to the threat.

*Question 50.* Under your leadership, New Jersey has set a goal of reducing greenhouse gas emissions by 3.5 percent from 1990 levels by the year 2005. New Jersey may be the first state to have set such a specific reduction target. Why did you support and encourage the setting of that goal? Can that goal be attained without harming New Jersey's economy?

Response. I recognized, as has President Bush, that climate change is a serious issue and should be addressed. The states continue to be laboratories of environmental innovation, and I am proud of New Jersey's lead on this issue. We set the goal based on my environmental agency's recommendations after extensive stakeholder involvement and agreement and on the firm belief that the goal can be achieved and that it will improve energy efficiency, possibly even saving money in the long run.

*Question 51.* What more could be done at the Agency to ensure that the U.S. moves closer to the voluntary goals set as part of the Senate-ratified United Nations Framework Convention on Climate Change?

Response. The United States should continue to play a leading role in both developing the science to help us better understand our climate and the potential changes we face and in developing and exporting cleaner, more efficient technologies. The EPA can assist these efforts by offering the expertise of its scientists and professionals, and EPA can work with the other appropriate Federal agencies, states, businesses and interested citizens in identifying and implementing new, effective strategies.

*Question 52.* You indicated that President-elect Bush believes that global climate change is a serious problem. That seems to conflict slightly with the public remarks that he made on the topic. It does not appear that he believes that global climate change and warming is a serious enough matter to require swift and concerted government action now to prevent long term impacts on the U.S. economy. What do you believe is the appropriate Federal response to the accumulating scientific evidence that global warming is occurring fairly rapidly and could have a devastating impact on the domestic and global economy and environment? How will you reconcile your position and his in your new post?

Response. The IPCC is expected to issue its latest findings soon, and I look forward to reviewing them and deciding on an appropriate response. President Bush is interested in addressing this issue, as am I. I am committed to working with you, and with the many others who will need to work together to address this important issue.

*Question 53.* You have talked about rewarding companies with reduced regulatory burdens if they can show that they are able to meet environmental performance standards through innovative or unconventional means. How would you determine what performance criteria actually improve environmental and public health protec-

tion on a national, state or facility basis, given the general lack of standardized environmental or public health data?

Response. The generation and use of accurate and useful environmental data is key to achieving environmental results whether it be done for existing regulatory standards or performance standards. For that reason a review and assessment of EPA's environmental information and data systems is a priority for me.

*Question 54.* You have an excellent record of working to preserve open space and improve parks, and, in general, pursuing a smart growth agenda. In your new capacity as Administrator, will you support the existing programs and efforts of the Clinton Administration which are targeted at building sustainable and livable communities? Will you maintain your emphasis on this important policy matter and, from time to time, provide recommendations to this Committee and others on how we can encourage economic growth and improve long-term environmental protection?

Response. I am proud of our work in New Jersey, and I would be happy to share my experiences with you.

*Question 55.* This month, the Agency issued its first-ever report on trends in protecting children's health, entitled "America's Children and the Environment: A First View of Available Measures." The report provides an assessment of EPA's progress over the past decade in protecting children's health, and was produced by EPA's Office of Children's Health Protection and its National Center for Environmental Economics. The report suggests some positive trends—such as fewer children living in counties which exceed national air quality standards for certain pollutants, including sulfur dioxide and ozone, and fewer children living in areas served by public water systems that have had violations of drinking water standards. However, some negative trends are also noted, including, for instance, approximately 1.5 million children showed elevated blood lead levels between 1992 and 1994—a finding that clearly is disturbing. This report points to the need for continuing Federal sources of data such as this. For instance, the Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH), is slated to release the first-ever "National Exposure Report Card" on specific blood levels of certain toxic substances found in a sample of 500 children. Will you continue the vital monitoring efforts that are the subject of the EPA report, coordinate with the CDC NCEH and other Federal sources of valuable data on children's health issues, and publish followup reports to the EPA report on a timely basis?

Response. I am not familiar with all the different agencies' particular monitoring, data collection and reporting obligations. If confirmed, I will work with the appropriate agencies to improve the health of our children.

*Question 56.* How important do you think it is to recover the economic benefit that a business gains from violating the law? For example, if a company saves \$5 million by delaying for 5 years the purchase of a pollution control equipment, should a penalty be collected that at least equals the amount the company saved from its violation?

Response. If confirmed, I would review EPA's current policy and other agencies' policies, including their comparative effectiveness, before making a decision.

*Question 57.* A recent letter from the Environmental Council of the States (ECOS) to Vice President-Elect Cheney emphasized the importance of monitoring the environment and pollution sources, and the need to devote resources toward that end. It strikes me that this is a common sense request: without data from inspections and other monitoring, the states and EPA will not have the information needed to enforce environmental laws. Do you share the view expressed by ECOS that compliance monitoring is a priority?

Response. As I stated in the question above on performance standards, we do need to better monitor environmental conditions and compliance. This will be priority for me, if confirmed, and I hope you will support me in securing the needed resources.

*Question 58.* As Administrator of EPA, how would you see your role in monitoring compliance with, and enforcing, environmental laws?

Response. I will encourage the EPA staff to work with the EPA regional offices, the states, tribal and local governments, businesses and interested citizens in finding and adopting the most effective ways to ensure compliance with our laws and improvement in our environmental conditions. As I have said earlier, I will offer the carrot, but will not retire the stick.

*Question 59.* The ECOS letter also states that many ECOS members would favor consolidation of EPA's Office of Enforcement and Compliance Assistance with the program offices. As you may be aware, at the beginning of the Reagan Administration, then EPA Administrator Anne Gorsuch undertook a major reorganization of the enforcement office, which was generally viewed as having a devastating effect on enforcement. I understand that the Commissioner of the New Jersey Dept. of En-

vironmental Protection, Robert Shinn, was a signatory to that letter: of course, it is not clear whether he was one of the members that made this recommendation. Do you agree with this recommendation and, if so, how would you ensure that the mistakes of the Gorsuch Administration are not repeated?

Response. I know there were a number of reorganizations over the last several years. Based on my experience, reorganizing can be beneficial, but it also takes a lot of energy and resources out of an Agency while the reorganization is taking place, and can disrupt the normal operation of the Agency. If you confirm me, I will need to evaluate what parts of EPA are working, what programs are effective, and what parts need to improve. This may lead to reorganizing parts of EPA. I welcome the Committee's views on what changes would make the Agency work better.

*Question 60.* What is your view on right-to-know laws—what purposes do they serve, and how important are they?

Response. The right-to-know laws—at the Federal, state and local level—can improve the public's understanding of the chemicals in their area and can assist emergency responders in better protecting the public from harm. I would be interested in any thoughts you may have on how to improve EPA's programs and better integrating and disseminating, in a helpful and understandable manner, the vast amount of information now being made available to the public.

*Question 61.* You testified regarding accomplishments under New Jersey's brownfields cleanup program, and how those accomplishments promote environmental justice. Yet, some have charged that changes made during your tenure actually reduced the protectiveness of hazardous waste cleanups, by eliminating the preference for treatment remedies and reducing opportunities for public comment on proposed cleanup plans. As Administrator of EPA, will you be committed to ensuring that minority and low-income communities are protected over the long-term, in the event that a site at which the remedy involved leaving waste in place later poses a threat to human health in the community? What do you see as the role of the EPA Administrator in ensuring that communities are afforded meaningful opportunities to participate in cleanup decisions that may affect their quality of life?

Response. New Jersey's law includes an important provision, that allows the state to go back in and require further cleanup if a new or additional danger is found. Communities should have the opportunity to comment on the setting of cleanup standards, and we should find ways to work with communities and businesses to encourage, not discourage and delay, cleanups.

*Question 62.* As I said I would at the hearing, I have attached a newspaper article concerning objections to permitting of a cement plant in a poor, minority community in Camden, New Jersey, that was already impacted by an incinerator, sewage treatment plant, and a number of hazardous waste sites. Please respond to the concerns and criticisms discussed in the article, including: (1) that the plant would result in the emission of 60 tons of particulate dust annually, in a community with elevated incidences of asthma-like symptoms; (2) that the plant was being built where it is "because [it] is a poor minority community. They thought that the neighborhood wouldn't stand up. . . ."; and (3) that the State failed to consult with the City or community. In addition, please discuss application of the State Environmental Equity policy to the decision to grant a permit at this site.

Response. I believe that no community should bear a disproportionate risk of environmental pollution. For that reason, New Jersey does not oppose EPA's acceptance of the complaint filed by South Camden Citizens in Action. While the state believes its actions were appropriate—we also recognize continued citizens concerns and will continue an open dialog to resolve them.

*Question 63.* As you know, PCB contamination in the Hudson River has been studied for more than 20 years, and EPA recently issued its proposed cleanup plan for public comment. As Administrator of EPA, will you do everything in your power to ensure that EPA keeps to its schedule for issuing a final Record of Decision for the Hudson River by June 2001?

Response. I will review and evaluate the comments submitted during this important public comment time, and I will then determine how next to proceed.

*Question 64.* Several Senators spoke in favor of giving EPA cabinet level status. Would you favor a clean bill toward that end; that is, a bill that did nothing other than elevating EPA to cabinet status?

Response. President Bush has stated that, if confirmed, I would have Cabinet-level status. I do not have any particular views on legislation making EPA a Department.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR SMITH

*Question 1.* One of President-Elect Bush's announced priorities is passage of a Federal multi-pollutant utility bill, similar to the air pollution reduction law enacted in Texas. What would be your main priorities in addressing this issue in legislation?

Response. The President's proposal to reduce utilities' emissions of nitrogen oxides, sulfur dioxide, mercury and carbon dioxide is part of his call for a national energy plan. I hope to work with you, other important Federal agencies, states, businesses and interested citizens in finding the most effective ways to reduce these chemicals, as part of an overall strategy that meets our nation's short- and long-term energy needs.

*Question 2.* One of the most critical environmental issues facing the next Congress and Administration will be financing the cost of building and maintaining the facilities needed to deliver safe drinking water and to treat wastewater. Recent EPA "needs surveys" estimated that the combined needs for drinking water and wastewater systems could approach \$280 billion over 20 years. Others say this number is actually much higher. As a Governor I am sure you have dealt with this issue first hand. Could you provide the Committee with your perspective on the role the Federal and State governments should play in addressing the financial needs our water infrastructure systems face over the next 20 years?

Response. As I touched on during my testimony, I know that local communities have significant needs but do not have the necessary resources to meet those needs. I look forward to working with you to identify the most effective Federal programs and resources to address this issue.

*Question 3.* Last Congress, a bipartisan effort was made to pass a bill to enhance and guide the EPA Brownfield program. One key aspect of the bill was to provide certainty to those who cleanup contaminated sites in order to encourage more cleanups and ensure that sites do not become future Superfund sites. The bill introduced last year created a division of labor between the Federal Government and States as to which sites should be cleaned up through the Superfund law and which should be handled by the States. Based on the limited resources of the Federal Government, there should be a greatly increased role of State responsibility of those sites at which an HRS scoring package has not been prepared or a decision that no further Federal action will be taken or those that by regulation the President determines warrant particular consideration. Do you agree that an increased State role is key to the success of the Brownfields program?

Response. The states are leading the way today in cleaning up and redeveloping brownfield sites. With additional assistance from the Federal Government, I believe the states and local communities can indeed do even more.

*Question 4.* After years of effort to comprehensively reform the Superfund law, although it is important to keep working toward that reform, it is also important to build more flexibility into the program and to administratively improve the program. In addition to the Brownfield initiative previously mentioned, the role that insurance plays in the cleanup of Superfund sites is ever increasing. In many cases, the stakeholders involved in the remediation of Superfund sites can benefit from the use of appropriate insurance products to cap cleanup costs and manage long-term risks. The past Administration has made some strides in providing a more workable framework for Superfund settlements through its reform packages, but more work is necessary. Some settlement negotiations are significantly delayed or terminated due to the costly premium payments required by EPA. Replacing such premiums in some settlements with insurance products is consistent with the Administration's goal to streamline Superfund settlements and speed the pace of cleanup. Will the new Administration consider "cost cap" and related insurance products to replace, or significantly reduce, those premiums in order to effectively remove this sometimes insurmountable barrier to finalizing such settlements?

Response. Yes, I will consider the use of this innovative tool.

*Question 5.* EPA has in the past clearly embraced the concept that there is often an inherent unfairness in the application of Superfund's liability scheme to small volume contributors to sites. Various statements and guidance documents issued by EPA articulate both the necessity and the benefits of early de minimis settlements. EPA has also encouraged other ideas, including the use of contribution waiver provisions, to increase the benefits of early settlement to de minimis settlers and decrease their transaction costs. Although the law has been found to impose strict, joint, and retroactive liability in court challenges, would you agree that reforms to better define who is liable, and for what volume they are responsible, are needed to ensure that small businesses are treated fairly in these proceedings. Do you agree that more administrative reforms are needed to be make the program more fair?

Response. The Superfund program has far to go before it is perfect, and I look forward to working with you on any needed reforms.

*Question 6.* One of the largest-ever Superfund settlements with a single potentially responsible party will be financed largely by finite risk insurance arrangement that is unique in Superfund cases but one that may become a popular pollution-liability financing tool. Under a proposed settlement with the current site owner, finite risk insurance would finance the \$201 million estimated cost of hiring a professional environmental contractor for 30 years to operate a water treatment plant designed to purify some waterways heavily contaminated by acidic drainage from the Iron Mountain Mine site near Redding, California. An endorsement to the policy would provide a government agency in 30 years with \$514 million more to cover the cost of protecting the environment from acidic drainage from the mine in perpetuity. The settlement will ensure long-term control of more than 95 percent of the pollution released from Iron Mountain, the largest source of toxic metals in the United States and the source of the most acidic mine drainage in the world, according to the EPA. Will the new Administration consider such "finite risk insurance arrangements" as an acceptable pollution liability financing tool in order to expedite settlements?

Response. Yes, I will consider the use of this innovative tool.

*Question 7.* Last year, Senator Smith and Senator Chafee requested that GAO conduct a study to: (1) identify the compliance status with the December 22, 1998 [UST] deadline; (2) ascertain how EPA and the states are enforcing these requirements; and (3) substantiate the validity of claims that new tanks are leaking. Initial results indicate that the problems do not come from the lack of equipment installation, but the operation and maintenance of the equipment. Firstly, as Administrator will you work to identify the scope of MTBE in groundwater? To date there seems to be no national estimates of the impact of MTBE on the nation's water supply.

Response. I will first need to assess the information already available at EPA and in the states.

*Question 8.* Second, will you commit to work with the Committee to look at this issue and remedy the situation. Do you have any thoughts as to how we can get a handle on this issue?

Response. Yes, I will work with you to assess this situation.

*Question 9.* While I have served on this Committee, stakeholders have consistently raised two concerns regarding the administration of the EPA: the need for sound science to drive decisionmaking and the lack of "sunshine" at the Agency. For more than 50 years, animal-based toxicology has driven hazard identification and risk assessment at the EPA. However, new non-animal test methods are rapid, predictive, cost-effective in the long run for industry, and more humane. Can you commit to making researching, developing and validating non-animal test methods a priority for EPA?

Response. I certainly understand your concerns and I look forward to learning more about these new methods.

*Question 10.* In addition, several EPA programs supported by the previous Administration have been developed without input from all interested stakeholders. In fact, the EPA has not published announcements of public meetings in the Federal Register, included qualified experts from all areas of interest on scientific committees and seriously addressed concerns stakeholders have regarding programs that are designed to use significant numbers of animals at great cost to industry. Can you commit that under your leadership EPA will strive to consistently abide by a policy of "sunshine" and inclusion for all interested stakeholders?

Response. As I stated in my testimony, I will seek to include stakeholders in the Agency's policy discussions.

*Question 11.* The previous administration had moved forward with various initiatives involving the collection of toxicity data resulting from the HPV chemical testing program, the children's health initiative, and the endocrine disruptor screening program. These programs will soon start producing data that will be available to the public. It is imperative to ensure that this data is not presented to the public as raw data and that the numbers are put into context for a layperson to understand, in terms of risk or at least with caveats or explanations. The Agency needs to better coordinate these efforts to ensure that the least number of animal lives are lost in collecting toxicity data and that the results are put in context. As Administrator, will you review these efforts to ensure that actual results will come of this effort and that the loss of animal life will be as few as possible?

Response. I will review this program and then decide how to proceed.



RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR BAUCUS

*Question 1.* Governor Whitman, I am sure you are aware of the price discrepancies that exist between the United States and Canada on farm pesticides, that the price charged to U.S. farmers is sometimes double what a Canadian farmer pays, and that these pesticides are often manufactured by the same company or related companies. Generally, the pesticides marketed in Canada are identical to the pesticides approved for sale in the U.S. by the EPA. Because of the laws governing the importation of farm pesticides, the Environmental Protection Agency last year was placed in the unenviable position of stopping U.S. farmers from buying the less expensive Canadian pesticides. Legislation was introduced last year to prevent EPA from being used in this manner again and will likely be reintroduced this year. This legislation was drafted with the technical help of the EPA. Governor Whitman, will you work with those of in Congress who want to ensure that our farmers have a level playing field, ensuring free but fair trade between the U.S. and Canada?

Response. Yes.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR LIEBERMAN

*Question 1.* Under President Clinton, the EPA issued ground-breaking new standards for the quantities of ozone and particulate matter—or smog and soot—in the air. The Supreme Court is currently considering a challenge to the standards. If they are upheld by the Supreme Court, are you committed to ensuring that the rules are implemented?

Response. Yes.

*Question 2.* The EPA budget has been the subject of controversy in the appropriations process over the last decade and has not been increased in some time. Could you speak to your plans for requesting funding for the agency?

Response. I am not yet sufficiently familiar with EPA or its budget to speak about any funding requests at this time.

*Question 3.* Obviously, state governments vary in terms of the resources and expertise they devote to environmental protection. New Jersey, for example, has long been regarded as a leader among the states, setting an example to be emulated by others. As you administer EPA programs, how will you determine if individual states are ready to assume more authority? What criteria will you use to determine if they are adequately discharging their responsibility to implement state programs?

Response. EPA has a long history of delegating programs to the States—and I believe that this partnership has accomplished a great deal. A new measuring stick already in place is the National Environmental Performance Partnership System, or NEPPS. I look forward to learning about other ways to measure progress and how existing methods can be improved.

*Question 4.* In 1998, New Jersey awarded the contract to design a new emissions testing program to Parson Infrastructure and Technology Group. Emissions testing programs are a vital cog in our efforts to protect our clean air, but unfortunately, Parsons was inexperienced with such programs and produced a system that was ineffective and resulted in long delays for motorists. A blue ribbon panel tasked with looking into the cause of the problem concluded that the Governor's office "did not effectively monitor the progress" of the project. Could you speak to this incident and how you will avoid similar occurrences at EPA?

Response. Since New Jersey is implementing one of the largest I&M programs in the country, the challenges have been great. To avoid similar situations as Administrator, I believe there is a need for thorough planning, with clear direction to able managers at the outset and throughout the project development and implementation. If anything goes wrong along the way, swift corrective action must be taken. If confirmed, I pledge to perform these functions.

*Question 5.* As you well know, the Northeast in general, and Connecticut in particular, is very concerned about maintaining strict air pollution controls. Could you speak your plans for the Office of Air, including any particular initiatives affecting the office or what criteria you would use for candidates for the Assistant Administrator?

Response. The Office of Air, like the other offices at EPA, is important to fulfilling EPA's mission. I am not familiar enough with EPA's structure to suggest any plans for any particular office. As for job qualifications, I am looking for the best and the brightest, those who know the substantive area well, are innovative leaders and decisionmakers, and are willing to listen to others.

*Question 6.* In 1999, DOJ and EPA initiated a series of enforcement actions against operators of fossil fuel-fired power plants in the Midwest, Southeast, and

Mid-Atlantic regions for violations permitting requirements under the Clean Air Act. These power plants were accused of emitting nitrogen oxides, sulfur dioxide, and particulate matter in amounts exceeding permissible levels because of modifications and upgrades made at the facilities over several decades. Many of these actions were pursued in conjunction with the State of New York. Are you committed to ensuring that the remaining enforcement actions are vigorously pursued, to ensure that interstate transport of air pollution, including ozone and sulfur dioxide, is reduced? And will you take any actions that could reduce opportunities for States, such as New York, to pursue such actions in the future?

Response. I first will need to review the ongoing enforcement actions. I look forward to working with states to address air pollution, particularly where interstate transport is an issue and cross-boundary cooperation is needed.

*Question 7.* In 1999, EPA and DOJ entered into a series of ground-breaking consent decrees with the seven largest manufacturers of diesel engines. The companies had been designing engines operated in a manner that met the emission standards while on the test, but operated in a different manner—with greatly increased emissions—when not being tested. The consent decree required the companies to produce engines that never exceeded a certain margin of error above the emission standard. Will you vigorously enforce the consent decrees as written? If not, what changes would you make?

Response. I will review the consent decree and the recently issued diesel/sulfur rule, which creates new requirements for engine manufacturers.

*Question 8.* Governor Whitman, you have stated that you would like to move to the next generation of environmental protection, one that seeks to forge partnerships between citizens, the government and business. A number of similar programs initiated by the Clinton Administration, however, were not permissible under the current legal framework. What approach will you take to initiating this new era of environmental regulation?

Response. I am optimistic that new partnerships can be created, and I look forward to working with you and the other members of the Committee on opportunities for “next generation” legislation.

*Question 9.* What are your plans for requesting funding for the Long Island Sound office? The office was authorized to receive \$40 million per year in last year’s Estuary Bill but has yet to be appropriated funds under that authority.

Response. I do not know the particulars of the funding for that office or why funds have not been appropriated, but I look forward to learning more.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR BOXER

*Question 1.* Would you please review Administrator Browner’s responses to the October 12, 2000, House Science Committee hearing on the subject of discrimination at EPA. Please let me know whether you will continue the review Ms. Browner began of EPA’s Office of Civil Rights. If not, please let me know what your approach would be to ensuring that you are made personally aware of civil rights issues and problems within the agency.

Response. I will do this and respond promptly, if I am confirmed.

*Question 2.* As a Governor, I’m sure you can imagine the outcry from citizens that would result if the Federal Government was attempting to site a low-level radioactive waste facility in your state. During the Bush Administration, such an attempt was made to site such a facility in California, but we defeated it. The effort failed, in large part, because we discovered that the nuclear industry’s arguments that a storage crisis existed at radioactive waste facilities were a sham. Today, there continues to be decades of capacity at such facilities.

Even though that’s the case, the nuclear industry has been pushing EPA to rewrite its rules to allow hazardous waste facilities to accept radioactive waste. They argue that there isn’t enough capacity at existing radioactive waste disposal facilities to handle the waste. My colleague from Utah, Senator Bennett, has one of these facilities in his state. He would tell you that they want to take this waste. What it’s really all about is that we are decommissioning nuclear plants and they don’t want to pay to send the waste to a safe, NRC licensed site.

I can also tell you that I am currently locked in a struggle with the Corps of Engineers because the agency itself dumped radioactive waste in a hazardous waste facility in California not licensed to receive such waste. In my view, Governor Whitman, allowing these hazardous waste facilities to take radioactive waste amounts to siting a radioactive waste facility in a state through the backdoor, which is unfair to the state and unfair to the public. Hazardous waste facilities are not sited with

radioactive waste in mind and they lack the special protections that attend the disposal of it. EPA decided not to issue such a proposal ultimately.

Can I rely upon you to continue the current law and EPA policy that radioactive waste—low-level or high level—should not be disposed of at hazardous or solid waste facilities? At the very least, can I rely upon you to inform my staff if you choose to revive this rulemaking process so that my Subcommittee can hold oversight hearings over any such proposal?

Response. I will review this important issue, I will uphold the laws on the books, and I look forward to learning more from you about how we can ensure the public is adequately protected from radioactive waste, wherever it may be.

*Question 3.* In my work on this Committee—from Superfund to the Safe Drinking Water Act—I have worked to ensure that our environmental laws are improved to make sure that they protect children. When these laws were originally written, we did not know that children are especially vulnerable to the harms caused by pollution. Do you agree that EPA should set pollution and public health standards at a level that protects the health of pregnant women, infants, children and the elderly?

Response. EPA should set its standards to ensure that the health of pregnant women, infants, children and the elderly is protected.

*Question 4.* The Safe Drinking Water Act contains a special provision I authored requiring EPA to ensure that Federal drinking water standards protect children. Will you support and fully implement this provision?

Response. Yes.

*Question 5.* The Food Quality Protection Act of 1996 contains a very important provision requiring EPA to revise all pesticide standards and to ensure that the new standards protect children. Can I rely upon you to implement this provision?

Response. President Bush has committed to implementing the FQPA in a manner that does not disrupt our farmers' access to safe crop protection products. I will strive to implement this new public health standard and make the needed pesticide reviews using the best science and in a timely manner.

*Question 6.* I know you are well aware of the problem of MTBE contamination from your own experience in New Jersey. If only we had taken steps to stop its use after it was first discovered leaking from an underground tank in Rockaway, New Jersey in 1980, we could have spared the Nation what promises to be a costly clean-up problem. As you know, a class action suit has been filed in Ocean County, New Jersey by private well owners against oil companies. The well owners are suing to get the companies to pay to cleanup MTBE contamination.

When this Committee marked-up S. 2962 last year, some advocated letting oil companies off the hook for liability for MTBE cleanup. They argued that this would be fair because oil companies didn't know that MTBE would pose such a problem. They also argued that this would be fair because Congress told oil companies to add MTBE to gas when we passed the Clean Air Act Amendments of 1990. We are learning through California litigation that oil companies did know MTBE would pose exactly the problems we are now discovering. Further, testimony delivered by some oil companies before this Committee during the debate over the Clean Air Act amendments of 1990 shows that the companies urged Congress to adopt the 2 percent requirement that gave rise to the use of MTBE.

Do you agree that those who knowingly pollute bear the responsibility to clean up that pollution—whether that responsibility is imposed under our environmental laws or under common law tort theories and/or product liability? While I don't think that there is a question that oil companies knew that MTBE would pose a serious drinking water problem, isn't it appropriate to let an impartial judge weigh the evidence on that issue rather than adopting legislation that would afford oil companies liability protection and effectively cutoff that judicial inquiry?

Response. I do believe that polluters should pay. The second question calls for a legislative or judicial decision.

*Question 7.* As you may know, we could save approximately 1 million barrels of oil per day if we were to require sport utility vehicles to meet the same corporate average fuel economy standards as those which apply to passenger cars. USGS estimates that the Arctic National Wildlife Refuge has approximately 3.2 billion barrels economically recoverable oil. If we were to raise CAFE standards for SUVs, in 8–9 years we could save the amount of oil that drilling ANWR would yield. Wouldn't you agree that, given a choice between doing damage to an irreplaceable natural resources and conservation, that we should choose conservation? Shouldn't we at least study the effect of raising CAFE standards for SUVs before opening ANWR?

Response. We should have a national energy policy that provides a strategic course for this nation to ensure both our short- and long-term energy needs. I look forward to working with you and the appropriate Federal agencies on these issues.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR CARPER

*Question 1.* It was a pleasure to be with you this morning at your confirmation hearing and to have a chance to hear from you about your plans for the EPA. As I mentioned this morning, I am interested in your thoughts regarding the Delaware River.

The Army Corps of Engineers has announced plans to deepen the Delaware River shipping channel from Philadelphia to the Atlantic. This is of particular interest because as you well know, the land underneath the river is considered Delaware property, and a major project taking place within the state deserves particular attention. Last week the Army Corps of Engineers announced that it will apply for necessary environmental permits from the State of Delaware. I welcome their application, and look forward to the permit review process.

Under your leadership, what will be the EPA's position regarding the Army Corps' project to deepen the Delaware? Do you feel it is appropriate for Federal agencies, when operating in a state, to abide by that state's environmental standards?

Response. I will first need to review the Army Corps' proposed project. I agree with President Bush's statement during the campaign that Federal agencies should comply with the same environmental laws that others must meet.

*Question 2.* Earlier this week, the EPA ordered an independent economic analysis of the plans to deepen the Chesapeake & Delaware Canal. I support this decision, and look forward to the results of this analysis. As EPA Administrator, will you encourage economic analysis of major environmental projects, such as the C&D canal, and the Delaware River deepening projects?

Response. As I stated in my testimony, I believe we should know the benefits and costs of projects.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR CORZINE

*Question 1.* Title VI of the Civil Rights Act prohibits recipients of Federal financial assistance from discriminating on the basis of race, color or national origin in their programs or activities. Under EPA's Title VI implementing regulations, EPA-funded permitting agencies are prohibited from issuing permits that have a discriminatory effect based on race, color, or national origin. In 1998, the EPA issued administrative rules to provide its staff with a framework to process Title VI environmental civil rights complaints. These rules—known as "guidance"—were issued on an interim basis. Revisions will be issued shortly.

What will you do to ensure that all revised EPA rules and regulations, including the proposed Title VI guidance, ensure that all Americans receive equal enforcement of protective environmental laws?

Response. I do not have any particular changes in mind for how EPA can improve on how it currently meets this obligation, but I will review EPA's process and determine how to proceed to ensure this law is followed.

*Question 2.* What other steps will you take to ensure that no group of people will have to bear a disproportionate share of the negative environmental and health consequences that come from a decision to issue a permit to pollute?

Response. I believe that groups should not have to bear a disproportionate burden for pollution. I will review EPA's current programs and determine how to proceed.

*Question 3.* The EPA has opposed the proposal by the Mills Corporation to fill in the 206 acres of wetlands in the Hackensack Meadowlands, in order to build a retail, hotel and business center. Do you agree with the EPA's position?

Response. It is likely that I will be required to recuse myself from decisions on this matter based upon my involvement in this issue in my position as Governor of New Jersey. However, all matters involving potential conflicts must be fully vetted with the EPA Ethics Office before determining whether recusal is appropriate.

*Question 4.* In your testimony, you indicated that you might recuse yourself from any further decisionmaking on this proposal. Please indicate why you think you might need to be recused from further decisionmaking.

Response. It is likely that I will be required to recuse myself from decisions on this matter based upon my involvement in this issue in my position as Governor of New Jersey. However, all matters involving potential conflicts must be fully vetted with the EPA Ethics Office before determining whether recusal is appropriate.

*Question 5.* There is a proposal to build a 6.7 mile east-west highway between Route 1 and Interchange 8A on the New Jersey Turnpike. Environmentalists oppose it because it could potentially destroy 14 acres of environmentally safe wetlands. While your administration supports the project, the Environmental Protection Agency does not. As EPA administrator, will you oppose this proposal as well?

Response. It is likely that I will be required to recuse myself from decisions on this matter based upon my involvement in this issue in my position as Governor of New Jersey. However, all matters involving potential conflicts must be fully vetted with the EPA Ethics Office before determining whether recusal is appropriate.

*Question 6.* New Jersey has 113 Federal Superfund sites, more than any other state in the nation. Yet the tax on the oil and chemical industry, which was used to help fund the cleanup of all Superfund sites, has expired. While enough money has accumulated in the fund to allow cleanup to continue through next year, there will not be enough money to finish cleaning up all the sites around the country. Should the tax on the oil and chemical industry be re-instated to help pay for the cleanup of Superfund sites? If not, should the money to help pay for the cleanup of these sites come from other taxpayers?

Response. As I stated during the hearing, it is critical that the resources be available to the Federal and state governments for these cleanups. I look forward to working with you as to how best to ensure those resources are available.

*Question 7.* One of the problems facing New Jersey and other states in the Northeast is the high level of air pollution from older power plants in both the Midwest and South. As Governor of New Jersey, you supported the EPA's lawsuits against those older power plants to force them to comply with the provisions of the Clean Air Act. Many of those lawsuits are still pending. Will you continue the EPA's Clean Air Act litigation and enforcement strategy to force older power plants to comply with the Clean Air Act?

Response. I will review the status of this litigation. Lawsuits can sometimes be helpful, although I do not believe that a "lawsuits first" approach is very effective. As I stated during the hearing, I believe in offering the carrot first, but retaining the stick.

*Question 8.* The Environmental Protection Agency issued new regulations which would further restrict the acceptable amounts of ozone and soot in the air. It is estimated that New Jersey's air pollution would drop by 20 percent if utility companies in the Midwest and South comply with these new regulations. These regulations are currently under review by the U.S. Supreme Court. If the Court strikes these regulations down, what will you do to replace them?

Response. I will wait to see how the Supreme Court rules before deciding how to proceed.

*Question 9.* Do you believe that members of the public who live near a business facility as well as the employees who work there have a right to know what types of toxic chemicals are being stored at that facility?

Response. The Federal Government and many states and local governments have such right-to-know laws, which can provide people with helpful information about the risks they may face in their community and can give emergency responders needed information to protect the public.

*Question 10.* When is it appropriate for the Federal Government to bring an enforcement action if a state is already involved in the matter? At what point would you step in as an EPA administrator and threaten a state that has failed to carry out the authority delegated to it by the EPA?

Response. It would rarely, if ever, be appropriate for the Federal Government to step in where a state already is aggressively pursuing enforcement. If confirmed, I will work to provide states with the resources they need to carry out environmental programs, and I will work to establish performance standards to hold them accountable for making environmental improvements.

*Question 11.* In your testimony before the committee, you emphasized the need for the EPA to work cooperatively with businesses and state and local governments in complying with environmental regulations. Sen. Inhofe described your approach to environmental enforcement as "compassionate compliance." But at what point do you believe the EPA should put away the so-called carrot of voluntary compliance and aggressively enforce the law?

Response. I have seen in New Jersey that most businesses are working to comply with our laws, but that many do not have the time or resources (or lawyers) to keep up with all the requirements. The government should first seek to assist those businesses to comply—the goal, of course, is environmental protection, not enforcement for enforcement's sake. But where a business refuses to comply, then it is appropriate to step in and fully enforce the laws.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR INHOFE

*Question 1.* Governor Whitman, when your nomination was announced, the President-elect stated that you and he shared "a philosophy that moves beyond the old

central command-and-control mindset that believes Washington has got all the answers to environmental issues." Your predecessor at EPA, by contrast, was committed to a federally imposed vision of the so-called "Precautionary Principle." This "one-size fits all" approach seemed to dictate that even the most inflexible regulatory solutions were often preferable to appropriate, risk-based outcomes. Can you comment on how the philosophy that you and the President-elect share differs as regards to the Precautionary Principle versus risk-based approaches?

Response. Our nation's environmental policy and decisionmaking are based on longstanding traditions of precaution, science-based risk analysis, and sound risk management, including consideration of benefit/cost. Precaution is an important component of risk management when making decisions in the face of uncertainty and the absence of complete knowledge. Whether and the extent to which precautionary considerations are employed in risk management decisions is highly context-specific. Precaution, however, should not be used to justify arbitrary decisions.

*Question 2.* One of the criticisms often leveled at EPA is that the science supported in the Office of Research and Development is not linked to or incorporated into the regulatory agendas of the Agency's program offices. How do you plan to address this problem?

Response. As I stated during the hearing, I believe science is the foundation on which all of EPA's policies should be built. I not only will work to improve coordination between EPA and others outside EPA, but also within EPA.

*Question 3.* In December the EPA determined that they would move forward with a rulemaking to control emissions of mercury from power plants. Unfortunately, the EPA did so using a more restrictive "command and control" facility-by-facility approach that limits the flexibility of utilities and states to find the most cost-effective means possible to control mercury. President-elect Bush, during the campaign, said that emissions reductions, including mercury, should be phased in "over a reasonable time period," and that these controls should include "market-based incentives, such as emissions trading and carbon credits, to help industry achieve the required reductions." My question is whether you would consider a cap-and-trade program, with the goal of regulating mercury emissions in a flexible manner that is based upon adequate protection of public health?

Response. I am very interested in pursuing what works. We have seen that a cap-and-trade program has worked very well to reduce emissions of sulfur dioxide, under the Clean Air Act Amendments' Title IV acid rain program. I would like to explore that for other chemicals as well. I don't know if mercury should be included, but I will look into that with you.

*Question 4.* Biotechnology is a growing field, not only for consumer products but also for remediation techniques. Do you support innovative pollution prevention programs that would foster the use of industrial enzymes in manufacturing processes in order to reduce the amount of air and water pollution and hazardous waste generation and are you aware that the biotechnology industry is playing a key role in reducing the amount of industrial pollution discharged annually by producing enzymes that make manufacturing processes cleaner?

Response. I am not familiar with all the wonderful things that enzymes can do, but I am willing to learn.

*Question 5.* On December 21, 2000, the EPA issued a final rule to reduce the sulfur levels in highway diesel fuel by 97 percent. Published reports indicate the new diesel sulfur rule could cause supply shortfalls of more than 12 percent nationwide and up to 37 percent in the West. Major rules such as this typically undergo a ninety-day review period by OMB to examine the impacts. The Clinton OMB spent less than 2 weeks reviewing the final sulfur diesel package. Many have suggested that the latest diesel rule should be reexamined and perhaps rescinded. How do you intend to proceed with this rule?

Response. I will review this rule along with all the other recent EPA rules, and then decide how to proceed.

*Question 6.* Under the New Source Review program of the Clean Air Act, EPA is currently invoking its "NSR Look Back" program in which selected sources are required to provide historical documentation of any activity which may have triggered NSR permitting. In reviewing this information, EPA is evaluating the applicability of NSR permitting based upon its current interpretation of the program, which has changed significantly over the last twenty-five years and is different than the program interpretation at the time of the permitting activity. Will this looking at the past through 2001 eyes continue?

Response. I believe it is important to be clear about your expectations, especially about legal requirements. Generally, the rules should not be changed in the middle of the game. I will review this NSR policy.

*Question 7.* Will you commit to supporting in any upcoming Superfund/brownfields bill language that will protect innocent small businesses, who legally disposed of trash, and other protections, which relieve innocent small businesses from Superfund liability? What other Superfund reforms would you support?

Response. We need to employ the tools that get the work done the most effectively. In some cases, Superfund's liability scheme may assist in the cleanup, but for many sites, such as brownfields, the Superfund liability scheme instead impedes cleanup. I would be happy to work with you to see what Superfund reforms might be needed.

*Question 8.* Cost/benefit arguments are often used to shape environmental regulations. Please describe how your approach might differ from the approach taken by the last Administration.

Response. I am not familiar with the last Administration's approach. I believe that we should know what the benefits and costs of a new policy are.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR BOND

*Question 1.* As you may know, the benefits of plant biotechnology and the Federal regulatory regime which governs its application has been endorsed by nearly every leading science organization in this country. Most recently, the American Medical Association re-affirmed its support for plant biotechnology and continues to oppose unnecessary new labeling requirements which would threaten the viability of the technology. The support of the AMA is shared by the American Dietetic Association, American Society for Cell Biology (10,000 members), American Society for Microbiology (40,000 members), Genetics Society of America (4,000 members), Society of In Vitro Biology, American Society of Plant Physiologists, American Phytopathological Society, American Council on Science and Health, International Food Policy Research Institute, Federation of Animal Science Societies, and others. Nobel Laureates have joined other independent scientists in petitions supporting biotechnology.

Those who stand the most to gain from this technology are the most disadvantaged in the world, particularly children, the sick, the poor, and the hungry in Africa and Asia. Notwithstanding the scientific consensus, anti-technology zealots, competitor groups such as some in the organic food industry, and trade protectionists in Europe have endeavored to discredit this new technology. Where the technology holds the most promise is in improved nutrition, medicinal uses, and environmental protection. Ironically, it is some activists who profess to represent the interests of environmental protection who oppose the development of technology.

Our regulatory system exists to inform the public if products are unsafe or safe and under what conditions. Public confidence in the U.S. system food production system is founded on the principle that regulatory decisions regarding food safety be based on science, not on hysteria, politics or separate unrelated agendas. For our multi-agency system of approval to do otherwise, would threaten new technologies as well as the overall confidence in our food safety.

Do you agree that the scientific experts in the regulatory agencies base their decisions on science and not politics?

Response. I believe that most government scientists base their decisions on science, not politics.

*Question 2.* The issue of the application of the precautionary principle to environmental and other matters has been very controversial in recent years. The overriding U.S. regulatory scheme incorporates the concept of precaution and acts protectively on the side of safety when there are substantive uncertainties. Our regulators have proven themselves willing and able to act to protect the public. I support the concept of the precautionary principle included as Principle 15 to the Rio Declaration. Principle 15 states that: "Where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

The U.S. regulatory system recognizes the difficulties of proving the negative and that improper use of a precautionary principle can stifle innovative activity that benefits the health and safety of the public. U.S. regulatory policy reflects a careful balancing of the responsibilities in the area of precaution. Therefore, I note that some food groups have identified a statement attributed to you in an October 2000 speech at the National Academy of Sciences that:

"policymakers need to take a precautionary approach to environmental protection. . . . We must acknowledge that uncertainty is inherent in managing natural resources, recognize it is usually easier to prevent environmental damage than to repair it later, and shift the burden of proof away from those advocating protection toward those proposing an action that may be harmful."

Please confirm that this remark does not reflect a desire to shift the carefully designed precautionary burdens currently established within the U.S. regulatory system.

Response. My remarks were made in a specific context and were not directed at any change in the U.S. regulatory system.

*Question 3.* One of the benefits of biotechnology is that its use has already proven to lower the need for chemical pesticide applications. There are a number of new applications of plant biotechnology under development to create plant-based vaccines and medicines. Additionally, there are a number of new applications of plant biotechnology under development to create bio-degradable plastics and enzymes that make manufacturing processes cleaner and even treat toxins in soil and water. Are you aware of these applications and do you agree that development of such technologies, subject to regulatory approval, should be encouraged?

Response. I am not familiar with all the wonderful benefits of these new applications, but I am happy to learn.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR VOINOVICH

*Question 1.* The EPA's 1996 Clean Water Needs Survey estimated that nearly \$140 billion will be needed over the next 20 years to address wastewater infrastructure problems in our communities. In March 1999, the EPA revised their figures upwards whereas infrastructure needs are not estimated at \$200 billion. Other independent studies indicate that the EPA has undershot the mark, estimating that these incredible unmet needs exceed \$300 billion over 20 years. In recent years, Congress has only appropriated \$1.35 billion for the Clean Water State Revolving Loan (SRF) program. The past Administration requested even less in its annual budgets. Do you believe the Bush Administration should include more funding for the Clean Water SRF in its budget requests to help communities cope with costly wastewater infrastructure problems?

Response. President Bush has recognized this need, and I look forward to working with you on the specifics.

*Question 2.* What does the Bush Administration intend to do to address water infrastructure needs nationwide?

Response. President Bush has recognized this need, and I look forward to working with you on the specifics.

*Question 3.* Do you believe there should be more grant moneys available to financially distressed communities to pay for water infrastructure projects?

Response. I am not familiar with all the details of the current loan programs, but I would be willing to learn more and work with you to determine if additional grant moneys would be the most effective way of improving communities' water infrastructure.

*Question 4.* The Wet Weather Quality Act of 2000 was enacted as part of the Consolidated Appropriations Act for FY2001. The bill creates a new 2-year, \$1.5 billion grant program to states for combined sewer overflow and sanitary sewer overflow projects. However, the money is only triggered when Congress appropriates at least \$1.35 billion for the Clean Water SRF. Do you believe the Bush Administration should request funding for this grant program?

Response. President Bush has recognized this need, and I look forward to working with you on the specifics.

*Question 5.* Sometimes its seems that the intent of Congress and the action of the EPA do not always coincide when it comes to meeting the environmental goals of our nation. I would like to know your views on how the Bush Administration will ensure that the intent of Congress is consistent with the actions of the EPA.

Response. If confirmed, I will be committed to working with you and the other members of this diverse Congress toward ensuring that EPA acts consistent with our laws.

*Question 6.* I have worked to pass the Regulatory Improvement Act (S. 746 in the 106th Congress). The bill would require all Federal agencies to conduct a cost-benefit analysis when issuing major rules. For instance, many Ohio communities are concerned that they are having to undertake billions of dollars in improvements to address non-existent or marginal water quality impacts. Will the Bush Administration conduct cost-benefit analysis during the rulemaking process?

Response. I do not know yet what the Administration-wide rulemaking process will look like, but President Bush has stated that regulators generally should have this information before making new policy.

*Question 7.* No Question 7 was provided.



Response. Question 8. Currently, there are separate regulatory programs for CSOs, SSOs, stormwater management, and total maximum daily loads. Do you believe these separate regulatory programs should be combined into a unified wet weather regulatory program?

Response. That's an interesting idea. I would be interested to know more about this idea.

*Question 9.* Some Ohio communities are concerned that the EPA is not very receptive to new technologies. For example, they would especially like the EPA to look closely at new technologies that would provide secondary treatment of wastewater at a lower cost than what the EPA requires. What are your views on how the Bush Administration will evaluate and approve new, cost-effective technologies?

Response. If confirmed, I would work to ensure that EPA reviewed and acted on new, cost-effective technologies so that they could be put to work.

*Question 10.* For SSOs, any discharge is currently illegal. CSOs are to be totally eliminated. It seems that from a practical standpoint, sewer deterioration will always take place and zero discharge for all storm weather conditions is an impractical/impossible goal. What are your views on finding the right balance between environmental benefit and the high costs of preparing for the worst-case scenario?

Response. We need to seek a balance between the benefits and costs of our laws and rules.

*Question 11.* I have been concerned that there is a lack of consistency between EPA's national office and the regions, as well as among the regions. Will you ensure that interpretations and policies will be consistent and standardized among all regions?

Response. There is a delicate balance between the certainty that consistency provides and the need for differences based on unique regional situations. As a Governor, I have been conscious of that even within my own state, and I will work to find that right balance.

*Question 12.* I believe that people you choose for your team should represent a regional balance. Do you agree?

Response. Yes.

*Question 13.* Total drinking water needs have been estimated to be in the \$325 billion range over 20 years. At the same time, the current authorization for the Safe Drinking Water State Revolving Loan Fund program can only meet approximately \$24 billion of the total needs. What will the Bush Administration do to address our nation's drinking water needs?

Response. President Bush has recognized this need, and I look forward to working with you on the specifics.

*Question 14.* Governor Whitman, you have prided your administration in New Jersey on your efforts to clean up brownfields at the state level and turn them into productive use. You have provided \$15 million to help towns clean-up waste sites and market them for re-use, and New Jersey has a reimbursement program for private parties that conduct voluntary clean-ups at brownfields sites.

However, many states are concerned that their efforts to get parties to clean-up brownfield sites are stymied because of Federal Superfund liability provisions. Parties that clean up non-Superfund sites under state cleanup laws need certainty about the rules that apply to them, particularly that their actions eliminate the risk of future liability under the Federal Superfund program.

The bill that I introduced last year—and which I will be reintroducing this year—allows states to release parties that have cleaned up sites under state laws and programs from Federal liability. I believe that states should have more options to clean up brownfields sites, because in many respects, states are leading the way to cleaning them up more efficiently and cost-effectively.

For instance, in some 20 years under the Federal Superfund program, the U.S. EPA has only cleaned up 17 sites in my state of Ohio. In contrast, 68 sites have been cleaned up under Ohio's voluntary cleanup program in just its first 5 years. And many more cleanups are underway. Ohio's actions are helping to recycle these wastelands, prevent urban sprawl and preserve our farmland and greenspaces, and in the process, they are making our cities more desirable places to live. I am convinced that putting abandoned sites back into productive use can be the spark that provides economic rebirth to many of our nation's urban areas, and with it, good-paying jobs to local residents.

My question is: what will the EPA do to facilitate greater flexibility under Superfund to give our states the ability to quickly, and safely, return brownfields to productive use?

Response. The states are trying to move ahead on cleaning up and redeveloping brownfields. As you know, President Bush has proposed reforming the Federal legislation and offering other programs to remove the threat of Federal liability, where

the site is cleaned up, and to offer additional incentives to spur cleanup and redevelopment. I look forward to working with you on this important issue.

*Question 15.* As Governor of New Jersey you took some very aggressive positions to represent your state on clean air issues, especially as they relate to the northeast versus the Midwest on ozone transport issues. As EPA Administrator, how are you going to reconcile the positions you took as Governor with the need for an EPA Administrator to take a broad, nationwide perspective on clean air issues?

Response. My experience as Governor of New Jersey will always inform my decisionmaking. I know that, if confirmed, I will need to take the needs of the entire nation into account, not just one region.

*Question 16.* As the Congress proceeds with reauthorization with the Clean Air Act, what changes to the Act would you be seeking? Do you think that the Act needs a major re-write or a few discrete "rifle shot" changes?

Response. I have not thought that far down the road about particular approaches to reauthorizing the Clean Air Act, but I look forward to working with you on that.

*Question 17.* Many people have talked about the need to do a better job of harmonizing environmental policy and energy policy, which often times seem to be in conflict. What are your views on how we can avoid conflicts and make sure the two policies are complementary? How do you see the Administrator's role in working with the Secretary of Energy to promote rational environmental and energy policies?

Response. President Bush has told his nominees that he expects us to work together, to seek out expertise and assistance from other agencies, so that we can craft and implement the best policies for America. This is particularly true with our need to harmonize environmental and energy matters, and I am looking forward to working with our new Secretary of Energy.

*Question 18.* As you may know, EPA ordered midwestern utilities to reduce their NOx emissions by May 2003, and this deadline was delayed by 1 year under Federal court order to May 2004. However, the so-called "126 petitions" still include the original 2003 deadline, resulting in two different and inconsistent deadlines. Meeting the earlier deadline might result in market disruptions and price spikes, as units are taken out of service in order to complete the very large construction projects that are necessary to meet the NOx reduction target. I would also note that the "126 petitions" were intended to be a backstop and supplemental to the state-driven SIP call process, whereas we now have the 126 petition deadline superseding the state SIP call deadline. Recognizing that this NOx reduction will occur, do you think that these inconsistent deadlines are a problem? My question is whether you will review this issue and consider recommending and applying only the SIP call deadline in order to avoid any market disruptions.

Response. I will review this issue.

*Question 19.* In December the EPA determined that they would move forward with a rulemaking to control emissions of mercury from power plants. Unfortunately, the EPA did so using a more restrictive "command and control" facility-by-facility approach that limits the flexibility of utilities and states to find the most cost-effective means possible to control mercury. President-elect Bush, during the campaign, said that emissions reductions, including on mercury, should be phased in "over a reasonable time period," and that these controls should include "market-based" incentives, such as emissions trading and carbon credits, to help industry achieve the required reductions. My question is whether you consider a cap-and-trade program, with the goal of regulating mercury emissions in a flexible manner that is based upon adequate protection of public health?

Response. I am very interested in pursuing what works. We have seen that a cap-and-trade program has worked very well to reduce emissions of sulfur dioxide, under the Clean Air Act Amendments' Title IV acid rain program. I would like to explore that for other chemicals as well. I don't know if mercury should be included, but I will look into that with you.

*Question 20.* In the area of environmental protection, American industry primarily seeks cost-effective rules that provide regulatory certainty. President-elect Bush specifically referred to one such issue during the campaign, when he called for our nation to, and I am quoting here "provide regulatory certainty to allow utilities to make modifications to their plants without fear of litigation." President-elect Bush was referring to New Source Review. The EPA has changed their interpretation of NSR in recent years, and has now proposed a rule under which routine maintenance could trigger a wide range of environmental standards that are then enforced against the plant in question. This may well result in plants being taken out of service due to unmet maintenance requirements, at the very time that we need more reliable and low cost generation of electricity. Will you examine this proposed rule on NSR, and look at alternatives that will honor President-elect Bush's pledge to

“provide regulatory certainty to allow utilities to make modifications to their plants without fear of new litigation”?

Response. Yes.

*Question 21.* During your tenure in this appointed position, what key performance goals do you want to accomplish, and how would this Committee know whether you have accomplished them?

Response. If confirmed, I will set performance goals, and I will be happy to work with you on those.

*Question 22.* Are you familiar with the strategic plan, annual performance plans, annual accountability report, and financial statements of your prospective agency? What do you consider to be the most important priorities and challenges facing the agency as it strives to achieve its goals? What changes, if any, do you feel might be necessary in these plans?

Response. I am aware that the Agency prepares them, but I am not familiar with their particulars. If confirmed, I will review those documents and work to ensure that the Agency is setting measurable performance standards to let us know whether we are in fact improving environmental conditions and not just whether we can count beans.

*Question 23.* Virtually all the results that the Federal Government attempts to achieve are accomplished only if the efforts of a vast network of state and local government and private sector contractors and partners are effectively coordinated. For example, much of the Federal Government’s domestic agenda—from mass transit to community mental health—is accomplished in part by providing grants and other technical assistance and support to state and local governments and third parties. Federal agencies, by working closely with their state and local partners, can instill performance-based approaches to managing intergovernmental programs that seek to maximize both results and state and local flexibility. Describe the skills and experience that you have that will prove helpful in developing and leading intergovernmental performance-based partnerships.

Response. My 7 years of service as Governor of New Jersey has provided me with much practical, hands-on experience in promoting and delivering on intergovernmental partnerships. New Jersey, with its strong “home rule” tradition, literally could not work without such partnerships. My administration’s environmental, as well as urban and education policies, have all been built around a commitment to working in partnership with local and county governments. For example, my plan for preserving one million acres of open space and farmland in New Jersey and the re-development of brownfields is dependent on a close working relationship between the state government and local and county governments.

*Question 24.* What is your experience in working with Congress or other legislative bodies responsible for the authorization, funding, and oversight of government programs? Specifically, describe any experience you have in working on a bipartisan basis to identify statutory changes that can improve program efficiency and effectiveness, as well as in fostering and responding to legislative oversight.

Response. Over the past 7 years, I have worked on a bipartisan basis with New Jersey’s congressional delegation and state legislature on countless matters of concern to my state and its people.

*Question 25.* What are your views on the importance and role of financial information in managing operations and holding managers accountable?

Response. Any good manager knows that financial information is an important tool in managing operations and holding managers accountable. When entrusted with taxpayer dollars, government must do all it can to ensure that those resources are used efficiently, effectively, and wisely. One must avoid the trap, however, of equating spending levels with success in meetings one’s mission. Too often, managers will declare a problem solved if they succeed in securing more money to address that problem. That is why managers must also include performance standards and measures in managing operations and evaluating success.

*Question 26.* How would you address a situation in which you found that reliable, useful, and timely financial information was not routinely available for these purposes?

Response. If I found that reliable, useful, and timely financial information was not routinely available, I would make whatever changes were necessary to ensure that it was.

*Question 27.* The Government Performance and Results Act envisions that agencies will link their human capital planning with their strategic and annual plans. However, we found that most agency plans did not sufficiently address how human capital will be used to achieve results. Can you describe your experience in building and maintaining the human capital needed to achieve results (getting the right employees for the job and providing the training, structure, incentives, and accountabil-

ity to work effectively)? More generally, describe your experience in integrating human capital considerations and planning into programmatic planning.

Response. The skills, talent, and experience that an agency work force brings to the work of that agency are the most important factors in determining the success with which the agency will meet its mission. As the New Jersey Governor, I have worked hard to ensure that our 60,000 state employees have the training, structure, incentives, and accountability needed to succeed. To better assess the state's work force needs, my administration undertook a complete review of all civil service job titles, classifications, and descriptions, initiated reforms in our civil services structure to reward performance and encourage training and workplace excellence, and we have instituted procedures for the development of clear goals and measures for all state employees. I also initiated the first ever Performance Assessment Review system for non-civil service employees working in the Governor's Office.

*Question 28.* Describe your experience in evaluating work forces (factors such as age, attrition rates, diversity, and skills imbalances) to identify the most challenging human capital issues, and discuss how you propose dealing with these issues in your agency over the next several years.

Response. My administration has led the way in developing work force planning and a responsible comprehensive program. Even a cursory examination of the composition of the Federal work force indicates that the coming years will see significant attrition as experienced people reach retirement age. Replacing those people—and the long experience they have developed and the institutional memory they hold—is a very real and pressing challenge. If confirmed, I intend to make this challenge a top priority at EPA. We need to look for creative, effective solutions to meeting this potential problem.

*Question 29.* If you have spoken with your predecessors—those who have held the position you now seek—about their “lessons learned” on how to manage the agency effectively, describe how their advice and experience has influenced your thinking and plans.

Response. I am grateful that most of my predecessors have reached out to me in the weeks since President-elect Bush nominated me for this position. I look forward to continuing to meet and talk with them in the immediate future. I know they have much good advice and wise counsel to impart.

*Question 30.* High-performance organizations draw on the strengths of employees at all levels and maintain honest two-way communications. Based on your experience, how would you assess your agency's capability for two-way communication, and what preliminary ideas do you have to promote such communication in your agency?

Response. As I have not yet been confirmed, I have not yet met with EPA employees. I believe that two-way communication is important, and I will work to make sure EPA fosters that.

*Question 31.* The Federal Government's work force has undergone significant downsizing in the past several years, and with the current tight labor market, it is becoming increasingly difficult to attract and retain talent. How would you work, within current rules, to attract and retain individuals with the experience, education, and skills needed by your agency?

Response. If confirmed, I will read the report on EPA's human capital crisis and then speak with my Cabinet colleagues and others in government about what may work well in their agencies. This is a very important issue, and it will be a priority for me.

*Question 32.* Numerous GAO reports have highlighted the need for agencies to expend more resources on effective training and professional development programs to better equip Federal employees for the workplaces of the future. Based on your experience, what priority would you place on workplace development, and how would you emphasize continuous learning in your agency?

Response. I am a strong believer in work force development. As Governor, I significantly upgraded the stature and use of the state's Human Resources Development Institute, a training center. We have expanded its course offerings and its outreach to state employees. Recognizing the importance of work force development, my administration has also provided funds to help workers in the non-public sector improve their skills and training. I would expect all EPA employees to take full advantage of the opportunities offered for training and development and would ensure that managers throughout the organization encouraged such development. I will review EPA training courses and professional development programs to ensure that they meet future work force needs.

*Question 33.* To become a high-performance organization, an agency needs senior leaders who are drivers of continuous improvement. What is the best approach for

motivating career employees, or any employees for that matter, to achieve excellence?

Response. I believe there are several important steps that a manager must take to promote continuous improvement and excellence. First, clear goals must be set. Second, clear measures for evaluating success must be established. Third, employees must know their performance will be evaluated against those goals and measures. In addition, employees at every level must be made aware of their importance to the agency's overall success and the things they can do in their job to help achieve that success. Managers, at every level, must also lead by example; their own commitment to excellence and continuous improvement should be evident to all those with whom they work.

*Question 34.* Political appointees who create and maintain constructive working relationships with civil servants, including members of Federal unions, can improve employee morale, increase performance, and lower costs. Describe your specific experience involving "front line" employees in achieving results.

Response. As Governor of New Jersey, none of what I sought to accomplish could have succeeded unless that state work force had been sufficiently motivated and committed to turning policy ideas into practical results. I have put a premium on the ability of all my political appointees (cabinet and sub cabinet) to work with the career employees and their unions to carry out my goals. I expect to have the same relationship at EPA.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR CRAPO

*Question 1.* What role, if any, should the EPA have regarding urban growth and development issues? If it should participate, how should the EPA interact with all of the parties to the debate so that their interests and concerns are addressed?

Response. As you know from your service on the Committee, EPA is in the middle of most debates over growth and development, generally because many activities today are regulated in some way by EPA. I believe that EPA has a lot of expertise to help states and local communities meet their needs, and so I would offer that expertise if states or local communities requested it.

*Question 2.* Do you support the EPA awarding Federal grants to organizations that engage in promoting anti-growth, anti-business efforts? If not, what steps will you take to ensure that Federal funds are not used for such activities?

Response. I will review this policy and then make a decision.

*Question 3.* The National Hazardous Waste Ombudsman and the Regional Ombudsmen serve as advocates for communities that disagree with agency actions involving activities managed by the EPA. Specifically, the Ombudsman provides an independent analysis on current projects under dispute. On January 3, 2001, the EPA published draft guidance for the conduct of the Ombudsman that most impartial and stakeholders agree would have the effect of undermining the independence and authority of the Ombudsmen. Do you support the important public advocacy and watchdog role provided by the Ombudsmen? What are your intentions with regard to the draft guidance? Will it be implemented, will it be implemented as written or significantly overhauled?

Response. I do support the Congressionally mandated ombudsmen role, and I will review the draft guidance and then decide how to proceed.

*Question 4.* Presently, the Regional Ombudsmen report to the Regional Administrators and the National Ombudsman reports to the OSWER Assistant Administrator. Would you be in favor of having the Regional Ombudsmen report to the National Ombudsman?

Response. I am not familiar enough with the situation to answer.

*Question 5.* At present, the National Ombudsman Office does not have control of its budget or personnel. The personnel report to the OSWER Assistant Administrator, not the Ombudsman. The Ombudsman must request resources and approval for all expenditures. Would you support the Ombudsman having control of his or her personnel and financial resources?

Response. I am not familiar enough with the situation to answer.

*Question 6.* In your testimony, you suggested that so-called Brownfields legislation will be a priority of yours if confirmed as Administrator. In recent years, Congress has recognized that use of funds for Brownfields programs undercuts resources for other important Superfund initiatives. It has now been 14 years since the last significant reform of the Superfund statute. How will you work with Congress to enact needed comprehensive Superfund reform that includes liability, remedy, and natural resource damages reform?

Response. I am interested in learning what reforms are do-able in this Congress, and will work with you to get those done.

*Question 7.* Small and rural communities have a competitive disadvantage in securing resources for compliance with environmental regulations under traditional granting programs. In other areas, EPA guidelines prohibit funding to communities for the purpose of developing feasibility studies for environmental projects. Increasing environmental regulations have the effect of strangling small communities that have few resources from which to draw for compliance. Do you support efforts to create special assistance programs, such as the proposed Project SEARCH Act, to help small communities comply with environmental regulations?

Response. Small communities, like small businesses, face special problems in trying to meet environmental requirements and fund the needed improvements. I would be interested in learning more about the proposed Project SEARCH Act and other ways that EPA might be able to assist small communities in improving their environmental conditions.

*Question 8.* Do you support efforts to increase the involvement of small communities in EPA policy-development? Do you support the proposed Small Communities Assistance Act?

Response. If confirmed, I would like to involve small communities in EPA's policy development. I look forward to learning more about the proposed Small Communities Assistance Act and other ways that EPA might be able to assist small communities in improving their environmental conditions.

*Question 9.* Water and wastewater infrastructure needs are growing for communities throughout the United States. Such initiatives are costly and Federal resources are limited. Continuing and additional regulations have the effect of exacerbating resource shortfalls in many communities. As Chairman of the Subcommittee on Fisheries, Wildlife, and Water, I will be working on efforts to address many of these concerns. Will the EPA under your direction work with Congress to help identify solutions to the infrastructure gap?

Response. Yes.

*Question 10.* In 1997, the EPA adopted stricter air quality standards for ozone and particulate matter, known popularly as the smog and soot rule. The U.S. Supreme Court heard oral arguments on challenges to this rule on November 7, 2000. One of the key issues argued before the Court was whether EPA's contention, that it can issue environmental regulations without consideration of costs to affected industries, is correct. If confirmed as Administrator, how would you consider costs and benefits in the development of environmental regulations?

Response. I understand that this particular issue is one of the questions before the Supreme Court. As I stated in my testimony, I believe we should know the benefits and costs of new policies.

*Question 11.* What is the proper role of risk assessment, cost-benefit analyses, and sound science in the development of environmental policies?

Response. We should use these tools so that we can better prioritize our efforts and the identify the best solutions.

*Question 12.* This year, the Clinton Administration promulgated Clean Water Act TMDL rules that will be extremely burdensome to businesses and states. These regulations lack a sound scientific basis. At the direction of Congress, the National Academy of Sciences is currently examining the science of TMDLs to provide a more solid foundation and is due to complete its study in June. Would you consider reexamining and revising the TMDL regulations based on the NAS study?

Response. I will review both EPA's own cost study, due out by the end of February, and the NAS study, and then I will determine how to proceed.

*Question 13.* In August 1999, the EPA published in the Federal Register a draft radiation release standard for the geologic repository being investigated at Yucca Mountain in Nevada. In promulgating the standard, the EPA had been directed by Congress to follow the recommendations of the National Academy of Sciences. The American Nuclear Society, the Nuclear Regulatory Commission, and the Department of Energy have submitted technical comments critical of the proposed standard. The American Nuclear Society has commented that the proposed standard is not consistent with the recommendations of the National Academy of Sciences. If confirmed, would you be willing to review these comments and to review the draft standard against what was recommended by the National Academy of Sciences?

Response. I understand that Administrator Browner signed that rule on January 17. I will review this action, along with the other recent EPA actions.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR CHAFEE

*Question 1.* Billions of dollars will need to be spent in the near future on water infrastructure. How will you seek to balance increased infrastructure needs with constrained resources and smaller budgets?

Response. As I discussed in the hearing, as a Governor I know that communities are facing a critical need for improved water infrastructure but do not have sufficient resources. President Bush has recognized this need, and I look forward to working with you and others to seeing how we can best meet it.

*Question 2.* As Governor of New Jersey, you were a leader in protecting open space in your state. What role do you believe EPA should play in preventing urban sprawl and preserving the Nation's open spaces?

Response. I am very proud of our efforts in New Jersey, and I know that states and communities can do great things if they pursue them. EPA has a great deal of expertise that it can offer to states and communities who are interested in EPA's assistance.

*Question 3.* As Administrator, how would you strive to improve internal coordination and communication among the individual divisions of the Agency?

Response. I have learned, from my experiences in New Jersey, that communication in environmental agencies can be segmented into the silos of air, water and land. I will work to open up communication within the agency, to share innovative ideas and basic data.

*Question 4.* In the past year, EPA has taken a number of legal actions against the nation's coal-fired power plants to encourage industry compliance with the Clean Air Act Amendments of 1990? Do you believe this is a useful tool for improving the nation's air quality?

Response. As I stated during the hearing, I do not believe in an "enforcement first" practice. I would first work with businesses to find the best ways to improve environmental performance. For those who refused to comply, then enforcement would follow. I will offer the carrot first, but I will not retire the stick. Lawsuits like these may be helpful in some cases, but I generally do not intend to use them in the first instance.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR CLINTON

*Question 1.* As you know, California is facing a serious energy crisis. In New York, we understand the effects of price spikes all too well. This past July, average bills for Con Ed's 3.1 million customers in New York City and Westchester County increased by 43 percent more than they were the previous July. Obviously, New York's utility costs remain some of the biggest threats to economic growth. The state's utility rates are the second highest in the country—60 percent higher than the national average. This is bad for business—and a strain on the budgets of too many of our hardest pressed New Yorkers. One of the reasons behind these price spikes is the growing demand. Therefore, conservation is a way to deal with this problem and lower pollution, yet a number of conservation programs have not been fully funded in the appropriations process. Will you advocate for increased investment in conservation both for environmental, and energy-related reasons? What is your strategy for promoting energy generation from renewable resources?

Response. If confirmed, I will work with my colleagues in the Administration to ensure that we have a sound national energy policy. As part of President Bush's proposal for such a policy during the campaign, he included various incentives to promote the use of renewable resources, and I will support those efforts.

*Question 2:*

New York and New Jersey have led the fight to combat sprawl. Particularly on Long Island, we have seen a tremendous effort to protect open space. Since 1981, the Land and Water Conservation Fund (LWCF) has each year received only a portion of its dedicated revenues and the Fund now has an unexpected balance of over \$12 billion. LWCF grant funds may be used for state planning and for the acquisition and development of state and local facilities that provide active and/or passive recreation opportunities. Do you support providing the LWCF an annual appropriation of \$ 900 million and additional permanent funding for wildlife, marine historic preservation and other conservation programs?

Response. President Bush supports full funding of the Land and Water Conservation Fund and returning a significant portion of that to the states for their conservation efforts. *Question 3.* What will your policy be on taking into account and determining on every issue the specific health risk that pollutants pose to children in particular? I believe children aren't "little adults" and I'm proud of the fact that over

the last several years, the EPA has taken into account health effects on children when making determinations about pollutants. Do you think that is the right course? Should we take into account effects on children? Are there any areas you don't think that that should be the case?

Response. As I discussed at the hearing, I believe we should adopt standards that are protective of sensitive populations, including children and the elderly.

RESPONSES OF GOVERNOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS  
FROM SENATOR BENNETT

*Question 1.* What is your view of the new diesel sulfur reduction rules? I am also interested to know your feelings on sulfur reduction for off-road diesel fuels, homes heating oil, etc.

Response. I will review this recent rule and then make a determination. I am not familiar with the details or impacts of particular proposals for reducing sulfur in other fuels.

*Question 2.* When does the cost of a proposed regulation exceed its benefits? How and who should determine the cost benefits?

Response. As I stated in the hearing, I believe it is important the government determine what the benefits and costs of a particular new policy might be before implementing that policy. I would work with the cost/benefit experts in the government to make decisions about particular policies.

*Question 3.* Should environmental policy be exercised at the expense of energy policy?

Response. As I discussed in the hearing and as President Bush has stated, it is critical to America that we have a strong national energy policy. If confirmed, I will work closely with my colleagues in the Administration, including the Secretary of Energy, to ensure that such a policy meets our nation's energy needs and still protects the environment.

*Question 4.* How will the forecasted energy shortages and rate increases impact the construction permitting process?

Response. I am not familiar with the particular impacts but am interested in learning more.

*Question 5.* How will you ensure that EPA will make all new regulations by the approved rulemaking process involving adequate notice and public comments rather than by guidance documents or changing definitions at a later date?

Response. I believe government should seek input from the public when making new policy and should inform the public about new policies. Government should set the rules and not change them in the middle of the game, without letting people know.

*Question 6.* EPA is currently invoking its "New Source Review (NSR) Look Back" program in which selected sources are required to provide historical documentation of any activity, which may have triggered NSR permitting. In reviewing this information, EPA is evaluating the applicability of NSR permitting based upon its current interpretation of the program, which is different than the program interpretation at the time of the permitting activity. Will this "looking at the past" through 2001 eyes continue?

Response. I will review this policy, if confirmed, and then make a determination.

*Question 7.* If industry invests in greener processes as a result of their development efforts, will you work with Congress to see that those accomplishments are recognized by extending patent protection for those products by 2-3 years?

Response. I am not familiar with the particulars of this patent issue, but I will do all I can to work with Congress and others to encourage businesses to develop and adopt cleaner processes.

*Question 8.* Some states running delegated programs operate in a constant fear of the EPA finding fault with the work they are doing. This makes it difficult for industry and state agencies to cooperate in protecting the environment. What are some steps you envision taking that will help build, rather than challenge, state/industry relationships?

Response. As a Governor, I know what it's like to be on the receiving end of mandates from DC. I look forward, if confirmed, to improving EPA's relationship with the states.

*Question 9.* What value will be placed on voluntary, collaborative programs during your administration relative to the program areas themselves and the enforcement division?

Response. As I stated at the hearing, I believe in offering the carrot first, but not retiring the stick. I have seen in New Jersey that we can make significant environmental improvements through voluntary, collaborative approaches, and I would seek



to continue to identify those opportunities if I were confirmed as EPA Administrator.

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GALE WARNINGS: GOVERNOR WHITMAN NOMINATED FOR U.S. EPA ADMINISTRATOR

COMMENTS OF THE NEW JERSEY AUDUBON SOCIETY

(By William R. Neil, Director of Conservation)

On Friday, December 22, 2000, President-Elect George Bush nominated Governor Christine Todd Whitman of New Jersey to the nation's top environmental job, Administrator of the U.S. Environmental Protection Agency.

New Jersey Audubon feels compelled to speak out after participating intensively for 7 years in many of the processes and proposals of her administration. We believe that the Governor of New Jersey is, by temperament, inclination, and management style, poorly suited for this position.

We give all due respect to the Governor's achievements as a preserver of open space, the preservation of Sterling Forest in New York, and her 1,000,000 acre program, the idea for which originated in a policy memo drafted by New Jersey Audubon Society on March 4, 1996. But saving open space in a roll-of-the-dice pattern is quite a different thing than systematically controlling sprawl in New Jersey, where the Governor is visibly failing. That's because she has been quite content with a toothless, voluntary State Plan that lacks standards, leaving zoning and building densities in the hands of municipalities which won't zone to effectively protect even the most sensitive of the Garden State's natural resources. Essentially, Governor Whitman is turning her back on our own best land-use history. In our Pinelands, which have been shielded since 1980 by one of the nation's most innovative regulatory land-use systems, votes of the Commission overseeing its regulations now go 2-1 to weaken those protections, thanks to a spate of poor appointments by Governor Whitman. Saving open space is not, however, central to the mission of the USEPA, and it is the reluctance of Governor Whitman to build upon New Jersey's good tradition of land use regulation, that offers us a strong clue about what is to come and worries us the most about her appointment to the USEPA.

We appreciate the views of New Jersey's Senators and some national environmental groups who reason that, given President-Elect Bush's environmental record and views, we should consider ourselves fortunate to have a moderate on the environment—we could do much worse, they say. While this certainly is a plausible position to take on the rather grim prospects for the environment under President Bush, we respectively disagree with this rather over-simplified fatalism.

Because of our first hand knowledge and experience under Governor Whitman, we feel that we must issue "gale warnings" to our representatives and the national environmental community. The primary mission of the USEPA is to issue regulations and standards governing the amount of pollutants that can be legally discharged to our air and water and to protect human health from at least some of the myriad of chemical products that appear in the marketplace. EPA also has important oversight duties concerning the regulation of wetlands. Thus regulatory concerns are at the heart of the matter. But it is on regulatory issues that Governor Whitman has serious philosophical and practical problems. It is her attempts to weaken wetlands and water regulations that have caused the greatest uproar in New Jersey. She herself set the stage for struggles in these areas by coming into office with barely disguised hostility toward environmental regulations. The code words used in the fall campaign by President Elect Bush—"command and control"—were heard early and often in the first years of the Whitman administration.

Her Administration spent a great deal of time promoting the Dutch model of environmental regulation which, among much else, sets long term goals and gives businesses the freedom to pick the methods. It sounded so good, until one stopped gazing at the Dutch "heavens" and focused on the ground-level attempts in Washington (the Contract with America and Congressman Schuster's "Dirty Water" Bill) and Trenton to weaken water pollution standards. We said it at the time and we worry about it for the nation's sake now: while everyone sat around Whitman's "stakeholders" tables pretending they had no big differences and promising not to sue each other (at least that was the Governor's hope), sophisticated lobbyists for industry were hellbent on ripping out the floorboards of our national and State protective standards. While the Governor held a soothing green umbrella over the processes, reassuring the public of her commitment to environmental protection, and stressing the need for efficiency and cutting red tape, water and wetland protection standards were actually being weakened.

It was not as if clues were missing for what was about to unfold. The water battles had been preceded by other policy initiatives that should have given friends of the environment pause. As David Halbfinger wrote in the *New York Times* on December, 26, 2000 ("Two Grades, One Record," pps. 1 & 26.):

. . . she cut its budget (NJDEP) by 30 percent and laid off hundreds of workers. She ordered that State regulations be no more stringent than Federal rules. And she cut inspections, eliminated penalties and introduced grace periods for violators, to the point that collections of environmental fines plunged 80 percent.

Adopting the motto "Open for Business," Governor Whitman eliminated the environmental prosecutors Mr. Florio had introduced, and replaced a public advocate's office, which had at times sued the State on behalf of environmental groups, with a business ombudsman's office to guide businesses through the permitting process. And she sought to move away from punitive measures toward voluntary compliance. (P.26)

There has been a predictable pattern in Governor Whitman's handling of environmental regulations. It began in early 1996 with the publication of a massive rewrite and weakening of water-related regulations, running to hundreds of pages in the February 5, 1996 issue of the *New Jersey Register*. The scope and sophistication of the technical changes and weakenings placed comprehension of the proposal out of the reach of most citizens. Thus began a long battle of official denial of increased pollution, op-ed and letter-to-the-editor debates and gradual retreat and withdrawal of the proposal for re-write under a growing storm of public protest, as the technical and "legal" cover for the weakenings was exposed. The same process, on a smaller scale, happened with the December 2, 1996 publication in the *New Jersey Register* of revisions to New Jersey's Fresh Water Wetlands Protection Act rules, the nation's strongest. Again, a storm of public criticism led to the rules withdrawal. They would re-emerge, 4 years later, in the summer of 2000, in a massive re-write that stretched to hundreds of pages, much larger than the original, and again have come under a hail of criticism that they are poor revisions and loaded with new General Permits that trouble conservationists.

Most recently, this year, as the culmination of a process that has dragged out since 1996, Governor Whitman's wastewater and watershed rule proposal, again running to hundreds of pages, was greeted with nearly universal incomprehensibility this past summer. Builders, the State Business and Industry Association, and municipal officials, all asked for more time to understand a rule that they had had months to digest. And with all the legal and technical help money can buy, they were still not sure they understood how the rule worked—or didn't work. This was for a rule that was supposed to help control sprawl and lend itself to predictability and certainty in the crucial policy area of wastewater infrastructure planning. Much of the environmental community, while lauding the Governor's goals, found the rule much too weak and lacking in the clarity and standards necessary to achieve this goal. As we write in December, the New Jersey Legislature is on the verge of declaring the proposal out of step with Legislative intent, very broadly defined. Our view is that despite having had nearly 4 years to decide what she wants to do, Governor Whitman has once again made nearly all parties dissatisfied and still has not made up her mind on key policy calls that are necessary to end its utter confusion.

That was what led us to make our "osprey" comparison. The osprey is a new Marine Corps hybrid aircraft that is both plane and helicopter, but which seems to do neither one very well, and crashes frequently. It looks like it has a design "identity crisis." So does Governor Whitman when it comes to environmental regulations. These are not good omens for someone heading into the top job at EPA.

Neither is the fact that the Governor keeps quite a distant, hands-off approach to these matters. In the 4 years of the watershed process, involving scores of meetings with stakeholders, the Governor never set foot in any of the meetings. In the first wetland regulations' revision proposal, when it was withdrawn under withering criticism in 1997, the press accounts made it sound like the terrible rule must have been issued under some rogue administrator from a different administration, not her very own at the New Jersey Department of Environmental Protection. It was as if she was totally unaware that her own DEP Commissioner was publishing gutting regulations that she would later have to disown. There seemed to be no connection, no responsibility. Indeed, throughout the numerous meetings we've attended through the Whitman Administration's massive regulatory revision processes, we don't ever recall seeing the Governor attend, sit down once and get her hands dirty and share her thoughts and ideas with all the suffering stakeholders. It may be one reason why these have been, despite her soothing sounds and wishes, time after time, rather fruitless stalemates that leave participants with a bitter aftertaste.

And, we should note, these have ended in stalemates after conservationists have exhausted themselves in blunting the worst of the weakening provisions.

We have heard quite a few comments recently about how Governor Whitman has protected New Jersey's coast. We think you should know that her revisions of New Jersey coastal law (called CAFRA) started out pretty well, weakened year by year as they dragged out between 1997–1999, and have ended with both builders and environmentalists suing on grounds so convoluted that they make the recent election issues in Florida seem straightforward. And the Governor flatly refused to campaign with us to get the Legislature to close an infamous coastal law loophole, which greatly compromises the effectiveness of the regulatory changes she proposed. Time after time on major environmental issues, this Governor has refused to take up any issue that might give her a difficult road in the Legislature.

Recently, in an interview with the Star-Ledger, (December 20, 2000, "Terms of Triumph and of Frustration," page 32) the Governor spoke some revealing and troubling words about her views of those that will be competing before her at EPA, and have been competing in the policy arena before her as Governor for the past 7 years. She said that

If you let it be seen that you can only have an either/or, we'll lose to business, because *they've got more gumption, more dollars to put behind efforts, more power to sway things*. We've got to show that we can strike the balance, and we've done that and done that successfully. (Our emphasis).

Now that's a marvelously revealing comment, and one that troubles us for someone heading into EPA. We thank Governor Whitman for her candor about who has more power and money, which is a frank and correct observation about this political era, as advocates for campaign finance reform never cease in telling us. But as for gumption, defined as courageous or ambitious enterprise, as opposed to just shrewd common sense (from the context it seems the Governor meant courage and ambition), we can only note that based on the state of the environmental community in New Jersey over the past 10 years, we might forgive her for this observation. That was not always the case however, because it took a lot of gumption to get the Pine-lands legislation and the nation's toughest wetlands protections passed, in 1979 and 1987, respectively. Since then, on land-use regulatory tools, the State's gone South and West with a vengeance.

But it also seems that this is a clear personal and philosophical preference with a troubling implication: one can't oppose business interests on major regulatory or legislative matters and it's futile to try, we guess even when it's in the public interest to do so. And on some matters of great importance at the EPA involving questions of human and ecosystem health, it is often necessary to impose substantial costs on business interests. Notice we didn't say always or in every situation. But this Governor's preference is clear, and it can well lead to a lack of necessary objectivity—objectivity which the EPA Administrator post demands.

We think that the Governor's attitude translates all too easily into two classes of citizenship and standing before the regulatory bodies. We said as much in watching her Administration give the cranberry growers of New Jersey the go-ahead to destroy 300 acres of wetlands even though more than 90 percent of the written comments from the public opposed her General Permit proposal and the industry was facing a known supply glut. Not only has her stance on this permit sanctioned the unnecessary destruction of wetlands, now taxpayers at the State and Federal level now are kicking in some \$73 million dollars to aid price-stricken growers and land-owners in the cranberry industry, when it was the industry's own relentless pursuit of expansion which caused their market to crash. Because of massive amounts of campaign contributions and the fact that the heads of the regulatory agencies are political appointees, we testified bluntly in 1999 that the environmental community implicitly did not have equal standing before the agencies considering the proposals.

We do think, however, that plenty of gumption was on display when one of the State's largest political donors and cranberry growers, A.R. DeMarco Enterprises, Inc. was accused of filling 22 acres of wetlands without obtaining a permit so that he could expand his cranberry bog operations. New Jersey's new Inspector General issued (November, 2000) a very critical report on New Jersey's proposed settlement of this, the largest freshwater fill in the law's history. And this under a DEP Commissioner who was trying to do something very generous for an industry to which he had very close ties. Governor Whitman had no problem with this, and never replied to our letter asking her to withdraw the permit because of Commissioner Shinn's conflicts of interest. This also has some troubling implications for the role that she will play at EPA.

Similarly, in the face of overwhelming citizen opposition, the Governor has given her full support to the biggest proposed wetlands fill in the Clean Water Act's his-

tory in the Northeast, more than 200 acres to be filled to allow a new massive new shopping mall to be build in the Meadowlands (Meadowlands Mills), just outside New York City. Here the common sense of citizens is on sounder ground than the Mills Corporation's marketing experts: "just what New Jersey needs," citizen after citizen sarcastically remarked at the public hearings, "another shopping mall." The Governor just can't seem to see that the EPA chief needs to bring a healthy skepticism to the table about some of the business community's proposals. When we see how the cranberry industry has wrecked its own market, driving small growers under, and the trends in energy "deregulation" (where are those three consecutive years of lower prices we were all promised when it was being marketed in New Jersey?), we wonder whether the Governor knows that the bloom is off the rose of the era of deregulation?

We would be unfair to the Governor and to environmental history in New Jersey if we didn't mention and thank the Governor for her rapid protection of the horseshoe crab from over-harvesting. Her actions stand in stark contrast to the horrendous anti-environmental positions of Virginia's Governor James Gilmore III, who stonewalled, year after year, in limiting his State's harvest of the horseshoe crab, before he finally relented this past year—the last holdout on the eastern seaboard.

But the full context of Governor Whitman's action on the horseshoe crab issue needs to be stated. The business interests supporting continued massive harvesting were, by comparison to other issues, a narrow segment of public opinion, truly a special, special interest. So there was no huge political or financial fall-out to her decision. Compared to the financial stakes linked to decisions she will have to make at EPA, this was, as the saying goes, a "piece of cake."

We conclude with a plea to our Senators, to our delegation in Congress: be forewarned on what the Whitman record, relevant to EPA's regulatory mission, has been in New Jersey. We wonder aloud whether we would not rather face someone going to EPA who was an upfront, open regulatory "gutter." Now we hope that we are wrong about what Governor Whitman will do at EPA, but we think our officials and our colleagues at the national environmental organizations are just a bit rosy eyed if they think, based on the historical record we have laid out, that this is a happy choice to head the Federal EPA. We sincerely hope that Governor Whitman realizes the implications of her new role and does an about face from her regulatory history in New Jersey. But the record really cannot support that optimism.

So if you see that inviting green umbrella go up, or hear talk of the Dutch model, our advice is to get your magnifying glass out and legal funds ready, and brace yourselves for grand regulatory revisions—with stealthy weakenings buried deep within. And all done, mind you, with a gracious smile and long denials that anyone so environmental friendly would even consider such actions. Gumption indeed.

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JOINT LETTER FROM NEW JERSEY SIERRA CLUB AND AUDUBON SOCIETY

SIERRA CLUB, NEW JERSEY CHAPTER,  
NEW JERSEY AUDUBON SOCIETY,  
*Princeton, NJ, January 22, 2001.*

ROBERT SMITH, *Chairman,*  
HARRY REID, *Ranking Democrat,*  
*Senate Environment and Public Works Committee,*  
*Dirksen Senate Office Building,*  
*Washington, DC.*

Re: Whitman EPA Administrator Confirmation Hearing Record

DEAR CHAIRMAN SMITH AND SENATOR REID: Please accept this letter on behalf of the over 20,000 members of the Sierra Club, New Jersey Chapter. We request that this submission and attached Exhibits be included in the formal hearing record in the Congressional Record.

We greatly appreciate the opportunity to participate in this process.

We would like to clarify the record with respect to the January 17, 2001 testimony of Governor Whitman, as well as express our overall concerns with the confirmation process.

*1. DEP Budget*

Governor Whitman testified to the effect that her Administration had increased the Department of Environmental Protection's (DEP) budget. The Governor did not offer a baseline and timeframe to support this statement. We feel that this testimony is misleading.

Exhibit 1 provides a May 16, 1996 letter from seven Republican New Jersey State Senators to Whitman opposing proposed cuts to the DEP State fiscal year 1997 budget. This letter also raised concerns with “historical erosion of staffing” at DEP, an allusion to prior Whitman DEP cuts made in her fiscal year 1995 and fiscal year 1996 budgets. This letter was written in the context of widespread public opposition to Whitman DEP budget cuts. We have dozens of New Jersey news accounts that document this record. Exhibit 2 provides a Newark Star Ledger January 14, 2001 news story that claims Whitman cut the DEP budget 30 percent. Governor Whitman diverted over \$80 million in funds established for environmental purposes to the General accounts that document this record. Exhibit 2 provides a Newark Star Ledger January 14, 2001 news story that claims Whitman cut the DEP budget 30 percent. Governor Whitman diverted over \$80 million in funds established for environmental purposes to the General Fund. Whitman DEP cuts resulted in a mandatory workweek reduction at DEP from 40 to 35 hours/week. DEP accounts for less than 2 percent of the New Jersey State budget. Federal funds and regulatory fees and fines comprise about 50 percent of DEP revenues. Despite this fiscal reality, DEP was targeted for layoffs and budget cuts in the first 3 Whitman budgets (Fiscal Year 1995—Fiscal Year 1997). The DEP budget, as a percentage of the total State budget, has declined under Whitman.

Given these, and other facts, it is misleading to suggest that Whitman has increased the DEP budget.

### *2. Mills Corporation development*

Governor Whitman testified to the effect that she had not taken a position regarding the Mills’ Corporation development. We feel that this is misleading.

Governor Whitman herself may or may not have personally addressed the Mills’ Corporation Plan for its largest mall (nationwide) ever in the Hackensack Meadowlands, but her Administration has certainly supported the Hackensack Meadowlands Development Commissions (HMDC) Special Area Management Plan (SAMP). The HMDC has regional planning and land use powers in the Hackensack Meadowlands. The SAMP is the formal planning and regulatory framework that contains (and legally had to contain) the development and wetland fill plans for the Mills’ mall.

Whitman’s Commissioner of the Department of Community Affairs (DCA), Jane M. Kenny, is the Chairman of the HMDC. According to a DCA press release dated April 1, 1999, Kenny “signed the SAMP Guidance Letter that will be published in the Federal Register next week.”

Despite the fact that the Guidance Document signed off on the destruction of 465 acres of wetlands, in best Orwellian fashion, the press release headline claimed that “Governor Whitman’s Open Space Goals Move Forward, More Meadowlands Wetlands Acreage Preserved, SAMP Revisions to be Published in Federal Register.”

Of course, this specific press release never mentions the Meadowlands Mills project. Instead, in trumpets the improvement over an earlier 1995 draft SAMP that called for filling of 842 wetland acres.

Formal comments on the SAMP’s July 20, 2000 draft Environmental Impact Statement were filed October 11, 2000 by Professor Ed Lloyd of Columbia University School of Law, Jennifer Davis of NRDC, James Tripp of Environmental Defense and Susan Kraham of the Rutgers Environmental Law Clinic. These comments indicate that the size of the proposed wetlands fill is now 134 acres, not the 90 portrayed in the 199 SAMP, and that the Mills Corp’s wetland “enhancement” plan “will actually cause significant adverse impacts to 221 additional acres of extant wetlands, and will itself require Section 404 and Section 10 permits, as well as mitigation.” (page 21 of comments).

### *3. Voluntary Compliance*

Governor Whitman testified to the effect that she supported a voluntary compliance approach. We feel it important to document what that approach has meant to New Jersey environmental programs. While the concept may appear to be limited to traditional environmental compliance and enforcement issues, Whitman has used it as a major policy theme that has been applied across-the-board in regulatory affairs. Examples:

- In 1991, New Jersey enacted a model Pollution Prevention Act. The Act sought “significant reductions” in toxics use. Whitman’s DEP Commissioner wrote a letter to industrial facilities regulated by the Act that the DEP would not enforce the first round of planning requirements of the Act. As a result, about 25 percent of facilities were late or did not file required plans, and toxics use reduction, the cornerstone of the Act, has been completely ignored.

- New Jersey has a national model known as the Clean Water Enforcement Act. The Act imposes mandatory penalties for violation of effluent limits in NPDES permits. This law is responsible for sharp reductions in the number of significant violators of State water laws. Under the “voluntary approach” Whitman did not oppose, and in fact supported, certain efforts by the New Jersey Legislature to gut this law.
- In developing State air pollution control regulations to assume the Clean Air Act Title V Operating Permit Program, DEP staff recommended that the State adopt requirements to submit both air quality modeling and risk assessment for Title V permits. Staff were over-ruled, and the DEP adopted regulations that make modeling ends risk assessment “voluntary.” We understand that not a single industrial facility, including major facilities that emit tons of hazardous air pollutants, has voluntarily done modeling and/or risk assessment.
- Under Whitman, NJDEP abandoned its historic State hazardous site cleanup program. Whitman signed legislation that: a) eliminated the statutory preference for permanent remedies; b) prohibited DEP from requiring alternatives analysis; c) vested the sole authority to select a remedy in the hands of the responsible party or developer; d) authorized large volumes of highly contaminated materials to be left onsite and “stabilized” with inadequate caps and other “institutional controls”; and provide only minimal notice to impacted communities just 45 days prior to construction (after all DEP approvals had been issued). Whitman abandoned the historic use of legally enforceable Spill Act Directives and Administrative Consent Orders (ACO) to control cleanups in favor of unenforceable “voluntary agreements.” Whitman refunded prior ACO mandated financial assurance to responsible parties and eliminated stipulated penalties for failure to comply with an ACO or Directive.
- Whitman abandoned the 1993 Statewide Solid Waste Management Plan, including that plan’s source reduction, toxics use reduction, and packaging and materials management policies. We are unaware of any industry that has voluntarily come forward to comply with the policies of the 1993 Plan.
- Whitman issued an Executive Order 27 (1994) that mandated that State regulations that are more stringent than Federal requirements be justified by cost benefit analysis. This Order resulted in the across-the-board weakening of, among other things, State regulation for air, water and waste permits, deregulated used oil as hazardous waste and eroded chemical plant safety requirements addressed under the provisions of Section 112 (r) of the Clean Air Act Amendments of 1990.

Exhibit 3 documents that in a memorandum of July 29, 1994, State DEP Assistant Commissioner Nagy found that the USEPA Federal 112 (r) requirements were “technically unjustifiable” and would “correlate with a significant increase in the number of potential fatalities” (Nagy, p. 2).

We know of no chemical facilities that have agreed with this finding and voluntarily agreed to comply with more protective State standards.

Similarly, EO 27 resulted in weakening of water quality study requirements for NPDES discharge permits proposed by the DEP on February 5, 1996 and in the above mentioned Title V operating Permit program. We are similarly not aware of any industrial facilities that have voluntarily complied with more protective State standards.

We find these facts particularly troubling in light of the Whitman testimony regarding the need to retain Federal EPA flexibility to account for unique local and State concerns. If Whitman supports such flexibility, then why did she issue EO 27, which eliminated New Jersey flexibility to address local concerns for purposes of Federal consistency.

#### *4. No Further Action letters*

Governor Whitman testified that New Jersey had issued “7,000” No Further Action (NFAs) in the New Jersey State hazardous site remediation program. We strongly believe that the Governor misspoke, perhaps by inadvertently equating the universe of known contaminated sites with the issuance of NFAs. Because a NFA letter releases a polluter from liability under the State program, it is a critically important regulatory document. Accordingly, we request that the committee ask the Governor to clarify her testimony regarding NFAs.

#### *5. MTBE liability*

Governor Whitman testified to the effect that Congress lacked the authority to address liability for MTBE cleanup. We believe she misspoke. Given the importance of this issue, we request that the committee ask the Governor to clarify her testimony regarding MTBE liability.

#### *6. Sound Science*

Governor Whitman touted “sound science” as the backbone of regulatory policy. However, in New Jersey, Whitman adopted an “affirmative action” policy for envi-

ronmental science, whereby DEP research funds must be used at New Jersey institutions, not necessarily on the most advanced science.

Exhibit 4 documents what has become a troubling pattern, whereby the Governor makes press remarks that contradict the undisputed facts and recommendations of her Agency scientists.

In closing, we wish to note that we were disappointed that neither the Whitman testimony nor the committee's questions were able to document and hold Whitman accountable for her record in New Jersey.

We again appreciate the opportunity to participate in the process and again thank you for your generous assistance in this important matter.

Sincerely,

BILL WOLFE, *Policy Director*  
*Sierra Club, New Jersey Chapter.*

BILL NEIL, *Director of Conservation,*  
*New Jersey Audubon Society.*

#### LIST OF EXHIBITS

Exhibit 1—New Jersey Senate—letter to Whitman opposing DEP budget cuts (May 16, 1996)

Exhibit 2—"Questions for the New Environmental Chief"—Newark Star Ledger (Tom Johnson, January 14, 2001)

Exhibit 3—memorandum of DEP Assistant Commissioner Nagy (July 29, 1994)

Exhibit 4—confidential memorandum of DEP Division of Science and Research regarding factual errors made to press by Whitman (March 28, 1994)—Note—sworn testimony of DEP officials supporting conclusions that Whitman and DEP Commissioner Shinn conspired to suppress and downplay the significance of environmental mercury and fish tissue research is available upon request.

Exhibit 5—Questions for Whitman, Sierra Club, New Jersey Chapter.

#### EXHIBIT 1

NEW JERSEY SENATE,  
*Trenton, NJ, May 16, 1996.*

The HONORABLE CHRISTINE TODD WHITMAN, *Governor,*  
*State of New Jersey*  
*State House CN-001*  
*Trenton, NJ 08625-0001.*

DEAR GOVERNOR WHITMAN: Among all the responsibilities of government, there are few of greater importance, or of more concern to the public than the protection of New Jersey's environment and the quality of public health. We know that protecting these important concerns, and carrying out these responsibilities through appropriate State actions and support is a priority you share with the Legislature and the general public. It is in recognition of that shared commitment to protecting New Jersey's environment and public health that we write to you today.

We are greatly concerned that your proposed budget for fiscal year 1997 does not adequately provide the necessary resources to State government to meet the environmental challenges facing the State. This is especially true in the proposed funding for the Department of Environmental Protection.

The proposed budget would require dramatic reductions in scientific, technical and human resources critical to the mission of the Department. In a State facing the environmental issues New Jersey does, we need to respond aggressively to the challenges of insuring that our air is safe to breathe, the water safe to drink or the empty lot next door safe to play in. It is highly questionable as to whether the Department will maintain the requisite expertise and resources under the fiscal year 1997 budget proposal to answer these questions and respond in a way protective of public health and the environment.

We are also concerned that the proposed reduction in resources will not fulfill the new approaches to environmental protection. The successful implementation of the initiatives under discussion will require additional resources above and beyond those currently available to the DEP. Many of the "reengineering" initiatives being undertaken by the Department will be fundamentally handicapped by the proposed reductions in resources contained in the current budget proposal.

Due to these concerns we feel that it is important that you be aware we may not be able to support this budget proposal, should it come before the Senate in its current form. The historical erosion of staffing at the Department experienced over past

budget cycles cannot be continued because the environmental goals we have outlined above will not be attainable.

We feel strongly that the proposed layoffs of DEP personnel will negatively impact the Department's ability to effectively safeguard the environment and protect public health. Therefore, we cannot support a final DEP budget which contains employee layoffs.

We are, of course, committed to working with you to restore the resources we feel are necessary to carry out the critical functions of the Department of Environmental Protection. We feel that it is very possible to identify appropriate resources, sources of funding and approaches to achieve this, and we ask for the opportunity to explore these with you and your staff.

Respectfully yours,

JOHN O. BENNETT,  
*Senate Majority Leader.*

ANDREW R. CIESIA,  
*Senator.*

JOSEPH M. KYRILLOS,  
*Senator.*

HENRY P. MCNAMARA,  
*Senator.*

JOSEPH A. PALAIA,  
*President Pro Tempore.*

JACK G. SINAGRA,  
*Senator.*

ROBERT W. SINGER,  
*Senator.*

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[From the Newark (NJ) Star-Ledger, Wednesday, January 3, 2001]

BUSH-WHITMAN AGENDA WILL HURT ENVIRONMENT

(By Bill Wolfe)

President-elect George W. Bush has nominated Governor Christie Whitman as Administrator of the Federal Environmental Protection Agency. In the nomination speech, Bush revealed his environmental agenda by declaring that it's time to move beyond "the old central command and control mindset." Whitman, who has presided over her own "open for business" environmental policy, agreed, adding, "I know what it's like to be on the receiving end of mandates from Washington."

Bush attempted to present this agenda as mainstream, citing what he claimed was "a growing consensus to this country about environmental policy."

We strongly disagree that any such consensus exists. The Bush-Whitman rhetoric reflects a dangerous combination of free-market and states'-rights conservative ideology. This agenda would severely weaken historic protections for the nation's air and water—protections that the overwhelming majority of Americans support and have come to expect from the EPA.

Under Federal law, the EPA has three primary functions: to set protective regulatory standards, to enforce these standards against regulated industries and to oversee and hold States accountable for implementing programs to achieve these standards.

For the past 30 years, States have had a poor record in protecting the environment. The progress that has been made has been the result of strong Federal standards, vigorous enforcement against polluting industries and the EPA's willingness to sanction poorly performing States.

Bush and Whitman reject this history and equate it with a failed Soviet-style "command and control" model. They believe that business and industry are already overregulated, that industry can set its own standards and that industry voluntarily complies with current standards. As Governors, Bush and Whitman have assailed EPA oversight, sanctions and "mandates from Washington."

These radical beliefs have consequences. A Bush-Whitman agenda would bar the EPA from developing necessary new standards and likely lead to a rollback of existing protections. These standards include protections concerning how much cancer-causing material can be discharged into our air and drinking water. Especially vul-



nerable to rollback are the EPA's recently adopted ozone, fine particulate and diesel standards, which protect our lungs.

As Texas Governor, Bush had an abysmal environmental record and was unable to convince the American public otherwise. Whitman has a similarly poor record, gutting enforcement and systematically weakening environmental standards. The truly dangerous distinction is that Whitman has effectively marketed her support for "open space" and her outdoors image to mask strongly anti-environmental policies.

As they say, wherever the Nation is going, New Jersey gets there first. I can see it now—Whitman doing an Alaskan photo-op canoe trip as the oil rigs drill the Arctic National Wildlife Refuge.

Bill Wolfe is policy director for the Sierra Club's New Jersey chapter. He served as a policy planner at the New Jersey Department of Environmental Protection from 1985 to 1995.

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[From the Trenton (NJ) Times, January 1, 2001]

WHITMAN APPOINTMENT IS A CAUSE FOR CONCERN

(By Bill Wolfe)

On December 22, 2000, President-elect Bush nominated Governor Christine Whitman as U.S. Environmental Protection Agency Administrator. In his nomination speech, Bush revealed his environmental policy agenda by declaring that it's time to move beyond "the old central command and control mindset." Whitman, who has presided over her own "open for business" environmental policy agreed, adding, "I know what it's like to be on the receiving end of mandates from Washington."

Bush attempted to present this agenda as mainstream, by citing what he claimed was "a growing consensus in this country about environmental policy."

I strenuously disagree that any such consensus exists.

The Bush/ Whitman rhetoric reflects a dangerous combination of free market and State's rights conservative ideology. If allowed to go forward, this agenda would severely weaken historic protections for the nation's clean air and clean water protections that the overwhelming majority of Americans support and have come to expect from the EPA.

What's at stake are crucial decisions made by the EPA, essentially, whether Americans can continue to rely on a national environmental protection program and whether the EPA can continue to function as an institution that enforces the nation's laws and holds the States' feet to the fire to implement the nation's clean air, clean water and toxic laws.

Under the various Federal environmental laws, the EPA has three primary functions: 1) to set protective regulatory standards; 2) to enforce these standards against regulated industries; and 3) to oversee and hold the States accountable for implementing programs that achieve these standards.

For the past 30 years, States have had a poor track record in protecting the environment. The progress that has been made has been the result of strong Federal standards, vigorous enforcement against polluting industries—and the EPA's willingness to sanction poorly performing States.

Bush/Whitman reject this history and equate it with a failed Soviet style "command and control" model. They believe that business and industry are already over-regulated, that industry can set its own standards and that industry voluntarily complies with current standards. As Governors, both Bush and Whitman have assailed EPA oversight, EPA sanctions and EPA "mandates from Washington."

These radical beliefs have consequences. A Bush/Whitman agenda would bar the EPA from developing necessary new standards and will likely lead to a rollback of existing protections. These standards include protections concerning how much cancer-causing substances are allowed to be discharged into our air and drinking water, especially vulnerable to rollback are the EPA's recently adopted ozone, fine particulate and diesel standards that protect the lungs of our children.

How can a Whitman-led EPA effectively enforce laws and oversee State programs when she and Bush believe in "voluntary compliance" and have opposed EPA oversight?

As Governor of Texas, Bush had an abysmal environmental record, but he was inept at selling it to the American public. Here in New Jersey, Whitman had a similarly poor record by gutting enforcement and systematically weakening environmental standards. The truly dangerous distinction is that Whitman has effectively

marketed her support for "open space" and outdoors image to mask strong anti-environmental policies.

As they say, wherever the Nation is going, New Jersey gets there fast. I can see it now—Whitman doing an Alaskan photo-op canoe trip as the oil rigs drill the Arctic National Wildlife Refuge.

STATE OF NEW JERSEY,  
DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
*Trenton, NJ, July 29, 1994.*

MEMORANDUM TO: Robert C. Shinn, Jr., Commissioner.

FROM: Lewis J. Nagy, Acting Assistant Commissioner Policy and Planning.

SUBJECT: TCPA—Proposed Rule Amendment to Add USEPA Regulated Substances to its List.

Section 112(r) of Federal Clean Air Act requires EPA to create an Accidental Release Prevention Program (ARP) that will be a nation-wide version of the Department's Toxic Catastrophe Prevention Act (TCPA) program. EPA is developing their rules in two separate rulemaking processes. On January 14, 1994 they adopted the list of chemicals to be regulated and the triggering threshold quantity for each chemical. The remainder of the rule that actually defines risk management programs was proposed on October 20, 1993, and is not expected to be adopted until late 1994 (the earliest) or sometime during 1995 with compliance required 3 years from adoption. Recent court cases upholding the Clean Air Act implementation dates could require facilities to be in compliance by December 1996 instead of 1997 or 1998.

As part of this Department's Air Operating Permit rule submittal to USEPA, a demonstration is required that the Department can enforce the ARP rule as part of the operating permit conditions. The attached rule proposal is the first step to meet that requirement. When EPA adopts the remainder of the ARP rule, a second TCPA rule revision will probably be necessary to reconcile technical requirements, document submittal, submittal dates, etc.

This proposal adds substances from the EPA list to the TCPA list, namely, 28 toxics, 52 flammables and 64 explosives. With three exceptions, the corresponding triggering threshold for existing TCPA substances, that are also on the EPA list, was set at the lower threshold of the two rules. In most cases, this was the TCPA threshold. The existing TCPA list contains 11 substances mandated in the TCPA statute and their thresholds given in the statute, and 94 substances added to the list by using a mathematical criteria based on toxicity and volatility with thresholds set by modeling criteria. The modeling criteria were based on the definition of an extraordinarily hazardous substance (EHS) given in the Act; that is, one which if released at sufficient quantity could result in death or permanent disability beyond the property line. The model considered an average population density of the 25 cities located near New Jersey's northeast to southwest (I-95—Turnpike—I-295) corridor of high EHS usage. The thresholds correlate with one fatality beyond a property line that is assumed 100 meters from the potential accidental release point.

This proposal raises the threshold given in the Act for three of the original chemicals based on using the Department's criteria: chlorine from 500 to 1,000 lbs.; bromine from 100 to 1,000 lbs.; and toluene-diisocyanate from 100 to 10,000 lbs. EPA's adopted thresholds for these substances are 2,500, 10,000 and 10,000 [sic] lbs., respectively. On adoption, EPA significantly raised the thresholds on 71 of its 77 toxic substances. Industry (e.g., CIC and NJBIA) would obviously prefer backing off to the EPA thresholds. If EPA had adopted its thresholds as proposed, that would have been the preferred option, since the proposed thresholds were in general agreement with TCPA criteria. (The original USEPA thresholds averaged 4.7 times the TCPA values with 18 of the 60 substances common to both lists assigned from 5 to 40 times corresponding TCPA values.) However, the increases made by EPA on adoption were so large (averaging some 18 times the TCPA values with 33 of the 60 substances common to both lists assigned from 5 to 167 times corresponding TCPA values) that they are not technically Justifiable in an area as densely populated as New Jersey where substances are generally handled on small sites, and would correlate with a significant increase in the number of potential fatalities.

This proposal requires an initial registration of regulated facilities within a short period time. This early registration will provide the Department with the information on the identity and number of new registrants coming into the program. It is anticipated that some 558 new registrants will be added to the existing 123 registrants that would remain (after an anticipated seven of the current 130 would be exempted from the program). The early registration will allow the Department to

begin working with the new registrants in an outreach mode to help them prepare the required risk management plans, etc. The Department would offer counseling to small business. Results of its current cooperation helping USEPA develop model risk management programs would be shared with small business for whom those models would be appropriate. Some three hundred new registrants will be for propane facilities that will require significant help in complying with these rules.

TCPA is a fee funded program. Early registrations will have two key impacts related to fees. By substantially increasing the size of the regulated community, but maintaining the Bureau's budget at or near its current level, fees for existing registrants will drop significantly. The second impact of the early registration (the new registrants added will be charged fees during January 1996) will be a decrease in the number of registrants after the first billing. In 1988, the initial program saw several hundred facilities reduce their inventories of regulated substances to below the triggering thresholds upon receipt of their first TCPA bill. This immediately reduced the potential risk at these facilities while at the same time exempting these facilities from the fees and rule requirements. The early registration will narrow the field of registrants quickly so that the Bureau's resources can be devoted to those facilities that will remain in the program.

It is anticipated that this proposal will be on the agenda at the August 16, 1994 legal meeting so that it can be forwarded to the Office of Administrative Law by August 19, 1994 (alternative September 2, 1994).

STATE OF NEW JERSEY,  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY,  
*March 28, 1994.*

CONFIDENTIAL

MEMORANDUM TO: Commissioner Robert Shinn.

THROUGH: Robert Tucker, Ph.D., Director.

FROM: Leslie McGeorge, Assistant Director.

SUBJECT: Information on Mercury in Fish.

Over the past several weeks, it has been observed that information attributed by the press to the Governor's Office on the issue of mercury in fish has contained some technical inaccuracies. We offer the information in this memorandum for your consideration in providing the Governor's Office with further clarification of this issue.

As was stated by the Governor's Office, there are three forms of mercury:

Elemental Mercury (metallic mercury). This is the type of mercury used in thermometers.

Inorganic Mercury (mercury salts). An example is mercuric chloride.

Organic Mercury. Methylmercury is the most important organic mercury compound in terms of environmental exposure.

Contrary to the statements reported in the press, all three forms of mercury are toxic to humans. Elemental mercury is volatile, and it is toxic when breathed from the air; exposure to elemental mercury can cause effects on the central nervous system. The toxicity of the other two types of mercury (inorganic and organic) can occur through ingestion, which is the exposure route relevant to mercury in fish. Inorganic mercury is toxic to the kidney. Methylmercury, the organic mercury of primary concern, is toxic to the central nervous system. The most sensitive toxic effect of Methylmercury in non-pregnant adults is paresthesia (abnormal sensations in the skin). Methylmercury is also toxic to the developing fetus, and causes defects in the development of the nervous system. This developmental toxicity is the most sensitive effect of exposure to methylmercury.

Of the different forms of mercury, all scientific data indicate that essentially all of the mercury in fish is methylmercury. The most recent and reliable investigation into the occurrence of methylmercury in fish conducted under ultraclean laboratory conditions (Bloom, 1992) showed that almost all of the mercury in the edible portion of fish and shellfish (muscle tissue) is in the form of methylmercury. This study included multiple samples (at least 3) of 15 species. For all species, the average percentage of methylmercury was at least 91 percent of total mercury, and for all freshwater fish species, methylmercury was 96 percent or more of total mercury. These results are generalizable to all marine and freshwater fish.

Information attributed to the Governor by the press indicated that there may be a marked difference in the ease of metabolism of different forms of mercury, and that the toxicity of mercury is dependent on whether it is released naturally or by

man-made processes. Actually, the time required for the body to rid itself of a dose of mercury is generally similar for all three forms of mercury. Additionally, the toxicity of a given form of mercury is not dependent on whether it originated from natural or man-made processes. Any type of mercury released may undergo changes from one form to the other in the environment. The mercury in fish may have come from either source, but the origin of the mercury in the tissue is not relevant to the potential for toxicity to humans.

In summary, there are three forms of mercury. For all intents and purposes the only form of mercury found in fish is methylmercury. Exposure to methylmercury through fish ingestion can pose a significant potential for adverse human health effects. Mercury in fish may originate from human or natural processes, but this distinction is not relevant from a human health perspective.

The Division of Science and Research has additional information on all of the points mentioned above. We would be happy to discuss these issues further with you at your convenience if you so desire.<sup>1</sup>

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QUESTIONS ON THE WHITMAN ENVIRONMENTAL RECORD

(From the Sierra Club, New Jersey Chapter, Bill Wolfe, Policy Director)

*Governor Whitman has had some positive accomplishments in New Jersey. A key question is whether Whitman will pursue these policies at a National level as EPA Administrator.*

*Statement:* As Governor, you joined fellow northeastern States and EPA in litigation to enforce the Clean Air Act on coal burning power plants in the Ohio Valley. As a member of the National Governor's Association, you lobbied your fellow Governor's to support EPA's efforts to implement the Clean Air Act, especially regarding reduction of emissions from Midwest coal power plants. As Governor of New Jersey, you supported EPA's recently adopted ambient ozone, fine particulate, mercury and diesel standards under the Clean Air Act.

*Question:* As EPA Administrator, will you vigorously defend each of these EPA regulatory standards against industry legal challenges and against attacks from Congressional oversight?

Will you continue EPA's Clean Air Act litigation strategy and enforcement efforts to force individual plants and State's to reduce emissions from Midwestern coal power plants?

*Statement:* Under your leadership as Governor, former New Jersey Attorney General Poritz signed on to a letter written by the National Association of Attorney's General strongly opposing efforts in the 104th Congress to pass "takings" legislation. As you know, some conservative legal scholars argue that many EPA environmental protection standards, such as wetlands restrictions under the Clean Water Act, constitute compensable "regulatory takings."

*Question:* What are your views on property rights and "regulatory takings," and will you continue to implement former New Jersey AG Poritz' views in EPA regulatory programs?

*II) Whitman has had a poor environmental record in New Jersey—will it carry forward at EPA?*

*Statement:* Given New Jersey's unique challenges, New Jersey has had a long history of developing model environmental protection programs and in adopting protective air, water, waste and soil standards. These standards have been backed up by strong and well funded environmental and public health regulatory programs. New Jersey was first State to adopt laws addressing national issues such as Superfund hazardous waste cleanup, Worker and Community Right-to-Know; Clean Water Enforcement; chemical accident release prevention, Pollution Prevention; recycling and solid waste planning/management (addressed under Subtitle D of Federal RCRA), et al.

Reversing this trend, in 1994, as Governor, you issued Executive Order No. 27. EO 27 seeks to make Federal and State requirements consistent. EO 27 requires that any State regulation that exceeds in scope or is more technically stringent than its Federal counterpart be justified by cost-benefit analysis. Under EO 27, if the State standard is not justified by cost-benefit analysis, it is to be rolled back and made consistent with the minimum Federal requirement.

For example, Section 112 of the 1990 Clean Air Act Amendments established a chemical Accidental Release Prevention Program (ARP). This program overlaps and

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<sup>1</sup> Reference: Bloom, N.S. (1992). Can. J. Fish. Aquat. Sci. 49, 1010.

was modeled on New Jersey's 1984 "Toxic Catastrophe Prevention Act." In an attempt to implement EO 27 in developing State regulations pursuant to TCPA, DEP Assistant Commissioner Nagy warned DEP Commissioner Shinn in a July 29, 1994 memorandum that:

" [EPA's Federal thresholds to trigger "extraordinarily hazardous substance" requirements] are not technically justifiable in an area as densely populated as New Jersey where substances are generally handled on small sites, and would correlate with a significant increase in the number potential fatalities" (Nagy, 1994—attached)

Despite this dire warning, the more stringent State TCPA regulations recommended by Assistant Commissioner Nagy were never adopted by NJDEP.

(Note: the Whitman EO 27 policy was also a justification for cutting New Jersey's Right to know list by about 2,000 chemicals and adopting the Federal RTK reporting thresholds; for rolling back New Jersey's water pollution and air discharge permit program requirements; ad nauseum).

*Question 1.* Do you still support the Federal consistency policy of EO 27 (and your cuts to New Jersey RTK list), in light of the above illustration?

The Clean Water Act expressly prohibits EPA or States from considering economic costs in developing surface water quality standards. Such water quality standards must be based solely on science and designed to protect aquatic and human health. Yet, in February 1996, despite prior written opposition in 1995 by USEPA Region II, your Administration proposed regulations to weaken New Jersey's surface water quality standards via an entirely new category of variance to allow industry to consider costs and technological achievability.

*Question 2.* Is the underlying cost-benefit justification approach to EO 27 relevant or appropriate to EPA regulation under the Clean Water Act, including EPA's development of national water quality standards and in EPA's review and approval of State standards? If so, how?

*Question 3.* Industry litigation now before the U.S. Supreme Court challenges EPA's recently adopted Clean Air Act standards on the basis of failure to pass cost-benefit analysis tests.

*Question 4.* How will you address the issue of the role of costs in developing EPA national ambient air quality standards under the Clean Air Act; in defending the legal challenge now before the court; and in implementing and enforcing EPA's recently adopted air quality standards?

*Statement:* USEPA Region II, in October 2000, imposed sanctions on New Jersey under the Clean Water Act and withheld \$2.2 million in Section 106 Federal grants. In July 1999, the USEPA Office of Inspector General issued an Audit Report of New Jersey's water monitoring and clean water act programs. The Report found key deficiencies, including: t New Jersey failed to adopt water quality standards for 33 of 126 EPA priority pollutants; New Jersey lacked a strategy to monitor all State waters as required by the Act; that recent budget cuts had further reduced the States ability to monitor water quality; and that New Jersey had "dropped the ball" in implementing the provisions of Section 303(d) of the Clean Water Act. Environmental groups have filed litigation now in Federal court to force USEPA to direct New Jersey to comply with the requirements of Section 303(d) of the Clean Water Act. Nationally, there are 36 lawsuits filed by enviro groups to force EPA to force States to comply with Section 303(d). Section 303(d) of the Act requires that States list all rivers and stream that fail to meet water quality standards and develop cleanup plans. Cleanup plans are know as "total maximum daily loads" or "TMDLs." New Jersey has over 1,000 sections of rivers/streams that require TMDLs, but the NJDEP has developed only a handful.

USEPA adopted national TOOL rules in July 2000. These rules were opposed by forestry, mining, and agricultural "dirty water" interests. The TMDL rules were adopted by the Clinton EPA essentially in defiance of a rider passed by Congress. Some Members of Congress have expressed an interest in legislatively vetoing EPA's new TMDL rules.

*Question:* As Governor, you supported a National Governor Association's policy opposed to the TMDL program. AS Governor, you have a weak record in implementing the TMDL program. Given opposition in Congress, will you support aggressive implementation of the TMDL program at EPA and the States?

*Statement:* We understand that you support a "voluntary compliance" enforcement policy. The NJDEP cut fines and penalties against regulated industries and developers by 80 percent over the first 4 years of your administration. Air inspections were reduced by 44 percent, compared to the last years of the Florio Administration. You abolished the Office of Environmental Prosecutor. You signed a "Grace Period" bill which prohibits the State DEP from issuing enforcement penalties for "minor"

violations. The State DEP never proposed regulations to define "minor violation." The NJDEP established an Office of Dispute Resolution in lieu of the traditional enforcement approach to settle enforcement matters.

*Question:* What will your enforcement policy be at USEPA? How will you assure that the nation's environmental laws are enforced? How will you assure that States are enforcing Federal laws in State delegated national environmental programs?

*Statement:* As Governor, you abolished the Offices of Environmental Prosecutor and Public Advocate. You also created an Office of Business Ombudsman.

*Question:* Will you support and retain the EPA's Office of Ombudsman?

*Statement:* As Governor, you publicly advocated "regulatory reform." However, your July 1995 "Strategy to Advance Regulatory Reform" (STARR Report) explicitly seeks to provide "regulatory relief, not "regulatory reform" (Source: STARR, page 1117).

Specific "regulatory relief" strategies identified in the DEP environmental section of your STARR Report include:

- Cutting New Jersey's RTK list from 3,000 to 800 chemicals;
- Increasing the thresholds for DEP environmental reviews of local sewer plans;
- Reduction/elimination of compliance monitoring at major industrial facilities;
- Allowing industry lobbyists to rewrite State air permit regulations;
- Rollback of New Jersey's model Clean Water Enforcement Act;
- Easing solid water industry economic regulation;
- Rolling back New Jersey's hazardous waste management regulations to Federal minimums deregulating used oil as a hazardous waste;
- Relaxing standards for hazardous waste site cleanup;
- Reducing enforcement penalties;
- Providing grace periods;
- Polluter immunity for self disclosed violations;
- Alternate dispute resolution;
- Emission trading and privatization of permit reviews and hazardous site clean-ups;
- Budget and staff reductions at DEP.

*Question:* Will you pursue similar regulatory relief policies at EPA?

*Examples of upcoming key Whitman EPA oversight issues.*

#### *I. Key policy issues/themes:*

*Question 1.* Can Whitman oversee and enforce the Federal environmental law on the States, given both Bush and Whitman State's rights and federalism/devolution philosophy (e.g. Whitman has opposed EPA oversight as "mandates from Washington")?

*Question 2.* Can Whitman enforce the Federal environmental laws against polluters, given her "open for business" "voluntary compliance" philosophy, and the "free market" philosophy she shares with Bush?. These views are extremely hostile to environmental regulation.

*Question 3.* Can a Whitman lead EPA invest in and develop the science and air/water monitoring data necessary to support new environmental standards, given her New Jersey record where she: a) slashed the NJDEP's budget by 30 percent; b) severely cut back NJDEP science; c) reduced air/water quality monitoring networks; and d) actually issued Executive Order No. 27 that rolled back New Jersey's stringent environmental standard to minimum Federal requirements.

EPA oversight of State's is pervasive. EPA has oversight of virtually everything a State agency does, such as issuing environmental permits, enforcement actions, adoption of regulations and standards, siting of dangerous facilities such as hazardous waste incinerators and landfills, and settlement of litigation. EPA oversees hundreds of millions of dollars of Federal aid to States to assure that it is spent to protect the environment, as intended by Congress.

#### *II) Some specific examples (past and present)*

##### *A) Clean Water Act*

- Whitman touts "open space" as her legacy, including a major new Whitman regulation called the "watershed and water quality management planning rules." These rules are strongly opposed by the New Jersey enviro community. The rules are subject to review and approval by USEPA under Sections 303 and 208 of the Clean Water Act. Will Whitman EPA objectively and critically review and oppose these rules?

- October 2000, EPA Region II imposed sanctions on New Jersey by withholding \$2.2 million in Federal grant money because the NJDEP was 9 months late in sub-

mitting a critical bi-annual water quality inventory Report. The Report was submitted to EPA by DEP in November and is now pending EPA review. Because the Report shows significant continuing deficiencies in water quality monitoring, restoration and water quality standards, we are urging EPA to withhold the money until NJDEP makes improvements.

- In July 1999, USEPA Region I (Boston) Inspector General issued an audit report that was critical of NJDEP's Clean Water Act programs under Whitman. NJDEP has not resolved the deficiencies and has flouted the Report.

- In 1995 and 1996, USEPA Region II opposed efforts by the Whitman DEP to weaken the New Jersey surface water quality standards and National Pollution Discharge Elimination System (NPDES) water pollution control permit program. The proposals were withdrawn. After 5 years of stall, in December 2000, NJDEP proposed new State water quality standards. This proposal is subject to USEPA review and approval under the Clean Water Act.

- Environmental groups have pending litigation in Federal District court to force USEPA to force New Jersey to clean up over 1,000 polluted waters that do not meet Federal water quality standards and are not fishable and swimmable. Cleanup plans are known as "TMDLs" (for "total maximum daily loads"). NJDEP estimates that cleanup could cost over \$7 billion. NJDEP and USEPA have dragged their feet in implementing the TMDL program under Section 303(d) of the Clean Water Act, which was required to be implemented in 1978 by the 1972 Clean Water Act. NJDEP and USEPA have a Memorandum of Agreement to implement the TMDL program over the next 13 years. The TMDL agreement and each and every TMDL are subject to EPA review and approval.

- USEPA finalized controversial national TMDL regulations in July 2000. Clinton ordered EPA to adopt them in defiance of a rider passed by Congress. What will Whitman EPA do in the face of this strong opposition by timber, farming, mining, industrial and municipal sewage treatment plants to these regulations?

- In 2000, USEPA opposed an NJDEP sweetheart enforcement deal with a politically connected major republican campaign contributor for the largest illegal wetlands destruction in New Jersey State history. A new settlement is under negotiation.

- EPA opposed versions of a "general permit" intended to weaken wetlands protections for cranberry growers in the Pinelands.

- New Jersey recently propped but has yet to adopt major new statewide wetlands regulations that are subject to review and approval by USEPA.

- Construction of a Route 92, a major new central jersey highway connecting Route 1 with the New Jersey Turnpike, hinges on EPA approval of wetlands permit.

- Hackensack Meadowlands Special Area Management Plan (SAMP) would allow massive destruction of wetlands in the meadowlands. The SAMP is subject to USEPA review and approval.

- Meadowlands Mills mall development hinges on EPA approval of wetlands permit.

- South Jersey/Philly port dredging for the "Delaware deepening" hinges on EPA approvals?

- New Jersey is unique nationally in that we discharge large amounts of industrial and sewage treatment wastewaters into rivers UPSTREAM of public drinking water supply intakes. These conditions warrant special attention (e.g strict monitoring and tight discharge standards). NJ DEP under Whitman has NOT considered these factors and has actually weakened discharge limits for sewage treatment plants on the Passaic River above drinking water intakes. What will Whitman EPA do?

#### *B) Clean Air Act*

- Clean air standards for ozone, fine particulates, mercury, and diesel fuel (truck) emissions were recently adopted by the Clinton EPA. Some air standards are before the Federal courts due to industry lawsuits. What will Whitman EPA or Bush Justice Department and EPA do?

- Last year, an EPA national study known as the "Cumulative Exposure Project" suggested that New Jersey has excessive levels of air toxics and that these levels may cause high cancer risks. NJDEP has only one air toxics monitoring station (in Camden) and a poor record on air toxics. What will a Whitman EPA do?

#### *C) Superfund*

- New Jersey has the most Superfund hazardous waste sites in the country (about 109, I think). There are also over 7,000 sites that are being "cleaned up" under State law, but that are within EPA purview. Whitman presided over changes in law that weakened cleanup requirements, such as allowing toxic contamination

to be left onsite or inadequately "capped," and excluded community groups from participating in the selection of the cleanup plan. Major themes, such as environmental justice, are raised by these cleanups, where sites are often in minority or disadvantaged neighborhoods. The contamination that is excavated from these sites is typically disposed of in landfills, transfer stations and incinerators which also are predominantly located in poor, disadvantaged or minority neighborhoods (same as garbage management facilities regulated by Subtitle D of Federal RCRA). Whitman has done ZERO on environmental justice. Where will Whitman EPA be?

*D) Resource Conservation and Recovery Act (hazardous and solid waste management)*

- See above.
- Whitman weakened New Jersey hazardous waste management rules.  
Safe Drinking Water Act  
Right to Know/Emergency Planning  
Chemical Plant Safety (TCPA)

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RESPONSES OF GOVERNOR WHITMAN, STATE OF NEW JERSEY, TO JOINT NEW JERSEY SIERRA CLUB AND AUDUBON SOCIETY LETTER OF JANUARY 22, 2001

The following responses address the points raised by the New Jersey Chapter of the Sierra Club and the New Jersey Audubon Society in their joint letter to Chairman Robert Smith and Senator Harry Reid of the Senate Environment and Public Works Committee dated January 22, 2001.

*1. Statement On DEP Budget:* "Governor Whitman testified the effect that her Administration had increased the Department of Environmental Protection's (DEP) budget. The Governor did not offer a baseline and timeframe to support this statement. We feel that this testimony is misleading. . ."

*Response On DEP Budget:* Over the course of Governor Whitman's Administration, the operating budget of the New Jersey Department of Environmental Protection has, in fact, increased when compared to the last base operating budget of the prior administration. Since Fiscal 1997, the budget proposed for DEP has grown from \$166.4 million to a current Fiscal Year (2001) level of \$197.1 million. This represents an increase of \$30.7 million or 18.5 percent. This does not take into account the Governor's budget recommendation for fiscal year 2002, which is \$218.2 million, representing an increase in DEP funding of \$7.8 million over the current fiscal years adjusted budget of \$210.4 million.

As for staffing, the Department, as of January 2001, is down some 10 percent versus when Governor Whitman took office. Here, again, claims have been made that staffing reductions on the magnitude of 25 percent were initiated during the Governor's first 3 years of office. This is clearly not the case. As with the budget, staffing within the Department has been increasing to address such strategic initiatives as watershed management, greenhouse gas planning, air toxics, water monitoring and for maintenance of State parks and natural areas.

Finally, more than \$15 million has been invested in the Department for the design and development of the Nation's first totally integrated environmental management information system, a system that is aimed at assisting the Department in making the most informed environmental decisions possible.

*2. Statement On Mills Corporation Development:* "Governor Whitman testified to the effect that she had not taken a position regarding the Mills' Corporation development. We feel that this is misleading. . . ."

*Response:* The Governor testified that she personally had not taken a public position on the proposed Meadowlands Mills proposal in the Hackensack Meadowlands District. In addition, she stated that she would seek the advice of EPA counsel on being recused from future decisionmaking at the EPA. This was largely because of State agency involvement with the proposed project while Governor Whitman was in office.

It is true that two of the Governor's Cabinet Officers, Commissioner Jane Kenny (Community Affairs and Chair of the Hackensack Meadowlands Development Commission) and Commissioner Robert C. Shinn, Jr. (Environmental Protection) signed a Federal Register Notice spelling out proposed changes to the Special Area Management Plan for the Hackensack Meadowlands. The Federal Register Notice dated April 22, 1999 was also signed by the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the National Oceanographic and Atmospheric Administration, and even the President's Council on Environmental Quality. The Federal Register Notice announced the intent of the agencies to proceed to the Final Environmental Impact Statement (prepared pursu-



ant to the National Environmental Policy Act) on a Meadowlands district-wide land use and environmental restoration plan. The District is 32 square miles in size and contains approximately 8500 acres of wetlands.

The "Special Area Management Plan" (SAMP) concept was authorized in the 1980 Amendments to the Federal Coastal Zone Management Act. SAMP was employed by the Corps, USEPA, and NOAA to reconcile conflicts between a regional agency with powers to zone and make land use decisions (the Hackensack Meadowlands Development Commission) and Section 404 of the Clean Water Act that regulates the filling of wetlands. Under the Meadowlands Commission's Master Plan, which dates back to 1972, over 2,000 acres of wetlands are zoned for development. The goals of the Special Area Management Plan, as articulated in a five party Memorandum of Agreement, were to provide for reasonable economic growth in the Meadowlands District while achieving no net loss in wetlands values and greater protection to the environment. The Memorandum of Agreement was signed in 1988 and has been carried forward through three Gubernatorial administrations in New Jersey.

The 1999 changes in the Special Area Management Plan focused primarily on reductions in the fill of wetland acreage previously proposed in the 1995 Draft Environmental Impact Statement. In the Federal Register Notice, Commissioners Kenny and Shinn signed off on a 45 percent reduction of wetland fill, now capped at a maximum of 465 acres for the entire region. This figure is much less that could be achieved under the 404 Federal process.

The Hackensack Meadowlands Special Area Management Plan has not been finalized. The Mills Corporation has chosen to pursue an individual Section 404 permit for its proposed development. In July of 2000, the Corps of Engineers issued a Draft EIS on the free standing Mills proposal. Both the New Jersey Department of Environmental Protection and the Hackensack Meadowlands Development Commission issued extensive comments critical of the Mills project and the level of analysis in the Draft EIS. Neither agency has endorsed the Mills proposal. The Corps of Engineers must issue a Final EIS before proceeding to a permit decision. Region 2 of EPA has gone on record recommending denial.

*3. Statement On Voluntary Compliance:* "Governor Whitman testified to the effect that she supported a voluntary compliance approach. We feel it important to document what that approach has meant to New Jersey environmental programs. While the concept may appear to be limited to traditional environmental compliance and enforcement issues, Whitman has used it as a major policy theme that has been applied across-the-board in regulatory affairs. Examples:

*Statement 3a:* In 1991, New Jersey enacted a model Pollution Prevention Act. The Act sought "significant reductions" in toxics use. Whitman's DEP Commissioner wrote a letter to industrial facilities regulated by the Act that the DEP would not enforce the first round of planning requirements of the Act. As a result, about 25 percent of facilities were late or did not file required plans, and toxics-use reduction, the cornerstone of the Act has been completely ignored."

*Response On Pollution Prevention Act:* On June 17, 1994, Commissioner Shinn sent a letter to approximately 550 New Jersey facilities which were required to prepare Pollution Prevention Plans and submit Plan Summaries to the department by July 1, 1994. As a result of the considerable public debate about the new law, the Legislature was considering amendments to the law, which could have had an impact on which facilities were ultimately required to prepare Plans. In his letter, Commissioner Shinn stressed that the department's philosophy in implementing the Pollution Prevention Planning component of the Act was to rely on outreach and incentives to achieve the goals of the program, and he directed that "no penalties were to be assessed against any company under the Act until the department and the Legislature have the opportunity to review the program as statutorily required in 1996." Facilities covered by the Act were still required to complete a Pollution Prevention Plan and to submit a Plan Summary to the department. By December, 1994, 97 percent of the covered universe did comply with the planning requirements. An original public policy goal of the Act, to reduce production-related waste, or non-product output by 50 percent below 1987 baseline amounts, was achieved in 1994. New Jersey continues to show a downward trend for non-product output, independent of changes in the State's economy, while national non-product output numbers are increasing. We have also increased our reduction goal from the original 50 percent target already achieved in 1994 to a full 75 percent reduction from the original 1987 baseline.

*Statement 3b.* "New Jersey has a national model known as the Clean Water Enforcement Act. The Act imposes mandatory penalties for violation of effluent limits in NJPDES permits. This law is responsible for sharp reductions in the num-

ber of significant violators of State water laws. Under the “voluntary approach,” Whitman did not oppose, and in fact supported, certain efforts by the New Jersey Legislature to gut this law.”

*Response On Clean Water Enforcement Act:* DEP has been consistently enforcing the provisions of the Clean Water Enforcement Act since its inception. Further, the Whitman Administration’s message has been the same for the past 7 years. We want to work with those members of the regulated community that understand their obligations and are willing to go beyond compliance. For those who have minor violations, we’ll work with them to achieve compliance within a short timeframe before we assess a penalty. But for major or recurrent violators, traditional enforcement must be utilized. A strong baseline enforcement program is needed to provide a credible deterrent for the portion of the regulated community that does not understand this message.

DEP continues to take strong enforcement action against those violators who repeatedly violate environmental laws or whose violations are not of a minor nature. Compliance is still the bottom line and this approach has not changed: if a violation is of a minor nature, the facility receives notice of that violation consistent with the State’s Grace Period Law and is not assessed a penalty if the violation is fixed in the required timeframe. However, if a violation is not minor, DEP assesses a penalty for that violation.

*Statement 3c:* In developing State air pollution control regulations to assume the Clean Air Act Title V Operating Permit Program, DEP staff recommended that the State adopt requirements to submit both air quality modeling and risk assessment for Title V permits. Staff were overruled, and the DEP adopted regulations that make modeling and risk assessment “voluntary.” We understand that not a single industrial facility, including major facilities that emit tons of hazardous air pollutants, has voluntarily done modeling and or risk assessment.”

*Response On Title V Operating Permits:* The use of modeling and risk assessments is not required as part of the Clear Air Act Title V Operating Permit Program. No State in the country requires them either. Although no company has voluntarily conducted modeling or risk assessments, the Department does utilize risk assessment in reviewing permit applications for the construction or modification of major sources of air pollution emissions. Each year DEP staff reviews hundreds of air pollution permit applications, applying risk screening tools. If determined to be necessary as a result of the screening, the permittee is then required to conduct modeling and risk assessment for the proposed equipment changes.

*Statement 3d:* “Under Whitman, NJDEP abandoned its historic State hazardous site cleanup program. Whitman signed legislation that: a) eliminated the statutory preference for permanent remedies; b) prohibited DEP from requiring alternatives analysis; c) vested the sole authority to select a remedy in the hands of the responsible party or developer; d) authorized large volumes of highly contaminated materials to be left onsite and “stabilized” with inadequate caps and other “institutional controls” and provide only minimal notice to impacted communities just 45 days prior to construction (after all DEP approvals had been issued). Whitman abandoned the historic use of legally enforceable Spill Act Directives and Administrative Consent Orders (ACO) to control cleanups in favor of unenforceable “voluntary agreements.” Whitman refunded prior ACO-mandated Financial assurance to responsible parties and eliminated stipulated penalties for failure to comply with ACO or Directive.”

*Response On Hazardous Waste Clean-ups:* The New Jersey Department of Environmental Protection’s (NJDEP) voluntary cleanup program for contaminated sites actually has resulted in private investment of the remediation of many more contaminated sites than would have been accomplished by the NJDEP with public funds alone. The primary purpose of the program was to accelerate work at thousands of lesser contaminated sites that would not have become a priority for NJDEP’s publicly funded program for some years, and were not being worked on by private parties. All remedial activities at contaminated sites in New Jersey must follow the State’s Technical Requirements for Site Remediation, regardless of whether they are being conducted under an Administrative Consent Order, Memorandum of Agreement or with public funds. These requirements guide investigations and cleanups in New Jersey along with the State’s conservative public health risk standard that is very protective. It requires that contamination be addressed if a person’s exposure to a hazardous substance results in a cancer risk exceeding one in a million and a non-cancer risk exceeding a hazard quotient of one. These benchmark human health standards were not changed during my administration, and remain more stringent than USEPA’s risk guidance. Also, the statutory preference for permanent remedies was again embodied in the Brownfield and Contaminated Site Re-

mediation Act in 1998; it has not been eliminated. The State continues to approve on a site specific basis remedial measures that incorporate engineering and institutional controls allowing contamination to be left in place at certain levels if such controls prevent exposure to the public and are maintained properly. Such locations require a deed notice and biennial certification reports documenting the controls remain protective of the State's strict public health standards and the environment. Caps and other engineering and institutional controls are used and must be reported on by the party responsible for maintenance of the control. In addition, an inspection of the site is conducted by DEP personnel; to date, no failures resulting in environmental consequence have been documented. New Jersey is the only State in the United States that has a full time control inspector. Spill Act directives (50 issued since 1995) and Administrative Consent Orders (85 signed since 1992) have been used, are used, and will continue to be used for priority sites for which the State is prepared to spend public funds if the responsible parties do not comply with the directive.

*Statement 3e:* "Whitman abandoned the 1993 Statewide Solid Waste Management Plan, including that plan's source reduction, toxics use reduction, and packaging and materials management' policies. We are unaware of any industry that has voluntarily come forward to comply with the policies of the 1993 plan."

*Response On Statewide Solid Waste Management Plan:* New Jersey has established one of the most comprehensive solid waste management programs in the United States premised upon reducing solid waste generation to the extent possible, mandatory recycling, toxicity reduction and "self-sufficiency" in taking care of our own long-term disposal needs through a county/state planning process and construction of 31 major facilities which make up our transfer and disposal infrastructure. A centerpiece to the system was the ability of local governments to impose "flow control" to direct solid waste to specific disposal facilities. In 1994, the U.S. Supreme Court ruled in the case of *Carbone v. Clarkstown*, and invalidated the flow control system in Clarkstown, New York. In 1997, the State was dealt a crushing blow when our historic system of "flow control" was struck down in the case of *Atlantic Coast Demolition and Recycling vs. Board of Chosen Freeholders of Atlantic County et al.* 112F. 3d 652 (3rd. Cir. 1997)

This decision thrust the State into nearly an immediate mode of deregulation with a historic debt figure amassed by our counties and solid waste authorities of over \$2 billion in the development of our long-term disposal infrastructure. As a result, the entire fabric of New Jersey's solid waste system has been in a state of transition since nearly the time Governor Whitman took office with the uncertainties of the Carbone decision in 1994. The State has also been struggling to address the outstanding debt situation since the 1997 Atlantic Coast decision.

Notwithstanding the serious situation the State has been forced to address, NJDEP has continued to advance New Jersey's commitment to recycling and toxicity reduction. Governor Whitman raised the statewide total waste stream recycling goal from 60 percent to 65 percent. All 21 of our counties now operate permanent or periodic systems for the collection and proper disposal of household hazardous waste. DEP has advanced "Universal Waste" management to collect fluorescent bulbs, thermostats, switches, consumer electronics and other products which contain heavy metals, including mercury. We continue to implement our "Toxic Packaging Reduction Act" and "Dry Cell Battery Management Act" to reduce toxics in packaging and collect batteries which contain mercury and other heavy metals. Finally, New Jersey has the most stringent standards in the country for mercury emissions control at the five energy recovery incinerators which operate in the State and we have nearly completed our second assessment of mercury in the environment through a Mercury Task Force stakeholder process.

Despite a complete upset of the historic solid waste system by the courts, DEP has retained New Jersey's focus on comprehensive solid waste management which includes source reduction, virtually unprecedented levels of materials recycling, household hazardous waste management, toxicity reduction, public education and disposal at state-of-the art landfills and incinerators.

*Statement 3f:* "Whitman issued an Executive Order 27 (1994) that mandated that State regulations that are more stringent than Federal requirements be justified by cost benefit analysis. This Order resulted in the across-the-board weakening of, among other things, State regulation for air, water and waste permits, deregulated used oil as hazardous waste and eroded chemical plant safety requirements addressed under the provisions of Section 112r of the Clean Air Act Amendments of 1990."

*Response On Executive Order 27:* Executive Order 27 (EO 27) stated that State agencies should consider applicable Federal standards when adopting regulations

that have Federal counterparts and should analyze whether existing Federal standards sufficiently protect the health of New Jersey's citizens. When DEP determines that New Jersey needs more stringent standards, EO 27 simply requires us to explain that decision. Therefore, the Order does not prohibit DEP from adopting standards or regulations that are more stringent than their Federal counterpart and did not force DEP to weaken all existing standards in order to comply with the Order; New Jersey still has the flexibility to promulgate more stringent standards where necessary. In fact, after careful analyses, NJDEP has adopted numerous environmental standards or rules that are more stringent than EPA's. Some examples include:

## AIR

1. New Jersey's standards for mercury emissions from municipal solid waste incinerators are more stringent than EPA's. EPA standard is 80 ug/m<sup>3</sup> or 85 percent control and New Jersey is 28 ug/m<sup>3</sup> or 80 percent control. New Jersey's standards were effective 1/1/96 whereas EPA's just came into effect in 12/00.

2. New Jersey's air toxics program is more comprehensive than EPA's. New Jersey requires facilities to list air toxic emissions on their permits if they exceed a predefined threshold value. This would then potentially trigger a risk assessment by DEP or the application of a state-of-the-art standard for those air toxics. EPA on the other hand only requires air toxics to be listed on a permit if EPA has promulgated an emission standard for the particular source operation being permitted.

3. EPA does not have NO<sub>x</sub> RACT rules per se, but the NO<sub>x</sub> standards in their acid rain rules are less stringent than the NO<sub>x</sub> standards in our NO<sub>x</sub> RACT rules.

4. The stringent NO<sub>x</sub> standards for power plants in our NO<sub>x</sub> budget rules (.15 lbs/mwh) set the stage for EPA's subsequent SIP call to 22 States.

5. Our preconstruction permitting program (Subchapter 8) for new and modified non-mayor sources is more comprehensive than EPA's. EPA's permitting trigger is between 25-100 tons per year of a given pollutant whereas New Jersey's trigger (although it's equipment based) equates to as low as approximately one ton per year.

## HAZARDOUS WASTE

1. New Jersey's "10 day" transfer facility requirement is more stringent than EPA's. We have standards for how waste must be managed during the 10 day holding period and we prohibit the mixing of unlike materials. Also, transporters must tell us that they're operating a 10-day facility and must keep logs of material entering and exiting the facility. EPA does not have these requirements.

2. New Jersey requires hazardous waste generators to submit hazardous waste manifests (shipping papers), whereas EPA does not.

3. New Jersey requires hazardous waste transporters to be licensed, whereas EPA does not.

4. New Jersey requires entities to submit plans to us for approval before they can process used oil. EPA does not. Also, our standards for halogens in used oil fuel (1000 ppm) are more stringent than EPA's (4000 ppm).

## SOLID WASTE

1. We regulate transfer stations, transporters, and recycling facilities whereas EPA does not.

2. The Solid Waste Utility Control Act requires that people engaged in the solid waste business be regulated as a utility. New Jersey's rules therefore set forth business practices, transaction standards, competition requirements and billing practices. There is no Federal counterpart to this.

3. The Comprehensive Regulated Medical Waste Management Act sets forth registration, transportation and waste handling requirements that are in addition to the solid waste requirements. This Act was based on a Federal version which has since lapsed. We are not aware of a Federal counterpart at this time.

4. The A-901 Disclosure Review Act sets forth standard that must be met in order for an entity to engage in the business of solid waste transportation or processing/disposal. There is no Federal counterpart to this Act.

## SITE REMEDIATION

1. When determining whether a site is sufficiently remediated, in most cases we are more stringent than EPA. New Jersey applies a risk factor of 1x10<sup>6</sup> (increased lifetime cancer risk) to individual contaminants whereas EPA applies a risk range of 1x10<sup>4</sup> to 1x10<sup>6</sup> and it is based on the cumulative impact of all contaminants.

2. We regulate large non-residential heating oil underground storage tanks (greater than 2,000 gallons), whereas EPA does not.

3. New Jersey requires that only New Jersey licensed individuals perform work on Federal and state-regulated underground storage tanks. There is no corresponding Federal requirement.

4. New Jersey's Industrial Site Recovery Act prohibits certain types of industrial properties from being sold or transferred unless they are remediated first. EPA does not have this requirement.

#### COASTAL MANAGEMENT

1. New Jersey's freshwater wetlands program includes buffers in the definition of transition areas whereas EPA does not.

#### SAFE DRINKING WATER

1. New Jersey has 15 chemicals for which we either have more stringent standards than EPA or we have a standard whereas EPA does not. For example, for MTBE, we have a standard whereas EPA does not. Also, for trichlorethylene, New Jersey's standard is 1 ppb, but the Federal standard is 5 ppb.

2. New Jersey has 13 drinking water standards that are more protective than Federal standards, and standards for 5 additional contaminants beyond those regulated at the Federal level.

#### WATER

1. New Jersey has regulations governing the construction of wastewater treatment and conveyance systems whereas EPA does not.

2. New Jersey permits all discharges to groundwater whereas EPA only permits underground injection and discharges at RCRA facilities.

3. The State law commonly known as the Clean Water Enforcement act (CWEA) has a number of provisions which are more stringent than the Federal Clean Water Act. In particular, the CWEA requires the Department or Delegated Local Agency to impose mandatory penalties for monitoring omissions or effluent violations that are serious violations or that cause the violator to become a significant non-complier.

#### PESTICIDES

The following pesticide initiatives/rules go beyond EPA programs and requirements. Requirements for notification of the public prior to applications of pesticides so the public may take precautions to minimize exposure if deemed necessary.

1. Require commercial applicators to be licensed and certified (take exams) prior to using any pesticides, not just the more hazardous "restricted use" pesticides, as an additional protective measure. Require annual refresher training for agricultural workers.

2. Rules on applications conducted in schools in order to be protective of children, who are a vulnerable population.

3. Extensive regulations to prevent contamination, risk and exposure in homes and public buildings during structural pest control applications.

4. Regulate an additional industry sector of dealers of restricted use pesticides through licensing and record keeping requirements.

5. Require permits for aquatic pesticide applications and mosquito control applications to prevent pesticide misapplications and contamination in bodies of water and hazardous exposure during large-scale community spray programs.

#### RELEASE PREVENTION

1. New Jersey's discharge prevention program is more stringent than the Federal requirements in that the State program covers a vast array of chemicals as well as petroleum and petroleum products. IN addition, all plans required to be developed under New Jersey rules must be submitted to NJDEP for approval, while Federal plans are only required to be submitted for facilities with over one million gallons of storage or facilities that have a discharge. The State program inspects all regulated facilities once a year, and also inspects some non-regulated facilities whereas the Federal program inspects only a fraction of the regulated universe.

2. New Jersey's TCPA (Toxic Catastrophe Prevention Act) program is more stringent than the Federal program as follows: more covered chemicals; lower thresholds for some chemicals; more reporting requirements; and more inspections per year. Also, the State program requires a risk reduction effort after a hazard analysis is performed.

3. New Jersey's RTK chemical inventory reporting program is more stringent than the Federal program in that employers must report regulated chemicals at a 500 pound threshold rather than the 10,000 pound Federal threshold. The State's environmental release reporting program requires reporting at 10,000 pounds rather than the Federal 25,000 pounds. Also, the State program includes materials accounting where the Federal program does not.

*Statement 4: "No Further Action Letters: Governor Whitman testified that New Jersey had issued "7,000" No Further Action (NFAs) in the New Jersey State hazardous site remediation program. We strongly believe that the Governor misspoke, perhaps by inadvertently equating the universe of known contaminated sites with the issuance of NFAs. Because a NFA letter releases a polluter from liability under the State program, it is a critically important regulatory document. Accordingly, we request that the committee ask the Governor to clarify her testimony regarding NFAs."*

*Response On No Further Action Letters: 7,000 No Further Action letters have been issued since the Brownfields law was enacted. No Further Actions are issued for full site cleanups, partial site (known as "Areas of Concern") cleanups, cleanups of homeowner tanks, and sites that require no further work after a review of initial documents. All of these sites are included in the number. The Brownfields Act is clear that liability protection (the "covenant not to sue" contained in No Further Actions) never extends to parties who are responsible for the discharge. They remain liable under the Spill Act. "The covenant not to sue shall not provide relief from any liability, either under statutory or common law, to any person who is liable for cleanup and removal costs pursuant to subsection c. of section 8 of P.L. 1976, c.141 (C.58:10-123.11g), and who does not have a defense to liability pursuant to subsection d. of that section." See N.J.S.A. 58:10B-13.1e.*

*Statement 5: "MTBE Liability: Governor Whitman testified to the effect that Congress lacked the authority to address liability for MTBE cleanup. We believe she misspoke. Given the importance of this issue, we request that the committee ask the Governor to clarify her testimony regarding MTBE liability."*

*Response On MTBE Liability: The New Jersey Underground Storage Tank Statute (N.J.S.A. 58:10A-210 effective September 8, 1986) was modeled after Subtitle I of the 1984 Federal Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act. Both laws and subsequent implementing New Jersey and Federal regulations give full authority to respond to discharges from regulated underground storage tanks. This ability clearly extends to all regulated underground storage tank contents, including MTBE.*

*In New Jersey, the Spill Compensation Control Act of 1976, the Underground Storage Tank Act and others are used to compel remediation of underground storage tank discharges, which may include MTBE. These laws, which include strict, joint, and several liability, give the State adequate authority to compel known responsible parties to conduct remediation including situations involving co-mingled contaminant plumes. All responsible parties with regulated underground storage tank discharges that are conducting ground water sampling have been required since 1990 to analyze for MTBE.*

*Statement 6: "Sound Science: Governor Whitman touted "sound science" as the backbone of regulatory policy. However, in New Jersey, Whitman adopted an "affirmative action" policy for environmental science, whereby DEP research funds must be used at New Jersey institutions, not necessarily on the most advanced science. Exhibit 4 documents what has become a troubling pattern, whereby the Governor makes press remarks that contradict the undisputed facts and recommendations of her Agency scientists."*

*Response On Sound Science: Through the establishment of its unique multi-media environmental science and research program in the late 1970's, DEP has had a long history of developing and applying sound science to its regulatory, enforcement and planning activities. With the agency's transition to a Results-Based Management System in the last 6 years, the use of current and accurate scientific information in decisionmaking has been given even greater emphasis. Environmental research, specific to New Jersey's needs, has been a primary means by which this information is obtained. Consistent with State procurement laws, DEP has employed a competitive process to identify, select and fund those research proposals best designed to meet its technical information needs. This competitive process invites proposals from academic institutions (as well as appropriate non-academic organizations) both within and external to New Jersey. All proposals are evaluated based on two paramount criteria: value of the proposed study to environmental decisionmaking in New Jersey, and scientific merit; these criteria are applied regardless of the applicant's location. DEP first seeks qualified in-state researchers to perform environ-*

mental research; however, if this search is unsuccessful, the agency looks outside of New Jersey.

Exhibit 4 from the New Jersey Sierra Club/Audubon Society, a 1994 DEP memorandum providing scientific information on the issue of the health effects of exposure to mercury in fish, is an example of the high quality scientific advice used in New Jersey's environmental decisionmaking. All of the State's mercury fish advisories developed in the last 6 years were based on the principles described in this memorandum. The basis for New Jersey's approach to mercury fish advisories was recently supported in a report of the National Academy of Sciences, ("Toxicological Effects of Methylmercury," NAS, 2000).

[January 2001]

WHITMAN SAMPLER

(By Jeff Tittel, New Jersey Chapter of the Sierra Club)

Governor Whitman has had some important environmental achievements, setting aside moneys for open space, support of Sterling Forest and banning the horseshoe crab harvesting. However in areas of environmental enforcement and regulation, Governor Whitman's legacy is quite different.

The Governor's environmental agenda has been the systematic dismantling of 40 years of New Jersey environmental policies, programs and enforcement.

- Eliminated the Environmental Prosecutor on the State and county levels.
- Eliminated the Office of Public Advocate whose job was to help citizens and citizen groups deal with government bureaucracy and even sued the State on behalf of environmental groups.
- The Governor opened the Office of Business Ombudsman whose job was to push through permits for businesses and to help facilitate permitting problems for industry.
- The Governor then took all fees, penalties and other funds that were dedicated to the DEP and brought them into the budget to underwrite her tax cut; then took an additional \$21 million dollars that had been dedicated for Combined Sewer Overflows; brought them into the budget and then eliminated that program.
- The Governor's environmental policy was called "Open for Business" where the Administration dismantled important regulatory enforcement functions, opened the Office of Resolution Disputes, allowed for grace periods on enforcement, risk assessments on regulations, and flexible permitting and eliminated penalties based on financial assessments.
- Passed an Executive Order that the State shall have no standards stricter than Federal regulations without a cost benefit analysis and special reasons.
- Since the DEP cuts and Open for Business, there has been an 80 percent drop in the moneys collected for fines in the State of New Jersey and an 80 percent decline in the number of cases under administrative appeal.
- Eliminated the DEP lab, the only lab in New Jersey that was certified to test in accordance with the Safe Drinking Water Act.
- Proposed to eliminate the New Jersey Geological Survey.
- Eliminated oversight of pesticide use.
- Privatized the voluntary Site Remediation Clean-up Program.
- Eliminated the DEP's mercury reduction program.
- Eliminated the mandatory Employee Trip Reduction Program.
- Cut the Right to Know Act's list of chemicals by 2,000.
- Eliminated the Solid Waste Plan.
- Tried to eliminate the Clean Water Enforcement Act.
- Tried to eliminate the Pollution Prevention Act and the Administration is at it again with new proposed regulations.
- Dismantled the Hazardous Waste Program.
- Cut the Radiation Protection Program.
- Changed the regulations to allow waste oil to be burned in space heaters in garages.
- The DEP has waited 5 years past its mandatory deadline to propose new rules for Coastal Zone Management. The rule was at best ineffective and has been pulled.
- Cut funding and maintenance for State parks. New Jersey has the lowest per capita spending for State parks in the nation.
- Appointed property rights advocates to the Pinelands Commission where they now have a majority.
- Tried to eliminate the New Jersey Office of State Planning.

- There has been no implementation of the State Plan. The rewrite of the Plan is weakening it even more.
- Supported budget language that provides that the New Jersey State Plan cannot be used to stop discretionary money to municipalities.
- While the Governor supports open space, the Governor has stated "We need to build highways to the open space so that people can get there."
- The DOT is supporting 40 new highways or highway expansions, mostly through rural areas.
- The Governor supports Rt. 92 a sprawl highway through the largest stretch of environmentally sensitive planning area designated in Middlesex County with a 14 acre wetland fill. EPA opposes this project.
- The Governor supports the extension of Rt. 29, a waterfront highway through a park along the Delaware River, filling in part of the river. Used a loophole to avoid a NEPA review.
- The Governor supported the Casino Tunnel, a new highway through a middle income African American neighborhood that will be a private driveway for a casino developer.
- The Governor supported taxpayers building a private road from the New Jersey Turnpike to a toxic waste incinerator that the Governor was supporting in Linden.
- The Governor supports Bergen Arches which is to turn an existing freight tunnel into a highway.
- The Governor supports the extension of Rt. 18 through the Rutgers Nature Preserve and along the riverfront.
- The Governor supports spending \$270 million dollars of public money for Merrill Lynch to build a corporate office part in a farm field in Hopewell, including running a sewer line 9 miles from the City of Trenton.
- The Governor supported the filling in of 200 acres of wetlands in the New Jersey Meadowlands for the Meadowland Mills mall. Opposed by the EPA.
- The Governor also supports the filling in of up to 500 acres for the new Meadowlands Plan (SAMP).
- The DEP proposes to allow cranberry growers to destroy up to 300 acres of pristine wetlands in the Pinelands for the creation of cranberry bogs. EPA had opposed.
- The EPA rejected the settlement agreement on a major wetland violation in the Pinelands by DeMarco Enterprises, a politically connected cranberry grower. The proposed settlement was also criticized by New Jersey's Inspector General.
- The Sierra Club had to go to court to prevent the adoption of the "mega rule" NJDEPES which would have allowed for substantial increases in the discharges of pollutants into New Jersey waterways. The EPA intervened to stop the adoption.
- The DEP is currently proposing to change permitted flows from using the 7Q10 standard to harmonic mean flows. This would allow dischargers to increase their flows by a 500 percent increase.
- The DEP is currently proposing 15 new general permits on wetlands that would allow special interests to be able to do everything from build fences through wetlands to animal waste lagoon.
- The DEP has refused to upgrade the Wallkill River to an appropriate Category I designation to protect the water quality in the Wallkill National Wildlife Refuge.
- Supported funding for a new sewer plant on the Wallkill River, as well as a sewer line through a Natural Heritage site.
- The DEP is proposing to allow a 700' television tower to be located on top of Weldon Mountain in the Weldon Mountain Wildlife Refuge Area.
- The DEP has refused to enforce its own permit levels on phosphorous discharges from sewer plants.
- New Jersey has the highest percentage (85 percent) of streams and rivers rated impaired for pollution in the country.
- Governor Whitman supported the Mercer County incinerator and financial bail-out for other incinerators.
- The DEP eliminated the siting criteria for garbage transfer stations and Class II recycling centers which included asphalt.
- The State has abandoned its long standing position on the taking issue and has now sided with the property rights advocates.
- The Governor's energy deregulation legislation allows for a \$9 billion dollar bail-out of stranded assets of electrical utilities, cuts funding in half for energy conservation programs, as well as for alternative and renewable energy programs, categorizes garbage incinerators as renewable energy, lists nuclear power plants as non-acid rain producing and eliminates siting criteria for power plants.



- The Governor supports the dredging of the Delaware River and the dumping of contaminated dredge spoils in environmentally sensitive areas.
- The DEP has refused to use its own million to one standard for public health on radium levels in drinking water.
- One-third of fines on pollution violations go uncollected.
- There has been a 44 percent reduction in air monitoring inspections.
- Eliminated the Highlands Task Force.
- Eliminated third party appeals on permits which removed a useful tool by community and environmental groups to appeal permits granted to polluters and developers.
- Adopted regulations that removed water quality standards for stormwater discharges for quarries.
- Weakened brownfield programs. Eliminated community involvement in clean-up plans as well as allowed for voluntary cleanup plans which includes capping and walking away without liability. Supported self-audit legislation for pollution permits. Defeated by New Jersey Legislature. Supported weakening of New Jersey Air Pollution law. Defeated by New Jersey Legislature. Supported allowing polluters to have 10 year interim permits. Stopped by EPA. Whitman cut water monitoring facilities from 200 down to 76.
- EPA Inspector General Report July 1999 said that New Jersey violated the Clean Water Act in its water monitoring program. Cited failures to monitor for 33 toxic chemicals as well as the lack of monitoring stations and New Jersey's failure to have any TMDLs.
- Sanctions imposed by EPA in September 2000 for New Jersey's failure to do proper water monitoring.
- New Jersey Assembly unanimously passed an oversight resolution in September 2000 that said the proposed watershed rules did not meet legislative intent to clean up and protect New Jersey's waters. The bill was up for a vote in the State Senate on the day Governor Whitman was nominated to the EPA and was pulled.
- CAFRA coastal rules are under litigation by every major New Jersey environmental group for allowing too much growth along the coast.
- The Whitman Administration has deliberately avoided implementing any environmental justice programs.
- Supported the Cape May sewer deal which will allow for sprawl development to pave over some of New Jersey's most environmentally sensitive lands and allowing for salt water intrusion to pollute the aquifer.
- As head of the Board of Public Utilities, Governor Whitman allowed for the selling off of watershed lands to real estate companies. The New Jersey legislature had to step in a pass the Watershed Moratorium Act.
- Cut funding for recycling and eliminated the mandatory 60 percent reduction in solid waste.
- Supported the building of Tabernacle High School in the Pinelands Preservation Area.
- Supported the firing of Terry Moore who was an advocate of growth management as Director of the Pinelands Commission.
- Supported "The Sanctuary" development in Evesham in the middle of endangered species habitat.
- Supported the reopening of the South Ocean County landfill. Vetoed funding dam repairs which was followed by flooding that destroyed some of the dams that were targeted for repairs.
- Line item vetoed budget language that would have prevented polluters from writing watershed cleanup plans.
- Governor Whitman's open space program actually cut the funding for urban parks, park development and matching grants to counties and municipalities. The farmland program has been criticized for failure to have an ethics code and for buying development rights on the lands of the politically well connected, lands that can't be developed, and on estates and gentleman farms, not family farms.
- The loss of open space to development has more than doubled under Governor Whitman and New Jersey leads the Nation in the loss of open space as a percentage of land area.

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RESPONSE BY THE GOVERNOR WHITMAN, STATE OF NEW JERSEY, TO "WHITMAN SAMPLER" FROM NEW JERSEY CHAPTER OF THE SIERRA CLUB

*Statement 1:* "The Governor's Environmental agenda has been the systematic dismantling of 40 years of New Jersey environmental policies, programs and enforcement."

Response. Under Governor Whitman's leadership, New Jersey has a clear Strategic Plan for environmental protection being implemented that is predicated on a belief that environmental protection and a vital economy are inextricably linked; that strong environmental policies, when properly administered, can enhance rather than hinder the State's economy. While renewing its 25-year commitment to ensuring a safe and healthy environment for New Jersey's 8 million residents to enjoy, we have pledged to eliminate unreasonable and unnecessary regulations and policies that do not help fulfill that commitment and to shift our focus from a "command and control" mentality, to one of results based management.

Some of our notable accomplishments over the past 7 years while I have been in office.

- . Passage of a statewide ballot measure to constitutionally dedicate \$98 million annually for the purpose of preserving open space, farmland and historic resources;

- . Moving forward to implement my commitment to have world class parks throughout our State so our citizens have access to high quality parks and other recreation and wildlife areas.

Significantly increasing dollars dedicated to preserving New Jersey's beaches. These funds help to protect lives and property through the construction of shore protection projects like, placement of revetments, groins, bulkheads, and sand for beach nourishment.

Signing legislation in 1997 to implement our comprehensive Watershed Management Program and, of critical importance, to fund it through a portion of the Corporate Business Tax.

- Providing a stable funding source that led to an unprecedented number of hazardous waste clean-ups through more than \$118 million from the Corporate Business Tax revenue dedicated for this purpose;

Further enhancing hazardous waste site clean-up by New Jersey being the only State in the Nation with a reimbursement program for non-responsible private parties conducting voluntary cleanups at brownfield sites.

- Successfully negotiating the Atlantic Compact for low-level radioactive waste disposal with our sister States of South Carolina and Connecticut to provide our State with low-level radioactive waste disposal capacity for about the next 50 years;

*Statement 2:* "As Governor, she has eliminated the State's environmental prosecutor."

Response. Dissolution of the Office of the Environmental Prosecutor has had no impact on the Department's enforcement program and its protection of the environment. While that office served as a as a coordinator for major environmental cases during its years of existence, the underlying functions of investigating noncompliance with environmental laws and taking appropriate enforcement action in response to noncompliance by the Department continued unabated. Since that office DEP continues to investigate and handle civil administrative enforcement cases; the Division of Law continues to provide advice and court representation in support of those cases; and the Division of Criminal Justice, Environmental Crimes Bureau handles any environmental matters that either DEP refers to them for criminal investigation/prosecution or that they determine from review of DEP case files that they will investigate/prosecute.

*Statement 3:* "As Governor, she has eliminated the Office of Public Advocate, whose job was to help citizens and citizen groups deal with government bureaucracy and even sued on behalf of environmental groups."

Response. The Department of the Public Advocate was abolished to eliminate inefficient bureaucracy resulting from one State agency suing other agencies and towns. In eliminating this bureaucracy, the Governor ensured that the vital core functions of the Office of the Public Advocate were preserved. For example, mental health and criminal matters previously handled by the Public Advocate were transferred to the Office of the Public Defender; the Public Advocate's functions concerning environmental protection and insurance matters were transferred to and assumed by the Departments of Environmental Protection and Banking, respectively; and the Ratepayer Advocate was established to represent consumer interests in proceedings before the Board of Public Utilities. Moreover, the Attorney General with the support of Governor Whitman, recently established the Office of the Inspector General to serve as an independent watchdog and protect against waste in State government on behalf of the public interest.

*Statement 4:* "As Governor, she has taken all fees, penalties and other funds that were dedicated to the Department of Environmental Protection and brought them into the General Budget to underwrite her tax cut."

Response. Upon taking office, it was evident that the DEP was too heavily reliant on resources generated from fees and fines and other non-state sources in order to fund its operating budget, which made up over 50 percent of its revenue. It was de-

terminated that, without substantial increases in fees and fines, the Department would be faced with a reduction in various environmental programs, since their costs were well beyond DEP's ability to fully fund those individual programs. It was also clear that dependence upon fees and fines represented a negative position from which to revitalize New Jersey's economy.

At the request of the Department, consensus was reached on placing DEP "On Budget." By doing so, individual programs no longer had to generate 100 percent of the revenue required to fund their programs; the General Fund absorbed the cost of the fringe benefits and indirect costs; the Treasury began picking up negotiated cost of living increases for employees and programs, that were facing certain reductions, now had the ability to operate in a fiscal climate where achieving results could be their focus versus how they were going to fund their very existence.

Other tangible benefits of the "On Budget" initiative were: that it allowed a more effective Executive and Legislative oversight process in crafting DEP's budget and further it afforded the Department the opportunity to shift funds out of previously dedicated financial silos to priority areas identified in each budget planning cycle.

*Statement 5:* "She took an additional \$21 million dollars that had been dedicated for combined sewer overflows into the budget and then eliminated that program."

Response. Under Governor Whitman's leadership, New Jersey has developed a comprehensive CSO Control Strategy and has undertaken regulatory actions to implement the same. The Strategy is in conformance with the National CSO Control Policy and has been approved by USEPA. New Jersey is aggressively pursuing the Strategy to control the discharge of Solids/Floatables and elimination of Dry Weather Overflows. Some of the notable accomplishments in this regard include:

Planning activities have been completed for all known CSO Points. Design activities are ongoing or have been completed for 84 percent of CSO Points. Twenty-five (25 percent) percent of the CSO Points are under construction. Construction for ten (10 percent) percent of the CSO Solids/Floatables Control Facilities have been completed and operating. The Department has awarded over \$21 million in planning and design grants and over \$122 million in construction loans through the State Revolving Fund to address the Phase I Solids/Floatables Control Measures needs. All CSO Points have been identified and are regulated by a NJPDES permit. The Department has incorporated all of the applicable Nine Minimum Controls of the Nations CSO Control Policy into the appropriate NJPDES permits and has taken appropriate enforcement actions. Development of CSO Long-term Control Plans (LTCPs) is being coordinated in concert with the Statewide Watershed Management Process.

The total cost required to implement CSO Long-term Control Plans is estimated at \$3.1 billion.

*Statement 6:* "The Whitman administration dismantled important regulatory enforcement functions."

Response. The Department's regulatory enforcement program is one of the largest and most extensive in the country. The Department performs an average of over 21,000 inspections a year supplemented by county environmental health agencies who, with the oversight of DEP, perform an additional 8,000 (average) inspections per year. This strong field enforcement presence is achieved with a team of approximately 200 inspectors in the program areas of: air, water, hazardous waste, solid waste, pesticides, Right to Know, Release Prevention and Coastal and Land Use. In addition to field inspections, the Department's enforcement personnel perform in-depth reviews of annual facility compliance certifications, excess emission reports, and other documents and submissions that are important to gauging facility compliance with the extensive body of State and Federal environmental laws. The State's improved environmental quality is assisted by the Department's enforcement program by encouraging compliance, by taking appropriate enforcement action in response to violations and by sending a message of deterrence to potential violators.

*Statement 7:* "She opened the Office of Resolution Disputes."

Response. The Office of Alternate Dispute Resolution was created to provide for an opportunity to better resolve conflicts between departmental programs and the entities they regulate because issues and responsibilities can be thoroughly discussed and more parties affected can participate. During this process, all statutes and regulations are followed. If successful, the violation is corrected more quickly than waiting for the resolution of a lengthy court proceeding. Any cases that cannot be settled go to litigation. We note that the Air Pollution Control Act amendments of 1995 required the Department to establish procedures for alternate dispute resolution of air contested cases. The ADR process is designed to be more interactive, providing a forum for all interested parties to discuss a particular issue or problem related to a facility in detail, provide an opportunity to communicate the Department's position regarding a particular issue or permit, and to identify options for

resolution. Not every enforcement case goes through ADR. Many requests for ADR are denied, especially when the issue under dispute is simply the size of the penalty.

The Federal Environmental Protection Agency has had its own successful Alternative Dispute Resolution Program since 1987. Federal statutes and executive orders require all Federal enforcement agencies and Federal courts to offer ADR in appropriate cases.

*Statement 8:* The Whitman administration "allowed for grace periods on enforcement."

*Response.* In 1995 the Legislature passed the Grace Period Law. Providing grace periods for minor infractions, as defined by statute, helps obtain compliance since violators are given the opportunity to correct the problem before monetary penalties are cited. Compliance is the end result DEP is seeking.

The Fast Track Compliance Act for minor violations allows programs to focus resources on more environmentally significant violations, including emission violations. This is so because facilities contested formal enforcement actions with small penalty assessments to preserve the right to small penalty reductions in settlement. By requiring compliance only and providing a "grace period," this entire case management process was avoided, allowing reallocation of resources to significant cases. In the case of the air program penalty amounts actually increased as a result, but the more important matter is the positive environmental results of the enforcement effort.

*Statement 9:* The Administration allowed "risk assessments on regulations and flexible permitting and eliminated penalties based on financial assessments."

*Response.* Based on a model developed in cooperation with USEPA, New Jersey has developed a voluntary, tiered regulatory option known as Silver and Gold Track. The program is a prime example of moving away from "command-and-control" regulation and rewarding high performers for going beyond the boundaries of traditional compliance through voluntary covenants. Only applicants with good compliance track records are eligible. The program provides operational flexibility while offering incentives and public recognition in return for a facility's commitment to improved environmental performance. Participation in the program also requires applicants to have aggressive local community outreach plans.

Penalties are not eliminated based upon a violator's ability to pay. If DEP conducts an ability-to-pay analysis and it is determined that the violator does not have the financial or other resources to pay a penalty, a payment schedule may be put in place. The manner in which the department assesses penalties is published in each program's portion of the New Jersey Administrative Code. These regulations identify violation citations, a summary description of the citation and the base penalty that will be assessed and how a base penalty can be modified based upon the specifics of the violation. These regulations, however, do not provide for an opportunity to eliminate penalties simply because of the financial condition of a company.

*Statement 10:* "Since the DEP cuts, there has been an 80-percent drop in the money collected from fines in the State and an 80-percent decline in the number of cases under administrative appeal."

*Response.* The amount of penalties collected is not a good indication of either facilities compliance with environmental laws and regulations or the environmental benefit that comes from a strong and effective enforcement program, such as DEP's. Generally, the Department's rate of penalty collection is good and new efforts are underway to use the services of a collection agency to collect penalties.

Since the compliance rates are up, assessments are down and therefore collections are down and decreasing from prior years. It should be noted however, that one, or a few large penalties in any one year can cause a spike that may appear to alter trends when that is not the case.

To the extent that the Grace Period law has eliminated a number of penalty cases that would have previously been contested, it follows that less cases are under appeal. However, DEP makes an effort to settle cases with settlement agreements since they are a much more efficient way to handle cases from a resource standpoint. Successful settlements would also result in less appeals of penalty actions. Where cases do not settle, DEP is always prepared to follow through with formal enforcement action.

*Statement 11:* Governor Whitman "eliminated the DEP lab, the only one in New Jersey certified to test in accordance with the Safe Drinking Water Act."

*Response.* In 1994, DEP initiated a laboratory consolidation program. Under this program, the DEP's radiological laboratory was merged with the DHSS laboratory and DHSS acquired the analytical equipment for specific additional pesticide methods. DEP routinely uses the DHSS laboratory's capabilities for surveillance and verification monitoring. DHSS laboratories are currently certified by EPA, which fulfills the State's laboratory requirements under the Federal Safe Drinking Water Act.

*Statement 12:* "She eliminated oversight on pesticide use."

Response. The Department has a robust pesticide control program that covers a wide range of important regulatory activities that affect the health of New Jersey residents as well as the environment in which they live: licensing of commercial pesticide applicators; requiring and assisting in providing training to pesticide applicators; a food monitoring program for the detection of pesticides in food products; outreach to migrant farm workers who handle or tend to be exposed to pesticides in agricultural settings; outreach through the Urban Initiative to educate consumers in urban settings about proper use of pesticides; establishment and strong advocacy of Integrated Pest Management as a preferred choice before pesticide use; and a program of enforcement to assure that pesticides are labeled, sold and applied in accordance with law. In addition, the Department's rules also require that pesticide applicators give notice to the public when making applications to help minimize the public's exposure to pesticides. The Department has just filed a rule proposal which will make extensive amendments to the pesticides regulations including: requiring the licensing of private applicators (farmers); increased or improved public notification requirements; increased training requirements for pesticide applicators. All of the above demonstrates that New Jersey has a top notch pesticide program and that oversight and involvement in the pesticide field has not been eliminated but has been expanded.

*Statement 13:* "She privatized the voluntary Site Remediation Cleanup Program."

Response. Since 1993, the voluntary cleanup program has facilitated contaminated site cleanups by private parties and municipalities under DEP oversight. The program was never been privatized. The cornerstone of the DEP program is a Memorandum of Agreement that allows a party to voluntarily approach the Department with the intent to investigate and clean up a contaminated site for redevelopment or to allow a property transaction to occur. Each year a portion of these voluntary cleanup agreements the Department approves includes a new group of brownfield projects. DEP issued No Further Action letters for 16,128 sites from June 30, 1993 to June 30, 2000, the majority of which were conducted under the voluntary cleanup program. DEP now issues more than 2,000 No Further Action letters each year after investigations and cleanups are completed to keep real estate and business transactions moving while providing safeguards for the environment. In terms of moneys spent on remedial work conducted under the voluntary cleanup program, NJDEP provided oversight at cleanups worth \$51.6 million in State fiscal year 1999 and \$40.4 million State fiscal year 1998.

DEP and the New Jersey Economic Development Authority have approved more than \$73.8 million in grants and loans for brownfield site projects and other remedial actions conducted under the voluntary cleanup program since funds became available in 1994. Grants and loans to municipalities and private parties who want to conduct remedial actions voluntarily have increased the number of site cleanups in the State.

*Statement 14:* "She eliminated the DEP's mercury reduction program."

Response. This administration adopted the most stringent mercury limits in the world for municipal solid waste incinerators and implemented those standards in 1996, 5 years before the Federal EPA's compliance date for national standards. AISO7 waste management of medical waste was successful at reducing mercury from medical waste incinerators by over 95 percent.

New Jersey implemented the most comprehensive municipal solid waste (MSW) incinerator standards in the country (28 Og/dry standard cubic meter (dscm) or an 80 percent reduction, vs. the Federal standards of 80 Dg/dscm or 85 percent reduction). New Jersey also implemented a significant medical waste incinerator emissions reduction program. These actions have resulted in a greater than 90 percent reduction in incinerator mercury emissions since 1993 making New Jersey a national model for progress in mercury emissions reductions. DEP has also piloted and managed innovative mercury battery, mercury switch and mercury containing fluorescent lamp collection and recycling programs.

*Statement 15:* "She cut the list of chemicals covered by the Right to Know Act by 2,000."

Response. In 1984, DEP required employers to report to DEP the entire U.S. Department of Transportation (USDOT) list of hazardous materials on a survey form that DEP used at that time called the Emergency Services Information Survey (ESIS). The Department included the USDOT list reporting requirement in order to gather information about the extent of use of the USDOT substances in New Jersey. This information would then be used to determine whether any of the USDOT substances should be considered Environmental Hazardous Substances (EMS) under the Right To Know law and be listed as EMS's in DEP's rule. The USDOT list was developed by the Federal agency for the purpose of identifying those substances

which potentially posed a hazard during transportation and which an emergency responder to a transportation accident would thus want to know about. The USDOT list had no relationship to the Department's Environmental Hazardous Substances list of chemicals which was developed to include those substances that could pose an environmental and public safety threat based upon their storage, manufacture, use at facilities in the State. In January 1994, Commissioner Jeanne Fox adopted the elimination of the ESIS survey (which had been incorporated in the RTK inventory survey) and also adopted elimination of the USDOT list of substances to be reported. At the same time, DEP proposed a new EHS list which proposed to include the USDOT list of hazardous substances. In July 1994, Commissioner Shinn adopted the new EHS list but did not adopt inclusion of the USDOT list of hazardous substances as part of the EHS list. Thus, the EHS list never included the USDOT list of hazardous substances as RTK Environmental Hazardous Substances.

*Statement 16:* "The Governor dismantled the Hazardous Waste Program."

Response. To the contrary, New Jersey boasts an award winning voluntary clean-up program. Two clean-ups overseen by the State, Trenton Waterfront Development and the Edison Crossroads Mall, were recipients of the prestigious National "Phoenix Award" for innovative site clean-up actions in 1999 and 2000 respectively. In terms of Superfund, since 1994, 13 sites have been fully cleaned and removed from the National Priorities List of sites and one partially removed. This brings the total number of sites removed to 18. Furthermore, Superfund sites are divided into subsites to facilitate both immediate cleanups that may involve drum removals and long-term cleanups that target contamination, such as tainted groundwater, requiring decades of treatment. As of December 31, 1999, 275 out of 446 subsites (62 percent) have been completely cleaned up or are being addressed through long-term operation, maintenance and monitoring. This is an increase of 111 subsites since June 30, 1994, or a 68 percent rise.

Governor Whitman signed the Brownfield and Contaminated Site Remediation Act in January 1998. DEP's brownfield inventory is 1,327 sites as of September 2000. New Jersey is the only State in the Nation with a reimbursement program for private parties conducting voluntary cleanups at brownfield sites. The state brownfield program enables a developer to enter a Redevelopment Agreement with the State after the company agrees to cleanup and reuse a brownfield site. Taxes generated from new businesses operating at a former brownfield site provide funds to reimburse a developer 75 percent of its cleanup costs.

*Statement 17:* The Governor "cut the Radiation Protection Program."

Response. New Jersey's Radiation Protection Program remains fully intact within the DEP and carries out its regulatory functions required by law. These include the oversight and licensure of x-ray technicians, inspection of x-ray machines to reduce unnecessary exposures to radiation, regulation of nuclear power plants, administration of New Jersey's comprehensive radon protection program, management of the low level nuclear waste siting commission activities, including negotiation of the Atlantic Compact with our sister States of South Carolina and Connecticut and providing technical support to Federal agencies on radiation protection issues.

*Statement 18:* The Governor "changed the regulations to allow waste oil to be burned in space heaters in garages."

Response. As a primary management strategy, the DEP continues to support used oil recycling. Most counties in the State actively require the collection of used motor oil. DEP also allows the burning of used oil in state-of-the-art combustors installed at maintenance garages to help avoid illegal dumping and less desirable management practices for used oil not destined for recycling. New Jersey's used oil combustion rule is amongst the most restrictive in the nation.

Environmental safeguards on maintenance garage used oil combustors include: limitation to certain onsite generated used oil (such as crankcase, transmission and hydraulic fluids from maintenance garages); prohibition on burning chlorinated solvents and similar materials; and annual combustion monitoring and burner tune-up to ensure efficient combustion.

*Statement 19:* "The Governor cut funding and maintenance for State Parks. New Jersey has the lowest per capita spending for State parks in the nation."

Response. The Governor is committed to the citizens of New Jersey and visitors to the State having access to high quality facilities at not only the New Jersey parks, but also our wildlife and natural areas. Over the past few years, she increased operating budgets for parks by over six million. She also recently asked New Jersey lawmakers to dedicate \$250 million dollars over the next 10 years to maintain and improve the State's parks, historic sites, wildlife and natural areas so that we will enjoy a "world-class" open space system.

Using information from the State Parks Trends 2000 Conference, in 1999 capital expenditure per visitor throughout the Nation ranged from \$.01 to \$8.11. New Jer-

sey fell in the middle of the States at \$1.44 per visitor (\$2.65 per resident). In the 11 Northeastern States, the average per visitor was \$1.10.

With respect to operating budget per visitor, throughout the Nation it ranged from \$.44 to \$9.24; New Jersey fell in the middle at \$1.87 per visitor (\$3.44 per resident). In the 11 Northeastern States, the average operating budget per visitor was \$2.73.

*Statement 20:* "During her term, the State Development and Redevelopment Plan has not been implemented. The rewriting of the plan weakens it even more."

Response. The implementation of the State Development and Redevelopment Plan has been a priority objective of the Whitman administration. Under the Governor's direction, each of the State agencies charged with implementing the plan have staff assigned for that purpose. These State agency "teams" are coordinated through a State Plan Implementation Assistance Team in the Department of Community Affairs. Implementation steps undertaken by the State agencies include the development of Geologic Information System (GIS) compatible systems; providing planning grants to local municipalities and counties; the development of environmental Indicators tied to State Plan goals; and a focus on coordinated infrastructure investment opportunities.

The Draft Final State Development and Redevelopment Plan, that is currently in the public hearing phase and should be adopted by the end of March 2001, replaces the current center designation process with a new process called "plan endorsement." This new process will significantly enhance the implementation of the Plan as, before endorsement can be attained, there will be a requirement for coordination and integration between State agency functional plans and local regional and municipal master plans.

*Statement 21:* "The DEP waited 5 years past its mandatory deadline to propose new rules for Coastal Zone Management. The rules were at best ineffective and have been withdrawn."

Response. The DEP adopted the first set of amendments, concerning single family homes, within one year of the 1993 legislative amendments to the Coastal Area Facility Review Act (CAFRA). It took longer to develop a set of comprehensive regulations that for the first time integrated environmental regulations with the State Development and Redevelopment Plan. These regulations, adopted on February 7, 2000, were the result of extensive negotiations with municipal, environmental, business, and legislative leaders. These regulations have resulted in significantly enhanced environmental protection and planning in the coast and for the first time established limitations of on development.

*Statement 22:* "While the Governor supports open space, her Department of Transportation is supporting 40 new highways or highway expansions, mostly through rural areas."

Response. The Department of Transportation provided its draft FHWA funded Planning Work Program to the State's three Metropolitan Planning Organizations (MPO's) for their review and comment. There is an activity in that Work Program entitled "Concept Development/Corridor Analysis" which lists 43 locations where transportation planning studies are either active or proposed. Some individuals and groups have construed that the DOT is proposing major roadway widenings at each of the identified locations. This is not the case. These studies will evaluate the transportation needs in the area from a congestion, operational, safety, roadway/bridge condition, bicycle, pedestrian, transit and community perspective. The studies will evaluate and recommend improvement concepts that address the specific needs identified consistent with the needs of the community. The DOT believes that most of these studies will not be recommending major roadway widening. For those areas where major widening is warranted, no decision will be made to advance a project until a full Public Involvement Process has been conducted.

*Statement 23:* "The Governor supports construction of Rt 92 through the largest stretch of environmentally sensitive land designated in Middlesex County, with 14 acres of wetlands to be filled in. The EPA opposes the highway."

Response. Route 92 is an essential east/west link in the central part of New Jersey where there is no such limited access facility or regional facility. The consequence of not constructing east/west access is that significant regional trips will continue to use the local road system. The local road system was not designed for large trucks and, in addition, the current traffic volume on the local road system inhibits the free-flow of traffic to meet the intended purposes of the local road system. Route 92, in the design year, is projected to serve an average daily volume of 32,000 vehicles, 2,600 of which are trucks. Moving regional traffic the Turnpike Authority's proposed Route 92 will result in a reduction of air pollution and will create a materially safer environment for those who live, work and raise families in the Central New Jersey area.

Route 92 will cause the filling of approximately 14 acres of wetlands. The Turnpike Authority, through creative design and a willingness to invest additional funds, has reduced the wetlands impact from an original 33.5 acres to the current 14 acres. The Turnpike Authority has presented a mitigation plan that will create approximately 50 new acres of wetlands to replace the filled acreage. In addition, the Turnpike Authority has committed to convey to the Governor's Open Space Program over 200 acres of forested wetlands.

Route 92 represents an appropriate balance between needed quality of life for the movement of people and goods with an appropriate respect for the environment. The project has overwhelming support from business, labor, local municipalities, the County of Middlesex, the Middlesex County Planning Board and the prestigious and well-recognized Regional Planning Partnership.

*Statement 24:* The Governor supported the casino tunnel, a new highway through a middle-income neighborhood in Atlantic City that will be a private driveway for a casino developer.

*Response.* The need to connect the Atlantic City Expressway and Brigantine Island has been sought and studied for more than 30 years. The Expressway offers the only flood-free exit from Atlantic City. In addition, the need to handle growth in traffic has called for grade-separated interchanges since casinos first were developed in the marina area nearly 20 years ago.

The advent of a 2,000-room resort casino hotel with a potential for two similar properties offered both the opportunity and the necessity to address these issues. In looking at alternatives, the Department of Transportation believed it was critical that the project minimize wetlands takings and impacts. DOT also wanted to minimize impacts on residents. The best alternative was to go between neighborhoods rather than through them. The alignment selected did just that. To further reduce impacts, DOT buried the road and kept all construction activities out of the neighborhood. Casino financial participation made this possible.

The tunnel will support the development and redevelopment of the bay area in Atlantic City for casino development and will allow the proper closure of an abandoned landfill. Promotion of casino development in Atlantic City is a significant public policy supported by the voters of New Jersey. Far from being a "private driveway," the tunnel will provide access to many properties in that area and will make their development possible. The tunnel was designed and constructed to meet all applicable environmental standards. The tunnel was ultimately supported not only by the local government of Atlantic City but by the residents of the neighborhood in which it went through.

Not only are we providing the connection to Brigantine and improving traffic but we also are carrying out one of the largest public-private infrastructure projects with minimal environmental impact on both the natural and man-made conditions.

*Statement 25:* "Whitman advocated taxpayer financing of a private road from the New Jersey Turnpike to a toxic waste incinerator that the Governor was supporting in Linden."

*Response.* Ultimately, shrinking hazardous waste generation in New Jersey, as well as regional "capacity assurance" planning, revealed that the State did not need to move forward with new hazardous waste disposal capacity. As a result, the proposed project never moved forward and the ramps were not constructed. While litigation remains active concerning this proposed facility and site, the project is not moving forward.

The New Jersey Hazardous Waste Facility Siting Commission approved the construction of a hazardous waste incinerator in the Trembley Point Section of Linden. The approval was conditioned upon trucks destined for the incinerator not using the local road system but would access the site through the use of ramps built by the New Jersey Turnpike Authority. The Turnpike Authority worked with the private landowner to develop access facilities exclusively for hazardous waste trucks. The ramps were to be paid for by the private landowner with no taxpayer or Turnpike Authority funds used for the construction. The Turnpike Authority's approved ramps leading to Trembley Point represented not only the fulfillment of the conditions set forth by the Siting Commission, but most importantly reflected the Turnpike Authority's commitment to protect the wellbeing and safety of New Jersey's citizens by removing trucks containing hazardous materials from the local road system and placing such trucks on the New Jersey Turnpike.

*Statement 26:* "She supports the extension of Route 18 through the Rutgers Nature Preserve and along the Raritan riverfront."

*Response.* The Route 18 extension through Rutgers Nature Preserve has gone through a full Federal Environmental Impact Statement and has been approved by the FHWA. This review process determined there were no significant impacts. During the EIS development, the impacts to the preserve were fully known, considered



and discussed with Rutgers University and other stakeholders. The DOT worked with these groups to minimize the impact and change the design to do so.

The area to be impacted (8.6 acres) by the project is on the periphery of the Preserve, in an area consisting of secondary growth woodland on what was formerly farmland. This will be mitigated by 8 acres of land adjacent to the Preserve. The more significant, mature forest is located on the eastern portion of the site and will not be impacted. Because this project is in an urban setting, there were difficult tradeoffs to be made to address safety, congestion and the need to preserve natural habitat.

In terms of the Route 18 aspects along the Raritan Riverfront, the Governor is deferring to and supporting the environmental review process, which is seeking to find an acceptable solution to a serious congestion and safety problem in an environmentally sensitive manner. The environmental review process is not complete and a final determination of significant impacts has not been made. Once all of this is known, a final decision will be made of what the project will be. Clearly, a final outcome has not been determined.

*Statement 27:* "The Governor supported spending \$270 million dollars to help Merrill Lynch build a corporate office park in a farm field in Hopewell, a project that included running a sewer line nine miles from Trenton."

Response. Merrill Lynch decided to locate its corporate office park in Hopewell Township, New Jersey a number of years ago. A proposal in 1999 to run a new sewer line to Trenton was never formally approved by Hopewell Township and was eliminated from consideration. The project site is currently connected for sewage disposal to the local Ewing-Lawrence Sewerage Authority.

*Statement 28:* "She supported the filling of 200 acres of wetlands in the Meadowlands for a mall. The EPA also opposed this project"

Response. The Governor has never supported filling 200 acres of wetlands to construct a mall in the Hackensack Meadowlands. Regulatory issues surrounding this project are currently pending before the Army Corp of Engineers in terms of its 404 wetlands permitting jurisdiction. The State will further evaluate the feasibility of this project from a regulatory perspective once the Army Corp has acted.

*Statement 29:* "The DEP wants to allow cranberry growers to destroy up to 300 acres of wetlands in the Pinelands for the creation of cranberry bogs. The EPA rejected the settlement agreement on a major wetland violation in the Pinelands by DeMarco Enterprises, a politically connected cranberry grower. The proposed settlement was also criticized by the New Jersey Inspector General."

Response. Last year the DEP adopted general permit 23 for the limited expansion of cranberry bogs in the Pinelands. Cranberry growing has been occurring in the Pinelands for over 100 years and is one of the few permitted uses of land in the preservation area. Cranberry bog expansions have been deemed desirable by both the State and Federal Governments as part of the Pinelands Comprehensive Management Plan, the most stringent land use regulatory program in the nation. GP23 allows no more than 300 of the 200,000 acres of wetlands in the Pinelands to be converted into bogs and provides for a no net loss of wetlands as well as additional mitigation and minimization provisions. Region II of the Federal EPA has approved GP23 as resulting in "no more than a minimal individual and cumulative impact." The Inspector General's comments on this settlement are currently under review by the Department. The settlement has not been finalized.

*Statements 30 and 31:* "Also in the Pinelands, she supported construction of Tabernacle High School in the Preservation Area. She appointed property rights advocates to the Pinelands Commission, on which they now have a majority."

Response. The Tabernacle High School proposal was made by the municipality and was approved by the independent Pinelands Commission without the Governor's involvement. The decision to allow construction of the high school was ultimately supported by Secretary of the Interior Babbitt following his visit to New Jersey. The Governor has appointed a wide range of members to the Pinelands Commission, including environmentalists and those who are concerned with the proper balance between land preservation and property rights. The New Jersey Pinelands remains the most strictly regulated and protected land mass in the nation.

*Statement 32:* She also "supported removal of the long-time executive director."

Response. Under New Jersey law, the Pinelands Commission itself has exclusive responsibility and authority for the naming of its Executive Director, who serves at the pleasure of the Commission. In 1999, the Commission did appoint a new Executive Director at its own discretion to bring a renewed perspective to this critical position.

*Statement 33:* "The Sierra Club had to go to court to prevent the adoption of a rule that would have allowed for substantial increases in the discharges of pollutants on to New Jersey waterways. The EPA had to intervene."

Response. The Department adopted comprehensive New Jersey Pollutant Discharge Elimination System (NJPDES) regulations (N.J.A.C. 7:14A et. seq.) on May 5, 1997, after extensive public dialog involving all interested parties including the Sierra Club. These regulations, which control the discharge of treated wastewater into waters of the State, are consistent with Federal regulations and are protective of water quality. The Department formally submitted those regulations to the United States Environmental Protection Agency, which approved them on October 26, 2000. The Sierra Club—New Jersey Chapter was one of the plaintiffs who brought suit against the Department concerning the adoption of those regulations. The Appellate Division of the Superior Court of New Jersey ruled in favor of the Department on April 14, 2000.

*Statement 34:* "New Jersey has the highest percentage in the country—85 percent—of streams and rivers impaired by pollution."

Response. This impaired waters percentage is derived from outdated information that has been taken out of context.

The Draft 2000 New Jersey Water Quality Inventory Report demonstrates that New Jersey's ocean and bay bathing beaches are fully swimmable and 75 percent of lake beaches are fully swimmable. New Jersey has been a national leader in opening shellfish beds for harvest with 88.9 percent currently harvestable.

In addition, 85 percent of monitored river stations met, or were better than, what is required by the New Jersey Surface Water Quality Standards for dissolved oxygen, which is necessary for aquatic life; 100 percent met or were better than required by standards for the toxic form of ammonia. Although 78 percent of monitored river stations had elevated bacteria, these locations are not designated bathing beaches, and New Jersey Surface Water Quality Standards are among the most stringent in the country. Fish communities have improved in the Raritan, Passaic and Delaware Basins largely due to secondary and tertiary improvements in sewage treatment. The Governor's commitment and funding of her Watershed Management initiative will provide for the next significant increment of water quality improvements in New Jersey.

*Statement 35:* "The Whitman administration adopted regulations that removed water quality standards for stormwater discharges for quarries."

Response. The Department has not adopted regulations that remove water quality standards for stormwater discharges from quarries. In fact, the Department presently regulates 46 quarries and other mining facilities in the State, under the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program. These permits require quarries to eliminate or minimize the discharge of pollutants to the waters of the State. The program is implemented under the authority of Federal National Pollutant Discharge Elimination System (NPDES) permit program and is consistent with permits issued by the Environmental Protection Agency and other delegated States on a national basis. To further improve the quality of our waters, the Department is presently developing a new general NJPDES permit that will be more comprehensive in regulating quarries and mining facilities for discharges to both surface and ground waters of the State.

*Statement 36:* "The EPA Inspector General's (IG) July 1999 report found that New Jersey violated the Clean Water Act in its water monitoring program. The report cited failures to monitor for 33 toxic chemicals, as well as the lack of monitoring stations."

Response. New Jersey has a comprehensive water monitoring program and set of surface water quality standards. Unlike many other States, New Jersey utilizes both chemical and biological monitoring to assess its waters. The chemical monitoring was expanded last year and will include over 300 sites. In addition, there are about 800 stations monitored to determine the health of our aquatic ecosystem.

Of the 33 chemicals cited in the IG's report that are not in the New Jersey standards, EPA has not published criteria recommendations that would trigger the need for New Jersey to adopt standards for 23 of these chemicals. For 9 other chemicals, New Jersey regulates them in two chemical groups rather than as individual compounds, as EPA has done recently. The remaining chemical will be proposed in a future proposal. The Inspector General's report notes that New Jersey has criteria for 29 substances beyond what is on EPA's list of 126 priority toxic pollutants.

*Statement 37:* "The State Assembly unanimously passed an oversight resolution in September that said the administration's proposed watershed rules did not meet legislative intent to clean up and protect New Jersey's waters. The resolution was scheduled for a vote and then pulled in the Senate the day was nominated to head the Environmental Protection Agency."

Response. The proposed watershed rules are one of the most comprehensive continuous planning regulations in the country. They address the water resource impacts of new development that will occur if the area will be on sewers or use septic

systems. Ensuring that new development does not cause the pollution of the State's water resources is a main purpose of the rules. The rules also establish a watershed management planning program for the entire State to address existing problems and develop long term solutions for areas that are continuing to develop. The legislative action on the rule was more a reaction to the inclusion of a linkage to New Jersey's State Development and Redevelopment Plan rather than a concern about the need for the proposed planning efforts to protect the State's water quality and water quantity.

*Statement 38:* "The Governor's energy deregulation legislation allows for a \$9 billion dollar bailout of electrical utilities, cuts funding in half for energy conservation programs, as well as for alternative and renewable energy programs, categorizes garbage incinerators as renewable energy, lists nuclear power plants as non-acid rain producing and eliminates siting criteria for power plants."

Response. [Eileen pursuing input from the BPU, but the DEP's response is as follows! Energy deregulation was a bipartisan legislative effort undertaken in New Jersey and several other States in the Northeast and California. Known as the New Jersey Energy Restructuring Act, its primary purpose is to reduce the cost of energy to the electric ratepayer by allowing competition in the energy generator industry. Although the environment was not a major theme of this Legislation, several provisions, supported by the Governor were enacted which will also have a positive and long lasting impact on New Jersey energy policy and environment. Among these are;

Establishing a process to enact additional system wide electrical generation emission controls on facilities in New Jersey. These standards, if needed, would be enacted by New Jersey and neighboring States.

Requiring specific emissions information to be sent to all electric ratepayers so that the customer can make the choice of buying cleaner energy. This is known as "green power."

Allowing consumers who generate their own electricity through solar and/or wind power to offset their electricity rate by "selling back" unused electricity to the utilities.

Enacting the most comprehensive demand side management program for energy efficiency in the country as rated by independent organizations. The new Societal Benefits Charge funding program includes a significant incentive for new Class I renewable energy technologies (Class I renewables are electricity generation from wind, photovoltaic, solar,

geothermal, wave, fuel cells, landfill gas and biomass.) The funding does not include MSW incinerators or large hydroelectric plants that are defined as Class II renewables. This funding amount, over \$100 million per year, is the second largest funding incentive program in the country.

Requiring, all sellers of electricity into the New Jersey market to have a percentage of renewable energy as part of their portfolio. The standard does allow for up to 2.5 percent of their existing portfolio to be Class I and Class II renewables for the year 2000 and 2001; however, this same standard requires that an additional 4 percent of their portfolio come solely from Class I renewables. This translates into 2.7 million MWH of electricity to be generated by new Class I renewables by 2012. This will significantly advance the renewable energy market in New Jersey.

Finally, in terms of promoting nuclear as a component of our non-acid rain program. New Jersey does not have a strategy that promotes nuclear as part of any air program. However, the current operating nuclear facilities are part of New Jersey's electricity baseload. These facilities do not have emissions. This baseload is part of any emissions inventory calculations required by the USEPA for NO<sub>x</sub>, SO<sub>2</sub>, CO<sub>2</sub> or mercury.

*Statement 39:* "Her efforts to weaken the State's air pollution law was stopped by the Legislature."

Response. The administration supported the 1995 legislative amendments to the Air Pollution Control Act. The majority of these amendments strengthened the Act and were to ensure the State statute was consistent with recent amendments to the Federal Clean Air Act.

New Jersey has a good air program. The Governor's new budget initiatives to expand the air program in air toxics and greenhouse gas will not only strengthen the program but make New Jersey a leader in this area.

*Statement 40:* "Her bid to grant polluters 10-year interim permits was blocked by the EPA."

Response. We are not aware of any 10-year interim permit limits that were blocked by EPA.

New Jersey has never had 10 year permits in any environmental program. Since 1968, New Jersey has had 5 year authorizations for operation in the air permit program. The water program has always had 5 year authorizations.

In the early 1990's, the department developed a number of proposals to strengthen the water program and held a series of interested party meetings to discuss those ideas. As a result of those discussions, in 1996 the department proposed major reforms of the water program which included a concept known as interim permit limits. These were not for a 10-year period. Based on public comment and further discussion, the department made a determination not to adopt those limits.

The Air Pollution Control Act does include a provision allowing for facilities with operating permits to establish a 15 year plan for achieving greater emission reductions than required. The additional reductions the facility achieves are renewable in 5 year increments upon renewal of their operating permits.

*Statement 41:* "She used her line-item veto to eliminate budget language that would have prevented polluters from writing watershed cleanup plans."

Response. Polluters are not writing watershed cleanup plans. This is referring to the preparation of Total Maximum Daily Loads (TMDLs) and associated implementation plans that will determine how to restore water quality that is not meeting standards. These plans are prepared by the State Department of Environmental Protection with input from all interested parties in the watershed that is impacted. The USEPA regional office reviews and approves these plans before the Department formally adopts them.

*Statement 42:* "When she was head of the State Board of Public Utilities, Whitman allowed watershed lands to be sold. The Legislature had to step in and pass the Watershed Moratorium Act."

Response. [Answer requested from BPU.]

*Statement 43:* "She cut funding for recycling and eliminated the mandatory 60 percent target for reducing solid waste."

Response. New Jersey has one of the most comprehensive recycling programs in the United States with a documented total recycling rate of 55 percent. During Governor Whitman's tenure, she did modify the statewide goal, but did so to increase our target from 60 percent—65 percent total waste stream recycling.

*Statement 44:* The Governor "vetoed funding for dam repairs. Later, flooding destroyed several of the dams that were targeted for repair."

Response. The Governor provided close to \$10 million for dam repairs in 1999 and another \$10 million in 2000. More significantly, the Governor initiated a more aggressive dam safety inspection program and has doubled the staff within the State's Dam Safety Program (to 20) to ensure the success of the more aggressive program.

*Statement 45:* "Despite her open space preservation program, the loss of open space to development has more than doubled under Governor Whitman. New Jersey leads the Nation in the loss of open space."

Response. As recognized in the Trust for Public Land's annual report, New Jersey and Maryland's smart-growth programs are among the nation's most comprehensive. Indeed under the Governor's leadership, New Jersey voters approved a constitutional dedication of \$98 million annually and the issuance of \$1 billion in bonds over the next 10 years to provide a stable source of funding the acquisition and preservation of one million more acres of open space, farmland, and historic sites in New Jersey. With the addition of one million more acres of preserved land, New Jersey will have preserved over 25 percent of its total acreage. The Governor also provided up to \$98 million per year for 20 years to pay off any bonded indebtedness.

The Governor has also supported the expansion of the Environmental Infrastructure Trust Financing Program (EIFP) to provide half-market rate loans to local and county governments so that the acquisition of open space and protection of water quality may proceed at an accelerated pace. Loans through the EIFP, coupled with the existing funding available through the Green Acres program, is receiving significant interest and will significantly increase the amount of open space preserved.

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PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY  
*Washington, DC, January 8, 2001.*

SENATOR HARRY REID, Nevada,  
*Environment and Public Works Committee,*  
*Dirksen Senate Office Building,*  
*Washington, DC 20510-6175*

DEAR SENATOR REID: On behalf of Public Employees for Environmental Responsibility (PEER), I am writing to express our concerns about the environmental record of New Jersey Governor Christine Todd Whitman, the US Environmental Protection Agency (EPA) Administrator-designate.

If Governor Whitman's chief qualification to head USEPA is her record in New Jersey, that record bears critical examination by the Senate Environment and Public Works Committee.

As Governor, Ms. Whitman championed policies which diminished the ability of the New Jersey Department of Environmental Protection (DEP) to enforce anti-pollution laws, protect natural resources and serve the public. Within 2 years of taking office as Governor, Ms. Whitman:

- eliminated DEP's only prosecution unit;
- abolished the Public Advocate Office, designed to assist affected communities and individuals in presenting their concerns to the DEP, and replaced it with a Business Ombudsman; and
- cut departmental staff by approximately one-third.

In her public statements, Governor Whitman has contended that her environmental record should be judged not by performance measures such as the number of inspections conducted or successful enforcement actions taken but instead should be evaluated solely by environmental results. PEER would urge you to approach this contention with two challenges:

1. What evidence is there that Governor Whitman's actions at DEP caused or directly contributed to any identified environmental quality improvements? Environmental improvements often have long gestations and, to the extent quality improvements can be isolated, Governor Whitman may simply be reaping the benefit of policies instituted by predecessors or by actions at the Federal level.

2. Precisely which environmental measures improved due to Governor Whitman's policies of discouraging enforcement? As you know, environmental quality measures are fraught with methodological fuzziness, however, certain results from her tenure seem clear:

- the number of impaired waters in the State of New Jersey increased by approximately 10 percent; and
- more than 60,000 acres of protected wetlands were lost to development due to relaxation of DEP regulatory protections.

Perhaps the committee should consider the testimony of DEP scientists, inspectors, permit writers and other environmental specialists who were charged with reconciling Governor Whitman's policies with their sworn obligation to faithfully execute anti-pollution laws. According to a survey of New Jersey DEP employees conducted by PEER in 1997 (copy enclosed), the agency experienced a sharp de-emphasis on enforcement, excessive corporate influence and manipulation of scientific findings under Governor Whitman.

The PEER survey, the only survey of State environmental professionals conducted in the Whitman era, was sent to all DEP employees and found:

- Nearly two out of three respondents report instances where "DEP inaction or lack of enforcement has caused environmental damage."
- More than three out of four employees say that the "level of DEP's environmental enforcement has decreased in the past 3 years."
- Nearly three out of four employees believe that under Governor Whitman, the "regulated community excessively influences DEP permitting, policy and enforcement decisions."

This PEER survey consisted of questions composed by DEP employees themselves. PEER mailed the survey to the work addresses of the more than 3,000 DEP employees. Approximately one in four agency employees (24 percent) responded, a strong rate of return when compared to the standard return rate for mailed surveys, generally.

Many employees included essays (also enclosed) further describing internal problems. According to one supervisor, "Trees are cut unlawfully, water is polluted, and wildlife is left unprotected." Special interest influence and political pressure were identified as major problems. For instance, an employee criticized DEP for being "corrupt and too political." An administrator accused the Governor of "catering" to business interests, and claimed "environmental rules are changed to protect industry." Another employee commented that "Regulations are being written by industry. . . permits have 'no teeth' anymore (because) polluters get what they want."

DEP employees also reported obstruction of environmental law enforcement, masking of scientific data and hiding of information from the public:

- More than half agree that "scientific evaluations are influenced by political considerations at DEP."
- One quarter of employees reported that they have received direct orders "to ignore an environmental rule or regulation" during the past 3 years.

- Sixty percent of employees fear “job-related retaliation for disclosing improper activity within DEP.”

If past is prologue, Governor Whitman's record at DEP should be closely examined in weighing her nomination to be EPA Administrator. To the extent that she seeks to replicate the policies instituted in New Jersey, her tenure at EPA will be marked by political interference in scientific findings, discouragement of needed anti-pollution enforcement efforts and suppression of candid recommendations from EPA's professional staff.

PEER urges you to carefully examine this nominee.  
Sincerely,

JEFFREY RUCH,  
*PEER Executive Director.*

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NEW JERSEY INSTITUTE OF TECHNOLOGY,  
*Newark, NJ, January 8, 2001.*

The HONORABLE TRENT LOTT, *U.S. Senate Minority Leader,*  
*Russell Senate Office Building,*  
*Washington, DC, 20510.*

DEAR SENATOR LOTT: I write to commend President-Elect George W. Bush's appointment of Governor Christine Todd Whitman as Administrator of the Environmental Protection Agency. I urge you to support her confirmation.

I have worked closely with Governor Whitman for 7 years. I can attest to her commitment to ecological preservation, environmental improvement and environmentally sustainable economic development.

Governor Whitman has energized the State Development and Redevelopment Plan making it a priority for all State agencies to balance economic growth with conservation and environmental protection needs.

Let me mention a few other areas in which she has provided dramatic and timely leadership in New Jersey: open space preservation; dredging and remediation; brownfields reclamation; watershed management; and preserving clean ocean water. Support of environmental research has been a consistent theme of her administration.

Based on my experience, I am convinced that Governor Whitman will provide strong leadership, built upon quality science and focused on effective environmental protection. She will fulfill the responsibilities of EPA Administrator with distinction.

Senator, I commend Governor Whitman to you without reservation. I urge you to support her confirmation as EPA Administrator. If you have any questions, please do not hesitate to have your staff contact me.

Sincerely,

SAUL K. FENSTER, *President,*  
*New Jersey Institute of Technology.*

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CLEAN OCEAN ACTION,  
*January 11, 2001.*

GOVERNOR CHRISTINE TODD WHITMAN,  
*State of New Jersey,*  
*State House,*  
*Trenton, NJ 08625.*

DEAR GOVERNOR WHITMAN: Congratulations on your nomination to become Administrator of the Environmental Protection Agency. It will be a tremendous opportunity and a great challenge. On behalf of Clean Ocean Action, we wish you the best through the confirmation process.

We remember well the leadership and initiative you took to end ocean dumping off the Jersey Shore. The controversy about ocean dumping contaminated dredged materials was raging when you campaigned for, and took the office of Governor. From the outset you took on this contentious and complicated issue with courage and wisdom. You brought together experts with a mission to identify solutions that would keep the ocean and the port thriving. Together, the expert crafted a solution that guaranteed both, and you ensured it was implemented.

It's not to say there were not bumps in the road; however, your steadfast commitment to supporting the ocean and the port prevailed.

Should you deem it beneficial, I would be available to testify in Washington, DC, at your confirmation hearing regarding your achievements to end ocean dumping off the Jersey Shore.

Sincerely,

CINDY ZIPF, *Executive Director.*

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NEW JERSEY GOVERNOR CHRISTIE ACCOMPLISHMENTS FOR THE ENVIRONMENT

*Open Space/Farmland Preservation*

- More Land Preserved than any previous Administration. Since January 1994, a total of 252,000 acres of open space and farmland in New Jersey has been preserved in comparison to 281,000 acres preserved from 1961–1993. Other highlights include:

- A total of 177,000 acres preserved under New Jersey's Green Acres program during the Whitman Administration—versus a total of 458,000 acres preserved under the program since 1961.
- Over 7,000 acres of preserved farmland closed or approved since 1994 versus the 207,131 acres of farmland closed prior to Governor Whitman's term.
- Creation of a stable source of funding and Garden State Preservation Trust to preserve one million acres over next decade. To date, 165,000 acres have been preserved toward the million acre goal (May 1997—December 2000), including 104,000 acres of open space and 61,000 acres of farmland.
- Signing of legislation providing \$11 million toward the purchase of Sterling Forest in New York, a source of drinking water for Northern New Jersey.
- Signing of her administration's 38th tax cut—for land conservation donations.
- Approval of over \$5 million for farmland soil and water conservation projects.

*Watershed Management Planning—The Creation of a New Program*

Governor Whitman established 20 Watershed Management Areas statewide and has spent over \$8 million each year for plans and projects to clean its waterways. New Jersey is considered a national model with its alliance of local regional and State officials; integrating infrastructure and permitting programs.

*Wastewater Regulation—A Revamped and Strengthened Program*

Governor Whitman signed Executive Order 109 requiring comprehensive environmental assessments before the Department of Environment Protection (LIP) can approve new or amended wastewater management plans. These new rules were proposed earlier this year to coordinate with regional Watershed and State Plans and encourage smart growths in areas with existing infrastructure.

*Air Quality—New Funding to Improve Monitoring Efforts*

Under Governor Whitman, three new monitoring sites were established and others upgraded to provide more comprehensive statewide data than is currently available from Federal sources. And the State is working to red Bloc greenhouse gas emissions below the 1990 levels through incentives to encourage voluntary reductions, promote energy efficiency and renewable technologies, and reduce landfill gas emissions.

*Brownfields—New Programs to Streamline Clean-ups and Encourage Redevelopment*

Governor Whitman signed a new law to transform the Brownfields program into a redevelopment tool and provided \$15 million to help towns clean-up sites and market them for reuse.

New Jersey is the only State in the Nation with a reimbursement program for private parties conducting voluntary cleanups at brownfield sites. New Jersey has more than \$73.8 million in grants and loans for brownfield site projects and other remedial actions since funds became available in 1994. (DEP's brownfield inventory was 1,327 sites as of September 2000.)

*State Plan—Support of Local Planning Efforts*

Governor Whitman has made it her administration's priority that all State agencies follow the State Plan to promote smart growth; the Governor has supported the cross-acceptance process to revise the Plan with local input. Governor Whitman appropriated \$3 million per year in Smart Growth grants to towns and counties.

*Clean Beaches—Drop in Beach Closings and Increased Funding for Protection*

Under Governor Whitman, all 127 miles of ocean beaches and 138 miles of bay beaches are 100 percent open for swimming with beach closings dropping from 800 in 1989 to 11 in 2000. Governor Whitman has allocated \$25 million per year in

shore protection projects to protect lives and property. The State has been praised by the National Resources Defense Council for having the nation's most comprehensive beach monitoring system.

*Shellfish Harvesting—New Jersey is Leader in Increasing Acreage of Shellfish Harvesting Waters*

Under Governor Whitman, New Jersey heads the Nation in opening shellfish beds with 88.9 percent now able to be harvested. its acreage has consistently risen from 578,419 acres in 1993 to 592,222 acres in 2001.

*Horseshoe Crab Population—New Jersey Guides Other Atlantic Coastal States*

Governor Whitman enlisted the Governors of Maryland and Delaware to support \$ 125,000 in new research to ensure the sustainability of horseshoe crabs as a food source for dependent animals. Governor Whitman supported a Federal reserve along the Delaware Bay to prohibit the harvest of horseshoe crabs here. The initiative follows the State's management strategies limiting harvests in Delaware and New Jersey waters.

*Dredging—New Jersey is National Leader in Innovation for Dredged Materials*

Under Governor Whitman, New Jersey residents supported the ports when they passed the Port Revitalization, Dredging Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996. The Governor's subsequent signing of legislation provided the authority and process for planning and implementing a statewide dredging and disposal plan. Dredged material is now seen as a resource and is being used to cap and reclaim tanner industrial sites and landfills, restoring them to productive use, resulting in both environmental benefit and well being for local economies.

*Environmental Infrastructure Trust—Funding for Clean Water*

Under Governor Whitman, the program has awarded \$590 million in clean water loans, \$85 million in drinking water loans, 55.2 million in planning grants and \$12.2 million in designing grants for infrastructure improvements statewide. With DEP the Trust offers loans to upgrade or repair wastewater facilities; upgrade infrastructure to reduce non-point source pollution, closure of landfills, and for land acquisition.

*Hazardous Waste Clean-ups—Stability of Site Remediation Program*

Under Governor Whitman, more than \$118 million in Corporate Business Tax revenue has been dedicated to publicly funded cleanups for remedial investigations, cleanups and administrative support during State Fiscal Year 1998 through State Fiscal Year 2001. This funding has provided the DEP's Site Remediation Program with a reliable source of revenue to begin site cleanup work at over 50 new sites and pay for ongoing remedial projects at over 200 active publicly funded sites across the State. The stability of the program's publicly funded effort is vital to New Jersey remaining a top recipient of Federal cleanup moneys in the nation. More than \$613 million in Superfund dollars was earmarked for New Jersey sites since 1994.

*Quality New Jersey Award—NJDEP is Presented with Prestigious Award*

As part of its strategic planning process, the DEP adopted the criteria from the Malcolm Baldrige National (dual) Award program as its framework for defining and achieving its "Open and Effective Government" goal and in support of its five environmental goals. In November 2000, NJDEP was presented with the 9000 Governor's Award for Performance Excellence—Bronze Level. DEP is the first State Department in New Jersey to receive this prestigious award and the only State environmental agency in the Union to receive this form of recognition based on a complete Baldrige-type application.

January 16, 2001

The HONORABLE HARRY REID, *Chairman,*  
*Environment and Public Works Committee,*  
*United States Senate,*  
*Washington, DC 20510.*

DEAR MR. CHAIRMAN: I am writing to you today to support strongly the nomination of New Jersey Governor, Christine Todd Whitman, to the position of Administrator of the U.S. Environmental Protection Agency.

During the 14 years that I served in the New Jersey General Assembly (1982–1996), I chaired the Environment Committee for 8 of those years. When Governor



Whitman served as President of the Board of Public Utilities in the late 1980's, she and I were always in agreement on the importance of reducing air pollution and increasing efficiency by the utilities. Since she was elected, Governor Whitman has often used the collaborative "Netherlands" approach of setting goals and establishing benchmarks to decrease pollution by industry. During her two terms, Governor Whitman took a strong stand against dredging and dumping in the ocean; personally intervened to prevent the decimation of the horseshoe crabs in the Delaware Bay; advocated a watershed protection plan to decrease non-point source pollution; and continuously promoted "smart growth" to reduce air pollution, traffic congestion and the loss of our open spaces. While the foregoing is far from a definitive list of her accomplishments, I believe that they give you an understanding of the breadth of her leadership on environmental issues.

Since I retired from the New Jersey Legislature, I have worked closely with Governor Whitman on the preservation of open space, especially through the establishment of a stable source of funding to eliminate our reliance on bond issues. In 1998 Governor Whitman led a campaign to pass a Constitutional Amendment dedicating \$98 million dollars a year to preserve New Jersey's vanishing open space. Through her leadership, New Jersey is committed to preserving another million acres, 40 percent of our landmass.

I believe Governor Whitman's environmental record in New Jersey attests to her ability to be an excellent Administrator of the USEPA.

Sincerely,

MAUREEN OGDEN.

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NATIONAL ASSOCIATION OF REALTORS  
Washington, DC, January 18, 2001.

The HONORABLE ROBERT SMITH,  
*Committee on Environment and Public Works,*  
*Dirksen Senate Office Building,*  
*Washington, DC, 20510.*

DEAR SENATOR SMITH: On behalf of the more than 760,000 members of the National Association of Realtors (NAR), I am pleased to endorse the nomination of Governor Christine Todd Whitman as Administrator of the U.S. Environmental Protection Agency.

As Governor of New Jersey, Christine Todd Whitman has demonstrated a commitment to environmental protection. She has worked to protect the shoreline, clean up hazardous waste sites and preserve open space. In so doing, she has worked with—rather than against—the regulated community to achieve her goals. She recognizes that environmental protection and economic development can co-exist.

NAR believes that Governor Whitman's State government experience enables her to fully understand the relationship between environmental protection efforts at the Federal, State and local government levels. Most importantly, it enables her to understand the impact of environmental regulation on the everyday lives of citizens and communities.

We are confident that Governor Whitman will bring the same energy and commitment to the broad spectrum of environmental issues that she will confront as EPA Administrator, and that she will call upon the knowledge and expertise of realtors to assist in developing workable solutions to critical environmental issues.

The National Association of Realtors believes that Governor Whitman is an excellent choice to serve with President George W. Bush and the 107<sup>th</sup> Congress in developing and implementing environmental policies. We look forward to working together with the new Administration and the new Congress on issues affecting the real estate industry.

Sincerely,

RICHARD MENDENHALL,  
*2001 President.*

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AMERICAN CIVIL RIGHTS COALITION,  
*Sacramento, CA, January 8, 2001.*

The HONORABLE CHRISTIE TODD WHITMAN,  
 441 N. Capitol St., NW,  
 Suite 201,  
 Washington, DC 20001.

DEAR GOVERNOR WHITMAN: I write to congratulate you on your appointment as Secretary-designate of the U.S. Environmental Protection Agency under the new Administration.

Given your qualifications, I am sure you will serve the President-elect and our nation well. I hope and pray that the new Administration will be successful in turning this country around on the issue of "race." I pledge my support and assistance to promote opportunity and a culture of achievement needed most in our inner-city and rural areas so that we adequately prepare our fellow Americans and our kids for the end of affirmative action preferences. The outgoing Administration has regrettably not done enough to advance self-reliance and break the cycle of dependency—not just on welfare but also with "affirmative action" as we have come to know it.

Although you and I disagree on the issue of race preferences, I believe it is extremely unfortunate that Jesse Jackson and others have chosen to raise questions about your nomination on the basis of racial profiling complaints. If there were any nominee who should not be subjected to the race card based on one's past interactions with black Americans, it should be you.

Once again, congratulations and best wishes.

Sincerely,

WARD CONNERLY, *Chairman.*

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CITY OF NEWARK, NEW JERSEY,  
 OFFICE OF MAYOR SHARPE JAMES,  
 Newark, NJ 07102, January 8, 2001.

Hon. HARRY REID, *Ranking Democratic Member,*  
*Environment and Public Works Committee,*  
*Senate Office Building,*  
*Washington, DC, 20510.*

DEAR SENATOR REID: As Mayor of New Jersey's largest city, I have had the pleasure of working with Governor Christine Todd Whitman during her tenure as our State's chief executive. She has been a strong advocate of open space and the environment and pushed for the adoption of New Jersey's Master Plan which favors economic development in our urban areas, while preserving valuable farm land and open space. The successes that we have seen in the Garden State during her term in office prove that preservation of the environment does not have to suffer at the expense of successes in economic development and job growth.

The City of Newark has made significant strides in developing its Brownfields sites thanks to Governor Whitman's Department of Environmental Protection. Under Governor Whitman's watch our city has enjoyed a strong working partnership with the State DEP and U.S. Environmental Protection Administration. These relationships have enabled Newark to speed up the time consuming and complex process of reclaiming contaminated urban land, and have helped make New Jersey's largest city a role model for other communities across this nation.

Newark became the first large city in New Jersey to implement Governor Whitman's Environmental Opportunities Zone legislation, which enables developers to freeze the assessment on contaminated land at its pre-clean up value and use the difference between that and the post-clean up value to remediate the land. This allows the developer to pay a lower tax rate during clean up and use the money saved to pay for the reclamation. The use of this zone legislation is a tool to stimulate development wherever Brownfields are an impediment to attracting new investment and jobs, once again, enforcing the Governor's philosophy that the environment does not suffer at the expense of development.

My relationship with Governor Whitman goes back to 1986 when I was first elected mayor of Newark and she was the chairperson of the Bureau of Public Utilities. At that time, Newark was in a center of a debate over the closing of landfills, the construction of a resource recovery plant and the opening of garbage transfer stations. As head of the BPU and in all other roles that she has held, Christine Todd Whitman has always shown professionalism, honesty, vision and sensitivity to the needs of government and the people of New Jersey.

We in New Jersey are honored to have our Governor nominated by President-elect George Bush to serve as the administrator of the U.S. Environmental Protection Administration and hope that you and your colleagues on the Environment and Public Works Committee will recognize what she has done to improve New Jersey's economic and environmental climate and recommend her swift confirmation by the membership of the U.S. Senate.

Sincerely,

SHARPE JAMES, *Mayor*.

STATEMENT OF THE ATLANTIC CITY BRANCH OF THE NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE

We are writing to apprise you of a project with significant community and environmental justice impacts which directly relates to the confirmation hearing of Governor Christie Whitman for Administrator of the USEPA. The Atlantic City Tunnel Project is a project that was funded by the State of New Jersey, administered by one of its agencies, and for the purpose of serving a casino. The Atlantic City Tunnel Project, which is formally referred to as the Atlantic City/Brigantine Connector, is being built by the South Jersey Transportation Authority, in conjunction with the New Jersey Department of Transportation (NJDOT), the New Jersey Transportation Trust Fund Authority, Mirage Resorts, Inc. and the Casino Reinvestment Development Authority, and will serve as the primary transportation route to a casino resort that was to be built by Mirage Resorts, Inc. The Boyd Gaming Company is the present owner of the casino construction site and plan to build a 500 million dollar casino named the "Borgota".

The South Jersey Transportation Authority, in conjunction with the New Jersey Department of Transportation, selected a route that bisects the Atlantic City communities of the First Ward, Second Ward, Third Ward, Fourth Ward, and Venice Park area of Atlantic City, all of which consists of predominantly African-American residents. The selected route has resulted in the relocation and displacement of homeowners that resided on the selected route. In addition, the route traverses within 25 feet of the remaining residents. Although they identified four viable routes, the route selected was the only one that would result in the displacement of residents.

A group of the impacted residents sued the project developers under Title VI of the Civil Rights Act (Bryant et al. v. New Jersey Department of Transportation et al., 1F. Supp 426 (1998)). The residents asserted that, despite the fact that the selected route traversed and impacted on a number of communities, which are predominantly African-American communities, the South Jersey Transportation Authority and the New Jersey Department of Transportation ignored racially discriminatory impacts of its decision. Specifically, the residents asserted that South Jersey Transportation Authority and New Jersey Department of Transportation affirmatively selected the route regardless of such impacts, despite the fact that viable alternatives existed that would not have such discriminatory impacts.

Because of limitations on resources to fully prosecute the case, the plaintiffs settled the lawsuit only after a specific commitment by the South Jersey Transportation Authority and the New Jersey Department of Transportation to address all issues of potential impacts to residents. The settlement agreement provided for the plaintiffs the opportunity to hire an independent technical consultant to review all the project plans and issue recommendations to South Jersey Transportation Authority and the New Jersey Department of Transportation to prevent negative impacts to the residents.

Among the significant issues of concern were:

*Protecting Residents from Exposure to Contaminants in the Soil*

Soil in the selected route of the tunnel is contaminated with heavy metals, petroleum-related compounds, and other organic and inorganic substances at levels in excess of health-based standards established by the New Jersey Department of Environmental Protection. Most of the soil exceeding NJDEP cleanup criteria will be reused onsite; the total volume of the contaminated soil that will be reused onsite is estimated by SJTA at 152,000 cubic yards. To ensure that these contaminants will not migrate into the community, the South Jersey Transportation Authority was requested to conduct air monitoring continuous engineering controls and cover the soil along with air monitoring—onsite and onsets—of the most significant contaminants found in the soils—heavy metals. This recommendation was rejected and excavation continues. Community residents have begun to complain of respiratory difficulties since the beginning of construction—including the triggering of dormant asthma.

*Long-Term Air Quality*

Computer model analysis performed by the consultants to the South Jersey Transportation Authority and the New Jersey Department of Transportation acknowledge the possibility that there could be hot spots of carbon monoxide and sulfur dioxide in the areas adjacent to the tunnel due to vehicular emissions. The residents recommended the installation of vents and air control devices to treat emissions prior to venting from—a low cost measure, particularly in light of the 330 million public dollar cost of the project. The residents also recommended air monitoring of these contaminants for a short time period after the tunnel is constructed. South Jersey Transportation Authority rejected these measures.

*Flooding*

The area where the tunnel is being built has a high water table. The project documents acknowledge that storm water flow will be cutoff by the tunnel. While South Jersey Transportation Authority has stated that the need to address storm water flow will be addressed in the project, the residents have recommended that the area be monitored after the completion of the tunnel to identify and address any localized flooding.

*New Jersey Inaction and Federal Government Intervention*

The South Jersey Transportation Authority, the New Jersey Transportation Authority, and the City of Atlantic City have not responded to any of the issues of impacts to the community residents. The New Jersey Department of Environmental Protection has served in the dual role of technical advisor to the South Jersey Transportation Authority and regulatory agency over the cleanup of contaminated soil. The community residents have issued recommendations to prevent impacts and requested environmental data on the project—none of which has been complied with. When a staffer from the New Jersey Department of Environmental Protection was urged to review the recommendations, the staffer stated that “while the recommendations were reasonable, without directions from above, he cannot act.”

Because of the unresponsiveness of all New Jersey State Agencies, the residents sought the assistance of the Federal Government. It reached out to the USEPA, both to Assistant Administrator Timothy J. Fields, Jr. and Region II Administrator Jeanne Fox, and through a USEPA Advisory Council, the National Environmental Justice Advisory Council. Based on the record of inaction by New Jersey State Agencies, the USEPA agreed to undertake actions to fully investigate environmental issues by committing to the following actions:

- investigate all past and present activities involving the handling of contaminated soil, its use as part of the tunnel infrastructure and the potential for migration of contaminants toward adjacent residential areas;
- convene a meeting of New Jersey Department of Transportation and South Jersey Transportation Authority, in consultation with the US Department of Transportation, to address the long-term air quality issues associated USA tunnel and flooding of adjacent residents; and??
- establish permanent oversight until the completion of the tunnel project;

*Recommendations*

Based on Governor Whitman’s Administration, direct involvement in the Atlantic City Tunnel Project and the potential conflicts associated with such in her prospective new position as Administrator of the USEPA, we urge that she commit to the following actions:

- Recusal from any involvement by Governor Whitman or any of her immediate staff members in USEPA’s ongoing involvement in the Atlantic City Tunnel Project;
- permit the USEPA personnel currently involved to fully pursue and complete their above-noted commitments;
- submit a report by such USEPA personnel to the Senate within 60 days of the status of the completion of its commitments; and??
- support for the full implementation of policies and actions by the USEPA, and in particular the Office of Environmental Justice and Office of Civil Rights, and USEPA’s National Environmental Justice Advisory Council, to investigate and prevent projects that disproportionately burden communities of color or low income communities.

We hope this information will help you assist us in getting the environmental protection that is so important to the health and welfare of our community.

## STATEMENT OF RAE ROEDER, PRESIDENT, CWA LOCAL 1033, TRENTON, NJ

Mr. Chairman and members of the Environment and Public Works Committee, I am Rae Roeder, President of CWA (Communications Workers of America), Local 1033 in Trenton, New Jersey where I represent 6000 New Jersey State Workers in Motor Vehicles in the Department of Transportation, Department of Treasury, Department of State, Department of Military and Veterans Affairs, Department of Education, Department of Law and Public Safety, Department of Banking and Insurance, and the Office of Public Defender.

As President of CWA Local 1033, I wish to notify all Senators serving on the Environment and Public Works Committee that our members, are opposed to the nomination of Christie Whitman to head the Environmental Protection Agency and urge you to consider the following facts in your deliberation and to reject her nomination.

The reasons for the opposition of our membership to the nomination of Governor Christie Whitman are as follows:

Whitman's Environmental Record shows that she:

- Cut the New Jersey Department of Environmental Protection's (DEPE) budget by approximately 1/3 during her tenure as Governor.
- Reduced staffing at DEPE, New Jersey Department of Environmental Protection, especially in the area of enforcement.
- Reduced fines for polluters, allowing business to regulate themselves.
- Abolished the post of environmental Prosecutor by eliminating the New Jersey Office of the Public Advocate and replacing it with an Office of Business Ombudsman.

Privatization efforts in Liberty State Park in Jersey City where the Governor is attempting to create a commercial Waterpark and bring an additional 4000 daily uses on 13 acres of park land. The Waterpark would destroy the park's public access and great potential by causing inevitable summer weekend traffic jams. Despite statements by Governor Whitman in 1995 that the interior of the Park should not be developed in any way, she now has become a spokesperson for the Waterfront Park. A public hearing on this matter is scheduled for January 27, at the Liberty Science Center. The little remaining space in Hudson County, New Jersey is invaluable for our generation—and generations yet to come.

*Parsons Infrastructure Fiasco: the Privatization of NJDMV Inspection Stations*

In 1998 Whitman sold off public services to a private company, Parsons Infrastructure of California, the highest and only bidder for a \$550 million contract to build the state's new auto emissions system.

CWA Local 1033 and other CWA Locals opposed the privatization and the awarding of a contract because:

- It was a taxpayer rip-off Parsons wanted to conduct the old emissions test for 1 year, at three times the cost the state was paying; instead of charging \$8.00 per car, Parsons would charge \$21.00.
- It was an illegal bid. Parsons failed to disclose that it was involved in several lawsuits including charges of fraud State law requires bidders to disclose pending lawsuits.

It was a dirty deal Parsons had already given \$64,000 to the Whitman's Republican Party and its candidates, as well as hired GOP officials to lobby on its behalf. See attached chart.

- It was unfair to public employees; Dedicated State Workers lost their jobs and lost pay, health care benefits and pensions. (More than 300 workers lost their jobs.)

Governor Whitman and her Treasurer DiEulerio claimed that the new system would be cheaper if a private contractor ran it rather than state workers. But the real numbers bear out what CWA predicted. In the first year of the contract, Parsons charged the State of New Jersey over \$48 million to perform the old emissions test, \$20 Million more than the state paid the year before for the same test.

During the first 18 months, Parsons was operating the old system and developing the new one at the same time. The Sierra Group was hired as consultants by the State to oversee the Parsons' creation of a new emissions test. The Sierra Group sent 90 memos to high-ranking State officials, warning that the system was being improperly developed. The memos put the State on notice that Parsons' test would not work when it went on-line in December 1999. Instead of investigating these concerns, the State plowed ahead with the new test imposing havoc on the lives and curs of thousands of New Jerseyans.

When the new emissions test began in December 1999, it quickly became clear that the Sierra Group's alarm was justified. Hundreds of motorists were stuck on waiting lines for more than 4 hours. The equipment and the software for the new test machinery failed miserably, especially when the temperature dropped below

freezing. Motorists waited in open-air shelters while their cars were inspected, despite the contractual requirement that Parsons was to build closed waiting areas to protect people from the weather. Cars that should have passed the test failed. . Some cars were damaged by the new test. The Newark Star Ledger and other newspapers reported the public's frustration on the issue at great length.

- Governor Whitman ranted and raved about the lines while allowing Parsons to continue to operate the inspection stations, despite clear evidence that it had not been able to create the test as it was conducted to do.
- Parsons continues to bill three times as much as the state paid for the same test when state employees conducted it.

And now Christie Whitman is before your committee to run and control the very agency, Environmental Protection, that controls the Clean Air Act and enforces the regulations could Parsons must abide by. How convenient? Now we will have the fox watching the hen house! So much for privatization saving taxpayers' money or providing quality service.

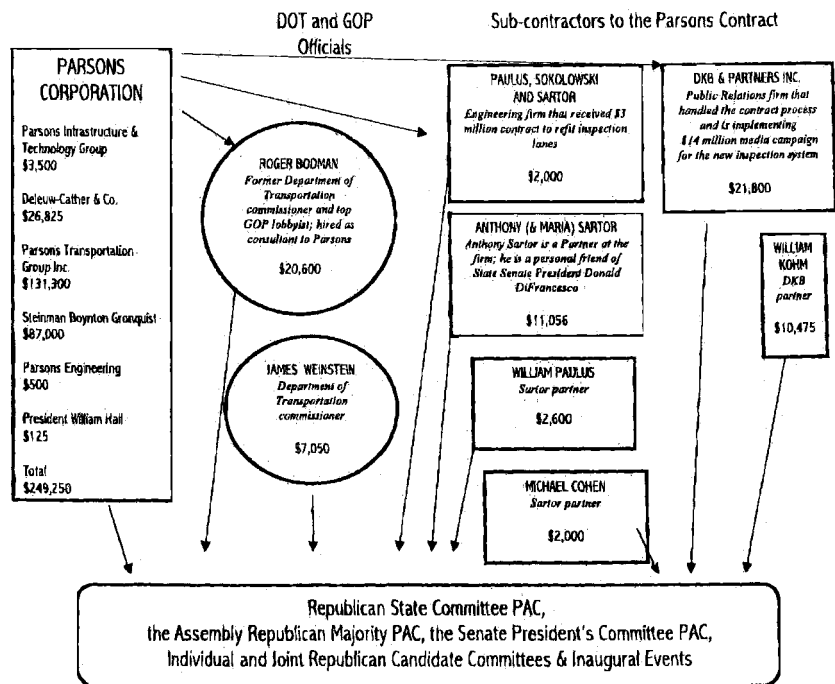
Additionally, CWA Local 1033 is strongly critical of Governor Whitman's lack of progress in identifying and ending racial profiling. Particularly disturbing is the picture of the Governor "patting down" an African-American suspect in Camden. This question of racial profiling is significant because the EPA oversees the cleanup of waste sites that are often located in low-income areas and sets emission standards that operate on urban streets.

*Racial Profiling of New Jersey State Workers*

The Whitman administration has systematically promoted institutionalized racism by promulgating a flawed subjective system of evaluation of workers, known as the PARS system. This system ties worker evaluation to a reduction in overall seniority despite the State's own figures which show that minorities systematically receive lower ratings than do their white coworkers. For this reason, CWA Local 1033 has filed a Civil Rights lawsuit in Federal court against the State of New Jersey.

For all of these reasons stated herein, we ask you to reject the nomination of Christie Whitman.

Thank you for the opportunity to let our views be made part of the record.



*City Hall, Hoboken, NJ, January, 16, 2001.*

HONORABLE HARRY REID, *Chairman,*  
*Environment and Public Works Committee*  
*U.S. Senate*  
*Washington, DC 20512.*

DEAR CHAIRMAN REID: I submit this letter for insertion in the records of your committee in support of the confirmation of the nomination of Christine Todd Whitman, as Administrator of the Environmental Protection Agency.

I have served since 1993 as the Mayor of the City of Hoboken, an urban area in Hudson County, New Jersey. Our City was recently recognized by the national Sierra Club with an award as the best city in New Jersey for urban developments and by New Jersey Monthly Magazine as The best city in New Jersey. Hoboken has a long and proud history as a city located on the Hudson River, treasuring a rich maritime heritage, the birthplace of baseball and Frank Sinatra. The movie "On the Waterfront" was filmed here in our City and on our piers.

With the decline of shipping in the Port of New York, our piers, warehouses and head houses were abandoned and fell in to disrepair. The areas were also contaminated with what are known as "historic soils", consisting of contaminants such as coal ashes, heavy metals, fuel oils, and the debris from 200 years of maritime service.

Confronted with this situation, I sought upon my election to revitalize the Hoboken Waterfront, cleaning up the contaminated sites, working to revitalize them for commercial office space, and to restore and rebuild the rotting piers as open public space and parklands. With Governor Whitman's, election I approached her not as a Democratic Mayor to a Republican Governor, but as two public officials concerned only with cleaning up the Hudson River and the contamination on the waterfront. I shared with her my dream for We revitalization of the waterfront and she without question embraced the dream and the task of a cleanup.

Governor Whitman directed that her appointees to the Port Authority of New York and New Jersey enter into a Public-private partnership with the City of Hoboken for the clean-up and restoration of the piers and dock areas, the development and installation of infrastructure for the new commercial properties, and with \$78,000,000 of public funding. Governor Whitman assisted the City with additional \$5,750,000 of Green-Acres Funds" for waterfront cleanup, constructing new parks, the first kayak and canoe launching areas on the Hudson River, and assuring waterfront access to our residents.

Today our shared dream exists on the Hudson. Gone are the rotting piers and the environmental contamination, replaced with 10 acres of open space and parkland on new piers. Demolished are the warehouses and head houses, replaced with three new city blocks with over 2,300,000 square feet of office space under construction. This environmental remediation and revitalization has brought a new surge of economic progress and jobs to the City, with companies like textbook publisher John Wiley and Sons relocating their world headquarters to Hoboken, New Jersey.

This project demonstrates Governor Whitman's successful efforts and concern for cleaning up and protecting our waterfront, for giving us access to the water for the first time in 200 years, for ensuring revitalization of the area and creating open-space and parkland that we have never had, and committing herself to the success of our collective dream. This effort and others are the hallmark of her administration, working through cooperation not conflict, performance not promises, and turning rhetoric into reality.

Our success in protecting and restoring our environment "on the waterfront", would not have been possible without her assistance, direction, cooperation, shared vision and concern for working toward solutions and results.

As the Mayor of the City of Hoboken, we affirm her to you, realizing New Jersey's loss is the country's gain.

Respectfully,

ANTHONY J. RUSSO, MAYOR.

