

DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2012

WEDNESDAY, MARCH 16, 2011

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 2:02 p.m., in room SD-124, Dirksen Senate Office Building, Hon. Jack Reed (chairman) presiding.

Present: Senators Reed, Nelson, Murkowski, Cochran, Collins, and Blunt.

ENVIRONMENTAL PROTECTION AGENCY

STATEMENT OF HON. LISA P. JACKSON, ADMINISTRATOR

ACCOMPANIED BY BARBARA J. BENNETT, CHIEF FINANCIAL OFFICER

OPENING STATEMENT OF SENATOR JACK REED

Senator REED. Let me call the hearing to order and welcome the Administrator.

And, on behalf of my colleagues, I would like to welcome you to the hearing on this year's 2012 budget request for the Environmental Protection Agency (EPA).

I am very pleased to welcome Administrator Lisa P. Jackson to testify before the subcommittee. Administrator Jackson, it's my understanding that this hearing will be your seventh appearance before a congressional committee during this Congress. I know all of your colleagues in the Cabinet are jealous, but tell them to try to contain themselves. We are extremely glad that you and Chief Financial Officer Barbara Bennett are here this afternoon to discuss these very important issues.

Like many in the room, I'm old enough to remember, in 1969, before President Nixon led the enactment of the EPA, when the Cuyahoga River, in Ohio, was on fire. Sometimes we forget the progress that we've made, and it's a result of legislation that has traditionally been supported on a bipartisan basis. And that's helped us improve the environment, which improves the health and, I think, also the productivity of the United States.

We do face significant challenges to continue to improve air and water quality. And they're particularly difficult at a time when our economy is under huge pressure and it is struggling, and we recognize that. We are under budget constraints. We also realize that we have to balance all of these factors: the need for environmental pro-

tection, to protect public health, and the need to wisely use public resources.

I want to make sure that the progress that we've made in the last several years—indeed, several decades—is not lost, and do so in a way that is wise and prudent for Americans, and particularly in their capacity as taxpayers.

If you turn to the budget, the administration has requested a total of \$8.973 billion for the EPA this fiscal year 2012. That's a decrease of \$1.318 billion below fiscal year 2010 enacted level, or a 13 percent cut. We all recognize that 2010 represented a significant increase in funding. But, I think, looking between the lines, a great deal of that funding went to sewer and drinking water infrastructure and clean-up operations, which had directly contributed to jobs and to stimulus, you know, around the country, at a time we needed it.

With the amount that has been requested, the budget proposes targeted investment to increase State air and water pollution control grants, and increased funding to climate change and chemical safety programs.

And I'm particularly pleased to see the request includes \$5 million for work on new fuel-efficiency standards for passenger cars that will save consumers money at the pump and further reduce carbon pollution. At a time when we see gas prices, not inching up, but galloping up, the long-term need to increase the efficiency of our fleets should be obvious.

But, I'm somewhat disappointed that there's a cut of about \$1.1 billion from water infrastructure programs. These are the very programs that were funded so robustly in 2010, and represented, for communities, not only a chance to improve the quality of life, but also to put people to work. For example, there's a \$550 million cut for the Clean Water State Revolving Fund (CWSRF), a \$397 million cut of the Drinking Water State Revolving Fund (DWSRF); there is a 26 percent cut for sewer projects and a 29 percent cut for DWSRF projects. And these may seem somewhat mundane, but literally it's the plumbing of our national economy and it's the way to keep people working and keep improving the quality of the environment.

It's been estimated that we'll lose about 300 fewer infrastructure projects because of the funding requests. And it will reduce jobs in the construction industry, which is already reeling from a 22 percent unemployment rate; these are the tradesmen and women who really need to get off the bench and get back to work.

In my home State of Rhode Island, we've lost 6,000 construction jobs since 2008. And, at the same time, we have more than \$1.2 billion of CWSRF projects that have been identified. So, we are far from, sort of, responding to the identified needs, in terms of sewage and water projects throughout the State. The magnitude of cuts is even greater over time, because many such States stretch their CWSRF and DWSRF programs by leveraging through their own resource and other resources. So, this also has a multiplier effect.

I also note that the National Estuary Program has been cut by about 17 percent, for a total of a cut, about \$27 million. And there has been a complete elimination of Diesel Emissions Reduction Act program. These have, again, particular concerns to my home State.

We, in Rhode Island, are participating in the Estuary Program, through our Narragansett Bay.

I know we are going to have a very good discussion today. I know the issues here are very difficult conceptually and they have consequences, both in terms of environmental quality, but also in terms of the overall economy. We do have to provide balance. And I hope, at the result of our discussions and deliberations, we will be able to provide you with the resources necessary to keep your mandate to protect the environment and also to help stimulate our economy.

With that, I'd like to recognize the ranking member, Senator Murkowski.

STATEMENT OF SENATOR LISA MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

Welcome, Administrator Jackson. Appreciate you being here today, and I note the Chairman's comments about your many appearances before subcommittees already yet this year. But, good to have you here today.

I recognize that today's hearing is about our fiscal year 2012 budget request, but most of the questions that I will direct to you this afternoon involve policy. I think you recognize that many of the agencies that the EPA has taken have immediate consequences to the State of Alaska.

When I travel around the State—and I do, a lot—I think, in this past year, I have just been about everywhere and one agency that gets more public scorn than any out there is that of the EPA. And I can tell you that the EPA is in a league of its own. We've got all of the other Federal agencies involved in all aspects of our life, but it really is the EPA that takes the brunt. And it is because people literally feel concerned that their economic livelihoods are being put at risk. I've had so many people approach me and say, "Lisa, you've got to reign in," Lisa, this Lisa "you've got to rein in the EPA. They're out of control. They're going to put me out of business."

And it's somewhat amazing to me that the EPA has decided to make Alaska, of all places, its problem child. And I hate to put it in those terms, but I want you to understand what it is that I hear from the people in my State. We've got cleaner air and cleaner water than just about anywhere else in the world. We've been mining, drilling oil—for oil and gas for decades. And yet, we have, seemingly, been so singled out by the EPA.

As I look at the fiscal year 2011 CR that we voted on the H.R. 1 that we voted on last week, it's clear to me that Alaskans are not alone in their view about the EPA. Of the 21 amendments that were related to energy and the environment that were voted on by the House, 9 of them placed funding limitations on various EPA policies. I know that you had a chance to look at those.

One of those amendments that was passed was offered by my colleague from Alaska, and it concerned the air permits that Shell Oil has applied for in the Beaufort. Shell has spent 5 years and \$50 million in pursuing these air permits from the EPA for no more than two drill ships to operate in the Arctic Outer Continental Shelf (OCS). Just last month, the EPA's Environmental Appeals

Board rejected those permits, remanded them back to the EPA's Region 10 for more analysis. Shell has now dropped its plans to drill in the Beaufort this summer. It costs the company even more money, certainly more jobs and economic opportunity within the region. And the delay truly is—it's 100 percent attributable to the EPA.

I cannot understand I just cannot understand how it can take so long for an agency to approve an air permit for a drilling rig that will operate 25 to 75 miles offshore less than one quarter of the year. The kinds of permits that are routinely issued in the Gulf of Mexico take 6 weeks to issue. And these are in air sheds where there are many more drilling rigs operating year round, you've got more communities in close proximity.

In Shell's case, there was supposed to be one drill ship, and the nearest area that would possibly face any impacts on air quality is the North Slope Borough. The borough is 88,000 square miles. It's bigger than 39 States, has roughly 7,000 people spread out across this area. The activities, right in their backyard, over in Prudhoe Bay and other fields, haven't had to go through this level of delay.

So, again, we're trying to understand. You're issuing an air-quality permit, it takes 6 weeks in one region of the country, and after 5 years we are still waiting.

Another issue that I'll have an opportunity to ask you, in questioning, that is equally frustrating, and this relates to a permit that we're trying to get in the National Petroleum Reserve (NPR-A). ConocoPhillips has submitted an application to the Corps of Engineers (COE) for a project known as CD-5 that would bring the first oil to market from the NPR-A. But, in order to do this, they've got to get a bridge over the Colville River. Contrary to the statutes passed by the Congress, establishing the reserve for the expeditious exploration and development of oil and gas resources, the EPA used an arbitrary designation that is neither in statute nor in regulation this is the Aquatic Resource of National Interest (ARNI) to threaten or override the COE decision and prohibit construction of the bridge.

Now, I sent you a letter about the designation of the ARNI, what standards are used in applying them. I just did receive a response. And, while I thank you for the response, it does not alleviate the concerns that I have. I'm very concerned that, by using this designation, the EPA has, essentially, the ability to pre-emptively signal a veto for projects under section 404(c) of the Clean Water Act (CWA). And what's troubling to many in Alaska is that this designation appears to have been used only 16 times in an 18 year period, up until last year, but was then used twice in Alaska in 16 months. So, people are coming to me saying, "What's going on? What is happening within the agency? And is this something that we should be concerned about?" And I think the answer to that is yes.

One of the other issues that I'd like to raise is the process that the EPA is using to conduct the watershed assessment there in Bristol Bay.

I have to admit, Administrator, you probably have one of the tougher jobs in this town right now. I think your agency has become a lightning rod. Many people would like to see it abolished,

or your budget completely eliminated. And I want you to know, ahead of the questions here, I do not believe that that is the solution that many of us have with the issues in the EPA. I do not want to abolish the EPA. I simply want the EPA to do its job.

And implicit in the EPA doing its job is fair treatment to those that you regulate. It should not take 6 years and \$50 million to approve air permits for leases that companies have paid billions of dollars for, at the invitation of the Federal Government. The EPA shouldn't be using arbitrary designations, like ARNIs, to override statutes that are passed by the Congress, in order to block critical projects that support our Nation's energy security. And the EPA shouldn't be using processes that can effectively pre-empt projects before applications have even been submitted.

Again, I appreciate that you have a very difficult job and the balancing act is tough. Part of our job, here on the subcommittee, is to ensure that you have the resources necessary to do just that. And again, we want to work with you to make sure that you have that, but, again, the expectation is that you work to do that job.

Senator MURKOWSKI. I thank you, Mr. Chairman.

Senator REED. Thank you, Senator Murkowski.

Before I recognize the director, first, all statements will be made part of the record, but if any of my colleagues want to make brief opening remarks, I'd definitely entertain such remarks.

Senator COCHRAN. Mr. Chairman.

Senator REED. I'll—

Senator COCHRAN. Oh. Go ahead.

Senator REED. Let me just go, Senator Leahy, then Senator Cochran.

Senator Leahy.

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Mr. Chairman, I'll be brief. Unfortunately, like everybody else, I've got another issue to attend to.

I do welcome the Administrator here. I do agree that it's one of the most difficult jobs. I once said that I didn't know whether to offer her a congratulations or condolences on the job.

But, I'm delighted you're there. You've worked a lot with us in Vermont. You've—and, since the Lake Champlain Designation Act, 20 years ago—the EPA's been a strong partner in the cleanup of Lake Champlain. I think both Vermont and New York have valued that. We've worked with Republican and Democratic administrations, Republican and Democratic Governors, alike, to identify and test the quality of Lake Champlain. We want to preserve it; we think it's a natural wonder, but it's also an integral part of our economy. So, I thank you for your help in facilitating the movement on the ECHO grant in Vermont. I understand this. These funds may be available the first part of April, which will be very helpful in that program.

The EPA's interest in Lake Champlain is stronger than ever, especially with your move, earlier this year, to require that a new Phosphorous Total Maximum Daily Load Plan be written by the EPA. And I know that in Vermont the Governor's office will be working closely with you on that.

But, we welcome the EPA's participation, but we also want to see a commitment. While the EPA budget for other watersheds has grown significantly over the past few years, the budget request for Lake Champlain remains relatively flat. In fact, the fiscal year 2012 budget request recommends a reduction from the level in fiscal year 2010.

So, I hope that Vermont and New York can work together on that. I know you were disappointed when the gulf oil spill required you to postpone a planned visit to Vermont, but I want you to know we'll all be welcoming you when you get there.

And so, that's my whole statement, which may have actually sounded somewhat parochial, Mr. Chairman, but it is an area of some concern. I have talked with Ms. Jackson before about these subjects.

Senator REED. Thanks.
Senator Cochran.

STATEMENT OF SENATOR THAD COCHRAN

Senator COCHRAN. Mr. Chairman, I'm pleased to join you in welcoming the administrator of the EPA to the subcommittee to review the EPA's budget request for fiscal year 2012.

The mission of the EPA is to protect human health and preserve the environment, which is vital to the sustainability and quality of life. Our subcommittee recommends the levels of funding for all Government agencies to fulfill their missions, as authorized by law.

PREPARED STATEMENT

We appreciate your cooperation with our subcommittee, and we look forward to hearing your testimony.

[The statement follows:]

PREPARED STATEMENT OF SENATOR THAD COCHRAN

Mr. Chairman, I am pleased to join you in welcoming the Administrator of the Environmental Protection Agency (EPA), to the subcommittee to review the EPA's budget request for fiscal year 2012.

The mission of the EPA is to protect human health and preserve the environment is vital to the sustainability and quality of life. Our committee recommends the levels of funding for all Government agencies to fulfill their missions as authorized by law. We appreciate your cooperation with our subcommittee, and I look forward to hearing your testimony.

Senator REED. Thank you.
Senator Blunt.

STATEMENT OF SENATOR ROY BLUNT

Senator BLUNT. Thank you, Mr. Chairman. I'm going to have to leave in a minute, and I hope to get back for some of the questions; but, just in case I don't, I wanted to say a couple of things, and end with a story that I heard last year on the impact of energy prices.

I am concerned, as the discussion on the Senate floor has indicated this week that many are, that the EPA not use its regulating authority to do what I believe legislatively would never happen now with cap and trade. New Source Review would be one of those authorities.

In our State, the Ameren Corporation upgraded a plant almost a decade ago so it could burn some low-sulfur coal. And now the EPA's there, attempting to achieve, in my view, what the administration couldn't achieve legislatively. And that's a real problem. Our State's a State where, I think, 82 percent of the electricity comes from coal. All the utility providers went together, after the House passed bill last year, and paid for a study, that no one has found fault with, of the impact of that bill in our State. And it was that the utility bill would almost double in the first decade.

And as I was talking to people all over Missouri last year—I think it was sometime in September—a guy walked up to me, who was an hourly employee somewhere he didn't I know he didn't have a Ph.D. in economics and here's what he said. He said, "If my utility bill doubles, that's a bad thing. If my retired mother's utility bill doubles, that's a worse thing. But, if the utility bill at work doubles and my job goes away, the other two bills don't matter much anyway, because I can't pay mine and I can't help my mother pay hers." And I do think that's the impact of policies that go too far too quickly.

I think the country has reached a conclusion on this, and I hope the administration and the EPA follow along with that. You know, my mom and dad were dairy farmers. The whole discussion of spilt milk is incredible to me, as is the discussion of farming without dust, or fugitive dust. You know, when I go later to talk to the Missouri Farm Bureau today, the concept that you have to control where the dust goes when you're harvesting or getting a field ready to plant is astounding to them, and it is to me.

And I have a statement for the record, Mr. Chairman. Thank you for letting me make those remarks.

Senator REED. Thank you very much, Senator Blunt.

Senator Nelson, do you have a—comments? Or—

Senator NELSON. No, Mr. Chairman. We'll wait for the questions. Thank you.

Senator REED. Thank you. Senator Collins.

STATEMENT OF SENATOR SUSAN COLLINS

Senator COLLINS. Thank you, Mr. Chairman. I'll put my full statement in the record and just make a couple of brief comments.

The EPA performs absolutely vital functions in helping to protect the public health by ensuring that the air we breathe is clean and the water we drink is safe. We need, however, to make sure that, as the EPA issues new regulations, that it does not create so many roadblocks to economic growth that it blocks out private investment, which is the key to a prosperous future.

According to the White House's own assessment, as posted on its online "Dashboard", the EPA is responsible for roughly 1 out of every 5 pending regulatory actions currently under review. That is an astonishing number of rules that are under consideration by any one agency, especially at a time when the President has said that he wants to pull back unnecessary, inefficient, or outmoded regulations that make our economy less competitive.

Speaking of new regulations, in my questions today I am going to talk about the very negative potential impact of the EPA's new Boiler MACT rules on the forest products industry in my State and

throughout the Nation. I know that Maine's forest product businesses and its employees are extremely worried about the effects of this onerous regulation. I do recognize, in response to a letter that I spearheaded, that 40 Senators signed, the EPA's taking another look at those regulations. And I do look forward to discussing that issue.

But, I would just note to my colleagues that we saw a great lack of flexibility within the EPA on display last spring, when the EPA did not provide enough time nor enough training opportunities to allow small businesses to comply with lead paint abatement rules. If I had not been successful in my efforts to require the EPA to provide more time for compliance, small contractors would have faced steep fines, up to \$37,500 per violation, per day, that could have forced many of them out of business, through no fault of their own, since there simply were not enough the EPA trainers to ensure compliance.

So, those are some of the issues that concern me, Mr. Chairman. I also associate myself with your remarks on the State Revolving Fund budget cuts. Those programs have worked extremely well in my State.

Thank you.

Senator REED. Thank you very much, Senator Collins.

Madam Administrator, your statement will be made part of the record. And any comments you'd like to make now, please go ahead.

SUMMARY STATEMENT OF LISA P. JACKSON

Ms. JACKSON. Thank you so much, Chairman Reed. Thank you, Ranking Member Murkowski and members of the subcommittee. Thanks for inviting me to testify about President Obama's budget request for the EPA.

The Congress enacted laws, such as the Clean Air Act (CAA) and the CWA, on a broadly bipartisan basis. It did so to protect Americans from pollution that otherwise would make their lives shorter, less healthy, and less prosperous. It did so to make the air and drinking water in America's communities clean enough to attract new employers. It did so to enable America's local governments to revitalize abandoned and polluted industrial sites. It did so to safeguard the pastime of America's 40 million anglers. It did so to protect the farms, whose irrigation makes up a one-third of America's surface freshwater withdrawals. And it did so to preserve the livelihoods of fishermen in America's great waters. The Congress directed the EPA to implement and enforce those laws. And each year, the Congress appropriates the money that makes the EPA's work possible.

As the Administrator of the EPA, I am accountable for squeezing every last drop of public health protection out of every dollar we're given. So, I support the tough cuts in the President's proposed budget. But I am equally accountable for pointing out when cuts become detrimental to public health. Without adequate funding, the EPA would be unable to implement or enforce the laws that protect Americans' health, livelihoods, and pastimes. Big polluters would flout the laws against dumping contaminants into the air, into rivers, and onto the ground. Toxic plumes, already under-

ground, would reach drinking water supplies, because ongoing work to contain them would stop. There would be no EPA grant money to fix or replace broken water treatment systems. And the standards the EPA has set to establish for harmful air pollution—I will mention one of those in just a minute—would remain missing from a population of sources that is not static, but growing.

So, if the Congress slashes the EPA's funding, concentrations of harmful pollution would increase from current levels in the places Americans live, work, go to school, fish, hike, and hunt. The result would be more asthma attacks, more missed school and work days, more heart attacks, more cancer cases, more premature deaths, and more polluted waters.

Needless to say, then, I fervently request and deeply appreciate bipartisan support for funding the essential work that keeps Americans, children, and adults safe from uncontrolled amounts of harmful pollution being dumped into the water they drink and the air they breathe.

Decreasing Federal spending is no longer just a prudent choice, it is now an unavoidable necessity. Accordingly, President Obama has proposed to cut the EPA's annual budget nearly 13 percent. That cut goes beyond eliminating redundancies. We have made difficult, even painful, choices. We have done so, however, in a careful way that preserves the EPA's ability to carry out its core responsibilities to protect the health and well being of America's children, adults, and communities.

You've been reviewing the budget request for a month now, so I will save the details for the question period. Before turning to your questions, I will describe an action the EPA took earlier today to reduce toxic air pollution that poisons children's brains and causes cancer.

In the 1990 amendments to the CAA, the Congress directed the EPA to establish standards for limiting toxic air pollution from coal- and oil-fired powerplants. More than 20 years later, the EPA had still had not established those basic safeguards, even though coal-fired powerplants are responsible for 99 percent of the toxic mercury dumped into America's air every year. Mercury is a neurotoxin, a brain poison. It harms the brain and the developing brains of children, leaving them with learning disabilities.

Earlier today, I signed long-overdue proposed standards to require coal- and oil-fueled powerplants to spend the next several years installing the technologies that are already widely available for sharply reducing the amounts mercury, arsenic, chromium, and other toxic pollutants that they dump into the air. Many of America's powerplants already control toxic air pollution, despite the lack of Federal standards. But, nearly one-half of the country's coal-fired plants continue to do nothing to limit the amounts of these poisons that they spew into the air.

PREPARED STATEMENT

The EPA's new action will ensure that companies all across the country follow the same rules. The equipment for capturing neurotoxic mercury and cancer causing arsenic and acid gases also traps fine-grain soot, which kills people by lodging deep in their lungs. So, these new standards will, each year, prevent up to 17,000 pre-

mature deaths in America, not to mention 120,000 cases of aggravated asthma. The health benefits will swamp the compliance costs by a factor of about 10 to 1.

Thank you, Chairman Reed. I look forward to yours and the panel's questions.

[The statement follows:]

PREPARED STATEMENT OF LISA P. JACKSON

Chairman Reed, Ranking Member Murkowski, and members of the subcommittee, thank you for the opportunity to appear before you to discuss the Environmental Protection Agency's (EPA) proposed budget. In the State of the Union Address—as President Obama laid out a plan to win the future—he made clear that we “will not hesitate to create or enforce common-sense safeguards to protect the American people,” and explained that these safeguards are “why our food is safe to eat, our water is safe to drink, and our air is safe to breathe.”

These are the services the EPA provides. The EPA's activities prevent thousands of illnesses such as asthma, cancer, and other diseases. They help keep students and workers healthy so they can be more productive. And, they save lives. Preliminary estimates show that last year, the Clean Air Act (CAA) alone is estimated to have saved 160,000 lives and prevented more than 100,000 hospital visits.

President Obama also understands, however, that as millions of families are cutting back and making sacrifices, they expect the same level of good fiscal sense out of their Government.

This budget reflects that good fiscal sense, and makes many tough choices.

Fiscal year 2010's budget of \$10.3 billion was the EPA's highest funding level since its creation. This fiscal year 2012 budget request, while a deep cut resulting in a total budget of \$8.973 billion, will allow the EPA to carry out its core mission and fund the most critical efforts to protect the health of American families.

The choices in this budget reflect the EPA's commitment to core regulatory work and preserving the hard-won progress made over the last 40 years in protecting and restoring the quality of our air, water, and land; ensuring the safety of our chemicals; and providing strong enforcement of environmental laws and regulations.

At the same time, we have heeded the President's call for deficit reduction and made some painful choices to reduce funding for important programs. As it does every year, the EPA has worked to find efficiencies within our programs and in some cases made reductions trusting that further efficiencies can be found. The \$8.973 billion proposed for the EPA in the fiscal year 2012 President's budget will allow the EPA to maintain its core programs while investing in areas of urgent need and will support key priorities during this time of fiscal challenges. This budget represents a nearly 13 percent reduction over the fiscal year 2010 budget and reflects our priorities: supporting action on climate change and improving air quality; protecting America's waters; building strong State and tribal partnerships; strengthening enforcement and compliance; enhancing chemical safety; supporting healthy communities; and maintaining a strong science foundation. Because of the constrained fiscal environment, the budget decreases the State Revolving Funds (SRFs) by nearly \$950 million while supporting a long-term goal of providing about 5 percent of total water infrastructure spending and spurring more efficient system-wide planning. The budget also reduces the Great Lakes Restoration Initiative by \$125 million, eliminates about \$160 million in targeted water infrastructure earmarks, and eliminates \$60 million for clean diesel grants. Our priorities are aligned with the Government-wide effort to identify near-term, high-priority performance goals. For the EPA, our goals include reducing greenhouse gas (GHG) emissions, improving water quality, and delivering improved environmental health and protection to our communities. The EPA will work toward meeting these goals over the next 18 to 24 months. Chairman and members of the subcommittee, let me touch on some of the highlights of this budget, both the painful choices and the targeted investments that will protect our health and the environment.

Supporting Action on Climate Change and Improving Air Quality

We are committed to meeting the EPA's obligations under the CAA, the landmark law that all American children and adults rely on to protect them from harmful air pollution. We will continue to take meaningful, common sense steps to address climate change and improve air quality. Making the right choices now will allow the EPA to improve health, drive technology innovation, and protect the environment; all without placing an undue burden on the Nation's economy. Indeed, the EPA's implementation of the CAA has saved millions of lives and avoided hospital visits;

enhanced American productivity by preventing millions of lost workdays and growing the clean energy sector; and kept American children healthy and in school.

Our budget requests \$46 million for additional regulatory efforts aimed to reduce GHG emissions and address the Climate and Clean Energy Challenge. This includes \$30 million in State grants and support for permitting, which will ensure that our State partners develop the technical capacity to address GHG emissions under the CAA. Also included is \$6 million in additional funding for the development and implementation of new emission standards that will reduce GHG emissions from mobile sources such as passenger cars, light-duty trucks, and medium-duty passenger vehicles. These funds also will support the EPA's assessment and potential development, in response to legal obligations, of standards for other mobile sources. Also included is \$7.5 million for the assessment and potential development of New Source Performance Standards for several categories of major stationary sources through means that are flexible and manageable for business. Finally, this amount includes an additional \$2.5 million for priority measurement, reporting and verification activities related to implementing the GHG Reporting Rule, to ensure the collection of high-quality data. Our air toxics strategy prioritizes standards that provide the greatest opportunity for cost-effective emissions reductions. This budget requests an additional \$6.4 million to conduct integrated pilots in several communities, including disadvantaged communities, to systemically evaluate and reduce risks from toxic air pollutants through regulatory, enforcement, and voluntary efforts. An additional \$3.7 million will improve air toxic monitoring capabilities and dissemination of information between and among the EPA offices, the State, local and tribal governments, and the public. We anticipate a more than four-fold increase in the number of vehicle and engine certificates the EPA issues. In addition, as a result of diverse and sophisticated technologies, we anticipate more challenging oversight requirements for both the vehicle/engine compliance program and fuels. We will upgrade vehicle, engine, and fuel-testing capabilities through a \$6.2 million investment in the National Vehicle and Fuel Emissions Laboratory.

Protecting America's Waters

By leveraging partnerships and traditional and innovative strategies, we will continue to sustain and improve water infrastructure and clean-up America's great waterbodies. The EPA, the States, and community water systems will build on past successes while working toward the fiscal year 2012 goal of assuring that 91 percent of the population served by community water systems receives drinking water that meets all applicable health-based standards. The Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) provide grants to States, which use the funds to make affordable loans to local communities for public drinking water and wastewater infrastructure projects. The President's budget requests \$1.55 billion for the CWSRF and \$990 million for the DWSRF. This request level reduces funding for SRFs by \$947 million from fiscal year 2010 levels. As part of the administration's long-term strategy, the EPA is implementing a Sustainable Water Infrastructure Policy that focuses on working with States and communities to enhance technical, managerial, and financial capacity. Important to the technical capacity will be enhancing alternatives analysis to expand "green infrastructure" options and their multiple benefits. Future year budgets for the SRFs gradually adjust, taking into account repayments, through 2016 with the goal of providing, on average, about 5 percent of water infrastructure spending annually. Federal dollars provided through the SRFs will serve as a catalyst for efficient system-wide planning and ongoing management of sustainable water infrastructure. We will also leverage our partnership with States and tribes through an additional \$21 million in Water Pollution Control (section 106) grants to enhance water quality and to provide additional resources to address Total Maximum Daily Load, nutrient, and wet weather issues. An additional \$4 million is requested for Public Water Systems Supervision grants to support management of State and drinking water system data, improve data quality, and allow the public access to compliance monitoring data not previously available. This will improve transparency and efficiency and reduce the need for State resources to maintain individual compliance databases.

This budget supports the EPA's continued efforts to clean up America's great waterbodies. It includes \$67.4 million for the Chesapeake Bay program, a \$17.4 million increase, which will allow the EPA to continue to implement the President's Executive order on Chesapeake Bay protection and restoration. The increased funding will support Chesapeake Bay watershed States as they implement their plans to reduce nutrient and sediment pollution in an unprecedented effort to restore this economically important ecosystem. This budget has \$350 million included for programs and projects strategically chosen to target the most significant environmental problems in the Great Lakes ecosystem, a \$125 million decrease from fiscal year 2010,

the first year of the initiative. Led by the EPA, and engaging the capabilities of a number of Federal agencies, the initiative will implement the most important projects for Great Lakes Restoration and achieve visible results. The administration is committed to restoring and protecting the gulf coast ecosystem following decades of environmental harm, including the BP Deepwater Horizon oil spill. As chair of the Gulf Coast Ecosystem Restoration Task Force, established by Executive Order 13554, I will work with the Federal and State Task Force members to lead environmental recovery efforts in the region. The EPA is also working to support the Federal and State trustees on the Deepwater Horizon Natural Resource Damage Assessment and Restoration Trustee Council as they develop a restoration plan to restore the region's natural resources to pre-spill conditions. As a complement to these efforts, the EPA's request of \$6.6 million for the Mississippi River basin program will address excessive nutrient loadings that contribute to water-quality impairments in the basin and, ultimately, to hypoxic conditions in the Gulf of Mexico.

Building Strong State and Tribal Partnerships

Strong partnerships and accountability are vital to the implementation of environmental programs, and we are committed to strengthening State and tribal capacity. This budget includes \$1.2 billion for State and tribal grants which is an overall increase of \$84.9 million over fiscal year 2010 within this amount is a reduction to Nonpoint Source (section 319) Grants and Local Government Climate Change Grants. This request will provide critical support to State and local governments who are working diligently to implement new and expanded requirements under the CAA and Clean Water Act. These include implementation of updated National Ambient Air Quality Standards (NAAQS) and addressing complex water-quality issues such as nutrient pollution, which I discussed earlier.

To help tribes strengthen environmental protection capacity and move forward with implementation of environmental programs, an \$8.5 million increase is included for Tribal General Assistance Program grants and \$20 million is budgeted for the competitive Tribal Multi-media Implementation grant program.

Strengthening Enforcement and Compliance

Regulated entities, Federal agencies, and the public benefit from easy access to tools that help them understand environmental laws and find efficient, cost-effective means for putting them into practice. This budget includes a request of \$27.5 million for the Regaining Ground in Compliance Initiative. Through this initiative, the EPA will begin to harness the tools of modern technology to address some of these areas and make EPA's Enforcement and Compliance Assurance program more efficient and effective. We also will increase the number of inspections at high-risk facilities regulated under the Spill Prevention, Control and Countermeasures and the Facility Response Plan regulations. By increasing the use of electronic reporting, monitoring tools, and market-based approaches, we will improve the effectiveness and efficiency of our limited resources, and ensure a level playing field for American businesses. By maximizing the use of advanced data and monitoring tools, we can focus our limited inspection and enforcement resources and focus our attention on identifying where the most significant vulnerabilities exist.

Enhancing Chemical Safety

America's citizens deserve to know the products they use are safe. One of my highest priorities is making significant and long-overdue progress in assuring the safety of chemicals. We are taking immediate and lasting actions to eliminate or reduce identified chemical risks and develop proven alternatives. fiscal year 2012 represents a crucial stage in our approach for ensuring chemical safety. The program has attained its "zero tolerance" goal in preventing the introduction of unsafe new chemicals into commerce. However, many "pre-TSCA" chemicals already in commerce remain un-assessed. With the \$16 million investment for the Enhancing Chemical Safety Initiative included in this budget, we will increase the pace of chemical hazard and risk assessments, strengthen chemical information management and transparency, and take action to address identified chemical risks including careful consideration of the impact of chemicals on children's health and on disadvantaged, low-income, and indigenous populations. The additional funding will help to close knowledge and risk management gaps for thousands of chemicals already in commerce through actions that will decrease potential impacts to human health and the environment. We also will continue promoting use of proven safer chemicals, chemical management practices, and technologies to enable the transition away from existing chemicals that present significant risks.

Supporting Healthy Communities

We are committed to protecting, sustaining, or restoring the health of communities and ecosystems by bringing together a variety of programs, tools, approaches and resources directed to the local level. Partnerships with international, Federal, State, tribal, local governments, and nongovernmental organizations have long been a common thread across the EPA's programs. This diversity of perspectives and experiences brings a wider range of ideas and approaches, and creates opportunities for innovations. The budget includes a \$20.4 million multidisciplinary initiative for Healthy Communities. It supports States and communities in promoting healthier school environments by increasing technical assistance on school siting, environmental health guidelines, and Integrated Pest Management in schools. It also provides resources to address air toxics within at-risk communities, and to enhance the important joint DOT/HUD/EPA outreach and related efforts with communities on sustainable development.

We proudly support the America's Great Outdoors Initiative to develop a community-based 21st century conservation agenda that can also spur job creation in the tourism and recreation industries. Leveraging support across the Federal Government, the EPA will join the Department of the Interior, the Department of Agriculture, and the Council on Environmental Quality to lead the coordinated effort to protect and restore our outdoor legacy. The area-wide planning and community support focus of existing EPA programs and initiatives like urban waters and brownfields programs align well with the goals and objectives of this new initiative.

Maintaining a Strong Science Foundation

To develop a deeper understanding of our environmental challenges and inform sustainable solutions, we are requesting a science and technology budget of \$826 million, \$22 million lower than our fiscal year 2010 enacted funding level, reflecting both efficiencies and difficult choices in order to ensure support for the highest-priority science needs. We will strengthen planning and delivery of science through an integrated research approach, which will help us more deeply examine our environmental and public health challenges. By looking at problems from a systems perspective, this new approach will create synergy and produce more timely and comprehensive results beyond those possible from approaches that are more narrowly targeted to single chemicals or problem areas. Within the request, we are including increases for research on endocrine disrupting chemicals, green infrastructure, air-quality monitoring, e-waste and e-design, green chemistry, and the potential effects of hydraulic fracturing on drinking water. To make progress on these research priorities and leverage the expertise of the academic research community, funding redirections will support additional Science to Achieve Results grants and fellowships. This budget also supports the study of computational toxicology, and other priority research efforts with a focus on advancing the design of sustainable solutions for reducing risks associated with environmentally hazardous substances. Two million dollars is also included to conduct a long-term review of the EPA's laboratory network. These increases are offset by redirections from other areas, such as human health and ecosystems, biofuels, homeland security, mercury, and ground water remediation. We look forward to working with the Congress to cut spending and cut the deficit. But to win the future, we cannot cut in a way that will undermine our ability to win the future and out-educate, out-innovate, and out-build our economic competitors. The budget that the President announced is a responsible plan that shows how we can live within our means and invest in the future. It makes tough choices to cut spending and cut the deficit. It includes a 5-year nonsecurity discretionary freeze, saving more than \$400 billion over the decade and reducing nonsecurity discretionary spending to its lowest level as a share of the economy since President Eisenhower, and the budget reduces the deficit by more than \$1 trillion, putting us on a path to fiscal sustainability. Thank you again for inviting me to testify today, and I look forward to answering your questions.

Senator REED. Well, thank you very much, Madam Administrator.

And let me start off a first round of questions, with the anticipation that we'll do two, if your time allows.

GREENHOUSE (GHG) GASES

One issue that has been addressed both explicitly and implicitly has been the whole regulation of GHG. The EPA and the States are required to start issuing GHG permits January 2 of this year for

modifications of the largest existing sources, with additional facilities scheduled to be phased in, this July. And there has been some discussion, obviously, about whether the EPA and the States would be ready to process the permits in time or they would, in fact, contribute to delay in construction parts, delay in modifications to these plants.

Can you tell us where we stand? Are the States and the EPA ready to process GHG permits in all 50 States? And how many permits are under review? And how many have already been granted?

Ms. JACKSON. Yes, Chairman, together we are ready. In every jurisdiction in the United States there is a permitting authority that is ready and able to process permit applications, to issue legally valid permits, upon review of applications. In those places where the State government has been unable or unwilling to process permit applications for GHG emissions, the EPA is now in place, by law, as the permitting authority for that portion of their permits, for the GHG portion of their permits.

We have approximately 100 permit applications in process for GHG emissions at this time. Twenty-six of those 100 have already completed their BACT analyses that are required as part of the permitting process. Two permit applications have been reviewed and already issued. One is in my home State of Louisiana. I'm not quite sure of the location of the other one. It may be California.

Senator REED. Thank you very much. Throughout our discussions, and implicit in everything we do, is this tradeoff, this balance between environment quality, public health, and economic development/economic productivity. And it's an ongoing debate. On one hand, when modifications are made and you permit and require changes in facilities, that usually implies hiring construction workers to go in—and contractor and engineers—and that creates jobs. But, there's also, on the other side, as we've all heard, the suggestion that this somehow impedes employment, impedes productivity.

CAA

We've seen different studies. There's one study reference I saw where, over the life of the CAA, the estimate of about 1.5 percent positive GDP as a result of the contributions of the CAA. But, the question really is, is there evidence that these rulemakings have produced the kind of job losses that some people have cited? Or, in fact, have they contributed to positive job creation? Any comments you may have?

Ms. JACKSON. Every objective analysis of the history, looking back at the CAA, not projections of worst-case scenario, but what has actually happened on the ground, shows that the CAA has actually helped the economy. The CAA was passed in 1970; our economy has grown more than 200 percent. Our gross domestic product (GDP) is up, in that time. Pollution, in that same time period, is down more than 50 percent. We were required to do a study recently—a peer-reviewed study. From 1990, when the CAA amendments passed, through 2020, the monetary value is projected to exceed the cost of the Act by a factor of 30—three-zero—to 1. Public health benefits are expected to reach \$2 trillion, with a “t”—\$2 trillion in 2020, due to the 1990 amendments of the CAA.

We know it's positive for our trade balance. There was an \$11 billion surplus in 2008. We export more environmental technology and goods than we use in this country, so we actually are positive, with respect to the trade balance. It's a \$300-billion-a-year revenue generator. And I think you might have mentioned the University of Massachusetts study, which talked about just two standards under the CAA having the potential to create as many as 1 million to 1.5 million jobs over the next 5 years.

H.R. 1

Senator REED. Just a final question in my remaining time, and that is: The House has a series of proposals in H.R. 1, which have been mentioned. In your view, would they in any way inhibit, the ability of the EPA to protect the public health? And I'll leave it to you to respond, Madam Chairman.

Ms. JACKSON. There are two portions to H.R. 1. There are the budget cuts and then there are the series of riders, which we heard mentioned. And I believe that the budget cuts are draconian. They cut across the EPA and will, in my mind, result in more pollution in our air and in our water and on our land. And because pollution is so closely tied to public health, my belief is, when it comes to air pollution, we will see more asthma attacks, more heart attacks, more premature deaths. That is the work of the EPA. And when the EPA is not able to do its work, cuts like that, in my mind, cut into our ability to do our job.

The riders, themselves, bring up a range of issues where the EPA's hands are, essentially, tied to address issues of pollution that aren't generally in controversy. People see the pollution, there is concern, justifiable concern, of the cost of addressing pollution, certainty for businesses, so that they know, if they need to get a permit, they can get it, and that the rules are what the rules are, and that they're the same rules across the board. But, my belief is that the cuts, as well as many of the riders, are going to result in holes in the environmental safety net.

Senator REED. Thank you very much.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

OSC PERMITS

Administrator Jackson, I want to followup with the statement that I made initially, as it relates to the OCS permits and the length of time that we're talking about. I mentioned that Shell has been in process now for over 5 years. I made reference to the fact that, in the Gulf of Mexico, an air-quality permit can be issued within about 43 days. So, you're looking at a situation where you've got about 6 weeks on one end and almost close to 6 years on the other. I guess just a basic question is: Do you think that this is reasonable?

Ms. JACKSON. I believe that what the EPA's job is, is to give prompt answers when permit applications come in. The EPA has certainly issued permits in that area. And, as you know, they've been subject to litigation and controversy. But, my preference, all other things being equal, is timely and as-quick-as-possible response when we get permit applications in.

Senator MURKOWSKI. We're trying to figure out, in Alaska, as we're advancing this—we're looking at other projects that are out there. Shell had applied for an application to nearly double to size of one of their refineries in Port Arthur—essentially building a brand new refinery. That permit was issued, or just signed off, 11 months later.

Again, am I trying to compare apples to oranges here? How long does it take, typically, to issue a permit for—for instance, for an auto factory or a—I mean, how long does something like that take?

Ms. JACKSON. Permits can take months to many, many years. One of the issues that I think accompanied the Shell permits, without in any way trying to be inflammatory, Senator, is that there's some amount of controversy over the activity of the drilling in the Chukchi. That doesn't influence the EPA's decision, but—

Senator MURKOWSKI. Right.

Ms. JACKSON [continuing]. It probably means—and I've discussed this with Shell, and with you, as well—that we know that we're subject to challenge for the permits we've issued. And we issued, I think, five all together. Two in 2007, one in 2008, another two in 2010.

Senator MURKOWSKI. But, again, what we're asking you to do—and I said this in my statement—we're asking for the EPA to do its job, which is to issue the air-quality permit, not to make a determination as to whether or not exploration activity offshore Alaska is a go or no-go. Your job is to—

Ms. JACKSON. And I absolutely agree with that—

Senator MURKOWSKI [continuing]. Issue the permits.

Ms. JACKSON. Senator.

Senator MURKOWSKI. Right.

Ms. JACKSON. That is not our job—

Senator MURKOWSKI. Right.

Ms. JACKSON [continuing]. In any way. I just want to, if I might, just give a bit of history on with regard to the two 2010 permits that I know are of great concern to you. The EPA issued the proposed permit a month after we got the final set of analyses from Shell and the permit application was deemed complete. That was July 2009. We received so many public comments that we needed to repropose the permit; that was January 2010. The final permit was issued just 2 months later, March 2010.

There are examples here where, 6 days after receiving an application, the EPA took action on the final application.

Much of the delay—and I don't mean this as excuse, but just a statement of fact—has been the litigation, where these permit decisions are challenged. We just recently, a few days ago, received the final decision from the Environmental Appeals Board on the two permits. And the administrative court upheld the EPA on 3 of the remaining 4 permit issues that we have been sued by outside groups on. So, it means the permit we issued was upheld.

On the fourth issue, there's a bit more work to be done, but I met with Shell. My staff has been meeting with Shell. And we believe that the we are on a path to address not only that issue, but the other ones raised.

NITROGEN DIOXIDE STANDARDS

Senator MURKOWSKI. One of the things that came up in this process—and you referenced the litigation, that’s one thing—but, there were some different standards that were in place initially for nitrogen dioxide and no requirement for GHG emissions. Now both of those new requirements are being applied retroactively on permits that were applied for 4 years ago. It gets you in a situation where you’ve got a lengthy permit process. And, working in all due diligence, you’ve got new requirements that then come in, and all of the sudden you don’t meet them, so it pushes you back even further.

Now, the EPA decided, last month, to grandfather at least one project. I know that the Avenal, the power center there in San Joaquin Valley, was grandfathered in so that it would be exempted from new rules that had been imposed on new air-quality standards. You saw fit to grandfather a much larger facility from the new requirements, and yet not considering, on a smaller certainly, a smaller facility, in terms of emissions that we’re talking about—you’re basically pushing it back and saying, “Well, these new requirements are now in place, so now you must meet them.” Isn’t that a bit arbitrary?

Ms. JACKSON. It’s not entirely accurate, if I might, Senator. The permit that the EPA issued to Shell, the two permits, did not require compliance with the 1-hour NO₂ standard or any GHG standard. The permits were challenged. And one of the things the Environmental Appeals Board said was, because of environmental justice, we should at least make an analysis of what those standards would mean.

I just have to say that I believe that the analysis will clearly show that there is no public health concern here. Environmental justice, I think, is extremely important—but, I believe it’s important that we be able to show people that this wasn’t going around a standard, that, in fact, these activities will not cause air pollution that will endanger health. And my belief is that, as we work, and we’ve put more resources into this. I can get that information to you, I just gave it to Shell to make sure that we are not holding anything up, that we’ll be able to show that.

[The information follows:]

RESOURCES FOR AIR PERMITS FOR OCS EXPLORATORY DRILLING OPERATIONS IN THE ALASKA

Position	FTE ¹ for 2011	FTE for 2010 ⁴
Senior Air Management Lead	³ 0.5	³ 0.75
Senior Policy Advisor/Peer reviewer	³ 0.8	³ 0.75
Project Manager	1.0
Permit Writer (including regular analysis) #1	1.0	³ 1.0
Permit Writer #2	³ 0.8	1.0
Permit Writer #3	0.5	0.5
First Line Supervisors	0.3	0.2
Attorney 1	0.8	³ 0.8
Attorney 2	0.8	0.8
Paralegal	³ 0.3
Alternative Model Approval; Air Quality Modeler 1	1.3	0.9
Air Modeler 2 and possibly 3	^{3,5} 1.0	^{3,6} 0.9
Air Quality Monitoring Expert	0.2	0.1
Stationary Source Engineer; source testing and monitoring expert #1	0.5	0.3
Stationary Source Engineer #2	³ 0.5

RESOURCES FOR AIR PERMITS FOR OCS EXPLORATORY DRILLING OPERATIONS IN THE ALASKA—
Continued

Position	FTE ¹ for 2011	FTE for 2010 ⁴
Community Involvement Specialist	0.4	0.5
Tribal Consultation Specialist and Liaison 1	0.2	0.2
Tribal Liaison 2	0.1	0.2
ESA Specialist and EJ Specialist	0.1	0.1
Administrative staff	0.2	0.25
IT services and Web page management	0.1	0.1
Service Center Contract (copying, mailing) ²	0.1	0.1
Records Management Contract ²	³ 0.5	³ 0.5
Oil and Gas Program Coordinator		
Total Region 10 FTE	11.7	10.25
Headquarters legal, policy, and technical support	2	2

¹ FTE = Full-time equivalent.

² Contract support expressed as FTE (approximate).

³ Resources temporarily assigned to OCS permitting from other programs until current permits are completed (total of 5 FTE in 2010 and 4.1 FTE in 2011). Note: In 2011, Region 10 redirected 2 FTE permanently to OSC work: Permit Writer and Attorney.

⁴ Source of this information is from the Environmental Protection Agency's Report to Congress on the Outer Continental Shelf (OCS) Permits as requested in the fiscal year 2010 Conference Report on the Department of Interior, Environment, and Related Agencies Appropriations Act, 2010 (House Report 111-316).

⁵ Loan from another Region; salary funds to be used to temporarily hire a State modeler.

⁶ On loan from Region 5.

Senator MURKOWSKI. Well, and I appreciate the fact that you have just said that you don't believe that these that this will endanger human health, and that's what we're looking at in the issuance of these permits. So, then again, it begs the question, why it's taking 5 years plus to issue the air-quality permits.

Ms. JACKSON. Ma'am—

Senator MURKOWSKI. Mr. Chairman, my time is expired, and I've got some other issues that I want to talk about, but it'll be round two.

Senator REED. Thank you very much, Senator Murkowski.

Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

CWA PERMITS

Administrator Jackson, welcome. I want to begin by thanking you for, not only coming before the subcommittee today, but also for appearing with Secretary Vilsack before the Senate Agriculture Committee recently. And I hope we can follow up on some of the issues that we discussed at that time.

One of the concerns that I continue to have is in connection with the CWA permits for pesticide application. Before the Senate Agriculture Committee, you indicated that there was possible misunderstanding on the application of the rule and where permits would be necessary. In other words, those applying on cropland would not be subject to a permit. I was hoping that maybe you could followup on that and help me understand, so that there isn't any misunderstanding.

Ms. JACKSON. Thank you, Senator. I'll try to do it quickly, so I don't run out your clock.

But, remember this permit was required because the EPA had made a finding that an additional CWA permit was not needed. We were challenged on that finding. And the Sixth Circuit Court of Appeals decision in National Cotton said, "If you were applying pes-

ticide permits to the water, you need a CWA permit in addition to the FIFRA label and licensing requirements.” So, only those applicators whose intention is to apply to water—so they are applying pesticides to water—need this additional permit. If—

Senator NELSON. So, if they apply it to crops, then it’s not applying it to water?

Ms. JACKSON. That’s absolutely right. If you’re applying to crops, that’s not water. Even we know sometimes there small amounts that run off. We know farmers and applicators do not like that, because they want the pesticides to stay where they put them. But and it’s not intended to apply to those situations, either.

PESTICIDE APPLICATION

Senator NELSON. Also wanted to raise a concern that I had. In Nebraska, pesticide application is done along rivers and canals to help control invasive species which impact waterflow. And my concern is that if it’s done along rivers or canals, would that automatically trigger a requirement for a permit on water, as long as it’s being applied to invasive species and not intended to be applied to water?

Ms. JACKSON. I believe it’s if it’s applied over an area, including a wetland, that is considered to be a water then you would need the permit. I just want to most of the people we’ve been working with are mosquito control districts and people who do deal directly in applications either in water or along the bank line. And so, that’s why we made it a general permit, because they generally need a permit anyway in order to apply that pesticide. So, this is a notification and will require some certifications that you’re using minimal amounts of pesticide. But, I do believe it would, although we can double check that for you, sir.

[The information follows:]

NEBRASKA PESTICIDE APPLICATION

The need for a permit is based on whether the pesticide application results in a discharge of pollutants to waters of the United States. The permit does not cover, nor is permit coverage required, for pesticide applications that do not result in a point source discharge to waters of the United States. If a pesticide is applied along waters of the United States, such as many rivers and canals, and results in a discharge of pollutants to waters of the United States (i.e., a discharge is unavoidable), then a permit will be required.

Senator NELSON. Okay.

Ms. JACKSON. And I want to remember we are asked the court for more time, until next October, so we don’t have a permit. So, I’m speaking a bit speculatively.

PLATTE AND REPUBLICAN RIVER BASINS

Senator NELSON. Okay. Well, there are some 50 projects along the Platte and Republican River basins, and 80 percent of our Nebraska’s crops irrigated, so there are significant numbers of canals that run across the State that have to be considered, as well.

So, our people from our natural resources districts were just in town, and are in town today. This is one of the concerns that they have. And so, if we can find a way to get that clear, it would be very, very helpful to them and to our office, as well.

Ms. JACKSON. We're happy to sit down with them or your staff, sir.

Senator NELSON. And I want to thank you also for the prompt action on the E15 ethanol blend. I think that, clearly, is an important thing for us, given the fact that we're facing constant challenges with foreign sources of oil at the present time. And anything we can do to continue pursue and support renewable energy domestic renewable energy, we ought to continue to do that. So, I appreciate what you're doing there.

SEWER SEPARATION PROJECT

The final thing I have is sort of a plea for some consideration, some help, to figure out how we can deal with very expensive long term compliance issues. In Omaha, we have the Sewer Separation Project that will cost nearly \$1.6 billion. And, even with any effort to try to get through revolving loan funds or other sources of income for that, or sources of money, it's virtually impossible to bring that level down so that it isn't a huge burden on the ratepayers in Omaha.

I was struck by what Senator Blunt said about his situation, where what the impact could be for businesses could result in job losses. It's estimated that the cost to comply in Omaha can more than double the within a very short period of time—the sewer fees. And so, it's not only the ratepayers, who are individuals of the family homes and apartment houses, but applies as well, as you know, to businesses, and particularly manufacturing operations and others, that might, in fact, have higher costs associated with their businesses.

And I would hope that perhaps we could explore ways to have revolving funds of a greater amount. We're talking about this in tough budget times, I understand, but if it can be done with lower interest rates so that we don't have to go to bonding bonded indebtedness. The Nebraskans don't like bonded indebtedness, and it doesn't go over very well. The State doesn't have any. So, what I would hope is that we might put our heads together and see if there are ways to help finance those more expensive projects for communities.

Ms. JACKSON. Thank you, Senator. I think that would be a great idea, because my experience in these is, oftentimes I'll just guess, I do not know for certain that these are the results of judicial orders that have strict schedules. No one wants raw sewage in the water. That's what the whole point is. But, in tough times, we have had a number of municipalities come in and say, "Can we talk about either alternate methods or alternate timetables that would give us a bit of relief?" So, I would be happy to have my Region 7 office have those conversations with Omaha.

Senator NELSON. Thank you. And again, thanks for being here. Thank you, Mr. Chairman.

Senator REED. Thank you, Senator Nelson. Senator Cochran.

GULF COAST RESTORATION

Senator COCHRAN. Madam Chairman, in looking at your statement, on page 4, I noticed this provision. It says, "As chair of the

Gulf Coast Ecosystem Restoration Task Force established by Executive Order 13554, I will work with the Federal and State task force members to lead environmental recovery efforts in the region. The EPA is also working to support the Federal and State trustees on the Deepwater Horizon Natural Resource Damage Assessment and Restoration Trustee Council as they develop a restoration plan to restore the region's natural resources to pre-spill conditions." Then there's this sentence, which concludes the paragraph, "As a complement to these efforts, the EPA's request of \$6.6 million for the Mississippi River Basin Program, will address excessive nutrient loadings that contribute to water quality impairments in the Basin and ultimately to hypoxic conditions in the Gulf of Mexico."

I was following that pretty well until I got down to the end and saw that last sentence. And I read it again, and I thought what in what does that mean? Can you answer my question? What does that mean?

Ms. JACKSON. I'll try, Senator. It's meant to outline a number of initiatives, all of which, I hope, will have the impact of a better Gulf of Mexico.

On the hypoxic issue, the end of the statement, there's obviously nutrients that come down the Mississippi River to its mouth. We now have created a zone along the gulf coast of the United States, in parts of Texas and Louisiana—I think a bit in your State, as well—that where the nutrient levels have caused algae to grow so much that they've taken the oxygen out of the water. That's harmful for the ecosystem. Obviously, clearly harmful for the seafood and other fish that breed, the nurseries of life that they are. And that growing area of hypoxia has been a concern of the EPA's since long before the spill.

I believe we either have or very shortly are putting out a framework. It's State leadership that's needed here. And it is not—there's been some concern that the EPA's going to sort of take over and come up with nutrient standards along the Basin. I don't think that will work. I don't think that kind of command-and-control approach will work. But, States have started to do wonderful things on bringing their nutrient loadings down so that, by the time that the water gets to the mouth of the Mississippi, we see a significant reduction in nitrogen and phosphorous.

BP OIL SPILL

Senator COCHRAN. Well, I'm a little skeptical that we may be—if we do nothing and don't say anything in our report about monitoring this program, that we are really writing a blank check, not just for \$6.6 million, which is a lot of money to me, to deal with a problem that obviously existed before, and will exist after, the calamity of the BP oil well that was way out in the Gulf of Mexico and was not affected at all by what comes down the Mississippi River.

Ms. JACKSON. No——

Senator COCHRAN. You know, it looks like a big reach—a reach for added jurisdiction and a blank check, really. Well, a \$6.6 million check——

Ms. JACKSON. Right.

Senator COCHRAN [continuing]. Which is kind of big.

Ms. JACKSON. I apologize if my statement is confusing, Senator. The Gulf of Mexico programs and the Gulf of Mexico Alliance have been working together with upstream States to deal with the hypoxia issue for a long time. And the EPA has actually had that program working for quite some time. They are unrelated to the actual incident of the Deepwater explosion, but not entirely unrelated from the purpose of the Gulf Coast Task Force, which I chair, which is to help the gulf become healthier overall. And, of course, if you talk to people who've been watching this growing red area of hypoxia off their shores for a long time. It's one of the things, in our first two public meetings, that we have heard about already.

So, they are intersecting, but they are certainly not meant to say that the oil spill had anything to do with the hypoxia.

Senator COCHRAN. Okay.

Thank you.

Senator REED. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

ETHANOL-BLENDED GASOLINE

Administrator, let me start with an issue that I hear about frequently from my constituents. I get calls, emails, letters, conversations all the time about constituents who are finding great difficulty in using an ethanol blended form of gasoline, because it causes problems in their older cars, their boats, their snowmobiles, lawnmowers, offshore, or off road vehicles. And this comes up over and over again. And my constituents are experiencing these problems even with an ethanol blend of just 10 percent.

So, Senator Cardin and I wrote to you, and introduced legislation as well, urging the EPA not to grant a waiver allowing E15 to be sold until we resolved some of the problems that ethanol was causing for these smaller engines. Unfortunately, the EPA went ahead and granted this waiver for use in automobile model years, I guess, 2001 and higher, and newer light duty vehicles. But, of course, the problem is that a lot of times the ethanol blends are not going to be segregated at gas stations, and it's going to cause some misfueling and some further problems.

Let me say, right up front, that I am not a fan of the \$6 billion that we spend each year on corn-based ethanol. If I were making cuts in the budget, that would be very high on my list. But, we do have mandates existing—ethanol mandates—that the energy, agricultural, and automotive sectors of our economy are already struggling to comply with. So, why did the EPA make it worse by approving E15?

Ms. JACKSON. Well, the EPA received a waiver request from Growth Energy, an industry group, asking for us to review their application for 15 percent ethanol.

I have to be clear, this not a mandate. The EPA does not mandate that E15 be sold. In fact, what the EPA is required to do by law is to respond to, or make determinations about, the safety of various ethanol blends in gasoline. We did that by relying on extensive testing of cars, most of it done by the Department of Energy. This took them \$40 million. It took many, many months. The waiver is based on the science, and only the science. The EPA is cur-

rently required by law to work on a label to prevent misfueling at stations.

For E15 to enter the market there are several other things that have to happen—most of them absolutely unrelated to the EPA, they have to do with State law and other Federal agencies—and the EPA’s not—it’s not the EPA’s job to make those determinations about what gets sold, but simply to answer the questions that were put to us under Integrated Science Assessments (ISAs).

Senator COCHRAN. Well—

Ms. JACKSON. ISAs gives us that.

Senator COCHRAN [continuing]. You didn’t have to approve the waiver request, however.

Ms. JACKSON. That’s absolutely right, Senator. But, the requirements of the CAA basically tell us that a waiver can be granted when you can show that it will not harm vehicles, among a number of criteria, I don’t have them in my head right now.

Senator COCHRAN. But, it is harming vehicles. I’m going to start sending over to you every email I get from Maine from a Mainer who’s had his snowmobile engine ruined or his lawnmower or boat engine fouled because of the concentration of ethanol. In Maine, we have a lot of older cars. Maine is a low-income State. And a lot of people are driving older vehicles and are already experiencing problems with the E10 mix. And they’re really concerned about what it’s going to mean when you go to E15.

And think of the gas station. I mean, you’re correct that they can still sell E10 as well as the E15, but there’s infrastructure costs in having a separate pump, a separate label. How is the EPA going to deal with that?

Ms. JACKSON. Again, Senator, the EPA denied the waiver for snowmobiles and yard equipment and marine engines. What we did was make a science-based finding that, for automobiles only, in model years newer than 2001 and including 2001, there wasn’t a reliability or safety problem with E15. The EPA doesn’t have a mandate that E15 be used, but I understand your concerns. Our jurisdiction, if you will, extends to a labeling rule, to putting out a label to help consumers know what the fuel can be used for, which is only 2001-and-newer cars.

Senator COLLINS. But, I think you’re ignoring the reality that there are already problems for these—for the snowmobilers, for the lawnmower operators, for boat, lobstermen, et cetera, using E10. So, it is not of comfort to me when you say, “Well, there’ll be a label for E15.” Plus, there’s a considerable cost to a small gas station to have another pump that has E15—it is separate. Why should they carry two kinds?

I just hope the EPA will take a closer look at the implications. And I really am going to start sending over those complaints so that you can explain to my constituents why their engines are being fouled.

Thank you, Mr. Chairman. I’m going to save my next question, because I’m out of time.

Thank you.

GHG REGULATIONS

Senator REED. Thank you very much, Senator Collins.

I'll begin the second round by following up with a final question in the whole context of the GHG regulations. And the proposal in H.R. 1 might sort of create a catch 22 situation. That is, as I understand it, you would be prevented from, essentially, issuing permits. Yet the law would still be on the book, which could open projects to legal challenges under the CAA, et cetera. But, can you sort of help us understand how—if H.R. 1 or something like it was passed, how it would impact the ability of the States and the EPA to issue permits and to avoid this unwitting, or witting, sort of gridlock, if you don't have the authority, yet the law's on the books, and people can go into court and say they're violating the law.

Ms. JACKSON. Right, well, as I mentioned earlier, Chairman, we have 100 permits already filed for GHG. So, there is a GHG rider that was included in H.R. 1, and it would preclude the EPA from issuing preconstruction permits, which are the permits that these 100 applications are for, in those States and territories and areas where the EPA is the permitting authority. It is sometimes the State and sometimes the EPA.

So, you're talking about California, Florida, Idaho, Kentucky, Massachusetts, Oregon, Texas, Wyoming, Puerto Rico, Virgin Islands, OCS, offshore deepwater ports, Arizona—I think there's one other.

And you're right, it would be something of a catch 22, because the CR doesn't affect the obligation, the underlying statutory obligation to obtain a permit; it simply affects the EPA's ability to issue or act on the permits. And so, people would have an obligation to obtain a permit the EPA could not issue, by law.

FUEL-EFFICIENCY STANDARDS

Senator REED. Thank you. Turning now to fuel-efficiency standards, we are already extremely sensitive to rising gasoline prices. They're about \$3.57 in Rhode Island, but when I go back this weekend, they'll probably be closer to \$3.80. And I think we all recognize that one of the ways to deal with this energy crisis is simply demand reduction. And, what's happened with the car industry—beginning with the 1970s and CAFE standards, is that increased mileage has helped avoid millions of gallons of gasoline use.

You're now talking about 35.5 miles per gallon by 2016, with your fuel-efficiency standards. Some people have suggested that'll save about \$3,000 over the life of the car, in terms of avoided gasoline cost. Of course, that number goes up as the price of gasoline goes up. And there's a proposal, I believe, to increase it to 60 miles per gallon by 2015, with additional savings.

Today, in this budget, there's \$5.2 million for developing fuel-economy standards out to 2025 and \$10 million for a first-time program to try to improve the efficiency of medium and heavy trucks.

Can you share with us, or confirm the savings that seem to be inherent in these proposed investments of, relatively, a small amount of money?

Ms. JACKSON. Certainly, sir. I think you kind of hit it on the head in your question. I think the current law actually required us to get to 35.5 miles per gallon by 2020. The President's clean car rules got us to 35.5 by 2016. So, we're 4 years early. And he's already ordered the EPA and the Department of Transportation to

work together on the next generation, which is 2017 model year, all the way out to 2025. We are doing that.

We are also working and sharing data with the State of California, because the CAA gives California different jurisdiction over pollution emission from automobiles. The EPA's role is actually under the CAA and has to do with GHG emissions. The CAA is a really important piece of the puzzle, because the CAA has strong enforcement teeth. Companies can't build a bigger gas-guzzling car and simply pay small fine, as they could under the National Highway Traffic Safety Administration (NHTSA) rules and under NHTSA's authority. Under the CAA, they must comply.

And we have estimated that, in the rules done so far, if you took the CAA out of that equation, you'd lose hundreds of millions of barrels of oil savings, because companies would simply just pay the fine rather than build the more fuel-efficient cars that we need and that Americans are buying.

STATE REVOLVING LOAN—FUNDS CUTS

Senator REED. Thank you. A final point, my time is rapidly declining—Senator Collins alluded to this, I've said it also—the State revolving loan-fund cuts. There was, as I understand it, a significant increase in the 2010 budget. And a lot of that was directed at, not only helping communities struggle—and I think Senator Nelson was talking about it also—in terms of dealing with required improvements in sewer systems and other systems, that ultimately get passed on to ratepayers if the local agency is the only source of funds.

We are proposing now, in this budget, to reduce, significantly, those funds, which shifts the burden onto local communities and also may very well have the effect of stopping projects or not even putting projects in even a planning phase, which means jobs.

Have you looked at the job effect of these proposed cuts?

Ms. JACKSON. We haven't done a jobs analysis of the proposed cuts. I would only offer a few things.

This is one of those tough choices that's certainly hard, as Administrator of the EPA, to swallow, but I swallow it and I embrace it, because I think we looked across at a couple of things on the landscape that—when the President came into office, the Recovery Act put \$6 billion to water and wastewater. Most of that money was required to be obligated within 18 months, and it was; but some of it is still hitting the streets in the form of projects that continue to be constructed and people who are getting paid, therefore have a paycheck as a result of that. His first budget also dramatically increased the amount of money for water and wastewater funding again. And so, yes, this is a cut, but it's still much higher than these funds we're seeing when he came into office.

And so, I would simply say that, yes, there is great leveraging that goes on, both in the drinking water and wastewater side. They're also revolving funds. So, part of what we're also hopeful of is to see some of those \$6 billion in loans start coming back into the fund, repay the fund, and hopefully get us to a state where we can ensure that our communities have clean drinking water and adequate sewage.

Senator REED. Thank you very much.

I'm going to recognize Senator Murkowski. And since Senator Blunt hasn't had his first round—my preference, unless you have a problem, Senator—would be to recognize Senator Blunt then Senator Collins.

Senator COLLINS. Absolutely.

Senator MURKOWSKI. I'll defer to Senator Blunt before I ask my second round.

Senator REED. Thank you.

Senator Blunt.

Senator BLUNT. Thank both of you. And thank you for having patience with me.

Administrator, I may have asked questions here that have been asked before. And, if I do, I apologize for not being here to hear your answers before.

COST-BENEFIT ANALYSIS

So, one of my questions would be—the Supreme Court recently rejected the idea that, because cost-benefit analysis isn't expressly authorized, it can't be used. And I'm wondering when and where you use cost-benefit analysis in your rulemaking process?

Ms. JACKSON. We do cost-and-benefit analysis, as well as jobs analysis, with most of our rules, not absolutely all of them. We do have some laws—the CWA is one of them—which require us to consider additional factors. We still look at cost, we still look at benefits, but often public health or safety are issues in the statute that we are specifically told that trump a cost-benefit—

Senator BLUNT. Is that cost-benefit analysis available? Is it part of the record? How does somebody access that, that isn't at the EPA?

Ms. JACKSON. Yes, sir. It's part of the rulemaking docket. It's part of the rulemaking record. So, it would be part of the rule, there'd be an explanation of those analyses. And they would be part of the docket, if someone wanted to get into looking at the full analysis.

Senator BLUNT. And there are cases like—what did you say, CWA and CAA?—where the overall mandate, in your view, overrides that as a criteria?

Ms. JACKSON. Well, it's not my view, sir. The law will, in some cases, make clear that the job of the Administrator is not to balance cost at this stage or another. So, in parts of the CWA, parts of the—

Senator BLUNT. So, the law actually says that in some places, that you shouldn't balance economic cost?

Ms. JACKSON. In setting health standards under the CAA, the NAAQS, the law says that those standards are to be based on protecting public health with a reasonable margin of safety, specifically not asking for cost analysis. We do them anyway, as a matter of information, because people ask. But, there are places where the law constrains us, to some degree. It's not very often. And, even in those cases, I think the EPA leans into the idea of presenting cost and benefit and jobs analysis, where we can do it, because it always comes up.

Senator BLUNT. Well, I'd say lean harder, when you can. It's really an important part of what you're doing.

AGRICULTURAL DUST

You know, I mentioned a couple of areas earlier that impact the agricultural economy. On this pursuit of the rule on dust and fugitive dust, is there any known technology available that would really be able to stop dust from moving around? I mean, I'm enough of a farm boy to know you can't farm in the mud. So, you're going to have some dust in farming; you're going to have some dust in harvesting. I'd love it if you'd tell me that the whole—the rural concern about this is blown out of proportion and you really understand that you're going to have dust, and you know that even the Federal Government's not big enough to do anything about that. But, I'm anxious to hear what you think can be done about fugitive dust.

Ms. JACKSON. The EPA has not proposed to regulate agricultural dust. The EPA does not have any plans to regulate agricultural dust. The EPA understands, as I said in a earlier hearing, that dust happens, especially in rural America.

The confusion seems to stem from a requirement of the CAA for particulate matter, for the particles, that lodge in lungs. There's fine particles and coarser particles. Every 5 years, the requirement, under the CAA, is that a scientific advisory board, independent of the EPA, acts in an advisory role and advises the Administrator on whether current standards for coarse and fine particles are protective. That report has come in, but no staff recommendations about any standards have been made to the Administrator.

Senator BLUNT. And would that particulate matter occasionally be something we call dust?

Ms. JACKSON. It could include dust, yes. But, fine particles are not dust. Coarser particles can include dust. But, the EPA's standards, which would be health standards, back to your earlier question, could potentially include coarser particles.

I should note, the EPA's in the process of holding listening sessions with stakeholders across the country. We've particularly focused on rural areas. I think there was just one in Idaho. We're looking, we're listening. And, by this summer, I will be required to either propose to retain the current PM_{10} —that's, of course, the particle standard—or change it. That would be a proposal, subject to public comment, with the full record for review by anyone who has an interest.

Senator BLUNT. Well, I think the one thing—one of the things Government always wants to do is be sure that public comment doesn't become public ridicule, that anytime we set standards, or even have discussions that are outside of the—of a possible solution. And I'll look carefully at what you all propose. But, I know this is something that just seems like the Government, even having this discussion, really doesn't understand what happens out there to feed and clothe the country.

SPILL PREVENTION, CONTROL, AND COUNTERMEASURES (SPCC) RULES
AND MILK

On the milk issue, I think your own internal estimate was that this new regulation could cost dairy farm families, dairy farmers, \$155 million. And as—I believe this is because the EPA's view is

that, since butterfat includes oil, that it triggers a hazardous spillage when your milk tank ruptures or something. Are you really pursuing that?

Ms. JACKSON. No, sir.

Senator BLUNT. No.

Ms. JACKSON. No, sir.

Senator BLUNT. We're you asked about this by the Agriculture Committee, also?

Ms. JACKSON. Yes, sir. It was one of my five myths about the EPA and agriculture.

The EPA has actually proposed an exemption from the SPCC rules. Those are rules that generally handle large amounts of oil to prevent them from spilling into waterways. The EPA proposed an exemption for milk, because, without a clear exemption, you could read the law or our current regulations as somehow bringing milk in. So, it was the EPA who was working with the dairy industry and its representatives to come up with the idea of an exemption. And that exemption will be finalized, I believe, within the month.

Senator BLUNT. Are you telling me the dairy industry asked you to look into this?

Ms. JACKSON. I wouldn't say—I cannot attest to whether they asked or we asked. I would say our staff were in conversations long before I became administrator. And one of the things that was agreed upon, and was hailed by the dairy industry, was clarification that milk was not subject to SPCC requirement.

Senator BLUNT. Well, I'm generous with your time, Chairman. I think I've used my initial time up.

Senator REED. Senator Murkowski.

Senator MURKOWSKI. Thank you.

Not coming from a farm or an agriculture State, I think the common person would look at this and can't believe that we're having a conversation that we would be regulating milk as an oil product and need to have some kind of a response plan. But, that's not my question, Administrator. We're—you're good with that.

GHG REGULATION UNDER CAA

It does go back, though, to a question that Senator Blunt had raised. And this goes to the cost-benefit analysis and all that goes into that. At a hearing that we had before the Energy Committee last year, I asked you a number of questions about the implementation of the new GHG regulations under the CAA. And, at that time, after those questions that I posed, I sent you a pretty lengthy letter asking a series of questions. I am still awaiting a response to many of those.

But, one of the questions that I asked was whether or not the EPA had conducted a full analysis of the economic costs, including job losses. And I heard your response to the Chairman about what you perceive to be the job gains. But, the question is whether or not such an analysis has been conducted of the full implementation of the GHG emissions once you have fully phased in even the small emitters. And, if the answer to that question is yes, I would ask that you provide the subcommittee with a copy of that. And, if you

have not yet conducted an analysis, I guess the question would be, Are you considering conducting such an analysis?

Ms. JACKSON. Senator, there is no analysis to give you. Looking forward many, many years, I think the accuracy of such an analysis would be subject to a wide margin of error, because we are doing these rules slowly, methodically almost, starting with the very largest sources, and mindful and hopeful that, at some point, the Congress may choose to take actions that will impact smaller sources in different ways.

So, we are doing cost analysis as we roll out actual rules. For example, in the summer, when we propose GHG efficiencies and steps for the power sector, there would be analyses there.

Senator MURKOWSKI. And those analyses, as you have indicated to Senator Blunt, would be available through the whole rulemaking process that you have, that that cost analysis would be included.

Ms. JACKSON. Yes, Senator.

ARNI AND COE

Senator MURKOWSKI. Okay. I want to gain a little more understanding about ARNI. ARNI is now the first name that everybody has gained an association with in Alaska. And any of you that have rivers in your State, I would suggest you get to know ARNI, too. This is the ARNI. I mentioned this in my opening statement.

I had asked you, Administrator Jackson, for just an understanding as to how does an ARNI designation come about, when is it applied. In response, I'm told that—you've indicated that you've only designated ARNIs on 1 percent of COE permits. But, you're citing 6-year-old data. And the letter goes on to state that you don't have any more recent nationwide data on how often or where the authority is being invoked.

So, what I'm trying to figure out is, Do we know, or does anybody within the EPA know, what, precisely, is or is not an ARNI, and exactly how often this designation is being used nationwide?

Your letter refers to a case-by-case designation within regions, which, from where I'm sitting, makes it sound—it sounds pretty arbitrary. What we are faced with—we just had the—a project in the interior of the State be denied because of an ARNI designation on the Tanana River. If you are an investor or if you are—in this case, the railroad was looking to put a bridge across—had no idea that the Tanana River would be designated as an ARNI. How do you anticipate, in advance, whether a given body of water is subject to such a designation?

So, I'm trying to understand a little bit more about how this operates within the EPA, in terms of a given designation.

Ms. JACKSON. Thank you, Senator. As I think I said in the response, the designation is triggered in response to permit actions. It is—it grows out of a 1992 agreement between the EPA and the COE. And the designation of ARNI specifically does not have the effect of denying a permit. I can't confirm for you, but I will check and get back to your staff. I know—I believe the ARNI designation on CD 5 came after the COE determination that the permit proposal wasn't compliant with 404. I could be wrong on that, Senator—

Senator MURKOWSKI. I think—

Ms. JACKSON [continuing]. But I will double check.

Senator MURKOWSKI [continuing]. We want to check on that.

Ms. JACKSON. Yes, okay. I will. So, I'll take that statement back.
[The information follows:]

DESIGNATION WITHIN REGIONS (TANANA RIVER)

On June 9, 2009, the Environmental Protection Agency sent the Corps of Engineers (COE) a comment letter identifying that the CD-5 pipeline, as proposed, may result in substantial and unacceptable impacts to the Coleville River Delta, and identified the Coleville River Delta as an Aquatic Resource of National Importance (ARNI). After completing their review of the proposed project, the COE denied the application for the CD-5 pipeline in February 2010.

Ms. JACKSON. But—we need to look at timing—but, I think the important thing is that I don't see the ARNI designation, which, as you mentioned, is used pretty infrequently. Looking back historically, the data we had in-house said 1 percent of CWA action, section 404 individual permit (IP) actions. The COE reviews 3,000 to 5,000 IPs, permit applications, annually. I'm told that the working relationship right now between the COE and with the State of Alaska and the EPA regional office out there is very good, and that this coordination's going to be important, because I think everyone involved understands the importance of these resources, not only to ConocoPhillips, but to the Nation's energy and economic security.

Senator MURKOWSKI. Well, we all need to be working together on it, but I—part of the concern that we saw with CD-5 and the designation up there is, the COE had approved a project. All the stakeholders involved had agreed that this was the project. Great public input on that. And then the EPA designation comes in and essentially circumvents that public input. And there is no public process with an ARNI designation, is the concern.

Ms. JACKSON. Yes.

Senator MURKOWSKI. And again, with very vague, or seemingly vague, criteria so that you do not know—you have no idea, going into it—whether or not this designation will be made after the fact, after the process has been well underway, and after a great deal of money, in many cases, has been put toward it. And again, we're seeing and we have seen this now in two critical, critical infrastructure projects, one that would advance oil and gas development in the NPR-A, one that would allow for access to military training grounds for our military, and we can't get a bridge across yet another river. So, we need to better handle, in terms of what is what the criteria is and, more importantly, avoiding any arbitrary definitions that we might see on a region by region or, as you say, a case-by-case basis.

Ms. JACKSON. Senator, just three things. It is important to recognize that the COE permit denial was because the COE found that there was a less damaging alternative that was available to ConocoPhillips to meet the project purpose, not because of the EPA's ARNI designation.

Number two, that being the case, I do believe—I want to state again that the ARNI designation is not in any way a denial of a permit, or does not mean that a permit is denied. It is simply a recognition of extraordinarily sensitive natural resources that may be in the area. And I don't think that it is indicative of the permit.

And, last but not least, we are not regulating milk. We are not regulating milk.

Senator MURKOWSKI. And I would just add for the record here, cracker-jack staff says that the ARNI designation on CD-5 was the summer of 2009, and the COE denial of the—of going forward with the bridge was February 2010. So, the ARNI was, in fact, designated first. Or that's what I'm told.

Ms. JACKSON. Yes, and I think that the COE denial talks about the need to look at less-damaging alternatives. And I think that gives us some real places to work with the State and the COE, I think—I hope, productively.

Senator MURKOWSKI. Mr. Chairman.

Senator REED. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

BOILER MACT RULES

Administrator, I want to go back to an issue that I raised in my opening statement about the EPA's proposed maximum achievable control technology rules for boiler emissions.

As I mentioned to you back in September, 41 Senators wrote to you to express great concern about the proposed EPA rules in this area. And they joined a letter that Senator Mary Landrieu and I led. But, I would note that what's remarkable about this letter is, it's almost equally divided between Democrats and Republicans, reflecting widespread concern, bipartisan concern, about the proposed boiler MACT rules. And we wrote then that we were concerned that they would result in significant job losses to the forest products industry at a time when the industry was really struggling, laying off workers, mills were closing, and that we also were concerned that it would discourage the use of wood biomass in woodpulp and paper facilities.

To the EPA's credit, you answered our letter very quickly and said that you would take another look at the rules. And I know you tried to get additional court time, and could only get an additional month, rather than the 15 months, I think it was, that you requested. Nevertheless the final rules came out last month. And the initial estimates by the American Forest and Paper Association is that even the final rules would lead to the loss of thousands of jobs, at a time when our economy can least afford it.

I know the EPA has claimed that the final rule—the cost of the final rule has been lowered by 50 percent. I have to tell you that that's cold comfort to me, because the initial rule, according to industry estimates at least, was something in the neighborhood of \$3 billion in capital costs, and more than \$11 billion for all manufacturing. The \$3 billion was just for the forest products industry. In Maine, the forest products industry estimated that the initial rules would cost \$640 million in compliance costs. So, even if you cut that in half, that is huge. It's still a huge, onerous, costly burden on an industry that is just barely starting to recover from the deep recession.

So, I have a number of questions for you. One is, it's my understanding that, under the CAA, the Congress has given the EPA the authority to develop alternative standards for emissions with health thresholds in cases where the regular MACT limits may be,

quote, “far more stringent than necessary to protect public health.” Back in 2004, the EPA did use a health-based approach. Why wasn’t a health-based approach used this time?

Ms. JACKSON. There was significant analysis, Senator, of exactly that point, whether there was justification for a health-based emission limit—they’re called HBELs—under the law. And those standards were not justified, in our opinion. There was significant comment on it. We heard from many, many people. But, at the end of the day, in the final standards, we did not believe that they were justifiable, and did not provide the protection from toxic air pollutants that the law required.

Senator COLLINS. Well, I have to say that the Congress gave you that authority for a reason. And to set limits that are far more stringent than necessary to protect public health, at a time, particularly, when the economy’s very fragile, really concerns me. Is the EPA going to accept further public comments on the rules that were published last month, on February 23?

Ms. JACKSON. Yes, Senator. Using the reconsideration process, which is part of the CAA that’s—

Senator COLLINS. Yes.

Ms. JACKSON [continuing]. Built into the law, we are soliciting, and now accepting, comments from members of the public, because the final rule was significantly different than the proposal.

Senator COLLINS. And how long—since, as you point out, the final rule is significantly different—how long do you expect that public comment period to be?

Ms. JACKSON. I believe it’s 60 days, Senator. I don’t know; I believe it’s 60 days. But, we’ll get back to you for the record.

[The information follows:]

BOILER MACT

Groups representing sources covered by the rules have recently filed a petition for an administrative stay of the Boiler MACT rule. The Environmental Protection Agency (EPA) has also received a petition for judicial review of the rule and a petition for reconsideration of aspects of the rule. The EPA intends to make a decision regarding a stay of the effective date of the rule by May 20, 2011, when the rule is scheduled to go into effect. At the time the EPA makes a decision, we will discuss a tentative schedule for the process which would include an opportunity for public comment.

Senator COLLINS. I hope that it would be as long as possible, 60 to 90 days, so that there can be ample time to review the rules. The mills in my State have started doing their analysis. They still have many, many concerns about what the impact would be. I know the White House is asking the EPA, and indeed all agencies, to take a hard look at pending rules that have an impact on job creation and preservation. And I certainly think this falls in that category.

Ms. JACKSON. Thank you, Senator. We are—there is a 3-year compliance period for these standards. And I expect, as part of the reconsideration, we may be asked to delay the effective date, while we’re in the reconsideration process.

I do want to point out, because I think I might not have been clear, that when we looked at the health-based emission limit, we looked as to whether there was another standard that would be protective for mercury, lead, arsenic, all of the acid gases included

in the rule. But, the rule, while being much cheaper, has phenomenal public health benefits that I don't want to have overlooked. By the year 2014, when it's implemented, you know, 2,500 to 6,500 premature deaths avoided, 1,600 cases of bronchitis, 4,000 nonfatal heart attacks.

I am all for finding the absolute cheapest way to get public health protection, but I didn't want you to think that we had rejected that kind of approach. In fact, we looked at it and determined that the technology allows us to get protection without the need for any additional health-based standard.

Senator COLLINS. Well, I would suggest that all of us want those public health benefits. They're extremely important. The CAA was authored by Senator Ed Muskie, and our State is very proud of that fact. But, clearly, the proposed rules—the initial rules were a gross overreach. I think the EPA is making progress in reducing the costs and coming up with a more practical approach. But, I still think we can achieve the health benefits that we desire without putting thousands of people out of work.

Thank you, Mr. Chairman.

Senator REED. Thank you.

Senator Blunt, questions?

Senator BLUNT. Yes, thank you, Mr. Chairman.

On that boiler MACT issue—I signed a letter on that recently, myself—would you have somebody send me the cost-benefit analysis out of that rulemaking process?

Ms. JACKSON. Certainly, sir. We can get you—

[The information follows:]

REGULATORY IMPACT ANALYSIS (RIA) FOR THE BOILER MACT

The URL for the RIA is <http://www.epa.gov/airquality/combustion/docs/boilerria20100429.pdf>

Senator BLUNT. Thank you.

NEW SOURCE REVIEW

On the New Source Review—I mentioned the Ameren action earlier, that I've sent a couple letters on. I think that that was almost 10 years ago, almost decade ago, when that change was made so they could burn more low-sulfur coal. It seems like, to me, that's a pretty long reachback for a review. I wonder why nobody did that in the EPA before now. And how long do you think the reachback from New Source Review might go?

Ms. JACKSON. The New Source Review requirements of the CAA came into place, I believe, in the 1977 amendments. And—

Senator BLUNT. Right.

Ms. JACKSON [continuing]. So, what they essentially do is say that, when a plant is making a significant investment to upgrade or rebuild, they should also invest in pollution control. So, the cases, which have been pursued since 1999, not necessary against Ameren, are lookbacks to see if companies, when they made significant changes to their operations, did indeed comply with the law by also upgrading their pollution controls. Ameren announced, I think in February, that it's going to install scrubbers to address sulfur dioxide at two facilities. I can't talk about the specifics of the case that's pending. It's in litigation over at Department of Justice.

But, that is a nonattainment area for sulfur dioxide. It's one of the largest sources of pollution in the State.

Senator BLUNT. And how do you find out that these plants are making these changes in the plant?

Ms. JACKSON. I haven't done these cases in a very, very long time, sir—but, generally, back when I did them, it relied on information from the energy administration. You would see large increases in energy output or in bids into the grid, depending on whether they're a regulated or nonregulated utility. And then from there you could use information gathering authority under the CAA to determine whether a violation of the law had—

Senator BLUNT. And if you see those output increases, then you just routinely go in and check and see if they've done anything to change the facility?

Ms. JACKSON. There's also the routine checks that come as part of the permit process. But, that would be the first thing that might get an inspector or an enforcement agent concerned; if they start to see huge amounts of energy increase, that means you're burning more fossil fuel, which means more pollution. And the question is, Has there been an investment in reducing the air pollution that's concurrent with that?

Senator BLUNT. Yes, it just seems to me it took an awful long time to—either for them to get their output up or for the EPA to decide this was something they wanted to look at, if it's almost a decade after the change was made and then suddenly there's an enforcement action. But, we'll continue to talk about that. I am concerned about it.

COOLING TOWERS

On the cooling-tower issue, I think I've seen one estimate of cost of added cooling towers to powerplants, to all the powerplants that may need them, would cost up to \$60 billion. I think all that—in virtually every State, there's a process to pass that along as part of the utility rate or—how do you think—what's your sense of how you approach the cooling-tower requirement? Are you going to look at every powerplant and try to come up with—help them come up with the best cost-effective thing for them? Or is there going to be a cookie-cutter process, here, that you have to meet these criteria in this size plant? Or what are you going to do there?

Ms. JACKSON. Well, the EPA is working on a rule, sir. That's as a result of a couple of Supreme Court—I think they're Supreme Court cases. I really do not want to get in front of the rulemaking process—we'll make a proposal; it'll be out for public comment. The one thing I have said publicly is that I don't believe in a one-size-fits-all approach on that issue. So, I think that there is certainly some amount of judgment. New facilities are different than older facilities.

Senator BLUNT. Well, we're—you know, that's obviously a big change in all of these facilities, if it happens. And I'll watch that, as well. But, I'm going to be particularly interested to see the cost-benefit analysis from the boiler MACT rulemaking, and look forward to getting that.

Thank you, Chairman.

Senator REED. Thank you, Senator Blunt.

At this point, Madam Administrator, I think we can—with your permission—wrap it up.

Senator MURKOWSKI. Could I just ask—

Senator REED. Absolutely.

Senator MURKOWSKI [continuing]. Very quickly?

Senator REED. Madam Senator.

ALASKAN NATIVE VILLAGES PROGRAM

Senator MURKOWSKI. You know, I've been very critical of the EPA throughout this hearing, but I was raised by a mother who is very generous. And she says if there is something good to be said, you need to make sure that that is said, as well. And one of the areas where Alaskans have benefited from the EPA and their programs has been the Alaska Native Villages Program. This, of course, helps us with water and sewer infrastructure. We are seeing a reduction in this, in the budget area, this year. This is a program that is run by the State, but the assistance that we receive from the EPA has been extremely helpful.

The question to you, Administrator Jackson, is whether or not the EPA has done an assessment in understanding what the overall needs of rural Alaska are for water and sewer improvements? Do you have that? Do you work with the State on that? We want to try to make the improvements that are necessary in this area. We know that the need is great, but I'm just wondering if an assessment has been made.

Ms. JACKSON. Yes, Senator. There's an annual inventory of need in Alaska. It's tracked by the Indian Health Service. As of November 2010, the total drinking water need in Alaska was 413 million gallons, and the wastewater need was 300 million gallons. So, obviously, it totals more than 700 million gallons. I can tell you that, while the need is not going away, in 1995, when the program began, only 45 percent of the population had water and wastewater. In 2010, 93 percent has water and wastewater. It is a program that is effective, that is working. Forty-three percent of the need that's out there is still to address first-time service to homes that have no pipes or haul service. Forty-four percent of the needs address health threats that are quite substantial.

Senator MURKOWSKI. Well, we want to work with you on that. We recognize that these are tight budgets. We understand that. But, I think you know and appreciate, as I do, that these are critical infrastructure needs for the health of those residents. So, we will be working with you as we seek to find ways to advance the funding. So, I appreciate that.

Thank you, Mr. Chairman, for the opportunity for an additional question.

ADDITIONAL COMMITTEE QUESTIONS

Senator REED. Thank you, Senator Murkowski.

And let me just amplify her remarks by simply saying "sewers."

Not just in Alaska, but around. We have many things in common. And our concern for infrastructure is a common passion amongst us.

Madam Director, we—Administrator—excuse me. We may have additional written questions which we will submit to you; from my

colleagues that may not have been able to attend the hearing. We'd ask you to respond very quickly. And I will ask the staff to see if they can coordinate any written questions by this Friday.

With that, Madam Administrator, thank you for your service and your testimony.

Ms. Bennett, thank you, too.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR JACK REED

RHODE ISLAND NARRAGANSATT BAY ESTUARY—FUNDING REDUCTION

Question. Rhode Island is home to 1 of the Environmental protection Agency's (EPA) 28 national estuaries, the Narragansett Bay Estuary Program. These estuaries raise \$15 for every \$1 that the EPA provides them through a Federal grant. I'm concerned that the administration chose to reduce funding for the National Estuary Program (NEP) by 17 percent—for a total of \$27 million—despite the program's excellent track record of leveraging Federal investment. Your budget request means that every estuary will receive a \$200,000 cut to its budget next year. That's a 25 percent cut. Can you explain why this program wasn't a higher priority in your budget?

Answer. The EPA is maintaining its strong commitment to an effective NEP, which is a long-standing example of the EPA's commitment to work with communities to achieve water-quality goals on a watershed basis. However, given budget constraints, we had to make difficult decisions regarding where to pursue increases in funding and where to reduce funding or maintain current funding levels. The President's fiscal year 2012 request provides \$600,000 per NEP, the same level the administration requested in fiscal year 2010. The EPA believes that this level of funding is sufficient to maintain continued positive momentum in the NEP.

STATE GRANT FUNDS

Question. Your budget request includes a 35 percent increase for State and local air-quality grants and a 9 percent increase for water pollution control grants. These increases will fund additional staff to process permits more quickly and to enforce pollution limits. In contrast, H.R. 1 includes a \$50 million cut in fiscal year 2011 for grants to State programs that fund air and water pollution control, hazardous waste financial assistance and nonpoint source prevention. That's a 5 percent cut. I am concerned that these cuts will have the exact opposite effect of your budget request and result in employee furloughs, slower permitting and reduced enforcement—particularly when States would be forced to absorb them so late in the year. What kind of measurable improvements do you expect your budget request to have on State permitting and enforcement programs? Conversely, what impact do you believe the cuts proposed in H.R. 1 would have on the ability of States to do their work this year?

Answer. I am concerned that inadequate funding for State and local air-quality grants could slow down the preconstruction permitting process for new and modified sources. A portion of the increased air grant funding for State and local agencies (\$25 million) will support States as they begin to update their programs for issuing title V operating permits and prevention of significant deterioration permits to include the largest sources of greenhouse gases (GHGs). Air operating permit programs are usually supported by permit fees paid by sources of emissions. However, the new requirement to issue permits to the largest sources of GHGs will require additional staffing and training by State permitting agencies which are not initially paid by fees. This increase will ensure that States have the necessary trained and equipped staff to issue permits to sources in a timely and efficient manner.

Another portion of the increase will support States' efforts to implement revised NAAQS and regulations to address air toxics. Under the previous administration, the EPA committed to review each NAAQS within the 5-year timeframe prescribed by the Clean Air Act. In most instances, the review of the latest science has resulted in the Administrator lowering the NAAQS to be more stringent and more protective of human health. As part of the implementation workload, States will need additional resources to conduct compliance assistance for regulated sources.

At this critical time in air pollution control programs and the severe budget cuts within State agencies, reductions in support to State and local agencies will delay

public health gains from improved air quality and negatively impact the private sector as sources are delayed in obtaining construction and operating permits to construct new facilities.

States use the 106 State grant program to implement their water pollution control programs, including permitting, enforcement, water-quality standards, Total Maximum Daily Loads, and ambient water-quality monitoring. States target these grant resources for water issues of the highest priority as identified by the States and the EPA. Over the past decade, the National Pollutant Discharge Elimination System (NPDES) universe of permitted facilities has expanded significantly from approximately 372,700 to an estimated 1 million. This is a result of industry trends and court decisions that have expanded the scope of the NPDES Program.

Increases are needed to address this expansion, to implement new NPDES regulatory requirements, and support initiatives such as the EPA's Clean Water Act Action Plan which seeks to revamp NPDES permitting, compliance, and enforcement. Under this new plan, the EPA is working with States to develop joint annual plans, integrate permit and enforcement reviews to focus on the greatest water-quality threats, improve transparency, and strengthen oversight to improve results and consistency.

Permit issuance backlog is an issue in many States, and decreases in State budgets have generally exacerbated the issue. An increase in Federal grant funding could improve permit issuance rates, while cuts in funding provided from the Federal budget could worsen the problem.

Finally, budget cuts could also result in States being unable to meet their program commitments, and being forced to return their authorized programs to the EPA. Due to resource concerns, Missouri is currently investigating this option, and other States could follow. Since Federal funding generally covers only a small percentage of the overall cost of running a State water pollution control program, operating a returned State NPDES Program would result in far higher costs to the Federal Government.

DIESEL EMISSION REDUCTION ACT (DERA) FUNDING ELIMINATION

Question. I'm concerned that the EPA's budget request eliminates \$60 million for the DERA grant program, a program which the Congress reauthorized for another 5 years just last December. The administration has suggested that the DERA Program is no longer necessary because older diesel engines will eventually age out of service on their own. Yet the EPA's diesel emission standards do not address replacement of the estimated 11 million older diesel engines that are still in use. These engines are some of the worst producers of particulate matter and smog-forming compounds, and they have service lives that can last 20 to 30 years. That's why the EPA estimates that every \$1 invested in funding diesel retrofits yields \$13 in public health benefits. Can you explain to us why you chose to eliminate this program? Do you really believe that the DERA Program has run its course?

Answer. Since 2008, the Congress has appropriated more than \$460 million for the DERA program, including \$300 million as part of the American Recovery and Reinvestment Act of 2009. With this funding, approximately 50,000 engines have been retrofitted (of the estimated 11 million vehicles and engines in the legacy fleet), and the EPA has awarded:

- \$249 million in competitive grants to fund implementation of EPA- or CARB-verified and certified diesel emission reduction technologies;
- \$137 million in funds to participating States to implement grant and loan programs for clean diesel projects;
- \$45 million in competitive grants through the SmartWay finance program to establish national low-cost revolving loans or other financing programs that help fleets reduce diesel emissions; and
- \$32 million in competitive awards through the Emerging Technologies Program to foster the development and field evaluation of cutting-edge technologies.

Budget constraints for fiscal year 2012 required the EPA to make tough choices; clearly the cost-effective DERA Program is an example. While the DERA grants accelerate the pace at which dirty engines are retired or retrofitted, pollution emissions from the legacy fleet will be reduced over time without additional DERA funding as portions of the fleet turnover and are replaced with new engines that meet modern emissions standards.

MISFUELING OF VEHICLES AND ENGINES WITH E15

Question. The EPA recently released a decision allowing 15 percent ethanol to be used in model-year 2001 and newer cars. Without providing consumers with clear labels and lower blend alternatives, this decision could lead to accidental misfueling

of vehicles and engines, such as marine vehicles. What steps is the EPA taking to implement this decision? How is the EPA working with the States or other parties to address consumer concerns regarding misfueling or lack of availability of lower ethanol blends?

Answer. Last fall, concurrently with the first partial waiver decision for E15, the EPA issued a proposed rule to help mitigate the potential for misfueling of vehicles, engines and equipment (including boats and other marine vehicles) not covered by the partial waiver. The proposed rule called for labeling of E15 pumps and product transfer and survey requirements to help ensure E15 is properly labeled. The EPA expects to issue a final rule later this spring. The EPA has also begun discussions with stakeholders about establishing a public outreach and education campaign to accompany the introduction of E15 into the marketplace. The EPA recently received a petition from engine manufacturers and owners asking the Agency to require the continued availability of E10, and we are in the process of considering that petition.

IMPACT OF H.R. 1 PREVENTING THE EPA FROM ISSUING NEW CWA GUIDANCE

Question. H.R. 1 contains language that would prevent the EPA from issuing new guidance to clarify which waters in the United States are subject to regulation under the Clean Water Act (CWA). I am concerned about what kind of impact this could have on the wetlands and waters we have in Rhode Island. Would you please explain what efforts to block the EPA issuing new CWA guidance actually mean in terms of public health and water quality?

Answer. H.R. 1 would have prohibited the EPA from implementing, administering, or enforcing new guidance or a new rule intended to clarify the definition of “waters of the US,” after Supreme Court decisions in *SWANCC* and *Rapanos*. The practical effect of the rider would be to prevent EPA from taking administrative steps to improve protections for the Nation’s streams, lakes, wetlands, and other waters. H.R. 1, if enacted, would have prevented the EPA from taking actions to better protect all of our Nation’s waters from chemical wastes, sewage, animal wastes, oil spills, and a variety of other contaminants. The result would be continued ambiguity regarding the scope of waters regulated by CWA programs, which has increased workload for field staff and contributed to uncertainty and delay for permit applicants.

Efforts to block the EPA from clarifying waters of the United States subject to the CWA could have negative effects on public health. People use our Nation’s waters for recreation, including activities that put them in direct contact with the water, such as swimming, waterskiing, jetskiing, and kayaking. Protecting smaller, upstream waters protects larger downstream waters. However, under current guidance interpreting the Supreme Court decisions, waters that flow for only part of the year (intermittent and ephemeral streams), many headwater streams, wetlands adjacent to these streams, and geographically isolated wetlands are difficult to protect.

At least 117 million Americans—more than one-third of the U.S. population—receive their drinking water from public systems fed at least in part by waters that currently lack clear protection from pollution and destruction.¹ In Rhode Island, almost 565,000 people receive drinking water from public drinking water systems that rely at least in part on these intermittent, ephemeral, or headwater streams.²

Wetlands absorb flood waters and mitigate the impacts of flooding. Filling of unprotected wetlands can lead to increases in the frequency and magnitude of “downstream” flooding.

Water quality in larger downstream rivers, lakes, and coastal waters depends in large part on water quality in the many small streams and on wetlands that filter out pollution and improve water quality before it reaches downstream waters. In addition, small streams and wetlands provide habitat, food, spawning sites, and nursery areas for a wide variety of plants, fish, amphibians, birds, and mammals.

¹U.S. EPA, July 2009. “Geographic Information Systems Analysis of the Surface Drinking Water Provided by Intermittent, Ephemeral and Headwater Streams in the U.S.” Available at: http://water.epa.gov/lawsregs/guidance/wetlands/surface_drinking_water_index.cfm

²U.S. EPA, July 2009. “Geographic Information Systems Analysis of the Surface Drinking Water Provided by Intermittent, Ephemeral and Headwater Streams in the U.S.” Available at: http://water.epa.gov/lawsregs/guidance/wetlands/upload/2009_12_28_wetlands_science_surface_drinking_water_surface_drinking_water_results_state.pdf

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

LAKE CHAMPLAIN

Question. The Environmental Protection Agency (EPA) has been a very strong partner in the clean-up of Lake Champlain for the past 20 years. The EPA's interest in Lake Champlain seems stronger than ever, especially given the Agency's move earlier this year to require a new Phosphorus Total Maximum Daily Load Plan, likely to be written by the EPA. Given the EPA's long-standing commitment then, I was disappointed to see the President's budget proposal cut Lake Champlain funding by 65 percent from the fiscal year 2010 level. The proposed funding level for Lake Champlain is especially hard to understand when in your testimony you highlight the continued efforts to clean up America's great water bodies and you propose increasing the Chesapeake Bay funding by 35 percent. Both the Bay and Lake Champlain watersheds face similar water-quality issues as they seek to reduce nutrient and sediment pollution in important ecosystems that span multiple States. Yet it appears the Champlain basin is asked to do more with far less. How does the EPA intend to fulfill its 20-year commitment to the Lake Champlain program at such a reduced funding level?

Answer. The EPA is maintaining its commitment to the Lake Champlain Program. We believe that this level of funding is sufficient to continue forward momentum in the implementation of the Lake Champlain Basin Management Plan, "Opportunities for Action." For example, in fiscal year 2012, this funding will enable the EPA to continue to work with its partners to continue monitoring of phosphorus and other water-quality parameters in the lake and tributaries, and to work with partners to implement projects that will help reduce phosphorus loads from all categories of sources (point, urban, and agricultural nonpoint).

SUPERFUND

Question. The Superfund Program, while creating a wonderful legacy, is often criticized for its slow clean-up pace. At an estimated 62 percent of listed Superfund sites, half or more of the job remains undone. In Vermont, we have four sites still awaiting final cleanup. How do you propose to tackle the ongoing cleanups and take on new sites, especially in light of budget cuts while you face cleaning up increasingly larger and more expensive sites?

Answer. To manage the EPA's clean-up programs more effectively and efficiently, seeking to maximize the efficiency of the resources available, the Agency has initiated a multi-year effort to integrate and leverage our land clean-up authorities to address a greater number of contaminated sites, accelerate cleanups where possible, and put sites back into productive use while protecting human health and the environment. One of the principal elements of the Integrated Cleanup Initiative is to increase the project management focus and manage projects to completion.

Cleanup of Superfund sites, typically the Nation's most contaminated, presents significant challenges. Sites on the National Priorities List (NPL) include, but are not limited to, contaminated sediment sites that may cover miles of river bed or harbor bottoms; mining sites with tailings piles causing acid mine drainage; landfills; and abandoned factories, mills, smelters, and other industrial facilities associated with wide-spread contamination. Often this contamination is found both on the surface and subsurface of a site, and frequently includes the contamination of groundwater. As a result, cleanup is often complex and frequently takes many years to complete.

Before the EPA may initiate the on-site clean-up work, studies must take place to determine appropriate remedies. Once studies are complete, the remedies must be constructed or designed. Then the physical on-site construction work begins. All of this work takes place while the EPA works to ensure appropriate input from States, tribes, and local communities. Despite these challenges, the EPA has made substantial progress—67 percent of NPL sites (more than 1,060 sites) have completed on-site construction—but the EPA recognizes that more needs to be done.

In times of fiscal constraints, the EPA will endeavor to prioritize its activities within the Superfund Program. For example, certain new construction projects may be delayed at sites where the contamination is determined to be relatively stable and the potential for human exposures are low. However, the public should be assured that the EPA will continue to take emergency actions should an immediate threat to human health or the environment be identified.

Question. Has the expiration of the industry taxes affected the EPA's ability to move cleanups forward?

Answer. The EPA continues to make progress cleaning up Superfund sites through a combination of annual Congressional appropriations, responsible party

settlement funding, and State cost share contributions. The level of funding appropriated by the Congress annually for the Superfund Program is funded through the Superfund trust fund as supplemented by general revenues as necessary. Historically, Superfund Program appropriation levels have not been contingent on the trust fund balance due to the supplementation from general revenues. However, the revenues from the Superfund taxes will provide a stable, dedicated source of revenue and decrease the burden on individual taxpayers to foot the bill for the cleanup of sites where no viable party has been identified.

Question. Have budget shortfalls for Superfund hindered your enforcement for efforts, leading responsible parties to drag their feet in negotiations in order to get a better deal, knowing that you do not have the funds to conduct a cleanup?

Answer. The enforcement tools available to the EPA to compel responsible parties to pay for or conduct cleanup are strong and do not change. Responsible parties are aware that if they “drag their feet” during negotiations, the EPA has the authority to issue enforcement orders unilaterally. Responsible parties are also aware that if they do not comply with a unilateral order, the EPA may bring an action to enforce the order or to conduct the cleanup and recover its clean-up costs as well as seek treble damages. The level of funding for enforcement proposed in the fiscal year 2012 budget ensures that the EPA will have sufficient funds so that, if responsible parties fail to perform their clean-up obligations, the EPA can use all available tools to ensure that contaminated sites are cleaned up to protect human health and the environment.

FORMALDEHYDE STANDARDS

Question. As your agency implements the Formaldehyde Standards for Composite Wood Products Act, that passed both the House and Senate with overwhelming bipartisan support and was signed into law by President Obama last July, I urge you to carefully consider the implications for small manufacturers of low-risk-engineered veneer and similar product components. I am very concerned that if our small niche market companies that produce smaller hardwood products, like guitar bodies and gun stocks, that pose little if any health risks based on end usage are held to the same standards as those items which were involved in the original focus of this legislation it will have a crippling effect on these companies.

Can you assure me that the EPA will take into account if these regulations will be overly burdensome and costly to these manufacturers? Or if it would have devastating financial impacts on these companies?

Answer. The Formaldehyde Standards for Composite Wood Products Act, enacted by the Congress in 2010, establishes formaldehyde emissions standards for hardwood plywood, particleboard, and medium-density fiberboard. As directed by the act, the EPA is evaluating all available and relevant information from State authorities, industry, and other available sources to determine whether the definition of the term “hardwood plywood” should exempt engineered veneer or any laminated product. The EPA intends to address these products in its rulemaking in a way that is protective of human health and the environment, taking into account the concerns of manufacturers, particularly small business manufacturers.

In addition, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires the EPA to estimate the number of small entities affected by a rule and assess the impacts on those entities. As part of developing the proposed rule to implement the Formaldehyde Standards for Composite Wood Products Act, the EPA convened a Small Business Advocacy Review (SBAR) Panel on February 3, 2011. The Panel is made up of representatives from the agency conducting the rulemaking (the EPA in this case), the Small Business Administration, and the Office of Management and Budget. The SBREFA further requires the Panel to solicit the advice and recommendations of Small Entity Representatives (SERs). Outreach meetings on this rulemaking were held with the Panel and the SERs on January 6, 2011, and February 17, 2011. The Panel also solicited two rounds of written comments from the SERs. The EPA is currently reviewing the comments received during the SBAR Panel process.

Additional analysis is required for regulations that impose more than a certain level of costs on society or raise novel policy or legal issues. For example, the Unfunded Mandates Reform Act requires, among other things, a cost-benefit analysis and consideration of a reasonable number of regulatory options for regulations that require the expenditures of funds by State, local, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Executive Order 12866 gives the Office of Management and Budget the authority to review regulatory actions that are categorized as significant, including rules that may have an annual effect on the economy of \$100 million or more. Although the EPA has

not yet determined the total costs that will be imposed by the formaldehyde implementing regulations, the EPA is planning to prepare an economic analysis that complies with the applicable requirements of the Executive order.

The EPA has already received a great deal of input from stakeholders, including small businesses, and will continue to do so as we develop the implementing regulations. Pursuant to the Administrative Procedures Act,¹ the EPA typically provides at least 60 days for the public to comment on proposed rules. The EPA is particularly interested in information on the effects of potential regulatory options on small businesses and on how the EPA can reduce the regulatory burden on small businesses while fulfilling its statutory mandates and its mission to protect human health and the environment.

QUESTIONS SUBMITTED BY SENATOR BEN NELSON

COMBINED SEWER MANDATES

Question. Administrator Jackson, like many cities in the United States, Omaha has a combined sewer system that was originally designed to carry both storm water and sewage into the Missouri River and Papillion Creek. That system is from the 1800s and we can all agree it makes sense to upgrade this infrastructure and protect water quality for citizens in Omaha. The reality though, is that it is going to cost ratepayers more than \$1.6 billion to meet the Environmental Protection Agency's (EPA) combined sewer overflow (CSO) mandate. This will result in a doubling of sewer fees over the next 15 years. Now I believe States and localities have to be responsible for some costs, but in cases like this when we're talking about enormous sums of money, I think the Federal Government should be a partner when it is mandating the upgrades. So my question is, how can the EPA be a partner in the case of combined sewer mandates? Outside of the revolving loan funds, which are something but far too small for projects like this, what tools can the EPA make available to help cities comply with the mandates it sets forth?

Answer. The Clean Water State Revolving Fund (SRF) is an important Federal component that is helping to improve wastewater infrastructure across the country. The President's fiscal year 2012 budget request continues this administration's historic commitment to funding wastewater infrastructure and brings the 4-year total for the SRFs to approximately \$16 billion (fiscal year 2009–fiscal year 2012).

The EPA also promotes the use of green infrastructure for CSO mitigation. Green infrastructure reduces the volume of stormwater entering combined sewer systems while simultaneously improving air quality, reducing urban heat island effects and energy use, mitigating climate change and its impacts, and fostering community redevelopment by improving urban aesthetics. These multiple benefits can make green infrastructure a cost-efficient method of upgrading combined sewer systems but also, importantly, make it potentially eligible for a broad range of Federal funding. By September 2011, the EPA will provide a resource guide identifying Federal grant programs, (e.g., HUD, DOT) for which green infrastructure projects may qualify for consideration along with case studies, where available, of how these grant funds have been applied to green infrastructure projects.

FEDERAL NUMERIC NUTRIENT CRITERIA (NNC)

Question. Administrator Jackson, last November, the EPA finalized Federal NNC for Florida's flowing waters and lakes. While few dispute the need to reduce nutrients in Florida's waters, the EPA's proposal has raised questions about the data underlying the proposal, the potential costs of complying with numeric standards when they are incorporated into discharge permit limitations, and disputes over administrative flexibility. The concern I have is the EPA's actions in Florida, will be a precedent for similar regulatory action elsewhere. For example, environmental advocacy groups have petitioned or filed lawsuits seeking to require the EPA to establish numeric nutrient water-quality standards in Kansas and for the upper Mississippi River basin. For Nebraska, this could require the EPA to establish standards for discharge from hog and cattle feeding operations, or any point source from livestock feeding, but it isn't clear that the means to comply currently exist. I know you have stated several times that the EPA does not intend to apply numeric standards to

¹ The Administrative Procedures Act governs the process by which Federal agencies develop and issue regulations, establishes requirements for publishing notices of proposed and final rulemaking in the Federal Register, and provides opportunities for the public to comment on notices of proposed rulemaking.

other States, but with the petitions and lawsuits that are out there; what steps are you taking to insure this will not be the case?

Answer. Nitrogen and phosphorus pollution is a widespread, serious and growing problem. This pollution threatens our waters used for drinking, fishing, swimming, and other recreational purposes. It can hurt the tourism industry, decimate people's home and property values, and cause illnesses. At this time, the EPA is not working on any Federal standards for phosphorus and nitrogen for any States other than ongoing efforts in Florida, but we are ready to provide support and technical assistance as States work to tackle this serious water pollution problem. To help States address this pollution, on March 16, 2011, the EPA sent a memorandum to our regions that builds on our commitment to build partnerships with States and collaboration with stakeholders on this issue. The EPA will use this memorandum as the basis for discussions with interested and willing States about how to move forward on tackling this issue recognizing that there is no one-size-fits-all solution. The EPA strongly believes States should address phosphorus and nitrogen pollution through standards they develop and supports these critical State efforts.

ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF WATER,
Washington, DC, March 16, 2011.

MEMORANDUM

SUBJECT: Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions
FROM: Nancy K. Stoner
Acting Assistant Administrator
TO: Regional Administrators, Regions 1–10

This memorandum reaffirms EPA's commitment to partnering with states and collaborating with stakeholders to make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to our nation's waters. The memorandum synthesizes key principles that are guiding and that have guided Agency technical assistance and collaboration with states and urges the Regions to place new emphasis on working with states to achieve near-term reductions in nutrient loadings.

Over the last 50 years, as you know, the amount of nitrogen and phosphorus pollution entering our waters has escalated dramatically. The degradation of drinking and environmental water quality associated with excess levels of nitrogen and phosphorus in our nation's water has been studied and documented extensively, including in a recent joint report by a Task Group of senior state and EPA water quality and drinking water officials and managers.¹ As the Task Group report outlines, with U.S. population growth, nitrogen and phosphorus pollution from urban stormwater runoff, municipal wastewater discharges, air deposition, and agricultural livestock activities and row crop runoff is expected to grow as well. Nitrogen and phosphorus pollution has the potential to become one of the costliest and the most challenging environmental problems we face. A few examples of this trend include the following:

- 50 percent of U.S. streams have medium to high levels of nitrogen and phosphorus.
- 78 percent of assessed coastal waters exhibit eutrophication.
- Nitrate drinking water violations have doubled in eight years.
- A 2010 USGS report on nutrients in ground and surface water reported that nitrates exceeded background concentrations in 64 percent of shallow monitoring wells in agriculture and urban areas, and exceeded EPA's Maximum Contaminant Levels for nitrates in 7 percent or 2,388 of sampled domestic wells.²
- Algal blooms are steadily on the rise; related toxins have potentially serious health and ecological effects.

States, EPA and stakeholders, working in partnership, must make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to our nation's waters. While EPA has a number of regulatory tools at its disposal, our resources can best be employed by catalyzing and supporting action by states that want to protect their waters from nitrogen and phosphorus pollution. Where states are willing to step forward, we can most effectively encourage progress through on-the-ground technical assistance and dialogue with state officials and stakeholders, coupled with cooperative efforts with agencies like USDA with expertise and finan-

¹An Urgent Call to Action: Report of the State-EPA Nutrients Innovations Task Group, August 2009.

²Nutrients in the Nation's Streams and Groundwater: National Findings and Implications, US Geological Survey, 2010.

cial resources to spur improvement in best practices by agriculture and other important sectors.

States need room to innovate and respond to local water quality needs, so a one-size-fits-all solution to nitrogen and phosphorus pollution is neither desirable nor necessary. Nonetheless, our prior work with states points toward a framework of key elements that state programs should incorporate to maximize progress. Thus, the Office of Water is providing the attached "Recommended Elements of a State Nutrients Framework" as a tool to guide ongoing collaboration between EPA Regions and states in their joint effort to make progress on reducing nitrogen and phosphorus pollution. I am asking that each Region use this framework as the basis for discussions with interested and willing states. The goal of these discussions should be to tailor the framework to particular state circumstances, taking into account existing tools and innovative approaches, available resources, and the need to engage all sectors and parties in order to achieve effective and sustained progress.

While the Framework recognizes the need to provide flexibility in key areas, EPA believes that certain minimum building blocks are necessary for effective programs to manage nitrogen and phosphorus pollution. Of most importance is prioritizing watersheds on a state-wide basis, setting load-reduction goals for these watersheds based on available water quality information, and then reducing loadings through a combination of strengthened permits for point-sources and reduction measures for nonpoint sources and other point sources of stormwater not designated for regulation. Our experience in almost 40 years of Clean Water Act implementation demonstrates that motivated states, using tools available under Federal and state law and relying on good science and local expertise, can mobilize local governments and stakeholders to achieve significant results.

It has long been EPA's position that numeric nutrient criteria targeted at different categories of water bodies and informed by scientific understanding of the relationship between nutrient loadings and water quality impairment are ultimately necessary for effective state programs. Our support for numeric standards has been expressed on several occasions, including a June 1998 National Strategy for Development of Regional Nutrient Criteria, a November 2001 national action plan for the development and establishment of numeric nutrient criteria, and a May 2007 memo from the Assistant Administrator for Water calling for accelerated progress towards the development of numeric nutrient water quality standards. As explained in that memo, numeric standards will facilitate more effective program implementation and are more efficient than site-specific application of narrative water quality standards. We believe that a substantial body of scientific data, augmented by state-specific water quality information, can be brought to bear to develop such criteria in a technically sound and cost-effective manner.

EPA's focus for nonpoint runoff of nitrogen and phosphorus pollution is on promoting proven land stewardship practices that improve water quality. EPA recognizes that the best approaches will entail States, Federal agencies, conservation districts, private landowners and other stakeholders working collaboratively to develop watershed-scale plans that target the most effective practices to the acres that need it most. In addition, our efforts promote innovative approaches to accelerate implementation of agricultural practices, including through targeted stewardship incentives, certainty agreements for producers that adopt a suite of practices, and nutrient credit trading markets. We encourage Federal and state agencies to work with NGOs and private sector partners to leverage resources and target those resources where they will yield the greatest outcomes. We should actively apply approaches that are succeeding in watersheds across the country.

USDA and State Departments of Agriculture are vital partners in this effort. If we are to make real progress, it is imperative that EPA and USDA continue to work together but also strengthen and broaden partnerships at both the national and state level. The key elements to success in BMP implementation continue to be sound watershed and on-farm conservation planning, sound technical assistance, appropriate and targeted financial assistance and effective monitoring. Important opportunities for collaboration include EPA monitoring support for USDA's Mississippi River Basin Initiative as well as broader efforts to use EPA section 319 funds (and other funds, as available) in coordination with USDA programs to engage creatively in work with communities and watersheds to achieve improvements in water quality.

Accordingly the attached framework envisions that as states develop numeric nutrient criteria and related schedules, they will also develop watershed scale plans for targeting adoption of the most effective agricultural practices and other appropriate loading reduction measures in areas where they are most needed. The timetable reflected in a State's criteria development schedule can be a flexible one pro-

vided the state is making meaningful near-term reductions in nutrient loadings to state waters while numeric criteria are being developed.

The attached framework is offered as a planning tool, intended to initiate conversation with states, tribes, other partners and stakeholders on how best to proceed to achieve near- and long-term reductions in nitrogen and phosphorus pollution in our nation's waters. We hope that the framework will encourage development and implementation of effective state strategies for managing nitrogen and phosphorus pollution. EPA will support states that follow the framework but, at the same time, will retain all its authorities under the Clean Water Act.

With your hard work, in partnership with the states, USDA and other partners and stakeholders, I am confident we can make meaningful and measurable near-term reductions in nitrogen and phosphorus pollution. As part of an ongoing collaborative process, I look forward to receiving feedback from each Region, interested states and tribes, and stakeholders.

Attachment

Cc: Directors, State Water Programs
Directors, Great Water Body Programs
Directors, Authorized Tribal Water Quality Standards Programs Interstate
Water Pollution Control Administrators

RECOMMENDED ELEMENTS OF A STATE FRAMEWORK FOR MANAGING NITROGEN AND
PHOSPHORUS POLLUTION

*Prioritize Watersheds on a Statewide Basis for Nitrogen and Phosphorus Loading
Reductions*

- Use best available information to estimate Nitrogen (N) & Phosphorus (P) loadings delivered to rivers, streams, lakes, reservoirs, etc. in all major watersheds across the state on a Hydrologic Unit Code (HUC) 8 watershed scale or smaller watershed (or a comparable basis.)
- Identify major watersheds that individually or collectively account for a substantial portion of loads (e.g. 80 percent) delivered from urban and/or agriculture sources to waters in a state or directly delivered to multi-jurisdictional waters.
- Within each major watershed that has been identified as accounting for the substantial portion of the load, identify targeted/priority sub-watersheds on a HUC 12 or similar scale to implement targeted N & P load reduction activities. Prioritization of sub-watersheds should reflect an evaluation of receiving water problems, public and private drinking water supply impacts, N & P loadings, opportunity to address high-risk N & P problems, or other related factors.

Set Watershed Load Reduction Goals Based Upon Best Available Information

Establish numeric goals for loading reductions for each targeted/priority sub-watershed (HUC 12 or similar scale) that will collectively reduce the majority of N & P loads from the HUC 8 major watersheds. Goals should be based upon best available physical, chemical, biological, and treatment/control information from local, state, and Federal monitoring, guidance, and assistance activities including implementation of agriculture conservation practices, source water assessment evaluations, watershed planning activities, water quality assessment activities, Total Maximum Daily Loads (TMDL) implementation, and National Pollutant Discharge Elimination System (NPDES) permitting reviews.

*Ensure Effectiveness of Point Source Permits in Targeted/Priority Sub-Watersheds
for:*

- Municipal and Industrial Wastewater Treatment Facilities that contribute to significant measurable N & P loadings;
- All Concentrated Animal Feeding Operations (CAFOs) that discharge or propose to discharge; and/or
- Urban Stormwater sources that discharge into N & P-impaired waters or are otherwise identified as a significant source.

Agricultural Areas

In partnership with Federal and State Agricultural partners, NGOs, private sector partners, landowners, and other stakeholders, develop watershed-scale plans that target the most effective practices where they are needed most. Look for opportunities to include innovative approaches, such as targeted stewardship incentives, certainty agreements, and N & P markets, to accelerate adoption of agricultural conservation practices. Also, incorporate lessons learned from other successful agricultural initiatives in other parts of the country.

Storm Water and Septic Systems

Identify how the State will use state, county and local government tools to assure N and P reductions from developed communities not covered by the Municipal Separate Storm Sewer Systems (MS4) program, including an evaluation of minimum criteria for septic systems, use of low impact development/green infrastructure approaches, and/or limits on phosphorus in detergents and lawn fertilizers.

Accountability and Verification Measures

- Identify where and how each of the tools identified in sections 3, 4 and Swill be used within targeted/priority sub-watersheds to assure reductions will occur.
- Verify that load reduction practices are in place.
- To assess/demonstrate progress in implementing and maintaining management activities and achieving load reductions goals: establish a baseline of existing N & P loads and current Best Management Practices (BMP) implementation in each targeted/priority sub-watershed, conduct ongoing sampling and analysis to provide regular seasonal measurements of N & P loads leaving the watershed, and provide a description and confirmation of the degree of additional BMP implementation and maintenance activities.

Annual Public Reporting of Implementation Activities and Biannual Reporting of Load Reductions and Environmental Impacts Associated With Each Management Activity in Targeted Watersheds

- Establish a process to annually report for each targeted/priority sub-watershed: status, challenges, and progress toward meeting N & P loading reduction goals, as well as specific activities the state has implemented to reduce N & P loads such as: reducing identified practices that result in excess N & P runoff and documenting and verifying implementation and maintenance of source-specific best management practices.
- Share annual report publicly on the state's website with request for comments and feedback for an adaptive management approach to improve implementation, strengthen collaborative local, county, state, and Federal partnerships, and identify additional opportunities for accelerating cost-effective N & P load reductions.

Develop Work Plan and Schedule for Numeric Criteria Development

Establish a work plan and phased schedule for N and P criteria development for classes of waters (e.g., lakes and reservoirs, or rivers and streams). The work plan and schedule should contain interim milestones including but not limited to data collection, data analysis, criteria proposal, and criteria adoption consistent with the Clean Water Act. A reasonable timetable would include developing numeric N and P criteria for at least one class of waters within the state (e.g., lakes and reservoirs, or rivers and streams) within 3–5 years (reflecting water quality and permit review cycles), and completion of criteria development in accordance with a robust, state-specific workplan and phased schedule.

QUESTIONS SUBMITTED BY SENATOR THAD COCHRAN

SUPERFUND NATIONAL PRIORITY LIST (NPL)

Question. I noticed that the Environmental Protection Agency (EPA) added 10 hazardous waste sites to the Superfund NPL, and 15 sites were proposed to be added to the list. Two of these proposed sites are in Mississippi. How long do you expect it will take for these two sites to be placed on the NPL? What can the communities expect from the EPA during this process?

Answer. The two Mississippi sites, Red Panther and Kerr-McGee Columbus were proposed to the NPL on March 10, 2011. There is a 60-day public comment period to provide support or opposition to the inclusion on the NPL of any site included on the proposal. The EPA will evaluate these comments before making any final decision; the earliest a decision on either site will be made is September 2011.

There have been a number of public meetings on these sites related to both removal actions and potential NPL listing. There have been three public meetings for the Red Panther site specifically related to listing, with another meeting set for this summer. There has been one public meeting on the Kerr-McGee site related to listing, and the EPA personnel involved with the site maintain frequent communications with the community and have a very visible on-site presence.

The EPA works very closely with the community at all stages of the investigation and cleanup of sites. For example, before a remedial investigation begins, the EPA conducts community interviews to solicit people's concerns and determine how and

when people want to be involved with the cleanup. Based on the community interviews and other relevant information, the EPA prepares a Community Involvement Plan that identifies the outreach activities the Agency expects to undertake. In addition, the EPA establishes an information repository and administrative record that will contain relevant site documents, and notifies the community about where to find the information. The EPA also informs the community about the availability of Technical Assistance Grants. These activities and more are designed to provide opportunities for the community to be involved in the site cleanup, and to help shape the decisions that are made about how the site will be addressed.

COMMUNITY WATER SYSTEMS TRAINING AND TECHNICAL ASSISTANCE

Question. Mississippi has approximately 850 community water systems. The majority are located in small rural communities with limited resources to comply with Federal environmental regulations, and are operated by part-time operators. The training and technical assistance funded through your agency allow these communities to protect their drinking water while enhancing public health. I have heard from hundreds of communities over the years regarding this assistance that has been in effect for more than 30 years and the positive impact on a local community's ability to have adequately trained personnel necessary to comply with complex EPA regulations. I have also been told that without this assistance, communities with limited means would be forced to hire outside entities for compliance, raise rates, or remain out of compliance. Do you believe this assistance is directly related to increased compliance, sustainability, and enhanced public health in rural America?

Answer. The assistance provided to States via the EPA's Public Water System Supervision (PWSS) grant programs and the technical assistance "set-asides" of the Drinking Water State Revolving Fund (DWSRF) are key components for assuring that drinking water systems are sustainable and deliver water that meets safe standards for consumers. For example, the Mississippi Department of Public Health utilizes their PWSS grant funds to provide staff engineering assistance to small water systems struggling to address disinfection byproducts and other compliance challenges. States also utilize DWSRF set-asides to fund circuit riders to help small systems with technical compliance issues, as well as fund third-party technical assistance providers to assist with energy and water loss audits and associated projects.

Question. Your budget does not explicitly include any funding to assist small rural water systems to comply with EPA rules and regulations. If we adopt your budget proposal, how will you assure the committee that these communities will be able to provide safe and affordable drinking water?

Answer. Since 1976, the EPA has annually received a Congressional appropriation under section 1443(a) of the Safe Drinking Water Act (SDWA) to assist States, territories, and tribes in carrying out their PWSS programs. Designated State agencies, territories, and tribes that have been delegated Primary Enforcement Responsibility for the PWSS Program are eligible to receive grants. The 2012 budget includes a request to again fund the PWSS programs. These grants help eligible States, territories, and tribes develop and implement a PWSS Program adequate to enforce the requirements of the SDWA and ensure that water systems comply with the National Primary Drinking Water Regulations. The EPA continues to be an active partner in the PWSS State Program to assist drinking water communities. Also, the EPA is upgrading the data management component of Safe Drinking Water Information System (SDWIS) that States can use during administration of their State drinking water programs. SDWIS/State houses information related to State inventory of systems, as well as required sampling and monitoring regimens. The modified system is expected to enable States to redirect resources to areas other than data management including providing increase attention to technical assistance needs of small systems.

In addition, the SDWA allows States to utilize several "set-asides" of their DWSRF to provide technical assistance to community water systems serving 10,000 or fewer persons to fund technical assistance initiatives. These "set-asides" include: small systems technical assistance (2 percent); administrative and technical assistance (4 percent); State program management (10 percent); and local assistance and other State programs (15 percent). Activities paid for with these funds include project planning, circuit riders, and special small system training. States use "set-aside" funds to provide technical assistance and training to help small systems build the capacity they need to comply with current and future drinking water rules.

QUESTIONS SUBMITTED BY SENATOR SUSAN COLLINS

WATER INFRASTRUCTURE FUNDING

Question. The Environmental Protection Agency (EPA) is proposing to cut \$960 million from the fiscal year 2010 level for the Clean Water and Drinking Water State Revolving Funds. Even with the extra infusion of funds we have seen in recent years, Maine, like many other States, faces ongoing need for water infrastructure funding and significant budget pressures. Waste management experts estimate that the capital need for repair and replacement projects in Maine over the next 5 years will cost at least 10 times the amount that the State was allocated in fiscal year 2010. Given that already overburdened municipalities are attempting to satisfy the EPA wastewater and drinking water mandates, how can we work to ensure adequate funding is available for States to meet such requirements?

Answer. The President's fiscal year 2012 budget request maintains this administration's historic commitment to funding drinking water and wastewater infrastructure across the country. As part of the administration's long-term strategy, the EPA is implementing a Sustainable Water Infrastructure Policy that focuses on working with States and communities to enhance technical, managerial, and financial capacity. Important to the technical capacity will be enhancing alternatives analysis to expand "green infrastructure" options and their multiple benefits. Future year budgets for the State Revolving Funds (SRF) gradually adjust, taking into account repayments, through 2016 with the goal of providing, on average, about 5 percent of water infrastructure spending annually. When coupled with increasing repayments from loans made in past years by States, the annual funding will allow the SRFs to finance a significant percentage in clean water and drinking water infrastructure. Federal dollars provided through the SRFs will act as a catalyst for efficient system-wide planning and ongoing management of sustainable water infrastructure. Overall, the administration requests a combined \$2.5 billion for the SRFs. This request brings the 4-year total for SRFs to approximately \$16 billion (fiscal year 2009–fiscal year 2012, including American Recovery and Reinvestment Act funds. These historic levels of funding demonstrate an unprecedented level of support for these programs and the communities that depend on them to help finance their water infrastructure needs.

EMISSION STANDARDS FOR HEAVY-DUTY VEHICLES

Question. As the EPA works with the National Highway Traffic Safety Administration (NHTSA) to implement the program to improve fuel economy for cars and trucks, I am interested in learning more about the EPA's plans to issue new regulations to curtail the emissions of certain heavy-duty vehicles.

Agriculture and forest products businesses in Maine rely on heavy-duty trucks to receive raw materials and ship products more economically, thus helping to preserve and create jobs. I support helping to produce a new generation of clean vehicles to lower our dependence on foreign oil and cut down on pollution, and have worked on legislation to advance the research and development of heavy-duty hybrid technology for trucks and to curb emissions by keeping the heaviest trucks on Federal interstates, rather than diverting them to local secondary roads and downtowns.

Can you discuss how the EPA intends to use the \$4 million it is requesting for fiscal year 2012, and detail what steps the EPA plans to take to work with industry and NHTSA in developing emissions for heavy-duty vehicles, which play such an integral role in our economy?

Answer. The EPA and the Department of Transportation's ongoing heavy-duty greenhouse gas (GHG) and fuel-economy rule has received unprecedented support from the trucking industry, including engine and truck manufacturers, trucking associations, and others. We have worked closely with industry and other stakeholders throughout the standards proposal process, including holding two public hearings in fall 2010. We are also continuing to meet with the regulated industry to make sure we have fully understood their comments. We are confident that the final action will be one that both improves trucking efficiency overall and maintains the full and broad functionality of trucking in our economy.

In support of the heavy-duty GHG Program, the EPA will have significant implementation needs to facilitate the success of the program. This includes the development of new testing capabilities, new IT structures, and the development of additional models and test protocols to ensure compliance. Unlike the light-duty sector we do not have existing protocols, test procedures, and baseline models for the heavy-duty sector. Putting this infrastructure into place will take 2 to 3 years, and with program implementation beginning in early fiscal year 2014, fiscal year 2012 will be a critical year for these heavy-duty GHG activities.

EMERGENCY PREPAREDNESS

Question. We have all watched in horror over the last week as the disaster in Japan continues to unfold. Our hearts obviously go out to all those who are suffering amid that country's worst crisis since World War II. Here at home, I think many people were surprised this week to awake to news reports that the nuclear crisis in Japan could lead to radiation clouds that travel with the jet stream and make their way to the Western United States.

Administrator Jackson, I note the EPA is requesting \$38.7 million in fiscal year 2012 for homeland security functions related to emergency response in the event of an incident involving harmful chemical, biological, and radiological substances. Can you elaborate on the status of plans for interagency coordination should such an event or test occur here in the United States?

Answer. The Nuclear/Radiological Incident Annex to the National Response Framework (NRF) describes the policies, situations, concepts of operations, and responsibilities of the Federal departments and agencies governing the immediate response and short-term recovery activities for incidents involving release of radioactive materials to address the consequences of the event. Domestic incidents may occur on Federal-owned or licensed facilities, privately owned property, urban centers, or other areas and may vary in severity from the small to the catastrophic. Coordinating agencies provide leadership, expertise, and authorities to implement critical aspects of the response in accordance with authorities and capabilities. The EPA serves as a coordinating agency for environmental response and cleanup for incidents other than those involving the Departments of Defense and Energy, NASA and NRC facilities or assets. The EPA may serve as a cooperating agency in support of any domestic nuclear incident. Incidents are generally managed at the lowest possible level and will adapt to meet requirements under the NRF.

The EPA's primary capabilities to support a domestic nuclear incident include:

- Integration into the Federal Radiological Monitoring and Assessment Center as well as participation in the Advisory Team for Environment, Food, and Health.
- Resources, including personnel, detection equipment, sample collection and laboratory analysis support for site characterization and defining the extent of contamination.
- Providing nationwide environmental monitoring data from the RadNet for assessing the national impact of the incident.
- Expertise and support on use of data from initial assessments and extent of contamination efforts for guidance on health and safety recommendations of response personnel and for use by decisionmakers to prioritize areas of decontamination.
- Application of its extensive experience in addressing hazardous waste sites to support the cleanup of the contaminated area.

Question. How would the EPA work with other Federal agencies to get messages out to the general public? What is your interaction with the Department of Homeland Security (DHS) on general public messaging pre and postdisaster?

Answer. As part of the DHS' responsibility to coordinate incident management under Homeland Security Presidential Directive 5, the NRF Incident Communications Emergency Policy and Procedures (ICEPP) provides detailed guidance to Federal incident communicators on activities to be initiated in conjunction with incidents requiring a coordinated Federal response. It is applicable to all Federal departments and agencies responding under the NRF. It establishes mechanisms to prepare and deliver coordinated and sustained messages regarding incidents requiring a coordinated Federal response, and provides for prompt Federal acknowledgment of an incident and communication of emergency information to the public during incident management operations.

The ICEPP is comprised of two annexes contained in the NRF:

- Public Affairs Support Annex.*—Describes the interagency policies and procedures for incident communications with the public.
- ESF #15—External Affairs Annex.*—Outlines the functions, resources, and capabilities for external affairs.
- As part of the response under ESF #15, DHS sets up conference lines to initiate and coordinate messages across levels of government.
- The National Incident Communication Conference Line is a channel for coordination across Federal agencies and may include affected States, as appropriate.
- The State Incident Communication Conference Line is a channel for the Federal agencies to coordinate directly with the State and local communicators.
- The Private Sector Incident Communications Conference Line is a channel for Federal agencies to coordinate with the private sector.

Assembled by the Federal Emergency Management Agency's Chemical, Biological, Radiological, Nuclear and Explosives Branch, the EPA co-leads the Nuclear/Radiological Communications Working Group. This group (made up of members from 10 Federal agencies and multiple State and local radiation and communications specialists) is a forum for interested parties at the Federal, State, and local level to exchange ideas and discuss nuclear/radiation related communications projects. Most recently, this group has been working on pre and postincident messages for nuclear detonations.

During any domestic nuclear incident, the EPA would work with other departments and agencies to provide fully coordinated information to the public. Also, based on recent events, we know that the EPA will play a significant role in providing monitoring information to the public, primarily through the EPA Web site. For example, while the nuclear incident in Japan is not considered a U.S. response effort, the EPA has used its Web site to keep the public informed about the data that is continuously collected from the RadNet monitors.

RURAL WATER TECHNICAL ASSISTANCE

Question. Maine has 382 community water systems. Owners and operators of these systems have an enormous and very important responsibility to provide safe drinking water. For years, Maine's small water systems have relied on support and technical assistance made possible through national funding provided by both the USDA and the EPA to help water system operators to understand and achieve compliance with increasingly complex Federal rules and regulations. In previous years, the Congress has set aside funding for rural water technical assistance within the Environmental Programs Management account of the EPA's budget. I was disappointed to see that the President did not specifically include this funding within his fiscal year 2012 request. With regard to both the current year and fiscal year 2012, it is unclear as to whether we will have the opportunity to set aside money within the EPM account for rural water technical assistance. My question is without clear direction from the Congress to direct funding to rural water technical assistance, will the EPA continue to make that investment?

Answer. Recent Congressional appropriations have typically included specific funding and direction for approximately \$16 million annually in small system technical assistance. Absent this directed funding, the EPA has two other avenues where systems may receive resources to support technical assistance needs. Since 1976, the EPA has annually received a Congressional appropriation under section 1443(a) of the Safe Drinking Water Act (SDWA) to assist States, territories, and tribes in carrying out their Public Water System Supervision programs. The 2012 budget includes a request to again fund the Public Water System Supervision (PWSS) programs. These grants help eligible States, territories, and tribes develop and implement a PWSS program adequate to enforce the requirements of the SDWA and ensure that water systems comply with the National Primary Drinking Water Regulations. The EPA will continue to be an active partner in the PWSS State Program to assist all communities, including rural ones, in providing safe drinking water.

In addition, the Drinking Water State Revolving Loan Fund (DWSRF) provides States with the flexibility to take a variety of "set-asides" from their Federal capitalization grant to fund technical assistance, State programs, and special assistance to water systems. These optional "set-asides" total up to 31 percent of a State's capitalization grant:

- 4 percent for administration of the DWSRF Program;
- 2 percent for technical assistance to systems serving 10,000 or fewer persons (project planning, circuit riders, and special small system training);
- 10 percent for development and implementation of State programs (PWSS, source water protection, capacity development, and operator certification); and
- 15 percent for local assistance (part of a capacity development strategy; establishment and implementation of a wellhead protection program; and loans for source water protection).

States use set-aside funds to provide technical assistance and training to help small systems build the capacity they need to comply with current and future drinking water rules. The EPA continues to encourage States to carefully consider how to balance utilization of the available "set-asides" as they administer their State program and small system technical assistance needs.

Question. Will the EPA provide on-site technical assistance to help Maine's community water systems to understand and comply with the EPA's complex requirements?

Answer. The EPA will continue to encourage States to take full advantage of flexibility afforded them by the State PWSS Grant Program and the “set-asides” available from the SRFs to provide technical assistance to small communities. Specifically regarding Maine, EPA Region 1 New England is providing the following services to Maine water systems: Effective Utility Management training, system specific implementation plans, and on-site technical assistance to improve long-term management and operations for six systems; funding two mutual aid Water/Wastewater Agency Response Network (WARN) workshops to help recruit more members for Maine WARN, and to facilitate a tabletop exercise with the objective of practicing the Maine WARN operational plan; revising an existing pocket guide to help small suppliers improve sampling techniques; developing a Maine specific document to assist business owners that are also public water suppliers; and initiating outreach efforts to educate Maine restaurants with their own public water supplies.

Question. Do you believe you have the authority to provide this technical assistance?

Answer. Provisions of the Safe Drinking Water Act section 1452 provide authority for a national technical assistance “set-aside”, as well as several “set-asides” available to States of their Federal capitalization grant to provide technical assistance or to fund technical assistance initiatives to community water systems serving 10,000 or fewer persons.

REGULATORY REVIEW

Question. Earlier this year the administration announced a government-wide search for outdated and inefficient regulations that make our country less competitive. I am interested in understanding what this will mean in practice as during the past 2 years, the administration’s track record has been one of imposing costly new burdens and red tape on employers. We saw an example of this last spring when the EPA did not provide enough time and training opportunities to allow small businesses to comply with lead paint abatement rules in order to avoid steep fines. Maine’s forest products industry is facing steep costs associated with the EPA’s Boiler MACT rules. Can you give me an update on how the EPA is undertaking its regulatory review? Will you immediately take action to alter or eliminate outdated and inefficient regulations as they are identified? What does this review mean for regulations that are currently in the pipeline?

Answer. On January 18, 2011, President Obama issued Executive Order 13563 outlining his regulatory strategy to support continued economic growth and job creation, while protecting the safety, health, and rights of all Americans. This Executive order presents the EPA with an opportunity to look at our regulatory program to ensure that it accomplishes the Agency’s mission to protect human health and to safeguard the natural environment while being mindful of the impact on continued economic growth and job creation.

The Executive order requires that all agencies develop and submit to the Office of Management and Budget (OMB), by May 18, 2011, a preliminary plan to periodically review existing significant regulations to determine whether any should be modified, streamlined, expanded, or repealed. The EPA takes this directive from the President very seriously and we engaged in several outreach efforts throughout the country to solicit public feedback on how we can improve our regulatory programs and process. One of the characteristics we seek to emphasize in our retrospective review is transparency of the review process itself. The EPA is committed to ensuring that its rulemaking procedures, including retrospective reviews, are open and accessible to the public so that interested citizens and stakeholders can be informed about and participate in the Agency’s decisionmaking processes.

In response to the release of the Executive order, the EPA immediately began working to implement the provisions of the Executive order. On February 18, 2011, the EPA launched its Improving Regulations Web site (www.epa.gov/improvingregulations). On February 22, 2011, the EPA opened 15 public dockets to receive comments, and on February 23, 2011, the Agency published a Federal Register notice soliciting public comments over the next 30 days. The EPA advertised and hosted a national meeting on March 14, 2011 in Arlington, Virginia, to solicit public comment on how we should design our plan for retrospective review and how we should conduct our periodic reviews. Moreover, each EPA regional office held one or more listening sessions for the public and key stakeholders. A schedule of the listening sessions was posted in advance on our Improving Regulations Web site. When we heard from the public that they needed more time to comment on the plan, we immediately responded to the concern by extending the public comment period from March 20 to April 4, 2011, and published another Federal Register Notice to announce the extension.

To date, we have received more than 200 written comments submitted to our public dockets, in addition to the input received at 19 separate public meetings and listening sessions the EPA convened in responses to the Executive order. The EPA is now working hard to read and digest all the public input, which ranged from targeted suggestions on regulatory text in particular rules to broad suggestions on how the Agency should design its plans for periodic retrospective reviews. In that latter category, we heard some specific ideas for improving our regulatory process that we are taking to heart and will work to make more routine in our rule-writing procedures:

- provide more opportunities for public dialogue on the EPA rulemakings;
- increase coordination across Federal agencies and within the EPA on rule-making activities; and
- ensure consistency when enforcing regulations.

The EPA is working hard to meet the deadline in the Executive order of delivering a preliminary plan for retrospective review to OMB by May 18, 2011. The plan will include both a list of rules for review in the near term and a roadmap on how the EPA will carry out the periodic reviews going forward which are called for by the Executive order. As the EPA moves forward to review the rules identified in the plan, we will do so in a way in keeping with the transparent and participatory process we have used thus far. With regard to rules currently in the pipeline, as will be noted in our plan, many of these are pursuant to ongoing reviews and we will continue to develop our rules in a manner that is consistent with our statutory obligations, the criteria laid out by the President, and our commitment to protect America's health and revitalize the economy.

INSPECTOR GENERAL REFORM ACT

Question. In October 2008, the Inspector General Reform Act, which I co-authored with Senators McCaskill and Lieberman, was enacted. The law enhances Inspector General (IG) independence to help empower and facilitate the important work of Inspectors General. The law requires that the President's budget request include comments from the agency's IG when the IG believes that the budget request for its office will "substantially inhibit" the IG's ability to carry out its oversight responsibilities. This year the EPA IG was the only IG who submitted comments under this authority. Specifically, the EPA IG stated that, despite an increase of \$1.24 million from the fiscal year 2010 enacted budget, the amount in the President's fiscal year 2012 budget request is approximately \$5 million below the amount he believes is necessary to carry out the work of his office. The EPA IG argues that these additional funds are critical, in particular, to carry out work related to cyber security investigations and homeland security oversight that the EPA has taken on. In recent years, the EPA IG office has funded these activities through a reallocation of existing resources, but "cannot continue to do so without creating accountability and risk vulnerability gaps in its oversight of other Agency programs and operations."

Why did you not take these concerns into account when developing your budget request?

Answer. The EPA took the IG's concern on cyber security into account in developing the fiscal year 2012 budget request while also considering other Agency priorities. In response to this identified need, an increase is provided in the IG's budget although overall funding for the EPA is down 13 percent below fiscal year 2010 enacted levels.

Question. Do you think that the IG has made errors in calculating the amounts needed to continue these additional new oversight responsibilities in the IG office? Do you think that these additional oversight responsibilities do not warrant sufficient funding?

Answer. In developing the fiscal year 2012 budget, the EPA had to make hard choices for all programs at the reduced budget level yet recognized the need for funding to support the IG's oversight of cyber security activities. As a result, a level of increase was provided that, combined with the available resources the OIG has in their budget, would allow OIG to continue carrying out this work that the IG has initiated within available resources.

QUESTIONS SUBMITTED BY SENATOR LISA MURKOWSKI

BRISTOL BAY WATERSHED ASSESSMENT

Question. The Environmental Protection Agency (EPA) was petitioned to preemptively veto development in the Bristol Bay area of Alaska, and responded by undertaking a so-called "watershed assessment" of the area. Such an assessment ap-

pears to be unprecedented—as I had observed in a letter to you, dated February 16 of this year—though I am open to reviewing all of the information your agency is gathering as part of that process. On February 10, members of my staff also participated in a meeting with EPA officials, at which your staff committed to provide examples of precedents for watershed assessments, or at least examples of similar activities by the agency. To date, I have not received that information.

Can you provide a description of prior assessments here today, or materials—for the record—that speak to the statutory authorities under which this watershed assessment is being conducted and copies of some examples of their past use?

Answer. The EPA's Bristol Bay assessment, focusing primarily on the Kvichak and Nushagak watersheds, will characterize the risks of large-scale development on the Bay's water quality and salmon fishery, and evaluate options to protect the watersheds and ensure the sustainability of the fishery. The EPA is conducting this assessment under our Clean Water Act (CWA) section 104 authorities described below.

The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In furtherance of that objective, CWA section 104(a) directs the EPA to establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs directs the EPA to:

“(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution;

“(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

“(3) conduct, in cooperation with State water pollution agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations . . .”

Section 104(b) further states that in carrying out these provisions, the EPA's Administrator is authorized to:

“(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by [her] him in connection therewith, pertaining to such research and other activities referred to in paragraph (1) of subsection (a);

“(2) cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in paragraph (1) of subsection (a) . . .”

The mission of the EPA is to protect human health and the environment. As such, evaluating the environmental impacts of different actions is a central role and function of the agency. The EPA has conducted environmental assessments that evaluate the impacts of past actions or estimate the potential impacts of future actions. Below is a list of several recent examples of such assessments. This information can also be found in our March 21, 2011, response to your February 16, 2011, letter. (Please note that some of these assessments are currently in draft form and under review.)

- U.S. EPA. Predicting Future Introductions of Non-indigenous Species to the Great Lakes (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-08/066F, 2008. (<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=190305>)
- U.S. EPA. The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-09/138F, 2011. (<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=225743>).
- U.S. EPA. Clinch and Powell Valley Watershed Ecological Risk Assessment. U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, Washington Office, Washington, DC, EPA/600/R-01/050, 2002. (<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=15219>).
- U.S. EPA. Ecological Risk Assessment for the Middle Snake River, Idaho. U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, Washington Office, Washington,

DC, EPA/600/R-01/017, 2002. (<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29097&partner=ORD-NCEA>).

—U.S. EPA. Waquoit Bay Watershed Ecological Risk Assessment: the Effect of Land-Derived Nitrogen Loads on Estuarine Eutrophication. U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, Washington Office, Washington, DC, 600/R-02/079, 2002. (<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=15221>).

Question. Can you describe in more detail the process that you will use for this assessment? For example, will you follow the Administrative Procedures Act (APA), provide for peer review of the science and economic analysis, and solicit input from all stakeholders? Will the conclusions reached by the “watershed assessment”, or actions taken pursuant to it, be subject to judicial or administrative review?

Answer. The EPA’s February 7, 2011, “Outline of the Development of EPA’s Bristol Bay Watershed Assessment” briefly describes the process the EPA intends to use to better understand the aquatic resources at issue and to evaluate potential impacts to those resources from large-scale development activities, such as mineral mining. As we emphasized in our March 21, 2011, letter to you, we plan to work with our Federal, State, and tribal partners, and the public, to assess the resources in Bristol Bay and identify options for improving protections for fisheries in the Bay that depend so significantly on clean water and a healthy watershed. We look forward to working with Federal agencies, corresponding State agencies, tribes, and others to take advantage of their experience and information to support the Bristol Bay assessment. As part of the assessment process, the EPA will collaborate with an extensive list of Federal, State, tribal, and local government agencies and organizations; the public; private interests such as mining project proponents; and others with an interest in Bristol Bay. The EPA’s effort to conduct a watershed assessment is not an action that triggers APA requirements. Nevertheless, as described above, the EPA intends to conduct the assessment process in an open and transparent manner that is consistent with the openness and transparency envisioned by the APA.

The EPA has also published guidelines for Ecological Risk Assessment which will help to inform our approach to the Bristol Bay assessment. These guidelines can be found at: <http://www.epa.gov/raf/publications/guidelines-ecological-risk-assessment.htm>.

The peer-review process will be a critical element of the watershed assessment and we appreciate the importance of this issue as reflected in your question. The details of EPA’s Bristol Bay watershed assessment, including the details of the peer-review process that will be used for this assessment, are still being developed. However, the EPA has established standards and procedures regarding peer review which can be found in the EPA’s Peer Review Handbook (see: <http://www.epa.gov/peerreview/>). We look forward to providing additional details regarding the peer-review process as the assessment moves forward.

Question. As I am sure you know, the Congress in 1971 in passing the Alaska Native Claims Settlement Act gave Alaska Native Corporations control more than 44 million acres of lands in Alaska, not Alaska Native tribes. Under a host of Federal statutes, more than 120 of them, Native corporations in Alaska have similar authorities to tribes. Will the EPA provide the same level of consultation and access to providing input to the watershed assessment in the Bristol Bay region to Native regional and village corporations as to tribes in the area? Clearly since most of the lands surrounding the Pebble mine site are owned by Native corporations, they have a great deal at stake from any potential rules or EPA actions that are an outgrowth of your watershed assessment.

Answer. The EPA looks forward to working closely with Alaska tribes and Native Corporations as part of our assessment in Bristol Bay. The EPA recognizes the strong interest and authorities of Alaska Native Corporations organized pursuant to the Alaska Native Claims Settlement Act regarding the land and resources in the Bristol Bay watershed. The EPA consults with Alaska Native Corporations as required by Public Law 108-199, 118 Stat. 452, as amended by Public Law 108-447, 118 Stat. 3267, and also interacts with both Alaska Native Corporations and federally recognized tribes pursuant to a number of other statutes and legal doctrines. The EPA intends to meet with Alaska Native Corporations to share information and solicit their views and input regarding the pending Bristol Bay watershed assessment subject to the same general considerations of practicability, expense, and scheduling that apply to our interactions with federally recognized tribal government and other critical stakeholders.

ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF WATER,
Washington, DC, March 21, 2011.

Hon. LISA A. MURKOWSKI,
United States Senate,
Washington, DC.

DEAR SENATOR MURKOWSKI: Thank you for your letter of February 16, 2011, to Administrator Lisa P. Jackson concerning the Environmental Protection Agency's (EPA) recent announcement to initiate a watershed assessment of the Bristol Bay, Alaska. As the senior policy manager of the EPA's national water program, I appreciate the opportunity to respond to your letter.

Your letter focuses on the EPA's proposed Bristol Bay assessment, provides a number of recommendations for the assessment, and raises a set of specific questions. In response, we are providing background information regarding the assessment and an answer to each of the questions in your letter. I want to emphasize the EPA's commitment to work with our Federal, State, and tribal partners to proceed with an unbiased and transparent public process supported by the best- available scientific information. We look forward to keeping you personally informed as this assessment moves ahead.

During the last year, a number of tribes, tribal entities, and other groups in southwest Alaska requested that the EPA initiate review of metallic sulfide mining in the Bristol Bay watershed utilizing our authorities pursuant to section 404(c) of the Clean Water Act (CWA). Other Alaska tribes, tribal entities, and groups have requested that we not take action under section 404(c) and instead use the standard CWA permitting process to evaluate proposed mining operations in the Bristol Bay watershed. I believe the conclusion common to both sets of requests is the strong belief that effective protection of Bristol Bay is vitally important to the health and sustainability of the area's valuable commercial and subsistence salmon fisheries. We believe that an effective and timely Bristol Bay assessment involving a broad range of stakeholders and the public is responsive to these requests and will provide needed information and data to inform future decisions.

In response to these requests, the EPA announced on February 7, 2011, its decision to initiate a Bristol Bay watershed assessment. This assessment will characterize the potential risks of large-scale development on the Bay's water quality and salmon fishery, and evaluate measures to protect the watershed to ensure the sustainability of the fishery. While the Bristol Bay watershed is comprised of seven drainages, the Kvichak and Nushagak watersheds are the principal drainages with lands open to large-scale development. The EPA's analysis, therefore, will focus primarily on those two watersheds. We will conduct the assessment in an open, public format and in close coordination with Federal, State, and tribal organizations. This assessment will identify options available to provide appropriate protection for waters in Bristol Bay and the salmon fishery which depends on clean water and a healthy watershed.

We appreciate and will give full consideration to your specific recommendations regarding the:

- Need for extensive coordination of the assessment with State, tribal, and local governments, Alaskan universities, Alaska Native Tribal Corporations, interested nongovernmental organizations, representatives of the Alaska fishing industry, the Pebble Partnership and others;
- Need for thorough peer review of the assessment, consistent with the policies established in the EPA's Peer Review Handbook; and
- Scope of the assessment's economic evaluation.

I hope my letter and enclosed detailed responses effectively address the questions in your letter. In light of the concerns that have been raised to the EPA, I want to reassure you that we will conduct an open and scientifically based assessment built upon participation by other Federal and State agencies, local tribal governments, and the public. I look forward to informing you of progress on this assessment as we move ahead.

Again, thank you for your letter.
Sincerely,

NANCY K. STONER,
Acting Assistant Administrator.

Question. If the EPA has conducted a "watershed assessment" before, would you provide copies of the assessments and the statutory authorities under which they

were conducted? If not, please provide a description of the statutory authorities for this assessment.

Answer. The mission of the EPA is to protect human health and the environment. As such, evaluating the environmental impacts of different actions is a central role and function of the agency. The EPA has conducted environmental assessments that evaluate the impacts of past actions or estimate the potential impacts of future actions. Below is a list of several recent examples of such assessments. This information can also be found in our March 21, 2011, response to your February 16, 2011, letter. (Please note that some of these assessments are currently in draft form and under review.)

—U.S. EPA. Predicting Future Introductions of Non-indigenous Species to the Great Lakes (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-08/066F, 2008. (<http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=190305>)

—U.S. EPA. The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-09/138F, 2011. (<http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=225743>).

—U.S. EPA. Clinch and Powell Valley Watershed Ecological Risk Assessment. U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, Washington Office, Washington, DC, EPA/600/R-01/050, 2002. (<http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=15219>).

—U.S. EPA. Ecological Risk Assessment for the Middle Snake River, Idaho. U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, Washington Office, Washington, DC, EPA/600/R-01/017, 2002. (<http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=29097&partner=ORD-NCEA>).

—U.S. EPA. Waquoit Bay Watershed Ecological Risk Assessment: the Effect of Land-Derived Nitrogen Loads on Estuarine Eutrophication. U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, Washington Office, Washington, DC, 600/R-02/079, 2002. (<http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=15221>).

The EPA's Bristol Bay assessment, focusing primarily on the Kvichak and Nushagak watersheds, will characterize the risks of large-scale development on the Bay's water quality and salmon fishery, and evaluate measures to protect the watersheds and ensure the sustainability of the fishery. EPA is conducting this assessment under our Clean Water Act section 104 authorities described below. The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Toward achievement of that objective, section 104(a) directs the EPA to establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs directs the EPA to:

“(1) in cooperation with other federal, state, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution;

“(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

“(3) conduct, in cooperation with State water pollution agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations . . .”

Section 104(b) further states that in carrying out these provisions, EPA's Administrator is authorized to:

“(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by [her] him in connection therewith, pertaining to such research and other activities referred to in paragraph (1) of subsection (a);

“(2) cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in paragraph (1) of subsection (a) . . .”

Question. Will the conclusions reached by the “watershed assessment”, or actions taken pursuant to it, be subject to judicial or administrative review?

Answer. The EPA’s “Outline of the Development of EPA’s Bristol Bay Watershed Assessment” briefly describes the process EPA intends to use to better understand the aquatic resources at issue, and to evaluate potential impacts to those resources from large-scale development activities, such as mineral mining. We hope to work with our Federal, State, and tribal partners, and the public, to use this information to identify options for improving protection for Bristol Bay fisheries and the waters on which these fisheries rely. The watershed assessment or publication of such an assessment is, itself, not a final agency action and therefore not subject to judicial or administrative review. Should the EPA proceed as a result of the recommendations identified in the assessment to take some final agency action, such action may be subject to review. Our goal, however, is to work with interested federal, state, and tribal groups, and the public, to prepare recommendations that would be broadly supported.

Question. Should a veto be exercised pre-emptively within the Bristol Bay watershed—not in relation to an application to undertake specific development in the area—could that decision be interpreted by courts or future administrations to extend more broadly to all future development proposals (e.g., an airstrip, fish-processing plant, refinery, hospital, school, museum) that may require a dredge or fill disposal site?

Answer. The EPA’s assessment is not a regulatory action. This assessment will help inform consideration of options for improving protection of the Bristol Bay watershed. The EPA has made no decision at this time to proceed with a CWA section 404(c) review in Bristol Bay. As a result, we are not prepared to speculate regarding the scope of any action taken under this authority.

Question. It seems that a pre-emptive veto could set a number of highly problematic precedents. For example, the Bureau of Land Management, the U.S. Forest Service, and other Federal agencies have historically been tasked with land planning decisions on Federal acreage. Similarly, State lands are managed by analogous entities. Should the EPA issue a pre-emptive veto of an entire area which, in this case, consists largely of State lands, those aforementioned agencies would no longer be able to plan for multiple-use activities, but instead be subjected to pre-emptive yes-or-no decisions from the EPA under whatever speculative assumptions regarding development the EPA may choose to adopt.

Has the EPA considered the precedents that would be set by a pre-emptive veto? Has the EPA consulted relevant Federal and State agencies regarding such a course of action? Could third-party litigants cite the veto as precedent in opposing other projects within the watershed?

Answer. The EPA has not made any decision regarding whether or not to initiate an advance 404(c) action at this time. As we have emphasized, we have instead chosen to work with our Federal, State, and tribal partners, and the public, to assess the resources in Bristol Bay and identify options for improving protections for fisheries in the Bay that depend so significantly on clean water and a healthy watershed. We look forward to working with Federal agencies, corresponding state agencies, tribes, and others to take advantage of their experience and information to support the Bristol Bay assessment. As part of the assessment process, the EPA will collaborate with an extensive list of Federal, State, tribal, and local government agencies and organizations; the public; private interests such as mining project proponents; and others with an interest in Bristol Bay. The EPA’s assessment process is being conducted in an open and transparent manner to allow the issues you have raised to be effectively raised and discussed. This information and public discussion will help inform decisions following completion of the study.

Question. In response to the petition received by the EPA to preemptively veto development in the Bristol Bay area under section 404(c) of the CWA, were responses other than the conduct of a watershed assessment considered by the EPA? Specifically, did the agency consider simply informing the petitioners of the need to wait until an actual permit application had been received for consideration under the CWA, the National Environmental Policy Act, and other relevant statutes? Conversely, did the EPA consider issuing a preemptive veto in response to the petition?

Answer. As previously noted, in 2010, a number of tribes, tribal entities and other groups in southwest Alaska requested that the EPA initiate review of metallic sulfide mining in the Bristol Bay watershed utilizing our authorities pursuant to section 404(c) of the Clean Water Act. Other Alaska tribes, tribal entities and groups requested that we let the typical permitting process for mines run its course. The EPA considered a number of options, including the two you note above, and relevant information before determining that the best option at this point, given the available information, is the assessment that we have chosen to conduct.

Question. Because primary authority over fill decisions rests with the Army Corps of Engineers, and because the EPA has rarely exercised veto authority over Corps approvals, what deficiency does the EPA forecast with what would presumably be the Corps' work on any proposed fill application, to such extent that the EPA feels compelled to conduct this analysis in advance of any such work?

Answer. The EPA works very closely with the U.S. Army Corps of Engineers in implementing our joint responsibilities under section 404 of the Clean Water Act. The EPA has a great deal of respect for the work that the Corps does in administering the section 404 permitting program. The fact that EPA has rarely exercised its authority under section 404(c) to question the Corps' permit decisions speaks to the effective level of coordination and cooperation between the two agencies. The assessment that the EPA is undertaking is to develop information to respond to requests from tribes and other groups in the State.

GREAT LAKES RESTORATION INITIATIVE

Question. In fiscal year 2010, a new program was started within the EPA's budget for restoration of the Great Lakes. In the first year, \$475 million was appropriated. It is my understanding that you have only spent \$81 million of this as of January 31 of this year. In a time of tight budgets, that raises the question of whether you can spend all that you have asked for in this year's request—\$350 million.

What level of carryover do you have from previous years for this program?

Answer. Through January of 2011, \$455.6 million of Great Lakes Restoration Initiative funds had been obligated and \$81 million had been expended. By May 5, 2011 almost the full \$475 million has been obligated, less than \$500,000 in carryover remains, and more than \$115 million has been expended. Much of the fiscal year 2010 funding was put toward restoration projects that will begin during this spring's construction season. Consequently, we expect to see accelerated expenditures and results this year from the fiscal year 2010 funding as construction begins. Now moving into its second year, we expect to also provide fiscal year 2011 funding during this construction season and to continue accelerated expenditures.

Question. Can you spend the full amount that you have requested for fiscal year 2012?

Answer. The EPA—working with its Federal partners, as well as the States, tribes, local governmental organizations, universities, and nongovernmental organizations—can spend the full amount requested for fiscal year 2012. Many excellent grant proposals did not get funded in fiscal year 2010 (requests totaling almost \$1 billion were almost six times the amount available). Many excellent grant proposals will again not be funded in fiscal year 2011 (requests were more than triple the amount available under the EPA's fiscal year 2011 Great Lakes Restoration Initiative Request for Applications). As a result, we expect that requests for funding in fiscal year 2012 will once again outstrip available funding. A significant level of work still needs to be done to achieve restoration of the Great Lakes. There are many projects that have not yet been started.

SUPERFUND TAX REAUTHORIZATION

Question. The budget request for fiscal year 2012 indicates that the administration supports reinstating the Superfund tax. This tax expired in 1995.

As you know, industry vigorously opposes reinstatement. In their view, they have paid not only for sites that they were responsible for, but "orphaned" sites as well where there were no responsible parties. And reinstatement of the tax on companies with no responsibility for contamination would be unfair. How would you respond to these criticisms?

Answer. The administration strongly supports the "Polluter Pays" principle. Parties should be liable for the cost of cleanups at sites for which they have responsibility, either as an owner, operator, generator, or transporter. Given that many Superfund sites involve historic activity where the environmental contamination became evident years after operations ceased, the EPA is sometimes unable to sufficiently identify and prove all of the parties that bear responsibility for the site or the parties are no longer financially viable or have a limited ability to pay.

Since appropriated resources for Superfund are primarily supported by general revenues from taxes paid by the general public, the reinstated taxes would apply to a more narrowly defined taxable group, consistent with other trust funds. Therefore, general taxpayers would no longer shoulder a disproportionate share of funding hazardous waste site cleanup. The reinstated taxes would restore the historic nexus that the parties who most directly benefit from the manufacture or sale of substances that commonly contaminate hazardous waste sites should bear the cost of cleanup when viable potentially responsible parties cannot be identified.

Question. What economic impacts would reinstating the tax have on industry and jobs in the current economic climate?

Answer. The administration is proposing to reinstate the taxes as they were last in effect on crude oil, imported petroleum products, hazardous chemicals, and imported substances that use hazardous chemicals as a feedstock, and on corporate modified alternative minimum taxable income (AMTI). A 1994 study sponsored by the EPA investigated the economic impact of the Superfund taxes by calculating the maximum potential effect of each tax on prices or profits.¹ These maximum impacts were all found to be relatively small, indicating that the taxes have only minor economic effects. Using the same methods with current economic data, the conclusions of the 1994 study are supported. Furthermore, the administration chose not to adjust the tax rates for inflation, effectively resulting in a lower tax than was last imposed. The administration believes this proposal is the most viable given the relative familiarity with the previous tax structure and current economic climate. Since the petroleum and chemical taxes have not been updated to reflect real dollars, their economic impact may actually decrease.

Relative to consumer demand for other products, the demand for oil has been fairly unresponsive to price changes. Regarding the petroleum tax, even if the entire tax is passed on to consumers, the estimated impact would be less than a half penny per gallon increase in gas prices. Such an increase in gas prices would represent only a 0.17 percent increase to the 2010 average retail price of gasoline of \$2.84 per gallon.²

Current data suggest that the taxes on chemicals should have only minor economic impacts. These taxes were originally calculated as the lower of two figures:

- 2 percent of the estimated wholesale price; or
- \$4.87 per ton for organic chemicals and \$4.45 per ton for inorganic chemicals.

Current data indicate that the majority of the chemical prices have increased considerably since the tax was last in operation, with some more than doubling.³ On the other hand, the Superfund taxes will not be corrected for inflation. This should significantly reduce, below 2 percent, the potential economic impact of the taxes on chemicals. Regarding the international marketplace, the proposed taxes will apply equally to imported chemicals as well as domestic. Thus, it is unlikely that these taxes would cause any change in a manufacturer's or an industry's mix of domestic and imported chemical substances.⁴

Finally, the Corporate Environmental Tax of 0.12 percent is imposed on firms with AMTI exceeding \$2 million. When it last expired, 89 percent of the tax was paid by firms with assets greater than \$250 million. The 1994 study found that the maximum estimated impact on the prices charged by affected firms did not exceed 1 percent in any of the major industrial categories, and was 0.09 percent across all industries.⁵ Since the tax only targets AMTI over a threshold, many small businesses will not have to pay. Large businesses that are taxed will only pay a minuscule fraction of AMTI. Thus, the corporate tax should have only minor economic impacts.

Question. When do you plan to send a specific legislative proposal to the Congress?

Answer. On June 21, 2010, EPA Administrator Lisa Jackson on behalf of the administration transmitted draft legislation to the Congress to reinstate Superfund taxes. We support reauthorization of the taxes as represented in this transmission.

Question. Will your new legislative proposal contain any changes to the way the existing Superfund program is run?

Answer. On June 21, 2010, EPA Administrator Lisa Jackson on behalf of the administration transmitted draft legislation to the Congress to reinstate Superfund taxes. The proposal did not contain any changes to the way the existing Superfund program is run. Rather, it focuses on generating revenues that will be placed in the Superfund Trust Fund to provide a stable, dedicated source of funds to operate the program.

The proposal reinstates the taxes as they were last in effect on crude oil, imported petroleum products, hazardous chemicals, and imported substances that use hazardous chemicals as a feedstock, and on corporate modified AMTI. The Superfund

¹“Economic Impacts of Superfund Taxes”, Prepared by Industrial Economics, Inc., for the Office of Policy Analysis, EPA (1994).

²This calculation is based on the 2010 annual average U.S. conventional retail price from the Energy Information Administration.

³ Recent annual chemical prices obtained from www.icis.com.

⁴“Economic Impacts of Superfund Taxes,” Prepared by Industrial Economics, Inc, for the Office of Policy Analysis, EPA (1994).

⁵*Ibid.*

taxes were applied to crude oil and imported petroleum products (9.7 cents per barrel), chemicals used in the production of hazardous substances listed in title 26 section 4661 (22 cents to \$4.87 per ton), imported substances that use hazardous chemicals as a feedstock (in an amount equivalent to the tax that would have been imposed on domestic production), and corporate modified AMTI⁶ in excess of \$2 million a year (0.12 percent). The excise taxes would be applied beginning in January 2012 and expire on December 31, 2021, and the income tax would be applied in taxable years beginning after 2011 and would expire for taxable years beginning after December 31, 2021.

LONG-TERM 2 (LTR2) ENHANCED SURFACE WATER TREATMENT RULE

Question. The purpose of the LT2 rule is to reduce illness linked with the contaminant *Cryptosporidium* and other disease-causing microorganisms in drinking water. These are primarily associated with uncovered finished water reservoirs.

In the past, the EPA has stated that they will not enforce the LT2 rule in Alaska's native villages because of the cost of compliance. Is this EPA's official position?

Answer. The EPA's position is that all public water systems, including Alaska Native Village systems, that use surface water or groundwater that is under the direct influence of surface water, are required to comply with the LT2 Enhanced Surface Water Treatment Rule. The EPA has been working hard to ensure that the rule is enforced fairly and consistently throughout the country. The LT2 rule builds upon the requirements established by the Surface Water Treatment Rule (SWTR); Interim Enhanced Surface Water Treatment Rule (IESWTR); and the Long Term 1 Enhanced Surface Water Treatment Rule by requiring water systems to determine if their source water is vulnerable to *Cryptosporidium*, and where applicable, incorporating additional treatment. In addition, the LT2 rule requires that all finished water reservoirs either be covered or the discharge treated.

On January 28, 2011, Alaska formally adopted the LT2 rule. As a result, Alaska Department of Environmental Conservation (ADEC) is now the primary enforcement agency for the rule. As the primary enforcement agency, ADEC is responsible for ensuring that all public water systems in Alaska, including systems serving Alaska Native Villages that are subject to the rule are in compliance.

Most Alaska Native Village systems have less than 10,000 users, and may utilize less costly monitoring requirements than systems servicing larger communities. In contrast to systems servicing 10,000 people or more, which are required to monitor for *Cryptosporidium*, smaller systems are allowed to first monitor for *E. coli*—a bacterium that is less expensive to analyze than *Cryptosporidium*—and are only required to monitor for *Cryptosporidium* if their *E. coli* results exceed specified concentration levels.

Question. The purpose of the LT2 rule is to reduce illness linked with the contaminant *Cryptosporidium* and other disease-causing microorganisms in drinking water. These are primarily associated with uncovered finished water reservoirs.

We do have some communities that are slightly larger, but still very small by anyone's standards. Some of them are having a very difficult time coming up with the funding to add treatment and come into compliance with the LT2 rule. Is the EPA prepared to assist these small communities either with financial help or compliance assistance to help alleviate the severe financial burden that the rule imposes?

Answer. The EPA has historically provided about 25 percent of the total Tribal Set Aside from the Drinking Water State Revolving Fund capitalization grant funding to support drinking water infrastructure construction in the Alaska Native Villages. These funds, along with funds from the EPA's Alaska Native Village program and other Federal agencies (the Indian Health Service, Department of Agriculture and the Department of Housing and Urban Development) can be utilized to fund infrastructure projects that address compliance challenges associated with LT2 for the Alaska Native Villages. In addition, Alaska Native Village water systems may apply for infrastructure financing through Alaska's Drinking Water State Revolving Fund.

FOREST ROADS

Question. For close to 35 years, the EPA has defined in its regulations (40 CFR 122.27) that forestry operations are nonpoint sources and therefore not subject to Federal CWA permits. Forestry has a documented record of compliance. A recent decision by the Ninth Circuit Court of Appeals threatens to overturn 35 years of precedent and treat forest roads on Federal, State, and private land as point sources

⁶Modified AMTI is AMTI determined without regard to the alternative minimum tax net operating loss deduction and the deduction for the Superfund environmental income tax.

requiring Federal permits. The EPA is not a party in the case. The 9th Circuit is presently deciding whether to reconsider the case en banc. In advance of this decision, the EPA has been preparing to implement the potential court order nationwide. If the court upholds the earlier decision and the EPA aggressively implements the final ruling, it would constitute an unprecedented expansion of EPA regulation under the CWA. I understand that the 9th Circuit Court of Appeals has questioned the EPA's 35-year treatment of forest roads as nonpoint sources under existing regulations. Most of these roads are indistinguishable from county roads and other roads used for transportation, recreation access, and a variety of other critical uses throughout my State. Requiring new permits for these roads would impose potentially enormous new costs and legal exposure on the people of Alaska who use these roads every day.

Does the EPA plan to stand behind its own long-standing regulation and seek to avoid imposing this enormous regulatory and legal burden on forest workers, counties, Federal land managers, and other users in Alaska and throughout the country?

Answer. On August 17, 2010, the U.S. Court of Appeals for the Sixth Circuit issued a decision holding that stormwater runoff from forest roads that is collected by and discharged from a stream of ditches, culverts, and channels is a point-source discharge for which a National Pollutant Discharge Elimination System (NPDES) permit is required. That court is now reviewing requests for rehearing. In the meantime, the EPA recognizes these sources of stormwater discharges, which were previously exempt from the requirements to obtain and comply with an NPDES permit, are now vulnerable to citizen suits for discharging without a permit. Because of this, the agency is exploring various options for providing permit coverage to these discharges.

LEAD PAINT RULE

Question. The Lead Renovation Repair and Painting (LRRP) Program rule represents an added cost that contractors, who pay to become trained and certified under the rule, then pass on to consumers. In many cases the LRRP requirements can add a significant percentage to the cost of upgrades and remodels. In States where there is a lack of enforcement, "good actor" contractors are pricing themselves out of the market due to the fact that many contractors are not in compliance for the rule and are not being subjected to enforcement, and therefore are able to offer lower costs to consumers.

Do you have any data on the actual additional costs being incurred by homeowners, building owners, and contractors that comply with the lead safety rule, the level of compliance, and the status of the enforcement of the EPA's Lead Paint Rule throughout the States?

Answer. In order to comply with the RRP rule, contractors will incur the following fees and estimated costs:

Certification Costs.—Firm certification is valid for 5 years. The fee for most firms is \$300, which is equivalent to a cost of \$60 per year.

Training Costs.—To become a certified renovator, an individual must take a training course from a private training provider accredited by the EPA. The trained renovators can then provide on-the-job training to other workers. The EPA estimates that this costs \$560 per person trained, including a tuition cost of \$186 (set by the training provider); the value of time for the 8 hours the renovator is in class (\$253); the value of time for 2 hours traveling to and from class (\$63); mileage costs to drive to and from the training (\$49); and lunch while at the training (\$9). The renovator's certification lasts for 5 years.

Labor, Equipment, and Supply Costs.—As part of the rulemaking process, the EPA conducted an extensive economic analysis that estimated the labor, equipment, and supply costs for these work practices. The EPA first estimated an absolute cost of complying with the lead-safe work practices required by a rule if a contractor did not use any containment, or perform any cleaning, or cleaning verification prior to the rule. However, the EPA heard from the industry that contractors had already been taking steps to control dust from renovations prior to the promulgation of the rule. Based on this input, the EPA estimated an average incremental cost of each lead-safe work practice by subtracting the cost already being incurred by renovators for containment and cleaning from the estimate of the absolute cost of the rule's requirements.

For typical jobs in single family homes, the EPA estimated that the average absolute costs to comply with the rule ranged from \$35 to \$376, depending on the size and nature of the job. The average incremental costs of complying with the rule ranged from \$8 to \$124. For example:

- For a large window replacement job in a single family home (12 windows), the average cost ranges between \$124 for contractors who already used some of the required work practices, to \$376 for contractors who did not use any of the required work practices.
- For a medium-sized job removing portions of a wall in a single-family home (such as might be done to repair water pipes or electrical wiring), the average cost ranges between \$41 for contractors who already used some of the required work practices, to \$121 for contractors who did not use any of the required work practices.
- For an exterior painting job involving four exterior walls, the average cost ranges between \$90 for contractors who already used some of the required work practices, to \$245 for contractors who did not use any of the required work practices.

With the exception of the renovation firm certification fee, these costs are discussed in greater detail in chapter 4 of the EPA's "Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities" (March 2008) <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2005-0049-0916> The renovation firm certification fee of \$300 was established in a subsequent rulemaking.

The above data reflect the EPA's estimates of the cost incurred by contractors, not the price paid by homeowners and other property owners. The EPA assumes that contractors will generally pass along their costs to their customers, and anticipates they may also add a mark-up.

Question. Can you give us an analysis of economic cost vs. health protection for the rule overall and for homes in which no children or young adults live?

Answer. The following discussion of the benefits of the 2008 final RRP rule is taken from the Executive Summary of the "Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities" (March 2008). Additional details can be found in the full report at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2005-0049-0916>.

The benefits of the rule result from the prevention of adverse health effects attributable to lead exposure. Neurotoxic effects in children and cardiovascular effects in adults are among those best substantiated as occurring at blood-lead concentrations as low as 5 to 10 µg/dL (or possibly lower); and these categories of effects are currently clearly of greatest public health concern. Other newly demonstrated immune and renal system effects among general population groups are also emerging as low-level lead-exposure effects of potential public health concern. Both epidemiologic and toxicologic studies have shown that environmentally relevant levels of lead affect many different organ systems depending on level of exposure.

Epidemiologic studies have consistently demonstrated associations between lead exposure and enhanced risk of deleterious cardiovascular outcomes, including increased blood pressure and incidence of hypertension. A meta-analysis of numerous studies estimates that a doubling of blood-lead level (e.g., from 5 to 10 µg/dL) is associated with a 1 mm Hg increase in systolic blood pressure and a 0.6 mm Hg increase in diastolic pressure. Studies have also found that cumulative past lead exposure (e.g., bone lead) may be as important, if not more, than present lead exposure in assessing cardiovascular effects. The evidence for an association of lead with cardiovascular morbidity and mortality is limited but supportive. Experimental toxicology studies have confirmed lead effects on cardiovascular functions. However, there is sufficient uncertainty about the level of exposure and likelihood of effects that adults will experience that this analysis did not attempt to estimate the number of cases that would be avoided due to the regulation.

A further discussion of the benefits of removing the opt-out provision can be found in the Executive Summary of the "Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Opt-out and Recordkeeping Final Rule for Target Housing and Child-Occupied Facilities" (April 2010). The 50-year annualized costs of the 2008 final rule were estimated to range from \$404 million to \$441 million per year, as detailed in chapter 4 of the EPA's "Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities" (March 2008). The additional costs of the removal of the opt-out provision were estimated to range from \$295 million to \$320 million per year, as detailed in the "Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Opt-out and Recordkeeping Final Rule for Target Housing and Child-Occupied Facilities" (April 2010). Thus, the total costs of the Renovation, Repair, and Painting Program have been estimated at \$699 million to \$761 million per year.

HEALY CLEAN COAL PLANT

Question. In 1992, the Federal Government provided \$119 million of the \$325 million cost of a clean coal power plant that was built in Healy, Alaska, and is now being operated by the Golden Valley Electric Coop. The EPA then issued an air permit for the plant. The EPA is apparently considering substantially altering the permit now as the plant is finally planning to move into continuous operations given the growing need for the electricity in Alaska's northern railbelt.

Since the plant has been kept in warm status for more than a decade, between testing cycles, why is it not appropriate to permit the plant to run under its original permit since it is based on technology approved by the Department of Energy and your agency?

Answer. The New Source Review (NSR) Program requires a company to get a pre-construction permit whenever it wants to construct a new facility or make major modifications at an existing one. Questions have been raised about whether the restart and associated restart activities at Healy would trigger the need for the NSR. Therefore, the EPA recognizes that a permit issued to Healy could be challenged by at least one nongovernmental stakeholder. Recognizing the unique situation at Healy, and the need for its generation, the EPA is currently facilitating discussions between the owners and operators of the source and other stakeholders with the goal of allowing the Alaska environmental agency to issue an operating permit to Healy that will provide certainty to the source, protect the environment, and satisfy the requirements of the NSR program.

FAIRBANKS AIR QUALITY

Question. Last summer you visited Fairbanks, Alaska, and learned that the town, given its extreme cold temperatures in winter, will likely have considerable trouble meeting the proposed tightened standards for PM_{2.5} (fine particulate matter) under the Clean Air Act (CAA).

Will the EPA give serious consideration to granting a waiver to the Fairbanks area from the tightening PM_{2.5} standards given the extreme difficulty that the town may have in meeting the standard at temperatures of 20 degrees below zero?

Answer. The CAA does not provide the EPA with the authority to waive National Ambient Air Quality Standard requirements, but it does allow some flexibility in implementing the standards. The EPA is bound by section 172(a)(2) of the CAA which states that an area's attainment date "shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment considering the severity of nonattainment and the availability and feasibility of pollution control measures." Our regulations implementing this portion of the CAA give the States flexibility in proposing an appropriate attainment date as part of the overall plan to address fine particulate matter (40 CFR 51.1004). Ultimate approval of the attainment date will depend on the technical merits of the final state submission; however our EPA Region 10 Office is committed to making this process as efficient, collaborative, and common sense as possible.

IMPLEMENTATION OF NORTH AMERICAN EMISSION CONTROL AREA (ECA) IN ALASKAN WATERS

Question. Last year, the EPA imposed new rules requiring low-sulfur diesel fuel to be used by freight carriers and cruise ships in southern and central Alaska waters, even though all vessels serving Great Lake ports were exempted from the new standards and the new ECAs being created by the Agency and going into effect next year.

Would the EPA, given the lack of such fuel in Alaska and at West Coast ports, consider delaying the implementation date of the Alaska/Inside Passage air regulations given the extreme cost to shippers and thus consumers of meeting the new standards, at least until the Agency conducts actual Alaska specific air-quality tests to confirm the need for the rules in Alaska's maritime climate?

Answer. Your question addresses two issues that the EPA takes very seriously—the availability of lower-sulfur fuels and the balance between achieving important health benefits and addressing the economic and technical concerns of industry.

The EPA has taken actions to address these concerns, not only domestically but also as part of the administration's team at the International Maritime Organization (IMO).

Before outlining those actions, we'd like to clarify that the fuel standard due to take effect next summer is the first phase 10,000 parts per million (ppm) sulfur standard, while the industry has until January 2015 before the more stringent 1,000 ppm fuel-sulfur standard takes effect.

In addition, we'd like to clarify that on all coasts, ships must comply with the emissions standards anytime they operate on the landward side of the North American ECA boundary even as they enter our internal waters. This includes operation within the Great Lakes. The narrow exclusion we adopted for a small subset of ships on the Great Lakes is discussed further below.

On the issue of fuel availability, although we believe that compliant fuel will be broadly available for the first phase standard in 2012, we recognize that mariners need a mechanism to address an unexpected nonavailability of fuel that is beyond their control. The IMO treaty allows the United States to provide flexibility in the unlikely event a vessel cannot reasonably obtain compliant fuel.

The EPA has taken actions to address concerns raised by industry regarding operating steamships (vessels with boilers rather than diesel engines for propulsion) on distillate fuel. First, in our final category 3 marine rule, the EPA excluded existing Great Lakes steamships from ECA fuel requirements, thus they may continue to use residual fuel oil. In addition, mirroring that action on the U.S. internal waters of the Great Lakes, we proposed to the IMO an exemption for steamships operating within the ECA. This would apply to the steamships that operate between Washington State and Alaska. By the narrowest of margins, our proposal was included among those that will proceed for circulation among IMO member states. We are striving to see that it is formally adopted by the IMO at its next committee meeting in July 2011.

Throughout development of the ECA and our category 3 marine rule, we sought to maintain the important health benefits of the ECA emissions standards while addressing the serious economic and technical issues raised by the industry. We continue to believe the balance we achieved is the right path to protect citizens in Alaska and the rest of the Western United States from damaging particulate matter and sulfur oxides pollution. Overall, the monetized health benefits of the EPA's coordinated strategy for ships are projected to range from \$110 billion to \$270 billion, assuming a 3 percent discount rate, or between \$99 billion and \$240 billion, assuming a 7 percent discount rate. These estimated benefits exceed the projected costs by a ratio of more than 30:1.

The EPA continues to be committed to working with the government of Alaska and regional/local businesses to assist with implementation in any way possible.

SUBCOMMITTEE RECESS

Senator REED. The hearing is now recessed.

[Whereupon, at 3:46 p.m., Wednesday, March 16, the subcommittee was recessed, to reconvene subject to the call of the Chair.]