DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2010

WEDNESDAY, MAY 13, 2009

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

The subcommittee met at 10:14 a.m., in room SD–124, Dirksen Senate Office Building, Hon. Dianne Feinstein (chairman) presiding.

Present: Senators Feinstein, Nelson, Tester, and Alexander.

ENVIRONMENTAL PROTECTION AGENCY

STATEMENT OF LISA P. JACKSON, ADMINISTRATOR

OPENING STATEMENT OF SENATOR DIANNE FEINSTEIN

Senator FEINSTEIN. Let me begin the hearing. But let me begin it with a great apology to my colleagues, to our new ranking member, Senator Alexander, to Senator Tester. I sort of pride myself on being on time, and the situation just descended into chaos. I had to be at a Judiciary Committee, I had to do other things, and I really am sorry.

Madam Administrator, I want to apologize to you, as well. I do not like to keep people waiting, and I am very, very sorry.

So, I hope you will accept my apology, I'll find my glasses and we'll proceed.

Good morning. On behalf of the Interior Appropriations Subcommittee, I welcome you to our hearing for the fiscal year 2010 for the United States Environmental Protection Agency (EPA), and I'm very pleased to welcome Lisa Jackson, the new Administrator of the EPA, before this subcommittee.

I also want to welcome Senator Alexander, our new ranking member. We've had an opportunity to discuss issues, I find myself in align with his thinking, so I really think that we're going to work very well together, and that's important. So, it's a good thing. So, thank you.

This is the first hearing we're conducting together. I've also had occasion to talk to Senator Tester about his concerns and I understand his concerns, in many respects, our two States have similar concerns, and so I believe we will work together well, as well.

The administration's fiscal year 2010 request for the EPA is $10.486 billion. Now, that's a remarkable 37 percent increase over the 2009 enacted level. And it translates into nearly $2.9 billion in

new funds for environmental protection. That truly is a very welcome addition.

And I'm particularly pleased that the President made a $3.9 billion commitment to fund water and sewer infrastructure. Most people don't know this, but as the most powerful Nation on Earth, we have antiquated and deteriorating water and sewer infrastructure. I mean, I remember when there was no such thing as bottled water. You didn't drink bottled water. There were seltzer bottles, that you spritzed, but the water coming out of the tap, virtually everywhere in America, was pristine, and pure, and as a child, we always drank it everywhere. That's not necessarily the case today.

So, these things are, in fact, very important. And there's $2.4 billion for the Clean Water Revolving Fund—that's a $1.7 billion enacted—over the enacted level. That's a big change, because all of our jurisdictions stand in line for these revolving loan funds. So that, indeed, is good news.

And together these funds will build more than 1,700 water and sewer projects across the country, and that's an increase of 857 projects compared to last year. And that's in addition to the 2,000 that will be funded by the $6 billion Congress provided through the stimulus bill.

Now, I have many other things to say about this budget, all of them good, all of them positive. I will put the remainder of my remarks in the record, and in the interest of time, welcome the distinguished Senator from Nebraska, Senator Nelson, and turn this over to the ranking member—the new ranking member—Senator Alexander, for his remarks.

STATEMENT OF SENATOR LAMAR ALEXANDER

Senator ALEXANDER. Thank you, Madam Chairman.

Ms. Jackson, thank you for being here. I can't think of any position I'd rather have in this Senate than the one I've got, unless it was yours, Madam Chairman.

But if I had to work with anyone else as chairman, I'm glad it's you, because I admire your decisiveness. As a former executive, I admire and appreciate that. And we do share views about the environment and our feeling that the great American outdoors and the natural landscape is an important part of the environment that we want to protect.

I'm excited about this opportunity, as I grew up and lived 2 miles from the boundaries of our most visited national park, the Great Smoky Mountains, which is 75 years old, this year.

I'll save my remarks for the time that I have to ask questions, but here are the subjects that I'll be interested in. I hope there's one area, Administrator Jackson, that you do act on promptly, and that's the clean air interstate rule for the Eastern United States, so we can get certainty about sulfur nitrogen and mercury and finish cleaning our air up.

There's one area I hope you don't act on, and that's on carbon, I think that's more appropriately left to the Congress, and we can talk about that.

I'd like to talk to you about clean air hot spots. We had a great briefing the other day, Madam Chairman, from Brian McLean, when Senator Carper and I were working on dealing with legisla-

tion that involves sulfur, nitrogen, and mercury—we've really made great progress since 1992 on the first two. We have the technology now to deal with mercury, but there are a few hot spots left in the country where we still have a sulfur nitrogen problem, and strategies for dealing with that, and protecting our national parks, especially, from the consequences of dirty air is something I'd like to talk about.

And then finally, Madam Administrator, I'd like to talk with you a little bit about the coal-ash spill at the Tennessee Valley Authority (TVA) site in Tennessee, and your intention—which I don't disagree with—for the EPA to move into the regulation of coal ash from coal plants, and your decision these last few days to become involved with the clean up now, and to do it under the Superfund Act, I want to be sure I understand just what that means, what the consequences are, and what the costs will be.

So I look forward, not just to this hearing, but to working with the Chairman and working with Administrator Jackson.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator Alexander.

Senator Nelson, do you have a comment? And then Senator Tester.

Senator NELSON. No, Madam Chairman, I really don't except to say that I am anxious to know more about the Department's move toward carbon regulation, and I'll bring that up during the questions.

Senator FEINSTEIN. Yes, we all will.

Senator NELSON. Thank you.

Senator FEINSTEIN. Right.

Senator Tester.

STATEMENT OF SENATOR JON TESTER

Senator TESTER. Thank you, Madam Chair, and I also want to thank you for your apology. I really appreciate the fact that you want to be on time, and sometimes we get pulled away, but I thank you very much for that, I appreciate that in this body.

And Administrator Jackson, thank you for being here. I do have a very quick statement I'd like to put forth.

As the Chairwoman said, I also want to thank you for the money that was put in for community water systems. I think clean water is a fundamental right, but a lot of small communities in States like Montana, really can't afford modern systems, so the State revolving funds are critically important, and a great source of funding to help local match meet the increased need for our antiquated water systems throughout the United States, especially in Montana.

The EPA is doing a lot of work in Montana, and we've got some big problems to clean up. The EPA is in the process of restoring the Clark Fork River by removing Milltown Dam. I want to commend you on that. This Superfund site is to be turned into a beautiful park. It will restore two rivers and improve fish habitat in those rivers. There will be a kayaking park right outside a town called Missoula, Montana. The clean-up is creating a lot of jobs in construction, and afterwards will create even more jobs by revitalizing that area, and offering some recreational opportunities. In

Montana, we call this the restoration economy, and I hope we see a lot more of it in the future.

I want to discuss Libby very quickly, and my questions are going to revolve around Libby for the most part.

The community of Libby was poisoned, and people are dying. Nearly 200 people—and this is not a big community—nearly 200 people have lost their lives to asbestos-related diseases, many more are sick. The town is struggling to meet its healthcare needs and has an unclear picture of what the eventual and complete cleanup, really means. Homes are being devalued because of contamination, and businesses are concerned about the liability on sites that they would like to locate in.

I have been to Libby, I have talked to the residents, things are difficult there. I have visited with folks who can barely breathe because of asbestos problems, who are denied oxygen from a WR Grace healthcare plan. These folks have asbestosis, they're denied oxygen from a WR Grace healthcare plan.

Parents don't know if it's safe to let their kids play in the yard because of the potential contamination, and several community groups that were set up to communicate with the EPA have been disbanded because the EPA staff quit showing up at those meetings.

Last week, the Justice Department failed in their criminal case against WR Grace, and the people in Libby and Montana are extremely frustrated.

I'm glad that you're in this position, because I know you want to take the Agency in the right direction. But the situation in Libby is serious enough that it demands your personal and immediate attention.

Your commitment to my colleague, Senator Baucus was that you would visit Libby and report on the reasoning behind the EPA's failure to declare Libby a public health emergency, and we look forward to both of those things happening, as soon as possible.

And with that, I will save the rest of it for the questions.

Thank you, Madam Chair.

Senator FEINSTEIN. Thank you very much, Senator Tester.

Madam Administrator, we will turn this over to you. We have your written statement in front of us, I'd like to ask, if you can, deal with some of these issues in your opening statement.

If you want cuts in your budget anywhere, let us know where, and then we will go to the questions, and that's generally the most informative part of these hearings. And we will have rounds of 5 minutes from each member.

So, welcome, and please proceed.

SUMMARY STATEMENT OF LISA P. JACKSON

Mrs. JACKSON. Well, thank you, Madam Chair, and let me simply start by saying that you and the members of this subcommittee are worth waiting for. So, I'm glad you did make it, and I'm glad we waited for you.

Good morning to you, to Ranking Member Alexander, to the members of the subcommittee, thank you for your kind opening words, thank you for inviting me here today, and I will keep my

remarks very brief so that we can get to the questions and answers.

I do want to introduce Maryann Froehlich. Maryann is our acting Chief Financial Officer at the EPA and has been ably assisting me in preparing for this hearing, just in case we have any questions, or you want to address any questions to her.

As you stated, Madam Chair, the President requests $10.5 billion, roughly, for fiscal year 2010. It reflects the challenges and promises that we face in an era of high energy costs, climate change and economic crisis, and it reflects the President's commitment to environmental protection as a piece of the solution for our economic challenges. We know we can do better. We agree that all Americans deserve clean air, water, and a healthy environment. We also know that the clean energy economy deserves vigilance on the environmental front, as well.

The President's budget starts the work that's needed to transform our economy. It includes investment in cutting-edge green technologies, but also it repairs our crumbling infrastructure, stronger regulatory and scientific capabilities to make the Nation's water, air, and land cleaner for our communities families and children.

It provides a substantial increase in support to address the public health and environmental challenges that can not be postponed. In short, the budget reflects the President's commitment to a new era of environmental stewardship and puts us on a path to a cleaner, safer planet.

You've already mentioned, Madam Chair, the $3.9 billion for clean water and drinking water state revolving funds, that's certainly a highlight of this budget. It's important to note that almost all of that money passes back into communities through the States, so that money is very much on the ground money for environmental restoration—for environmental investment, if you will I like your restoration economy remarks, Senator Tester.

We estimate that this 157 percent funding increase in the State revolving funds will finance, as you suggest, about 1,700 clean water and drinking water projects. I remind everyone that those areAmerican, well-paying jobs, here in this country.

The fiscal year 2010 budget also supports efforts to develop a comprehensive energy and climate change policy with measures to increase energy independence and reduce greenhouse gases. This comes in the form of a $19 million increase to help the EPA, among other things, implement the greenhouse gas inventory, so we can take the very important step of measuring our progress in reducing emissions. That will also ensure that we are targeting major sources of emissions.

The budget requests $55 million, an increase of over $8 million to fund an enhanced toxics program, to screen, assess, and reduce chemical risk. That's a 17 percent increase, and allows the EPA to help complete screening level characterizations on more than 6,750 organic chemicals in use in the United States. There's also an increase of $24 million in the President's budget for the Superfund Program, that investment enhances enforcement and removal work throughout the country. Beginning in 2011, the so-called "polluter pays" measure would be reinstated under this budget, which would

generate $1 billion a year, rising to $2 billion a year by the year 2019. These are extremely important resources needed to address cleanups of contaminated sites across America.

Along with increases in Superfund, the budget provides a total of $175 million for Brownfields, which is a $5 million increase. The Brownfields program helps States, tribes, local communities, and stakeholders in economic redevelopment to work together to assess and clean up brownfield sites, revitalizing these properties, and returning them to their best and highest uses.

These protection efforts focus on ensuring that the sites are ready to be returned, putting both people and property to work.

Madam Chair, members of the subcommittee, the budget sets the EPA on a clear path to addressing our Nation's environmental challenges, and helps us to accomplish important work. I look forward to discussing the Clean Air Interstate Rule, and our plans to accelerate the schedule for development of that rule.

I know we'll get into some discussion of greenhouse gases, carbon, and TVA. I'm happy to do that in the questions and answers. As you know, we have redoubled our commitment, Senator Alexander, to the TVA Clean-Up, and we've promised coal ash regulations by the end of this calendar year, a proposal.

I think the two go hand-in-hand. We applaud the work of the State of Tennessee. They were the first on the scene after the tragic spill in December, and have been leaders in assuring that the cleanup is done in a transparent and scientifically sound way.

We believe, because the TVA is a Federal facility that the EPA should be involved in a cleanup of this magnitude to bring Federal resources to bear on the cleanup side to work hand-in-hand with the State. I believe the State and the EPA will make a good team—a partnership that will ensure that that area is restored to its extraordinary natural beauty, and also its environmental health. The residents there deserve no less.

PREPARED STATEMENT

You're right, I know we will discuss Libby. We've been working with Senator Baucus actually before my confirmation. Senator Baucus made it clear that he wanted a visit to Libby and personal attention. I'm happy to discuss that in the questions and answers, as well, Senator.

Thank you very much.

[The statement follows:]

PREPARED STATEMENT OF LISA P. JACKSON

Madam Chairman and members of the subcommittee, I am delighted to appear before you today to discuss how the proposed fiscal year 2010 budget request for the Environmental Protection Agency (EPA) is designed to address our environmental challenges and contribute to the country's economic recovery.

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

This budget starts the work needed to transform our economy through investment in cutting-edge green technologies, repairing crumbling infrastructure and strengthening our core regulatory and scientific capabilities to make the Nation's water, air,

and land cleaner for our communities, families, and children. This budget keeps EPA on the job protecting the environment. It helps States, tribes, and local governments stay on the job by providing critical partnership assistance. And, it helps put Americans back on the job.

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

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

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

INVESTS IN WATER INFRASTRUCTURE

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

We estimate that this 157 percent funding increase in the State Revolving Funds will finance 1,000 clean water and 700 drinking water projects across America—projects that will upgrade and update the Nation's aging water infrastructure, assure compliance with Safe Drinking Water Act requirements, make water delivery more efficient, and create American jobs that pay well. These investments channel critical funding for water system pipe replacements and help address an estimated 240,000 water pipe breaks that occur across America each year and waste millions of gallons of water.

The Clean Water and Drinking Water State Revolving Funds provide grants to States to capitalize their own revolving funds, providing infrastructure financing to communities, making water infrastructure more efficient, and supporting green jobs in the 21st century. Because repayments and interest are recycled back into the program, these State Revolving Funds generate funding for loans even without Federal capitalization. We estimate that for every Federal dollar invested, approximately $2 in financing are provided to municipalities.

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

ACCELERATES GREAT LAKES RESTORATION

The Great Lakes Basin is a national resource treasure that is home to 34 million people in the United States and Canada. It holds 20 percent of the world's fresh surface water, has 10,000 miles of coastline, and contains a diverse array of biological communities. EPA's fiscal year 2010 budget requests $475 million for Great Lakes restoration programs and projects that strategically target the most significant problems in the region, such as aquatic invasive species, nonpoint source pollution, toxics in sediment, and habitat and species loss.

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

In the fiscal year 2010 budget we include other geographic priorities, such as Puget Sound, San Francisco Bay, and the Chesapeake Bay. The Chesapeake Bay restoration effort is funded at $35 million, a $4 million increase over fiscal year

2009, and will support projects to further address nutrient and sediment pollution in the Bay.

INITIATES A COMPREHENSIVE APPROACH TO SLOW GLOBAL WARMING

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

GREENHOUSE GAS EMISSIONS (CAP AND TRADE PROGRAM)

The fiscal year 2010 budget includes a $19 million increase to support the President's effort to develop a comprehensive energy and climate change plan to transition America to a clean energy economy, reduce oil usage, and slow global warming. It will allow us to work on a greenhouse gas emissions inventory and work with industry sectors to report high-quality greenhouse gas emission data that is the foundation of an effective climate policy. This funding supports design, development, and testing the data management system, developing guidance and training materials to assist the regulated community, conducting industry-specific workshops, and developing source measurement technologies for greenhouse gases.

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

CHEMICAL RISKS

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

RESEARCH AND DEVELOPMENT

The Research and Development programs are funded at $842 million for the Science and Technology appropriation, and increase of $52 million from fiscal year 2009. This funding will support the rigorous, peer-reviewed scientific analyses that we must use as a basis for our environmental decisions. It will allow us to assess, develop and compile scientifically rigorous tools to inform decision-making and assist in incorporating green infrastructure into existing practices.

COMPUTATIONAL TOXICOLOGY

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

INTEGRATED RISK INFORMATION SYSTEMS (IRIS)

The fiscal year 2010 budget includes $14.5 million, a $5 million increase over 2009, to enable the IRIS to increase assessment production and reduce our backlog of assessments for chemicals previously identified as priority needs.

BIOFUELS

The fiscal year 2010 budget includes $5.6 million, an increase of $5 million over fiscal year 2009, for biofuels research and sustainability analysis mandated by the Energy Independence and Security Act of 2007. Biofuels lifecycle and sustainability research will provide better information to decision makers on the trade offs and opportunities associated with increased biofuels production.

GREEN INFRASTRUCTURE RESEARCH

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

AIR TOXICS

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

Therefore, the budget also includes $3.3 million for air toxics research to protect and improve the quality of the air that each of us breathes. Air toxics research studies the effects to human health of toxic air pollutants and includes evaluating risk assessment methodologies to support the development and implementation of regulatory programs that assist State and local governments and tribes develop clean air plans. The fiscal year 2010 budget also supports improvement of risk assessment tools, including National-Scale Air Toxics Assessment; analytical support to States as they enhance air toxics monitoring near selected schools, and five FTE in EPA's regional offices to provide technical assistance and coordination.

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

STRENGTHENS ENVIRONMENTAL ENFORCEMENT

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

SUPERFUND

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

BROWNFIELDS

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

LEAKING UNDERGROUND STORAGE TANKS (LUST)

The fiscal year 2010 budget requests $128 million for the Leaking Underground Storage Tanks program, including $113 million for the LUST trust fund. The LUST program promotes rapid and effective responses to releases from Underground Storage Tanks containing petroleum and hazardous substances by enhancing State, local, and tribal enforcement and response capability. EPA supports State and tribal underground storage tank programs to clean up contaminated sites, promote innovative and environmentally friendly approaches in corrective action to enhance and streamline the remediation process, and measure and evaluate national program progress and performance. Almost 80 percent (or 377,019) of all reported leaks have been addressed to date, leaving a backlog of almost 103,000 cleanups that have not yet been addressed. In fiscal year 2010, EPA will continue to work with the States and tribes to complete LUST cleanups in an effort to reduce the remaining backlog.

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

PARTNERSHIPS

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

CATEGORICAL GRANTS

In fiscal year 2010, EPA requests a total of $1.1 billion for "categorical" program grants for State, interstate organizations, nonprofit organizations, and tribal governments. EPA will continue to pursue its strategy of building and supporting State, local and tribal capacity to implement, operate, and enforce the Nation's environmental laws. In this way, environmental goals will ultimately be achieved through the actions, programs, and commitments of State, tribal and local governments, organizations and citizens. Highlights of EPA's fiscal year 2010 categorical grants include:

AIR QUALITY AND RADON GRANTS

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

WATER POLLUTION CONTROL GRANTS

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

NONPOINT SOURCE PROGRAM GRANTS

In fiscal year 2010, EPA requests $200.9 million for Nonpoint Source Program grants to States, territories, and tribes. EPA's goal is to reduce annually the amount of runoff of phosphorus, nitrogen, and sediment through our Clean Water Act section 319-funded projects by 4.5 million pounds, 8.5 million pounds, and 700,000 tons, respectively. These grants enable States to use a range of tools to implement their programs including: both nonregulatory and regulatory programs, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects.

HAZARDOUS WASTE FINANCIAL ASSISTANCE GRANTS

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

PUBLIC WATER SYSTEM SUPERVISION GRANTS

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

TRIBAL GENERAL ASSISTANCE PROGRAM GRANTS

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

PESTICIDES, TOXICS SUBSTANCE, AND SECTOR PROGRAM GRANTS

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

LEAD GRANTS

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

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

HOMELAND SECURITY

EPA has a vital role in homeland security. The Agency has been called upon to respond to five major disasters and nationally significant incidents in the past 7 years. In the coming years, EPA's homeland security roles and responsibilities will continue to be of the utmost importance as the Agency enhances its preparedness.

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

EPA's fiscal year 2010 budget provides an increase of $9 million to fully fund five Water Security Initiative pilot cooperative agreements. The Water Alliance for Threat Reduction Activities. The Water Security Initiative will include continued de-

sign and demonstration, of a system to test, and evaluate the appropriate response to drinking water contamination threats. Adoption of effective water security guidance on contamination systems will be issued upon completion of these projects.

INSPECTOR GENERAL

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

CONCLUSION

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

GREENHOUSE GASES

Senator FEINSTEIN. Thank you very much, Madam Administrator.

Senator Alexander mentioned the greenhouse gas area, and I want to plunge right into that, if I might. You made that—your proposed endangerment finding on April 17. As I understand the Clean Air Act, section 202(a), the decision—your proposed decision that's coming, includes essentially two separate decisions—a finding that six greenhouse gases, including carbon and methane, do endanger both public health and welfare, and a finding that emissions from new motor vehicles cause or contribute to the greenhouse concentrations that endanger public health.

So, once the endangerment decision is finalized, which is expected by legislation by June 30 of this year. The groundwork is laid for the EPA to begin regulation of vehicle emission standards for greenhouse gases, as well as for possible stationary source regulations. This is very powerful, and potent.

As Senator Alexander stated—and I happen to agree with him—it is definitely preferable to have the Congress act in this area, and the House looks like it may be.

I think the jury is still out in the Senate, and we hope—and everything is being done and there is a very active effort by Senator Boxer and Senator Kerry on the EPW Committee to come up with a bill. As we know, here we've got 60-vote cloture for virtually anything that is controversial, and we have Copenhagen coming at the end of the year where American leadership is necessarily expected.

My question to you is this, what is the EPA prepared to do if action is not taken in a prompt and timely way by the Congress?

Mrs. JACKSON. Well, thank you, Madam Chairman.

EPA is prepared to follow-up on its statutory duties under the Clean Air Act. As you rightfully noted, the proposed endangerment finding is the first step to potential regulation of greenhouse gases.

The President and I have said repeatedly that we agree with you and Senator Alexander, that we would prefer to see Congress act. We would prefer to see a law that is specifically dedicated to addressing the issue of greenhouse gas emissions in this country, along with comprehensive energy legislation. That is being considered in the House of Representatives.

We have a duty at the EPA. Two years ago, the Supreme Court ordered the EPA to make a finding one way or the other, and the proposed finding answers the call from the Supreme Court, so we are following the law.

If that finding is finalized, then the EPA would be authorized to regulate greenhouse gas emissions from motor vehicles and trucks, and the EPA will proceed, judiciously, to assess the need for, and to coordinate that regulation.

Senator FEINSTEIN. Before the end of the year?

Mrs. JACKSON. I would say that it is quite likely that we will make a decision on endangerment well before the end of the year. The EPA has been working as I'm sure you know already, very closely, and under orders from the President with the Department of Transportation, with your home State of California, which has been a leader on this issue, to make sure that as we consider next steps on emissions for automobiles, that those steps are coordinated, and that they will comply with the Clean Air Act and its mandates.

Senator FEINSTEIN. Can you discuss with us some of the issues that you might have to address in the next 1 to 2 years, to move toward regulation of greenhouse gases?

Mrs. JACKSON. I'm happy to. Well, we just talked about the first issue.

ENDANGERMENT FINDING

Senator FEINSTEIN. Right.

Mrs. JACKSON. The first regulatory issue we would turn is to motor vehicles. The endangerment finding actually pertains to motor vehicles, as you know, and that is not a new issue, it's one that has been brewing for quite some time. It was actually brought to a head, not only by the *Massachusetts* v. *EPA* decision, but also by the State of California. California developed automobile emissions standards that were designed to specifically address carbon. The so-called "waiver decision" which President Obama ordered the EPA to re-look at on my first day as Administrator, says that we are now in the process of looking at whether or not the California standards should be applied in those States that have chosen—on a Statewide level—to adopt them.

Senator FEINSTEIN. Is it 12 States?

Mrs. JACKSON. I believe it's 12, yes.

Senator FEINSTEIN. So, what you're saying is 12 States are ready, and now under the law can affect——

Mrs. JACKSON. The EPA has not made a determination on the waiver, the public comment period closed in early April, and as you noted, by law, by June 30 Congress has asked us to make a determination one way or another with respect to the waiver.

Once the decision is made with respect to California, the other States would so be empowered.

Senator FEINSTEIN. Yes.

The reason Senator Alexander asked this, you see, I think this is a very powerful mobilize for the Senate to come to grips with the need to pass a bill. Because at least as I look at it, they are going to be under a mandate where there is little choice, once they make

the waiver decision, to move, to regulate if we do not have something.

So, in—at least in my view—it's a very powerful compelling argument as to way we must take some action, and not be dilatory.

I'm going to turn it over to you for your questions with that.

CLEAN AIR

Senator ALEXANDER. Thank you, Madam Chairman.

In my second round I'd like to get back to the discussion we were just having, but in this first round, let me ask you about the other three pollutants, and about the TVA situation.

The other three pollutants that come from coal plants are, of course, sulfur, nitrogen, and mercury. And Senator Carper and I had an excellent briefing the other day about the success of those programs since the early 1990s. Even though there's some work still to be done, great progress has been made.

And it's worth knowing that it differs from carbon in a couple of important ways. One is, there was the technology to deal with sulfur at the time the cap-and-trade was imposed on sulfur, called "scrubbers," and two, we were dealing with a lot less money, and only a part of the economy.

But a court has knocked down the so-called "CAIR rule," which provided certainty about—and high standards—about sulfur and nitrogen. That's a real problem for those of us who care about clean air in the Eastern United States. Because in Tennessee, for example, in the Great Smoky Mountain area, as well as in the New Jersey area in the Northeast that you're very familiar with—we're affected by dirty air that blows in from other places, as well as some we commit ourselves. And the only way we can deal with that is to have a strong national standard, or at least one that applies to the Eastern United States.

Senator Carper and I are prepared to go forward with legislation that would reinstate strong, clean air pollution rules on sulfur, nitrogen, and mercury, on which we don't want a cap-and-trade because it just goes up in the air and comes down.

My question for you is, wouldn't it be easier and quicker for the country if we simply gave the EPA the authority that the court said that you don't have in order to write a CAIR rule, or would it be easier and quicker, and better for the country if we authored a comprehensive bill and tried to pass that.

Or, should we do it in two steps? Go ahead and give you the authority, let you do the rule, which I would assume would come quicker, and then try to persuade our colleagues to do a comprehensive piece of legislation?

Mrs. JACKSON. Thank you, Senator. And thank you for your leadership on the issues of clean air.

I would offer you the following pieces of information, and then maybe we could come to a decision, offline, together on what's the best way to go.

The EPA will take the rest of the calendar year to work on the replacement for the CAIR rule that was knocked down by the court. As you know, we're operating under the old rules while we develop a new rule.

We're working to propose that new rule in early 2010, the calendar year 2010.

In the meantime, the NO_X trading program began on schedule, in January of this year. The ozone season NO_X trading program began on May 1, and the SO_2 trading program is expected to commence January 1, 2010, as intended.

My concern is that without potential additional authority there are some specific issues that we're concerned we could be sued on and lose again if we don't have a legislative fix.

So, I think there may be a need for a small, but mighty legislative fix to enable those rules to go forward without additional challenge.

The other commitment I'd like to make to you, sir, is that this gives us an opportunity to once again look at the science, and make sure that in the CAIR rulemaking, we are judicious and smart, but that we squeeze every drop of cost-effective protection we can, and every control we can get out of the CAIR rule. I think that there are opportunities still to be had in that arena, as well.

TENNESSEE VALLEY AUTHORITY (TVA)

Senator ALEXANDER. Well, I will look forward to working with you on that as I know Senator Carper will.

And I think it's important and relevant, Madam Chairman, to the global warming concern. I think we have to use coal plants for the foreseeable future, and so we need to clean them up. And a big part of cleaning them up is sulfur, nitrogen and mercury. We can plug our electric cars in at night and never have to build another power plant for the next 20 years. And then we can figure out what to do about carbon.

Now, I asked you about TVA. TVA estimates it'll cost $1 billion to clean up that coal ash spill—that's a huge amount of money for the ratepayers of our region. We understand the EPA will now be a partner in that cleanup. Please explain to me what that means to us, to be as part of the Superfund. Will that add to the bill that the TVA ratepayers will have to pay? Will that mean that Federal dollars will be available to help with the cleanup? Will that mean that the EPA will use TVA's experience as a model for other coal plants in the country in terms of how they deal with coal—might deal with coal ash in an effective way?

Mrs. JACKSON. Certainly, I believe that the EPA's getting more directly involved in the face of an enforceable order with TVA, which we issued recently, on May 11, means that the EPA will be there in the unlikely—but possible—event that things don't go well TVA has been stepping up to the plate, to date. Most of the work, to date, has been paid for by TVA. TVA has also stepped up to pay the State's oversight costs, and has agreed to pay the EPA's oversight costs. So, to the extent that the polluter pays, TVA—although they are a Federal entity—has agreed, as part of this order, to pay those costs.

Now, I'm well aware of the fact that the costs keep escalating, because the more we learn, the more we realize that the old adage, that an ounce of prevention here would have been worth many pounds of cure, because this will be an expensive cleanup. First, because of what it did to the land, but also because of the eco-

system—the water and the fact that small amounts of chemicals there can have a profound impact on the ecosystem.

There's no new money now, Senator, I do believe that the EPA's involvement ensures that the cleanup will be done. I commit to you that it means we will be vigilant and that we will continue discussions if we find that funding is an issue. I would not hesitate to bring those issues to the attention of the White House. I believe that this is the right model.

You asked if this is a model—to me, it very much is. This is a Federal facility. The message for the American people, and for the people in your State is that the Federal Government takes responsibility for what happens here. TVA has done that, and to make sure that the cleanup is done right.

Senator ALEXANDER. Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator.

Senator Tester.

LIBBY, MONTANA

Senator TESTER. Thank you, Madam Chair.

EPA has 16 Superfund sites in Montana, including Anaconda, Butte, East Town, Mill Town, and Libby. As I said in my opening statement, I really want to focus on Libby for now.

The EPA Emergency Response Team first came to Libby in 1999, cleanup began shortly thereafter. In 2006, the EPA Office of Inspector General investigated cleanup in Libby on allegations that the Agency failed to address scientific standards during cleanup. That report was just released.

While that report found no criminal activity, it questioned the science of the cleanup and apparent rush to complete record of decision. It highlighted problems with communication in the community and it pointed out a disconnect between the scientists and the Agency.

It has been 3 years, but it appears that the questions raised in the Rumper Report are still valid. My questions are—will you commit the EPA to making sure that any record of decision is done with a complete scientific background to ensure that Libby has been cleaned to safe levels?

Mrs. JACKSON. Senator, absolutely. I commit that science is first at the EPA.

Senator TESTER. And, in your mind, can you say what would constitute a safe level?

Mrs. JACKSON. I can not, sitting here, give you a numeric level. What I will say is that the science of assessing risk with respect to asbestos contamination has not necessarily progressed as quickly as I believe it should for the people of Libby. I know they are frustrated, and they are worried, as they rightfully should be. I believe that if there are actions that we can take in the interim, to make sure that the cleanup doesn't stall, there are things we know we must do. We've been working with the community and with your colleague, Senator Baucus.

LIBBY, MONTANA—COMMUNICATIONS

Senator TESTER. Okay, how can communication be improved with the community? In both directions?

Mrs. JACKSON. Well, I was troubled to hear earlier, Senator, your concern about the EPA pulling out of meetings. I will go back and speak with my staff. We will redouble efforts to make sure that out of our Denver field office, as well as out of headquarters, all lines of communications are open. I have been personally involved in trying to jump start our efforts in Libby, Montana.

Senator TESTER. I appreciate that.

Needless to say, Libby is a complex cleanup site, but there's not been a risk assessment, working with the EPA and the community. Do you feel that placing a risk assessor on the ground in Libby might help with the Agency's communication with the residents?

Mrs. JACKSON. I certainly will commit to making sure that risk assessors are as available to the community as they need to be. I know that the risk assessors from our Denver office have been up there—we can send them back. Having them on the ground every day may be more than we need—risk assessment is a fairly rigorous science. Whatever we need to do to make sure that the people of Libby believe they have access to our experts, we will do.

LIBBY, MONTANA—HEALTHCARE

Senator TESTER. Okay.

The folks in Libby who have been exposed to—continue to be diagnosed with asbestosis and mesothelioma—Lincoln County, which is where Libby is located—has the highest age adjustment rate of asbestosis mortality in the United States, among counties. How can we help these folks with their healthcare after the EPA leaves?

Mrs. JACKSON. Thank you, Senator.

I certainly wouldn't want to step into the territory of the Department of Health and Human Services (HHS), we certainly have started to have discussions with them. Senator Baucus asked me to look into that issue as part of my confirmation, and those discussions are continuing. So, I have nothing——

Senator TESTER. One of the things that I see on another set of committees, with Veterans Affairs and the Department of Defense is making sure that information gets passed along in an appropriate manner, things can fall through the cracks. And what the VA did is they made a commitment to work with the Department of Defense to make sure that there weren't things falling through the cracks.

I think that that is an equal parallel here between the EPA and HHS. And it's not going to happen—we will have people fall through the cracks, we'll have healthcare needs—and I know you're not a healthcare agency, but HHS is, and I think that if you dovetail your efforts together with Secretary Sebelius from HHS, I think that we can make a giant step forward in meeting some of the challenges that occur in Libby.

So that, I guess the question I have with you is, are you having conversations right now, with Secretary Sebelius, or whoever in HHS, and do you anticipate that being an ongoing situation, as far as your working with them to best meet the needs of the citizens?

Mrs. JACKSON. The answer is yes. I have not personally had a discussion with the new Secretary on this, but our staff—long before Secretary Sebelius was confirmed—has been working together. We will continue that work, and we will make sure that in doing

so, we address your concern about people falling through the cracks of either the cleanup site, or the healthcare side.

Senator TESTER. Okay.

Thank you very much, Madam Chair.

Senator FEINSTEIN. Thank you very much, Senator Tester.

And, you know, since you've raised the situation at Libby—I also serve on the Justice Department and was very active in the asbestos legislation, which went on and on and on and on.

And in the course of it, the real—I mean, the incredible damage that was done to people by asbestos became extraordinarily clear. I just want to help you any way I can because it is such a big problem with asbestosis, with mesothelioma. I mean, mesothelioma is, I guess, 100 percent fatal, and quickly, and it affects young people. You can pick it up off of somebody's uniform, pick up the little shards. So, I would like to just offer my help wherever I can.

Senator TESTER. Madam Chair, I very much appreciate that. I feel somewhat hesitant to talk about specific instances like Libby, I mean, we should be talking about global things, like things in the air, and clean water which impacts all of our communities across the United States.

But this situation in Libby is so grotesque that I really think—and we spent a ton of money, and I'm not sure that, personally—and I'm not a scientist, I'm a farmer—but I'm not sure that we've got the bang out of the buck that we've spent.

I think that with some attention by people like you, Administrator Jackson, I think we can get a big bang for the buck, we can help make this community whole again, and we can solve a huge problem that we have, in one of the most beautiful places in the world.

Senator FEINSTEIN. Well, Senator Tester, Senator Alexander, why don't we work together on some report language for the bill, which essentially would mandate the EPA to really do what Senator Tester has just suggested—take a new look at it and give us some findings.

Madam Administrator, would you be responding to report language? We could also put in bill language, I suppose, but——

Mrs. JACKSON. We're already responding, and I'm happy to double efforts. We've agreed to do all we can working with Senator Baucus, and having Senator Tester's voice join in that, I think, can only result in more action for his constituents.

Senator FEINSTEIN. Right. Well, you were new, I think very high of you, you come so well recommended to the Federal Government and the problem has been that this has gone on year after year after year after year for a long time and I really think it needs to be addressed. I really think we need to have prohibitions extended even more. There's always an excuse as to why you have to use asbestos in certain things—brake linings or various things—and I just think we need to do more to cope with the threat.

So, if you have some thoughts, please give them to us. In the meantime, we'll work together, and see if we can devise some report language which holds the EPA's feet to the fire.

CLEAN AIR ACT

Senator TESTER. Thank you, Madam Chair.

Senator FEINSTEIN. Thank you, Senator.

Madam Administrator, if you regulate greenhouse gases, does the Clean Air Act give you discretion to decide which type of pollution sources should be prioritized for regulation? And if so, do you agree that the EPA should focus its resources on setting regulations for very large sources, instead of small ones?

And if you do, what would you consider the large sources to be? The most priority sources?

Mrs. JACKSON. Yes, I believe there is flexibility in the Clean Air Act that allows for sensible regulatory approaches, as opposed to these maximalist approaches that we hear people talking about.

Obviously, before the agency would finalize any regulations, it would propose those regulations, along with its legal thinking on the issue. I know a lot of legal minds have been brought to bear on how much flexibility is in the Clean Air Act. We currently believe that there's flexibility that allows us to approach the worst and biggest sources first.

So, the answer to your second question is yes, we would use common sense. As we do in other regulatory programs, we would start with the big sources, before we would look to solve——

Senator FEINSTEIN. Well, what would those big sources be?

Mrs. JACKSON. Primarily sources over 25,000 tons per year, and the reason I say that is because that's what we're going to measure under our greenhouse gas emissions rule. Those are utilities, those are refineries, those are the big chemical plants and processes that are already regulated under the Clean Air Act.

Senator FEINSTEIN. We'd also include the utilities?

Mrs. JACKSON. Utilities, and we've already talked about mobile sources, cars, et cetera.

Senator FEINSTEIN. Right.

Mrs. JACKSON. Those are the two big sectors. Transportation, cars, and utilities account for well over half of the greenhouse gas emissions in our country.

Senator FEINSTEIN. Right.

Okay, I understand that the California waiver is being considered by the EPA in the context of a broader effort to coordinate the setting of Federal Corporate Average Fuel Economy standards, known as CAFE, with Clean Air Act greenhouse gas emissions standards.

I was the author of this latest CAFE bill, the 10 over 10—10 mileage—10 gallons per mile improvement over 10 years, which actually became the law, which was—we all felt—a very substantial achievement. But this process should be coordinated, it seems to me, with that area. How do you plan to do this?

Mrs. JACKSON. I agree. Thank you for your work on this issue so far, Madam Chair. The National Highway Traffic Safety Administration (NHTSA) statute and the Clean Air Act are not identical statutes. They get at different issues. One of the challenges has been to coordinate two statutes that weren't necessarily made to work together, but in some ways overlap, in terms of the fact that they have profound impact on the domestic and international auto manufacturing industry.

My staff has been working awfully hard with NHTSA staff understanding where we have identical or overlapping mandates,

where we might have different ones, and coming up with a coordinated approach.

The President has said that he wants one road map, if you will for the auto industry, so that they don't feel as though they have to please NHTSA and then try to figure out what that means, in terms of meeting the requirements of the Clean Air Act.

Senator FEINSTEIN. Do you believe you have the authority that you need to affect this coordination?

Mrs. JACKSON. Yes, so far——

Senator FEINSTEIN. NHTSA is NHTSA, you know, they can be——

Mrs. JACKSON. Well, in President Obama's administration, NHTSA might be NHTSA, but we all work together. We have been doing that.

We feel as though right now we're having very productive conversations—not only with NHTSA, but with auto manufacturers. Obviously, we are one piece of the White House/auto task force set of issues, and right now we do feel as though our Clean Air Act authorities—while they require us to be proactive, and require us to look at carbon, we can work in coordination with NHTSA.

Senator FEINSTEIN. And you think you can maintain high standards by working in coordination? That they won't, kind of, dumb these standards down?

Mrs. JACKSON. You know, I believe that I don't really have that choice. I've taken an oath to uphold the Clean Air Act. I have to look at standards which, at the end of the day, would meet the requirements of the Clean Air Act, if we were indeed regulating under the Clean Air Act.

So, I don't see that working with NHTSA in any way dilutes that responsibility. I don't see it resulting in unduly lenient standards. It means that we have to do the really hard work of working together, and that's what's been going on.

Senator FEINSTEIN. I'm very pleased to hear you say that, because I agree with you. And I think you truly do have a Federal mandate. And unless we're willing to open the Clean Air Act and diminish that responsibility, you clearly have that responsibility, at least in my view.

Mrs. JACKSON. Okay, thank you.

Senator.

CLEAN AIR INTERSTATE RULE (CAIR)

Senator ALEXANDER. Thank you, Madam Chair.

Continuing the line of thinking that—as I heard you and the Administrator talking, if the EPA were to proceed on carbon—well, first, is there any reason you need to wait until we figure carbon out, in order to move on sulfur, nitrogen, and mercury. Can you move ahead on a CAIR fix is my question?

Mrs. JACKSON. Yes, I believe we can, and the only thing I would say is that it is reasonable. One of the reasons regulations are important is that they give certainty to business, they give certainty to investment, and so I'm sure many investors in utilities would like to see the whole answer, not just piecemeal, but you can move on the CAIR piece, and it's very important.

Senator ALEXANDER. And then if I heard you right, the two of you, there was some talk about common sense, and picking large segments of carbon to approach first.

So, I've thought of looking at this, and I'm one who believes global warming is an issue and that man is making a big contribution, and that it's one problem to solve, but we shouldn't jump off the cliff.

It seemed to me that a logical way to approach it would be smokestacks, tailpipes. Smokestacks are 40 percent of it—coal plants—we already regulate them, we know what we're doing there.

Tailpipes are vehicles—that's 70 percent of carbon. The so-called economy-wide proposals that we were considering in the Congress only get to 80 or 85 percent, and they introduce an enormous amount of complexity and surprises—particularly for a regulatory agency, which would have a hard time evaluating the complexity of this economy.

If you were to proceed, wouldn't it be wise to start with coal plants, and with a low-carbon fuel standard, perhaps for tailpipes?

Mrs. JACKSON. Well, we're giving lots of thought to the issue of regulation when and if we proceed with regulation. We are standing on the side, though, and also watching with great optimism and hope, the actions of Congress right now.

There are things that a market-based solution does offer you. They harness, in a different way the power of the marketplace to place a price on carbon, that can unleash a variety of investments. Everything from renewable energy to energy efficiency, to low carbon fuel standards, to controls on carbon, to investments in ways to offset carbon.

There is a broadness to it, and I don't know that we need to decide one or the other. It is a fact that transportation and the utility sector—I think my number is somewhere closer to 60 percent, you said 70 percent—are the majority of domestic greenhouse gas emissions.

Senator ALEXANDER. Yeah, but of carbon, it's 70—40 and 30, I believe, if I'm right.

The big difference, though, between cap-and-trade on sulfur and cap-and-trade on the whole economy today—there are two big differences. One is, we had a technology, we knew what to do with sulfur in 1991, and we don't know what to do with carbon.

And second, then we were talking about a market of a few billion dollars, and now we're talking $100 billion a year. So, we could make a big mistake, here, and run jobs overseas, overnight, if we're not careful, it seems to me.

So, how could you impose a mandate to get rid of—that would put a moratorium, basically, on coal plants, when we're not building nuclear plants, and renewable energy, if we tripled it, will only amount to 7 or 8 percent? Those are the consequences of administrative decisions, and how do we deal with not having a technology to deal with carbon?

Mrs. JACKSON. The technology conundrum is an interesting one. I would say the following: we had a technology to deal with sulfur. What we learned is that once there was a market-based program,

that technology proved to be much cheaper, and much easier to deploy, commercially, than we previously thought.

The estimates for the SO_2 trading program and the impact on the economy were much higher than they proved to be.

I'm persuaded by having spoken to Secretary Chu over at Energy. I remember the work I did on carbon capture as part of gas plant when I was a summer employee. We can capture carbon from streams. It's the sequestration part, it's where to put it that we need to do a bit of work on.

Secretary Chu believes that with the right amount of investment, and the market push to make that a technology that people will spend time and money on perfecting and commercializing, it will happen.

I just wanted to address one other thing you said, Senator, because I think it's so important—there cannot be a global warming program that is predicated on the assumption that coal is gone. In fact, this whole exercise is about putting in place a regulatory feature so that coal can be part of the mix. It is a domestic energy source that the President has said is crucial for us, it breaks our dependence on foreign sources of fossil fuel and energy, in part, and it is part and parcel of the question, if you will, that does indeed require very careful consideration.

Senator FEINSTEIN. I think one thing, if I may, it's very interesting is whether you're going to be able to develop products from carbon. There is an experiment now doing on in California at Moss Landing, I think the company is Scolera, something like that, where they are effectively using carbon to build building blocks, and having some degree of success. It's an experimental program, but I think things like that are very interesting to watch.

And, you know, human ingenuity can came up with a lot of options, so that should be interesting.

Do you have any further questions?

Senator ALEXANDER. I have a couple, I don't want to keep you, though.

Senator FEINSTEIN. Well, perhaps I'll excuse myself, and hand you this.

Senator ALEXANDER. You going to trust me?

Senator FEINSTEIN. I trust you implicitly.

Senator ALEXANDER. For 5 minutes? Do you mind staying 5 more minutes so I can ask——

Senator FEINSTEIN. Let me just say thank you very much.

Mrs. JACKSON. Thank you so much.

Senator FEINSTEIN. Thank you.

Senator ALEXANDER. Thank you, Dianne.

Senator FEINSTEIN. Thank you.

COAL ASH SPILL

Senator ALEXANDER [presiding]. Madam Administrator, I thank the chairman for her courtesy that's very, very, very nice of her. I have two questions. One is—involves the coal ash spill.

There is a contamination in the Tennessee River, downriver from where this spill was, of a radioactive element called cesium. This is an element that was left over from the bomb work during World War II at Oak Ridge. And it came down through the Clinch River,

into the Tennessee River, and it's down in the sediment. It's not harmful, as long as it's in the sediment. It could be harmful to fish and swimmers if it's disturbed. The spill is up river—up another river, the Emery River.

So, my concern is, that the EPA and TVA make certain that in any work done in the Emery River and the Tennessee River, that we take great care not to disturb the sediment where the cesium is, because that could be dangerous to people in the area, and very unhealthy. Are you aware of the cesium issue and will you take steps to make certain that EPA and TVA don't disturb the cesium in the sediment during the TVA coal ash cleanup?

Mrs. JACKSON. I was aware that there was some concern about historic radiological contamination. That is a very valid concern, having worked on several dredging projects. That is always the issue, whether you mobilize contamination that had best been left immobile. The remedy selection process at that site, associated with the TVA's spill, will be very important in making sure we consider that issue. You have my commitment that the EPA will consider that as we move forward.

ACID RAIN PROGRAM

Senator ALEXANDER. Thank you, Madam Administrator.

My other question is this, I mentioned earlier, the success of the acid rain program and how that's helped the Eastern United States and it's helped the Great Smoky Mountains in our Eastern Tennessee area, which has a special problem with air quality. Currently there are 12 streams in the Great Smoky Mountain National Park, which is the most polluted National Park in terms of air quality. These 12 streams violate the Clean Water Act because of low pH levels. In other words, they're too acidic. And, these come from the acid deposits from the air, of course, from coal plants and industrial emissions. Is there any way to relate the Clean Water Act and the Clean Air Act in some way, so that we create goals for States or areas or regions, to try to make sure that as we clean up the air, we clean up the water as a result—as we work on acid rain?

It may be that simply a strong set of CAIR rules on sulfur and nitrogen and mercury is sufficient. But we have seen, over the last 15 years, that even though that cleaned up a lot of the Eastern United States, there are some spots left. This is one of the hot spots.

So my question is, could we take a look at a program that relates clean air and clean water, such modeled after the regional haze rule, that might help us set objectives for cleaning up the streams in the Great Smoky Mountain National Park or in other areas where there's a similar problem?

Mrs. JACKSON. I think that is, Senator, a fascinating idea and suggestion. I think that, clearly air deposition is causing exceedances for water, so those two programs have to be assessed together. There's probably a need for additional monitoring. There's probably a need for those assessments to be done in a coordinated fashion. I'm persuaded by an announcement even yesterday for the Chesapeake, where we talked about the fact that the Chesapeake Bay, waters have exceedingly high levels of nitrogen.

One of the things we're going to do, on a Federal level, is put in place a CAIR rule to reduce the airborne component of that deposition. I think you're talking about a similar strategy for the Great Smoky National Park, and I think that that makes perfect sense. I'd love to work with you on that.

Senator ALEXANDER. Good, I look forward to working on that. There's always the difficulty of imposing new standards on regions that can't meet those standards——

Mrs. JACKSON. Absolutely.

Senator ALEXANDER. Because it may not be their fault that they have a particular concentration of acid rain. So that would have to be balanced. I'm not interested in imposing on the State of Tennessee a standard it by itself can't meet, but some sort of cooperative arrangement or relationship between clean air and clean water might at least put a spotlight on the problem and make sure that when we take another look back at the clean air rules 10 years from now, that we look back and see that we've made progress on those 12 streams in the Great Smokies and other areas which are hot spots for acid rain deposition.

BIOFUELS

Mrs. JACKSON. Thank you.

Senator ALEXANDER. Now I have one little question. I know you have an increase of $5 million in the budget for research for advanced biofuels. What's that about? Is that its relationship to clean air or are you trying to figure out a way to make better advanced biofuels?

Mrs. JACKSON. I believe that is the money that is going to EPA's Ann Arbor lab, does that sound right? We have additional money, but I have $13 million there to assess the impact of higher percentage biofuel blends. You might know that right now we have public comment open, for example, on whether you can have more than 10 percent ethanol in gasoline.

Senator ALEXANDER. Yeah.

Mrs. JACKSON. There's been a request for higher blend levels. We have——

Senator ALEXANDER. So it's probably not so much to invent a better biofuel, but to see what the impact of the biofuel might be.

Mrs. JACKSON. Yes, exactly, Senator. Life-cycle analysis, the impact on production, is to make sure that in our Ann Arbor lab, that those fuels can be accepted without voiding warranties or causing impacts to performance of engines, and the risks and tradeoffs of biofuels use in production.

Senator ALEXANDER. Thank you.

I appreciated, too, your comments on coal. Tennessee doesn't produce much coal, but the more I've studied these issues—and you and I have talked about this—we have our Energy Committee and we have our Environment Committee, you know, and really all the issues are at the intersection of the two. And we don't really have many good ways of looking at them, so the more I've studied it—almost the Holy Grail of our ability to have low-cost energy, so we don't hurt people and run jobs away, is having a way to deal with coal, which I'm so anxious to get those first three pollutants dealt with.

And as far as the carbon, my hunch is—I just think it ought to be a priority. I told Dr. Chu that I thought the next Nobel Prize in science ought to be reserved for whoever figured out what to do with carbon from existing coal plants. I doubt it will be sticking it in the ground. I think there's too much of it. I think there's going to be some biological or chemical reaction, but I have no way of knowing. But I hope that stays a real priority for you, because we have very practical decisions to make over the next 10 years. I mean, do we build more coal plants? I mean, we're basically encouraging, by our rules, the utilities to keep open old dirty coal plants. And by the prospect of more rules, we're discouraging new, more efficient, cleaner coal plants.

We're not building nuclear very much yet, renewable doesn't amount to much yet, and so we may find ourselves in a real dilemma, in terms of jobs and the economy. So keeping a focus on coal, I think, is very important.

ADDITIONAL COMMITTEE QUESTIONS

I thank you for staying and I thank the chairman for trusting me with the gavel. I look forward to working with you.

Mrs. JACKSON. Thank you so much.

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

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

CAP AND TRADE

Question. Your budget includes a new $5 million initiative to prepare for a possible cap-and-trade program. How does the Environmental Protection Agency (EPA) plan to use those funds?

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

Question. Are these efforts needed if Congress enacts another type of regulatory framework other than a cap-and-trade program?

Answer. The efforts the Agency proposes to undertake in fiscal year 2010 are critical even if an approach other than cap and trade is ultimately pursued. Specifically, monitoring and verification, establishment of baselines and performance standards, and assessment of State, Federal, and international programs are directly relevant to policies such as taxes, incentives, and technology-based policies. Work on the international offsets and REDD issues will be needed given the importance of finding effective ways to support developing country action to reduce GHG emissions.

GREENHOUSE GAS

Question. The fiscal year 2009 Interior bill included a mandate for EPA to publish a final mandatory reporting rule for greenhouse gases no later than June 26. Time is of the essence—we need this rule to be in place so that we are able to gather 2010 data. Is EPA on track to promulgate the final rule by the June 26 deadline?

Answer. The proposal, signed on March 10, 2009, indicates that the data collection would start on January 1, 2010, with the first reports to EPA coming in on March 31, 2011. Given the schedule and the fact that the comment period ends on June

9, 2009, the Agency will not have the final rule in the Federal Register on June 26, 2009.

Question. If not, will you commit to finalizing the rule so that data collection can start by January 1?

Answer. The Agency is working towards the implementation dates in the proposal and recognizes the importance of collecting 2010 data.

Question. Your fiscal year 2010 budget request includes $17 million to implement the greenhouse gas reporting rule, which is an $11 million increase over the funds I added to the fiscal year 2009 budget. I'm very pleased to see EPA acknowledge the importance of this rule and make it a funding priority. How will your budget request be used?

Answer. EPA will devote the fiscal year 2010 President's budget resources to: (1) the data management system, (2) implementation, and (3) verification activities for the Mandatory Reporting Rule. The work on the data systems will include: determining requirements; designing the database, software, and user interface, with stakeholder input; and developing training tools for stakeholders. The implementation activities will include: developing guidance and training materials to assist the regulated community; responding to inquires from affected facilities on monitoring and applicability requirements; and developing tools on applicability. The verification work will include: developing and finalizing verification approaches and working with regional staff on verification, compliance assistance, and training. Also, a portion of the budget request will be dedicated to intramural costs to manage the program (e.g., salaries and travel).

Question. Will this increase ensure that the agency has all the funds it needs for 2010 to implement this rule?

Answer. Fiscal year 2010 will be a critical year for preparing for the implementation of the GHG Reporting Rule, and the $17 million in our budget request will provide us with the resources to complete the intensive preparation process associated with an economy-wide program.

STATE REVOLVING FUNDS

Question. Your budget requests a $1.7 billion increase to the Clean Water State Revolving Fund (CWSRF), for a total of $2.4 billion, and a $671 million increase to the Drinking Water State Revolving Fund (DWSRF), for a total of $1.5 billion.

Given the current fiscal climate, does EPA believe that States will have any difficulty meeting the required 20 percent match for these additional funds?

Answer. The $1.7 billion increase to the CWSRF and the $671 million increase to the DWSRF reflect the urgent need for investment in America's aging infrastructure. If appropriated, such an increase will result in a nearly $475 million increase in match required, spread across all States and Puerto Rico, for an average of $9.3 million per State. EPA has not received any indication that States will have difficulty providing this match. States have indicated to EPA that the level of State Revolving Fund (SRF) increases in the fiscal year 2010 request will help them in addressing their infrastructure needs. As a note, States have several options for obtaining their SRF program match. In addition to appropriating funds for the programs, States have the ability to sell bonds in order to obtain the match.

GREAT LAKES RESTORATION INITIATIVE

Question. Your budget request contains $475 million for the Great Lakes Restoration Initiative—that's a 692 percent increase compared to the funding that Congress enacted for Great Lakes cleanup in fiscal year 2009. Given that there are other important water bodies across the country, why did EPA choose to focus so much of your budget increase on the Great Lakes clean-up rather than spreading the funds to multiple areas?

Answer. The Great Lakes hold 20 percent of the world's fresh surface water, have over 10,000 miles of coastline, and drain about 200,000 square miles of land. They are a source of drinking water for over 30 million people in the United States and Canada. Roughly 10 percent of the United States population and more than 30 percent of the Canadian population live in the Great Lakes basin, and its fishery is valued at more than $5 billion, providing jobs and recreation opportunities to millions of people annually.

However, there are significant environmental stressors to the Great Lakes: invasive species are multiplying causing food web disruptions, birds are dying from avian botulism, algal mats are fouling beaches, and nutrient loadings have re-emerged as an environmental issue. The Great Lakes Restoration Initiative focuses on a set of intensifying stresses, which the Great Lakes scientific community has concluded are placing the Great Lakes at or beyond a tipping point, causing wide-

spread ecosystem breakdowns. Actions taken now could prevent irreversible damage and will save money over the long term.

Funding for the Great Lakes now can also be seen as an investment in a part of the country in great need of such investment, particularly in light of the problems facing the automotive industry. This additional funding will create green collar jobs and help protect human health and the environment in a region facing economic difficulties.

Finally, Great Lakes restoration is required under a binational agreement (the Great Lakes Water Quality Agreement with Canada), section 118 of the CWA, and an Executive Order. In recent years, the Federal Government and stakeholders have developed a program that is ready to move forward in a coordinated way to protect and restore the Great Lakes. The Initiative builds upon 5 years of work of the Great Lakes Interagency Task Force and stakeholders, guided by a Great Lakes Regional Collaboration Strategy. The Initiative provides needed Federal funding to move this program forward in a well-orchestrated, well-coordinated effort among multiple Cabinet-level departments to implement critical protection and restoration actions.

Question. How can EPA be sure that such a large increase in funds for the Great Lakes will be spent in a timely fashion? Do you have specific projects that have already been prioritized for funding?

Answer. The 2005 Great Lakes Regional Collaboration Strategy identifies a need of $20 billion over 5 years to address Great Lake environmental problems. For the most part, the environmental problems facing the Great Lakes, as well as their solutions, are well known and have been identified in existing documentation, such as the Great Lakes Regional Collaboration Strategy, Remedial Action Plans, and Lakewide Management Plans.

In developing the Great Lakes Restoration Initiative Proposed 2010 Funding Plan, Federal agencies drew from this existing work with stakeholders to identify ready-to-go programs and projects to jump start restoration in 2010. Where possible, the Initiative will use existing programs of the Federal agencies. To be ready to go, EPA is considering the feasibility of a request for proposals this summer in advance of the appropriation. Federal agencies have begun work on Interagency Agreements for the transfer of funding. The proposed administrative language accompanying the President's request will simplify transfers and receipt of funding by other Federal agencies and will provide EPA with new grant implementation authority.

Programs prioritized for funding are identified in the "Agency Actions" document, which is available from: http://www.epa.gov/grtlakes/glri/index.html.

SAN FRANCISCO BAY—DELTA WATER QUALITY

Question. I am very pleased that EPA included $5 million in your budget to continue competitive grants to improve water quality in the San Francisco Bay. EPA's recognition that the Bay needs to be a priority is a big step forward toward the health of the Bay. However, I believe that the Federal Government also needs to do more to help the Sacramento and San Joaquin River Delta. Specifically, can you tell me how EPA is currently involved in the Bay-Delta to restore habitat and improve water quality? What more could EPA be doing?

Answer. EPA has a long history of efforts to protect and restore the Sacramento and San Joaquin River Delta water quality. We will continue to work cooperatively with our agency partners and stakeholders to restore the critical Bay-Delta ecosystem while recognizing the competing needs of all stakeholders. In the next year, our activities will focus on supporting the efforts of the State and Regional Boards. We will also be a participant and a reviewer on several major National Environmental Policy Act documents. In all forums, we will continue to work with the fishery agencies to ensure an integrated approach (the CWA and Endangered Species Act) to water quality restoration. Following is a summary of EPA activities taking place in the Sacramento and San Joaquin River Delta. Additional priorities include support for coordinated monitoring and assessment; enhanced support of core programs such as standards, Total Maximum Daily Loads (TMDLs), and permitting to drive water quality restoration; improved science, including assessments of nutrients and climate change impacts; and agricultural initiatives including pesticide impact models and environmental stewardship assistance to growers.

CalFed and Delta Vision.—One of the more ambitious efforts to protect and restore San Francisco Bay-Delta water quality was the CALFED Bay Delta Program, a State-Federal partnership initiated in 1995 (following the Bay Delta Accord and EPA's promulgation of Delta water quality standards) to address water management and ecosystem protection in the entire watershed. The first phase (2000–2007) of a 30-year program ended in 2007. In response, in 2006, the Governor commissioned a blue-ribbon panel which recently delivered a "Delta Vision Strategic Plan."

Bay Delta Conservation Plan.—As the Delta Vision process was underway, major water districts dependent on the Delta began a Habitat Conservation Planning effort (the Bay Delta Conservation Plan, or BDCP) with the California Department of Fish and Game, United States Department of the Interior (DOI) (Fish and Wildlife Service and Bureau of Reclamation) and National Oceanic and Atmospheric Administration Fisheries to address endangered species concerns. The BDCP aims to make sufficiently large changes in the Delta to reverse the decades of decline of several beneficial uses and add stability to water operations in the Delta. The State and Federal agencies are preparing a Draft Environmental Impact Report/Statement on the BDCP; EPA has agreed to be a cooperating agency. Our involvement to date has been largely to promote and support scientific review of the various actions proposed. We will become more involved as the Environmental Impact Statement is drafted and projects (which will need CWA 404 permits) are designed.

Pelagic Organism Decline (POD).—Long-term sampling identified a dramatic decline of a number of fish populations beginning in 2001, including both endangered species and sport fisheries. EPA played a key role, working with the Interagency Ecological Program, in a new and broad scientific effort to identify causes of the crash. The POD investigation is in its fourth year and has been supported by over $20 million in State and Federal monies. A number of water quality and habitat degradation concerns that have been identified are now being addressed by the State and regional boards. Ammonia discharges from wastewater treatment plants combined with low and constant flow regimes appear to have favored the spread of toxic blue-green alga, invasive clams and jellyfish over the former highly valued fish community.

Water Quality Standards and TMDLs.—We are supporting the State and Regional Board on a number of activities to review and/or develop new water quality standards and to develop and implement TMDLs. In 2008, the State Water Resources Control Board and the Central Valley and Bay Regional Water Quality Control Boards developed a Bay Delta Strategic Workplan, which encompasses their ongoing efforts, as well as new work deemed necessary to address the Delta ecosystem decline. Some of the more significant efforts include: (1) review of the 2006 Water Quality Control Plan; (2) development of a Central Valley Drinking Water Policy; (3) TMDLs to address impairments in the Delta from mercury, in the Central Valley from pesticides, in the San Joaquin River from dissolved oxygen and salinity; and (4) implementation of TMDLs throughout the watershed.

Monitoring.—There currently is no coordinated system for collecting and managing water quality data for the Delta and the Central Valley. EPA has been an advocate for a system similar to those in the Bay and on the South Coast in order to improve the quality, efficiency, access and use of information for planning and management. There are three monitoring initiatives that together cover the full Bay-Delta watershed: the Delta Regional Monitoring Program (RMP) directed by the Central Valley Regional Board; the Sacramento River Watershed RMP, initiated a decade ago through EPA earmarks; and the San Joaquin Basin Monitoring Strategy (underway through an EPA grant, in conjunction with the Regional Board). Technical coordination comes through shared support of the State's Surface Water Ambient Monitoring Program. All three efforts have inventoried existing monitoring and are aligning monitoring and assessment within the Delta watershed to address key issues.

San Joaquin River Restoration.—Congress recently enacted significant legislation that directs restoration of the San Joaquin River from Friant Dam to the confluence of the Merced River, to implement the historic agreement reached by water users and environmental groups in 2006. Restoration of such magnitude will have ramifications for Delta water management. The Bureau of Reclamation is preparing a Draft Environmental Impact Statement for this program and we are participating as a cooperating agency, working to both leverage the effort for improved water quality monitoring and ensure the downstream water quality regulatory regime supports the planned reintroduction of fisheries.

RIALTO-COLTON BASIN—NATIONAL PRIORTIES LIST/WATER REPLACMENT ORDERS

Question. The fiscal year 2009 Interior appropriations bill was accompanied by report language supporting the listing of Rialto-Colton Basin in San Bernardino County, California to the National Priorities List (NPL) to remediate groundwater contamination, and encouraging EPA to issue water replacement orders against the parties responsible for trichloroethylene and perchlorate contamination of the groundwater basin to remain in effect until clean drinking water supplies are fully restored to the City of Rialto, City of Colton, West Valley Water District, and the Fontana Water Company.

What progress has been made toward listing the Rialto-Colton Basin in San Bernardino, California, on the National Priorities List?

Answer. EPA proposed listing the "B.F. Goodrich" site on the NPL in September 2008, which includes the "160-acre area", part of the Rialto-Colton Basin, and groundwater contamination originating on the 160-acre area. EPA generally publishes proposed and final NPL listings in the Federal Register in the fall and spring and anticipates completing our review of the comments received before the fall listing update.

Question. What progress has been made by EPA to issue water replacement orders?

Answer. Based on current information, EPA has determined that water replacement orders are not warranted at this time as the impacted communities have a clean supply of drinking water. As we proceed with our work on the B.F. Goodrich Site, we will continue to evaluate all of our options and will provide for meaningful public involvement in our proposed remedy.

Question. How does the EPA intend to address the Rialto-Colson Basin, including concrete steps that can be taken this year toward clean-up or water replacement?

Answer. EPA is developing a proposal for an interim groundwater cleanup project in the Rialto-Colton basin, a groundwater extraction system within known contaminant source areas, which will go out for public comment later this year. We anticipate that the treated groundwater from this project will be provided to the local water purveyors for use in the regional, potable water supply system. In addition, we expect to spend $3 million this year to carry out and/or oversee four field investigations needed to develop a comprehensive remedy for the site. These investigations, which are currently underway, include the installation of up to six new groundwater monitoring wells to help define the extent of groundwater contamination, soil testing at a disposal pit used by the Goodrich Corporation in the 1950s and 1960s, and soil testing at locations where West Coast Loading Corporation operated at the site in the 1950s. Data from some of these investigations will be used to help develop a final groundwater remedy. If this final remedy includes additional groundwater extraction and treatment systems down gradient from the interim groundwater cleanup project described above, it is anticipated that treated water from such a remedy would also be made available to local water purveyors.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

MOUNTAINTOP MINING

Question. There is tremendous concern in West Virginia about the future of coal.

I agree that we should find better ways to mine coal and reduce its environmental impact. However, I do not accept that job losses in the coal industry are an inevitable consequence of cleaner air and water. We must forge a consensus and strike a balance between increasing environmental controls, and preserving the livelihoods of West Virginians.

I believe clean coal can be a "green" energy.

The Environmental Protection Agency (EPA) is reviewing section 404 permits for certain mining operations, and has invoked its authority under section 404(c) of the Clean Water Act (CWA) to prohibit permits related to surface mining operations for the filling of waters in the United States.

Question. What is your long-term plan for regulating mountaintop mining?

Answer. On February 13, the U.S. Court of Appeals for the Fourth Circuit issued an opinion upholding four permits issued by the U.S. Army Corps of Engineers (the Corps) under section 404 of the CWA for coal mine operations in the Appalachian region. Because of active litigation in the 4th Circuit challenging the issuance of these Corps permits for coal mining, the Corps has been issuing far fewer permits in West Virginia and elsewhere in the Appalachian coal fields since the litigation began in 2007. As a result, there is a significant backlog of permits under review by the Corps.

EPA identified only a small subset, 6 of some 50 actions that were pending near-term authorization, with which the Agency had serious environmental concerns. EPA is not raising concern with the majority of pending permits which represents mines with significantly fewer environmental impacts. The Corps is expected to continue to issue permits for these surface coal mining operations that do not raise significant environmental concerns.

EPA and the Corps are developing coordination procedures to help to ensure that permit decisions will be made consistent with the law, sound science and in a timely

manner that avoids further delay. We agree with you that the permit process can protect jobs and the environment.

Question. How long do you think mountaintop mining will be sustainable under the CWA?

Answer. We recognize that mountaintop removal coal mining can be a highly destructive form of surface coal mining that buries streams and impacts downstream water quality. We also understand that much of the most accessible coal reserves have already been mined leaving surface coal mining methods such as mountaintop removal often the only mining practice that is economically practical to mine remaining reserves. As you have very thoughtfully recognized, there are opportunities to improve coal mining practices such as mountaintop removal to significantly reduce adverse environmental impacts, We look forward to working with the coal industry to implement these improvements to make surface coal mining practices cleaner and more environmentally responsible and, as a result, sustainable for years to come.

Question. What criteria has the EPA established for section 404 permits? Is the EPA providing specific guidance to the mining industry to ensure the permitting process does not stall?

Answer. EPA has identified a set of environmental factors which we are using to help guide the review and evaluation of pending permit actions for surface coal mine operations. Our goal is to ensure a transparent, understandable, and predictable permit process. Based on these criteria, EPA is focusing its comments on mine proposals with the most significant environmental impacts. The key factors which we are considering include:

—Length of stream impacts, in particular impacts to perennial streams and critical headwater streams;

—Number of valley fills;

—Geographic location of the proposed action, and assessment of impacts based on watershed level information, considering factors such as percentage of area mined, percentage of forested area, interior forest, percentage of urban area, and stream density/quality, index of biotic integrity, threatened and endangered (T&E) species;

—Cumulative effects, particularly in consideration of the number of proposed new mines proposed for given watershed;

—Existing water quality and potential for water quality impacts downstream of fill, in particular selenium and conductivity as specific constituents of concern; and the potential impacts to biotic integrity and T&E species in high quality and state outstanding resources waters;

—Adequacy of alternative analysis; and

—Adequacy of mitigation.

Question. In reviewing section 404 permits, what consideration is given to postmining economic development?

Answer. Postmining land use considerations were included by Congress in the Surface Mining Control and Reclamation Act of 1977 to encourage the effective use of lands for economic development after mining is complete. These considerations have been particularly important in southern West Virginia counties in desperate need of jobs and economic development opportunities. EPA will continue to work with States like West Virginia to encourage environmentally responsible mining that protects both jobs and the environment.

Question. Your agency has been talking with the Army Corps of Engineers and Council on Environmental Quality at the White House about coal matters. During those meetings, what consideration is being given to the well-being of places like rural communities of West Virginia, where job retraining is not a realistic option because coal jobs, if lost, are unlikely to ever be replaced by other jobs?

Answer. Interagency discussions regarding coal mining have very much considered the well-being of rural communities throughout Appalachia, including West Virginia. EPA has been impressed by the efforts of folks in Mingo County, West Virginia, for example, who have worked with us to reduce the adverse environmental impacts of coal mining while showing great leadership in identifying postmining land uses that create jobs, stimulate the local economy, and create opportunities for the young people of the area to remain in Mingo County. We believe that the Mingo County Redevelopment Commission is a model of how Federal, State, and local governments can work together to ensure environmentally responsible mining moves forward and creates sustainable, long-term opportunities for communities and their young people.

QUESTIONS SUBMITTED BY SENATOR BEN NELSON

INDIRECT LAND USE CHANGES

Question. I was encouraged that the proposed Renewable Fuel Standard (RFS) rule you signed on May 5, 2009, takes aggressive action in increasing the supply of renewable fuels to 36 billion gallons per year (GPY) by 2022, as required by the Energy Independence and Security Act of 2007 (EISA).

The revised statutory requirements of EISA also included new definitions and criteria for both renewable fuels and the feedstocks used to produce them, including new greenhouse gas emissions (GHG) threshold. I am concerned that the Environmental Protection Agency (EPA) is taking into account indirect land use changes (ILUC) when determining GHG emissions associated with renewable fuels production. Given the complexity and uncertainty of ILUC, along with its analytical limitations in determining lifecycle GHG for biofuels, how is the EPA working to ensure this requirement be fair, consistent, objective, and scientifically defensible as it moves forward with the rulemaking process?

Answer. EPA recognizes that it is important to address questions regarding the science of measuring indirect impacts, particularly on the topic of uncertainty. For this reason, EPA has developed a methodology that uses the very best tools and science available, utilizes input from experts and stakeholders from a multitude of disciplines, and maximizes the transparency of our approach and our assumptions in the proposed rule.

Our analysis relies on peer-reviewed models, including comprehensive agricultural sector models, such as the Food and Agricultural Policy Research Institute model that have been used widely to analyze the impacts of numerous agricultural sector policies including recent farm bills. The Agency also has used the most current estimates of key trends in agricultural practices and fuel production technologies and has reviewed the growing body of literature on lifecycle analysis and indirect land use change.

EPA has ensured that there will be multiple opportunities to solicit public and expert feedback on the proposed approach. In addition to the formal comment period on the proposed rule, on June 10 and June 11, EPA held a 2-day workshop focused specifically on lifecycle analysis during the comment period to assure full understanding of the analyses conducted, the issues addressed, and the options that are discussed. EPA provided a thorough description of its methodology and sources of information used in conducting the lifecycle assessment as included in the proposal. Over 200 persons representing industry, academia, and other stakeholders and experts participated. During this workshop, EPA responded to questions from participants, and importantly, also heard presentations from stakeholders and experts including several which specifically addressed indirect land use assessment. The information received during the workshop will be part of the official record for the rule and will be useful as EPA works to develop its final rule analysis. The Agency expects that the information provided during this workshop, from EPA and others, will help ensure that it receives submission of the most thoughtful and useful comments to this proposal and that the best methodology and assumptions are used for calculating GHG emissions impacts of fuels for the final rule.

Additionally, although our lifecycle analysis relies almost entirely on peer-reviewed models and data, between this proposal and the final rule, the Agency will conduct additional peer-reviews of key components of our analysis, including the use of satellite data to project the type of future land use changes, methods to account for the variable timing of GHG emissions, and how the several models the Agency has relied upon are used together to provide overall lifecycle GHG estimates.

Question. Furthermore, if it could be demonstrated that the U.S. corn ethanol industry was capable of hitting its EISA target (actually a "cap") of 15 billion GPY by 2015 without the need for breaking up or deforesting any "virgin" soil, would it not be true that the ILUC "penalty" would by definition have to be zero?

Answer. No, this is not the case. Even if there was no new land converted between now and when the 15 billion gallons volume requirement was met, there could still be an indirect impact on agricultural production and the economy from the production of 15 billion gallons. The indirect impacts of renewable fuel production are the result of interactions throughout the global agricultural commodity markets. Measuring these indirect impacts requires the use of economic models. These models capture the impacts of increased biofuel feedstock production on all crop production, not just biofuel feedstock. This allows EPA to determine secondary agricultural sector impacts, such as crop shifting and changes in demand due to commodity price changes. To estimate the impacts of biofuels feedstock production on international agricultural and livestock production, the Agency used the same

methodology to assess both direct and indirect impacts including those due to land use change. For example, even if there was no measured land use change in the United States, there could be land use change internationally due to the impact increased ethanol production has on crop prices and exports.

However, regardless of the outcome of the lifecycle analysis, there is not expected to be any impact on the ability for corn ethanol to comply with the RFS2 requirements. When Congress set aside 15 billion gallons for conventional biofuels that need to meet the 20 percent GHG threshold, they also included "grandfathering" provisions that would exempt certain renewable fuel facilities from the threshold requirements. There is expected to be more than 15 billion gallons of corn ethanol alone that will be produced by these grandfathered facilities, more than satisfying the mandated volume.

E15 LCEAN AIR ACT WAIVER

Question. Following up on the EPA's new proposed RFS rule to increase the supply of renewable fuels to 36 billion gallons by 2022. There is concern the Clean Air Act's limitation on gasoline-ethanol blends has created a "blend wall," the point where the RFS requirement exceeds the ability to blend gasoline with an ethanol content in excess of 10 percent (known as "E10"), which currently accounts for 98 percent of ethanol usage.

Estimates indicate the market will hit the blend wall by 2012—and some industry experts warn that it could come into play as early as next year—when the E10 market reaches saturation at approximately 12.5 to 14 billion gallons of ethanol, causing substantial harm to our biofuels industry while also putting the RFS at risk.

As you know, section 251 of the 2007 Energy bill permits the Administrator of the EPA to waive the Clean Air Act limitation on ethanol content in gasoline provided such a waiver does not affect the emission control systems in vehicles. It is my understanding multiple studies have demonstrated that E15 will not cause or contribute to the failure of any emission control devices or systems in vehicles; this includes legacy vehicles and small nonroad engines. What information and studies are you looking at in evaluating whether or not to grant the waiver and permit ethanol-gasoline blends of up to 15 percent?

Answer. The EPA is taking an active role in implementing the new renewable fuel mandates set out by Congress. The ethanol waiver request we received from Growth Energy on March 6, 2009, is part of this effort. A notice of its receipt was published in the Federal Register on April 21, 2009. Comments are due by July 20, 2009. We recognize the urgency of the "blend wall" and the impact the waiver would have in delaying its arrival.

The issues raised by the waiver request are very important and complex. We anticipate a significant number of comments from a wide range of stakeholders in response to our request for public comment. In addition, we continue to work closely with the Department of Energy and the Department of Agriculture on this issue. We have gathered data on testing done by others and us, but those data are limited. This includes the studies that Growth Energy included in their waiver request. We expect additional data to be submitted as part of the comment period as well, and that all available data will be available to interested stakeholders. The Department of Energy is conducting comprehensive testing that is estimated to be completed in about a year. We will take these comments and any other relevant information into consideration, and, using the best available technical data, make a determination on the waiver request.

Question. Have you given consideration to an interim step of permitting gasoline blends of up to 12 or 13 percent in order to ensure that the biofuels industry is not harmed by the fast-approaching blend wall?

Answer. With respect to allowing a 12 or 13 percent ethanol blend in the interim, we have assessed our authority under the act to take such an action outside of the waiver process. This would require a revision of the "substantially similar" interpretive rule, which defines the limits for the use of oxygenates in gasoline, such as ethanol, without the need for a waiver. The current "substantially similar" rule limits ethanol to about 7 percent by volume. Ethanol received a waiver in 1978 to allow 10 percent by volume. We have concluded that in order to have a reasonable basis to revise the "substantially similar" rule to 12 or 13 percent, we would need similar data to that for a waiver. We are not aware of any significant data at 12 or 13 percent to review. Thus, absent additional data, the most expedient means of assessing the impacts of greater percent ethanol in gasoline is to consider the waiver request we received from Growth Energy.

ENDANGERMENT FINDING

Question. Last month you signed a proposal finding that the current and projected concentrations of six key GHG in the atmosphere threaten the public health and welfare of current and future generations.

Do you see the proposed rule granting the EPA the authority to regulate (GHG) under the Clean Air Act absent congressional action? Also, what is the EPA's understanding of the Supreme Court's finding in *Massachusetts* v. *Environmental Protection Agency*?

Is it the position of EPA that the finding directed the agency to regulate CO_2, or just that the EPA has the authority to regulate CO_2?

Answer. The Supreme Court in *Massachusetts* vs. *EPA* ruled that Carbon Dioxide (CO_2) and other Greenhouse Gases (GHGs) fall within the Clean Air Act's definition of "air pollutant," and that EPA must determine whether such emissions meet the endangerment test of section 202(a) or explain why available science is not sufficient to make a determination. The Supreme Court also concluded that if the Agency determines that emissions of those GHGs from new motor vehicles and new motor vehicle engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, then EPA is required to regulate CO_2 and several other GHGs under Clean Air Act section 202(a) (the provision at issue in the case).

In response to the Supreme Court's decision, EPA has issued proposed endangerment findings under section 202(a) of the Clean Air Act for CO_2 and several other GHGs, and proposed cause or contribute findings for the emissions of those GHGs from new motor vehicles. As proposed findings, they do not provide EPA with the authority to regulate. Only if EPA decides, after considering public comment, to issue final findings that new motor vehicle GHG emissions meet the endangerment and cause or contribute tests of section 202(a), will EPA have authority to issue GHG emission standards under that section for motor vehicles. For EPA to issue GHG emission standards for other types of mobile or stationary sources, the Agency would have to conduct rulemakings under the specific Clean Air Act provisions that authorize regulation of those sources. Clean Air Act provisions vary in the determinations EPA must make in order to regulate.

Question. What measures is EPA taking to account for the economic consequences?

Answer. If EPA decides, after considering public comment, to issue final findings that GHG emissions meet the endangerment and cause or contribute tests of Clean Air Act section 202(a), Administrator Jackson will make decisions about using the Clean Air Act. In particular, section 202(a) provides the Administrator with the discretion to determine the content and timing of motor vehicle emission regulations. That section also directs the Administrator to make regulatory decisions based on cost, technological feasibility, and other relevant factors. Many provisions of the Clean Air Act provide similar discretion and direction to consider costs and other factors in deciding how (and in some cases, whether) to regulate under those provisions.

As noted above, EPA would assess the costs of any proposed GHG controls as part of the rulemaking process required to issue such regulations under section 202(a), and the public would have an opportunity to comment on EPA's proposal, including its cost estimates.

Administrator Jackson has stated that if EPA embarked on Clean Air Act regulation of GHGs, it would focus on the largest emission categories, such as motor vehicles and power plants. In an advance notice published in the Federal Register last year, the Agency examined many issues concerning the potential use of the Clean Air Act to regulate GHGs, including the potential for such regulation to result in the application of the act's permitting programs to GHGs. EPA is currently considering the public comments received in response to the notice on how the permitting programs might be tailored for GHGs to avoid or minimize economic consequences for smaller sources. Addressing small business concerns with potential GHG regulation under new legislation or the Clean Air Act is a priority for the Agency.

QUESTION SUBMITTED BY SENATOR THAD COCHRAN

GULF OF MEXICO FUNDING

Question. When I look at the funding provided by the U.S. Environmental Protection Agency (EPA) to its Gulf of Mexico Program (the EPA Program Office charged with facilitating collaborative actions to protect, maintain, and restore the health and productivity of the Gulf of Mexico in ways consistent with the economic well-

being of the region), I see huge disparities in funding levels provided to the Gulf relative to other great water bodies like the Great Lakes, Chesapeake Bay, and Puget Sound. In fiscal year 2009, for example, the Great Lakes Program Office received $57 million in support, and the Gulf of Mexico Program Office received only $4.6 million. Such disproportionate funding has been the case since the Gulf Program's inception in 1988. It seems particularly unfair and counterproductive to the mission of EPA to consistently underfund such a critical and productive region.

Can you please help me to better understand the reasoning behind this practice, particularly with the advancement of the President's initiative to spend $475 million on the Great Lakes?

Answer. EPA has undertaken a number of strategic geographic initiatives throughout the country. The Agency has traditionally exercised the Administrator's limited authority under CWA 104(b)(3) to establish and maintain cooperative issue assessment and coordination of response planning support to these multi-state ecosystem initiatives. As the assessments evolve and the critical issues and tactical response plans are developed, Congress has, in many cases, enacted specific legislation through the CWA to help underwrite the execution of these recovery and/or conservation Action Plans (i.e., the CWA Amendment forming the Great Lakes Program; the Great Lakes Legacy Act; the CWA Amendment forming the Chesapeake Bay Program).

The Gulf is confronted by a number of environmental issues that threaten both the ecology and economic sustainability of the surrounding coastal communities and, the Nation. The initiation and support over the last few years of the Gulf States Governors Alliance has been instrumental in rapidly advancing the action plan framework for this region. We understand that the Governors Alliance is preparing to release the next 5-year action plan on June 10, 2009.

QUESTIONS SUBMITTED BY SENATOR SUSAN COLLINS

COMBINED SEWER OVERFLOWS

Question. Combined Sewer Overflows (CSOs) are an enormous problem in communities with older water infrastructure. In the late 19th to early 20th century, many communities built single sewer systems for both sewage from homes and storm water runoff from streets and roofs. During large storms these systems are overwhelmed. The excess storm water mixes with the raw sewage and flows into nearby bodies of water. Each year nearly 1 billion gallons of raw sewage from CSOs puts the public at risk for disease and compromises the integrity of water bodies throughout the Nation. How will EPA use the proposed increases in water and wastewater infrastructure revolving loan funds to eliminate this serious threat to our Nation? Since this is such a big problem, do you believe a dedicated fund just for CSOs is warranted?

Answer. The Environmental Protection Agency (EPA) agrees that CSOs cause environmental and public health problems. Since the CSO Policy was finalized in 1994, EPA and the States have made substantial progress working with municipalities to develop long-term control plans to eliminate or reduce the overflows and the environmental and public health threat. The Clean Water State Revolving Fund (CWSRF) is designed to allow State programs the flexibility to direct funds to those projects that will have the greatest impact, considering factors including public health and environmental protection. EPA believes that funding CSO controls through the existing CWSRF would be more efficient than establishing a separate CSO grants program, and that the significant increase proposed in the CWSRF by the President will help address high priority CSO problems.

NATIONAL MERCURY MONITORING NETWORK

Question. I have long believed that we, as a Nation, are not paying sufficient attention to the dangers posed by mercury to our children and, in general, to all of our citizens. When I have spoken to experts in Maine about this problem, I have learned that each new scientific study finds more mercury in the environment and more affected species than the previous study. In 2006, when EPA released a major new mercury regulatory rule, its Inspector General found that data for mercury pollution models was severely lacking and recommended EPA implement a national mercury monitoring network. In 2007, to address this need for better data, I introduced the Comprehensive National Mercury Monitoring Act to ensure that we have the information we need to make decisions necessary to protect our people and environment. I intend to pursue this bill again this year.

Do you support implementing a National Mercury Monitoring Network?

Answer. Addressing mercury emissions is a complex and multi-faceted issue that necessitates evaluation of all media, including air, water, sediments, fish, and wildlife. EPA recognizes the pressing need for comprehensive, long-term mercury monitoring and has made significant and tangible progress toward establishing a national mercury monitoring network. EPA is collaborating with Federal, State, tribal agencies, and academic partners to provide a comprehensive understanding of mercury in the environment using limited existing data and monitoring capabilities.

In 2003, EPA co-sponsored a workshop with the Society for Environmental Toxicology and Chemistry to develop a national program to track the changes resulting from reductions in mercury emissions in the U.S. Detailed recommendations for a comprehensive national mercury monitoring program emerged from this workshop and were published in a peer reviewed journal article (2005) and a subsequent book (2007).

In response to the workshop recommendations, EPA collaborated with the National Atmospheric Deposition Program (NADP) membership of Federal agencies, States, tribes, academic institutions, industry, and other organizations to launch a new, coordinated network for monitoring mercury in the atmosphere. At present, 20 atmospheric mercury monitoring stations are participating in NADP to provide high resolution, high quality atmospheric data. NADP plans to offer a publicly accessible database of long-term atmospheric mercury measurements.

In 2008, EPA co-convened a workshop to design a comprehensive and integrated national mercury monitoring network—MercNet. The workshop included approximately 50 experts from Federal agencies (U.S. Environmental Protection Agency, U.S. Geological Survey, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, National Park Service, etc.), State and tribal agencies, Biodiversity Research Institute, NADP, industry, and other institutions. Workshop scientists agreed on a goal and major design elements for a national mercury monitoring program, including a national distribution of approximately 20 intensive sites, to understand the sources, consequences, and trends in U.S. mercury pollution.

EPA is committed to working with its partners, as resources permit, to develop a comprehensive, long-term mercury monitoring program which would contribute much needed information on how the environment is responding to changing uses and emissions of mercury.

Question. What specific steps will the EPA take in the coming year to protect us against this persistent and dangerous neurotoxin?

Answer. The Administrator has announced that EPA will be developing a Clean Air Act section 112(d) standard for electric utility steam generating units addressing all hazardous air pollutants emitted from these units including mercury. The Agency is currently in settlement negotiations with the plaintiffs in a mandatory duty lawsuit concerning the timing for completing this rule and does not have a schedule for developing the regulation at this time.

Mercury is also among the pollutants that the Agency is, or will be, regulating under section 112(d) through rules for other industries and sectors (e.g., for the Portland cement, industrial boilers, and medical waste incinerators).

MID-LEVEL ETHANOL FUEL BLENDS

Question. Ms. Jackson, on March 6, you were presented with a request for a waiver from the Clean Air Act for mid-level ethanol fuel blends. Subsequent to that request, a large group of interested organizations, including the Sierra Club, Public Citizen, and the American Lung Association, wrote a letter asking you to deny that request. They argued that these fuels have not yet received sufficient study to ensure that they will not pose hazards to the environment, health, and safety. In fact, I continue to receive complaints from my constituents about the performance of the current ethanol fuel blend in snowmobiles, boat engines, and chainsaws. These constituents have no fuel choices since, in Maine, only a 10 percent ethanol gasoline fuel blend is available at our gasoline pumps and I am very concerned about any potential increases in the amount of ethanol allowed in gasoline. Given the administration's support for policy based on good science, will you make certain that all of the data needed to answer questions about the merit of these new fuels are analyzed before permitting them into commerce?

Answer. EPA is carefully considering the waiver request it received from Growth Energy on March 6, 2009. A notice of its receipt was published in the Federal Register on April 21, 2009. Comments were requested on a number of issues. The comment period closes on July 20, 2009.

The issues raised by the waiver request are very important and complex. The Agency is aware of the concerns raised by the organizations that you noted. These

include the impact of E15 on nonroad engines such as those in snowmobiles, boats, and chain saws. As anticipated, the Agency is receiving a significant number of comments from a wide range of stakeholders in response to our request for public comment. In addition, the Agency continues to work closely with the Department of Energy (DOE) and the Department of Agriculture on this issue. DOE is conducting a significant amount of testing. EPA will take the public comments, test data, and any other relevant information into consideration. The Agency will use the best available technical data and make a determination on the waiver request based on good science.

SUBCOMMITTEE RECESS

Senator ALEXANDER. The meeting is recessed.

[Whereupon, at 11:39 a.m., Wednesday, May 20, the hearing was recessed, to reconvene subject to the call of the Chair.]