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HEARING ON THE PRESIDENT'S PROPOSED EPA BUDGET FOR FISCAL YEAR 2010

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

MAY 12, 2009

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ONE HUNDRED ELEVENTH CONGRESS
FIRST SESSION

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HEARING ON THE PRESIDENT'S PROPOSED EPA BUDGET FOR FISCAL YEAR 2010

TUESDAY, MAY 12, 2009

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

The committee met, pursuant to notice, at 9:45 a.m. in room 406, Dirksen Office Building, Hon. Barbara Boxer (chairman of the committee) presiding.

Present: Senators Klobuchar, Lautenberg, Vitter, Barrasso, Sanders, Whitehouse, Udall, and Merkley.

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

Senator BOXER. The Committee will come to order.

I know Administrator Jackson has a very hectic day, so we have accommodated her by starting 15 minutes earlier than normal. But we will also try to keep our opening statements to 4 minutes and I would start by thanking Administrator Jackson for appearing before the Committee today to discuss the President's budget for the EPA.

Every year the Committee holds a hearing to examine the budget for the EPA and clearly, during the last Administration, there was rarely any good news in the budget. For example, the Bush 2009 budget represented a 26 percent decline in resources over the past 8 years. And I am pleased to see this budget represents a fresh new commitment to safeguarding public health including the health of our children, curbing the carbon pollutions that cause global warming, and creating clean energy jobs.

The investments in this budget signal the high priority that the President places on the health of the environment and the health of the American people. Our States and our cities are faced with unprecedented need to invest in drinking water plants and wastewater treatment facilities. These systems help ensure our families can safely turn on the tap when they go to work in the morning and come home in the evening and they will keep our lakes and rivers clean for fishing and swimming. This is so important to all of us in our States.

EPA estimates that our Nation has more than $200 billion in investment needs just for wastewater infrastructure. By 2019, our drinking water infrastructure needs could top $100 billion. And I think it is important to note that when we do clean these areas up and bring them up to speed we create many, many good paying jobs. So this budget would provide $3.9 billion for drinking and

wastewater infrastructure, an increase of more than $2.3 billion. This is more than a down payment on protecting public health. Again, it will put people to work and rebuild our crucial infrastructure.

I look forward to our business meeting later this week where we plan to move forward to reauthorize and update the Clean Water and Safe Drinking Water Revolving Funds. I am pleased we have introduced a bipartisan bill. Yes.

[Laughter.]

Senator BOXER. That reflects our agreement on the importance of this issue. And if we do pass this, it is the Revolving Fund that deals with rebuilding our sewer infrastructure. I do not think that has been authorized in 22 years. Twenty-two years. And we are on the verge of breaking that. And then the other, the Drinking Water Revolving Fund, is about 13 years. So we are very excited, Administrator Jackson, that with you helping us and guiding us and working with us we can make some real bipartisan progress.

There are important elements in this budget: addressing global warming, the Energy Star Program, a national inventory of large sources of greenhouse gas emissions which Senator Klobuchar has worked so hard on, there is analysis of issues relating to cap-and-trade for controlling the pollution, there is developing vehicle emission reduction technologies to address carbon pollution and help us car manufacturers adopt such technologies and become more competitive.

So this is an historic budget. I will say I have concerns. I am worried about the Superfund cleanup piece. And I do not understand why the projected number of completed Superfund cleanups is down despite the overall increase in the budget and why diesel emissions reduction efforts, which are so important to Senator Carper and so important to protecting children from asthma, why that has been cut. I am concerned that the needs of State and local air officials do not appear to be adequately reflected.

So here is where I come out and say I am with most of it. I am concerned with a few pieces here. And at the end of the day the budget begins the hard work of restoring America's confidence in the EPA. It would make our families healthier, our communities safer.

And I will put the rest of my statement in the record to keep with the 4 minutes and under the rules. Thanks to Senator Vitter, I am going to call on Senator Klobuchar, then Senator Vitter and then Senator Lautenberg.

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

Senator KLOBUCHAR. Thank you very much, Madam Chairman, and thank you, Senator Vitter, for allowing me to go first. I am going to another committee hearing to introduce my former professor, Cass Sunnstein, who hopefully will help you get through all these regulations so we can get some things done here.

I want to also tell you how much I appreciate the leadership you have shown at the EPA and the integrity you are working to restore to the office. I am looking forward to going through your budget and working with you on this budget.

I also am pleased that there is money set aside for that greenhouse gas registry. I always felt that we are not going to start any kind of a greenhouse gas system nationally in terms of reducing greenhouse gases if we cannot even count them and this is the very important first step that should have been done administratively a while back. I always thought it was ironic that we had something like 37 States that had started their own greenhouse gas registry together because the Federal Government had failed to act.

I also appreciate as Chair of the Subcommittee on Children's Health and as a fellow parent of a school age child that you have instituted a new plan for screening combinations of chemicals, recognizing that people are never exposed to just one chemical alone but typically small doses of multiple chemicals in combination. I understand that this new method will pay particular attention to the way small children are affected disproportionately by toxic chemical exposure and may help us realize some of the causes of serious medical problems that plague people later in life.

And I just wanted to mention one thing that we had talked about earlier this week: the status of biofuels. I believe that if we are going to move to the next stage of ethanol and biofuels, with cellulosic ethanol, with switch grass and prairie grass and corn stover and other things that we have to continue to make sure that we do not pull the rag out from under our existing bio-fuel business which has had to compete tool and nail with these humongous oil companies to just get into existence. I know we have talked about that.

I personally believe that, to fulfill some of the national requirements that were included in the Energy Bill, we need to move to higher blends of ethanol, E12, E15 and I am hopeful that there will be money set aside to get those proceedings moving because we have been waiting a long time to do that and biofuels clearly should be a part of the work that we do in order to get ourselves off of our dependence on foreign oil.

So, overall, I wanted to thank you for your good work, Administrator Jackson, the work of the EPA, the fact that we are able to get information and evidence and things that we need to make good decisions. As you know, we have a major bill ahead of us, a climate change bill, and we look forward to your leadership and working with you to make sure that we have a strong bill that not only reverses the trend we have seen across the world with global warming but also does it in a way that will make sure that middle class people, people who have been harmed in this economy, are not hurt by our action. What we want to do is have them helped by this action and I believe there is a way that we can do it.

Thank you very much.

Senator BOXER. Thank you, Senator, very much. Before you leave, I want to talk to you about one quick thing. On the way out.

Senator Vitter.

OPENING STATEMENT OF HON. DAVID VITTER, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator VITTER. Thank you very much, Madam Chairman, for the opportunity to discuss this proposed budget and delve into some of the major items facing the Agency and the Country and

thank you, Administrator Jackson, for your time here and your leadership.

As we discuss the President's budget, I think it is important to note some broad, conflicting signals given by the Administration through the budget. On the one hand, the President touts fiscal responsibility. On the other hand, he proposes major spending increases which result in record deficits and national debt.

Early on, the Administration asked us to support an $800 billion borrowing plan essentially on our kids' credit card to stimulate the economy. And we were told that that $800 billion in added debt would create 3.5 million jobs. I hope that gamble pays off. I hope it supports and creates those jobs. However, going beyond that, as we move from a one time stimulus to a 5- and 10-year budget plan, my concern grows when we see that level of spending increase continue and reflected in the budget, including an EPA budget that grows 37 percent in 1 year.

Now, the EPA has a very important responsibility in protecting our environment. It also has a responsibility not to regulate our economy into a full blown depression and that is my other very serious concern. The most notable decision in this new EPA in that regard is the greenhouse gas endangerment finding. It is no secret that that decision to attribute climate change to six greenhouse gases is intended to pressure Congress into passing comprehensive cap-and-trade legislation. Hopefully, EPA recognizes the precarious situation this decision places the Agency and the Administration in. There exists no legitimate economic argument that regulating CO_2 would not significantly increase the cost of energy.

In addition, there is no economic analysis to support the idea that increasing the cost of energy would not be a major negative impact on low-income families or force some jobs and businesses overseas. And that is the great, great risk with the endangerment finding. Essentially, it really seems that you are telling Congress that, unless we pass legislation that will increase the cost of energy, including on low-income families and businesses and schools, then you will be forced, as an agency, to regulate CO_2 and unilaterally increase the cost of energy on those same low-income families and businesses and schools.

Now, despite the 37 percent increase in funding at a time of record deficits, I do think there is some important and good expenditures within this budget and I want to highlight that. Those include funding for the clean water and drinking water infrastructure program which is needed in many areas, certainly including rural Louisiana. However, we may also be on the verge of having new environmental regulations that could single-handedly cripple the economy, also limit property rights and our Country's ability to generate wealth including in those areas.

I will submit the remainder of my comments for the record but again, I want to underscore two key things. One is on the fiscal side, a grave concern about this enormous increase in spending and with it, deficit and debt, not just again in a one-time stimulus but in a game plan for Federal spending for the next 5 and 10 years. And second, specific policy, including on the greenhouse gas side, that will clearly spell enormous increase in energy costs and negative impact on jobs.

Thank you, Madam Chairman.

[The prepared statement of Senator Vitter follows:]

STATEMENT OF HON. DAVID VITTER, U.S. SENATOR
FROM THE STATE OF LOUISIANA

Madam Chairman, thank you for the opportunity to discuss the EPA's proposed budget and to delve into some of the major items facing the agency. Administrator Jackson, your time here today is appreciated.

As we discuss the President's budget it is important to note the conflicting signals being given by the Administration. On the one hand, the President touts fiscal responsibility and economic growth. On the other, he proposes major spending increases and record deficits and national debt.

The Administration asked us earlier this year to support borrowing $800 billion on our children's credit card to "stimulate" the economy. In fact, we were told that the $800 billion in added debt would create 3.5 million jobs. I am hopeful that the gamble against our children's future will indeed create 3.5 million jobs. However, I am not sure, given the stimulus spending, that an additional increase in the EPA's budget by 37 percent is warranted. How can we justify this spending increase?

EPA has a very important responsibility in protecting our environment. EPA also has the responsibility not to regulate our economy into a full blown depression. It is possible to abuse environmental laws and issue regulations in a manner that puts families out of work and makes doing business in the United States wholly uncompetitive.

The most notable decision to be issued in these early days from your office is the greenhouse gas Endangerment Finding. It is no secret that the decision by EPA to attribute climate change to six greenhouse gases is intended to pressure Congress into passing comprehensive Cap-and-Trade legislation. Hopefully EPA recognizes the precarious situation such a decision places the Agency and Administration in.

There exists no legitimate economic argument that regulating CO_2 would not increase the cost of energy. As well, there is little economic analysis to support the idea that increasing the cost of energy would not impact low-income families or force some businesses overseas, thus the risk associated with the Endangerment Finding. Essentially, it seems you are telling Congress that unless we pass legislation that will increase the cost of energy on low-income families, businesses, schools, fire departments, etc., then you will be forced as an agency to regulate CO_2 and unilaterally increase the cost of energy on low-income families, businesses, schools, fire departments, etc.

Despite the 37 percent increase in funding, at a time of record deficits, I do believe there are good expenditures within the budget. Those include increased funding for Clean Water and Drinking Water Infrastructure, which is much needed in areas such as rural Louisiana. However, we may also be on the verge of having new environmental regulations that could single-handedly cripple the economy while limiting property rights and the country's ability to generate wealth. Two of those proposals include Cap and Trade legislation and the Clean Water Restoration Act. In other words, we have borrowed beyond all imagination, at the rate of nearly 50 cents on every dollar spent, are still planning on increasing spending without economic analysis to show that such spending is sustainable, and then want to hamstring our economy with regulations that would be stifling at the best of economic times.

If you need evidence of what over regulation and poor economic analysis can do to an economy, look no further than the California Air Resources Board (CARB). The California Air Resources Board intentionally skewed its analysis of the economic effects of its proposed climate action plan, according to a review by State-commissioned economists and by the non-partisan Legislative Analyst Office. The Air Resources Board released the analysis in September, 3 months after it released its draft plan for implementing the Global Warming Solutions Act. CARB projected that their policies would increase gross State product based on the notion that forcing higher energy into the market place would grow an economy. To come to that conclusion requires a blatant disregard for common sense and complete economic illiteracy.

All six economists selected by the Board to peer review the analysis found CARB's economic analysis deeply flawed. In the words of Harvard Economics Professor Robert N. Stavins, Albert Pratt Professor of Business and Government: "I have come to the inescapable conclusion that the economic analysis is terribly deficient in critical ways and should not be used by the State government or the public for the purpose of assessing the likely costs of CARB's plans."

Given the President's and your own promises to ensure that EPA decisions are supported by sound science, I am hopeful that similar credence will be given to economic analysis supporting EPA regulation. The economy is flailing and families are having a tough time paying their bills, so the last thing we need is to chase jobs out of the country with crippling regulation based on flawed economic analysis.

I am hopeful that somewhere in the 37 percent increase in spending there will be moneys directed toward experts that may provide cost-benefit analysis to EPA regulation. It is imperative that the economic impact on working Americans be scrutinized just as judiciously as the impact on the environment. We are still a Nation of the people, by the people, and for the people.

Senator BOXER. Thanks. I want to use the 40 seconds that Senator Vitter went over to give myself time to rebut a couple of things he said.

You know, if you are in danger, you are in danger. The Bush administration, we got all their information. They made a very similar endangerment finding. It was only because it was stopped in cyberspace that the rest of us did not know about it until we sought the documents.

You know, it is like saying if you go to the doctor and the doctor finds you have cancer but he does not want to tell you, he is not going to tell you because you are transitioning to a different job. That is ridiculous. Either a pollutant is a danger to the planet and to the health of our families, or it is not. It is not about whether there is a recession or a boom in the economy. It is what it is, as my kids always tell me.

Now, the fact is that when we do this right, we are going to create clean energy jobs that will never go away. We will get off of foreign oil and we will have enough money for consumer rebates to keep people whole. That is the truth. All of this fear-mongering is off base because it is the opposite. We are going to create these clean jobs that cannot be taken away from us. We are going to revive our economy and we are going to have enough funds coming in the door from the polluters to make people whole during that transition.

So this debate started this morning. I did not bring it up, but it was brought up. So I feel, as Chairman of this Committee, that we will be reporting out a strong bill. I felt I should respond.

Senator Lautenberg.

Senator VITTER. Madam Chair.

Senator BOXER. Yes?

Senator VITTER. [Remarks off microphone.]

Senator BOXER. Well, you spoke 40 seconds overtime and I matched you.

Senator LAUTENBERG. Let me pile on first please.

Senator BOXER. Yes. After Senator Lautenberg, you can have time. And then, of course, I will have time and then, of course, we will turn to Administrator Jackson.

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

Senator LAUTENBERG. Madam Chairman, thanks for your renewable source of energy and continuing the fight against the foul environment that we have seen. Sometimes these egregious claims that are made just challenge logic and thought.

We have been lucky that in a little more than 100 days, Lisa Jackson, with President Obama being a great cheerleader and sup-

porter, since Ms. Jackson has been at the helm EPA has made some monumental decisions. It formally declared that carbon dioxide is a pollutant and a threat to the public's health and welfare. It is considering granting the California waiver to allow states like New Jersey and California to regulate greenhouse emissions from vehicles. And just last week, EPA announced it would revisit two rules from the Bush administration that deregulated more than a million tons of hazardous waste.

We are seeing a new era of leadership at EPA. And we are grateful. One special advantage that Ms. Jackson has, she served as a DEP Commissioner in New Jersey and that, of course, gave her the base of knowledge that helps her handle all of these things so perfectly. And we are grateful. We see new leadership, a new commitment to the Agency's mission. The budget request shows that commitment by funding the EPA at the highest level in its 39-year history. It gives the Agency the resources it needs to clean up our communities and keep our children healthy.

Now, the Fund programs also are job creating impetuses. They are going to help turn our environment into a much cleaner environment and a cleaner energy economy as well. It helps erase the neglect we saw under the previous Administration.

First, the budget adds to the funding provided in the Economic Recovery Act for the Nation's Superfund Program. That program is important to me both because it falls under the subcommittee that I now chair and, more importantly, because it has such an impact on my State, our State of New Jersey.

Now, New Jersey has more Superfund sites than any State in the Country and those sites are decaying, allowing toxins to seep into the neighborhoods where our children live, learn and play. By funding this Superfund Program, cleaning up these sites will create jobs and revitalize local communities that have been crippled by the toxic legacy of irresponsible companies.

And I want to respond to our colleague's comments. He has every right to view things from his perspective, as he does. But I would say this. When we talk about budget for EPA, we must look behind the numbers, behind the arithmetic, and see what it means. As a grandfather of a child with asthma, I must tell you it worries me enough to say that if I could only pay more and get that air cleaner so I do not have to hear that he was wheezing when he played baseball and had to be carried off the field, I would. So let us look at this from a practical standpoint.

When the State of Louisiana was crushed by that terrible hurricane, they asked for more money. They asked for lots of money and got lots of money to try to help them out of this abyss that they were in. And that is what we are talking about here. And instead of sitting here as the auditors, we ought to sit here as the doctors and do what we can to protect the health of these families. And again, by funding these programs, cleaning up these sites will revitalize local communities that have been crippled by the toxic legacy of irresponsible companies.

The budget also proposes that we restore the Superfund polluter pays principle to make sure that polluters, not taxpayers, are footing the bill for these cleanups. Later this year, I am going to introduce legislation to accomplish this goal. And I look forward to

working with the Administration to make sure that bill becomes law.

According to EPA, we will be able to raise $1 billion each year starting in 2011 and as much as $2 billion annually by 2019. The budget request makes a crucial and necessary investment in our water infrastructure and this budget proposes $3.9 billion to provide loans to States to build and repair our crumbling water system. It creates thousands of technical and construction jobs, making our economy and communities healthier.

Madam Chairman, forgive the overrun here. This budget provides the resources to protect our environment and grow our economy at the same time. And I applaud the Administration and Administrator Jackson's efforts and I look forward to hearing more about EPA's progress. Damn the torpedoes, plow on ahead.

[Laughter.]

Senator BOXER. Thank you, Dr. Lautenberg. You are not an auditor, you are a doctor. I love that analogy. I think it is right on target.

So we are going to go a little bit different here. We are going to give Senator Vitter a chance. One minute. Then we are going to go to Senator Sanders and then Senator Barrasso.

Senator VITTER. Thanks, Madam Chair.

Just quickly, I just wanted to add that you and I are obviously going to disagree about the fundamentals of climate change and that is fine. But I hope that as we go through the debate we can have a full, honest debate and I just do not think it is part of that full, honest debate to suggest that these very dramatic measures we are talking about are going to grow the economy, create more jobs, have an overall positive economic impact and not have an enormous economic cost.

It really reminds me of something going on in your State, which is the actions of the California Air Resources Board. They intentionally skewed their analysis of economic effects of their proposed climate action plan and made these same arguments that it would actually increase the gross State product based on these new green jobs. The problem is, they had six economists peer review that analysis and all six of those economists—it was not some conservative think tank—all six of those economists chosen to peer review that analysis said it was deeply, deeply flawed. In the words of Harvard Economics Professor Robert Stavins, who is an Albert Pratt Professor of Business and Government, we have come to the inescapable conclusion that the economic analysis is terribly deficient in critical ways and cannot be used by the State government.

So, I just think we need to have——

Senator BOXER. Well, trust me, you are going to have as much time as you want. And I am going to have as much time as I want to debate that.

Senator VITTER. Great.

Senator BOXER. And I would tell you that you do not know my State. If my State had not passed this cutting edge global warming bill, we would be in far worse shape. We have seen the development of 400, that is 400, new solar energy companies. People are installing weatherization, solar rooftops.

The party of no. That is what we are facing here folks, the party of no versus the party of the future.

Please, Senator Sanders.

OPENING STATEMENT OF HON. BERNARD SANDERS, U.S. SENATOR FROM THE STATE OF VERMONT

Senator SANDERS. Thank you, Madam Chair.

First of all, welcome, Ms. Jackson.

We lived through 8 years of an Administration that in many ways did not even believe in science let alone the reality of global warming, let alone the need to protect our air, our water, our food and I am delighted that we now have an Administration that understands that you do not have a choice. As Senator Lautenberg mentioned a moment ago, we do not have options about whether we keep our children healthy, about whether or not the air we breathe is clean, whether the food we eat is safe. That is not an option. That is a sacred obligation that the Government has in terms of protecting its people.

I think what this budget reflects is an understanding that we have neglected the EPA for many years, that we want the EPA there to vigorously protect our environment, the health and well-being of our people, that we must address the crisis of global warming and that, as the Chairwoman just indicated, the reality is, and the President has made this clear and I agree with him, that one of the key issues of our generation, it may be the defining issue of our generation, is whether or not we finally break our dependence on fossil fuel, move to energy efficiency, move to sustainable energy and in the process over a period of years create millions of good-paying jobs.

I know some of my friends on the other side do not believe it. They are wrong. The reality is that we have the potential to transform our economy and our energy system and the EPA is going to play an important role in that. So, I applaud the President for understanding that reality, for beginning the process of putting the necessary funds into that struggle and we certainly are confident that Administrator Jackson is going to be a great leader in that effort.

Thank you.

Senator BOXER. Senator Sanders, thank you.

Senator Barrasso.

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

Senator BARRASSO. Well, thank you very much, Madam Chairman.

Madam Chairman, I come from a State that is blessed with many natural resources and our State is a leader in energy production. Wyoming has what the Country needs. We have it all. We have wind, natural gas, coal, oil, uranium. We have it all. And it is imperative that the Administration propose a budget that ensures we use all sources of American energy. This is not just for the benefit of Wyoming; it is for the benefit of the entire Nation.

America needs an all of the above energy strategy. No resources should be excluded for politically correct reasons. I sincerely believe

that we should make America's energy as clean as we can, as fast as we can, without raising prices for American families. This budget works against that goal.

I am concerned that the bloated budget that we have before us today will feed a growing regulatory monster. It is the most expensive budget in the EPA's 39 year history. Its size and scope signals the coming storm of regulations that will cripple energy production in America. The vast array of new rules, mandates and regulations that the Administration plans to impose are staggering.

The new influx of taxpayer money will likely go to EPA to ramp up permit processing for all the predicted 1.2 million new entities that will be captured under the new Clean Air Act rules. These are the rules that will be forthcoming under the EPA's endangerment finding. Among these entities are schools, farms, hospitals, nursing homes, small businesses and other commercial entities. The permits take an average 866 hours of work to process at a cost of $125,000 to the permittee.

If passed, more taxpayer money will also go to implement the Clean Water Restoration Act. The Act would capture all wet areas of a State under EPA's control. More Government workers will also need to be hired at EPA to process all the Clean Water Restoration Act permits required of farmers, ranchers, and small and large towns across America.

Attorneys from across America will be hired by the EPA to enforce new regulations on energy producers, farmers, small businesses, and ordinary communities. With attorneys comes support staff: secretaries, clerks, tech people, and administrative assistants. The green job bonanza for the EPA will not be all across America. It will be right here in Washington, DC.

Washington is quick to pass new environmental Federal mandates on our States. It is less likely to provide funding to those States. Wyoming, like our other States, needs assistance to implement many of our environmental laws. New permitting requirements under the Clean Air Act could overwhelm the States. Ranchers, farmers, small business owners will bear the brunt of these new permits. If the Agencies are going to mandate new requirements, then Washington needs to pay for them.

The bottom line is this budget is not an investment in America's future. It is an investment in Washington's future. Given the economic times we live in, Americans deserve better.

I look forward to the testimony of the Administrator.

Senator BOXER. Thank you very much. And we turn to Senator Whitehouse.

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

Senator WHITEHOUSE. Thank you, Madam Chair.

Welcome, Administrator. The debate, just in the opening statements, is already lively.

It is interesting you are appearing before a Committee of the U.S. Senate which I think, at this point, is one of the very last places in America where the voices of the polluters and the polluting industries still prevail on the question of climate change. You can even go to the board rooms of our major electric utilities

and they seem to have gotten it. Certainly, there is an enormous amount of American industry that has gotten it. The insurance industry has gotten it, at least the property/casualty side. You can go to churches and hunting groups and fishing groups and people who live with it, and they get it. But somehow, in this U.S. Senate, the polluting industries and their political heft, still promises to carry the day in opposition to climate change.

So, my urge to you is that, well within the law and well within the support of the administrative record that has been developed on climate change, on carbon regulation and on auto tailpipe emissions, you administrate and you make decisions and your Agency makes decisions that are as strong as they can be. And that, I believe, is the one thing that can change the present dynamic so that people come to the Senate and say, OK, we are here to actually solve this problem. Otherwise, this is an industry that will duck this problem endlessly and, if they get to a situation in which they think they can get a good deal out of EPA and they do not have to come to the Senate and they can use their influence here to keep us from being effective on climate change, I think you have a worst case scenario.

We need strong, lawful, fact-based regulation out of EPA which is not only your proper legal duty but also, I think, will have enormous beneficial effects in terms of the atmosphere that surrounds climate change legislation here in the Senate. I honestly believe at this point without that we do not have a chance of passing a significant climate change bill here. There is simply too much influence by the polluters who do not want to pay for the pollution that they cause. Simple prospect: polluter pays. But the polluters obviously do not like that prospect and so here we are stuck.

So, I encourage you, with the budget that you have before you, to be diligent, to be strong and to go exactly where the facts and the evidence lead you.

Thank you very much.

Senator BOXER. Thank you so much.

Senator Udall.

OPENING STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator UDALL. Thank you very much, Madam Chair.

I would just prefer to put my testimony in the record and proceed with the Administrator and ask questions as we go along.

Thank you.

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

Senator BOXER. Thank you very much, Senator. You are so unlike the rest of us who have really gotten into the debate already. Can you imagine when we start making up that bill? That is going to be hot. It is going to make global warming look cool.

[Laughter.]

Senator BOXER. All right, we are ready to go. Administrator Jackson, you have the floor. Do you want 7 minutes to open or something like that?

Ms. JACKSON. I do not think I will need the whole 7 minutes.

Senator BOXER. Well, we will give you 7 and you take what you need.

STATEMENT OF LISA P. JACKSON, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. JACKSON. Thank you so much, Madam Chairman. Thank you for your leadership. Thank you to the members of the Committee for inviting me to appear before you today to discuss the proposed fiscal year 2010 budget request for the Environmental Protection Agency.

We believe this budget is carefully designed to address our environmental challenges and contribute to the Country's economic recovery. I am happy to have the chance to share my thoughts with you today.

The President requests $10.5 billion for fiscal year 2010 to carry out EPA's mission to protect human health and the environment. That request reflects both the challenges and promise we face in an era of high energy costs, global climate change and economic crisis.

For far too long the American people have been offered a false choice: economic prosperity or environmental protection. We believe we can do better. In fact, we believe that clean energy, clean air and water and a healthy environment have powerful economic potential. You will see that in this budget. Economic recovery and environmental protections go hand in hand here.

The President's budget starts the work needed to transform our economy. It includes investments in cutting edge green technologies, repairs to crumbling infrastructure and stronger regulatory and scientific capabilities to make the Nation's water, air and land cleaner for our communities, families and children. These investments put Americans back to work while at the same time helping our communities, our children and our health.

It also provides a substantial increase in support to address public health and environmental challenges that can no longer be postponed. Water infrastructure, fresh water resources, climate change, critical research and chemical management all require urgent action. In short, the budget reflects President Obama's commitment to usher in a new era of environmental stewardship and put us on a clear path to a cleaner and safer planet.

The most significant investment in the Fiscal Year 2010 budget is $3.9 billion for Clean Water and Drinking Water State Revolving Funds. Those funds support water infrastructure projects for States, tribes and territories. These investments will prepare us to match the success we had in the 1970s and 1980s when EPA construction grants helped build much of the infrastructure that dramatically increased our Nation's water quality and its safety.

We estimate that this 157 percent funding increase in the State Revolving Funds will finance 1,000 clean water and 700 drinking water projects across America; projects that will upgrade the Nation's aging water infrastructure, assure safe drinking water and create well paying American jobs.

EPA's fiscal year 2010 budget also supports efforts to develop a comprehensive energy and climate change policy with measures to increase energy independence, move into a low carbon economy and reduce greenhouse gas emissions. This comes in the form of a $19 million increase to help EPA, among other things, implement the greenhouse gas inventory so we can take the very important step

of measuring our progress in reducing emissions. That will also ensure that we are targeting major sources of emissions without overburdening small business and others.

Just as we need to address climate change, we also need to manage the risks associated with the chemicals that we use. The fiscal year 2010 budget requests $55 million, an increase of $8 million over fiscal year 2009 levels, to fund an enhanced toxic program to screen, assess and reduce chemical risk. This 17 percent increase will help EPA complete screening level hazard and mischaracterization and initiate action as needed on more than 6,750 organic U.S. chemicals.

The President's budget also contains an increase of $24 million for the Superfund program. That investment will enhance enforcement and removal work and support the broader Superfund program. The budget also includes a proposal to reinstate the Superfund Fee that expired in 1995. Beginning in fiscal year 2011, the so-called polluter pays measure would generate $1 billion a year, rising to $2 billion a year by 2019. Those are extremely important resources needed to fund cleanups of contaminated sites across America.

Along with increases in Superfund, the budget provides a total of $177 million for the Brownfields program, a $5 million increase from 2009. The Brownfields program is designed to help States, tribes, local communities and other stake holders in economic redevelopment to work together to assess, safely cleanup and reuse brown fields. Revitalizing these once productive properties helps communities by removing blight, satisfying the growing demand for land, helping limit urban sprawl, enabling economic development and developing quality of life. These protection efforts focus on ensuring that contaminated sites are ready to be returned to beneficial use by our communities, putting both people and property to work.

Madam Chairman and members of the Committee, the fiscal year 2010 budget request sets EPA on a clear path to addressing the pressing environmental challenges that face our Nation. It enables us to accomplish important work that American support and has clear benefits to the economic, environmental and human health of our communities.

Thank you again for your time and I am happy to answer any questions this Committee might have.

[The prepared statement of Ms. Jackson follows:]

TESTIMONY OF
LISA P. JACKSON
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

May 12, 2009

Madam Chairman and Members of the Committee, I am delighted to appear before you today to discuss how the proposed FY 2010 Budget request for the Environmental Protection Agency is designed to address our environmental challenges and contribute to the country's economic recovery.

The President requests $10.5 billion for FY 2010 to carry out EPA's mission to protect human health and safeguard and improve the environment. This budget represents a 37 percent increase over our FY 2009 Budget -- the highest level ever for EPA. It reflects both the challenges and promise we face in an era of higher energy costs, global climate change, and economic crisis. We recognize that now is the time to make the environmental investments to support a cleaner energy economy and a more sustainable future.

This budget starts the work needed to transform our economy through investment in cutting-edge green technologies, repairing crumbling infrastructure and strengthening our core regulatory and scientific capabilities to make the Nation's water, air, and land cleaner for our communities, families, and children. This budget keeps EPA on the job protecting the environment. It helps states, tribes, and local governments stay on the job by providing critical partnership assistance. And, it helps put Americans back on the job.

The FY 2010 budget request provides a substantial increase for EPA programs, reflecting greater opportunity for EPA to address public health and environmental challenges that can no longer be postponed, in areas such as water infrastructure, protecting our freshwater resources, laying the foundation to address climate change, and addressing gaps in research as well as chemical management.

This FY 2010 budget reflects President Obama's commitment to usher in a new era in environmental stewardship and puts us on a clear path to a cleaner and safer planet.

Madam Chairman and Members of the Committee, I now would like to provide a bit more detail about the major environmental protection priorities addressed in this budget.

Invests in Water Infrastructure

The most significant investments in the FY 2010 budget include $3.9 billion total for the Clean Water and Drinking Water State Revolving Funds to fund water infrastructure projects for states, tribes, and territories. This budget includes $2.4 billion for the Clean Water State Revolving Fund and $1.5 billion for the Drinking Water State Revolving Fund. These investments will help the Nation build, improve, and repair the infrastructure that provides us with reliable and safe sources of water.

We estimate that this 157 percent funding increase in the State Revolving Funds will finance 1,000 clean water and 700 drinking water projects across America – projects that will upgrade and update the nation's aging water infrastructure, assure compliance with Safe Drinking Water Act requirements, make water delivery more efficient, and create American jobs that pay well. These investments channel critical funding for water system pipe replacements

and help address an estimated 240,000 water pipe breaks that occur across America each year and waste millions of gallons of water.

The Clean Water and Drinking Water State Revolving Funds provide grants to states to capitalize their own revolving funds, providing infrastructure financing to communities, making water infrastructure more efficient, and supporting green jobs in the 21st century. Because repayments and interest are recycled back into the program, these State Revolving Funds generate funding for loans even without Federal capitalization. We estimate that for every Federal dollar invested, approximately two dollars in financing are provided to municipalities.

The Administration will make these water investments with an eye to the future. EPA will continue to work with state and local partners to develop sustainability policies, including management and pricing, conservation, planning adequate long-term funding for future capital needs, and providing equitable consideration of small system customers. As President Obama has said, now is the time to make long overdue investments in clean energy and new infrastructure to create a platform for entrepreneurs and workers to build an economy that will lead us into a better future. This significant investment sends a clear message to American taxpayers that the water infrastructure, that all of us rely on every day, will be repaired, maintained, and modernized for the 21st century.

Accelerates Great Lakes Restoration

The Great Lakes Basin is a national resource treasure that is home to 34 million people in the U.S. and Canada. It holds 20 percent of the world's fresh surface water, has 10,000 miles of coastline, and contains a diverse array of biological communities. EPA's FY 2010 budget

requests $475 million for Great Lakes restoration programs and projects that strategically target the most significant problems in the region, such as aquatic invasive species, nonpoint source pollution, toxics in sediment, and habitat and species loss.

This restoration effort represents the federal government's commitment to significantly advance Great Lakes protection. The Great Lakes Initiative will use outcome-oriented performance goals and measures to target the most significant problems and track progress in addressing them. EPA and its Federal partners will coordinate state, local, tribal, and industry actions to protect, maintain, and restore the chemical, biological, and physical integrity of the Great Lakes.

In the FY 2010 budget we include other geographic priorities, such as Puget Sound, San Francisco Bay, and the Chesapeake Bay. The Chesapeake Bay restoration effort is funded at $35 million, a $4 million increase over FY 2009, and will support projects to further address nutrient and sediment pollution in the Bay.

Initiates a Comprehensive Approach to Slow Global Warming

EPA's FY 2010 Budget supports efforts to develop a comprehensive energy and climate change policy to increase energy independence, move toward a greener economy and to reduce greenhouse gas emissions. There is not a moment to lose in confronting the rapid advance of climate change.

Greenhouse Gas Emissions (Cap and Trade Program)

The FY 2010 Budget includes a $19 million increase to support the President's effort to develop a comprehensive energy and climate change plan to transition America to a clean energy economy, reduce oil usage, and slow global warming. It will allow us to work on a greenhouse

gas emissions inventory and work with industry sectors to report high-quality greenhouse gas emission data that is the foundation of an effective climate policy. This funding supports design, development, and testing the data management system, developing guidance and training materials to assist the regulated community, conducting industry-specific workshops and developing source measurement technologies for greenhouse gases.

This budget provides funding to develop environmentally sound methodological approaches needed to implement a possible cap and trade program, including offsets, and to strengthen climate partnership programs. EPA will develop protocols to measure the effectiveness of offset projects, and provide advice on effective, environmentally sound approaches to offsets.

Chemical Risks

Just as we need to address climate change, we also need to manage chemical risks. The FY 2010 Budget requests $55 million, an increase of $8 million over FY 2009 levels, to fund an enhanced toxics program to screen, assess, and reduce chemical risks. This 17 percent increase will fulfill U.S. commitments under the Security and Prosperity Partnership of North America to complete screening-level hazard and risk characterization and initiate action as needed on more than 6,750 organic U.S. chemicals.

Research and Development

The Research and Development programs are funded at $842 million for the Science and Technology appropriation, and increase of $52 million from FY 2009. This funding will support the rigorous, peer-reviewed scientific analyses that we must use as a basis for our environmental

decisions. It will allow us to assess, develop and compile scientifically rigorous tools to inform decision-making and assist in incorporating green infrastructure into existing practices.

Computational Toxicology

The FY 2010 Budget includes a $4.5 million increase over the FY 2009 enacted level for Computational Toxicology Research. This increase will enhance EPA efforts to provide regulatory offices with detailed hazard assessment profiles on thousands of chemicals of concern, as well as information on human exposure potential, including chemical screening and prioritization, and toxicity pathway-based risk assessment. This funding will also provide for the high-throughput screening of up to 200 additional chemicals and the deployment of this information in EPA databases with supporting analysis tools, via computer programs and EPA websites.

Integrated Risk Information Systems

The FY 2010 Budget includes $14.5 million, a $5 million increase over 2009, to enable the Integrated Risk Information System (IRIS) to increase assessment production and reduce our backlog of assessments for chemicals previously identified as priority needs.

Biofuels

The FY 2010 budget includes $5.6 million, an increase of $5 million over FY 2009, for biofuels research and sustainability analysis mandated by the Energy Independence and Security Act of 2007. Biofuels lifecycle and sustainability research will provide better information to

decision makers on the trade offs and opportunities associated with increased biofuels production.

Green Infrastructure Research

The FY 2010 budget provides $3.6 million to expand green infrastructure research to assess, develop and compile scientifically rigorous tools and models that will be used by the Agency's water and other programs, states, tribes, and municipalities to help advance the deployment of green infrastructure. This research will help EPA and its non-Federal partners further their understanding of the benefits it provides, and aid in integrating green infrastructure into water pollution control programs at the Federal, state, and local level.

Air Toxics

I believe EPA has a particular duty to inform America's most vulnerable populations about the environmental risks we face. I recognize that for the nation's vulnerable populations – the disadvantaged, the elderly, children, and historically disadvantaged communities –are least able to bear additional increments of environmental risk.

Therefore, the budget also includes $3.3 million for air toxics research to protect and improve the quality of the air that each of us breathes. Air toxics research studies the effects to human health of toxic air pollutants and includes evaluating risk assessment methodologies to support the development and implementation of regulatory programs that assist state and local governments and tribes develop clean air plans. The FY 2010 budget also supports improvement of risk assessment tools, including National-Scale Air Toxics Assessment; analytical support to

states as they enhance air toxics monitoring near selected schools, and 5 FTE in EPA's Regional offices to provide technical assistance and coordination.

These combined scientific efforts do more than build our understanding of environmental programs; they remind us all of the need for transparent, clear communication of the facts and risks of the environmental challenges we face together.

Strengthens Environmental Enforcement

EPA's FY 2010 budget proposes the largest enforcement and compliance budget in history -- $600 million, an increase of $32 million from last year. The $600 million enforcement budget reflects the President's strong commitment to enforcing of our Nation's environmental laws and ensures that EPA has the resources necessary to maintain a robust and effective criminal and civil enforcement program. Specifically, the request includes an increase of nearly 30 additional positions primarily for civil and criminal enforcement. In addition, we will enhance efforts to integrate environmental justice considerations in EPA's programs and policies as well as fulfill environmental requirements with respect to other federal agencies' projects funded by the American Recovery and Reinvestment Act. Experience has shown that investing in our enforcement program yields tangible pollution reductions and fundamental behavioral change in the regulated community. The FY 2010 Budget will advance EPA's mission, and do so with unparalleled transparency. The success of our efforts depends on earning and maintaining the trust of the public we serve by upholding values of transparency and openness in conducting EPA operations.

Superfund

The $1.3 billion Superfund budget contains an increase of $24 million over FY 2009. Funding in the budget will enhance enforcement and removal work as well as support the Superfund program. The budget also includes a proposal to reinstate the Superfund tax that expired in 1995. Beginning in FY 2011, the taxes should generate $1 billion a year, rising to $2 billion a year by 2019 – all to fund needed cleanups across America. These efforts focus on ensuring that contaminated sites are ready to be returned to beneficial use by our communities.

Brownfields

The 2010 budget provides a total of $175 million for the Brownfields program, a $5 million increase from 2009. This includes $149.5 million for Brownfields State and Tribal Assistance Grants to continue to provide Brownfields assessment, revolving loan fund, clean-up, and job-training grants. The Brownfields program is designed to help states, tribes, local communities and other stakeholders work together to assess, safely cleanup, and reuse Brownfields. Revitalizing these once productive properties helps communities by removing blight, satisfying the growing demand for land, helping limit urban sprawl, enabling economic development, and improving quality of life.

Leaking Underground Storage Tanks

The FY 2010 budget requests $128 million for the Leaking Underground Storage Tanks program, including $113 million for the LUST trust fund. The Leaking Underground Storage Tanks program promotes rapid and effective responses to releases from Underground Storage Tanks containing petroleum and hazardous substances by enhancing state, local, and tribal enforcement and response capability. EPA supports state and tribal underground storage tank

programs to clean up contaminated sites, promote innovative and environmentally friendly approaches in corrective action to enhance and streamline the remediation process, and measure and evaluate national program progress and performance. Almost 80 percent (or 377,019) of all reported leaks have been addressed to date, leaving a backlog of almost 103,000 cleanups that have not yet been addressed. In FY 2010, EPA will continue to work with the states and tribes to complete LUST cleanups in an effort to reduce the remaining backlog.

All three of these programs – Superfund, Brownfields, and Leaking Underground Storage Tanks – focus on cleaning up contaminated sites to ensure these sites are ready to be returned to beneficial use by our communities, putting both people and property to work.

Partnerships

Next, I want to discuss how this budget will help our partners stay on the job. States, localities, and tribes are the front line in many environmental programs – they implement major portions of many EPA programs. As the recession drastically lowers tax revenues, states and localities are looking at deep cuts in all their programs – cuts that could hinder environmental progress on a wide range of issues.

Categorical Grants

In FY 2010, EPA requests a total of $1.1 billion for "categorical" program grants for state, interstate organizations, non-profit organizations, and tribal governments. EPA will continue to pursue its strategy of building and supporting state, local and tribal capacity to implement, operate, and enforce the nation's environmental laws. In this way, environmental goals will ultimately be achieved through the actions, programs, and commitments of state, tribal

and local governments, organizations and citizens. Highlights of EPA's FY 2010 categorical grants include:

Air Quality and Radon Grants

The FY 2010 request includes $248 million for grants to support state, local, and tribal air management and radon programs. These funds provide resources to multi-state, state, local, and tribal air pollution control agencies for development and implementation of programs for the prevention and control of air pollution and implementation of National Ambient Air Quality Standards. EPA will continue an initiative to measure levels of toxic air pollution near selected schools across the country and ensure that deployed monitors collect high-quality data. This partnership will help EPA maximize its monitoring and analytical capabilities. This budget also includes $8.1 million for radon grants that focus on reducing radon levels in existing homes and promoting the construction of new homes with radon reducing features.

Water Pollution Control Grants

The FY 2010 Budget request includes $229 million for Water Pollution Control grants. These grants assist state and tribal efforts to restore and maintain the Nation's water quality. EPA will also work with states to implement the new rules governing discharges from Concentrated Animal Feeding Operations. EPA encourages states to continually review and update the water quality criteria in their standards to reflect the latest scientific information from EPA and other sources.

Non-Point Source Program Grants

In FY 2010, EPA requests $200.9 million for Nonpoint Source Program grants to states, territories, and tribes. EPA's goal is to reduce annually the amount of runoff of phosphorus, nitrogen, and sediment through our Clean Water Act section 319-funded projects by 4.5 million

pounds, 8.5 million pounds, and 700,000 tons, respectively. These grants enable states to use a range of tools to implement their programs including: both non-regulatory and regulatory programs, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects.

Hazardous Waste Financial Assistance Grants

In FY 2010, EPA requests $106.3 million for Hazardous Waste Financial Assistance grants. These grants are used for implementation of the Resource Conservation and Recovery Act hazardous waste program, which includes permitting, authorization, waste minimization, enforcement, and corrective action activities. In FY 2010, EPA expects that 100 hazardous waste facilities will put in place new or updated controls to prevent releases.

Public Water System Supervision Grants

In FY 2010, EPA requests $105.7 million for Public Water System Supervision (PWSS) grants. These grants provide assistance to implement and enforce National Primary Drinking Water Regulations to ensure the safety of the Nation's drinking water resources and to protect public health. In FY 2010, EPA will emphasize that states use their PWSS funds to ensure that drinking water systems of all sizes meet new and existing regulatory requirements.

Tribal General Assistance Program Grants

EPA's budget request includes $62.9 million for the Tribal General Assistance Program to help federally-recognized tribes and intertribal consortia develop, implement and assess environmental programs. In FY 2010, 100 percent of federally-recognized tribes and intertribal consortia will have access to environmental assistance.

Pesticides, Toxics Substance, and Sector Program Grants

The FY 2010 request includes $25.6 million to build environmental enforcement partnerships with states and tribes and to strengthen their ability to address environmental and public health threats and assist them in the implementation of compliance and enforcement provisions of the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act. Under our Toxic Substances Compliance Grant program, states receive funding for compliance inspections focused on asbestos, polychlorinated biphenyls (PCBs), and lead-based paint. States also receive funding for implementation of the state lead-based paint certification and training, and abatement notification compliance and enforcement program. Under the Sector program grants, EPA builds environmental partnerships with states and tribes to strengthen their ability to address environmental and public health threats, including contaminated drinking water, pesticides in food, hazardous waste, toxic substances, and air pollution.

Lead Grants

The FY 2010 request includes $14.6 million for lead grants. This funding will support the development of authorized programs, including work under the new Lead Renovation, Repair, and Painting Rule, in both states and tribes to prevent lead poisoning through the training of workers who remove lead-based paint, the accreditation of training programs, the certification of contractors, and renovation education programs. In FY 2010, EPA will continue to award targeted grants to reduce childhood lead poisoning and keep EPA on target to eliminate childhood lead poisoning as a public health concern.

In addition to these grants, the FY 2010 Budget continues EPA's funding and Beaches Environmental Assessment and Coastal Health Act and Wetlands grants to protect our coastal shorelines and improve water quality in watersheds throughout the country.

Homeland Security

EPA has a vital role in homeland security. The Agency has been called upon to respond to five major disasters and nationally significant incidents in the past seven years. In the coming years, EPA's homeland security roles and responsibilities will continue to be of the utmost importance as the Agency enhances its preparedness.

The FY 2010 Budget requests $160 million to support the Agency's homeland security efforts. The emphasis for FY 2010 is on several areas: applied research for decontamination methods and agents; ensuring trained personnel and key lab capacities are in place to be drawn upon in the event of multiple large-scale catastrophic incidents; and enhancing critical water infrastructure security efforts.

EPA's FY 2010 Budget provides an increase of $9 million to fully fund five Water Security Initiative pilot cooperative agreements. The Water Alliance for Threat Reduction Activities. The Water Security Initiative will include continued design and demonstration, of a system to test, and evaluate the appropriate response to drinking water contamination threats. Adoption of effective water security guidance on contamination systems will be issued upon completion of these projects.

Inspector General

This budget also reflects another key concern of Congress and mine – making sure we manage our resources responsibly. This budget includes increases to the Inspector General to help ensure that we protect public dollars from fraud, waste, and abuse.

Conclusion

Madam Chairman and Members of the Committee, the FY 2010 budget request sets EPA on a clear path to accomplishing the important work Americans support to address the pressing environmental challenges facing our nation. We are honored to have the job of protecting human health and the environment. And, we are proud that this $10.5 billion funds investments in both our environmental and economic future.

Questions Submitted for the Record by Senator Boxer

Water Infrastructure

Boxer Question 1: The President's budget proposes $3.9 billion for the Clean Water and Drinking Water State Revolving Funds, which represents a serious commitment to rebuilding the nation's infrastructure and providing jobs in communities across the country. Please describe how the Administration's budget increase for the revolving funds will help repair and rehabilitate our nation's aging infrastructure?

Answer: The Administration's investment for the Clean Water and Drinking Water State Revolving Funds reflects a renewed commitment to address the Nation's drinking water and wastewater infrastructure needs. The investment will facilitate continued progress toward drinking water and clean water goals, and result in increased job opportunities at the local level. In addition to the funds invested through the American Recovery and Reinvestment Act (ARRA), these dollars are a critical step to meet water infrastructure needs in communities across the country. The funds will help meet the needs indicated in both the 2004 Clean Watersheds Needs Survey and the 2007 Drinking Water Needs Survey.

Green Infrastructure

Boxer Question 2: The President's budget places a strong emphasis on investing in green infrastructure – it proposes a 20% set-aside in the Clean Water and Drinking Water State Revolving Funds and increased investment in green infrastructure research. Please describe the benefits of investing in green infrastructure, including in job creation, and also how this investment will help address the nation's clean water and drinking water needs?

Answer: The goal of the 20% Green Project Reserve is to provide funding for capital projects that offer a lower cost alternative to traditional approaches to persistent water quality challenges. Green stormwater practices are expected to alleviate the burden on combined sewer and separate stormwater systems by capturing and treating stormwater before it reaches the collection system. Green Infrastructure management methods and technologies encourage infiltration and evapotranspiration, and capture and reuse stormwater to maintain or restore natural water processes. Green infrastructure is an approach to wet weather management that is cost-effective, sustainable, and environmentally friendly.

Green drinking water practices are expected to extend the capacity of systems, increase water quality, and enable water efficient production, thereby reducing pumping and treating of drinking water sources. Energy efficient Publicly Owned Treatment Works (POTWs) have lower electric bills,

contributing to more cost-effective sustainable utilities and reduced Greenhouse Gas emissions. Conserving water will reduce the burden on depleted aquifers for drinking water and reduce the volume of wastewater that must be treated by the nation's POTWs.

All of these projects create new design, construction and maintenance jobs The green project reserve requirement, in effect, expands the components of eligible projects receiving SRF support, and subsequently expands the job-types beyond those historically necessary to complete traditional water quality projects.

Benefits of Addressing Global Warming

Boxer Question 3: Global warming poses a serious threat, including increasing the risk of devastating storms and tragic wildfires. Please describe the scope of this budget's commitment to address greenhouse gas emissions and some of the expected benefits from these measures?

Answer: The FY 2010 enacted budget has $164 million to address the climate change. These funds are divided among a number of programs.

As in years past, in FY 2010 we have continued to work on our highly successful voluntary programs, pursuing these common sense approaches to reducing greenhouse gas emissions. EPA partnership programs break down market barriers and promote the deployment of cost-effective technologies and processes designed to yield greenhouse gas reductions over the life of the investment. Some, such as Energy Star and SmartWay Transport, have increased the use of energy-efficient products and practices, spurred investment in clean energy development, and reduced emissions of carbon dioxide, methane, and other greenhouse gases with very high global warming potentials.

The Agency's Clean Automotive Technology program has developed advanced clean and low greenhouse gas emitting engines and hybrid technologies. Through this program, EPA transfers innovations and know-how to automotive and truck companies wanting to commercialize significant elements of these low-GHG innovations.

EPA is also continuing to manage the implementation of the highly successful Methane to Markets Partnership -- a US-led, international initiative that brings together 31 Partner governments and over 900 public and private sector organizations to advance methane recovery and use as a clean energy source. Currently, the US is supporting over 170 projects around the world and has leveraged over $278 million in public and private sector investments. These projects are expected to reduce emissions by 61 million metric tons of CO_2-equivalent annually.

In addition to EPA's voluntary climate change programs, EPA provides technical assistance and expertise to advise the Administration and Congress on effective, economically and environmentally sound approaches to greenhouse gas policy. EPA's climate change analysis builds on the understanding of (1) the emission and sequestration of GHGs, for all GHGs and from all sectors of the economy; (2) the economic, technical, and policy issues related to wider deployment of key mitigation technologies (e.g. energy efficiency, transportation, non-CO2 GHGs, carbon capture and storage); and (3) the key design elements of a cap and trade system (including coverage and point of regulation, cost containment mechanisms, allowance distribution, market oversight, and offsets).

EPA is currently implementing the Greenhouse Gas mandatory reporting rule and developing the infrastructure for handling the data in the first year of reporting in 2011. This includes developing and testing the data management system, working through data exchange standards with states, continuing to issue guidance to the regulated community, responding to requests from individual facilities, and preparing for review and dissemination of data collected in FY2011.

EPA is also continuing its work to develop a framework for geologic sequestration, to help address barriers to the widespread development and dissemination of carbon capture and storage systems.

Chemical Risk Assessments

Boxer Question 4: Administrator Jackson, the budget asks for a $5 million increase for EPA's Integrated Risk Information System (IRIS) which develops risk assessments that are used to create safety standards in other programs, such as the Clean Air and Drinking Water programs. Can you please describe how this money will help better protect public health?

Answer: The IRIS program supports the Agency's efforts to assess public health risks from exposure to environmental pollutants by providing the highest quality science-based chemical hazard and dose-response assessments. Peer reviewed, qualitative and quantitative health hazard assessments are prepared on environmental pollutants of relevance to EPA's regulatory programs. These assessments are used by EPA's program and regional offices to support their decision making and are also disseminated to the public, principally on the IRIS internet database. IRIS is widely used throughout EPA and the risk assessment/risk management community as the premier source of hazard and dose-response information for environmental pollutants. These additional resources are necessary to increase the number of completed assessments, in addition to decreasing the backlog of draft assessments, to better meet the needs of the Agency.

Perchlorate

Boxer Question 5: I am very concerned by the Agency's past delay in issuing a drinking water standard for perchlorate. This is a dangerous contaminant that can harm the body's hormone system, which helps to control human development. Infants and pregnant women may be especially at risk from perchlorate exposure. Please describe the status of EPA's efforts to regulate perchlorate in drinking water?

Answer: The status of EPA efforts pertaining to perchlorate is as follows:

- EPA plans to complete its drinking water regulatory determination for perchlorate in the summer of 2010.
- Administrator Jackson directed EPA scientists to re-evaluate data related to the perchlorate regulatory determination. To ensure transparency and opportunity for public input on its decision making prior to making a final regulatory determination, the Agency sought comments on these alternative approaches for interpreting data in a August 19, 2009 Federal Register Notice.
- Since September 2009 EPA has been undertaking an extensive review of the information provided in the public comments.
- If the determination is to regulate, EPA will move expeditiously to develop a national drinking water standard for perchlorate and conduct the health risk reduction cost analyses and consultations required in developing such a rule.

Chromium 6

Boxer Question 6: Please describe the status of EPA's efforts to revise the drinking water standard for chromium?

Answer: The status of EPA efforts pertaining to the drinking water standard for chromium is as follows:

- EPA published the current national primary drinking water regulation (NPDWR) for total chromium (which includes both chromium III and VI) on January 30, 1991.
- The NPDWR established an MCLG and an MCL of 0.1 mg/L. Although the NPDWR regulates total chromium, the adverse health effects associated with hexavalent chromium (Cr VI) are the basis of the current MCLG because that is the form with the greatest potential effects.

- In 2002-2003 and as part of our first six-year review of existing drinking water regulations, EPA noted that the National Toxicology Program (NTP) had agreed to study the chronic toxicity and carcinogenicity of oral exposure to Cr VI.
- In 2008, the NTP released a study indicating that chromium VI may cause cancer via oral ingestion.
- While an assessment for chromium VI currently exists on the Agency's Integrated Risk Information System (IRIS), it does not include an evaluation of carcinogenicity via oral ingestion. As a result, on December 21, 2007, the Agency nominated and included Cr VI on its 2008 IRIS agenda.
- The Agency is currently working with the California EPA, New Jersey Department of Environmental Protection, and the Centers for Disease Control ATSDR and has posted a schedule for completing the assessment on the IRIS Tracking System website. (Note: IRIS Track has a projected date of completion and final posting of the assessment to the IRIS database in the first quarter FY 2011).
- Once the IRIS assessment is completed, the Agency will review the outcome of the health reassessment along with other factors (e.g. analytical and technology feasibility, occurrence and exposure from drinking water, etc) and evaluate whether it is appropriate to revise the drinking water regulation.

Perchloroethylene

Boxer Question 7: Perchloroethylene is a widely used degreasing solvent and is also used in dry cleaning operations. This chemical, which is also called tetrachloroethylene, can harm the nervous system, liver, and kidneys. Studies have also found that perchloroethylene can also harm the reproductive system.

a) Please describe the status of EPA's review of this chemical in the Integrated Risk Information System and whether EPA's review of this chemical's potential human health risks is consistent with the latest recommendations on risk assessment from the National Academy of Sciences.

b) What steps is EPA planning to address this toxic contaminant?

Answer: EPA's draft assessment for tetrachloroethylene (perchloroethylene) was released for public comment and submitted to the National Academy of Sciences (NAS) for external peer review in June 2008. On February 9, 2010, the NAS released on their Web site the results of their peer review of EPA's draft. EPA is currently reviewing the recommendations in that report and will consider the advice of the NAS, along with comments received

from the public, and will revise the draft assessment expeditiously. EPA anticipates posting a final assessment in the fourth quarter of FY 2010, though the date of the final assessment will depend on the complexity of revisions that need to be made based on the NAS review and public comments. After completing the assessment, EPA will post key health hazard information on the Integrated Risk Information System database, which provides science-based human health assessment information to support the Agency's decision-making activities.

Coal Ash Regulations

Boxer Question 8: The Tennessee Valley Authority's devastating coal ash spill in Kingston, Tennessee is an important example of the risks posed by coal waste.

a) Please describe the status of EPA's efforts to determine whether to regulate coal combustion waste disposal activities and its review of the safety and risks of coal waste impoundments?

Answer: A proposed rule from EPA for coal combustion residuals (CCRs) is currently undergoing review under Executive Order 12866.

EPA's review of the structural safety of coal waste impoundments is an on-going, multi-stage effort. This includes Information Request letters sent to companies and facilities; site assessments; independent reports on specific units; and facility plans to implement the recommendations identified by EPA's contractors to improve the structural stability of these units. Specifically, in March and April, 2009, EPA mailed Information Request letters under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to electric utilities that have surface impoundments or similar units that contain coal combustion residuals (CCRs). These information request letters were sent to 219 facilities and through them, EPA received information on 584 impoundments; EPA has used this information to assist in evaluating the structural integrity of these management units. EPA posted all of the information received from the utilities in response to this information request.

EPA, working closely with other federal agencies and the states, reviewed the information provided by the facilities to identify impoundments or similar management units that need priority attention. Using contractors who are experts in dam integrity, in 2009, EPA conducted site assessments at all units identified in response to our information request letters as having a high or significant hazard potential rating and have made recommendations that the facility should undertake to address possible problems identified with the stability of these management units. (The hazard potential rating refers to the potential consequences of a unit failure, not to the structural stability of the unit or the probability of failure. A high hazard potential means that a failure of the unit is

likely to cause loss of human life. A significant hazard potential means that a failure of the unit is likely to cause environmental or economic damage or damage to infrastructure.) EPA did not assess units at TVA's facilities in 2009, as there are other ongoing reviews of these units. However, we plan to address TVA facilities once those on-going reviews are completed.

EPA is requesting that facilities implement the recommendations made through site assessment reports and is intending to follow up to ensure that the recommendations are implemented. If a company does not plan to address the recommendations in the report, EPA is prepared to use its existing authorities to make sure that the impoundments are stable. EPA has posted final reports on 38 facilities covering 83 units on the web site, and plans on posting additional reports shortly. In addition, EPA has posted the plans that 22 facilities have submitted for addressing the recommendations made in the final reports. Additional plans will be posted as soon as possible subsequent to review.

During its review of facility responses, EPA learned of nine additional facilities with surface impoundments. EPA mailed Information Request letters to these facilities on December 29, 2009. Currently, the information received is being analyzed and will be posted to the EPA website in the near future. As EPA's nationwide assessment progresses, updated information will be available on the web site. In addition, EPA would be happy to provide you or your staff with a full briefing on our assessment efforts.

Question: b) Please also describe all documents or information that EPA has gathered in its review of coal combustion waste disposal activities, including treatment, that describe impoundments that present known or potential hazards.

Answer: As described above, EPA has gathered a great deal of information on impoundments containing CCRs.

EPA has conducted several analyses of public health and environmental risks and impacts associated with disposal of coal-fired power plant wastes. These include a damage case study and a draft risk assessment in support of EPA's March 1999 Report to Congress[1] and its May 2000 Regulatory Determination[2] on coal combustion residuals (CCRs). In the damage case assessment, EPA identified 11 proven cases of damage to groundwater and surface water. Because of extensive comments, EPA did not consider the draft risk analysis to be sufficient to draw reliable conclusions on risks.

Since then, EPA has revised and completed the risk assessment and damage case study. EPA published these documents for public comment in a Notice of Data Availability (NODA) in the Federal Register of August 2007 (72

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[1] For more information on EPA's supporting documentation for EPA's March 1999 Report to Congress please refer to http://www.epa.gov/osw/nonhaz/industrial/special/fossil/fsltech.htm

[2] Please refer to: http://www.epa.gov/osw/nonhaz/industrial/special/fossil/fl21-fr.pdf

FR 49714). The NODA summarized the results of these studies. The studies can be found at:
http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006 48027b9cc
http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006 48023415b

Following TVA's coal ash spill in December 2008, EPA began evaluating potential compliance issues under the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), and the Emergency Planning and Community Right-to-know Act (EPCRA), related to the disposal of CCRs by coal-fired power plants. In addition to the CERCLA information collection activities to assess impoundment stability and engineering characteristics in March and April of 2009, in June 2009 EPA issued Information Request letters under the authority of the CWA to 19 coal-fired power plant facilities. Pursuant to the requests, the facilities were required to submit information related to: its on-site impoundments used to store or treat waste or wastewater; its processes used to treat and dispose of waste and wastewater; and other information related to the generation and disposal of CCR that was needed to make compliance determinations under RCRA, the CWA and EPCRA. The Agency is currently reviewing the information submitted.

On September 15, 2009, EPA announced plans to revise effluent requirements for discharges from steam electric power plans, including coal-fired plants. This announcement utilized the results of a multi-year study of the potential environmental impacts from power plant wastewater discharges. EPA conducted this study to better understand how pollutants from wastewater at coal combustion facilities may result in environmental degradation if improperly handled. On October 23, 2009, EPA published the findings of this study in a final report titled *Steam Electric Power Generating Point Source Category: Final Detailed Study Report* (October 2009, http://www.epa.gov/waterscience/guide/steam/).

On November 13, 2009, EPA issued an Information Request letter under the authority of the Clean Water Act to American Electric Power (AEP) requiring it to conduct liquefaction, slope stability and vibration studies for two coal ash surface impoundments at its Philip Sporn Plant in West Virginia. The request was issued after an initial assessment of the structural integrity of the two surface impoundments raised concerns about the long term stability of the impoundments. The request set specific requirements and due dates for the three additional studies needed to evaluate the long term structural stability of the impoundments. EPA received the seismic slope stability analysis on February 12, 2010 and will receive the vibration study on June 30, 2010 and the liquefaction study on September 30, 2010.

Smart Growth

Boxer Question 9: Please describe how much money and staff time, in full time equivalents, EPA is requesting for its Smart Growth program, and how this request compares to the money and staffing provided to this program in fiscal year 2009.

Answer:

Resources (Dollars in Millions):

	FY 2009 Enacted		**FY 2010 Pres Bud**	
Smart Growth	$3.9M	18.0 FTE	$5.1 M	18.0 FTE

Questions Submitted for the Record by Senator Carper

Carper Question 1: As I'm sure you know, a recent American Lung Association study reported that six out of ten American live in areas where air pollution endangers their lives. You've listed five main goals for the Agency:

1. Clean Air & Climate Change
2. Clean Water
3. Land Preservation & Restoration
4. Healthy Communities & Ecosystems
5. Compliance

Of these goals, clean air is funded fourth. Does that reflect the Administration's priorities?

Answer: The Administrator outlined seven priorities for EPA in January, 2010. They are: taking action on climate change; improving air quality; assuring the safety of chemicals; cleaning up our communities; protecting America's waters; expanding the conversation on environmentalism and working for environmental justice; and building strong state and tribal partnerships. The President's FY 2011 budget for EPA reflects these priorities while making tough choices to reduce costs. The President's FY 2011 budget increases funding for programs falling under EPA's Clean Air and Global Climate Change by approximately $97 million over the FY 2010 Enacted Budget.

Carper Question 2: In December, the DC District Court of Appeals remanded the Bush Administration's Clean Air Interstate Rule (CAIR). This decision keeps CAIR in place for an undermined period of time, while EPA must rewrite the rule. The same court vacated the Bush mercury rule in February 2008. Recent reports have indicated that the EPA plans to propose a rule in May 2010 for both mercury and other air toxics coming from power plants and a replacement for CAIR –

a) Is this true?
b) Is it true that you will not be able to replace CAIR with another cap-and-trade program?
c) Rewriting these rules will be a significant task for the Agency - but is there a sufficient increase in FTEs to do so?
d) Do you have the manpower and budget capacity to rewrite both these rules and have them ready by next year?

Answer: We plan to propose a rule to replace CAIR soon and finalize it after public comments are addressed. The rule will establish compliance dates for emissions reductions that will be the most beneficial for states developing plans to

attain and maintain the national ambient air quality standards for ground-level ozone and fine particles.

Through settlement negotiations with the plaintiffs, EPA will propose a utility MACT rule in March 2011 and issue a final rule in November 2011. Once we issue a final MACT rule, the Clean Air Act provides that existing units must be in compliance within 3 years; new sources must be in compliance upon startup.

Carper Question 3: The new Renewable Fuel Standard program increases the volume of renewable fuel required to be blended into gasoline from 9 billion gallons in 2008 to 36 billion gallons by 2022. The EPA is responsible for promulgating regulations to ensure the biofuels mandate and accompanying greenhouse gas reduction targets are met. The FY10 budget includes $5.6 million for biofuels research and sustainability analysis, which is a sizeable increase of$5 million from FY09.

a) What does the EPA plan to do with the additional funding, and what sort of biofuels research and analysis would be prioritized?

Answer: With the additional $5 million in FY 2010 for biofuels research, EPA will develop the 2010 Report to Congress on the impacts of biofuels to date and likely future impacts resulting from requirements of Section 211(o) of the Clean Air Act. This report was mandated by Section 204 of the Energy Independence and Security Act (EISA) of 2007. In addition, funds will be used to further research and characterize releases, exposures, and significant environmental and public health risks arising from increased volumes of biofuels. In particular, EPA will research the environmental impacts of biofuels feedstocks, production, transportation and end-use, for which EPA has a mandate or authority to address under the Clean Air Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, and other statutes.

Carper Question 4: The American Recovery and Reinvestment Act provided $4 billion for the Clean Water State Revolving Fund and $2 billion for the Drinking Water State Revolving Fund. Of that funding, states were required to dedicate at least 20 percent to green projects, including green infrastructure and energy or water efficiency. The EPA's FY 2010 budget similarly proposes a 20 percent set-aside for green infrastructure and efficiency projects.

Can you describe the progress to date in allocating Recovery Act funding to green water infrastructure projects?

Answer: Every State Revolving Fund obligated at least 20 percent of its capitalization grant to projects eligible for the Green Project Reserve (GPR) and communities that received this funding placed every dollar under contract by

February 17, 2010. Over $1.6 billion of SRF funds (Clean Water and Drinking Water) funds were dedicated to GPR projects. Green Project Reserve projects relate to clean water or drinking water system actions that result in positive impacts on water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

Question: What criteria are the EPA using to determine what qualifies as a green project - and how much of a premium is placed on efficiency and leakage reduction?

Answer: EPA issued guidance on March 2, 2009 that articulated examples of a number of projects and project-related costs that could count toward the 20 percent GPR [http://www.epa.gov/water/eparecovery/]. EPA is developing guidance for 2010 that builds upon the lessons learned while implementing ARRA. The 2010 GPR guidance will expand the list of GPR projects, identify projects that clearly do not qualify for GPR and include criteria to help States identify other GPR projects not listed in the guidance. States are responsible for selecting GPR projects. EPA's guidance places no extra premium on any specific type of GPR project, including efficiency and leakage reduction.

Carper Question 5: Although Delaware has no frontage on the Chesapeake Bay itself, a significant portion of the western edge of the state drains to the Bay's rivers. Approximately one third of Delaware's acreage drains into the Bay system, with nearly all of that in agricultural production. How does the EPA intend to work with the states to improve the Chesapeake Bay Program and bring about real progress in phosphorous and nitrogen reductions?

Answer: EPA and its federal partners are developing a strong new action plan, with the help of the states, to reduce phosphorous and nitrogen from all sources in the Chesapeake Bay watershed.

First, EPA has committed to a strong and transparent accountability system through a Bay-wide Total Maximum Daily Load (TMDL) for the Bay watershed. The TMDL will ensure that all controls and measures needed to reduce nutrient and sediment pollution to meet Bay water quality standards are in place by 2025. As instructed in the Presidents's Executive Order (EO) 13508, EPA and USDA is exploring a new program that would provide leadership and support to States for a trading program to offset pollution loads from new or expanding sources under the TMDL.

Second, EPA and its federal partners have been working expeditiously to meet the May 12, 2010 deadline for publishing a final strategy as required by the EO, Chesapeake Bay Protection and Restoration. Through its work to implement the EO, EPA is identifying actions and changes to be made to regulations, programs, and policies. EPA has already announced plans to develop new

regulations for the Chesapeake Bay to significantly reduce runoff pollution from urban, suburban and agricultural sources. These regulatory actions would serve as a backstop for the work of the States. Specifically:

- EPA plans to propose and take final action on a new rulemaking for concentrated animal feeding operations (CAFOs) that will consider expanding coverage and strengthening permit limits in the Chesapeake Bay watershed. EPA recognizes the valuable contributions states have already made in reducing nutrient runoff from CAFOs and encourages the states to strengthen their programs through enhanced measures in their state implementation plans. In the event a state program is not sufficient to meet TMDL expectations, our new rulemaking will seek to strengthen requirements, but we will not implement them for states that have adopted effective programs on their own. EPA will take action by December 2014.

- EPA announced on October 30, 2009 its intention to initiate a national post-construction stormwater rulemaking that will consider more stringent elements applicable to Chesapeake Bay watershed. As part of this rulemaking, EPA will consider additional Bay-specific requirements, including expanding MS4-regulated areas; setting post-construction standards for areas with smaller development footprints; and increased measures for retaining rainfall on development sites.

- EPA may develop and implement a number of regulations and programs to reduce nitrogen from a variety of stationary and mobile sources of air deposition. Approximately one-third of the nitrogen that reaches the Bay comes from emissions into the air from vehicles, industries, power plants, gas-powered lawn tools and other emissions sources. EPA will implement its current nitrogen control programs for air emissions and establish air deposition allocations as part of the load allocations in the Bay and tributary TMDLs.

EPA has also committed to a vigorous program of compliance and enforcement actions to protect and restore the Bay. With these rulemakings and actions, EPA would significantly strengthen or clarify federal requirements that would limit nutrient and sediment discharges to the Bay.

Finally, new resources will be available to help the states meet these goals. In FY2010, Congress provided $50.0 million to EPA for the Chesapeake Bay Program, a $15.0 million dollar increase over FY 2009 figures. EPA will distribute seventy-five percent of the $15 million increase, or $11.2 million, to the six Bay watershed states and the District of Columbia as Chesapeake Bay Regulatory and Accountability Program (CBRAP) Grants. These additional grant funds more than double the funding available to states through existing Chesapeake Bay Implementation Grants. Additional funds will be available for

contractor support to the states and DC for Watershed Implementation Plan development.

The President's FY2011 budget reflects the Administration's commitment to Bay restoration with a request for $63.0 million in FY2011 which proposes continued funding for these Chesapeake Bay grant programs for the states.

While EPA will continue to play an important enforcement role in the Bay States, the States themselves will primarily conduct the bulk of environmental inspections and compliance assistance. As such, EPA would closely plan and coordinate compliance and enforcement efforts with its State (and Commonwealth) partners within the Chesapeake Bay Watershed to ensure robust watershed-wide compliance and enforcement programs that establish clear expectations for the public and the regulated community regarding compliance. An EPA/State Planning, Communication and Oversight plan will be developed pursuant to this Strategy. Through our coordinated efforts, EPA and the states will strengthen their compliance and enforcement programs to ensure compliance.

To leverage EPA and the states' limited compliance and enforcement resources, EPA will coordinate closely with the States in the Bay watershed on targeting and pursuing the most serious contributors to Bay impairment, including significant sources of nitrogen and phosphorus contamination.

Carper Question 6: In 2004 EPA launched a voluntary program called SmartWay that is designed to create strong market-based incentives that challenge the freight industry to improve its environmental performance and overall fuel efficiency. By 2012, the SmartWay program aims to save between 3.3 and 6.6 billion gallons of diesel fuel per year. EPA predicts SmartWay participants will also reduce their annual greenhouse gas emissions by 48 million tons of C02 equivalents. This innovative collaboration between EPA and the freight industry is a true partnership between the public and private sectors that works. What has the program's budget been for the last two years and will it be expanded in FYIO?

Answer: The funding level for this program is:

($ in millions)

	FY 2009 Enacted	FY 2010 Enacted	FY 2011 President's Budget Request
SmartWay	$2.8	$2.8	$2.7

Carper Question 7: It is oftentimes necessary for a truck to idle its main engine to provide driver comforts such as heat or cooling. EPA estimates that trucks bum over 1.1 billion gallons a year in this manner. The installation of idle reduction systems can virtually eliminate the need to idle the main engine. However, this equipment can cost up to $10,000, making it difficult for an owner

to afford purchasing such devices. How can Congress help these businesses with the purchase of this equipment so we can conserve fuel and reduce greenhouse gas and other emissions?

Answer: EPA's SmartWay Transport Partnership provides information to the trucking industry about idle reduction solutions, via our technical bulletins, our web site, direct stakeholder outreach, and other media directed at truck fleets and operators.

EPA also awards Diesel Emissions Reduction Act (DERA) funding through the SmartWay Finance Program, to fund projects that develop innovative financial programs. These grants fund projects to help truck operators purchase idle reduction equipment. However, unlike a traditional grant program, in which funding is used to directly reduce the cost of equipment, the SmartWay Finance Program provides funding to grantees to establish innovative financial programs which offer more attractive loan or lease terms. Many trucking fleets are operated by small businesses and owner-operators; these mom-and-pop operations find it difficult to access capital to purchase fuel-saving equipment, even equipment with a positive payback, like idle reduction equipment. The SmartWay finance program makes idle reduction more affordable to these operators, by reducing the initial cost to purchase the idle reduction equipment, and by providing a pathway for truck operators to pay back the loans or leases through fuel savings. The funds, once repaid, are available to assist other truck operators.

Congress can assist by providing the funding requested in the President's budget for the SmartWay program and its outreach to the trucking industry about the need to reduce unnecessary idling; and by providing the funding requested in the President's budget for innovative grant programs like the SmartWay Finance program. This program achieves reductions in criteria pollutants and greenhouse gas emissions, saves fuel and energy costs, protects energy security, and improves air quality, while offering our nation's truck drivers improved access to equipment that allows them to rest during federally-mandated rest periods.

Questions Submitted for the Record by Senator Inhofe

Inhofe Question 1: a) How far beyond "navigable waters" do you believe federal jurisdiction under the Clean Water Act should extend?

b) Do you believe federal jurisdiction should include all intrastate waters?

c) How about ephemeral features? Are there any waters you would not include?

Answer: The Supreme Court concluded in *Rapanos* that Clean Water Act jurisdiction does extend beyond waters considered "traditionally navigable." The Administration and EPA believe that it is important that the Clean Water Act provide broad protection of the Nation's waters, consistent with Congress' commerce, treaty, and property clauses under the Constitution. This position was explained in a May 20, 2009 letter addressed to House Transportation and Infrastructure Committee Chairman Oberstar, and Senate Environment and Public Works Chair Boxer, co-signed by EPA Administrator Lisa Jackson, along with leadership at the Council on Environmental Quality, Army Corps of Engineers, Department of Agriculture, and the Department of Interior. That letter also recognizes the importance of a definition for the waters of the United States that is predictable and manageable. EPA supports a definition that improves predictability, transparency, and consistency for the regulated public and ensures prompt decision-making.

The May 20, 2009 letter from EPA and other Federal agencies detailed that the Administration seeks to restore the geographic scope of "waters of the United States" to the scope that existed before recent Supreme Court decisions. EPA does not believe that all intrastate waters are subject to CWA jurisdiction.

The preamble to EPA's Clean Water Act jurisdiction regulations includes a list of features that are generally not jurisdictional, such as drainage ditches constructed wholly from uplands. EPA also does not believe that prior converted croplands are waters of the United States.

Inhofe Question 2: a) What role do you see coal playing in our nation's energy portfolio? b) What are your views on the methods we use to extract coal?

Answer: Almost half of all electricity generated in the U.S. currently comes from coal, and we would expect this resource to continue to play an important role in helping meet the nation's energy needs. New economic investments in renewable energy sources and nuclear power will also serve to help strengthen and diversify the U.S. energy portfolio. Unfortunately, the energy benefits of U.S. coal have not been without implications for human health, water quality, and the environment for coalfield communities. A growing body of scientific data points to serious environmental and human health consequences

from surface coal mining operations. EPA has acknowledged these harmful consequences and is committed to addressing them, in collaboration with our federal and state partners and the regulated public, by promoting environmentally responsible surface coal mining practices. Not only will such improvements better protect water quality and the health of communities, consistent with federal law, but they will also ensure the nation continues to benefit from the economic and energy advantages of coal.

Inhofe Question 3: The EPA budget provides funding to begin laying the foundation for a cap-and-trade system. If cap-and-trade legislation such as Waxman-Markey passes, how much more funding will EPA need to implement it?

Answer: The Agency has not yet costed out the bill for its impacts on the Agency's budget. Any such effort would be highly dependent on the final requirements of legislation.

Inhofe Question 4: If the U.S. adopts a cap-and-trade program, and other countries do not, U.S. mining and manufacturing will be displaced overseas. What analysis is EPA doing to calculate the costs from increased emissions abroad if cap-and-trade passes?

Answer: EPA recently participated in the development of the report, The Effects of H.R. 2454 on International Competitiveness and Emission Leakage in Energy-Intensive Trade-Exposed Industries: An Interagency Report Responding to a Request from Senators Bayh, Specter, Stabenow, McCaskill, and Brown.[1] The report uses criteria established in H.R. 2454 to perform a preliminary assessment identifying energy-intensive trade-exposed industries; these industries would likely be deemed eligible for allowance allocations to "trade-vulnerable" industries under H.R. 2454. The report also performs economic modeling to examine the impacts of a cap-and-trade program on the international competitiveness of energy-intensive trade-exposed industries, and the effectiveness of H.R. 2454's allowance allocation provisions in mitigating those impacts. Related to this, the modeling also examines the effectiveness of these provisions in preventing "emission leakage" -- a shift in manufacturing activity and associated emissions overseas that could, under some circumstances, result from the adoption of a domestic climate policy.

The report finds that, of nearly 500 manufacturing industries, 44 are sufficiently energy intensive and trade exposed that they would likely be deemed eligible for allowance allocations to "trade-vulnerable" industries under H.R. 2454. Almost all of these industries fall within five broad sectors: chemicals, paper, nonmetallic minerals (e.g., cement and glass), iron and steel, and

[1] http://www.epa.gov/climatechange/economics/economicanalyses.html

nonferrous metals (e.g., aluminum). These industries account for about 10% of manufacturing output and 5% of manufacturing employment. The economic modeling in the report predicts that the allowance allocations in H.R. 2454 would offset any adverse effect that a cap-and-trade program would otherwise have on these industries' international competitiveness, preventing emissions leakage that might otherwise arise if such a program were to reduce the competitiveness of U.S. industry. That modeling also predicts that, even in the absence of the allowance allocations in H.R. 2454, on average, the bill's impact on the competitiveness of energy-intensive trade-exposed industries would be relatively limited.

Inhofe Question 5: How is the agency equipping itself to take on major international initiatives such as establishing a program in developing countries to reduce emissions from deforestation, or help evaluate and approve international offset credits as proposed in Waxman-Markey?

Answer: EPA, in cooperation with federal agencies such as USAID and other research institutions, has developed an effective program for working with developing countries on monitoring, reporting and verification of emissions from tropical forests. The program emphasizes a pragmatic combination of ground measurements and remote sensing data to get credible and consistent data over time that can be used in the development and implementation of policies to reduce emissions from deforestation. EPA is working with State Department and other federal agencies to ensure that international technical standards for monitoring, reporting and verification of reduced deforestation are consistent with requirements laid out in proposed domestic legislation. EPA is also working with other federal agencies to track developments in existing international offsets programs and assess strengths and weaknesses in areas such as the project approval process, project baselines, monitoring requirements, and verification.

In FY 2010, EPA requested funding to provide technical assistance and expertise to advise the Administration and Congress on effective, environmentally sound approaches for a GHG cap and trade program. One major area of effort was offsets, which are a key component of reducing cap and trade costs while leveraging reduction opportunities in uncovered sectors. With these resources, EPA is developing protocols and methodologies that can accurately account for emission reductions from major offset categories, assessing and developing options for monitoring and verifying the effectiveness of offset projects, and analyzing and developing options to encourage early reductions prior to the start of a federal regulatory program such as cap and trade. EPA will also assess the potential for existing and proposed mechanisms under the United Nations Framework Convention on Climate Change (UNFCCC), such as Reduced Deforestation and Degradation (REDD) to provide cost reductions while guaranteeing environmental credibility.

The efforts we are taking in FY 2010 can be used to inform a single- or multi-sector cap and trade approach, and also if an approach other than cap and trade is ultimately pursued. Specifically, monitoring and verification, establishment of baselines and performance standards, and assessment of state, federal and international programs are directly relevant to policies such as taxes and technology - or other incentives-based approaches. Work on the international offsets and REDD issues is needed given the importance of finding effective ways to support developing country action to reduce GHG emissions. The budget of $5 million provides a strong foundation for this work effort.

Inhofe Question 6: You issued a memo to the staff on April 23 addressing the issue of transparency and saying you will bring "sunlight" to the agency. You've declared several times you would bring "overwhelming transparency" to EPA. The prior administration held regular management conversations between senior agency leaders and staff, and these were broadcast so any employee could see them on their desktop computer. I understand none have been held since your arrival. How does reducing information to the public and the staff bring "sunlight" and promote "overwhelming transparency?"

Answer: EPA has taken many steps to increase transparency, including making the schedules of the Administrator and senior staff available to the public, something that had not been done in the prior Administration. In order to communicate better with more Americans, EPA regularly webcasts policy and research discussions to the public. There was a recent live webcast of the FY 2011 budget rollout, including the audience questions and answers. When traveling to the EPA regional offices, the Administrator makes it a priority to have frank discussions about a range of issues with large numbers of EPA employees, stakeholders and local media. These are just two examples of how the Administration is making this EPA more transparent for all Americans.

Inhofe Question 7: The agency had consistently published on its website a report to the public on how it was performing and the results it was obtaining. The last such report appeared in December and there hasn't been one since. Why is that?

Answer: In accordance with the Government Performance and Results Act (GPRA), EPA produces an annual Performance and Accountability Report (PAR), each November. EPA's PAR describes to the President, Congress, and the public the Agency's environmental program and financial performance over the course of a fiscal year. The PAR reports the performance results that EPA obtained over the year, measured against the targets presented in the Agency's performance plan and budget. The reports also describe progress in addressing management issues. For the past three years EPA also has produced a shorter "Highlights" version of the Performance and Accountability Report, intended for

a general public audience. All GPRA-related reports can be found on EPA's website at http://www.epa.gov/performance. EPA also produces quarterly performance information for those programs that received funds through the American Reinvestment and Recovery Act (ARRA). An ARRA performance report for the first quarter of FY 2010 can be found at http://epa.gov/recovery/.

Inhofe Question 8: You've said you would publicize your schedule, but what is published on the EPA website are items such as "staff briefing" with no subject matter, or "meeting with Administration officials" with no indication of topic or participants. On some days, the message says, "The Administrator's schedule is not available."

a) How does this constitute "overwhelming transparency?"
b) What will you do to improve this reporting?

Answer: During the last administration the media and other observers reported that the public too often felt that environmental policy was being set behind closed doors in meetings with industry lobbyists and other special interests, with no disclosure and no transparency. The Administrator believes that this undermined the public's trust in the Agency and its mission. For the first time in the Agency's history, every EPA senior official -- the Administrator, the Deputy Administrator, Assistant Administrators and Regional Administrators -- is required to post a working public schedule online. That schedule contains information on every meeting between EPA senior officials and groups outside of Government -- including stakeholders, industry groups, and the public. This gives the public more information than ever before about whom the Agency is talking to. While EPA is constantly seeking to improve and build on this effort, EPA is proud of this brand new initiative, which puts EPA at the forefront of transparency efforts across government.

Inhofe Question 9: a) How often do you meet with Carol Browner, and b) What topics do you discuss with her?

Answer: The Administrator meets or speaks with Carol Browner at least once a week about energy and climate policy.

Inhofe Question 10: What was Carol Browner's role in proposing the 'cause and contribute' finding and the endangerment finding of greenhouse gases under the Clean Air Act?

Answer: Carol Browner did not propose these findings or direct that they be proposed. The Clean Air Act assigns the task of proposing endangerment and contribution findings to the EPA Administrator.

Inhofe Question 11: Your senior climate counsel, Lisa Heinzerling, is a noted critic of using a cost benefit analysis approach for environmental and health issues.

a) What is your own philosophy about using cost-benefit analyses for EPA's policy analysis?
b) How do you reconcile her documented views on the matter with yours?

Answer: To support the rulemaking for every economically significant regulation, EPA examines: the statutory direction, cost-effectiveness, economic impacts, burden on States (as required by the Unfunded Mandates Reform Act), impacts to small business (as required by the Small Business Regulatory Enforcement Fairness Act), environmental justice consequences (as required by Executive Order 12898), and benefit-cost analysis (as required by Executive Order 12866).

As appropriate, and when allowed by law, all of these analyses inform the decision making process. It is the Administration's policy that benefit-cost analyses are consistent with good science and good economics. EPA's economists follow the Science Advisory Board's peer review "Guidelines for Preparing Economic Analyses," and OMB's Circular A-4 (guidance for conducting benefit-cost analysis).

Inhofe Question 12: In a recent interview with NPR, you said, "The President has said - and I couldn't agree more - that what this country needs is one single national road map that tells auto makers who are trying to become solvent again what kind of car it is they need to be designing and building for the American people." In your view, what is the proper extent of EPA's role in designing automobiles?

Answer: In adopting regulations to control emissions of pollutants from motor vehicles, EPA does not specify vehicle design or otherwise specify the means by which pollutant reductions are to be obtained. Manufacturers are free to achieve the standards in any way they choose. Issuing such performance-based standards – standards that specify the result to be achieved and leave manufacturers with complete discretion as to how to achieve those results – is consistent with the provisions of Title II of the Clean Air Act. Among other things, such an approach preserves manufacturers' flexibility to respond to market demand.

EPA's proposed greenhouse gas emission standards for model year 2012-2016 light-duty vehicles (jointly proposed with NHTSA's CAFE standards) follow this approach. Not only are the proposed standards performance-based, but because the proposed standards are based on an attribute curve (reflecting

vehicle size), each manufacturer would have its own fleet-specific standard based on the vehicle models it chooses to produce. A major reason for adopting this attribute-based approach is to preserve manufacturer flexibility as needed to respond to market conditions. See 71 FR 17566 (April 6, 2006) (previous administration adopting this approach for 2008-2011 light trucks); 74 FR at 49490, 49516-517 (proposing to adopt the same attribute-based approach for greenhouse gas emission standards under section 202 (a) of the Clean Air Act). In the statement you quote, the Administrator was simply referring to the fact that as EPA and NHTSA establish consistent vehicle requirements, and California accepts these harmonized standards as a means of complying with its own standards for light duty vehicle GHG emissions, manufacturers will have a clear and stable regulatory context within which to make their individual design decisions, and will not have to design separate fleets to satisfy three separate regulatory programs.

Inhofe Question 13: President Obama's budget proposes to reinstate the Superfund tax beginning in Fiscal year 2011. He estimates that the tax would generate $6.6 billion through fiscal year 2014. Congress has already enacted $1.29 billion for the Superfund program in the FY2009 Omnibus Act, and provided another $600 million in the American Recovery and Reinvestment Act for a total of $1.89 billion for fiscal year 2009. You stated in your testimony that EPA and its partners anticipate completing construction activities at 22 Superfund National Priority List sites in fiscal year 2010. I understand that number, and the specific sites on which that number is based, could very well fluctuate depending on a number of factors. Please list the 22 sites that EPA anticipates completing based on your budget proposal, and the timeframe for bringing each of those specific projects to completion.

Answer: The following list of 22 sites represents a pool of potential candidates that may achieve Construction Completion (CC) in FY 2010.

The dynamic nature of the Superfund program results in sites moving in and out of the CC candidate pool during the year. Superfund projects encounter issues similar to other large construction projects, *e.g.*, delays caused by weather, equipment and materials availability, and land access and easements challenges. Overlaying these issues with those related to the cleanup, *e.g.*, handling hazardous materials, addressing hidden subsurface contamination, and verifying remedy performance to ensure protection of human health and the environment, adds layers of complexity.

With these complexities, the Superfund program may identify new sites as potential near term CC candidates in situations where the actual waste volume is less than anticipated, pilot tests or field data demonstrate the effectiveness of an innovative technology that eliminates the need for further remedial construction, or settlement with a responsible party to conduct the work may be accelerated.

The vast majority of sites achieve the CC milestone in the last quarter of the fiscal year. Generally, this reflects that, for most regions of the country, construction activity begins in spring and peaks in summer.

22 Candidate Sites for Construction Completion in FY 2010

SITE NAME	STATE
Consolidated Iron And Metal	NY
Foote Mineral Co.	PA
Garland Creosoting	TX
Hatheway & Patterson	MA
Havertown Pcp	PA
Hudson Refinery	OK
Interstate Lead Co. (Ilco)	AL
Liberty Industrial Finishing	NY
Louisiana Army Ammunition Plant	LA
Malvern Tce	PA
Memphis Defense Depot (Dla)	TN
Metal Banks	PA
Monitor Devices, Inc./Intercircuits, Inc.	NJ
Moss American Co., Inc.	WI
National Starch & Chemical Corp.	NC
Norfolk Naval Base (Sewells Point Naval Complex)	VA
North Cavalcade Street	TX
Oeser Co.	WA
Otis Air National Guard Base/Camp Edwards	MA
Parkview Well	NE
Petro-Chemical Systems, Inc. (Turtle Bayou)	TX
Silresim Chemical Corp.	MA

Inhofe Question 14: There are a number of duplicative and unnecessary administrative costs associated with the Superfund program.

a) Can you identify specific examples of such costs, and
b) How will you reduce or eliminate them?

Answer: EPA makes every effort to manage the Superfund program effectively and efficiently. As such, the Agency is currently undertaking an Integrated Cleanup Initiative (ICI), the goal of which is to identify and implement opportunities to integrate and leverage EPA's land cleanup authorities to accelerate cleanup, address a greater number of contaminated sites, and put these sites back into productive use while protecting human health and the environment.

Some of the initiatives that EPA is pursuing to advance ICI include:

(1) EPA is evaluating the integration of the Superfund Removal and Brownfields programs to achieve more cleanup and reuse of contaminated properties;
(2) EPA is evaluating whether the waste cleanup enforcement programs can be implemented in a more integrated fashion; and
(3) EPA is undertaking an effort to increase program efficiencies by examining EPA contracting processes and administrative practices, including a review of administrative cleanup processes and an analysis of the various program boards and panels to ensure that they are being utilized effectively and are not serving as a barrier to cleanup progress.

Each of the initiatives is designed to improve program efficiencies and reduce or eliminate unnecessary costs and duplicative efforts.

Regarding contracting, the Superfund Senior Regional Management and Acquisition Council (SRMAC) is reviewing the existing Superfund contracting strategy, including reviewing key issues such as contract capacity/utilization, cross contract utilization and efficiencies. SRMAC anticipates completing their efforts in FY 2010. A number of possible contract efficiency options have already been identified, for example, using a fixed rate "Indefinite Delivery/Indefinite Quantity" (IDIQ) type contract rather than an architect and engineering type contract when the work involves certain straight forward activities, e.g., earth moving. The Superfund program has also continued to look at opportunities to streamline paperwork and/or administrative requirements to identify potential savings.

Inhofe Question 15: EPA's lead paint rule requires training and certification for renovators who disturb more than six square feet in target housing. The rule's economic analysis says it would require certifying 186,000 persons in the next year, and another 123,000 the year after. How do you plan to train an average of over 4,000 persons per week to meet the deadline in this rule, especially when the rule makes no provision to fund this training? Has EPA begun certification yet?

Answer: EPA has approved 204 training providers as of April 22, 2010. Of these training providers, 109 are "traveling trainers" that are accredited to provide training in multiple states. These training providers have provided training in states that do not have state-specific providers. EPA continues to evaluate training provider applications and this number will continue to grow.

The number of training classes per week continues to increase. Based on the most recent data, more than 6,936 courses have been offered and greater than 160,000 renovators are estimated to have been trained as of April 22, 2010.

The training capacity will continue to grow after April 22, 2010. Renovators will continue to be trained after April 22.

EPA's estimate of the number of renovators that will conduct renovation jobs in pre-1978 housing and in child-care facilities and schools is based on activities that will occur throughout the first year the rule goes into effect. This is not the number of renovators that will be conducting renovations as soon as the rule goes into effect on April 22.

Inhofe Question 16: The budget requests $600 million for enforcement, which is a record amount. Would you please speak to your philosophy about education versus enforcement and whether it is more cost effective to educate about and prevent damage from pollution versus focusing on punishment and responding after the damage is done?

Answer: The Agency believes providing compliance assistance to avoid pollution is a critical element of our efforts to protect public health and the environment. The Agency also maintains strong cleanup and enforcement programs to deter non-compliance, ensure a level playing field for those that follow the rules, and address contamination that threatens the environment and the health of our citizens.

With respect to our compliance and enforcement program, the Agency relies on an integrated approach to achieve compliance and deter future violations. This strategy uses tools such as compliance assistance to increase understanding of, and compliance with, regulatory requirements and a vigorous compliance monitoring program to identify violations and better target our enforcement efforts. Traditional civil and criminal enforcement programs are also essential to protecting public health and the environment, ensuring a level economic playing field, and addressing the most egregious violations. Our experience has shown that this integrated approach, focused on the most significant environmental threats, achieves the greatest level of deterrence and best environmental outcomes.

Inhofe Question 17: You put an end to Performance Track, a multi-year effort that was the federal government's principal voluntary pollution control initiative. It represented an effective collaboration between government and industry designed to educate about and prevent pollution. You did this without briefings from program managers or internal agency review. Why?

Answer: As our environmental challenges have changed, enlightened stewardship by progressive companies has become an important adjunct to the U.S. Environmental Protection Agency's (EPA) programs. These stewardship initiatives augment our regulatory framework through the use of advanced

technology and innovation. Many leading companies, for example, have made significant reductions in greenhouse gas emissions and energy consumption. In nearly all cases these companies are beginning to understand that it is in their economic interest, and that of their shareholders to become environmental stewards.

Since 2000, the National Environmental Performance Track Program has been an important vehicle through which EPA recognized and encouraged such actions. Nevertheless, there has been much discussion about the benefits of the program and whether its "membership" approach was the best way to promote environmental stewardship on a large scale. Members of Congress and our stakeholders asked us to consider other approaches that could be more effective for the future. Therefore, we terminated the Performance Track program in order to redirect efforts towards other efforts that might lead to greater benefits in environmental stewardship.

Performance Track's remaining resources (in the form of FTE) have been redeployed to a variety of programs elsewhere in the Office of Policy, Economics and Innovation (OPEI) including Performance Analysis, the Smart Growth and Green Buildings.

Inhofe Question 18: Under the State and Tribal Assistance Grant program, the EPA budget calls for 20 percent of Clean Water and Drinking Water State Revolving Funds to be set aside for green infrastructure projects. What data and documentation did you use to determine that 20 percent figure?

Answer: EPA selected 20 percent for the Green Project Reserve (GPR) in 2010 based upon the 20 percent Green Project Reserve required set-aside in the American Recovery and Reinvestment Act of 2009. It proved to be an attainable goal for all States in 2009. Many states proactively solicited GPR projects from communities and organizations that have not previously used the CWSRF for water quality projects. The demand in those states far outstripped available funding. Continuing the provision allows communities to pursue the planning and design for other GPR projects with the expectation that they will compete on a level playing field with other more traditional projects for funding.

Question: What criteria is EPA using to determine whether there are "sufficient eligible projects" that are green?

Answer: EPA issued guidance on March 2, 2009 that articulated examples of a number of projects and project-related costs that could count toward the 20 percent GPR [http://www.epa.gov/water/eparecovery/]. EPA is developing guidance for 2010 that builds upon the lessons learned while implementing ARRA. The 2010 GPR guidance will expand the list of GPR projects, identify projects that clearly do not qualify for GPR and include criteria to help States

identify other GPR projects not listed in the guidance. States are responsible for selecting GPR projects.

Inhofe Question 19: As you may know, I am very supportive of the Diesel Emissions Reduction Act (DERA), but I also take grants oversight very seriously. Unfortunately, I have heard some very troubling anecdotes about the application process for DERA grants under the stimulus bill. Most of the concerns had to do with the web-based Diesel Emissions Quantifier (DEQ) that applicants use to calculate the emissions reductions that would result from their proposed projects. Specifically, applicants reported having great difficulty getting the DEQ to work, even when trying to use it late at night, early in the morning or on weekends as suggested by EPA. Some applicants got it to work and then realized the information calculated for them was incorrect. In one instance, the DEQ reported that a proposed project would reduce a fleet's emissions by more than 100 percent. While that result may be easy enough to catch as a faulty answer, other incorrect results may seem reasonable, especially to grant applicants who may not be experts at diesel technologies. What specific steps have you taken or do you plan to take to ensure that potential applicants do not experience the same DEQ capacity problems in the future?

Answer: The Diesel Emissions Quantifier (DEQ) is a tool to estimate emissions from any given set of parameters in a clean diesel project. EPA has developed the DEQ for its clean diesel stakeholder community to utilize when estimating potential emission reductions from diesel retrofit projects. EPA works hard to assure that it is as accurate and as user-friendly as possible. At times EPA receives comments, suggestions and/or complaints about the way the DEQ is functioning. EPA always takes these comments and complaints seriously and strives to make sure that the DEQ is always functioning properly.

During the Recovery Act grant competitions, EPA received complaints that users were not able to access the DEQ. The Agency quickly realized that the problem was the limit on the number of same-time users. EPA worked to expand the capacity for the number of same-time users at the web server from approximately 50 to over 500, which alleviated the problem. This action occurred well within the time period in which applicants could submit their grant applications. In addition, as always, grant applicants were allowed to use other methodologies for calculating emissions reduction estimates as long as these alternatives were explained in their grant applications. Some applicants chose to use other calculators or methods, such as EPA's Mobile6 or NMIM tools.

Inhofe Question 20: What specific steps have you taken or do you plan to take to ensure that the DEQ does not provide grant applicants with incorrect information in the future?

Answer: At times, users report problems with the DEQ's calculations. When a problem regarding the DEQ's inoperability is brought to EPA's attention, EPA must determine if the issue is with the tool or with the user not being able to interpret the data. The majority of the time the issue of concern is the latter. In these cases, EPA explains the results to the user.

In rare cases where there is an actual problem with the calculations EPA works quickly to identify the source of the issue and updates/corrects the appropriate coding within the DEQ. Specifically, the computer code associated with that problem is reviewed and appropriate changes are made, if warranted, and then the new code is applied.

In addition, to streamline EPA's approach in evaluating any future problem areas, an extensive review of the functionality of the existing code and database was performed in August 2009 to ensure there were no extraneous lines of code or data hindering the operations of the DEQ.

Inhofe Question 21: Once EPA was made aware of these problems, what actions did the agency take to make potential applicants aware of the fact that they might need to rerun information through the DEQ, including reentering fleet information, to ensure accurate results? If no such actions were taken, please explain why there were not.

Answer: In response to the problem of same-time users having trouble due to limited capacity, EPA advised users on its DEQ home web page to potentially utilize the tool during non-peak hours. In addition, the DEQ User Guide was continually updated as changes were made were to the tool. A tutorial on how to use the DEQ efficiently was recorded and posted on EPA's web site. Finally, EPA made an announcement about the DEQ through its email listserv, highlighting the expanded capacity for same-time users.

Inhofe Question 22: In light of these known problems, what specific steps did you take or do you intend to take when reviewing submitted applications to ensure that the information being used to compare applications is accurate, a fundamental requirement for a fair competition?

Answer: It is important to note that the emission reductions are considered estimates during the grant application phase. These figures are only one of a number of criteria evaluated prior to award of any grant. Specifically, during the Recovery Act competitions, EPA allotted four points out of 100 to these diesel emissions reduction estimates. When reviewing applications, if EPA deemed the data to be reasonable based on past project experience, the applicants received all points. Should an applicant submit data that appears to be inconsistent with the project, EPA will still consider the application for award.

Inhofe Question 23: The budget does not appear to contain sufficient funds for revision of all the National Emissions Standards for Hazardous Air Pollutants (known generally as MACT standards for the Maximum Achievable Control Technology on which the NESHAPs are based).

a) Are you concerned that EPA has been sued by environmentalists to revise all the MACT rules to include specific emission limits in the place of the current exemptions for startups, shutdowns and malfunctions pursuant to the Court decision in *Sierra Club* v. *EPA, Civil Case No. 02-1135?*
b) What schedule and budget has EPA adopted for MACT rule development?

Answer: The Agency is working on more than 90 rules to reduce air toxics. This is a tremendous challenge, but we are committed to fulfilling our obligations under the Clean Air Act to issue regulations that protect human health and the environment from air toxics. We are devoting significant resources towards developing new Maximum Achievable Control Technology (MACT) standards, while completing residual risk and technology reviews (RTRs) of the existing MACT standards. EPA is integrating its approach in meeting multiple Clean Air Act requirements for stationary sources. For example, where the Act requires that the Agency take multiple regulatory actions that affect the same industry, we are beginning the process of aligning the timing of these rules to take advantage of synergies and help the Agency realize efficiencies in how we use our resources.

EPA recognizes the additional challenges for addressing startups, shutdown, and malfunctions (SSM) as a result of the Court decision in Sierra Club v. EPA, Civil Case No. 02-1135. As a result of this decision, EPA is addressing the SSM issues through several efforts. We plan to amend the MACT General Provisions to remove the SSM exemptions. This administrative amendment conforms to the DC Circuit Court of Appeals decision to vacate the SSM exemptions in the General Provisions, and we are working to issue this amendment, which will impact about one-third of the MACT standards. As we undertake periodic reviews for risk and technology reviews of our MACT rules for various industrial sectors, we will address startup and shutdown issues as appropriate in conjunction with these reviews. In addition, we are undertaking an effort to remove malfunction exemptions across all MACT standards.

Inhofe Question 24: Do you share industry's concerns that removal of the exemption from MACT standards during startup, shutdown and malfunction events will cause danger to workers, industrial plants, and neighborhoods?

Answer: Although we have had many discussions with industrial representatives, industry has not raised as a significant issue the possibility that

the 2008 Sierra Club v. EPA decision vacating the provisions of 40 C.F.R. Sections 63.6(f)(1) and (h)(1) may cause danger to workers, industrial plants, or neighborhoods. The provisions of 40 C.F.R. Section 63.6(e)(1)(i), which require sources to minimize emissions at all times consistent with safety and good air pollution control practices, including periods of startup, shutdown and malfunction (SSM), are still in full force and effect.

The Court's vacatur of the SSM provisions directly affects about one-third of air toxics standards, which are known as Maximum Achievable Control Technology (MACT) standards, and nearly two thirds of MACT standards have separate provisions, other than Sections 63.6(f)(1 and (h)(1), to address SSM emissions. In a July 22, 2009, letter we encouraged sources that anticipate compliance difficulties to contact EPA or the appropriate state regulatory authority. By engaging with regulators early, sources can identify their compliance concerns and engage in a meaningful dialogue with EPA or the appropriate state regulatory authority about the individual circumstances presented by a particular facility, including any information on the nature and extent of the excess emissions that occurred or are expected to occur during SSM events. In appropriate cases, EPA or the state may be able to take action to resolve a source's compliance concerns. Such actions may include, for example, issuance of an Administrative Order on Consent that includes a schedule for the source to achieve compliance during SSM events.

Inhofe Question 25: Are you concerned that facilities may not be able to maintain their manufacturing equipment if they can't shut it down for periodic maintenance and restart the equipment without risking knowing violations of the Act? Do you view this as the result for certain industries if the SSM exemptions are removed from the MACT standards?

Answer: Elimination of startup and shutdown exemptions should have little effect on a facility's ability to maintain manufacturing equipment. In general, such equipment can be brought offline safely while continuing to control emissions with emission control equipment. Likewise, emission control equipment can be brought online prior to startup of manufacturing equipment to control emissions during startup. In addition, for rules with their own SSM provisions, we plan to address startup and shutdown, as appropriate in conjunction with the periodic risk and technology reviews.

Inhofe Question 26: The new EPA budget, the largest in history, is being touted for its job creating potential as well as its commitment to environmental protection. There is discussion on how these new policies will create thousands of new renewable jobs, and no discussion on its impacts on coal and nuclear sources of energy, which currently supplies 70% of our energy needs. Recently, the Federal Energy Regulatory Commission Chairman Jon Wellinghoff had this to

say about whether America needs new coal or nuclear plants, "We may not need any, ever." Do you agree with his statement?

Answer: EPA's economic analysis of energy and climate change legislation indicates that the electric power industry will continue to use a diversity of fuels including coal and nuclear as well as other fuels and renewable power sources. EPA's economic analysis also shows that the electric power industry can increase its energy efficiency while helping meet the nation's energy needs.

Inhofe Question 27: Since EPA is so focused on job creation potential, do you anticipate any job opportunities coming from new coal plants or our largest source of carbon free energy, nuclear facilities?

Answer: EPA has not analyzed potential job creation from building of new coal or nuclear power plants. However, it is reasonable to expect that such investments would create jobs.

Inhofe Question 28: Has EPA done any analysis of jobs lost and created based on implementing its new budget priorities to grow a clean energy economy? If so, please provide them.

Answer: EPA does not normally do that type of analysis, and has not done one in this case.

Inhofe Question 29: The EPA Office of Inspector General (OIG) recently conducted a scientific analysis suggesting meaningful health benefits are more likely to be achieved by increasing iodide consumption for certain populations than EPA's current focus on removing exceedingly small amounts of perchlorate from drinking water. The OIG report concludes that a "cumulative risk assessment approach is required to identify potential actions that will effectively lower risk to public health." Do you agree with the conclusion of the OIG report that public health policy is better informed by reviewing the cumulative risks presented by perchlorate and other chemicals that stress the thyroid's ability to uptake iodide, such as thiocyanate and nitrate?

Answer: On December 30, 2008, the EPA Office of Inspector General released the *OIG Scientific Analysis of Perchlorate (External Review Draft)* for comment. EPA's Office of Water and Office of Research and Development reviewed and provided comments on the draft report. The OIG has not issued a final report. EPA agrees conceptually that cumulative risk assessment of a suite of contaminants can be a more effective means of evaluating exposure risks.

However, the Agency must utilize the best available peer reviewed science in decision making under the Safe Drinking Water Act.

Inhofe Question 30: EPA and the National Academy of Sciences (NAS) undertook a comprehensive review of perchlorate. Recently, EPA has asked again for assistance from NAS regarding the health effects of perchlorate in drinking water. There is considerable activity underway on perchlorate, and top scientific bodies are working to understand the effects of perchlorate from a public health perspective. However, I understand that, based on press reports, the agency sent a proposal on perchlorate in drinking water to the White House Office of Management and Budget (OMB) for review on May 18. It is unclear what this proposal entails, so please provide a copy of it. Nevertheless, given all the scientific bodies still working on this issue,

a) Why does EPA think it is ready to make a determination on regulation?
b) Will you be completely transparent in showing how you made your determination on perchlorate and its effects, showing what scientific information you used; and
c) How you arrived at your conclusions?

Answer: EPA is committed to transparency in its decision making, and the Agency published the supplemental request for comment on the perchlorate regulatory determination on August 19, 2009 (74 FR 41883, or see http://www.epa.gov/fedrgstr/EPA-WATER/2009/August/Day-19/w19507.pdf). In this notice EPA sought public comment on a broad range of alternatives for interpreting the available data on the level of health concern, the frequency of occurrence of perchlorate in drinking water, and the opportunity for health risk reduction through a national primary drinking water standard. As part of this FR Notice, EPA also announced that it did not planto request additional NAS review of issues related to perchlorate. Instead, EPA presented alternative approaches to the interpretation of the scientific data relevant to a regulatory determination for perchlorate and sought public comment. To assure continued transparency in the Agency's decision making, public comments, supporting documentation and a summary of the Office and Management and Budget review of the FR Notice can be found at: http://www.regulations.gov (Docket ID No. EPA-HQ-OW-2009-0297).

Inhofe Question 31: With regard to regulatory actions concerning greenhouse gases, will you follow the Presidential directive to coordinate with other agencies to obtain their concurrence or other views during the development and preparation of the regulatory actions and prior to any key decision points during that development and preparation process?

Answer: For all rulemakings, EPA will follow the processes in place to ensure interagency and White House review and comment, in accordance with the Administrative Procedures Act and all other relevant Executive Orders.

Inhofe Question 32: The budget does not appear to contain sufficient funds for revision of all the National Emissions Standards for Hazardous Air Pollutants (known generally as MACT standards for the Maximum Achievable Control Technology on which the NESHAPs are based). Are you concerned that EPA has been sued by environmentalists to revise all the MACT rules to include specific emission limits in the place of the current exemptions for startups, shutdowns and malfunctions pursuant to the Court decision in *Sierra Club* v. *EPA, Civil Case No. 02-1135?* What schedule and budget has EPA adopted for MACT rule development?

Answer: The Agency is working on more than 90 rules to reduce air toxics. This is a tremendous challenge, but we are committed to fulfilling our obligations under the Clean Air Act to issue regulations that protect human health and the environment from air toxics. We are devoting significant resources towards developing new Maximum Achievable Control Technology (MACT) standards, while completing residual risk and technology reviews (RTRs) of the existing MACT standards. EPA is integrating its approach in meeting multiple Clean Air Act requirements for stationary sources. For example, where the Act requires that the Agency take multiple regulatory actions that affect the same industry, we are beginning the process of aligning the timing of these rules to take advantage of synergies and help the Agency realize efficiencies in how we use our resources.

EPA recognizes the additional challenges for addressing startups, shutdown, and malfunctions (SSM) as a result of the Court decision in Sierra Club v. EPA, Civil Case No. 02-1135. As a result of this decision, EPA is addressing the SSM issues through several efforts. We plan to amend the MACT General Provisions to remove the SSM exemptions. This administrative amendment conforms to the DC Circuit Court of Appeals decision to vacate the SSM exemptions in the General Provisions, and we are working to issue this amendment, which will impact about one-third of the MACT standards. As we undertake periodic reviews for risk and technology reviews of our MACT rules for various industrial sectors, we will address startup and shutdown issues as appropriate in conjunction with these reviews. In addition, we are undertaking an effort to remove malfunction exemptions across all MACT standards.

Inhofe Question 33: We understand that EPA may not share industry's concerns that removal of the exemption from MACT standards during startup, shutdown and malfunction events will cause danger to workers, industrial plants, and neighborhoods. Why is that?

Answer: Although we have had many discussions with industrial representatives, industry has not raised as a significant issue the possibility that the 2008 Sierra Club v. EPA decision vacating the provisions of 40 C.F.R. Sections 63.6(f)(1) and (h)(1) may cause danger to workers, industrial plants, or neighborhoods. The provisions of 40 C.F.R. Section 63.6(e)(1)(i), which require sources to minimize emissions at all times, consistent with safety and good air pollution control practices including periods of startup, shutdown and malfunction (SSM), are still in full force and effect.

The Court's vacatur of the SSM provisions directly affects about one-third of air toxics standards, which are known as Maximum Achievable Control Technology (MACT) standards, and nearly two thirds of MACT standards have separate provisions, other than Sections 63.6(f)(1 and (h)(1), to address SSM emissions. In a July 22, 2009, letter we encouraged sources that anticipate compliance difficulties to contact EPA or the appropriate state regulatory authority. By engaging with regulators early, sources can identify their compliance concerns and engage in a meaningful dialogue with EPA or the appropriate state regulatory authority about the individual circumstances presented by a particular facility, including any information on the nature and extent of the excess emissions that occurred or are expected to occur during SSM events. In appropriate cases, EPA or the state may be able to take action to resolve a source's compliance concerns. Such actions may include, for example, issuance of an Administrative Order on Consent that includes a schedule for the source to achieve compliance during SSM events.

Inhofe Question 34: Is the Agency concerned that facilities may not be able to maintain their manufacturing equipment if they can't shut it down for periodic maintenance and restart the equipment without risking knowing violations of the Act? Does EPA view this as the result for certain industries if the SSM exemptions are removed from the MACT standards?

Answer: Elimination of startup and shutdown exemptions should have little effect on a facility's ability to maintain manufacturing equipment. In general, such equipment can be brought offline safely while continuing to control emissions with emission control equipment. Likewise, emission control equipment can be brought online prior to startup of manufacturing equipment to control emissions during startup. In addition, for rules with their own SSM provisions, we plan to address startup and shutdown, as appropriate in conjunction with the periodic risk and technology reviews.

Inhofe Question 35: The new EPA budget, the largest in history, is being touted for its job creating potential as well as its commitment to environmental protection. Many have discussed how these new policies will create thousands of new renewable jobs, and no discussion on its impacts on coal and nuclear sources

of energy, which currently supplies 70% of our energy needs. Recently FERC Chairman Jon Wellinghoff had this to say about whether America needs new coal or nuclear plants, "We may not need any, ever." Certainly it's disconcerting, to say the least, to hear that the chairman of the Federal Energy Regulatory Commission sees no future for our nation's two most cost-effective sources of electricity. Do you agree with that statement?

Answer: EPA's economic analysis of energy and climate change legislation indicates that the electric power industry will continue to use a diversity of fuels including coal and nuclear as well as other fuels and renewable power sources. EPA's economic analysis also shows that the electric power industry can increase its energy efficiency while helping meet the nation's energy needs.

Inhofe Question 36: Since EPA is so focused on job creation potential, does EPA anticipate any such opportunities coming from new coal plants or our largest source of carbon free energy, nuclear facilities?

Answer: EPA has not analyzed potential job creation from building of new coal or nuclear power plants. However, it is reasonable to expect that such investments would create jobs.

Inhofe Question 37: Has EPA done any analysis of jobs lost and created based on implementing its new budget priorities to grow a clean energy economy?

Answer: EPA does not normally do that type of analysis, and has not done one in this case.

Inhofe Question 38: With regard to EPA's proposed "endangerment" finding in response to Massachusetts v EPA, are you in favor of a determination that it would be based on the record of the scientific data and empirical evidence, rather than political or other non-scientific considerations?

Answer: Yes, the Agency is in favor of a determination that it be based on the record of the scientific data and empirical evidence, rather than political or other non-scientific considerations.

Inhofe Question 39: With regard to regulatory actions concerning greenhouse gases, will you follow any Presidential directive to coordinate with other agencies to obtain their concurrence or other views during the development and preparation of the regulatory action?

Answer: For all rulemakings, EPA will follow the processes in place to ensure interagency and White House review and comment, in accordance with the Administrative Procedures Act and all other relevant Executive Orders.

Inhofe Question 40: As you know, in Oklahoma, we continue to have municipalities struggling with the arsenic rule and with the Disinfection Byproducts (DBP) Stage I rule. Small systems that purchase water from alternative systems and have not had to test, treat or monitor their water must comply with DBP II. Additionally our water systems will need to meet federal clean water requirements such as the new Groundwater rule, the Disinfection Byproducts Stage II rule or the Long Term 2 Enhanced Surface Water Treatment Rule. What are you doing to assist these communities in reaching these drinking water standards?

Answer: The SDWA provides several mechanisms for assisting communities to comply with drinking water regulations:

- The Capacity Development program provides a framework for assisting public water systems in building and maintaining technical, managerial and financial capacity. Through their strategies, states prioritize financial and technical assistance to systems struggling with compliance.

- Optional SRF set-asides provide assistance to communities through circuit rider programs, training of operators on rule requirements, conducting rate setting studies, and developing asset management plans.

- EPA has placed an emphasis on helping small communities with their compliance needs and improving their long-term sustainability through assistance with asset management and educating community leaders on the value of safe water.

Inhofe Question 41: I have always appreciated the manner in which EPA has worked with me at the Tar Creek Superfund Site. Recently, the State of Oklahoma and Quapaw Tribe of Oklahoma wrote you outlining a number of concerns with recent developments with the site. I know that EPA is presently working on a response to these concerns. What commitment will you make to work with my office to address these concerns and ultimately reach a settlement at the site?

Answer: The Agency is committed to continue working with you and your office on the Tar Creek Superfund Site. EPA is looking for ways to enhance Quapaw and State participation in our efforts at the Tar Creek Superfund site, as

reflected in Administrator Jackson's June 2009 letter to Chairman John Berry of the Quapaw Tribe of Oklahoma, Oklahoma Secretary of the Environment J.D. Strong, and Mr. Steve Thompson, Executive Director of the Oklahoma Department of the Environment (ODEQ).

Additionally, in a separate June 2009 letter, EPA proposed measures to address the issues raised by the Tribe, the Secretary, and the ODEQ. The proposal included working toward a Joint Prosecution Agreement with the State, which would allow the State to share our work product documents and reports regarding our case against the PRP mining companies. Consequently, in August 2009, U.S. Department of Justice (DOJ) and the State entered into a Joint Prosecution Agreement, which has allowed DOJ and EPA to share their confidential reports and settlement strategies with the Oklahoma Attorney General's office and with the ODEQ. DOJ and EPA attorneys are now coordinating with the ODEQ attorney and the Assistant Oklahoma Attorney General.

EPA also proposed that, prior to the public comment period on any proposed settlement and consent decree with the PRP mining companies, EPA would look for ways to secure meaningful input from the Quapaw Tribe. Settlement negotiations have not yet reached this stage.

EPA will also provide information regarding the progress of settlement talks, and continue discussions regarding the implementation of the remedy. Toward this end, EPA's Office of Regional Counsel and Quapaw Tribe counsel have begun frequent discussions. In addition, the ODEQ, the Tribe, and other stakeholders (U.S. Department of the Interior, the Bureau of Indian Affairs, and the Fish and Wildlife Service) are invited to participate in weekly conference calls regarding the Agency's efforts to obtain access and other issues related to implementation of the remedy at the Tar Creek Superfund site.

May 20, 2009

Representative James Oberstar
Chair
Committee on Transportation and Infrastructure
House of Representatives
Room 2165
Rayburn House Office Building
Washington, D.C. 20515

Dear Chair Oberstar:

In response to your request for the Administration's views, this letter briefly outlines issues related to problems and needed clarification on waters protected by the Clean Water Act and identifies certain principles that may help guide legislative and other actions to address these issues.

Problem Statement

The Clean Water Act is one of the Nation's most effective environmental laws. Since its enactment in 1972, the condition of rivers, lakes, streams, wetlands, and coastal waters across the country has dramatically improved. Today, millions of Americans are able to enjoy swimming, fishing, boating, and other recreational activities because of the cooperative efforts by Federal, State, Tribal, and local governments to implement the Clean Water Act. In addition, by protecting the health of the Nation's aquatic ecosystems, the Clean Water Act has helped assure that water is safe to drink and that fish and shellfish are safe to eat. Along with these vital environmental and public health benefits, clean and safe water is critical to the economic well-being of the Nation, providing significant economic benefits associated with activities ranging from recreation to urban revitalization.

Supreme Court decisions in 2001 and 2006 narrowed the prior interpretation of the scope of waters protected by the Clean Water Act. (Rapanos v. United States, 547 U.S. 715 (2006); Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001)) Federal agencies have faced significant challenges implementing these recent decisions. In addition, U.S. Circuit Courts of Appeal have taken different positions in interpreting the Supreme Court decisions, further complicating implementation. Current agency guidance implementing the decisions contemplates complex findings that sometimes result in jurisdictional determinations that lack consistency across the country and can be time-consuming and expensive. Delayed and unpredictable decisions are frustrating and costly to persons seeking approval of projects related to these waters.

It is important to note that although the Supreme Court decisions arose in the context of the Clean Water Act dredged or fill program, they affect all Clean Water Act protections because the Act has a single definition for "waters of the United States". As a result, these decisions affect the National Pollutant Discharge Elimination System (NPDES) program, water quality standards program, oil spill prevention and clean-up program, as well as the permit program for discharges of dredged or fill material. Taken together, these programs are the heart of the Clean Water Act

We are committed to resolving key issues with respect to the scope of the Clean Water Act in order to provide a solid foundation for addressing continuing challenges to the health of aquatic ecosystems. We are focused on the importance of coordination among Federal, State, and local programs related to wetlands, floodplain management, water quality protection, and habitat restoration. We also recognize that the impacts of a changing climate, including changes in precipitation patterns and rising sea levels, will pose difficult challenges for protection of aquatic ecosystems. Finally, as we work to meet goals for wetlands protection nationwide, we need to identify opportunities to expand protection of wetlands and other aquatic resources that are especially vulnerable or critical to sustaining the health of these systems.

Principles

As we work to address the issues associated with the scope of the Clean Water Act, we urge you to consider the general principles described below.

1) **Broadly Protect the Nation's Waters:** It is essential that the Clean Water Act provide broad protection of the Nation's waters, consistent with full Congressional authority under the Constitution. All of the environmental and economic benefits that these aquatic ecosystems provide are at risk if some elements are protected and others are not.

2) **Make Definition of Covered Waters Predictable and Manageable:** The definition of waters protected by the Clean Water Act should be clear, understandable, well-supported, and transparent to the public. Legislation

and supporting guidance concerning waters covered by the Act should promote prompt actions and avoid time-consuming and costly technical analyses.

3) **Promote Consistency Between Clean Water Act and Agricultural Wetlands Programs:** Farmers often face complex issues with respect to whether wetlands located on their farm are within the scope of the Clean Water Act, the wetland conservation provisions of the Food Security Act, or both. Identification of waters covered by the Clean Water Act and the Food Security Act, and operational elements of implementing programs, should reflect consistent, predictable, and straight-forward decision guidelines.

4) **Recognize Long-standing Practices:** In over thirty years of implementing wetlands protection programs, Federal agencies worked with States and stakeholders to make common-sense interpretations of the Clean Water Act in various agency regulations. Congress should consider including in the Clean Water Act certain exemptions that are now in effect only through regulations or guidance. For example, a carefully crafted statutory exemption for "prior converted cropland" would be useful to both farmers and Federal agencies.

Enactment of legislation amending the Clean Water Act – based on these principles – would go a long way toward addressing the substantial confusion and uncertainty arising from the recent Supreme Court decisions. Since existing guidance documents and supporting regulations can be revised to implement these principles to only a limited degree, a clear statement of Congressional intent is needed to provide a foundation for steady and predictable implementation of the Clean Water Act in the years to come.

Thank you for your interest in this important problem. We look forward to working with you to address these issues in the future.

Sincerely,

Nancy Sutley
Chair
Council on Environmental Quality

Lisa Jackson
Administrator
Environmental Protection Agency

Terrence "Rock" Salt
Acting Assistant Secretary
of the Army (Civil Works)

Tom Vilsack
Secretary
Department of Agriculture

Ken Salazar
Secretary
Department of the Interior

cc: Representative John L. Mica, Ranking Member

Questions Submitted for the Record Senator Vitter

Vitter Question 1: I have a question about EPA's Energy Star program. My specific question relates to EPA's plan to suspend the Energy Star labeling program for programmable thermostats that EPA is planning to formalize via a letter to stakeholders on May 18th Suspending the labeling program will have a significant negative financial impact to manufacturers during a challenging economic time. Manufacturers will have to change the packaging of these products, and update their marketing plans and materials costing millions of dollars. Can you explain why EPA is taking this action at this time when they have agreed to continue to work with industry to develop a new Energy Star specification and will reinstate the Energy Star labeling program when a new specification and program have been developed?

Answer: The ENERGY STAR specification for programmable thermostats (PTs) was suspended on December 31, 2009. While EPA recognizes the potential for PTs to save significant amounts of energy, there continues to be questions concerning the net energy savings and environmental benefits achievable under the existing ENERGY STAR PT specification through a number of field studies. Based on this information, EPA decided to sunset the specification for PTs to ensure the integrity of ENERGY STAR.

EPA plans to continue to advance energy efficiency through PTs with ongoing education efforts and work with industry and other experts to design and implement an improved ENERGY STAR specification that differentiates products. With the goal of creating a specification that differentiates products and delivers energy savings, EPA distributed a Draft 1 Version 2.0 Revised Programmable Thermostat Specification for stakeholder review on October 29, 2009. EPA sees these Tier 1 requirements as a key step to fully realizing the energy-saving potential of PTs.

EPA believes that further enhancements to usability and communication capabilities are needed and achievable in the near future. Communication capabilities refers to the PT's ability to interface with energy management systems by communicating information (e.g., settings, temperature data, and responding to a limited set of commands) to systems outside a HVAC system (e.g., utility smart meter or home energy monitoring system). As such, EPA is also working with the U.S. Department of Energy and other groups to develop metrics or benchmarks that will allow a more refined comparison of products' usability.

Vitter Question 2: The new EPA budget, the largest in history, is being touted for its job creating potential as well as its commitment to environmental protection. We hear lots of discussion on how these new policies will create thousands of new renewable jobs, and no discussion on its impacts on coal and

nuclear sources of energy, which currently supplies 70% of our energy needs. Recently FERC Chairman Jon Wellinghoff had this to say about whether America needs new coal or nuclear plants, "We may not need any, ever." Certainly it's disconcerting, to say the least, to hear that the chairman of the federal Energy Regulatory Commission sees no future for our nation's two most cost effective sources of electricity. Do you agree with that statement?

Answer: EPA's economic analysis of energy and climate change legislation indicates that the electric power industry will continue to use a diversity of fuels including coal and nuclear as well as other fuels and renewable power sources. EPA's economic analysis also shows that the electric power industry can increase its energy efficiency while helping to meet the nation's energy needs.

Vitter Question 3: Since EPA is so focused on job creation potential, does EPA anticipate any opportunities coming from new coal plants or our largest source of carbon free energy, nuclear facilities?

Answer: EPA has not analyzed potential job creation from building of new coal or nuclear power plants. However, it is reasonable to expect that such investments would create jobs.

Vitter Question 4: Has EPA done any analysis of jobs lost and created based on implementing its new budget priorities to grow a clean energy economy?

Answer: EPA does not normally do that type of analysis, and has not done one in this case.

Vitter Question 5: With regard to EPA's proposed "endangerment" finding in response to Massachusetts v EPA, are you in favor of a determination that it would be based on the record of the scientific data and empirical evidence, rather than political or other non-scientific considerations?

Answer: Yes, the Agency is in favor of a determination that it be based on the record of the scientific data and empirical evidence, rather than political or other non-scientific considerations.

Vitter Question 6: In light of the Court of Appeals decisions involving the New Source Review regulations, will you recommend that the agency permanently return to the old rules from prior decades, or will you support a renewed attempt at progress and reform of those rules?

Answer: The NSR/PSD program is important for the protection of public health and the environment. EPA is committed to getting all of the benefits from these programs and to following the Clean Air Act and decisions by the courts. We continue to review actions from the last Administration and make changes where appropriate. EPA is also committed to making the program work effectively as we move forward on implementing revised NAAQS.

Vitter Question 7: With regard to regulatory actions concerning greenhouse gases, will you follow any Presidential direction to coordinate with other agencies to obtain their concurrence or other views during the development and preparation of the regulatory action and prior to any key decision points during that development and preparation process?

Answer: For all rulemakings, EPA will follow the processes in place to ensure interagency and White House review and comment, in accordance with the Administrative Procedures Act and all other relevant Executive Orders.

Vitter Question 8: Do you believe federal jurisdiction under the Clean Water Act should extend beyond "navigable waters"?

a) If so, how far beyond?

b) Do you believe federal jurisdiction should include all intrastate waters?

c) How about ephemeral features?

d) Are there any waters you would NOT include?

Answer: The Supreme Court concluded in *Rapanos* that Clean Water Act jurisdiction does extend beyond waters considered "traditionally navigable." The Administration and EPA believe that it is important that the Clean Water Act provide broad protection of the Nation's waters, consistent with Congress' commerce, treaty, and property clauses under the Constitution. This position was explained in a May 20, 2009 letter, addressed to House Transportation and Infrastructure Committee Chairman Oberstar, and Senate Environment and Public Works Chair Boxer, co-signed by EPA Administrator Lisa Jackson, along with leadership at the Council on Environmental Quality, Army Corps of Engineers, Department of Agriculture, and the Department of Interior. That letter also recognizes the importance of a definition for the waters of the United States that is predictable and manageable. EPA supports a definition that improves predictability, transparency, and consistency for the regulated public and ensures prompt decision-making.

The May 20, 2009 letter from EPA and other Federal agencies detailed that the Administration seeks to restore the geographic scope of "waters of the United States" to the scope that existed before recent Supreme Court decisions. EPA does not believe that all intrastate waters are subject to CWA jurisdiction.

The preamble to EPA's Clean Water Act jurisdiction regulations includes a list of features that are generally not jurisdictional, such as drainage ditches constructed wholly from uplands. EPA also does not believe that prior converted croplands are waters of the United States.

Vitter Question 9: What role do you see coal playing in our nation's energy portfolio? What are your views on the methods we use to extract coal?

Answer: Almost half of all electricity generated in the U.S. currently comes from coal, and we would expect this resource to continue to play an important role in helping meet the nation's energy needs. New economic investments in renewable energy sources and nuclear power will also serve to help strengthen and diversify the U.S. energy portfolio. Unfortunately, the energy benefits of U.S. coal have not been without implications for human health, water quality, and the environment for coalfield communities. A growing body of scientific data points to serious environmental and human health consequences from surface coal mining operations. EPA has acknowledged these harmful consequences and is committed to addressing them, in collaboration with our federal and state partners and the regulated public, by promoting environmentally responsible surface coal mining practices. Not only will such improvements better protect water quality and the health of communities, consistent with federal law, but they will also ensure the nation continues to benefit from the economic and energy advantages of coal.

Vitter Question 10: The EPA budget provides funding to lay the foundation for a cap-and-trade system. If the U.S. adopts a cap-and-trade program, and other countries do not, U.S. mining and manufacturing will be displaced overseas. What analysis is EPA doing to calculate the costs from increased emissions abroad if cap-and-trade passes?

Answer: EPA recently participated in the development of the report, The Effects of H.R. 2454 on International Competitiveness and Emission Leakage in Energy-Intensive Trade-Exposed Industries: An Interagency Report Responding to a Request from Senators Bayh, Specter, Stabenow, McCaskill, and Brown. (http://www.epa.gov/climatechange/economics/economicanalyses.html). The report uses criteria established in H.R. 2454 to perform a preliminary assessment identifying energy-intensive trade-exposed industries; these industries would likely be deemed eligible for allowance allocations to "trade-vulnerable" industries under H.R. 2454. The report also performs economic modeling to

examine the impacts of a cap-and-trade program on the international competitiveness of energy-intensive trade-exposed industries, and the effectiveness of H.R. 2454's allowance allocation provisions in mitigating those impacts. Related to this, the modeling also examines the effectiveness of these provisions in preventing "emission leakage" -- a shift in manufacturing activity and associated emissions overseas that could, under some circumstances, result from the adoption of a domestic climate policy.

The report finds that, of nearly 500 manufacturing industries, 44 are sufficiently energy intensive and trade exposed that they would likely be deemed eligible for allowance allocations to "trade-vulnerable" industries under H.R. 2454. Almost all of these industries fall within five broad sectors: chemicals, paper, nonmetallic minerals (e.g., cement and glass), iron and steel, and nonferrous metals (e.g., aluminum). These industries account for about 10% of manufacturing output and 5% of manufacturing employment. The economic modeling in the report predicts that the allowance allocations in H.R. 2454 would offset any adverse effect that a cap-and-trade program would otherwise have on these industries' international competitiveness, preventing emissions leakage that might otherwise arise if such a program were to reduce the competitiveness of U.S. industry. That modeling also predicts that, even in the absence of the allowance allocations in H.R. 2454, on average, the bill's impact on the competitiveness of energy-intensive trade-exposed industries would be relatively limited.

Vitter Question 11: You issued a memo to the staff on April 23 addressing the issue of transparency and saying you will bring "sunlight" to the agency. You've declared several times you would bring "overwhelming transparency" to EPA. The prior administration held regular management conversations between senior agency leaders and staff, and these were broadcast so any employee could see them on their desktop computer. I understand none have been held since your arrival. How does reducing information to the public and the staff bring "sunlight" and promote "overwhelming transparency?"

Answer: EPA has taken many steps to increase transparency, including making the schedules of the Administrator and senior staff available to the public, something that had not been done in the prior Administration. In order to communicate better with more Americans, EPA regularly webcasts policy and research discussions to the public. There was a recent live webcast of the FY 2011 budget rollout, including the audience questions and answers. When traveling to the EPA regional offices, the Administrator makes it a priority to have frank discussions about a range of issues with large numbers of EPA employees, stakeholders and local media. These are just two examples of how the Administration is making this EPA more transparent for all Americans.

Vitter Question 12: The agency used to publish on its website a report to the public on how it was performing and the results it was obtaining. The last such report appeared in December and there hasn't been one since. Why is that?

Answer: In accordance with the Government Performance and Results Act (GPRA), EPA produces an annual Performance and Accountability Report (PAR), each November. EPA's PAR describes to the President, Congress, and the public the Agency's environmental program and financial performance over the course of a fiscal year. The PAR reports the performance results that EPA obtained over the year, measured against the targets presented in the Agency's performance plan and budget. The reports also describe progress in addressing management issues. For the past three years EPA also has produced a shorter "Highlights" version of the Performance and Accountability Report, intended for a general public audience. All GPRA-related reports can be found on EPA's website at http://www.epa.gov/performance. EPA also produces quarterly performance information for those programs that received funds through the American Reinvestment and Recovery Act (ARRA). An ARRA performance report for the first quarter of FY 2010 can be found at http://epa.gov/recovery/.

Vitter Question 13: You've said you would publicize your schedule, but what is published on the EPA website is likely as not to be items such as "staff briefing" with no subject matter, or "meeting with Administration officials" with no indication of topic or participants. On some days, the message says, "The Administrator's schedule is not available." How does this constitute "overwhelming transparency?"

Answer: During the last administration the media and other observers reported that the public too often felt that environmental policy was being set behind closed doors in meetings with industry lobbyists and other special interests, with no disclosure and no transparency. The Administrator believes that this undermined the public's trust in the Agency and its mission. For the first time in the Agency's history, every EPA senior official -- the Administrator, the Deputy Administrator, Assistant Administrators and Regional Administrators -- is required to post a working public schedule online. That schedule contains information on every meeting between EPA senior officials and groups outside of Government -- including stakeholders, industry groups, and the public. This gives the public more information than ever before about whom the Agency is talking to. While EPA is constantly seeking to improve and build on this effort, EPA is proud of this brand new initiative, which puts EPA at the forefront of transparency efforts across government.

Vitter Question 14: What is your philosophy about using cost-benefit analyses for EPA's policy analysis? Your senior climate counsel, Lisa Heinzerling, is a noted critic of using a cost-benefit analysis approach for

environmental and health issues. How do you reconcile her documented views on the matter with what you just said?

Answer: To support the rulemaking for every economically significant regulation, EPA examines: the statutory direction, cost-effectiveness, economic impacts, burden on States (as required by the Unfunded Mandates Reform Act), impacts to small business (as required by the Small Business Regulatory Enforcement Fairness Act), environmental justice consequences (as required by Executive Order 12898), and benefit-cost analysis (as required by Executive Order 12866).

As appropriate, and when allowed by law, all of these analyses inform the decision making process. It is the Administration's policy that benefit-cost analyses are consistent with good science and good economics. EPA's economists follow the Science Advisory Board's peer review "Guidelines for Preparing Economic Analyses," and OMB's Circular A-4 (guidance for conducting benefit-cost analysis).

Vitter Question 15: In a recent interview with NPR, you said, "The President has said - and I couldn't agree more - that what this country needs is one single national road map that tells auto makers who are trying to become solvent again what kind of car it is they need to be designing and building for the American people." Would you please explain your philosophy about free enterprise versus central government planning?

Answer: In adopting regulations to control emissions of pollutants from motor vehicles, EPA does not specify vehicle design or otherwise specify the means by which pollutant reductions are to be obtained. Manufacturers are free to achieve the standards in any way they choose. Issuing such performance-based standards – standards that specify the result to be achieved and leave manufacturers with complete discretion as to how to achieve those results – is consistent with the provisions of Title II of the Clean Air Act. Among other things, such an approach preserves manufacturers' flexibility to respond to market demand.

EPA's proposed greenhouse gas emission standards for model year 2012-2016 light-duty vehicles (jointly proposed with NHTSA's CAFE standards) follow this approach. Not only are the proposed standards performance-based, but because the proposed standards are based on an attribute curve (reflecting vehicle size), each manufacturer would have its own fleet-specific standard based on the vehicle models it chooses to produce. A major reason for adopting this attribute-based approach is to preserve manufacturer flexibility as needed to respond to market conditions. See 71 FR 17566 (April 6, 2006) (previous administration adopting this approach for 2008-2011 light trucks); 74 FR at 49490, 49516-517 (proposing to adopt the same attribute-based approach for

greenhouse gas emission standards under section 202 (a) of the Clean Air Act). In the statement you quote, the Administrator was simply referring to the fact that as EPA and NHTSA establish consistent vehicle requirements, and California accepts these harmonized standards as a means of complying with its own standards for light duty vehicle GHG emissions, manufacturers will have a clear and stable regulatory context within which to make their individual design decisions, and will not have to design separate fleets to satisfy three separate regulatory programs.

Vitter Question 16: President Obama's budget proposes to reinstate the Superfund tax beginning in Fiscal year 2011. He estimates that the tax would generate $6.6 billion through fiscal year 2014. Congress has already enacted $1.29 billion for the Superfund program in the FY2009 Omnibus Act, and provided another $600 million in the American Recovery and Reinvestment Act for a total of $1.89 billion for fiscal year 2009. Will you please provide a list of the specific Superfund projects this money will be used for, and the timeframe for bringing each of those specific projects to completion?

Answer: The Agency directed its Superfund resources toward managing, overseeing and cleaning up the nation's most contaminated hazardous waste sites. The majority of the FY 2009 appropriated resources went directly to the Superfund cleanup programs [Remedial, Emergency Response and Removal, EPA Preparedness, Federal Facilities, and Support to Other Federal Agencies].

As part of EPA's FY 2009 performance accomplishments, EPA completed construction at 20 sites across the country for a cumulative total of 1,080 NPL sites with site construction complete (approximately 67 percent of the sites on the NPL). 316 other sites had construction activity underway. In addition, EPA conducted 195 Superfund-lead removal actions; completed 400 Superfund final site assessment decisions; achieved a net total of 66 Superfund sites ready for anticipated use; and continued to maintain progress achieving or exceeding EPA's other Superfund program performance measure targets.

With the $600 million the Agency received for ARRA (including $18 million for management and oversight), EPA worked to accelerate shovel-ready ongoing construction projects and initiate new shovel-ready construction projects in order to expedite the injection of those resources into the nation's economy. Information on Superfund projects which received ARRA funding can be found on the EPA website at http://www.epa.gov/superfund/eparecovery/sites.html. Fifty-one sites received funding for remedial action projects, of which four of the fifty-one sites also received funding for remedial design activities to assist EPA in accelerating work to initiate new remedial action projects, including Arsenic Trioxide Site (ND), Central City Clear Creek (CO), Welsbach & General Gas Mantle (NJ), and Eureka Mills (UT). The table below includes the list of sites that received ARRA funding for remedial action projects, along with the projected project completion dates.

American Recovery and Reinvestment Act Superfund Sites

Site Name	St	Planned Project Completion Date
SILRESIM CHEMICAL CORP.	MA	9/30/2012
OLD ROOSEVELT FIELD CONTAMINATED GW AREA	NY	12/30/2011
ATLANTIC WOOD INDUSTRIES, INC.	VA	10/1/2012
CROSSLEY FARM	PA	10/31/2039
HAVERTOWN PCP	PA	8/31/2010
GMH ELECTRONICS	NC	12/31/2012
SIGMON'S SEPTIC TANK SERVICE	NC	12/30/2016
TOWER CHEMICAL CO.	FL	10/28/2011
UNITED METALS, INC.	FL	3/30/2011
JACOBSVILLE NEIGHBORHOOD SOIL CONTAMINATION	IN	9/30/2013
OUTBOARD MARINE CORP.	IL	6/30/2011
SOUTH MINNEAPOLIS RESIDENTIAL SOIL CONTAMINATION	MN	2/30/2012
GARLAND CREOSOTING	TX	1/10/2011
GRANTS CHLORINATED SOLVENTS	NM	9/30/2012
TAR CREEK (OTTAWA COUNTY)*	OK	OU4, RA009: 1/30/2011 OU4 RA010: 9/30/2038
BOUNTIFUL/WOODS CROSS 5TH S. PCE PLUME	UT	9/30/2011
SUMMITVILLE MINE	CO	6/30/2012
UPPER TENMILE CREEK MINING AREA*	MT	9/302018
SULPHUR BANK MERCURY MINE	CA	12/31/2010
COMMENCEMENT BAY, NEAR SHORE/TIDE FLATS	WA	9/30/2012
ELIZABETH MINE	VT	9/30/2013
HATHEWAY & PATTERSON	MA	9/30/2013
EMMELL'S SEPTIC LANDFILL	NJ	9/30/2012
IMPERIAL OIL CO., INC./CHAMPION CHEMICALS	NJ	10/30/2012
MONITOR DEVICES, INC./INTERCIRCUITS, INC.	NJ	9/30/2013
PRICE LANDFILL	NJ	9/30/2014
OTTATI & GOSS/KINGSTON STEEL DRUM	NH	9/30/2013
LAWRENCE AVIATION INDUSTRIES, INC.	NY	6/30/2012
STANDARD CHLORINE OF DELAWARE, INC.*	DE	9/29/2012
BRUNSWICK WOOD PRESERVING	GA	10/1/2012
ESCAMBIA WOOD - PENSACOLA	FL	2/28/2010
WOOLFOLK CHEMICAL WORKS, INC.	GA	12/30/2009
CONTINENTAL STEEL CORP.*	IN	OU1: 12/31/2011 OU6: 9/30/2011
CHEROKEE COUNTY*	KS	OU4: 9/30/2017 OU6: 9/30/2012
MADISON COUNTY MINES	MO	3/30/2012
OMAHA LEAD	NE	9/30/2018
ORONOGO-DUENWEG MINING BELT	MO	12/31/2015
ARSENIC TRIOXIDE SITE	ND	9/30/2011
CENTRAL CITY, CLEAR CREEK	CO	12/31/2012
GILT EDGE MINE	SD	3/31/2012
FRONTIER FERTILIZER	CA	3/31/2012
IRON MOUNTAIN MINE	CA	12/31/2011
BUNKER HILL MINING & METALLURGICAL COMPLEX	ID	12/30/2015
WYCKOFF CO./EAGLE HARBOR	WA	9/30/2015
NEW BEDFORD	MA	12/30/2029
CORNELL DUBILIER ELECTRONICS INC.	NJ	9/30/2013
HORSESHOE ROAD	NJ	12/30/2010
ROEBLING STEEL CO.	NJ	3/15/2014
VINELAND CHEMICAL CO., INC.	NJ	9/30/2012
WELSBACH & GENERAL GAS MANTLE (CAMDEN RADIATION)	NJ	6/30/2011
EUREKA MILLS	UT	9/30/2011

* Sites have two (Cherokee County, Continental Steel, Tar Creek, Standard Chlorine) or three (Upper Ten Mile) projects with on-site construction.

Vitter Question 17: There are a number of duplicative and unnecessary administrative costs associated with the Superfund program. How will you reduce or eliminate such costs?

Answer: The Agency is currently undertaking an Integrated Cleanup Initiative (ICI), the goal of which is to better utilize EPA's assessment and cleanup authorities, in an integrated, transparent, and accountable fashion, to address a greater number of contaminated sites, accelerate cleanups, and put those sites back into productive use while protecting human health and the environment. Among other things, the ICI is looking at efforts to increase program efficiencies by examining EPA contracting processes and practices and by conducting a thorough review of the Agency's cleanup programs (Superfund Remedial, Superfund Emergency Response and Removal, Superfund Federal Facilities Response, and Brownfields Projects).

Simultaneously, the Agency is undertaking a review of potential contract efficiencies. In the Superfund program, the Superfund Senior Regional Management and Acquisition Council (SRMAC) is reviewing the existing Superfund contracting strategy, including reviewing key issues such as contract capacity/utilization, cross contract utilization and efficiencies. SRMAC anticipates completing their efforts in FY 2010. A number of possible contract efficiency options have already been identified, for example, using a fixed rate "Indefinite Delivery/Indefinite Quantity" (IDIQ) type contract rather than an architect and engineering type contract when the work involves certain straight forward activities, e.g., earth moving. The Superfund program has also continued to look at opportunities to streamline paperwork and/or administrative requirements to identify potential savings.

Vitter Question 18: EPA's lead paint rule requires training and certification for renovators who disturb more than six square feet in target housing. The rule's economic analysis says it would require certifying 186,000 persons in the next year, and another 123,000 the year after. How do you plan to train an average of over 4,000 persons per week to meet the deadline in this rule, especially when the rule makes no provision to fund this training? Will EPA be able to begin certifying by May 22?

Answer: EPA has approved 204 training providers as of April 22, 2010. Of these training providers, 109 are "traveling trainers" that are accredited to provide training in multiple states. These training providers have provided training in states that do not have state-specific providers. EPA continues to evaluate training provider applications and this number will continue to grow.

The number of training classes per week continues to increase. Based on the most recent data, more than 6,936 courses have been offered and greater than 160,000 renovators are estimated to have been trained as of April 22, 2010.

It is estimated based on the trends for training courses and numbers trained that by April 22 there will have been 5,600 courses completed and 100,000 renovators trained.

The training capacity will continue to grow after April 22, 2010. Renovators will continue to be trained after April 22.

EPA's estimate of the number of renovators that will conduct renovation jobs in pre-1978 housing and in child-care facilities and schools is based on activities that will occur throughout the first year the rule goes into effect. This is not the number of renovators that will be conducting renovations as soon as the rule goes into effect on April 22.

Vitter Question 19: The budget requests $600 million for enforcement, which is a record amount. Would you please speak to your philosophy about education versus enforcement, and whether it is more cost effective to educate about and prevent damage from pollution versus focusing on punishment and responding after the damage is done?

Answer: The Agency believes providing compliance assistance to avoid pollution is a critical element of our efforts to protect public health and the environment. The Agency also maintains strong cleanup and enforcement programs to deter non-compliance, ensure a level playing field for those that follow the rules, and address contamination that threatens the environment and the health of our citizens.

With respect to our compliance and enforcement program, the Agency relies on an integrated approach to achieve compliance and deter future violations. This strategy uses tools such as compliance assistance to increase understanding of, and compliance with, regulatory requirements and a vigorous compliance monitoring program to identify violations and better target our enforcement efforts. Traditional civil and criminal enforcement programs are also essential to protecting public health and the environment, ensuring a level economic playing field, and addressing the most egregious violations. Our experience has shown that this integrated approach, focused on the most significant environmental threats, achieves the greatest level of deterrence and best environmental outcomes.

Vitter Question 20: You put an end to Performance Track, a multi-year effort that was the federal government's principal voluntary pollution control initiative. It represented an effective collaboration between government and industry designed to educate about and prevent pollution. You did this without briefings from program managers or internal agency review. Why?

Answer: As our environmental challenges have changed, enlightened stewardship by progressive companies has become an important adjunct to the U.S. Environmental Protection Agency's (EPA) programs. These stewardship initiatives augment our regulatory framework through the use of advanced technology and innovation. Many leading companies, for example, have made significant reductions in greenhouse gas emissions and energy consumption. In nearly all cases these companies are beginning to understand that it is in their economic interest, and that of their shareholders to become environmental stewards.

Since 2000, the National Environmental Performance Track Program has been an important vehicle through which EPA recognized and encouraged such actions. Nevertheless, there has been much discussion about the benefits of the program and whether its "membership" approach was the best way to promote environmental stewardship on a large scale. Members of Congress and our stakeholders asked us to consider other approaches that could be more effective for the future. Therefore, we terminated the Performance Track program in order to redirect efforts towards other activities that might lead to greater benefits in environmental stewardship.

Performance Track's remaining resources (in the form of FTE) have been redeployed to a variety of programs elsewhere in the Office of Policy, Economics and Innovation (OPEI) including Performance Analysis, the Smart Growth and Green Buildings.

Vitter Question 21: Under the State and Tribal Assistance Grant program, the EPA budget calls for 20 percent of Clean Water and Drinking Water State Revolving Funds to be set aside for green infrastructure projects. What data and documentation did you use to determine that 20 percent figure?

Answer: EPA selected 20 percent for the Green Project Reserve (GPR) in 2010 based upon the 20 percent Green Project Reserve required set-aside in the American Recovery and Reinvestment Act of 2009. It proved to be an attainable goal for all States in 2009. Many states proactively solicited GPR projects from communities and organizations that have not previously used the CWSRF for water quality projects. The demand in those states far outstripped available funding. Continuing the provision allows communities to pursue the planning and design for other GPR projects with the expectation that they will compete on a level playing field with other more traditional projects for funding.

Question: What criteria is EPA using to determine whether there are "sufficient eligible projects" that are green?

Answer: EPA issued guidance on March 2, 2009 that articulated examples of a number of projects and project-related costs that could count toward the 20

percent GPR [http://www.epa.gov/water/eparecovery/]. EPA is developing guidance for 2010 that builds upon the lessons learned while implementing ARRA. The 2010 GPR guidance will expand the list of GPR projects, identify projects that clearly do not qualify for GPR and include criteria to help States identify other GPR projects not listed in the guidance. States are responsible for selecting GPR projects.

Senator BOXER. Thank you. We will each take 4 minutes.

Administrator Jackson, the Energy Star Program has been extremely successful in increasing energy efficiencies in appliances. EPA estimates that the program helped people save more than $19 million in utility bills and to prevent the equivalent of more than 43 million metric tons of greenhouse gases in 2008. This is a win/win. Your budget asked for a $1 million increase in the Energy Star Program. Can you describe how you think the program is functioning and whether it can be made even more effective?

Ms. JACKSON. I could not agree more, Madam Chair, that the Energy Star Program is a success. It is a win/win. It has been a voluntary program and about giving the Americans the information they need to make educated choices. Probably the flagship is in the appliances that we buy. You can go to a store, look at an appliance and make a determination. If you see the Energy Star Seal, you know you are getting an appliance with energy efficiency.

The additional money will help us to continue that program, to continue to update it to make sure that we stay on the front edge of technology which is evolving so that Americans can continue to have trust in the Energy Star label. Additionally, it would allow us to move into home improvement and energy efficiency on the building side because, as we see massive amounts of money being poured into energy efficiency on the building side, we want to give Americans information there as well.

Senator BOXER. Good. Good. Well, I am very supportive of you.

Now, I want to ask a question about the Superfund sites and I know Senator Lautenberg shares this concern. We were discussing it yesterday. I do not have to tell you that they are the most contaminated toxic waste sites in the Country with arsenic, benzene and lead, which is known to cause cancer and damage human development. So I am perplexed that EPA has revised its expected number of cleanups from 35 under George Bush's estimates to 20. And the Agency only anticipates cleaning up 22 sites next year. This is down significantly from the average annual pace of cleanups during the Clinton administration. They were way up then. I think there were 80 sites per year. So, obviously, I am not happy about this and I know others are not.

So, I am going to ask you two questions. One, what accounts for the decline in cleanups? And also, I am concerned about the diesel emissions reduction work. You are cutting a lot of the funds there. Last year, we had $15 million for diesel emissions reduction work in San Joaquin and South Coast Air Quality Management Districts in the State of California. Again, diesel emissions cause, or contribute to, heart disease and premature deaths. So, I am going to work to reinstate the funding.

But I am perplexed. Could you explain to me the Administration's reason for cutting those funds and for cutting the number of Superfund cleanups? Those are the two areas that concern me.

Ms. JACKSON. Thank you, Madam Chair.

I will do the Superfund first. I share your concern and I respect it. Obviously, more money, one would hope, would result in, at the end of the pipelines, the cleanups, which everyone looks forward to speeding up. I think there are numerous factors and I think it bears further investigation.

So, I will give you an answer for now, if you will, because I know that you and Senator Lautenberg will demand it, as well you should, which is that we have certainly done a lot of the easier sites. So there is some argument to be made that some of the low-hanging, easier to clean up sites have passed through the system.

You might also be aware that the front end of the pipeline, the listing and assessment of sites on the Superfund list has drastically been curtailed in recent years. As a result, you do not see the number of sites and variety of sites coming out. So, easy sites are not going on the list. We are not seeing cleanups. We will certainly spend all the money allotted to us and we will spend it early.

So my concern is not that we are somehow being slackers with respect to getting that money out on the street, creating jobs and doing cleanups. What that argues is that the sites are more complex and they take longer to clean up. We probably need to look at the Superfund pipeline and I probably need to get back to you and agree to work with you and this Committee and certainly Senator Lautenberg on that particular issue.

I do applaud my staff for being honest and giving us a real number so that we can ask hard questions.

On the DERA funding, the overall amount for the Country is $60 million. I know you know that, Madam Chair. The specific earmarks that have been made for California diesel emission reduction grants are not there. Obviously, the President's budget does not continue this earmark as well as any others and so, while it is almost certainly, like other diesel emission grants, a very noble program and in keeping with the President's commitment to cut earmarks that is what——

Senator BOXER. Well, let me just follow up and say this. I could not disagree more with the President on calling it an earmark to put money into the places that have the worst air quality in the Nation. I mean, that is ridiculous. You know, I think it is good government to go put the money where it is. So, I am hopeful that we can get some language in here that we can agree on short of an earmark that says we intend for the money to go to the places where people are suffering the most. So, we will work together on this.

So, I will just conclude by saying you know, you are, if I might just say, a breath of fresh air and your honest answers are really appreciated. We are going to have our disagreements. We know that. I am going to fight hard for more Superfund funding. Because that is the same answer the Bush administration gave us and I do not buy it because, frankly, they put a lot of money in to spend, to go cleanup sites, and nobody said oh, well, it is a waste of money there. So, I just do not understand it. I just do not get it.

But we will work with you very openly. We will work with your staff. We will work with Senator Lautenberg. Hopefully, we can push hard to get more attention paid to these Superfund sites. These sites are hanging out there, they are a drag on the economy, and they are a danger to our kids.

On the diesel, again, maybe there is some way we can, without using the exact place that these funds should go, I just want to be sure, as the Chairman here, that if the worst sites for these diesel

emission problems is New Jersey, I do not care where it is, I want it to go to those sites. We will work together.

All right. Senator Barrasso.

Senator BARRASSO. Thank you very much, Madam Chairman.

I appreciated Senator Whitehouse's comments that we need lawful, fact-based regulation. I appreciate Ms. Jackson's comments that she wanted to make sure that we did this without overburdening small businesses and others.

That brings me to my concern and the question, Ms. Jackson, about the EPA's recent proposal finding greenhouse gases, as you said, are a danger to the public health and welfare. It really appears to me that that decision was based more on political calculation than on scientific ones.

In a memo that I received this morning, and it is marked Deliberative Attorney-Client Privilege, nine pages, you are mentioned on every page of this memo. It is a White House memo. Counsel in this Administration repeatedly, repeatedly, questions the lack of scientific support that you have for this proposed finding. It is here. Nine pages. This is a smoking gun, saying that your findings were political, not scientific. Here, page two: "There is concern that the EPA is making a finding based on harm from substances that have no demonstrated direct health effects such as respiratory or toxic effects."

You then talk about regulating greenhouse gases and the economy. Dow Jones Newswire this morning said U.S. regulation of greenhouse gases such as carbon dioxide "is likely to have serious economic consequences for businesses small and large across the economy." That is what a White House memo warned the Environmental Protection Agency earlier this year. Here it is: "Making the decision to regulate carbon dioxide under the Clean Air Act for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities."

How do you square that when you say I do not want any overriding effect on the economy of small businesses, when this internal document, marked Deliberative Attorney-Client Privilege, says everything you are proposing is going to have serious economic consequences for our businesses in this Nation?

Charlie Munger, who is Warren Buffett's partner at Berkshire Hathaway, was recently on CNBC. He said an artificial market in government-mandated carbon credits would be "monstrously stupid to do right now." He added that the move is almost demented considering other nations' intention to continue industrial development, emitting vast amounts of greenhouse gases.

I could go on, but I am fascinated to see what you have been saying and yet to see what the White House has been writing where you are on every page. Would you like to comment?

Ms. JACKSON. Certainly I would like to comment, Senator. I do not have that document in front of me so I will comment generally on many of the issues you bring up.

Senator WHITEHOUSE. Madam Chair, may I just inquire if the Senator intends to make that document a matter of record and if so, I ask unanimous consent——

Senator BARRASSO. Madam Chairman, I would be happy to do that.

Senator WHITEHOUSE. That way, we would know what we are talking about. I appreciate it. Thank you, Senator.

Senator BOXER. Without objection that will be in the record.

[The referenced information follows:]

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Discussion of scientific support and analysis.

The NPRM fails to articulate the process by which the Administrator came to the conclusion on p. 30, line 41-46:

> "The Administrator believes that the scientific findings in totality point to compelling evidence of human-induced climate change, and that serious risks and potential impacts to public health and welfare have been clearly identified, even if they cannot always be quantified with confidence. The Administrator's proposed endangerment finding is based on weighing the scientific evidence, considering the uncertainties, and balancing any benefits to human health, society the environment that may also occur."

The finding document remains very separate from the TSD, with only occasional references to the IPCC or particular CCSP report findings, and it is up to the reader's interpretation of the TSD to determine how the evidence has been weighed to arrive at the conclusions above. The finding rests heavily on the precautionary principle, but the amount of acknowledged lack of understanding about basic facts surrounding GHGs seem to stretch the precautionary principle to providing for regulation in the face of unprecedented uncertainty. (The TSD notes several areas where essential behaviors of GHGs are "not well determined" and "not well understood" (e.g., why have U.S. methane levels decreased recently?).) This could be remedied by expanding the discussion on pp. 25-31 to articulate more clearly how the Administrator weighed the scientific evidence related to each impact or how/whether she gave more or less weight to particular impacts for either the public health or the welfare finding and how she weighed uncertainty in her deliberations.

For example, the NPRM and TSD outline the following 5 human health effects from climate change: temperature effects, air quality changes, extreme events, climate-sensitive diseases and aeroallergens. It is unclear whether temperature effects will result in net mortality increases or decreases and the scientific literature does not provide definitive data or conclusions about aeroallergen impacts. Further, the impact of climate-sensitive diseases may be minimal in a rich country like the US.

Hence, it seems that the Administrator's public health endangerment conclusion is based on the other two impacts, with the most significant health risks being posed by air quality changes. If so, the discussion here should state this explicitly. Further, the argument for why the increases in ozone from climate change pose a health impact could be fleshed out more thoroughly (p. 27, line 34-39). Since tropospheric ozone is already regulated under the Clean Air Act, EPA should explain why those regulations are inadequate to protect public health from the ozone impacts of climate change.

In addition, the finding could be strengthened by including additional information on benefits, costs, and risks (where this information exists); meeting appropriate standards for peer review; and accepted research protocols. Some issues to cover that would address costs, benefits, and risks include the following:

- Methodology or methodologies used for weighing risks and various outcomes and the risks associated with each;
- Confidence intervals related to model results at the regional and local scales;
- Underlying assumptions of findings, publications on which the findings are based, and "business-as-usual" scenarios;
- Quality and homogeneity of temperature data from surface networks that may affect estimates of past temperature trends, and calibration and verification of models;
- Impacts of climate change on the value of net economic benefits.

The Finding should also acknowledge that EPA has not undertaken a systematic risk analysis or cost-benefit analysis.

In the absence of a strong statement of the standards being applied in this decision, there is a concern that EPA is making a finding based on (1) "harm" from substances that have no demonstrated direct health effects, such as respiratory or toxic effects, (2) available scientific data that purports to conclusively establish the nature and extent of the adverse public health and welfare impacts are almost exclusively from non-EPA sources, and (3) applying a dramatically expanded precautionary principle. If EPA goes forward with a finding of endangerment for all 6 GHGs, it could be establishing a relaxed and expansive new standard for endangerment. Subsequently, EPA would be petitioned to find endangerment and regulate many other "pollutants" for the sake of the precautionary principle (e.g., electromagnetic fields, perchlorates, endocrine disruptors, and noise).

Endangerment without consideration of regulatory consequences.

EPA should explain whether it considered a finding that methane and the other four non-CO2 GHGs do in fact contribute to climate change, based on their higher warming potential, but that overriding policy concerns make such a finding infeasible concerning CO2. Because methane and the other four non-CO2 GHGs are either already regulated under the CAA or are functionally equivalent to pollutants typically regulated under the CAA, an endangerment finding for these GHGs would be relatively routine. Because GHGs are understood to be long-lived, well-mixed in the atmosphere, and generated by many nations around the globe, the most analogous regulatory approach for controlling GHGs would seem to be Title VI of the CAA. EPA's relevant experience with controlling ozone-depleting substances should inform its decisions on an approach to regulating GHGs.

In contrast, an endangerment finding under section 202 may not be not the most appropriate approach for regulating GHGs. Making the decision to regulate CO2 under the CAA for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities. Should EPA later extend this finding to stationary sources, small businesses and institutions would be subject to costly regulatory programs such as New Source Review.

The role of mitigation, adaptation, and/or benefits of climate change
To the extent that climate change alters our environment, it will create incentives for innovation and adaptation that mitigate the damages from climate change. The document should note this possibility and how it affects the likely impacts of climate change.

For example, climate change is likely to unfold slowly and people may migrate from hot regions (e.g., Arizona) to more temperate regions (e.g., Minnesota) and this would mitigate the adverse impacts on health (although people would incur migration costs). Further, climate change is likely to lead to innovation that mitigates the ozone related health impacts; it seems reasonable to assume that in the absence of regulation of GHS, new medicines that lessen the health impacts of ozone will be developed. Moreover, advances in technology and the development of public health programs (e.g., cooling centers) are likely to lessen the negative welfare impacts of heat waves.

Similarly, the document would appear more balanced if it also highlighted whether particular regions of the US would benefit, and to what extent these positive impacts would mitigate negative impacts elsewhere in the United States. For example, it might be reasonable to conclude that Alaska will benefit from warmer winters for both health and economic reasons. Deschenes and Moretti (2007 *Review of Economics and Statistics*) demonstrate that extremely cold days are more dangerous to human health than extremely hot days. Please add this paper to the literature review in Section 7(a) of the TSD.

Further, there should be a consideration of the fertilizing effect of CO2, which may overwhelm the negative impact of additional hot days on agricultural yields in some regions of the US. In others regions, the net effect is likely to be negative.

Agency compliance with other environmental mandates
There is some concern that an endangerment finding, and some of the language used to support the finding, will make it more difficult to comply with NEPA and other environmental planning statutes.

- This finding and the associated emission standards for these six greenhouse gases may make it much more expensive and difficult to develop other air quality standards (NAAQS in particular). For example, EPA has recently asked BLM to use models that sometimes exceed current budgets in developing resource management plans and environmental impact statements. Also, there are currently no models available that forecast the potential impacts of greenhouse gases on climate change at the regional or local level, which are the levels at which our decisions are made. This rule also could make findings that would leave agencies vulnerable to litigation alleging "inadequate NEPA" due to new information (i.e., the endangerment finding) that was not considered when the EIS was developed. Without a model available, an agency would be left with little ability to respond because (i) there are no standards to serve as thresholds, (ii) there are no tools to analyze impacts, and (iii) the cost of analyzing impacts could be exorbitant.

- Unnecessarily broad or expansive language with respect to the effects of GHGs or the certainty with which effects will occur could create a basis for finding all GHG emissions significant for purposes of NEPA analysis, thus requiring an EIS for all direct and indirect effects that change GHG emissions in any amount. Similarly, EPA should be very careful to state which effects are significant and their scale to avoid unintentionally trigger NEPA for Federal actions not otherwise considered to have environmental impacts.

Four chemicals v. six chemicals
EPA proposes to make an endangerment finding on six directly emitted and long-lived GHGs—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride, treated as a group as an air pollutant. The proposal, however, defines the terms "air pollution" and "air pollutant" for purposes of section 202(a) as the six GHGs, two of which are not addressed in the underlying petition and which EPA recognizes are not emitted by new motor vehicles or motor vehicle engines, and on page two, this action is characterized as a "response" to the Supreme Court's decision in Massachusetts v. EPA, 549 U.S. 497 (2007), which arose from a petition with respect to the four GHGs. Although the latter two GHGs have similar characteristics and are addressed in UN documents, it is not clear why they are included in the endangerment and "cause or contribute" findings. While it appears that section 202(a) provides sufficiently broad authority for EPA to do so and the draft explains this decision as based on the uniform, global nature of GHG ambient concentrations, a seemingly simpler regulatory action might be to base the definition of "air pollution" or "air pollutant" on the four GHGs emitted by new motor vehicles or motor vehicle engines.

- This raises the question of the extent to which EPA intends or does not intend this finding to extend beyond section 202 to the same terms used in other key parts of the CAA, e.g., section 101(a) (general findings and purpose), section 108 (National Ambient Air Quality Standards), and section 111(b) (New Source Performance Standards). EPA would benefit from making its position explicit in this proposal. Commenters are sure to take this important issue on in some fashion so EPA may as well do what it can to shape the debate and the comments being invited. For example, it could note that the same terms are important parts of other key CAA provisions, but then state that EPA at this time is only addressing and seeking comment on issues directly associated with section 202. Alternatively, it could state that it views these findings as to GHGs to be broadly applicable to the Act as a whole, but nonetheless make clear that EPA is not in this rulemaking attempting to consider or address any of the other regulatory findings that would be necessary to trigger GHG regulation under other CAA programs. A third option would be to invite comment on whether interested parties believed there was any basis for distinguishing the understanding of the terms in the section 202 context from the understanding of the terms in other parts of the Act.

- EPA fails to make a case of why the six GHGs should be treated as a single pollutant and why all six should be treated as a group. Treating the gases as a group yields the indefensible result that emissions of PFCs, SF6 and HFCs other than HFC-134a from motor vehicles are asserted to "cause or contribute: to air pollution, when there are no such emissions from motor vehicles. Further, EPA states that: "Depending on the circumstances... it may be appropriate to set standards for individual gases [of the 6], or some combination of group and individual standards." EPA asserts that these regulatory flexibilities would exist whether or not greenhouse gases are treated as multiple pollutants or as individual pollutants. [See discussion on page 32-33.]

- These greenhouse gases differ significantly in terms of physical properties, formation mechanisms, and possible mitigation techniques.

  - Mobile source CO_2 is formed by burning fossil fuels. Virtually all of the carbon in the fuel is converted to CO_2. The more efficient the combustion process, the more complete the conversion to CO_2. Unlike for traditional criteria pollutants (*e.g.*, NMHC, CO, NO_X), which can be converted to other substances through emissions aftertreatment (*i.e.*, catalytic converters), no mobile aftertreatment device can convert CO_2 to something that does not contribute to global warming.[1] Therefore, mobile source CO_2 emissions can only be reduced by burning less fossil fuel, either by improving fuel economy or converting to less carbon-intensive fuels.

  - Mobile source CH_4 and N_2O emissions are by-products of fossil fuel combustion. However, burning less fossil fuel does not necessarily mean reducing CH_4 and N_2O emissions. For example, using methane (CH_4) rather than petroleum could increase CH_4 emissions

  - Mobile source HFC emissions arise from releases of HFC refrigerants from mobile air conditioners. Therefore, mobile source HFC emissions can only be reduced by using different refrigerants and/or "hardening" mobile air conditioners to reduce the potential for refrigerant leaks.

  - Mobile source CO_2, CH_4, N_2O, and HFC emissions not only have different global warning potentials, they remain in the atmosphere for different amounts of time and are removed from the atmosphere by different mechanisms.

- In contrast to EPA's citation of Class I and Class II substances under Title VI, under Title II, EPA's treats mobile source NHMC and NO_X as separate pollutants, even though both are precursors to the formation of tropospheric ozone (i.e., urban smog), and both are mitigated through a combination of fuel improvements,

[1] In fact, current catalytic converters operate by convert HC, CO, and NO_X <u>into</u> CH_4, N_2O, and CO_2 (and water).

> combustion process changes, and emissions aftertreatment. Considering that mobile source CO_2, CH_4, N_2O, and HFC emissions are even more distinct from one another than are mobile source NHMC and NO_X emissions, and that EPA classifies NMHC and NO_X as separate pollutants, EPA should classify these as separate pollutants or, alternatively, classify CO_2 as one pollutant, classify CH_4 and N_2O as another pollutant (class), and classify HFCs as a third pollutant (class).

Accounting for the Global Nature of Greenhouse Gas Pollution in the Findings
In this draft proposal, EPA finds under Clean Air Act (CAA) section 202(a) that (1) "air pollution" in the form of the global mix of six greenhouse gases (or the GHGs) may be reasonably anticipated to endanger public health and welfare (the endangerment finding); and (2) emissions of an "air pollutant" in the form of the global mix of the GHGs from new motor vehicles or motor vehicle engines cause or contribute to that air pollution (the contribution finding). The agency characterizes the "global" nature of the GHG emissions and concentrations (page 16), notes the effects of GHG emissions globally in making the endangerment finding (page 29), and assesses the contribution of the GHGs emitted by section 202(a) sources as a percentage of global emissions (page 36). The proposal appears to assume, but does not explicitly discuss why (or solicit comment on whether) these are relevant legal inquiries under section 202(a) the Clean Air Act. This is virtually certain to be a subject of public comment; and we recommend that EPA directly address this matter in the proposal.

EPA also factors international considerations into the endangerment and contribution findings differently. On page 29, the agency states: "The Administrator judges that impacts to public health and welfare occurring within the U.S. alone warrant her proposed endangerment finding." On page 36, however, EPA bases its finding on the "significance" of the GHG emissions from section 202(a) sources for purposes of the contribution finding in part on their global contribution:

> It is the Administrator's judgment that the collective GHG emissions from section 202(a) source categories are significant, whether the comparison is global (over 4 percent of total GHG emissions) or domestic (24 percent of total GHG emissions). The Administrator believes that consideration of the global context is important for the cause or contribute test but that the analysis should not solely consider the global context.

It is unclear from the proposal why a difference in treatment of the two findings is necessary or appropriate. Because the Administrator regards the domestic contribution comparison in itself to be significant, it may be simpler (and less open to challenge) to base the contribution finding solely on domestic considerations. (This would not foreclose a discussion of global contribution, provided, as requested above, it is made clear how relevant this is under section 202(a)).

Group Versus Individual Approach to "Air Pollutant"

On page 32, EPA proposes to designate the six GHGs, collectively, as the "air pollutant" for which the endangerment finding is being made. The proposal, however, then goes on at pages 33-40 to analyze the contribution issue both as to the six GHGs collectively, and as to each individually. Although EPA hints that it believes either a collective or individual approach could be valid and would reach similar results, see page 34, the agency never really says expressly whether or not it is soliciting comment on these issues and whether it would be open to considering a pollutant-by-pollutant-based approach for the final rule. We recommend that this be made explicit.

Comment Solicitation

EPA limits solicitation of comment on the proposal to the simple statements on page six to the effect that it seeks comment on all aspects of this action (data, methodology, and major legal and policy considerations). While this is efficient and legally sufficient, the agency may want to highlight a few key areas in which comment would be most useful. The first two issues that we've identified above might be worthy of an express request for comment. EPA may also need to clarify the relationship between comment on this proposal and the July 30, 2008 Advance Notice of Proposed Rulemaking on Greenhouse Gas Emissions (ANPR). In footnote 11, EPA indicates that it is responding to a few key comments from the ANPRM in this proposal related to the endangerment and contribution findings and asks commenters to "submit to the docket for today's action any comments they want EPA to consider as it makes a decision on this proposed determination." We recommend that EPA move the footnote 11 discussion up to the main body of the proposal at page 6 and explicitly state that commenters may not rely on prior submission of comments to the ANPR and that if parties wish EPA to consider comments made in response to the ANPR or other rulemakings, they should re-submit those comments here with an appropriate explanation as to how the commenter believes those comments relate to issues raised in this proposal. We can imagine a party trying to make out a challenge to this endangerment finding based on arguments that were raised entirely or primarily in comments submitted in response to the ANPR, not this proposal (a prospect that is somewhat more likely due to the fact that EPA in various places discusses comments made in response to the ANPR).

Agricultural Production

The proposed Finding erroneously suggests that Intergovernmental Panel on Climate Change (IPCC) predicts an increase in both crop and forest production in the U.S. (e.g., pg. 28 lines 21 and 34 of the Proposed Finding, pg 80 line 26, page 87 line 9). The IPCC findings refer to North America, not the U.S.

The Synthesis and Assessment Product 4.3 (SAP 4.3) "The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity in the United States" (U.S. Climate Change Science Program/Backlund et al. 2008), which includes more recent and more geographically-specific publications, tempered IPCC's findings substantially, citing water limitations, northward progression of production zones, diminished grain set period, pest infestations, nutrient limitations, air pollution, and wildfire, among other dampening factors to production in agriculture and forestry in the

U.S. Significant increases in production may be possible within North America as a whole, but are unlikely within the U.S. itself.

The Findings document should be corrected to reflect that IPCC is referring to North America rather than the U.S. More importantly, the Findings document should be revised to accurately reflect the discussion in the Technical Support Document (TSD).

In addition, the placement of the IPCC prediction near the beginning of each section in the absence of any summarization gives the impression that large production increases are conclusive. This overrides the very salient and far more equivocal discussion which follows, leaving readers with the mistaken impression that climate change is a boon to U.S. agriculture and forestry. A summary statement which more accurately reflects the content of the technical discussions should be composed to lead each section.

Emissions from the combustion of different fuels vs. emissions from different mobile source categories.
Mobile source CO_2 is formed by burning fossil fuels. Virtually all of the carbon in the fuel is converted to CO_2. Therefore, and considering that CO_2 remains in the atmosphere for a long time, national aggregate consumption of different types of fuels provides the most accurate basis for estimating CO_2 emissions.

IPCC guidelines for national reporting of GHG emissions account for this fact, and EIA and EPA both use fuel consumption—not vehicle sales and fuel economy—as a basis for estimating and reporting CO_2 emissions. According to the IPCC (emphasis added), "Emissions of CO_2 are best calculated on the basis of the amount and type of fuel combusted (**taken to be equal to the fuel sold**, see section 3.2.1.3) and its carbon content."[2]

Such reporting addresses petroleum consumption in the aggregate and for different petroleum-based fuels, such as shown below from EIA (http://www.eia.doe.gov/oiaf/1605/ggrpt/carbon.html):

[2] http://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2_Volume2/V2_3_Ch3_Mobile_Combustion.pdf, p. 3-10.

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Table 5. U.S. Carbon Dioxide Emissions from Energy and Industry, 1990, 1995, and 2000-2007
(Million Metric Tons Carbon Dioxide)

Fuel Type or Process	1990	1995	2000	2001	2002	2003	2004	2005	2006	P2007
Energy Consumption										
Petroleum	2,178.8	2,206.1	2,459.0	2,470.2	2,467.7	2,512.4	2,602.8	2,619.9	2,596.2	2,579.9
Coal	1,799.9	1,698.9	2,146.4	2,084.4	2,094.1	2,131.3	2,157.6	2,161.2	2,139.8	2,162.4
Natural Gas	1,033.6	1,193.0	1,239.8	1,189.3	1,245.7	1,212.6	1,194.2	1,182.5	1,158.9	1,237.0
Renewables[a]	6.3	10.5	10.8	11.2	13.1	11.8	11.5	11.6	11.8	11.9
Energy Subtotal	**5,018.7**	**5,308.5**	**5,855.8**	**5,755.1**	**5,820.6**	**5,868.1**	**5,966.2**	**5,975.3**	**5,906.7**	**5,990.9**
Nonfuel Use Emissions[b]	*98.8*	*108.5*	*110.8*	*105.8*	*106.2*	*103.9*	*112.1*	*107.0*	*111.5*	*117.6*
Nonfuel Use Sequestration[c]	*251.2*	*286.5*	*300.2*	*293.8*	*293.9*	*289.6*	*311.9*	*302.3*	*302.0*	*301.5*
Adjustments to Energy	-82.4	-62.4	-60.9	-45.3	-37.8	-28.3	-44.3	-46.5	-86.8	-74.2
Adjusted Energy Subtotal	**4,936.3**	**5,246.0**	**5,794.8**	**5,709.9**	**5,782.8**	**5,839.7**	**5,921.9**	**5,928.9**	**5,839.9**	**5,916.7**
Other Sources	85.1	102.3	97.8	97.0	97.7	98.9	102.0	103.4	105.9	105.1
Total	**5,021.4**	**5,348.4**	**5,892.6**	**5,806.9**	**5,880.5**	**5,938.7**	**6,023.9**	**6,032.3**	**5,945.8**	**6,021.8**

[a]Includes emissions from electricity generation using nonbiogenic municipal solid waste and geothermal energy.
[b]Emissions from nonfuel uses are included in the energy subtotal above.
[c]The Btu value of carbon sequestered by nonfuel uses is subtracted from energy consumption before emissions are calculated.
P = preliminary data.
Notes: Data in this table are revised from the data contained in the previous EIA report, *Emissions of Greenhouse Gases in the United States 2006*, DOE/EIA-0573(2006) (Washington, DC, November 2007). Totals may not equal sum of components due to independent rounding. Adjusted energy subtotal includes U.S. Territories but excludes international bunker fuels.
Source: EIA estimates.

General Editorial issues

"New Motor Vehicle or Motor Engine" Reference. The draft sometimes simply refers to emissions from "motor vehicles" rather than emissions from "new motor vehicles or motor vehicle engines." (The draft could indicate initially that the term "motor vehicle" is intended to refer to both of these.)

Statements regarding consideration of current and near-term emissions [page 35], and cumulative emissions [page 17] appear to be inconsistent, and should be clarified.

EPA clearly intends that the definition of the "air pollutant" emitted by new motor vehicle or motor engine sources to be the six GHGs. In several places, however, the proposal appears to describe the four GHGs emitted by new motor vehicles or motor vehicle engines as the "air pollutant." See, e.g., pages 1 (lines 36-37), 2 (lines 24-27), and 36 (lines 34-37).

Ms. JACKSON. I will answer briefly, Senator, because I suspect we will have this discussion many times.

I disagree with several of the characterizations. The first is that the endangerment finding is a scientific finding, mandated by law. Mandated by the Supreme Court. The Supreme Court ruled 2 years ago that EPA owed the American people a determination as to whether greenhouse gases, either in whole or individually, endanger public health and welfare. That analysis had been done really before I took the oath of office.

We did review it, as I promised to do at my confirmation hearing. We reviewed the science of it; we went through interagency review through the White House. Again, I am not sure what that document may say. It is deliberative so obviously it is people's opinions. It does not mean regulation.

I have said, over and over, as has the President, that we do understand that there are costs to the economy of addressing global warming emissions and that the best way to address them is through a gradual move to a market-based program like cap-and-trade. There is a difference between a cap-and-trade program which can be authorized by legislation and is being discussed, and a regulatory program.

With respect to EPA's regulatory authority, it is true that if the endangerment finding is finalized, EPA would have authority to regulate greenhouse gas emissions. What I have said in that regard is that we would be judicious, we would be deliberative, we would follow science, and we would follow the law.

I would call your attention to our greenhouse gas registry rule, where we particularly did not look for small businesses to register or have to report emissions. If you want an indication of where we know the significant sources of greenhouse gases are, they are in transportation and the utilities sector.

Senator BARRASSO. One last quick question, Madam Chairman, if I could.

Could you please explain then by what authority can the EPA decide to not include all of these other emitters of carbon dioxide who do reach the emission thresholds set out in the Clean Air Act? I mean, how can anyone in your Administration decide where to draw that line? The law, as you just said, is clear. So how do you not go after everyone or expose yourself to lawsuits for all of those others?

Ms. JACKSON. Senator, thanks. I know this has been an issue that we have gone back and forth on. It is one I look forward to having continued dialog on.

If it comes to that point where we are into a regulatory mode on greenhouse gas emissions, I will say only the following two things. I am not prepared here to outline the legal strategies. Certainly it would be one of the things we would propose as part of a regulatory agenda.

The second thing I would say is to remind you that we, under the Clean Air Act, have the potential to regulate all those sources you talk about now for other contaminants, schools, hospitals, farms and Dunkin Donuts. We do not, because we make regulations smartly to address the threats in the best way possible and with an eye toward understanding that we do not want to unduly

affect those who can least afford to pay. So, I do believe that the regulatory process allows us the opportunity to make those decisions and to do it but we are not at that point yet.

Senator BARRASSO. Thank you, Ms. Jackson. Thank you, Madam Chairman.

Senator BOXER. Thank you, Senator. Senator, I just want to point out to you that they are under court-ordered act and this is a Nation of laws and the endangerment finding that was made is strikingly similar to that was made by the Bush administration because the science is so obvious and the attack on the EPA is, I think, just not necessary right now. They are just saying that they have the ability to act. We have the ability to act in a cap-and-trade system which will give us the revenues to keep small businesses whole, to keep consumers whole. So you are fighting against something that is not there. But, in any case, we will get on with this.

I just wanted to say for the record that Senator Lautenberg and I asked the GAO to investigate EPA's management of the Superfund Program and the pace of the cleanups. We expect the results later this year. We will make them public and, at that point, we will see what an objective source says about the pace of the cleanups. This is going to be an ongoing issue for us.

Senator Lautenberg.

Senator LAUTENBERG. Thanks, Madam Chairman. We continue with this ping-pong game with one side saying listen, we have got to protect the health and well-being of our families. We have enormous costs for doing that because, under the previous Administration, health programs were starved but the budget deficit grew fat, lazy and indifferent. Now we have to dig our way out of the hole that was created by that.

Those who have a budgetary concern should express that. But I would ask a question of those who called upon the Federal Government, and again I use the case of Katrina, come in, bring us money, we do not give a darn where you get that money, you have got to save our communities. They did not say, but wait a second, look at what we are going to do to the budget if we do that. It was just get us into the condition that we ought to be in.

There are several questions, Madam Chairman, that I intend to submit to Ms. Jackson. But I will tell you something. I get compliments regularly for the work that I do to protect the environment and the health of children. It is a major focus of mine.

When we look at what was done in these past years, and we use corporate responsibility then as it existed by looking at ExxonMobil who, 15 years ago roughly, had the spill up in Alaska, and paid fines. They were fined additionally $5 billion and rather than pay the fine, which would be, to use the expression, a spit in the ocean compared to $10 billion worth of earnings and profit, and they employed lawyers year after year after year and finally they have got that fine now reduced to a half a billion dollars. So, it shows what the enemies of good thought in terms of health and well-being of our children look like.

We cannot be dissuaded from our mission that is to protect the well-being of our families. When I looked at these things, Ms. Jackson, the budget proposed a significant funding increase for pro-

grams to help keep the public safe from dangerous chemicals. I applaud the increase. But I am concerned that the EPA may not have the legal authority necessary to fully address the risks posed by industrial chemicals. Do you believe that the Toxic Substances Control Act needs to be reformed?

Ms. JACKSON. Senator, I do agree that at this time there is a need to look at our authorities and to seriously consider revising and updating that law.

Senator LAUTENBERG. So we have things that we have to do to catch up with our allowable activities. According to several studies, enforcement of environmental laws by EPA fell significantly over the last 8 years. There is additional funding provided in the budget. Will that be able to increase the enforcement and to be able to challenge the polluters that there are consequences for their actions?

Ms. JACKSON. Yes, Senator, I am glad to know that there is an increase that allows us to add about 30 FTEs to our enforcement program. There is $600 million available in the enforcement budget. You know I am a long-time believer in the importance of enforcement. It levels the playing field for companies across our Country and it acts as a deterrent for future bad behavior. I think that those are important roles that EPA has to play.

Senator LAUTENBERG. Thank you. Thank you, Madam Chairman.

Senator BOXER. Thank you so much. Senator Vitter.

Senator VITTER. Thank you, Madam Chair.

Madam Administrator, in light of the Appeals Court decision involving the New Source Review regulations, will you recommend that the Agency permanently return to the old rules from prior decades or will you support a new attempt at reforming those rules?

Ms. JACKSON. Thank you, Senator. We are in the process of reviewing many NSR rule changes that came about. We have already indicated our agreement to re-look at the aggregation rule and I believe that we have indicated that we intend to look at other rules and their practices as well.

Senator VITTER. What would you say is a general timeframe for that?

Ms. JACKSON. I could not give you a deadline, sir, but I would say that review is ongoing and we are aware of the fact that there is a need for some regulatory certainty and so I would hope that we would look to complete that review in months, not years.

Senator VITTER. OK. Are there any areas of that New Source Review landscape where you are definitely not going to explore that but just revert, essentially permanently, to the old rules?

Ms. JACKSON. I am sure there are, Senator, but I could not enumerate them. What we have said is that we are going to look at the rules as a whole. There were several rule changes made, especially toward the end of the last Administration, that we were bound to reconsider. The NSR enforcement program in my mind remains an important one. It is based on a simple idea and one that has become complex, I think, the rulemaking. So I do believe there may be a need for changes. I am also sure that there are some aspects that will not change.

Senator VITTER. OK. Second topic. Do you think Federal jurisdiction under the Clean Water Act should extend beyond navigable waters and, if so, how or to what extent?

Ms. JACKSON. I have been on record, Senator, as saying that I believe we are in such a murky, forgive the bad pun, area with respect to Clean Water Act jurisdiction that the best and easiest thing to do would be to have Congress clarify that jurisdiction. Through Supreme Court determinations, we find ourselves spending a majority of our resources looking at whether we have jurisdiction over a water body or a wetland rather than on the permitting or enforcement in those water bodies or wetlands. I am well aware, that——

Senator VITTER. One way to do that is with the term navigable which is, and can be, clearly defined. Is that where you would draw the line or where would you draw the line and how would you define that jurisdiction?

Ms. JACKSON. I have no final position on that issue. I am well aware that is something that is being discussed in this Committee and elsewhere and I would look forward to having those discussions.

Senator VITTER. OK. I think we all agree on the need for certainty and predictability and the benefit of that. I would just suggest the law uses a word that is certain and can be predictable, at least if we clear up court cases with reference to it, and that is navigable waters. So, getting clarity is one thing. Significantly expanding jurisdiction is something different. I look forward to continuing that discussion.

I applaud you and the Administration for setting out as a stated goal transparency in all sorts of ways. There are a few things the EPA has been doing in the last few years that I think were positive in that regard. One was holding regular management conversations between senior leaders and staff that were often broadcast on desktop computers for the whole Agency. Another was a report on the website regarding specific goals and action items and accomplishments or lack thereof under those goals. Do you plan on continuing those specific things? Or what specific things with regard to the goal of transparency would you set out?

Ms. JACKSON. I think those are both good management practice, Senator, and as soon as we have more time you will see us continuing those and expanding. We have already put out what is commonly referred to as our version of the Fishbowl Memo which is considered the gold standard based on Administrator Ruckelhaus' idea that EPA should operate in a fishbowl. We have endorsed that idea. My schedule is now up on the Internet so that people can see where I am and who I am meeting with. I have encouraged and actually insisted that my senior staff do the same. I like your ideas and I think that I would happily embrace them and others.

Senator VITTER. Great. Well, I point out those two specific ideas and ask if you can follow up with us on that. Also, with regard to your schedule, sometimes there are items like staff briefing with no subject matter or meeting with Administration officials with no topic or list of participants and I suggest that does not particularly say anything. So, if you all could put a level of detail there that

says something meaningful, I think that would round out that initiative.

Finally, I just ask unanimous consent to submit Senator Inhofe's opening statement for the record.

Senator BOXER. Without objection.

[The prepared statement of Senator Inhofe follows:]

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

Madam Chairman, I look forward to today's hearing and the chance to discuss EPA's priorities for the coming year.

Before I begin, though, I want to discuss Administrator Jackson's recent efforts to promote openness and transparency at EPA. I applaud Administrator Jackson for establishing clear, precise guidelines on transparency. According to the Administrator's April 23rd memo, the Agency will "reach out as broadly as possible for the views of interested parties" when developing regulations. I trust the Administrator and her staff will honor this principle, especially as the agency considers regulating greenhouse gases under the Clean Air Act. We don't agree on this issue—I am strongly opposed to carbon regulation under the Clean Air Act and I will try to stop it—but at least we can agree that EPA should remain open to a wide variety of viewpoints.

Also, I was pleased that Administrator Jackson recognized the importance of congressional oversight. Already I have submitted requests for information on many issues, and I will continue to seek information on issues before the Agency. Thus far, from my standpoint, the record of the Agency has been mixed. I hope that with future requests, on a more consistent basis, I can receive answers to questions in a timely and substantive manner. I look forward to working with the Administrator and her staff on this.

Now, on to the budget. Permit me to put this year's EPA budget request in context.

Since January 20, the day President Obama took office, over 2 million Americans have lost their jobs and 1 million families have lost their homes to foreclosure.

From January to March of this year, the Nation's Gross Domestic Product dropped by a larger than expected 6.1 percent.

And yet, since January 20, we have spent $787 billion in an economic stimulus package and increased the public debt by $558 billion.

Now, in spite of these massive spending increases and economic problems, the President proposes what I can only call a stunning increase in Federal spending: a total of $3.4 trillion. This is more than the Nation has ever spent under any other President. It will also create a $1.8 trillion Federal deficit—the highest ever.

The President also proposes some budget cuts, to the tune of $17 billion. Half of those will come from defense spending. So, according to the President's budget, and during a time of war no less, we are being asked to cut a number of next-generation weapons systems for our war fighters. Yet there seems to be enough money to increase EPA's budget by a staggering 37 percent.

Now don't get me wrong: there are legitimate areas of EPA's budget that deserve funding increases. The Clean Water State Revolving Loan Funds are a good example. But we must remember the proper balance between environmental protection and economic growth. We will not end this recession, or attain a cleaner, healthier environment, by enlarging EPA's bureaucracy with taxpayer dollars.

The President made a point of saying recently that he wants his Cabinet to identify $100 million in cuts out of his multi-trillion dollar budget. I think he can find that extra $100 million in EPA's bloated budget request alone.

The President's EPA budget in many respects fuels a growing bureaucracy and encourages more misguided regulation, both of which threaten jobs, our energy security, and our economic competitiveness, not to mention our citizens' freedoms.

Thank you, Madam Chairman.

Senator BOXER. If I might say, Senator Vitter, the Clean Water Restoration Act that you asked about, the Rapanos decision, Senator Feingold has written a bill. I am a co-sponsor of it. A couple of members on my side would like to amend that and I know some members on your side would as well. We are working hard with Senator Feingold and CEQ to see what we can come up with.

So I want to assure you that we are going to have a bill up for markup in the near future on that because I think everyone agrees we need clarification. Your idea of how to clarify and mine will no doubt be different but we will debate that at the time. But that will be coming in the next several weeks.

I believe Senator Whitehouse is next.

Senator WHITEHOUSE. Thank you, Madam Chair.

One point and one question. The point follows up a little bit on my opening statement.

For as long as there has been pollution, there has been a constant battle with polluters who do not want to pay the costs of their pollution, either preventing it or cleaning it up. They would like to just dump it and have it been somebody else's problem. There is absolutely nothing new about that. Polluters do not want to pay. What is new is our understanding of what the costs are of carbon pollution: economic costs, environmental costs, wildlife and habitat costs, and, as we have discovered, very significant national security costs.

In the context of that battle, of the polluters not wanting to pay, I would like to ask for unanimous consent to add to the record of this hearing an article entitled Lobbying: Energy Companies' Utilities Spent Nearly $80 Million in First Quarter. Some of the highlights of this are that all environmental groups combined in the first quarter spent a grand total of $4.7 million on lobbying. The Nature Conservancy was the top environmental group and it spent $850,000 thus far.

[The referenced information follows:]

ENVIRONMENT & ENERGY DAILY
THE BEST WAY TO TRACK CONGRESS

LOBBYING: Energy companies, utilities spent nearly $80M in first quarter *(05/12/2009)*

Alex Kaplun, E&E reporter

Electric utilities and oil and gas companies have massively outspent environmental groups and renewable energy advocates on Capitol Hill during the opening months of 2009, according to recently filed federal disclosure reports.

All told, electric utilities -- which includes both individual companies and their Washington-based advocacy groups -- have spent a grand total of $34.4 million on lobbying activities during the first three months of the year, according to data complied by the Center for Responsive Politics. The oil and gas companies have also spent roughly $44.6 million during that same period.

Those totals come on top of what was a record year for industry spending in 2008, when the electric utilities and the oil and gas companies spent a combined total of more than $286 million on their lobbying efforts. And assuming the energy and climate change debate drags out for some time, it is highly possible that the lobbying bill could exceed last year's total.

Though the disclosure reports filed by the various companies and law firms reveal little about exactly what issues they are spending their money on, the spending figures reinforce the high stakes for industry with the Democratic Congress and industry's willingness to pay what is necessary to influence lawmakers.

Meanwhile, environmental groups, labor unions and other liberal-leaning groups are taking a different approach, spending millions of dollars on a series of television ads and other advertising campaigns aimed at pressuring key lawmakers to support cap-and-trade legislation. But they have spent comparatively little on direct lobbying of lawmakers.

And while there have been only a handful of ads from the industry side, energy companies and their lobbying groups are dramatically outspending environmentalists when it comes to not just lobbying but also campaign contributions (*E&E Daily*, April 28).

Thus far in 2009, all environmental groups combined have spent a grand total of $4.7 million on lobbying, according to the Center for Responsive Politics. The Nature Conservancy, which has spent $850,000 thus far, tops the list.

The various renewable energy companies have spent a grand total of $7.5 million, with the biggest spender there being the American Wind Energy Association which has spent just over $1.2 million.

By comparison, Exxon Mobil Corp. alone has spent more than $9.3 million in the first few months of 2009. The company's lobbying totals exceed any other single corporation or organization except the U.S. Chamber of Commerce, which has spent a total of $15.5 million.

The chamber, which has been by far the single biggest lobbying force in Washington over the last decade, has likewise been active in the energy debate this year, though it is unclear from the disclosure records what amount -- if any -- the organization has spent on lobbying of lawmakers. Its totals are not included in the calculations for any energy-specific industries.

Other heavyweights in the energy sector include: Chevron Corp. at $6.8 million, ConocoPhillips at $6 million, BP at $3.6 million and Marathon Oil at $3.4 million. All four are among the 20 biggest lobbying spenders in any sector in the first few months of 2009, according to the Center for Responsive Politics.

As for electric utilities, the biggest single lobbying spender is Southern Co. at $3.7 million, followed by the Edison Electric Institute at $2.6 million, American Electric Power Co. Inc. at $1.7 million and Exelon Corp. at $1.54 million.

Senator WHITEHOUSE. By comparison, ExxonMobil Corporation alone in the first quarter has spent more than $9.3 million, Chevron Corporation $6.8 million, Conoco-Phillips $6 million, BP $3.6 million, Marathon Oil $3.4 million. Just from big oil, I add that up to a total of $29.1 million. The total of all oil and gas companies is roughly $44.6 million just in this first quarter.

So, if we wonder why the Senate is the last place in America that still does not get it, that climate change is a real problem for our people and that carbon pollution is something that people should pay for when the emit it, big utilities, big industry, gee, connect the dots.

The question that I have has to do with the Clean Water Restoration Act. I have heard, over and over again, about the farmer with the pond who is going to water his cattle in the pond and now there is going to be an EPA agent staked out by the pond so that before any cow walks into the pond and muddies those waters they will need a permit. It seems a little improbable. It is sort of one of those urban myths that has developed. Can you tell us a little bit about what your strategy will be for farms that have ponds for watering cattle and horses and livestock?

Ms. JACKSON. Thanks, Senator. The sponsors, Congressman Oberstar and Senator Feingold, have already had lots of dialog with the Farm Bureau and with the farming community members to assure them that their goal in trying to clarify jurisdiction is not to snare agriculture and farmers in a whole new set of regulations but to use common sense.

It is not our intention to worry about the whereabouts of every single cow. There is lots of precedent that exempts farm operations and, in fact, the plain language already developed would make it clear that this imposes no new requirements on farm operations. There are certainly requirements now on farm operations, on agribusiness, as you know. So that is not an issue. It has been used, in my mind, as a distraction to lobby against the very real need for clarification of jurisdiction.

Senator WHITEHOUSE. The family farmer with the cattle pond can rest assured.

Ms. JACKSON. Yes, please, help me assure them.

Senator WHITEHOUSE. Thank you.

Senator BOXER. Thank you.

Senator Udall.

Senator UDALL. Thank you, Madam Chair.

Administrator Jackson, I would like to draw your attention to a very important EPA project that affects New Mexico, Arizona and the Navajo Nation. The EPA sponsored a cleanup of contaminated sites in the Navajo Nation due to uranium mining. This is a multi-region project with significant EPA funding so it is important for us that EPA headquarters is supportive. EPA is responsible for cleaning contaminated homes, water sources, abandoned mines on the Navajo Nation.

It is absolutely critical that EPA see this site through because recently there has been discussion about starting uranium mining, restarting uranium mining, in the West. It would be tragic, I think, to start creating new environmental issues on the Navajo Nation in the 21st century before we uphold our commitments to clean up

the legacy from the 20th century. Will you commit to continuing the EPA cleanup of uranium sites on the Navajo Nation until the job is complete?

Ms. JACKSON. Yes, Senator, we will stay the course and finish the job. As you know, there is an additional $7.8 million for the Superfund Removal Program to clean up high priority abandoned uranium mines, waste piles and home sites and to sample irrigation and livestock wells on the Navajo Nation.

EPA has already assessed more than 100 structures. We will work with the Navajo Nation to screen an additional 100 mines. We have already assessed 200 wells.

Senator UDALL. Thank you. The budget that you have presented has significant increases for the Clean Water State Revolving Fund and also the Safe Drinking Water State Revolving Fund. But if you go out into the future and you look at the needs, you know, your Agency has done an assessment of the overall needs, and the needs, the long-term needs assessment is a lot higher than the money that we are putting toward this. I applaud the Administration and you for increasing those budgets, but what do you think the strategy should be down the road to deal with those huge needs that do not appear to be met on a yearly basis of the budgets we have right now?

Ms. JACKSON. Well, I think that we have sort of a two-pronged strategy at EPA. The first is to show and to demonstrate that the Recovery Act money, that $6 billion amount, plus now this amount of money in the President's budget, that we can spend it wisely, that we can help to move communities across the country, and rural communities particularly who have affordability problems with trying to fund this work on their own, with getting this money.

I do think we need to look, going forward, at the size of the need, and recognize that oftentimes it is rural communities that cannot come up with the ability to make a loan so they need additional help from the Federal Government. It is something that came up in my confirmation hearing. I think it is an unanswered question, one I would like to work on with you and other members of this Committee.

Senator UDALL. Thank you. I very much appreciate your looking out for those small rural communities because they really do have a hard time, whether it comes to water quality of wastewater infrastructure. I mean, they are the ones that are really struggling.

Thank you, Madam Chair.

Senator BOXER. Thank you. Senator Klobuchar.

Senator KLOBUCHAR. I am back. Administrator Jackson, it is good to see you.

The 2007 Energy Independence and Security Act mandates the production of $36 billion of biofuels by 2022. Last year, ethanol was used to displace over 9 billion gallons of gasoline in our Nation's transportation system. So cellulosic ethanol, as we have discussed before, could raise per-acre ethanol yields to more than 1,000 gallons, significantly reducing the land requirements.

I see cellulosic as the future of biofuels. But we still have to move from small scale to large scale production. Ms. Jackson, how important of a role do you see for biofuels in the overall effort to

reduce global warming emissions from gasoline and other fossil-based transportation fuels?

Ms. JACKSON. Biofuels play an important and critical role, Senator. They have the potential, as long as we follow the science and do it right, to literally have the impact of removing millions of cars off of our highways, of addressing not only global warming pollution but other pollutants as well.

As the President has said, those private investors and entrepreneurs who took the risk of investing in ethanol when the country asked them to, should be there and their infrastructure needs to remain so that it is there to support the next generation biofuels. Most of that infrastructure can be retrofitted with support. EPA's role in that process is to speak honestly and in a science-based way to make sure we are moving to the right fuels and, at the same time, protecting, if you will, the current infrastructure.

Senator KLOBUCHAR. Thank you very much. As you know, the EPA allows ethanol blends in gasoline of up to 10 percent by volume. Under the current renewable fuel standard, we are likely to hit the so-called blend wall in the near future. The blend wall, as you know, is the maximum possible volume of ethanol that can be blended into motor gasoline at a 10 percent concentration. The EPA and the Department of Energy are currently conducting tests on E15 and E20, allowing up to 15 percent and 20 percent ethanol in a gallon of gas by volume. Results will be published by the end of the year.

Meanwhile, a group of those pushing for increased biofuels filed a petition with the EPA in March 2009 requesting an increase in the ethanol blend from 10 to 15 percent. This process is likely to take as long as 270 days to move through the regulatory process. Would you consider recommending a short-term increase in the level of ethanol blends to say E11 or E12 to help prevent this technology from hitting a ceiling before a decision is made on E15?

Ms. JACKSON. Senator, the EPA is currently in the middle of a request for information and comment on the growth energy petition for an increase in the blend up to 15 percent. Ethanol in gasoline, we are eagerly looking forward to data that comes in domestically and from abroad on whether those materials up to 15 percent can be blended, whether ethanol can be blended at some level above its current 10 percent. It would be wrong of me to prejudge that process. The most important thing is to follow the data.

I also want to call your attention to the President's recent development of a biofuels task force. It includes Secretary Vilsack, Secretary Chu, myself and the President's applied recognition that there are more issues than what the actual blend number is. There are distribution issues, there are warranty issues, and there are consumer education issues that all need to be addressed in order to make sure that this fuel that we are producing has an outlet.

Senator KLOBUCHAR. I appreciate that because you can have a fuel but then if you do not have the vehicles that are compatible with that fuel there is an issue. Then if you do not have the pumps, that is another one.

Senator Boxer, do you mind if I do one other?

Senator BOXER. No, go ahead.

Senator KLOBUCHAR. Administrator Jackson, last week your Agency released a proposed rule for implementing the renewable fuel standard as part of the Energy Independence and Security Act of 2007. The rule deals with all aspects of RFS implementation including greenhouse gas emissions for all fuels covered by the RFS.

One area of particular concern in my State is the issue of life cycle greenhouse gas emissions. I understand the EPA is looking at both direct greenhouse gas emissions and indirect emissions from land use changes. It is a proposal to measure indirect emissions that is causing concern.

I know you believe in basing things on science. We are concerned that this is speculative to look at this and would be very difficult to do on an evidence based method. I would just like you to look carefully at this analysis and that you will not include indirect land use calculations if the analysis shows that such a calculation is speculative and is not evidence based.

Ms. JACKSON. Absolutely, Senator. In fact in releasing the rule for comment, we also initiated a peer review science process of specifically those issues regarding indirect land use and international impacts. I look forward to results of that review as well as the public comment period.

Senator KLOBUCHAR. All right. I am sure we will be talking more about this in the future.

Ms. JACKSON. No doubt.

Senator KLOBUCHAR. Thank you.

Senator BOXER. Thank you very much.

Administrator, I have three brief questions but they are important. Then I am going to ask Senator Merkley, would you come and sit up here because I am going to have you complete the hearing.

What is your timeframe, Administrator? Did you need to leave? Because I know you are under pressure.

Ms. JACKSON. I never know where I am supposed to be. What time do we have to get out of here? I think I have to be in Mount Vernon at noon time.

Senator BOXER. So that means you need to get out now.

Ms. JACKSON. Well, we will work with you, Madam Chair, whatever you decide.

Senator BOXER. Let me just ask these three questions and then Senator Merkley will close it. I also have other questions for the record. Administrator Jackson, I will ask you all three so just take some copious notes on this.

Chromium 6 is a heavy metal that has contaminated drinking water supplies in California. Erin Brockovich fought for people who drank water contaminated with Chromium 6. A 2008 study shows that Chromium 6 can cause cancer when ingested. In 2002, EPA had delayed deciding whether to toughen chromium's drinking water standard. Could you tell me the status of EPA's effort to revise the drinking water status for chromium?

My second question is toxic air in schools. You are my heroine because you made a promise that you are going to begin to collect monitoring data. I wanted to ask you, what do you anticipate accomplishing in the monitoring program during 2010? What is your goal?

On coal ash, at your confirmation we discussed the need for EPA to address the threat posed by coal combustion waste disposal practices. The TVA's devastating coal ash spill is one of the biggest examples of the risk posed by this coal waste. EPA recently announced it was reviewing the safety of ash impoundments and considering regulating ash disposal. Can you tell me the status of EPA's efforts on regulating coal ash disposal, determining the safety of coal waste impoundments, and cleaning up the TVA's coal ash spill?

Ms. JACKSON. Madam Chair, I will start with the last first but I do have notes on all.

On coal ash, I have promised proposed regulations by the end of the calendar year and we are on track to meet that goal. In fact, our announcement just yesterday that we were inserting ourselves into the TVA cleanup I think will give us important information that can be used in that rulemaking for coal ash impoundments across the country.

We also, as you know, have sent out a request for information to utilities to find where, as you had put it earlier, the ticking time bombs might be. We found some. Not only that, but we identified some additional ones that the utilities identified, so we are still gathering information there.

Senator BOXER. When will you announce the results of your investigation?

Ms. JACKSON. I do not have a date but I will get that back to you, Madam Chair.

Senator BOXER. But you are saying by the end of the year you will have recommendations?

Ms. JACKSON. No, we will have a regulatory proposal.

Senator BOXER. You will? So I am assuming that by the end of the year you will also have made the assessment of what a big problem this might be.

Ms. JACKSON. Certainly. Hopefully before that.

Senator BOXER. Very good. Just so you know, the Committee is doing its own investigation on this matter. We will let you know of our discoveries as well.

Ms. JACKSON. Yes, that would be very helpful. Obviously, we would love to share information there.

On the schools monitoring initiative, you know that we are already monitoring at 62 schools in 22 States. We are requesting $3.3 million and 5 FTE in this fiscal year 2010 budget. There is about a 60-day window so we are actually getting to the end where we will start to get some results. We promise as quick a turnaround as we can and I am happy to share those results with the Committee as we get them. Obviously, also most important, is to share them with the parents and the school administrators who are eagerly waiting.

Senator BOXER. Please. I think it is really important. I would not wait for an artificial date. Administrator, if I can say this: if it was the FDA, if you were the FDA, and you found out that there was a prescription drug out there that was harming people, you would not wait until you figured it all, you know, finish the whole study. You immediately, ethically, have to say, if you find that there is a

school that is dangerous and you know it now, please, I think that it is key to take action. Can I count on you to do that?

Ms. JACKSON. Absolutely.

Senator BOXER. Excellent. Chromium 6?

Ms. JACKSON. Chromium 6, EPA is still reviewing its data. It is coordinating with California EPA, with my former home at the New Jersey DEP and with DCD and HCSDR. I do not have a date for you, Madam Chair, but I will push to get one to your staff.

Senator BOXER. Please do. We will send the rest of our questions in.

Senator Merkley, I am going to ask you to chair the rest of the hearing and if anybody comes in, call on them. Otherwise, you can close it down when you are done without a time limit.

Senator MERKLEY [presiding]. Thank you very much, Madam Chair. I am pleased to do so. I thank you very much for joining us today and for doing so much in a very short period of time to take on such important environmental issues.

I wanted to simply ask, in the context of questions that have preceded me today, how important is it that we, as a Nation, really dive in and tackle carbon dioxide and other global warming gases?

Ms. JACKSON. Well, as the endangerment finding proposal says, CO_2 and the other five gases we evaluated pose a threat to this generation and to future generations. There is an urgent need to get into this game in a big way as a country, to address it and to do it a way that is also mindful of our economy, our current economic situation, but also for selfish reasons. The race for clean energy is on. If we do not jump in in a big way, and climate change is certainly part of the equation, we are going to be passed by by others in the world that are jumping on before us.

[The referenced information follows:]

INSERT 1

Chromium

Question: What is the status of EPA's efforts to revise the drinking water standard for chromium and can you give us a date?

Answer: The Agency is aware of the study released by the National Toxicology Program in 2008 indicating that chromium +6 may cause cancer via oral ingestion. An assessment for chromium +6 currently exists on the Agency's Integrated Risk Information System (IRIS; a database containing the Agency's scientific position on the health effects resulting from exposure to certain chemicals) but does not include an evaluation of carcinogenicity via oral ingestion. As a result, EPA included the reassessment of chromium +6 on its 2008 IRIS agenda. The Agency is currently working with California EPA, New Jersey DEP, and the Centers for Disease Control/Agency for Toxic Substances and Disease (ATSDR) since they have recently developed draft assessments for chromium +6 and will have a schedule for the completion of an IRIS assessment in the near term.

The Safe Drinking Water Act is required to review, and if appropriate revise, each existing national primary drinking water regulation every 6 years. We expect to release the review results for our second review of drinking water standards in the next few months. While the drinking water standard for chromium is part of this review, we will not have the completed assessment in time for this release. Once we have the completed health risk assessment for chromium +6 and determine whether there are any changes in health toxicity values, we will evaluate this information along with other factors (e.g. analytical and technological feasibility and occurrence and exposure in drinking water) to see if it is appropriate to revise the drinking water standard. Note that the Agency is not precluded from performing an off cycle review for any drinking water standard as opposed to waiting until the end of the third review cycle (i.e., 2015).

Senator MERKLEY. Some have said that given the Nation's economy right now, that we should delay our work. But it sounds to me like you are saying we will miss a critical opportunity to strengthen our economy.

Ms. JACKSON. Absolutely. The race to the clean energy future is on. I have heard Secretary Chu at the Department of Energy liken it to the Internet boom of the last decade. If we are not in it in a big way, and we are not bringing American innovation and willingness to roll up our sleeves and get it done to bear, I worry that we are going to miss a tremendous opportunity.

Senator MERKLEY. I want to try to understand the most cost effective way, because we want to get as much done as possible at the least cost and strengthen our economy. Is it more effective for us to simply pass rules that restrain every single source of carbon dioxide of at least all of the major sources of carbon dioxide? Or is more cost effective to allow one producer to say, hey, it costs me, if you will, $1 million to reduce quantity x but someone else a quarter of a million dollars and we should work to create a market so that we can get more done for less?

Ms. JACKSON. A market-based mechanism is more effective. It is not only more economically effective, it can be more environmentally effective because it quickly puts a price on carbon that business can assess and make a determination of how best to adjust.

Senator MERKLEY. Thank you. I want to turn to, and I appreciate your bringing that to our attention, I believe that the market-based approach is not a completely new invention. We have used it with some effectiveness on sulfur dioxide and acid rain. Do we have some experience with that?

Ms. JACKSON. That is right. EPA certainly has quite a bit of national experience in its SO_2 program, its acid rain program. That program was found to be a very cost effective way, much cheaper than estimates and much cheaper than industry forecasts, by the way, of reducing SO_2 pollution and having a dramatic impact on acid rain and on the health of our forests in the Central and Eastern part of the United States.

Senator MERKLEY. I do recognize that carbon dioxide and methane gas is a more complicated picture than sulfur dioxide but despite that greater complexity this tool would be suitable for use?

Ms. JACKSON. Yes, absolutely, Senator.

Senator MERKLEY. Thank you.

One important issue to Oregon, as it is to many States, is the Superfund Program and the program has a modest increase in your budget. The Portland Harbor is one example of a major, major Superfund cleanup. There have been times when folks working on that project in Oregon have been somewhat frustrated.

For example, one company received an 82 question information request asking it to identify potentially responsible parties with questions going back to 1937. The company has spent $100,000 responding and expects their final response to total more than 1 million pages. This is a company that has already identified itself as being involved in a positive way with the cleanup.

Are there ways that we can reduce the paperwork and increase the action on the Superfund site itself?

Ms. JACKSON. Certainly. I do believe that there are opportunities for us always to make sure that we are moving as quickly on the cleanup front as we are on the enforcement front. I am happy to look into that particular matter for you, Senator. It sounds a bit as though we are trying to find additional people to help pay for the cleanup, which is a good thing, but we need to balance that against actually getting the cleanup done. So I am happy to look into that for you.

Senator MERKLEY. Thank you very much. There are some recent Supreme Court decisions that have affected the scope of the Clean Water Act's jurisdiction, making the jurisdiction a little bit murky. That would affect a number of important rivers and streams in Oregon with the potential loss of Clean Water Act protections. Is this situation one which your Agency is familiar with and is working on? Is there a way to dive in in terms of implementation activities, enforcement activities, how will the work of your Agency be affected?

Ms. JACKSON. The current situation has us spending more of our time trying to determine whether we have jurisdiction than we do working on actual permits or enforcement cases. So the administrative burden is quite high. I have said before, and I said before you joined us, that I believe that the most efficient solution would be a legislative one, a statutory one, since we have landed where we are through a series of two Supreme Court decisions which were, in and of themselves, somewhat murky because they split decisions. So we are operating on fairly shaky ground. It would be very helpful to have legislative clarification on jurisdictional issues.

[The referenced information follows:]

INSERT 2

Superfund

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QUESTION: Are there ways that we can reduce the paperwork and increase the action on the Superfund site itself?

ANSWER: EPA has many sample information request letters that are specifically tailored to the type of site (e.g., chemical plants, dry cleaners), the sophistication of the recipient (e.g., individual, small business, large corporation), the recipient's involvement with the site (e.g., owners, operator, transporter) and the nature of the information sought. The Agency understands that responding to information requests impose a burden on recipients and makes every effort to narrow the list of questions to include only those that are pertinent to the particular site. The responses received from these requests are often invaluable to the Agency in helping us find out more about the site history and chemicals of concern. In addition, the agency can learn of potentially liable parties who can then share in the cost of cleanup.

BACKGROUND: Since January 2008, EPA has sent information request letters to approximately 260 current and former property owners or tenants and facility operators in the general vicinity of Portland Harbor. These letters are part of EPA's information gathering process and search for potentially responsible parties under the authority provided by Section 104(e) of CERCLA.

The requested information will help EPA learn more about the materials handled at the site, past practices and known or suspected releases of contamination into the Portland Harbor Superfund Site. In addition, the requested information will help determine the need for response, choosing or taking necessary response at the Portland Harbor Superfund Site. This will allow EPA to determine liability and identify additional potentially responsible parties for the Portland Harbor Superfund Site.

Some companies have operated for a long period of time or have numerous properties along the river which may generate a significant amount of information in response to our request. EPA has been sensitive to the workload that responding to our request may have on some companies and has granted extensions to the response deadlines for all who have asked. We have also agreed to

phased responses in some circumstances.

The Portland Harbor Superfund Site was listed on the NPL in December 2000. The RI/FS was started in 2001 and is still underway. The RI/FS is investigating the lower 12 river miles of the Willamette River. The Oregon Department of Environmental Quality is the lead for identifying and controlling upland sources to the Superfund Site. Additionally, two early sediment removal actions have been conducted, and other hot spot early actions are underway. A cleanup decision for the river is anticipated in 2012.

Senator MERKLEY. Well, thank you very much. It is a pleasure to have you, Administrator Jackson, and the work you are doing and I certainly look forward to working with you and all the work that you are doing on green energy and the economy.

I do ask for the unanimous consent of the Committee to enter into the record the document that Senator Whitehouse discussed earlier in the hearing. Hearing no objections, so ordered.

Senator VITTER. Thank you all very much and we will bring this Committee hearing to a close.

[Whereupon, at 11:15 a.m., the Committee was adjourned.]

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