

**NOMINATIONS OF ROGER ROMULUS MARTELLA
JR., BISHOP WILLIAM H. GRAVES, AND
ALEX BEEHLER**

HEARING

BEFORE THE

**COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS**

SECOND SESSION

September 13, 2006

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ONE HUNDRED NINTH CONGRESS
SECOND SESSION

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**NOMINATIONS OF ROGER ROMULUS
MARTELLA JR., BISHOP WILLIAM H.
GRAVES, AND ALEX BEEHLER**

Wednesday, September 13, 2006

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

The committee met, pursuant to other business, at 10:15 a.m. in room 406, Dirksen Senate Office Building, Hon. James M. Inhofe (chairman of the committee) presiding.

Present: Senators Inhofe, Jeffords, Boxer, Carper, Obama, Alexander.

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

Senator INHOFE. We will now convene the hearing of the nominees. We are going to hear from the three nominees this morning. First will be Roger Martella, who has been nominated to be the EPA General Counsel. Mr. Martella currently serves as Principal Deputy General Counsel of the EPA. Prior to joining the EPA he worked at the Department of Justice, Environment and Natural Resource Division.

We will also hear from Alex Beehler, who has been nominated to be the EPA Inspector General. Mr. Beehler is currently with the Department of Defense serving as the Assistant Deputy under Secretary of Defense for Environment, Safety, and Occupational Health. He was also a trial attorney with the Department of Justice for ten years. Let me just say that Mr. Beehler is very qualified for this position, and I look forward to having an Inspector General that will carry out his duties without political bias.

Last but certainly not least we will hear from William Graves, who has been nominated to be a member of the board of directors of the Tennessee Valley Authority. He is the 42nd Bishop of the Christian Methodist Episcopal Church. Bishop Graves serves as vice chairman of the Board of Commissioners of Memphis Light and Gas and Water, TVA's largest customer. Bishop Graves is nominated to fill the 9th and final slot on the newly organized TVA Board. I look forward to hearing them.

I understand that Senator Jeffords has an opening statement, and Senator Alexander, if you would like to come up here to be recognized, you will be after Senator Jeffords.

[The prepared statement of Senator Inhofe follows:]

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

We are going to hear from 3 nominees this morning. First will be Roger Martella, who has been nominated to be the EPA General Counsel. Mr. Martella currently serves as Principal Deputy General Counsel of the EPA. Prior to joining EPA, he worked for the Department of Justice's (DOJ's) Environment and Natural Resources Division for 7 years, leaving as Principal Counsel for Complex Litigation. He has a substantial background as an environmental attorney and will make an excellent addition to EPA.

We will then hear from Alex Beehler, who has been nominated to be the EPA Inspector General. Mr. Beehler is currently with the Department of Defense, serving as Assistant Deputy Under Secretary of Defense for Environment, Safety and Occupational Health. He was also a Trial Attorney with DOJ for ten years. Let me just say that Mr. Beehler is very qualified for this position, and I look forward to having an Inspector General that will carry out his duties without political bias.

Last, but certainly not least, we will hear from William Graves, who has been nominated to be a Member of the Board of the Tennessee Valley Authority. He is the 42nd Bishop of the Christian Methodist Episcopal Church. Bishop Graves served as Vice-Chairman of the Board of Commissioners of Memphis Light Gas & Water, TVA's largest customer. Bishop Graves is nominated to fill the 9th and final slot on the newly reorganized TVA board.

I look forward to hearing from each of you.

**OPENING STATEMENT OF HON. JAMES M. JEFFORDS,
U.S. SENATOR FROM THE STATE OF VERMONT**

Senator JEFFORDS. Thank you, Mr. Chairman. I want to thank all of the nominees here this morning for their commitment to public service. Two of our nominees will face great challenges at the EPA.

Mr. Martella, nominated for the position of General Counsel, you will be the primary legal advisor through the Administrator.

I want to commend these individuals and wish them well. You will be responsible for evaluating every issue the Agency must tackle, and I hope your evaluation will always make the health and the safety of the public and the environment your top priority. You will play a political role in making sure that the EPA's legal decisions are based on the laws that Congress enacted.

In recent years, many of the EPA's legal decisions have been highly questionable and have not survived court review. I hope you will address that issue before this Committee.

Mr. Beehler, you have some big shoes to fill. Your predecessor, Niki Tinsley, performed a great service at the EPA and the citizens of this country. She epitomized what was envisioned when the Office of the Inspector General was created in 1978 by providing independent and impartial analysis. The Inspector General provides a great service to the public. You will be the eyes and the ears for the public within the Agency, and that responsibility is not to be taken lightly. You have been closely involved in some controversial proposals at the Department of Defense. I look forward to examining your record in that regard.

Bishop Graves, if confirmed you will join several other new TVA Board members confirmed earlier this year. In my view, your main responsibility is to ensure that TVA continues to provide its core product, electric power, competitively, efficiently, and reliably. But I also feel that the TVA needs to set a standard of public responsibility in the areas of environmental and fiscal performance. The TVA should be a model for the country in the area of cleaner and carbon-free power generation.

I look forward to hearing from all of you and learning how you will respond to these challenges if confirmed.

Thank you, Mr. Chairman.

[The prepared statement of Senator Jeffords follows:]

STATEMENT OF SENATOR JAMES M. JEFFORDS, U.S. SENATOR FROM
THE STATE OF VERMONT

Thank you, Mr. Chairman, and I want to thank all of the nominees here this morning for their commitment to public service.

Two of our nominees will face great challenges at the EPA.

Mr. Martella, nominated for the position of General Counsel, you will be the primary legal advisor to the Administrator. You will be responsible for evaluating every issue the Agency must tackle. I hope your evaluation will always make the health and safety of the public and the environment your top priority.

You play a critical role in making sure that the EPA's legal decisions are based on the laws that Congress has enacted. In recent years, many of the EPA's legal decisions have been highly questionable and have not survived court review. I hope you will address that issue before this committee.

And Mr. Beehler, you have some big shoes to fill. Your predecessor, Nicki Tinsley, performed a great service to the EPA and the citizens of this country. She epitomized what was envisioned when the Office of the Inspector General was created in 1978, by providing independent and impartial analysis.

The Inspector General provides a great service to the public. You will be the eyes and ears for the public within the Agency and that responsibility is not to be taken lightly. You have been closely involved in some controversial proposals at the Department of Defense. I look forward to examining your record in that regard.

Mr. Graves, if confirmed, you will join several other new TVA Board Members confirmed earlier this year. In my view, your main responsibility is to ensure that the TVA continues to provide its core product—electric power—competitively, efficiently and reliably.

But I also feel that the TVA needs to set a standard for public responsibility in the areas of environmental and fiscal performance. The TVA should be a model for the country in the area of cleaner and carbon-free power generation.

I look forward to hearing from all of you and learning how you will respond to these challenges if confirmed.

Senator INHOFE. Thank you, Senator Jeffords.

Senator Alexander, thank you for joining us.

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

Senator ALEXANDER. Thank you, Mr. Chairman. I thank you for your courtesy in allowing me to be a part of the Committee.

It is my privilege to be here today to speak in support of one of Tennessee's most distinguished citizens who has been nominated by President Bush for the Board of the Tennessee Valley Authority. Bishop William Graves is from Memphis. He is well known in our State and in the entire mid-south region.

First, he has plenty of experience in the job that he has been nominated to take, because over the last ten years he has been a member of the Board of Commissioners of the Memphis Light, Gas and Water Company, which is the Tennessee Valley Authority's largest customer. So if he should be confirmed, Bishop Graves would be one of two members of the TVA Board with experience with distributors of TVA's power.

Secondly, as the Chairman said, Bishop Graves is the 42nd bishop of the Christian Methodist Episcopal Church. He was elected to that position in 1982. He served pastorates in Georgia, which is one of the States served by TVA, and Indiana and Wisconsin and California. He has represented the CME church in the World Meth-

odist Conference on several occasions. He is the immediate past president of the board of directors of the National Congress of Black Churches, and currently presides over the First Episcopal District, with headquarters and residence in Memphis.

Mr. Chairman, Bishop Graves' nomination by the President represents two important milestones. First, Bishop Graves will be the first Memphis citizen ever to serve on the Tennessee Valley Authority Board, and since Memphis is the largest customer of TVA's electricity, that is especially appropriate. Second, Bishop Graves will be the first African American member of the Tennessee Valley Authority Board. He is a distinguished citizen, and on behalf of Senator Frist and myself we welcome him.

If I may just add to Senator Jeffords' comment, I too hope that the Tennessee Valley Authority with the new board—Mr. Chairman, you and Senator Jeffords can remember that we confirmed several of them just a while ago—they are off to a terrific beginning. They are a very good board. They are doing exactly what a modern governance structure of an \$7 billion a year company ought to do. They are developing a strategic plan.

TVA is becoming a national leader in the production of carbon-free energy by reopening a nuclear power plant, which is on time, on schedule. Nuclear power, of course, produces 70 percent of our carbon-free energy in the country, and TVA as a Federal Agency is taking the lead in doing that, so I salute that, Mr. Chairman, and I applaud this nomination as I know all Tennesseans do.

[The prepared statement of Senator Alexander follows:]

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

Mr. Chairman, members of the Environment and Public Works Committee, thank you for this opportunity to be here today to speak in support of the nomination of Bishop William Graves to serve as a Director on the Board of the Tennessee Valley Authority. I'm honored to be here today to introduce one of Tennessee's most distinguished citizens who have been nominated by President Bush for the board of the Tennessee Valley Authority. Bishop William Graves is from Memphis. He's well known in our state and in the entire mid-south region.

First, he has plenty of experience in the job that he's been nominated to take, because over the last ten years, he's been a member of the board of commissioners of the Memphis Light Gas and Water company, which is the Tennessee Valley Authority's largest customer. If confirmed, Bishop Graves would be one of two members of the TVA Board with experience as distributors of TVA's power.

William Graves is the 42nd Bishop of the Christian Methodist Episcopal Church. He was elected to this position at the 1982. He has served pastorates in Georgia—which is one of the states served by TVA—Indiana, Wisconsin, and California. He has represented the Christian Methodist Episcopal Church in the World Methodist Conference on several occasions. He is the immediate past president of the board of directors of the National Congress of Black Churches and currently presides over the First Episcopal District, with headquarters and residence in Memphis, Tennessee.

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He is a distinguished citizen, and on behalf of Senator Frist and myself, we welcome him.

The new TVA Board is off to a terrific beginning. They're a very good board. They are doing exactly what a modern governance structure of a \$7 billion-a-year company ought to do. They're developing a strategic plan. TVA is becoming a national leader in the production of carbon-free electricity by reopening a nuclear power

plant. Nuclear power, of course, produces 70 percent of our carbon-free electricity in the country and TVA, as the Federal Agency, is taking the lead in doing that. So I salute that, Mr. Chairman, and I applaud this nomination, as I know all Tennesseans do.

Senator INHOFE. Thank you, Senator Alexander, for that excellent statement.

We will now hear from our witnesses. We will start with you, Mr. Martella. We would like to ask you to confine your opening statements to five minutes. Your entire statement will be made a part of the record.

Mr. Martella.

**STATEMENT OF ROGER ROMULUS MARTELLA, JR., NOMINEE
FOR ASSISTANT ADMINISTRATOR, OFFICE OF THE GENERAL
COUNSEL OF THE ENVIRONMENTAL PROTECTION AGENCY**

Mr. MARTELLA. Thank you, Mr. Chairman, Senator Jeffords, and members of the Committee. Thank you for providing me with this opportunity and the honor to appear before you today.

At the outset, I respectfully would like to introduce my wife behind me, Ann, and my children, Eva Angelina and Santino. And, for the record, I would like to recognize our third child who is on the way and due in January.

I am also joined by my parents behind my wife, Roger and Mary Ann Martella, who are small business owners, who continue to run their Italian corner bakery after some 30 years. Next to them are my in-laws, John and Gayl Worthington, who are retired public school teachers from Battle Creek, Michigan, and made the journey to be here today.

Finally, Mr. Chairman, well behind me are a number of young men and women who are homeschool students from Virginia and also members of Boy Scouts and Girl Scouts, who are here both to show support to me and to observe this important Senate process of advice and consent on the President's nominations.

Mr. Chairman, I feel an extraordinary honor at being asked by the President and the Administrator to lead EPA's attorneys in support of the Agency's mission to accelerate environmental protection while maintaining economic competitiveness. For almost a year, as the acting General Counsel and as the Principal Deputy General Counsel, I have had the good fortune to work shoulder to shoulder with the talented staff at what is, in effect, the Nation's strongest environmental law practice. The work that our office performs every day raises important and cutting edge issues critical to the Agency's overriding mission, and I am fortunate that I have members of the General Counsel staff, several of whom are here today to show support to me, behind me.

If confirmed as General Counsel, I would bring to the post my perspective as an environmentalist, my attorney skills developed as counsel to both the Federal Government and the private sector on complex environmental issues, and the unique breadth of perspective of how our Federal decisions affect local Governments.

First, I am a passionate advocate for the environment. As the father of a young and growing family, I think constantly about the ramifications of decisions on my children, their young friends, and

all their future families, and believe our decisions today must give equal time to protecting their legacy tomorrow.

At the same time, I also wish a strong and viable economy for my children. Environmental decisions should not be made without regard to their economic and social consequences and should be crafted to conserve our Nation's economic competitiveness while protecting the environment. When I return home to my parents' bakery and to a now struggling industrial town built by entrepreneurial immigrants, I reflect on the impact of our decisions on American small businesses, in particular. I feel strongly that good Government demands that we avoid doing harm to this backbone of our Nation's economy, while at the same time promoting the health of our environment. I have no doubt that these two goals can be mutually achievable.

Second, as an attorney I am a passionate advocate for my clients, in this case EPA. During my seven years at the Justice Department I took pride in maintaining an unbroken record of successfully litigating all the cases I took to court, which largely defended important Agency decisions and regulations. But I am also proud that, where feasible, I sought to resolve many cases in a way that not only resulted in a win for the Government but also addressed the interests of all stakeholders to the dispute. Ironically, it frequently takes a lawyer to suggest to parties that litigation is not the best solution and to facilitate a negotiated compromise that supports the interests of all stakeholders to the fullest extent possible.

My experience has taught me that solving a problem through consensus has the added benefit of strengthening long-term relationships and avoiding future disputes. At EPA, I have worked to expand the use of environmental conflict resolution tools to address complex environmental disputes across the Nation.

Finally, as a citizen who, during almost my entire career has played an active role in civic service at a local level, I appreciate firsthand the importance of working together with local, State, and tribal Governments, as well as other stakeholders, to achieve environmental results. I am fortunate to have the opportunity to apply my skills at the local level, including as an elected member of the Warrenton, VA Town Council and formerly as a member of a committee that brought together farmers, utilities, and the Government to help preserve my county's agricultural heritage. I constantly reflect upon this local public service when I am at work at EPA. Having this local perspective reminds me of how decisions by the Federal Government have real and significant impacts on people in communities far flung from Washington.

Thank you, Mr. Chairman and members of the Committee. I respectfully would request that my full statement be submitted as part of the record, and I would be happy to answer any questions you may have.

Senator INHOFE. Thank you, Mr. Martella.
Bishop Graves.

**STATEMENT OF BISHOP WILLIAM H. GRAVES, NOMINEE FOR
MEMBER OF THE BOARD OF DIRECTORS OF THE TEN-
NESSEE VALLEY AUTHORITY**

Bishop Graves. Good morning. I am honored to be here today as one of President Bush's nominees to the Board of the Tennessee Valley Authority. I would like to thank Senator Frist, Senator Alexander, and my own Congressman, Harold Ford, Jr.

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you today, sir, but may I also add I am scared.

[Laughter.]

Bishop Graves. May I present my wife, who joins me, Donna Graves, and one of our daughters, Mira, who is sitting behind me.

Senator INHOFE. Which one is the wife and which one is the daughter?

Bishop Graves. My wife, my daughter. I hope I am able to go back home after that, Mr. Chairman.

I was born in Brownsville, TN, the eighth of nine children, in the depths of the Great Depression. My family moved to Detroit when I was young, but I frequently returned, visiting relatives and friends. After completion of high school, I returned for my college years at Lane College in Jackson, Tennessee.

I understand what TVA has meant to the people of Tennessee Valley from the years of economic struggle to the present day. As a resident of the Tennessee Valley, I would consider it a great honor and humbling challenge to serve on the Board of TVA, if confirmed.

My background as a pastor and as bishop of the Christian Methodist Episcopal Church gives me a profound appreciation for TVA's mission of service to the 8.6 million people in the Valley. It is a mission based on making life better, improving our communities, and supporting our families as they live and work in concert with God's natural world. It is a worthy mission, indeed, and I will use all of my faculties, my strength, and the power that is in me to consider the challenges facing TVA and make sound and careful determinations.

Mr. Chairman, I would like to also tell you that I had the opportunity to hear about your concern during the last confirmation hearing about the proper financial management of agencies like TVA. I want to assure you that if I am confirmed I will work hard to make sure that the TVA Board and employees manage our resources wisely and ethically.

Based on my work, my life experience, and my knowledge of TVA, I believe I can make a valuable contribution to the Board of the Tennessee Valley Authority if you choose to confirm me. Throughout my professional life I have worked with people from all walks of life. As a board member of Memphis Light, Gas and Water, TVA's largest single customer, I learned much about the challenges facing TVA as a power provider keeping pace with the exuberant growth of our region's economy.

Thank you again for this opportunity. I look forward to answering any question you may have for me.

Senator INHOFE. Thank you, Bishop Graves. I am very familiar with your hometown. My daughter received her Ph.D from Memphis State University, and I have had a lot of barbecue there.

Mr. Beehler.

STATEMENT OF ALEX BEEHLER, NOMINEE FOR INSPECTOR GENERAL OF THE ENVIRONMENTAL PROTECTION AGENCY

Mr. BEEHLER. Thank you, Mr. Chairman. Mr. Chairman, Senator Jeffords, members of the Committee, thank you for providing me with the opportunity to appear before you today.

I would like to recognize my wife, Stephanie Beehler, who is seated three to the left of me.

It is a great honor and privilege to be here today as the nominee to be Inspector General of the Environmental Protection Agency. In my current and previous positions involving environmental law and policy, my vision has been to seek environmental improvement.

If I am confirmed, I pledge to you that I will do everything in my power to work with the dedicated, expert staff in the Office of the Inspector General to provide the Agency, Congress, and the American people an independent, objective review of EPA programs. I will work to prevent and detect fraud, waste, and abuse, and to provide the leadership to promote effectiveness, efficiency, and economy in program administration. Each is an important component in assisting the Agency's mission of protecting human health and safeguarding the environment, and I pledge to work with the Committee and its staff in carrying out our shared goal of environmental protection and improvement.

During my 28 years of professional experience in Washington, DC, I have had the privilege to spend 17 of those years engaged in environmental law enforcement and policy positions from several different perspectives. I have served as a special assistant to the Associate Administrator for Legal and Enforcement Counsel at EPA, as a Federal environmental prosecutor for the Department of Justice, as an environmental regulatory advisor to a major corporation, as the top environmental policy official at two non-profit organizations, and currently as a senior environmental official at the Department of Defense.

These opportunities plus positions on the Senate Judiciary Committee and in private litigation practice have provided me with a wide range of legal, investigative, and Government experience that have prepared me to perform the critical role of helping protect human health and the environment as Inspector General of the EPA.

While at the Department of Justice, I was lead attorney on many CERCLA cost recovery cases requiring the substantive review of financial and audit records. One case in particular, the Picillo Superfund Site in Rhode Island, involved the court appointment of a special master solely to address all accounting matters and the judicial rendering of one of the most comprehensive examinations of CERCLA cost recovery issues to date.

My non-profit work afforded me the opportunity to devise and implement environmental policy strategies focused on environmental improvement, where substantive results were defined, measured, and emphasized.

In my current capacity at the Department of Defense, I continue to stress results over process by pushing for putting facts on the table and collecting the best available data and science in a holistic, integrated manner for all of the Department's operations, from design to disposal.

I have proactively pursued building trust with interested parties to encourage sharing of the issues and information leading to solutions and environmental improvement. If confirmed, I would continue the same truth-seeking approach as Inspector General, with independence and integrity. I would ferret out problems and target areas for improvement through proactively seeking knowledge from other internal EPA offices, from other Federal agencies and components, from State agencies, and from non-Government sources and entities. I would provide leadership through breadth of vision, while drawing upon the considerable expertise of staff for depth and execution.

Throughout my career and life I have strived to use responsibilities entrusted in me to make things better. Through independent and measured thinking, sound judgment and common sense, respect for the rule of law with the highest ethical standards. My goal is to lead by example and learn from others. I hope to have that opportunity as EPA's Inspector General.

Thank you, Mr. Chairman and members of the Committee. I ask that my entire written statement be made part of the record. I would be happy to answer any questions that you may have.

Senator INHOFE. Thank you, Mr. Beehler. Of course, all statements will be made part of the record.

We have two required questions or questions that have required answers I would like to ask each one of you and I would like to have you respond audibly for the record.

Are you willing to appear at the request of any duly constituted committee of Congress as a witness?

Mr. MARTELLA. Yes, Mr. Chairman.

Bishop Graves. Yes, sir.

Mr. BEEHLER. Yes, Mr. Chairman.

Senator INHOFE. All right. Secondly, do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed for this position?

Mr. MARTELLA. No, Mr. Chairman.

Bishop Graves. No, Mr. Chairman.

Mr. BEEHLER. No, sir.

Senator INHOFE. Thank you very much.

It is my understanding that Senator Boxer would like to make an opening statement.

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

Senator BOXER. Well, since I missed that turn, I will be happy to wait until you finish your questions, and then if I could take five minutes for an opening and five minutes for questions that would be great.

Senator INHOFE. That would be fine.

Senator BOXER. Thank you.

Senator INHOFE. That would be fine.

First of all, Senator Alexander, since you are here, anything you'd like to comment on or ask of any of the witnesses, particularly Bishop Graves?

Senator ALEXANDER. That is a great courtesy, Mr. Chairman. I don't think so. Bishop Graves and I have had a chance to talk. I know him well, know his experience. As I mentioned, he will go on the TVA Board as the most experienced member in terms of having direct experience on a day-to-day basis with the distributor. My hope, Mr. Chairman, with this new Board, which is a diverse board from all across the region, is that they have a chance to spend a year or two looking carefully at TVA and developing a strategic plan, and then coming back to this Committee and other Members of the Congress who have jurisdiction and letting us know the direction that you go. So I thank you for your courtesy, but I think I will not have questions.

Senator INHOFE. Thank you, Senator Alexander.

Senator JEFFORDS. I have no questions.

Senator INHOFE. All right.

Mr. Martella, in my office we discussed this and we have had some hearings, as you know, in the last couple hearings over how the various regions vary from one another in terms of things that they are involved in, the roles they play. I would ask you what role this position, if confirmed, you would be able to do to help us, recognizing that there are some differences from region to region, but certainly not the differences that would justify the behavior of some of these regions relative to each other.

Mr. MARTELLA. Thank you, Mr. Chairman, for that question. As you know, I share your concern and I believe that ensuring national consistency with EPA headquarters and our ten regional offices should be a goal of the Agency. At the same time, you and I agree there needs to be some flexibility. Senator Murkowski and I have talked about flexibility involving situations in Alaska, for example.

Even as Deputy General Counsel I have taken a proactive role in working towards national consistency with headquarters and our regional offices. For example, I have worked very proactively with high-level headquarters officials and high-level regional officials towards developing a list of nationally significant projects and issues. The idea would be if an item is flagged as nationally significant there would be headquarters coordination to ensure that we were taking consistent positions across the Nation. I also rely Mr. Chairman, on my regional counsels in each of our ten regional offices to keep me informed and ensure that headquarters has a role in ensuring consistency in positions across the Nation.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you.

Mr. Beehler, you and I also talked about this, the grants management and the problems. There has been criticism for the last ten years. And then, most recently, in the last three years we have been trying to set up a system where we have daylight and we know what types of grants are out there and who has access to them. What would be your role in grants management?

Mr. BEEHLER. Thank you, Mr. Chairman, for the question.

Grants management at EPA is one of the most important activities that the Agency does, consuming almost half of their annual budget. If I am confirmed, I certainly will make the careful review of grants management one of my top priorities and would work with you, Mr. Chairman, the other Senators on the Committee, and the respective staff to seek out any questions and concerns that you may have, either on specific grants or on the general grant management program, as well, and then take that back and give it careful review throughout the Office of Inspector General to make sure that the grants management program is the most effective and efficient it can be, given the resources at hand.

Senator INHOFE. Yes. Thank you, Mr. Beehler.

Bishop Graves, you know, we had a hearing and I think we had six nominees that were confirmed to the TVA on the restructuring of this board not too long ago, and it was called to attention in my State of Oklahoma we have what some people refer to as the Little TVA. It is called the Grand River Dam Authority. There has been a lot of ethical problems there, and so that made me most interested in the history of the TVA and some of the problems that were there, so I ask you the same question I asked the other six prior to their confirmation. What steps would you take to ensure that you don't slip back—not you, individually, but the board does not slip back into some of the problems it had in the past?

Bishop Graves. Would you repeat the question?

Senator INHOFE. The ethical problems of the past of the board, what steps can you take to ensure that we don't revert back to some of those problems as a member of the board?

Bishop Graves. Well, first thing I would do, Mr. Chairman is make sure that I understand the past and compare, and would use all my abilities to check out and to do whatever research and use my best judgment to keep and raise high ethical standards.

Senator INHOFE. Yes. I have no doubt about that, and I have felt we concentrated most of the last hearing of those nominees up for confirmation to some of the problems of the past and how we can avoid those in the future, so I am very pleased, as is Senator Alexander, with this new formation and look forward to many years of relating with you.

Senator Boxer.

Senator BOXER. Thank you so much. I am hoping I can have ten minutes now, because—

Senator INHOFE. You can have 10 minutes if you want 10 minutes. Yes.

Senator BOXER. Thank you. I do.

Senator INHOFE. Of course.

Senator BOXER. I do.

First of all let me say to the Bishop and to Mr. Martella I will be supporting you and I think your nominations are most appropriate. I have some questions about Mr. Beehler, so the two of you can breathe a sigh of relief.

I will make my comments.

Mr. Chairman, I feel very strongly about the Office of the Inspector General in the various departments of Government. I mean, it is very clear to me that the Inspector General should be an advocate for the mission of the Agency and not come to the job with a

record of really working in many ways to weaken environmental enforcement, so I want to talk about my concerns, Mr. Beehler, and of course give you an opportunity to respond, but I'm going to wait for the chairman.

I was saying that to me an Inspector General who is someone that Members can rely on from both sides of the aisle to look at their work to ensure that the mission is being accomplished by the Agency in which they are assigned, and the object to me is to ensure that EPA, its employees, and actions remain free of waste, fraud, and abuse, any person nominated I believe must be impartial, must be independent, and I just look at Mr. Beehler has a very successful record in his life and I applaud that but I don't see it meshing with this job, so I'm going to talk to you about that.

I know that you have been closely involved in efforts by the Department of Defense to obtain exemptions from environmental statutes, and what is disturbing to me is already in the law there is a broad exemption granted. If ever there is a problem with national security the DoD can come to us and can act, so there is no impediment, but yet still what we've seen lately is a DoD that keeps trying to win exemptions from specific environmental statutes. That is disturbing to me because, as Inspector General, you know, since you've done that, I just don't think—and maybe I'm wrong again—that you would have a deep-seated belief that these statutes should be defended.

You were in the key DoD position when the Department delayed stronger standards for perchlorate, for trichloroethylene, if I've said it right. We know that those contaminations exist on hundreds of sites, of DoD sites. And you left the Department of Justice to work as director of environmental compliance at Koch Industries, which had recently paid record fines for environmental violations and was facing criminal environmental charges.

While at Koch, you helped to steer money to organizations that routinely seek to weaken our environmental laws. So I just have a problem. I mean, you might be great in some other position, but I see in this particular job the need for a principled environmental steward, independent, impartial, and I just unfortunately don't see it. I see a nomination of an individual with close tie to the very industries that you will be charged to oversee. I think we need an independent EPA IG who will stand up to political pressures, give us the plain truth about EPA and environmental issues.

So, with the time I have remaining, I would like to ask you about the issue of perchlorate, which is a very deep-seated issue in my State and in others. It is a widespread contaminant that could cause damage, mental and physical. It is especially lethal to pregnant women.

On March 20, 2006, a California Federal court agreed with the Natural Resources Defense Council that the Department of Defense, the Office of Management and Budget, and the Environmental Protection Agency have improperly withheld a number of documents that describe perchlorate contamination health effects and cleanup methods and costs. For example, the court ruled that DoD had improperly withheld "a draft memorandum concerning perchlorate treatment technologies for DoD facilities in California."

An Inspector General must be an advocate for openness, but not someone who supports keeping the public in the dark. The public has a right to know. I mean, that is the beauty of this greatest country in the world here. We let the public know. We don't lie to them. We don't hide things. And when we do, we are not advancing the cause of freedom or democracy. So I am very concerned, while at DoD did you advise or consent to withhold any information that the Federal Court recently ruled was improperly withheld from the public?

Mr. BEEHLER. No, Senator, I did not.

Senator BOXER. So you had nothing to do with what they did on the perchlorate issue?

Mr. BEEHLER. Concerning the withholding of documents or providing documents?

Senator BOXER. Well, what was your position on the cleanup of perchlorate?

Mr. BEEHLER. Senator, my position when I came in, I helped establish the first program office that the Department of Defense had concerning emerging contaminants to help work in a cooperative fashion, in a very open fashion, with other Federal and State regulators to address such issues of concern as perchlorate, TCE, and the other chemicals that you mentioned. To date, my office and the services in response to this office and initiative have worked very closely with the State of California to set up a sampling protocol at over 1,000 sites where perchlorate may have been present to put a sampling priority for perchlorate at those sites and to implement it with the maximum amount of coordination, review - -

Senator BOXER. Okay, so thank you. Do you disagree with the court's decision then to find against the Department of Defense that you didn't, in fact, do this, what you are saying you did? Do you think they were incorrect, the correct was wrong?

Mr. BEEHLER. Senator, I am not in a legal position at the Department of Defense and I do not have general knowledge of the particulars of the court's decision.

Senator BOXER. Okay. Did you ever agree to provide or directly provide or were you aware that people were providing third parties who advocate for DoD contractors with information on the perchlorate issue?

Mr. BEEHLER. Would you repeat the question please?

Senator BOXER. Sure. Did you ever agree to provide or directly provide third parties who advocate for DoD contractors with information? In other words, did you agree to share that information with third parties?

Mr. BEEHLER. Concerning this lawsuit?

Senator BOXER. Perchlorate, concerning perchlorate.

Mr. BEEHLER. We certainly have shared any information that we have obtained from the data sampling efforts with the State regulators, and I believe that is public information.

Senator BOXER. Okay, but not with third parties?

Mr. BEEHLER. I really do not have knowledge one way or the other about that.

Senator BOXER. Okay. I would like you to go back and—

Mr. BEEHLER. Senator, I would be happy to take—

Senator BOXER. Because I don't want to give you a question that you are—so if you could go back, because the court held that that is exactly what happened, that the public didn't get the information but yet the private contractors did get it. So if you could go back and let us know on that one.

Mr. BEEHLER. I would be happy to, Senator.

Senator BOXER. Thank you very much.

[The requested information was not submitted in time for print.]

Senator BOXER. TCE is an industrial cleaning agent that we know causes cancer and other health effects. TCE contaminates at least 323 Superfund sites. A 2003 DoD document notes the Department has 1,400 TCE contaminated sites across the country. In 2001, the EPA issued a draft risk assessment that found TCE can cause cancer, damage the human nervous and immune system, and children are especially vulnerable. In December, 2002, EPA's Science Board called their risk assessment ground-breaking work, particularly in analyzing the risk to children. In 2006 the National Academy of Sciences concluded that evidence of carcinogenic risk and other health hazards from TCE has strengthened since 2001.

The Los Angeles Times reports that the White House developed a working group which included DoD officials to fight EPA's efforts to increase protections against perchlorate, and this works State and business to fight the TCE risk assessment. Did you agree with the decision to have DoD continue to participate in this working group?

Mr. BEEHLER. Senator, the only working group that I am aware of is one that is ongoing, working with EPA and other Federal agencies to seek out the best available science and actually have requested that the National Academy of Science provide such information.

Senator BOXER. Okay. So did you participate in the working group?

Mr. BEEHLER. No, Senator, I did not.

Senator BOXER. So you were never part of it and you didn't know about it?

Mr. BEEHLER. Well, Senator, as I've answered, the only group that I am aware of is the one that I have described. I am not aware of what the one that has been characterized in the news article.

Senator BOXER. I'm sorry. Which one did you describe?

Mr. BEEHLER. I described the one that is ongoing right now. It is at a staff level with several Federal agencies, including EPA. It is on an ongoing basis to look at TCE and seek out the best available science, and therefore has approached the National Academy of Sciences.

Senator BOXER. Well, don't you think there has already been ground-breaking work on TCE? You are still looking for more science? I mean, there has been ground-breaking work on TCE, but you think there needs to be more science?

Mr. BEEHLER. Well, in fact, Senator, during this time around 2002 EPA's own Assistant Administrator for Research and Development openly questioned the conclusions of some of the draft work conducted by—

Senator BOXER. Okay. So the National Academy of Sciences in 2006 concluded that evidence of carcinogenic risk and other haz-

ardous from exposure from TCE strengthened since 2001, and you want more science?

Mr. BEEHLER. Well, Senator, my understanding is it is a two step process, and TCE—the National Academy of Sciences is in the second phase of that.

Senator BOXER. Okay. Well, it sounds like you are in the working group but you don't define it the same way the L.A. Times does, so I will write to you and see if we can get this better explained, because you are in a group that is looking for better science, and yet the scientists have already said that TCE is a problem. A USA Today article said, on DoD's efforts to stall regulations on perchlorate and TCE, quotes you as saying the military "diving into the science is one small but appropriate way for DoD to be a responsible player in these debates." I would only just say, you know, I look at DoD in this case, I mean, as trying to challenge the science. I think you are saying you are diving into it when EPA made these landmark findings.

I am troubled by it, Mr. Chairman, and I don't question Mr. Beehler's integrity as a human being at all or fault his career, but I just don't see how his career thus far gets him ready for this important task.

I thank you.

Senator INHOFE. Thank you, Senator Boxer.

Senator Obama.

**OPENING STATEMENT OF HON. BARACK OBAMA,
U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator OBAMA. Thank you very much, Mr. Chairman, and to all who have been nominated I congratulate you for being in this position.

I am going to just focus my questions to Mr. Martella, and I want to focus on a public health issue that is not of your making but you will not have line responsibility for and I am frustrated about, so don't take this personally, but I want to talk to you about blood poisoning among children.

During my short time in the Senate, a major focus of my work in this Committee has been to improve our Government's efforts to protect children from lead poisoning. I notice you just passed some water backwards so, as I suspect, you've got a couple. One is really excited by this hearing, by the way.

Mr. MARTELLA. That is a good thing.

Senator OBAMA. Yes, exactly. I've got two children about the same age, so I think you will share with me the concern about this issue.

The CDC estimates that 400,000 children under the age of five have elevated levels of lead in their blood. The consequences of this poison are all too well understood: learning disabilities, speech delays, hyperactivity, seizures. The majority of the research indicates that the damage, once done, is irreversible. My home State of Illinois has the unfortunate distinction of having the highest number of lead poisoning children in the Nation.

The source of most child lead poisoning is no mystery; it is the lead paint in old houses. A number of my colleagues and I have pressed the EPA in the past as to what is being done to protect

against poisoning by lead and paint. Last year, I put a hold on an EPA nomination and even threatened EPA funding in order to get some action by the Agency in this regard. As a result, EPA issued a draft rule last December to address lead removal during home renovation and repairs. That was progress. That was a good start. I have been disturbed to hear from outside groups, however, that this rule may not be finalized until December of 2007.

Now, I know obviously you are relatively new to EPA. That is why I said don't take this personally. But part of your job, I think, is to understand sort of the statutory mandates that the EPA has and to develop this rule that, by the way, originally was enacted in 1992. It is now a decade later, so we have been waiting 14 years for these rules, which is, frankly, ridiculous. So recently Senator Boxer, Congressman Waxman, and I wrote two letters to Administrator Johnson asking a very simple question: when will this rule be finalized? We have not yet received an answer to our question and I just think the delay is unacceptable.

You are being nominated for General Counsel of the EPA. You will be in charge of complying with statutory mandates. I have no doubt that you will want to do a good job. I've got to just as you a very simple question: when is the lead renovation rule to be finalized?

Mr. MARTELLA. Senator Obama, I appreciate your question. I understand your concerns, as you recognize with my own young and growing family, and I will also share with you something, which is that we have made the decision to live in a house built in the 1920s.

Senator OBAMA. So you've got a personal concern.

Mr. MARTELLA. We have a very personal concern.

Senator OBAMA. Keep them away from the paint chips.

Mr. MARTELLA. And we do. We take very strong precautions. So this is an issue that is also something that I acutely want to focus on if confirmed as General Counsel, and I appreciate the fact you recognize that the specific concerns you raise are not something I have had a role in.

But what I can tell you is that if I am confirmed as General Counsel my role will be to work and put forward all the legal resources we have at our disposal to help the program finalize this rule and finalize protections against lead and do what I can from the Office of General Counsel and the legal issues to support the Agency's efforts to address this very serious issue.

Senator OBAMA. That is the response I wanted to hear, and I appreciate that. I am going to take you at your word that you are going to work diligently on this, and I just want to make clear my attitude that waiting for more than another year is unacceptable. From my perspective, this has been dragging on for 14 years. It is time to just go ahead and get this done.

And so my office is going to be working diligently, and I would actually like, in the interim between this hearing and your confirmation, for you to take the initiative to get more answers from your colleagues who are currently working on these rules and get back to my office to find out how soon these actual rules are going to be released. If you already are knowledgeable about that, then I would like you to tell me either in—it sounds like at this point

you are not exactly sure what the status is. Am I correct about that?

Mr. MARTELLA. Senator, I'm not sure of the status of the rules. I do understand, I believe, our program office, which has immediate control over the rules, is meeting with your staff in the near future.

Senator OBAMA. Okay.

Mr. MARTELLA. But I will follow up on your request and go back and try to get more information.

Senator OBAMA. Yes. I just think you are here in front of me now. I expect to support your confirmation, but prior to the actual vote taking place I would like to get a sense that you are following up on this issue.

Mr. MARTELLA. Thank you.

Senator OBAMA. All right.

Thank you very much, Mr. Chairman.

Senator INHOFE. Thank you, Senator Obama.

I thank all of our nominees for taking the time to be here today. We look forward to your service. We will be having our confirmation before too long.

We are adjourned.

[Whereupon, at 11:03 p.m., the committee was adjourned.]

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

Mr. Chairman, thank you for calling this business meeting to consider several important pieces of legislation and nominations. I congratulate all of the nominees—Mr. Martella, Mr. Graves, and Mr. Beehler. Thank your for your willingness to serve.

Many issues face us today. But I would like to focus on Mr. Beehler's nomination to be the Inspector General at the EPA and the bipartisan Good Samaritan legislation before us.

Mr. Beehler, countless times I have sat at this dais and told stories about Libby, Montana. I've told the Story of Les Skramstad, the miner in Libby. When the news of the contamination in Libby broke, Les told me that he would be watching me to make sure that I kept my promises to help the community. I consider Les my good friend. It broke my heart to hear just the other day that he had to be hospitalized due to his asbestos related illnesses.

I've told the story of Mel and Leehra (L-E-E-R-A) Parker. Mel and Leehra had to abandon their tree nursery on the banks of the Kootenai River, because their property was so contaminated. Only weeks ago, the Parkers found more asbestos on their property in an area that was supposed to have been remediated.

Mr. Beehler, the story I would very much like to tell one day is the story of EPA getting the job in Libby done right. That is why last month in a letter to the Office of the Inspector General, I requested a review of EPA's work in Libby. I want to make sure that the EPA has the necessary data to develop a baseline risk assessment and exposure criteria for tremolite asbestos. Mr. Beehler, the town of Libby does not need a rubber stamp. They need an advocate who will examine EPA's work with an objective eye to make sure that this tragedy is not prolonged.

Mr. Chairman, I'd also like to take a moment to comment on the Good Samaritan legislation before us. I'd like to try to allay some of the concerns that I've heard about this bill. Let me state what this bill is not. It's not a substitute for the Superfund program. In fact this legislation prohibits issuing Good Samaritan permits to remediate sites on the Superfund National Priorities List.

This bill is also not a loophole to protect polluters. Any person who had a role in the creation of the pollution is not eligible for a permit. If a person is liable under any Federal, State, tribal, or local law for the remediation of the site, then that person is not eligible for a Good Samaritan permit.

Neither is this bill a re-mining bill. A Good Samaritan could reprocess tailings and "previously mined ores and minerals that directly contribute to the contamination" to capture any value, but this must be incidental and secondary to the primary purpose of remediating a historic and abandoned mine site.

This bill is an attempt to work together to help clean up the thousands of abandoned mines throughout the West. The scope of the problem is staggering. In Montana alone there are more than 5,000 abandoned hard rock mines.

This legislation alone will not solve this problem. But it is an important tool that will give Good Samaritans the liability protections that they need to encourage them to undertake these cleanups. In exchange for these liability protections, any potential Good Samaritan must meet rigorous standards to make sure that the cleanups are done right. Any project must improve the environment to a significant degree and meet applicable water quality standards. The bill also includes a public hearing and comment process. Finally, EPA and the relevant state or Indian tribe must concur with the issuance of, and sign, the permit. If local rules or ordinances are implicated by the permit, then local authorities must also concur with, and sign, the permit. The bill also includes a provision sunseting the Good Samaritan program after 10 years. This is a good bill protective of human health and the environment.

I'm proud to have worked together with Senators Inhofe, Allard, and Salazar to craft a bill that both industry and Trout Unlimited have endorsed. Mr. Chairman, this bill will not solve the problem of abandoned mines. But it will help. I urge my Colleagues to support it.

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

Mr. Chairman, thank you for calling today's hearing.

Today we'll hear testimony from three nominees, two for positions at the Environmental Protection Agency (EPA) and one for the Tennessee Valley Authority (TVA). The EPA positions for which these nominees are being considered are central to how the Agency functions. The General Counsel provides legal guidance, while the Inspector General serves as both auditor and watchdog.

As we consider nominees to fill these positions, I believe we need to look at more than just their paper qualifications or someone's expertise in a courtroom. We need nominees who understand that communities across the country face environmental problems that pose threats to the health, or even survival, of people and wildlife.

I think most people would agree that the quality of the air they breathe is critical to their quality of life. As a quasi-Federal Agency, the TVA is exempt from parts of the Clean Air Act. But that doesn't mean TVA should not work with the EPA to reduce smog and carbon emissions.

I look forward to hearing Mr. Graves' plans for the future of the TVA, particularly his plans for protecting the environment and conserving energy at TVA.

Mr. Chairman, thank you again for calling today's hearing.

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

Thank you, Mr. Chairman. I would like to speak briefly about the nomination of Mr. Alex Beehler to the post of inspector general at the Environmental Protection Agency.

According to the Inspector General Act, one of the duties of EPA's inspector general is to keep the Agency's administrator and the Congress fully informed of any serious deficiencies in EPA's administration of the programs for which it is responsible. So that the inspector general might discharge that duty, the Act gives him tools that even this Committee often is denied in practice, namely, unimpeded access to all of the Agency's records as well as to EPA's administrator and other employees.

The public and the Congress rely upon EPA's inspector general to employ these powerful tools, and to disclose any serious Agency shortcomings that they reveal. If he does not, then critical problems will remain under wraps, and EPA, the nation's primary protector of public health and the environment, will fail to exhibit the effectiveness that the American people deserve.

In his current position as the head of the Defense Department's office for safety, occupational health, and the environment, Mr. Beehler has fought to win exemptions for the Department from Federal anti-pollution statutes, and he has participated in the Pentagon's effort to induce EPA to weaken and delay national health-based standards for the carcinogenic solvent, trichloroethylene. With Mr. Beehler's assistance, the Defense Department has enjoyed some success on these fronts.

Under the current administration, some political appointees within EPA have supported, to varying degrees, the Pentagon's resistance to the public-health protec-

tions that EPA administers. I am concerned that if this collaboration gives rise to deficiencies in EPA's administration of those protections, Mr. Beehler might, owing to his recent professional background and institutional loyalties, be too slow as EPA inspector general to uncover and disclose the deficiencies. In other words, I am not sure I am comfortable taking a protagonist in recent bureaucratic battles against EPA's public-health programs and making him EPA's internal watchdog, particularly at a time when certain key program officials within EPA exhibit insufficient enthusiasm for the Agency's mission to protect public health and the environment.

That said, I honestly hope that Mr. Beehler's responses to my questions and those of my colleagues on this Committee will alleviate my concerns. For Mr. Beehler's record reveals that he is an experienced, highly intelligent, and diligent lawyer. I believe that if he were to marshal those strengths toward the full and faithful execution of the duties set forth in the Inspector General Act, then Mr. Beehler would make a fine EPA inspector general.

Thank you, Mr. Chairman.

STATEMENT OF ROGER ROMULUS MARTELLA, JR., NOMINEE FOR ASSISTANT ADMINISTRATOR OFFICE OF THE GENERAL COUNSEL ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Jeffords, members of the Committee. Thank you for providing me with the opportunity and the honor to appear before you today. At the outset, I respectfully would like to introduce my wife, Ann, my children Eva Angelina and Santino, and for the record would like to recognize our third child who is on the way and due in January, name and gender yet to be determined. I am also joined by my parents, small business owners who continue to run their Italian corner bakery after some 30 years.

Perhaps the best way to give you a sense of how humbled I am to be the President's nominee for the General Counsel of the Environmental Protection Agency is to share with you a short story from my senior year in college. Late in my final semester at Cornell University, I decided to attend law school with the ultimate goal of working as an environmental attorney for the Government. I remember very distinctly approaching a recruiter from one of the top environmental law schools, told her that my goal was to work at EPA, and asked whether the school place students at the Agency. I can still hear her response as clear as the instant she said this to me: EPA is so selective in who they hire, and hires so few people, that you need to have other goals.

So, with that background in mind, I hope you can appreciate the extraordinary honor I feel at being asked by the President and the Administrator to lead EPA's attorneys in support of the Agency's mission to accelerate environmental protection, while maintaining economic competitiveness. For almost a year, as the Acting General Counsel and as the Principal Deputy General Counsel, I have had the good fortune to work shoulder to shoulder with this talented staff at what is, in effect, the nation's strongest environmental law practice. The work that our office performs every day raises important and cutting edge issues critical to the Agency's overriding mission. For example, in the past several months I have worked with our attorneys to defend key Agency positions on clean water before the Supreme Court, to assess the Agency's legal authorities in addressing the rapidly emerging field of nanotechnology, and to implement the Brownfields statute.

If confirmed as General Counsel, I would bring to the post my perspective as an environmentalist, my attorney skills developed as counsel to both the Federal Government and the private sector on complex environmental issues, and a unique breadth of perspective of how our Federal decisions affect local Governments.

First, I am a passionate advocate for the environment. As the father of a young and growing family, I think constantly about the ramifications of decisions on my children, their young friends, and all their future families and believe our decisions today must give equal time to protecting their legacy tomorrow. At the same time, I also wish a strong and viable economy for my children. Environmental decisions should not be made without regard to their economic and social consequences, and should be crafted to preserve our nation's economic competitiveness while protecting our environment. When I return home to my parent's bakery and to a now struggling industrial town built by entrepreneurial immigrants, I reflect on the impact of our decisions on American small businesses in particular. I feel strongly that good Government demands that we avoid doing harm to this backbone of our nation's economy while at the same time promoting the health of our environment. I have no doubt these two goals can be mutually achievable.

Second, as an attorney I am a passionate advocate for my clients, in this case EPA. During my seven years at the Justice Department, I took pride in maintaining

an unbroken record of successfully litigating all the cases I took to court, which largely defended important Agency decisions and regulations. In fact, senior managers created a special position for me Principal Counsel for Complex Litigation—to make the most use of my skills in handling and supervising a docket of natural resource cases among the Environment Division's most complex. But I also am proud that, where feasible, I sought to resolve many cases in a way that not only resulted in a win for the Government, but addressed the interests of all stakeholders to the dispute. Ironically, it frequently takes a lawyer to suggest to parties that litigation is not the best solution and to facilitate a negotiated compromise that supports the interests of all stakeholders to the fullest extent possible. My experience has taught me that solving a problem through consensus has the added benefit of strengthening long-term relationships and avoiding future disputes. At EPA, I have worked to expand the use of environmental conflict resolution tools to address complex environmental disputes across the nation.

Finally, as a citizen who during almost my entire career has played an active role in civic service at a local level, I appreciate firsthand the importance of working together with local, State, and tribal Governments as well as other stakeholders to achieve environmental results. My breadth of perspective includes public service to the Town of Warrenton and Fauquier County, beautiful and environmentally sound communities in the Virginia Piedmont. I am fortunate to have the opportunity to apply my skills at the local level, including as an elected member of the Warrenton Town Council and formerly as a member of a committee that brought together farmers, utilities, and Government to help preserve the County's agricultural heritage. I constantly reflect upon this local public service when I am at work at EPA. Having this local perspective reminds me of how decisions by the Federal Government have real and significant impacts on people in communities far flung from Washington.

Thank you, Mr. Chairman and members of the committee. I would be happy to answer any questions you may have.

RESPONSE BY ROGER ROMULUS MARTELLA JR. TO AN ADDITIONAL QUESTION
FROM SENATOR INHOFE

Question 1. With only one political official governing, on average, 1,000 career staff in each region, I have concerns that bureaucrats—rather than elected officials—are making significant policy decisions. As EPA General Counsel, what would you do to ensure that policies set by the Administration, are in effect and consistent in the regions?

Response. As I referenced in my oral testimony, I believe that ensuring national consistency, while accommodating some flexibility where appropriate, is an important goal. During my tenure at EPA as Deputy General Counsel and as Acting General Counsel, I have taken proactive steps to further this goal. For example, I have played a lead role in working with headquarters and regional offices toward developing a definition of “national significance” that would flag issues for headquarters review to ensure consistency of positions across the Agency. I also work closely with OGC's network of regional counsels and encourage open communication to identify issues among the regions that would benefit from headquarters coordination in order to ensure national consistency.

If confirmed as General Counsel, I would continue to promote strong coordination and communication between headquarters and the 10 EPA regions to help achieve the goal of national consistency. At present, I hold a weekly telephone conference with senior OGC staff in Washington and with each regional office. The Office of General Counsel also holds a monthly call where legal developments are discussed to ensure consistent implementation across the Agency, and headquarters and regional senior staff meet in person twice a year to coordinate on legal developments and regional issues. Thus, if confirmed as General Counsel, I plan to take steps to ensure national consistency and will work to facilitate a strong flow of coordination and communication between the regions and headquarters to further this goal.

RESPONSES BY ROGER MARTELLA TO ADDITIONAL QUESTIONS
FROM SENATOR JEFFORDS

Question 1. In recent years, a number of EPA's rules have been overturned, with strongly worded court opinions that question EPA's legal interpretations of key environmental statutes, such as the Clean Air Act.

Do you believe it is the General Counsel's duty to counsel against Agency action that the General Counsel believes is legally at odds with the statute and unlikely

to survive court challenge? Would you be willing to clearly indicate to the Administrator that a rule should not go forward because of high legal risk?

Response. I believe that one of the General Counsel's primary roles is, in consultation with the office's staff, to advise the Agency's decision makers on a range of options that are fairly supported by pertinent statutes, regulations and case law. As part of this analysis, I believe it is incumbent upon the General Counsel to provide an assessment of the strengths and weaknesses of each option under the pertinent statutes, regulations and case law, including an assessment of any litigation risk. I do not intend to shy away from communicating directly the varying legal risks associated with different options to decision makers. Thus, if the Administrator or other Agency decision maker were considering an action for which a legal argument could fairly be articulated under the applicable statutes, regulations and case law, but that I believed nonetheless bore a high legal risk, I would be fully candid about the litigation risk and the downside potential of pursuing such a position. However, I am mindful that these statutes give the Administrator and other decision makers the ultimate authority to decide how to implement their provisions in light of all relevant information before the Agency, including any legal risks that I would have identified.

One of my primary goals, if confirmed as General Counsel, would be to work to further support implementation of Agency decisions. Thus, I would work closely with the staff in the General Counsel's Office and Regional Counsel's Offices to ensure that the Agency compiles strong administrative records, to develop solid legal frameworks for rules and decisions, and to provide support to and coordination with the Department of Justice in defending the Agency in any litigation.

Question 2. In a brief filed recently by the EPA's Office of General Counsel before the U.S. Department of Labor Administrative Review Board, the Agency argued, contrary to significant legal precedent, that there has been no clear, unequivocal waiver of Federal sovereign immunity from whistleblower liability under the Clean Air Act, CERCLA, the Clean Water Act, the Safe Drinking Water Act and the Toxic Substances Control Act and thus that whistleblower claims must be dismissed. Do you intend to maintain that Federal workers may not pursue whistleblower claims under these statutes to report concerns such as the Administration's statutory violations, lax enforcement, or manipulations of data, any or all of which may result in threats to public health or the environment?

Response. If confirmed as General Counsel, I would seek to ensure full and fair enforcement and implementation of all laws, including pertinent whistleblower provisions. I cannot, however, speculate on the specific position EPA will take in any hypothetical future litigation brought by a Federal employee under the whistleblower protection provisions of the environmental statutes. EPA's position will necessarily depend on the facts and circumstances of the case and the applicable laws. I would anticipate that I would also seek and respect the guidance of the United States Department of Justice, including opinions issued by the Department of Justice's Office of Legal Counsel concerning waivers of Federal sovereign immunity.

In the case to which you refer, EPA submitted arguments to the United States Department of Labor Administrative Review Board concerning waiver of Federal sovereign immunity from liability under the whistleblower provisions of various environmental statutes. EPA submitted these arguments in direct response to a specific invitation by the Administrative Review Board to EPA and other parties to address the issue in a case that was pending before the Administrative Review Board. The Administrative Review Board invited views on this issue based on one of its recent decisions holding that there was no waiver of State sovereign immunity under various environmental whistleblower provisions. The employee has appealed the Administrative Review Board's decision to the Eleventh Circuit Court of Appeals. The Eleventh Circuit has recently asked the parties to address a threshold jurisdictional question relating to the procedure for seeking review of Department of Labor decisions.

Question 3. Over the past several years, EPA has had to grant a number of petitions for reconsideration of controversial rules. Some of these rules were subject to court deadlines because EPA did not meet statutory deadlines. Some allege that EPA is knowingly issuing defective rules and then using its own powers of reconsideration to give itself more time. Do you believe such use of petitions for reconsideration is appropriate? What will you do to ensure that when a rule is issued pursuant to a court ordered deadline, it is at least good enough that EPA itself does not need to recall it?

Response. When EPA issues a final rule, it seeks to account for all of the relevant information, including comments received during the public comment period and information obtained during the course of the rulemaking. In some instances, how-

ever, new and relevant information comes to light after the close of the public comment period, and the Administrator decides on a course of action that rests on that new information. In those instances, parties interested in the rule may seek reconsideration on the basis they did not have the opportunity to comment on the new information. The Agency may grant reconsideration where appropriate to ensure that the public has a full and fair opportunity to comment on such information.

The final rules that the Administrator issues reflect an appropriate consideration of the pertinent information and rationales available to the Agency at the time the Administrator issues the final rule. The Agency utilizes the reconsideration process in appropriate circumstances to ensure that the public has an adequate opportunity to react to information on which it was not practicable to provide comment in advance of the final rule. The Clean Air Act, for example, explicitly provides the opportunity for a reconsideration proceeding to provide further ventilation of the new information.

Question 4. EPA has been on the cutting edge of many important legal issues that are relevant to the Federal Government as a whole. One such issue is the constitutional requirement that a person have “standing” to have his or her case heard by a Federal court. Depending on how the standing requirement is interpreted, the ability of citizens to challenge Federal Agency actions—particularly EPA actions—could be greatly curtailed. What are your views on the significance of this issue and how the doctrine of standing is evolving?

Response. I agree that standing is a significant issue to be considered in litigation. As a judicial law clerk on the Tenth Circuit Court of Appeals, I came to appreciate first hand that parties and the court both have obligations to consider standing as a constitutional requirement that is a necessary prerequisite to jurisdiction and justifiability.

If confirmed as General Counsel, I would work closely with the Justice Department to evaluate whether parties in litigation have met the constitutional and prudential requirements for standing in a given action. My analysis would be informed by Article III of the Constitution and interpretations by the Supreme Court and other Federal courts. I anticipate that part of the analysis would include analyzing the complaint and pleadings to assess whether a plaintiff has established the standing requirements. At the same time, in response to your question, my evaluation of standing would not be driven by a sense of curtailing parties from bringing legitimate claims, but rather would be governed by established case law and principles relevant to the standing determination.

RESPONSES BY ROGER ROMULUS MARTELLA JR. TO ADDITIONAL QUESTIONS
FROM SENATOR OBAMA

Question 1. Due to growing concerns over child lead poisoning caused by lead in the paint of older homes, the EPA was mandated by statute in 1992 to issue a rule for home renovation and remodeling. Senator Boxer, Congressman Waxman, and I have written twice to the EPA, requesting additional information about the timing for finalizing the rule. The Agency’s reply, while timely, did not suffice to answer our questions, and I will therefore repeat them here.

Is EPA considering conducting additional studies in support of this rulemaking? If EPA plans to conduct additional studies, please detail each such proposed study, including the timing and cost. What portions of the rulemaking will the additional studies support?

Response. As I testified during the hearing, I am acutely sensitive to issues regarding lead. My role as General Counsel, if confirmed, would be to ensure that OGC provides adequate legal resources to help finalize this rule and finalize protections against lead.

It is my understanding that staff from the Office of Pollution Prevention Pesticides and Toxic Substances (OPPTS) met with your staff and staff from Senator Boxer and Representative Waxman’s office on Thursday, September 14, 2006 to discuss your questions regarding this proposed rulemaking (Lead Renovation Repair and Painting Program). I am told that it was a positive meeting and am appreciative of your willingness to sit down with EPA to discuss this issue further. I am told that on August 1, the Agency also provided a written response to your letter of July 24, 2006.

As stated in the August 1 letter and consistent with the staff discussion of September 14, public comments on the proposed rule raised many important issues regarding the required work practices, cleaning verification, and activities that are prohibited during abatement but permitted by the proposed rule. Consistent with our recent written and verbal communications, the Agency is conducting a study to

better characterize dust lead levels generated during a range of renovation, repair and painting activities. EPA is conducting the study in parallel with other aspects of the rulemaking effort. The results of the study will provide important data, which will be available at a key point, to inform Agency decisions on how these issues will be addressed in the final rule.

The objectives of the study include:

- Characterizing the effect of a range of renovation, repair and painting jobs that disturb lead-based paint on dust lead levels. Jobs will include practices that are prohibited under abatement regulations but permitted in the proposed rule;
- Characterizing the effect on dust lead levels of the use or non-use of plastic sheeting containment during interior and exterior jobs;
- Characterizing the differences in lead levels between surfaces cleaned with the proposed rule cleaning methods, and surfaces cleaned with baseline (broom and shop-vacuum) cleaning methods;
- Characterizing the amount of lead dust in adjacent rooms as a result of different renovation, repair and painting jobs, use or non-use of plastic sheeting containment and use or non-use of proposed rule cleaning methods;
- Characterizing the accuracy of the cleaning verification method when used by workers in the range of renovation, repair and painting activities in the study.

This study design underwent peer review last spring; data collection has started and will be completed in December 2006. EPA expects to receive the study results in January 2007. The estimated cost of the study is \$1.2 million.

I understand from my colleagues that EPA has committed to following up on last week's agreement to discuss the results of the study with you or your staff once the study is finalized. We anticipate that the timing should be in late January 2007. At that time, we would also be happy to discuss in more detail the comments that you provided in your May 24, 2006 letter to EPA Administrator Steve Johnson.

Question 2. Are there equally or more protective methodologies for which EPA already has sufficient supporting data, but which the Agency did not propose in an attempt to minimize the costs of the rule to industry?

Response. Consistent with our discussions with your staff, the Agency proposed or took comment on the range of methodologies that it is aware of for conducting renovation, repair and painting activities in a protective manner. However, in order to be effective in protecting children, a rule governing these activities must be practical to implement and understandable to homeowners and residents and to the predominantly small businesses that conduct renovation activities. In addition, EPA's goal in this rulemaking process is to develop an approach that will encourage homeowners to employ contractors who follow lead safe work practices. Thus, EPA believes that cost and practicability are relevant to the protectiveness of its proposed rule. EPA's goal for the proposed and final rules is to establish a comprehensive program that protects children and that can be effectively implemented. Any methodologies or technologies required by the final rule will be subject to this consideration.

Question 3. What information does the Agency staff believe it needs in order to support a final rule that it did not need to write the proposed rule? Has every step been taken to ensure the data/information does not already exist?

Response. As discussed with your staff last week, EPA has received a large number of substantive comments addressing virtually every aspect of the proposed rule. Many comments address the need for and efficacy of the required work practices and other issues that will be informed by the study of lead dust generation that is currently underway. EPA has evaluated the existing data and does not believe that equivalent data exist.

Question 4. Has EPA met with officials from industry who urged the Agency to delay the rulemaking through additional studies or other actions? If so, please provide the dates and attendees at those meetings, and describe the requests made in such meetings.

Response. As communicated to your staff on September 14, we had the opportunity to meet with various stakeholders, including industry representatives, as part of the rulemaking process. We were not asked by these officials to delay the rulemaking through additional studies.

We were, however, asked instead to extend the comment period on the proposed rule. On March 27, 2006, during the public comment period on the proposed rule, EPA met with representatives of the National Association of Homebuilders (NAHB) at the Office of Management and Budget. At that meeting, and in a subsequent letter, NAHB requested a 90-day extension of the public comment period in order to have sufficient time to complete and submit to the Agency a study that NAHB

planned to undertake. Other commenters also requested a 90-day extension of the comment period. EPA extended the comment period an additional 45 days.

As further communicated to your staff on September 14, EPA has not and would not agree to additional studies or actions for the purpose of delaying a rulemaking.

Question 5. When does EPA plan to complete the rulemaking?

Response. EPA is committed to issuing a final rule as expeditiously as possible. As discussed in the meeting with your staff, EPA is currently analyzing a large number of significant comments on virtually every aspect of the proposed rule. The Agency is also determining what additional information-gathering and analysis may be needed to adequately respond to the comments and make informed and supportable decisions on how best to address commenters' issues in the final rule. EPA expects to complete the analysis of the comments soon and will then be in a better position to predict the time required for the Agency to develop a final rule. At that time, EPA will be happy to share with you our thinking on the potential timing of a final rule.

As I indicated in my oral testimony, if confirmed as General Counsel, I will ensure that the Office of General Counsel provides full and adequate legal resources to support the Agency's efforts in finalizing the lead rule.

RESPONSE BY ROGER ROMULUS MARTELLA JR. TO AN ADDITIONAL QUESTION
FROM SENATOR LAUTENBERG

Question 1. You testified that environmental decisions should be crafted to preserve our nation's economic competitiveness as well as protecting our environment. However, in some instances, Congress has directed that health standards should be set without considering the cost of implementing the standards. If you are confirmed as General Counsel, how would you advise the Agency regarding statutes that prohibit consideration of costs in setting health standards?

Response. If confirmed as General Counsel, one of my primary responsibilities would be to advise decision makers at EPA on the range of discretion and factors they may consider in the decision-making process. In offering such counsel, I will review applicable direction provided by Congress in relevant statutes. Frequently, such statutes provide decision makers with wide discretion to consider numerous relevant factors, including environmental, health, and economic ramifications of a decision. In other instances, Congress in certain statutes has chosen to limit the Agency's discretion to certain enumerated factors and criteria. I would anticipate that if confirmed I would examine each relevant statute in offering legal counsel to determine whether Congress intended to provide broader discretion in making a decision or whether Congress intended to limit the analysis to certain factors and preclude other factors, such as economic costs.

STATEMENT OF BISHOP WILLIAM H. GRAVES, NOMINEE FOR MEMBER OF THE BOARD
OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY

Good morning. I am honored to be here today as one of President Bush's nominees to the Board of the Tennessee Valley Authority.

I am very grateful to Tennessee's Senators, Majority Leader Bill Frist and Lamar Alexander, and to my Congressman, Harold Ford, Jr., for their support.

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

I was born in Brownsville, Tennessee, the eighth of nine children, in the depths of the Great Depression. My family moved to Detroit, Michigan, when I was young, but I frequently return, visiting relatives and friends. After completion of high school, I returned for my college years at Lane College in Jackson, Tennessee.

I understand what TVA has meant to the people of the Tennessee Valley from the years of economic struggle to the present day. As a resident of the Tennessee Valley, I would consider it a great honor and a humbling challenge, to serve on their Board.

My background as a pastor and as Bishop of the Christian Methodist Episcopal Church gives me a profound appreciation for TVA's mission of service to the 8.6 million people of the Tennessee Valley.

It is a mission based on making life better, improving our communities, and supporting our families as they live and work in concert with God's natural world.

It is a worthy mission indeed, and I will use all my faculties, my strength, and the power that is in me to consider the challenges facing TVA and make sound and careful determinations.

Based on my work, my life's experiences, and my knowledge of TVA, I believe I can make a valuable contribution to the Board of the Tennessee Valley Authority if you choose to confirm me.

Throughout my professional life, I have worked with people from all walks of life. As a Board Member of Memphis Light, Gas & Water, TVA's largest single customer, I learned much about the challenges facing TVA as a power provider keeping pace with the exuberant growth of our region's economy.

Thank you again for this opportunity, and I look forward to answering any questions you may have for me.

RESPONSES BY BISHOP WILLIAM H. GRAVES TO ADDITIONAL QUESTIONS
FROM SENATOR JEFFORDS

Question 1. The new Energy Policy Act of 2005 encourages the development of distributed generation by allowing individuals to connect windmills or solar panels at their home to the grid and expanding combined heat and power projects by standardizing the interconnection process. Do you think this legislation should apply to the TVA?

Response. I do not have enough information at this time to comment on the Energy Policy Act of 2005, but I am very interested in exploring the potential benefits of distributed generation to the Tennessee Valley. I look forward to participating in the TVA Board's consideration of these standards if I am confirmed.

Question 2. Would you support the TVA electing to voluntarily adopt further measure to increase energy-efficiency at its power generating facilities and among its rate payers, and increase the supply of electricity in the region?

Response. Energy conservation, wherever it makes sense, is an important goal for TVA to take into account when considering the operations of its facilities. I have not yet had the opportunity to assess the potential for implementing greater energy conservation measures within TVA, but it is something I will look into if I'm confirmed.

Question 3. Do you think that TVA, which has more than \$24 billion in debt, should take on additional debt to finance new power plants when private industry is willing to accept the financial risk of constructing new plants?

Response. I have not been privy to details about TVA's debt or financing strategies, nor do I have information about the timeline for needing new generation. However, I believe TVA has a commitment to its customers to provide affordable and reliable power. If confirmed, I will use my position on the Board to make sure we are meeting the electricity needs of the Valley while working to keep costs low.

Question 4. Do you feel the TVA should institute some kind of competitive bidding for new projects to ensure that the taxpayers of the Tennessee Valley region are paying the lowest possible price for their power, and that new generation is constructed in a cost-effective manner?

Response. If confirmed, I will look into the way TVA makes investments in new projects. As I've mentioned, my experience in working with Memphis Light, Gas & Water, TVA's largest customer, has given me a unique perspective on how important it is for TVA's customers to have access to both affordable and reliable power. I would work to make sure TVA continues to meet this goal.

Question 5. The effect of restructuring of the electric production and transmission industry in our country on the reliable delivery of electric power will continue with lessons learned from the blackout in New York, the California power crisis and reliability struggles elsewhere. TVA must continue its earnest efforts to ensure reliable power delivery. What else do you feel that TVA can be doing with neighboring utilities to ensure that we do not suffer additional regional blackouts?

Response. I know how important electric reliability is to the people of the Southeast, especially for residents in the hot summer months and for industries located in the TVA region. I know this is something TVA has been involved in and that they continue to make efforts to increase the reliability of the power grid. At this point, I do not know specifically what else TVA can do with its neighboring utilities, but if confirmed to the Board I will make sure we have qualified people working closely on this issue.

Question 6. What will you do to ensure that TVA aggressively reduces air pollution and aims to achieve at least 1990 levels of carbon dioxide emissions?

Response. If confirmed, I will support the ambitious efforts already in place by TVA to reduce air pollution as well as future efforts to make additional reductions. The reduction of emissions is a very important issue, which I plan to give serious consideration. From what I understand about these issues now, I think TVA's deci-

sion to add more nuclear and renewable energy generating capacity to its system is a prudent thing to do.

Question 7. What will you do to ensure that TVA is being operated as a very efficient business so that financial resources are available to continue its investments in state-of-the-art air pollution control technology?

Response. If confirmed, I will carefully study TVA's business model and will work diligently to further the TVA goals of keeping costs low and keeping debt at appropriate levels so that we can support the efficient operations of our plants and continue to install pollution controls.

Question 8. In addition to hydropower, what portion of TVA's generation base should come from renewable energy sources?

Response. Unfortunately at this time, I do not have adequate information to be able to provide you with a percentage. I do support renewable energy sources and hope to make sure that TVA is doing its part for renewable energy if I am confirmed to the Board.

Question 9. Do you support TVA's Green Power Switch program, which allows families and companies to voluntarily accept a small surcharge on their monthly bill in order to purchase blocks of electricity generated from renewable sources?

Response. From what I know about TVA's Green Power Switch, I support the program. I do not have the details or the magnitude of this offering by TVA, but I think it is an important way in which we can help promote renewable energy.

Question 10. TVA announced plans in 1997 to cut its debt in half by 2007 and increased rates for its distributors specifically in order to reduce its debt. TVA has acknowledged that it will not meet its debt reduction targets and is only on track to make a small dent in its overall debt. As part of the TVA board, do you plan to meet the original plan of reducing TVA's debt?

Response. I have not had the opportunity to read this plan, so I cannot commit to supporting those goals. However, it is important that TVA keep its debt at a level that ensures the financial health of the Agency. If confirmed, I will work to make sure TVA is financially sound and that the rate payers are not at a financial risk.

Question 11. TVA is an \$8 billion entity. TVA charges higher electricity rates in some portions of the service territory. Would you, as a member of the TVA Board, seek to make uniform TVA customers' rates?

Response. It is my understanding that TVA does charge uniform rates throughout the Valley. However, I will be glad to look further into this issue if I am confirmed.

STATEMENT OF ALEX BEEHLER, NOMINEE FOR INSPECTOR GENERAL,
ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Jeffords, members of the committee. Thank you for providing me with the opportunity to appear before you today. It is a great honor and privilege to be here today as the nominee to be Inspector General of the Environmental

Protection Agency (EPA).

In my current and previous positions involving environmental law and policy, my vision has been to seek environmental improvement. If I am confirmed, I pledge to you that I will do everything in my power to work with the dedicated expert staff in the Office of Inspector General to provide the Agency, Congress, and the American people, an independent, objective review of EPA programs. I will work to prevent and detect fraud, waste, and abuse in EPA programs, and to provide the leadership to promote effectiveness, efficiency, and economy in program administration. Each is an important component in assisting the Agency's mission of protecting human health and safeguarding the environment. And I pledge to work with the Committee and its staff in carrying out our shared goal of environmental protection and improvement.

The legislation creating the Federal inspectors generally recognizes the importance of the audit and investigative functions to be carried out by the Office of Inspector General, and specified in the Act the appointment of personnel to oversee those operations. Likewise, Congress recognized the skills necessary for an effective Inspector General, and required a background in accounting, auditing, law, public administration or investigations.

During my 28 years of professional experience in Washington, DC. I have had the privilege to spend 17 of those years engaged in environmental law enforcement and policy positions from several different perspectives. I have served as a special assistant to the Associate Administrator for Legal and Enforcement Counsel at EPA, as a Federal environmental prosecutor at the Department of Justice, as an environ-

mental regulatory advisor to a major corporation, as the top environmental policy official at two non-profit organizations, and currently as a senior environmental official at the Department of Defense. These opportunities, plus positions on the Senate Judiciary Committee and in private litigation practice, have provided me with a wide range of legal, investigative, and Governmental experience that have prepared me to perform the critical role of helping protect human health and the environment as Inspector General of EPA.

While at the Department of Justice, I was lead trial attorney on many CERCLA cost recovery cases requiring the substantive review of financial and audit records. One case in particular, the Picillo Superfund Site in Coventry, RI, involved the court appointment of a special master solely to address all accounting matters and the judicial rendering of one of the most comprehensive examinations of CERCLA cost recovery issues to date. The outcome of the litigation was highly favorable to the U.S. Government on several accounts: award to the Government of almost 100 percent of contested costs; validation of the Government's financial management of Superfund costs and strong precedential case law favoring the Government on cost recovery. My nonprofit work afforded me the opportunity to devise and implement environmental policy strategies focused on environmental improvement where substantive results were defined, measured, and emphasized. In my current capacity at the Department of Defense, I have continued to stress results over process by pushing for putting "facts on the table", and collecting the best available data and science in a holistic, integrated manner for all the Department's operations—from design to disposal.

In order to be effective, I have proactively pursued building trust with interested parties to encourage sharing of issues and information leading to solutions and environmental improvement. If confirmed, I would continue the same truth-seeking approach as Inspector General, with independence and integrity. I would ferret out problems and target areas for improvement through proactively seeking knowledge from other internal EPA offices, from other Federal agencies and components, from State agencies, and from non-Government sources and entities. I would provide leadership through breadth of vision while drawing upon the considerable expertise of staff for depth and execution.

Throughout my career and life, I have strived to use responsibilities entrusted to me to make things better - through independent and measured thinking, sound judgment and common sense, respect for the rule of law, with the highest ethical standards. I try to listen to all sides of an argument and respect the views of those with different perspectives, before making a judgment. My goal is to lead by example and learn from others. I hope to have that opportunity as EPA's Inspector General.

Thank you, Mr. Chairman and members of the Committee. I would be happy to answer any questions that you may have.

RESPONSES BY ALEX BEEHLER TO ADDITIONAL QUESTIONS
FROM SENATOR INHOFE

Question 1. In your past position with a non-profit organization, you had responsibility to ensure that the grants your organization awarded were properly funded, managed, and appropriately spent. How would this experience help the IG's office improve its oversight of grants management at EPA?

Response. In my previous position, I was responsible for ensuring grant dollars were awarded and managed in a way that promoted maximum benefits for the dollars spent. The same goals apply to the billions of dollars EPA invests in grants each year. Many of the best practices I employed in my position at the non-profit are transferable to EPA grants. Past Office of Inspector General (OIG) work identified a number of weaknesses in EPA grants management, some of which I understand continue to exist. I look forward to using my expertise to contribute to EPA's initiative to improve grants management and ensure the American taxpayers dollars are well spent by EPA.

Question 2. I understand that in your current position you are responsible for reviewing tens of millions of dollars in contracts for the Installation and Environment Division at Department of Defense. Do you see any of the criteria you use in these reviews as transferable to grants management oversight at EPA?

Response. In my current position, I do not review individual contracts. I authorize the contracting agencies to contract for various products and services to support the functions of my office. In that role, I am responsible for ensuring that the products and services sought are necessary and useful and represent the most beneficial application of the taxpayers' resources provided to my office. In addition, I review and

approve various grants, cooperative agreements, and interagency agreements to obtain products and services necessary to carry out the functions of the DoD in the area of environment, safety, and occupational health. In all these actions, I apply first and foremost the criteria that the expenditures will provide useful and valuable products for the taxpayers' funds. I anticipate that the criteria I have applied at DoD are just as applicable in other settings such as EPA.

Question 3. As most here are aware, I have been very critical of how EPA prioritizes its spending requests. For example, every year, in order to say they have "cut spending," EPA cuts the State revolving loan funds for water infrastructure, knowing that Congress will restore that money. These cuts to core programs with demonstrable environmental benefit occur, while certain small programs, with little to no benefit to the environment, go on completely funded. To your knowledge has EPA ever done a cost-benefit analysis of its various programs, including voluntary programs, research activities, and grants. Is this something that should be examined by the IG to determine where waste might be occurring?

Response. To my knowledge, EPA has not conducted such a cost-benefit analysis. If confirmed, I plan to focus the OIG's work on helping ensure EPA uses data and measures to effectively manage its programs and resources.

Question 4. In my opinion, the former EPA Inspector General produced a number of reports that not only were shoddily investigated, but demonstrated a clear motivation to achieve policy objectives that not only was she unqualified to judge. In particular, a report was issued criticizing EPA's mercury proposal process in which the IG's staff interviewed only the small number of Clean Air Act Advisory Committee members who disagreed with EPA's process and not one of the large majority of members who both attended the 13 days of meetings over 18 months and supported the process. What will you do to rein in this kind of behavior on your staff?

Response. It is critical that the EPA Inspector General demonstrate independence and objectivity to effectively help the Agency achieve its mission. While I cannot speak to the quality of the OIG work you cite, I can say that in the limited contact I have had with the OIG staff, I have been impressed with the professionalism and dedication to their mission. As IG, I will ensure only objective, balanced, and suitable facts are used to support OIG reports.

Question 5. Mr. Beehler, the subject of the The National Academy of Sciences report on assessing the Human Health Risks of Trichloroethylene (TCE) and its recommendations was discussed at the hearing. It has been suggested that NAS found that the science is "complete" on this chemical and that the NAS report suggests that there is enough science to force companies and other parties to cleanup potential TCE contamination to an even greater degree. In its recommendations, however, the NAS Committee stated that while the "evidence on carcinogenic risk and other health hazards from exposure to TCE has strengthened since 2001," the committee recommended "that Federal agencies finalize their risk assessment with currently available data so that risk management decisions can be made." It does not appear to recommend cleanup levels or a particular course of action with respect to cleanup, but rather suggests that EPA finish its risk assessment. In fact, the report makes clear that "the committee was not asked to address risk management issues." Is that correct?

Response. Yes, that is correct.

Question 6. Additionally, the report includes several research and methodological recommendations regarding exactly how EPA should conduct this risk assessment, including new epidemiologic data analysis, sensitivity analysis, dose-response relationships, species differences and modes of action. If all this data analysis is yet to be complete, how can the science be considered "decided"?

Response. I agree that further data analysis must still be done before the science is considered "decided." It is my understanding that EPA's Office of Research and Development (ORD) agrees too. The NAS report recommends that as part of doing an updated assessment, EPA should do a new meta-analysis of currently available epidemiology studies. It is my understanding that ORD plans to do an updated assessment for peer review based on currently available data.

Question 7. Prior to serving at the DoD, you worked at Koch Industries as the Director of Environmental and Regulatory Affairs. You also were employed by the Charles G. Koch Foundation as Vice President for environmental programs. Koch Industries' record on the environment has included paying some of the largest civil fines ever imposed on a company under any Federal environmental law, and the filing of criminal charges for illegal releases of benzene in Texas, which were later settled with the Department of Justice for \$20 million in penalties and a guilty plea for concealing information.

Although you arrived at Koch after the company had been charged with these violations, the settlement of the criminal indictment occurred during your tenure as Director of Environmental Affairs. What role, if any, did you play in any environmental enforcement settlements during your tenure at Koch Industries?

Response. None.

Question 8. If confirmed as Inspector General, would you plan on recusing yourself from investigating matters relating to Koch industries?

Response. Yes.

Question 9. If not, how would you plan on avoiding any appearance of impropriety or bias?

Response. Not applicable.

Question 10. With regard to your work as Director of Environmental Programs for the Charles G. Koch Foundation, we understand that during your tenure the foundation provided funding to a number of organizations such as the Mercatus Institute, among others, that are actively involved in debates regarding environmental regulations.

Please provide a detailed description of the organizations or projects that the foundation funded or helped to fund that take positions or provide analysis regarding environmental protection laws. Please summarize the work product, or reports or other analysis that were funded during your tenure.

Response. During my tenure, the Charles G. Koch Foundation (Foundation) was involved in extensive grant making in a wide range of fields with which I had no knowledge or involvement. To the best of my recollection, the relevant grants that I was involved with included regarding an analysis of EPA's permitting processes. This grant was provided to Resources for the Future. A second grant is one that involved Harvard University in conjunction with Resources for the Future, EPA and the American Chemistry Council. This grant analyzed lessons learned and successes shared toward better environmental management and improvement.

Question 11. Your financial documents indicate that you have investments in a number of companies that could be directly affected by EPA regulations or enforcement actions. These include major manufacturing companies that have previously been subject to EPA enforcement actions, energy companies and mining companies. I understand you have elected not to divest yourself of these investments but rather to manage any potential conflicts of interest by recusing yourself from all matters that have a direct and predictable effect on your financial interests or by seeking a written waiver.

Given the scope of environmental statutes that the EPA administers and the breadth of regulatory and enforcement actions it takes, how do you plan on evaluating all of your work for potential conflicts of interest?

Response. In keeping with the terms of the ethics letter I signed on Aug. 3, 2006, I will issue a recusal statement that clearly sets forth the names of the companies from which I would be recused. I will remain vigilant with respect to my potential conflicts of interest and appearance concerns. I will consult the OIG's Counsel and/or the Agency's ethics officials, as appropriate. In addition, I will rely upon the career senior managers in the OIG to assist me in abiding by the terms of my ethics agreement and my recusals.

Question 12. Will this place a resource burden on the Office of Inspector General and the EPA ethics staff to screen all your work against the backdrop of your investments? If not, please detail how you will manage the Inspector General Office resources to avoid this.

Response. The burden of remaining vigilant about my own recusals remains with me, as I am responsible for ensuring that I understand and abide by the Federal ethics standards. OIG Counsel assures me that he does not believe that my ethics considerations will create an undue burden on his workload.

Question 13. How will you make strategic decisions for the Office of the Inspector General that relate to allocating scarce audit and investigation resources among different industry sectors, some of which may include companies that you maintain investments in?

Response. The OIG does not normally allocate resources against industries. Resources are allocated based on customer (both internal and external) requests, potential monetary and environmental/health benefits or risk, and within the scope of the IG's authority. Resource allocation and work decisions are not made based on the IG's personal likes or preferences, but rather on the mission of EPA and the OIG.

Question 14. How would you handle a recommendation by the Inspector General staff that you institute an investigation of the EPA's enforcement actions related to energy companies?

Response. I have been advised by OIG Counsel and EPA's ethics officials that I am not automatically recused from matters of general applicability involving energy companies. However, I would recuse myself from any matters in which I could not be objective, or perceived as being objective, whether they are due to a financial interest or my previous work. In such case, the work of OIG would continue to be handled by the experienced career executives of OIG.

Question 15. In your view, would a recommendation, given by you, to investigate EPA enforcement activities related to a different industrial sector in which you do not have investments, also pose a conflict of interest, given the limited amount of investigation resources available to the Inspector General? If not, please explain why and be specific.

Response. No, I do not believe that there would be any conflict of interest if I were to recommend OIG action with respect to an industry in which I do not have any financial interest. The term "financial interest" is defined in the Standards of Ethical Conduct for Employees of the Executive Branch as limited to financial interests that are held by an employee, his spouse or minor children. (5 CFR 2635.403(c)).

However, if I could not be objective, or be perceived as being objective, whether the reasons are due to a financial interest or my previous work, I would recuse myself from the matter before me. In such case, the work of OIG would continue to be handled by the experienced career executives of OIG.

Question 16. If during the course of your work as Inspector General, you are provided, either orally or in writing, with confidential enforcement information related to any company that you have investments in, how would you plan on making future investment decisions related to such a company, particularly decisions to divest or reduce your investments in such a company?

Response. EPA's Office of Enforcement and Compliance handles enforcement matters for the Agency, not the OIG. As the IG, it would be highly unusual for such information to come to my attention. If it did, I would not involve myself in the matter nor would I use such information to make personal financial decisions. In the event that I am provided information related to a company identified on my recusal list, I would notify OIG Counsel and adhere to his advice on how to proceed. I would refrain from reading the information because I would be recused.

Question 17. Did you invest in these sectors and/or companies while employed at DoD? How did you avoid conflicts of interest arising with your investments in these companies or other companies with financial relationships with DoD?

Response. These investments were made prior to my employment at DoD. I relied on counsel of DoD General Counsel's ethics office for guidance on avoiding conflicts of interests.

RESPONSES BY ALEX BEEHLER TO ADDITIONAL QUESTIONS
FROM SENATOR LIEBERMAN

Question 1a. Are you planning, in the event that you become EPA's Inspector General, to recuse yourself from any decisions concerning any IG investigation, inquiry, audit, or report touching upon EPA's reaction either to any Defense Department request for changes to the statutes that EPA implements or to any Defense Department request for particular EPA action or inaction?

Response. In addition to recusing myself from any matter concerning exemptions sought by the DoD under the environmental laws, such as the Clean Air Act, RCRA and Superfund for so called "readiness activities," I will also recuse myself from any matters in which I could not be objective, or be perceived as being objective, whether due to a financial interest or my previous work.

Question 1b. If so, then what assurances can you provide me now that other employees of the Inspector General's office would have adequate legal authority and practical ability to initiate and effectively complete such an investigation, inquiry, audit, or report?

Response. Under this circumstance, I will delegate all powers and authorities granted to be under the Inspector General of 1978, as amended or any other authority to the OIG official designated to handle the matter.

Question 1c. If not, then why not, considering the concerns expressed in the opening statement that I submitted to the record of your confirmation hearing?

Response. Not applicable.

Question 2. The Inspector General Act empowers and directs EPA's inspector general to keep the Congress fully informed of, among other things, "serious problems . . . and deficiencies relating to the administration of programs and operations administered" by EPA. Please describe the principles and factors that will guide you, if you are confirmed to the post of EPA's inspector general, in determining whether individual controversial policy decisions made by EPA officials qualify as or reveal "serious problems" or "deficiencies," as those terms are used in the Inspector General Act.

Response. The principles and factors would be those matters which implicate fraud, waste, abuse, mismanagement or inefficiency relating to EPA's program and operations. Additionally, I would consider the level of risk involved, the amount of potential monetary costs or recovery involved, and the importance of an issue to Congress, the Agency and the public in developing OIG work assignments. The OIG formally reports to Congress semiannually on the activities undertaken, and the results of their work.

RESPONSES BY ALEX BEEHLER TO ADDITIONAL QUESTIONS
FROM SENATOR LAUTENBERG

Question 1. During your tenure, the Department of Defense (DoD) has sought exemptions from the Clean Air Act, Clean Water Act, Superfund and other environmental laws. If you are confirmed as Inspector General, would you continue to advocate for DoD to be exempt from laws administered by the EPA?

Response. No. Under the IG Act, IGs are strictly prohibited from engaging in programmatic work and I will abide by the IG Act. Specifically, any decision I make as IG will be based upon my responsibilities as the IG and not on my previous work experiences.

Question 2. While at the Defense Department, you opposed EPA's revised risk assessment for the chemical trichloroethylene (TCE). If you are confirmed as Inspector General, and EPA decides to move forward with a revised risk assessment, or a strengthened drinking water standard for TCE, will you oppose EPA's efforts?

Response. See above. Policy deliberations and decisions are programmatic activities and are expressly prohibited under the IG Act.

Question 3. As you know, The National Research Council (NRC) was ultimately called upon to study the issue of TCE. In July, the NRC essentially confirmed EPA's view that a revised risk assessment for TCE was in order. Has your view of the matter changed in any way based upon the NRC report?

Response. EPA, DoD, and DoE together sought the NRC review to analyze the science upon which the EPA draft risk assessment was based. The NRC brought certain matters into question and the EPA has taken that additional information to apply in improving its risk assessment.

RESPONSES BY ALEX BEEHLER TO ADDITIONAL QUESTIONS
FROM SENATOR JEFFORDS

Question 1. The EPA Inspector General's duty is to serve as an independent, impartial and accountable source for audits, evaluations and, investigations of EPA. The Inspector General functions as a "watchdog" in alerting the public and Congress to areas of concern at EPA. Your predecessor showed admirable independence in producing important reports that were critical of the EPA in the areas of mercury control, New Source Review and EPA's evaluation of air quality after the World Trade Center attacks.

What about your record makes clear that you are willing to take EPA to task for not fulfilling its public health responsibilities under the environmental laws? How does your record demonstrate the qualities of independent thought and communication that are required of an Inspector General?

Response. During my extensive work experience in positions involving environmental law and policy, I have sought environmental improvement. Much of my professional experience has been spent enforcing our nation's environmental laws. I was a prosecutor at the Department of Justice for 10 years. Prosecuting cases is a similar process: you collect the facts; build a case; and present your findings. It is like evaluating any organization concerning its operational decisions and actions.

Question 2. During your time at the Department of Defense (DoD), you have advocated that the Defense Department be exempted from the major environmental statutes, including the Clean Air Act, Superfund, the Clean Water Act and the Resource Conservation and Recovery Act. Were these exemptions designed in any way to im-

prove or enhance environmental protection? Would they have increased or decreased environmental oversight by EPA and the States?

Response. The overwhelming focus (more than 95 percent) of my time and effort at DoD has been spent on program administration and outreach to States, localities, tribes, non-Governmental organizations (NGOs), and other stakeholders—not the legislative proposals known as the Range and Readiness Preservation Initiative, which were developed and adopted by DoD and the Administration two years before I joined DoD.

As explained to me, these legislative proposals were simply designed to codify the existing regulatory policies and practices of DoD, EPA, and the State regulators—policies maintained under Federal and State administrations of both parties, including the previous Administration—which were, however, being challenged in various lawsuits.

These proposals were therefore not intended to increase or decrease EPA and State environmental oversight. These proposals were designed to either have neutral or positive environmental consequences.

RESPONSES BY ALEX BEEHLER TO ADDITIONAL QUESTIONS
FROM SENATOR BOXER

Question 1. Mr. Beehler: You currently serve as Assistant Deputy Undersecretary of Defense for Environment, Safety and Occupational Health. During your tenure in that position, the Department of Defense has repeatedly sought exemptions under the environmental laws, such as the Clean Air Act, RCRA and Superfund for so called “readiness activities” and you have publicly advocated for such exemptions. However, the record has shown that military readiness has not been impacted by environmental requirements and that DoD rarely, if ever, has used exemptions already available to it under existing regulatory provisions.

If confirmed, do you plan on recusing yourself from issues related to these exemptions in light of your previous advocacy for them?

Response. Yes.

Question 2. If not, will you integrate these views into Inspector General Reports on EPA matters where these views may be relevant?

Response. Not applicable.

Question 3. Do you disagree in any way with former EPA Administrator Christine Todd Whitman’s testimony before the Senate Environment and Public Works Committee stating that “I do not believe there is a training session anywhere in the country that is being held up or not taking place because of environmental regulation.” February 26, 2003). If yes, please be specific in your response.

Response. It has been reported to me by DoD that there is at least one situation where training has been restricted at the Massachusetts Military Reservation, Camp Edwards, due to Administrative Order No. 2 issued by EPA in April 1997 pursuant to the Safe Drinking Water Act. That order relates to munitions constituents in a sole source drinking water aquifer.

Question 4. On April 21, 2004, DoD Deputy General Counsel Ben Cohen indicated in testimony before the House Energy and Commerce Committee that in response to a request from Deputy Secretary Paul Wolfowitz, no branch of the DoD had submitted any information that warranted using the existing national security exemptions under CERCLA, RCRA or the Clean Air Act. After that testimony I understand you continued to publicly advocate for such exemptions.

What was your factual basis at that time for continuing to advocate for these exemptions in light of the prior testimony of Administrator Whitman and Mr. Cohen on these subjects?

Response. I have been advised that Mr. Cohen’s testimony referred to existing exemptions in various environmental statutes, not to the legislative proposals that DoD was advocating.

My overwhelming focus, more than 95 percent of my time and effort, has been spent on program administration and outreach to States, localities, tribes, NGOs, and other stakeholders—not these legislative proposals, which were developed and adopted by DoD and the Administration two years before I joined DoD.

As these proposals have been explained to me, these legislative proposals were simply designed to codify the existing regulatory policies and practices of DoD, EPA, and the State regulators—policies maintained under Federal and State administrations of both parties, including the previous Administration—which were, however, being challenged in various lawsuits.

These proposals were therefore not intended to increase or decrease EPA and State environmental oversight. These proposals were designed to either have neutral or positive environmental consequences.

