

**NOMINATIONS OF RICHARD CAPKA, JAMES B.
GULLIFORD AND WILLIAM L. WEHRUM**

HEARING

BEFORE THE

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

SECOND SESSION

ON

THE NOMINATIONS OF **RICHARD CAPKA**, TO BE ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION; **JAMES B. GULLIFORD**, TO BE ASSISTANT ADMINISTRATOR, OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES, U.S. ENVIRONMENTAL PROTECTION AGENCY; AND **WILLIAM L. WEHRUM**, TO BE ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

APRIL 5, 2006

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ONE HUNDRED NINTH CONGRESS
SECOND SESSION

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**NOMINATIONS OF RICHARD CAPKA, JAMES B.
GULLIFORD AND WILLIAM L. WEHRUM**

WEDNESDAY, APRIL 5, 2006

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

The committee met, pursuant to notice, at 9:30 a.m. in room 628, Dirksen Senate Office Building, Hon. James M. Inhofe (chairman of the committee) presiding.

Present: Senators Inhofe, Warner, Bond, Voinovich, Murkowski, Thune, DeMint, Jeffords, Baucus, Boxer, Carper, Clinton, and Lautenberg.

Senator INHOFE. The meeting will come to order.

General you are seated in place, so you are in the right place. We will go ahead and start. We will have a pretty good participation this morning, I understand. Right now, there are staff of several of the Senators, but several are going to be coming by.

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

The purpose of today's hearing is to consider the President's nominees for three vital positions within the Administration, including the head of the Federal Highway Administration and two Assistant Administrator positions for the EPA.

It is my hope that we can move all these nominees quickly. I want to extend a welcome to all of you and the members of your families who are here today. I want each one of you to feel free to introduce any members of your family who are here.

I also want to thank all of you for your willingness to serve our Nation. Anyone who has been through this before understands all too well that it is no small task of a nominee or a nominee's family to go through the confirmation process that you are facing.

On the first panel, we have retired General Richard Capka, who has been nominated to be Administrator of the Federal Highway Administration. Rick Capka is a very good choice to head the FHWA. He is a career engineer, beginning at the Army Corps of Engineers after graduating from West Point. After 29 years of military service to our country, he retired as a Brigadier General and then went over to the Massachusetts Toll Authority before being tapped to serve this country again as Deputy Administrator for the FHWA under Mary Peters, who did an excellent job as Administrator.

I have talked to you about that before. Mary did an excellent job, and one of the things she was was responsive. As soon as some-

thing happened, she was there and you were there with her. So you know that, and that is one of the things we would look for in your service, too.

Mary stepped down just prior to Hurricanes Katrina and Rita. General Capka and FHWA have received wide acclaim for their response to these disasters.

On the second panel, we will have James Gulliford and William Wehrum, both of whom have been nominated to fill critical Assistant Administrator positions at the EPA. Mr. Gulliford has been nominated to head the EPA Office of Prevention, Pesticides and Toxic Substances.

Since 2001, Mr. Gulliford has been based in Kansas City as EPA's Regional Administrator for Region VII. As Regional Administrator, Mr. Gulliford is the chief of all technical and administrative operations of the EPA in Region VII, which is comprised of Nebraska, Iowa, Kansas and Missouri.

Region VII has a staff of over 550 and an annual budget of approximately \$500 million. Prior to joining EPA, Mr. Gulliford was the director of Iowa's Department of Soil Conservation.

Mr. Wehrum has been nominated to head the EPA Office of Air and Radiation. Mr. Wehrum is currently the Acting Assistant Administrator to this office. Prior to his assuming the acting role, he served the EPA as both Principal Deputy Assistant Administrator and Counsel to the Assistant Administrator of the Office of Air and Radiation.

This committee has seen much of Mr. Wehrum lately as a witness representing the EPA three times in the past 6 months. He has answered numerous questions before the committee and over 70 follow-up questions from the committee's minority members alone. I believe that all of the nominees that we have had during this Administration, that Mr. Wehrum is the most familiar with this committee.

Once again, I thank all of you for being here today.
[The prepared statement of Senator Inhofe follows:]

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

Good Morning. The purpose of today's hearing is to consider the President's nominees for three vital positions within the Administration, including the head of the Federal Highway Administration and two Assistant Administrator positions at EPA. It is my hope that we can move all of these nominees quickly. I want to extend a welcome to all of you and the members of your families who are here today. I also want to thank all of you for your willingness to serve our Nation. Anyone who has been through this before understands all too well that it is no small task of a nominee or a nominee's family to go through the confirmation process that you are facing.

On the first panel, we have retired General Richard Capka, who has been nominated to be Administrator of the Federal Highway Administration. Rick Capka is a very good choice to head the FHWA. He is a career engineer, beginning at the Army Corps of Engineers after graduating from West Point. After 29 years of military service for our country, he retired as a Brigadier General. He then went over to the Massachusetts Toll Authority before being tapped to serve this country again as the Deputy Administrator of FHWA under Mary Peters—who did an excellent job as Administrator. Mary stepped down just prior to Hurricanes Katrina and Rita. General Capka and FHWA have received wide acclaim for their response to these disasters.

On our second panel we will have James Gulliford and William Wehrum—both of whom have been nominated to fill critical Assistant Administrator positions at EPA.

Mr. Gulliford has been nominated to head the EPA Office of Prevention, Pesticides and Toxic Substances. Since 2001, Mr. Gulliford has been based in Kansas City as EPA's Regional Administrator for Region 7. As Regional Administrator, Mr. Gulliford is the chief for all technical and administrative operations of the EPA in Region 7—which is comprised of Nebraska, Iowa, Kansas and Missouri. Region 7 has a staff of over 550 and an annual budget of approximately \$500 million. Prior to joining EPA, Mr. Gulliford was the Director for Iowa's Department of Soil Conservation.

Mr. Wehrum has been nominated to head the EPA Office of Air and Radiation. Mr. Wehrum is the current Acting Assistant Administrator to this office. Prior to him assuming the Acting role, he served the EPA as both Principal Deputy Assistant Administrator and Counsel to the Assistant Administrator in the Office of Air and Radiation. This committee has seen much of Mr. Wehrum lately as a witness representing EPA three times in the past 6 months. He has answered numerous questions before the committee and over 70 follow-up questions from the committee's Minority members alone. I believe that of all the nominees that we have had during this Administration, Mr. Wehrum is the most familiar to the committee.

Once again, thank you all for being here today.

Senator INHOFE. Do you want to go ahead and do his introduction?

Senator WARNER. If you wish to have other comments, Senator?

Senator INHOFE. I think it might be better with the number of members we have if you go ahead with your introduction, Senator Warner, and then we will go ahead with our opening statements. It gives you some more time.

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

Senator WARNER. Delighted, Mr. Chairman and members of the committee.

You know, one of our great responsibilities is to find well-qualified individuals to serve in these public service positions. I commend the President of the United States for selecting Mr. Capka to be the Administrator of the Federal Highway Administration. I have had the opportunity to work with him.

As Brigadier General, he spent 29 years in the U.S. Army Corps of Engineers serving across the world in positions managing infrastructure projects from water infrastructure, to road, flood response in California. He was awarded the Distinguished Service Medal, which is the highest-ranking medal given to officers for their distinguished service in non-combatant situations mostly, and the Defense Superior Service medal and the Legion of Merit.

After his retirement from active duty, General Capka served as CEO and executive director of the Massachusetts Turnpike Authority, where he directed and turned around Boston's famous \$14.5 billion Big Dig project. His experience as a practicing engineer and in managing infrastructure across the world, coupled with his experience managing highway projects, he has served this country well.

He has been the Deputy Administrator since 2002. The committee worked very closely with him and his staff crafting the Surface Transportation Reauthorization bill, passed and signed into law last year.

I will put the balance of my statement in the record, but he has an extraordinary family history, and perhaps he will allude to it. Do I see some of your family is with you here this morning?

Mr. CAPKA. Sir, I am flying solo this morning.

Senator WARNER. Flying solo this morning. All right, but I think it should be in the public record, two sons, both of them followed in the father's career in the military for periods of time.

Thank you, Mr. Chairman, and good luck to you. You are on your own.

[The prepared statement of Senator Warner follows:]

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

Thank you Mr. Chairman for holding this hearing today. One of our greatest responsibilities as members of the U.S. Senate is to provide advice and consent regarding the President's nominees for executive branch positions. Today, I have the pleasure to introduce an accomplished public servant, Richard Capka, to be the Administrator of the Federal Highway Administration.

Brigadier General J. Richard Capka spent 29 years in the U.S. Army Corps of Engineers serving across the world in positions managing infrastructure projects from water infrastructure to roads to flood response in California. He has been awarded the Distinguished Service Medal, the Defense Superior Service Medal, and the Legion of Merit.

After his retirement from active duty, General Capka served as CEO and executive director of the Massachusetts Turnpike Authority (MTA) where he directed and turned around Boston's \$14.5 billion "Big Dig" project.

His experience as a practicing engineer and in managing infrastructure projects across the world coupled with his experience managing highway megaprojects has served General Capka well in his role as Deputy Administrator of FHWA since August 2002. This committee worked very closely with him and his staff in crafting the Surface Transportation Reauthorization bill, SAFETEA, passed and signed into law last year. It was a 3-year odyssey that tested his mettle and led to his nomination to run the FHWA.

Perhaps his most important accomplishment as an engineer however, is shared with his wife Susan. They have raised two sons who served in the Army and are engineers, one of whom followed in his father's footsteps to attend the U.S. Military Academy at West Point. I had secured an appointment for him to attend the U.S. Air Force Academy but he decided on West Point instead. They now have left active duty but are still serving the public building light rail transit systems in the Northwest United States and as a geotechnical engineer at the Federal Energy Regulatory Commission (FERC). Most important, with their wives Mary Beth and Kristen, General Capka's sons are raising the next generation of America's engineers, 3 grandsons and twins on the way.

He is ready, willing, and able to get to work. I applaud his willingness to serve this President, the Secretary of Transportation, and the American people and urge the committee to quickly report his nomination to the full Senate.

Mr. CAPKA. Thank you, sir.

Senator INHOFE. Thank you, Senator Warner.

We will now continue with our opening statements.

Senator Jeffords.

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

Senator JEFFORDS. Thank you, Mr. Chairman.

I want to thank all of our nominees here this morning for their commitment to public service.

I want to welcome our first nominee, Richard Capka, to head the Federal Highway Administration. I look forward to learning from Mr. Capka about the implementation of SAFETEA and his views on how we will finance the Federal Surface Transportation Program in the years to come.

Welcome to James Gulliford, the nominee to head the Office of Prevention, Pesticides and Toxic Substances. This office has not had a political appointee in charge since Governor Whitman left

EPA in 2003. During this time, the Center for Disease Control uncovered widespread human exposure to untested industrialized chemicals. Several studies confirm that even newborn babies are exposed to hundreds of manmade chemicals, many of which have been linked to cancer and neuro-development disorders.

The Government Accountability Office revealed that EPA has required testing for fewer than 200 of the 62,000 chemicals in commerce since 1979, and only five chemicals have been regulated. In addition, the GAO found the Agency lacks sufficient data to ensure that political health and environmental risk of new chemicals are identified. Faced with these challenges, the Bush administration has chosen to cut funding for these critical functions and weaken the community's Right-to-Know Toxic Release Inventory Program.

Thank you.

Mr. William Wehrum is named to be Assistant Administrator for Air and Radiation at the Environmental Protection Agency. Quite frankly, I am troubled by this nomination, given that Mr. Wehrum has served a top political appointment in this office since 2001. During his tenure, we witnessed this Administration's repeated assaults on our Nation's environmental protection laws, especially the Clean Air Act.

During this time, big energy companies have complete access to the decisionmakers at the top levels of the Bush administration and the EPA. We see reports in the national press that Mr. Wehrum and his predecessor, Mr. Holmstead, have crafted rules based on input from their former colleagues in industry, rather than the advice of the EPA career staff.

At the industry's request, rules and regulations have been put forth that allow the dirtiest powerplants to increase their electricity production without installing required modern pollution controls. A report of the EPA Inspector General suggests that the outcome of EPA's mercury rule was predetermined by "senior management," and analysis promised to a Federal advisory committee was abruptly cancelled by Mr. Wehrum and his predecessor.

Another report by the EPA Inspector General forces us to conclude that neither Mr. Wehrum nor his predecessor have completely been candid about the effect of EPA's proposed New Source Review rules on ongoing enforcement actions.

The person who accepts this role will be a steward of the Nation's air quality. We ask that he serve as our conscience on air pollution and we ask that his conduct and his decisionmaking process be above reproach, both in terms of scientific basis and in transparency to the public.

I have concerns about whether the 5-year public record put forth by this nominee and this Administration upholds these standards. I hope that during the questioning, Mr. Wehrum can convince me that these concerns are unfounded.

Thank you, Mr. Chairman.

[The prepared statement of Senator Jeffords follows:]

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

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

I want to welcome our first nominee, Richard Capka, to head the Federal Highway Administration. I look forward to hearing from Mr. Capka about the implementation of SAFETEA and his views on how we will finance the Federal surface transportation program in the years to come.

Welcome, James Gulliford, the nominee to head the Office of Prevention, Pesticides and Toxic Substances. This office has not had a political appointee in charge since Governor Whitman left the EPA in 2003. During this time, the Center for Disease Control uncovered widespread human exposure to untested industrial chemicals. Several studies confirm that even newborn babies are exposed to hundreds of man-made chemicals, many of which have been linked to cancer and neuro-developmental disorders.

The Government Accountability Office revealed that the EPA has required testing for fewer than 200 of the 62,000 chemicals in commerce since 1979, and only five chemicals have been regulated. In addition, the GAO found the Agency "lacks sufficient data to ensure that potential health and environmental risks of new chemicals are identified."

Faced with these challenges, the Bush administration is proposing to cut funding for these critical functions and to weaken the Community-Right-To-Know "Toxic Release Inventory Program." Mr. Gulliford, I look forward to hearing your plans to overcome these hurdles if you are confirmed.

Our third nominee is William Wehrum, named to be the Assistant Administrator for Air and Radiation at the Environmental Protection Agency. Quite frankly, I am troubled by this nomination, given that Mr. Wehrum has served as a top political appointee in this office since 2001. During his tenure, we have witnessed this Administration's repeated assaults on our Nation's environmental protection laws, especially the Clean Air Act.

In 1990, Congress and the first President Bush agreed on far-reaching changes to the Clean Air Act to improve the health of every single American. As a member of this committee, I sat through days of meetings in this building and over in Majority Leader Mitchell's office as we developed this delicate compromise.

Throughout the 1990's, then-Presidents Bush and Clinton moved to fully implement these important air-pollution reduction measures. But in the past 5 years, this Administration has systematically dismantled these protections. During this time, big energy companies have had complete access to the decisionmakers at the top levels of the Bush administration and the EPA.

We see reports in the national press that Mr. Wehrum and his predecessor, Mr. Holmstead, have crafted rules based on input from their former colleagues in industry rather than the advice of EPA career staff. At the industry's request, rules and regulations have been put forth that allow the dirtiest powerplants to increase their electricity production without installing the required modern pollution controls. The result: more mercury in our environment causing learning disabilities in children; greater soot and ozone causing lung and respiratory illness in children and seniors; more haze and acid rain destroying our forests.

Polluters win, public health loses. This is a most disturbing trend, and one that I can only assume that Mr. Wehrum has had an active role in promoting during his tenure with the EPA. A report issued by the EPA Inspector General suggests that the outcome in the EPA's mercury rule was pre-determined by "senior management," and analyses promised to a Federal advisory committee were abruptly canceled by Mr. Wehrum and his predecessor. Another report by the EPA Inspector General forces us to conclude that neither Mr. Wehrum nor his predecessor has been completely candid about the effect of the EPA's proposed New Source Review rules on ongoing enforcement actions.

Mr. Chairman, you and I have worked together on the committee for many years and we have confirmed many qualified nominees from all ends of the political spectrum. While I have not always agreed with the views of candidates, I believe the President should be able to choose his own people to carry out his policies, and I have always voted in this committee to confirm nominees.

Having said that, I also believe the Constitution imposes an obligation upon this body, and this committee, to carefully scrutinize nominees and not simply rubberstamp those who come before us for positions of the public trust. The person who accepts this role will be the steward of our Nation's air quality. We ask that he serve as our conscience on air pollution, and we ask that his conduct and his decisionmaking process be above reproach, both in terms of its scientific basis and its transparency to the public.

I have concerns about whether the 5-year public record put forth by this nominee and this Administration upholds these standards. I hope that during our question-and-answer period, Mr. Wehrum can convince me that these concerns are unfounded.

Senator INHOFE. Thank you, Senator Jeffords.
Senator Bond.

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

Senator BOND. Thank you very much for holding these hearings today, Mr. Chairman. We are delighted to have these fine nominees before us.

Briefly, with Mr. Capka, I know that he has endured the Big Dig in Boston and come out with some successes out of a project that was mired in the mud. He is well known to the State transportation officials in Missouri, as well as other States, and based on the reports we get from the folks who are actually building the highways in the States, I can say that he deserves our wholehearted support.

On the next panel, I have the great privilege of introducing a nominee who has served very well. I am proud to introduce him to the committee. I claim him as somewhat of a constituent because he currently serves EPA's Region VII as the Regional Administrator for the region covering Missouri. He has done a fine job for EPA and a fine job for Missouri, even if he did come from Iowa.

He has had 25 years of professional experience administering environmental programs in agriculture and mining. Before serving as Regional Administrator, he was Director of the Iowa Soil Conservation Program. Previously, he was with Iowa State University and Southern Illinois in mine reclamation and environmental protection.

As you can imagine, I am much more familiar with what he has done in Missouri. I can tell you that the record has been outstanding. He oversaw EPA's participation in a project to clean up Smithville Lake in partnership with the Missouri Corngrowers, USDA, and other agricultural organizations. The project produced successful voluntary watershed efforts by farmers to establish best management practices to protect a very important lake from atrazine runoff. Atrazine is a very important herbicide in corn production.

As a result of that project, the atrazine impairment for the lake has been removed. He has helped get out the word on soy biodiesel, recognizing the importance of alternative fuels and the opportunity of agriculture to contribute to the next generation of low-sulfur diesel fuels.

Together, we participated in the Missouri State Fair Agricultural Leadership Listening Forums, as well as efforts in Southwest Missouri with communities and farmers to protect water quality in high-growth areas. He has been a very successful Regional Administrator and he will be good for the Nation and its pesticide programs.

Finally, Mr. Chairman, I regret to say that today is the kind of day with respect to our third nominee that keeps so many fine candidates from serving their country, the kind of day that means so many of them say "no, thank you" when their country calls, the kind of day that makes family members in the audience cry.

You see, we are about to witness the fruition of a long-planned attack in opposition to the EPA Air nominee. To help the cause, de-

tails of a mysterious EPA proposal not formalized by the Agency, not proposed as a rule, only commented upon internally by Agency officials in a private memo, are leaked to an environmental group and then to the press.

In perfect coordination, a member releases a press release and stories appear in the Washington Post and the New York Times criticizing the proposal and nominee. Even though the leaked memo was written in December, all this coincidentally is brought to light in the days before a confirmation hearing in April.

What is the issue about? Well, it has to do with whether EPA should revoke an air policy which forces facilities to install control technology even if they no longer exceed emissions limits. Now, you think that is pretty dry stuff, but of course that is not why it was done. Instead, it was done to create a scene, to get media attention, to make things uncomfortable for the nominee, and by damaging his fine reputation, to try to hurt the President and the Administration.

Well, on behalf of all of us, I apologize to Mr. Wehrum, the EPA Air nominee, in advance, and more importantly to your family. You have served EPA and the Nation tirelessly for the last 5 years. Air quality has improved during your tenure and will continue to improve under your watch. I was proud to support the Administration's Clear Skies proposal to reduce acid rain, smog and mercury emissions by 70 percent. I was glad to see that EPA went ahead with it anyway where it could when politics blocked the Senate from acting.

I will proudly support the nomination of Mr. Wehrum in the committee, and will vote on the floor if we are given a chance to do so. I hope, however, this latest example of polarized debate here in Washington and the potential for personal attacks that come with it, do not deter other fine candidates from serving in the Government.

I thank the Chair.

Senator INHOFE. Thank you, Senator Bond. I must associate myself with your remarks.

Senator Lautenberg.

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

Senator LAUTENBERG. Thanks, Mr. Chairman.

I appreciate the fact that we are having a chance to meet with these candidates this morning and review, as we have as a responsibility to do, their qualifications. I listened to our colleague just a minute ago, identifying these hearings as torture tests and opportunities to pick on families. Not to do it, not to ask the questions that come across in our responsibility as U.S. Senators, I think is a dereliction of duty.

I served my country in uniform and I have done what I had to do to be a good representative of the State of New Jersey and this country. I feel free to ask questions, and I will unashamedly be willing to criticize publicly if necessary. I apologize to the families if they are offended. This is by no means an attack on your representative who is here.

We have a job to do. When I think of the work that I have to do, especially in the area of EPA and environmental controls, I never forget that I have 10 grandchildren, the oldest of which is 12. I am concerned about the air they breathe, the water they drink, and the chemicals that invade our everyday living. I am concerned about things like that. No one can take that responsibility away from me, I will tell you.

So Mr. Chairman, I thank you. I am concerned about these nominees. These hearings present important tasks. We have three candidates and I look forward to the opportunity to hear from them and to learn more about their views.

The Agency that Mr. Capka—and I commend you for your military service, Mr. Capka—is nominated to head initially indicated it may withhold New Jersey highway funds from being transmitted. These are funds which this committee approved last summer in the Highway bill. Last year, Mr. Capka got involved personally and soothed our feelings by approving New Jersey's method of funding of our State's share of transportation projects. A few weeks ago, however, information came out that the Administration was considering going back on their word and might withhold some of these funds. But I understand that Mr. Capka is working to clear up the problem, and I look forward to his affirmation in our question period.

I am pleased that the Federal Highway Administration has agreed to approve New Jersey's fiscal year 2006 and 2007 State transportation plans, and I will closely monitor the Agency's progress.

Regarding Mr. Wehrum, his record is different than that which I would like to see at the EPA in this critical job. I am concerned about jobs. I am concerned about our economy, but I am also, as I indicated earlier, concerned about his view on what enters our atmosphere and what we are going to do to control it. As Counsel for EPA's Office of Air and Radiation, then as Acting Assistant Administrator, he presided over rulemakings that would delay reductions in the emissions of mercury, which has already polluted every river and lake in New Jersey.

According to news stories published this week, Mr. Wehrum's office drafted a proposal to allow hundreds of industrial facilities to increase their emissions of toxic chemicals like arsenic, benzene, cadmium, lead and formaldehyde. A Federal court recently held that a different set of rules drafted by Mr. Wehrum to relax pollution controls were in violation of the Clean Air Act.

Mr. Chairman, you and other members of this committee know how strongly I feel about the need to maintain a strong Clean Air Act. I don't see the evidence that Mr. Wehrum's agenda extends much beyond weakening critical clean air protections.

I also will be interested to hear the testimony today from Mr. Gulliford, the nominee to head the Office of Prevention, Pesticides and Toxic Substances. I hope that Mr. Gulliford will be able to articulate and follow through on an aggressive agenda to obtain needed information about the health effects of new chemicals and those already on the market. I would like an assurance that the mission of the office would be to truly protect families from toxins, dan-

gerous chemicals, my grandchildren and the grandchildren of everyone who has grandchildren living in America.

Thank you.

Senator INHOFE. Thank you, Senator Lautenberg.

Without objection, I will submit for the record right before the opening remarks of General Capka five letters of support from organizations who are singing your virtues.

Senator DeMint.

**OPENING STATEMENT OF HON. JIM DEMINT, U.S. SENATOR
FROM THE STATE OF SOUTH CAROLINA**

Senator DEMINT. Thank you, Mr. Chairman.

I want to thank all of our nominees for their willingness to serve.

Just a couple of comments. I will start with the highway system, Mr. Capka. I am going to introduce a bill today that would begin a process of turning back some of the functions that the Highway Administration has taken over from the States. As you know, the Federal Highway Administration was set up to build an interstate highway system, which is essentially complete. The mission has crept to the point where we are effectively micromanaging a lot of functions at the State level that we cannot do efficiently.

My hope is that you and others at the department will work with us on evaluating this idea to look at the idea of devolving some of the functions now at the Federal level to allow States more flexibility to manage their own roads and highways and bike paths. So we can talk more about that later.

Just a couple of comments about the EPA. I appreciate my colleagues' concerns for air quality, water quality. We have made a lot of progress and it is something that I hope we can continue.

But we do need to do it in a rational way. I hear some folks suggesting that perhaps the EPA is too pro-business. My experience is they have been irrationally anti-business in my part of the country. The EPA has put our part of the State of South Carolina under a designation of unclassifiable. We have tried to work with the EPA for a number of years now.

The real problem here is we are still collecting data. We have yet to be told what the pollutants are, or have any recourse in how to fix them, yet the EPA continues to develop new standards, stricter standards, when we have no idea on how to fix the problem we already have, or whether it is coming from another State.

So I will certainly support the nominees, and I know it is a difficult balance to deal with what we have just heard from some other folks about being too pro-business, when it looks to me like we are trying to close business down in this country. Clean air is an important part of the quality of life, but so is a good job. So the EPA has a very difficult challenge, and I look forward to working with both of these nominees, particularly Mr. Wehrum, on how to develop a better regulatory system that works for health, as well as our economy.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator DeMint.

Senator Boxer.

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

Senator BOXER. Thanks so much, Mr. Chairman.

We have before us nominees for three important positions: highways, pesticides and air. We have limited time to question all of them, at least I certainly do, and I know you will be devastated to know that I have a conflict.

Senator INHOFE. Oh.

[Laughter.]

Senator BOXER. I know. I know. I have to go to the Foreign Relations Committee to deal with the India-United States proposed agreement on nuclear weapons. So I would ask unanimous consent, first, that my questions and the nominees answers be included in the record.

Senator INHOFE. Without objection.

Senator BOXER. Mr. Chairman, I want to focus my remarks today on the nominee who would lead the Office of Air and Radiation, Mr. Bill Wehrum. I do want to associate myself with Senator Lautenberg's remarks. Senators are not rubber stamps. We need to be independent voices fighting for the health and safety of our States. So in that context, I will make my remarks.

I will not be referring to leaked memos that Senator Bond talked about. I will address those at a later time, but right now I have other things to talk about, because the job of ensuring our air is safe to breathe is crucial to the health of our people, and every State faces challenges when it comes to air quality. I want to share with you a few of the reasons I am so concerned about where we are heading on this issue.

Because Californians breathe some of the most toxic air in the Nation, according to a recent article, March 22 in the L.A. Times, California is second in the Nation when it comes to cancer risk posed by air pollution. Another recent L.A. Times article on March 25 describes new scientific research showing that the number of deaths from breathing city smog in California may be twice as high as previously estimated.

The current number of premature deaths due to air pollution-related disease in California is 9,000 annually. We face increased risk of lung cancer, heart attacks, and other serious illness tied to fine particulants in the air. A doubling or tripling of premature deaths represent a lot of unnecessary suffering for the families of my State.

So I view today is that we are at a crossroads. Do we continue to erode the gains that we have made in the past on air pollution? One thing is clear to me, if we continue down the recent path the public will pay the price. We are not talking about bureaucracy here. We are talking about life and death.

The nominee to lead the air program at EPA is extremely troubling to me, and I see that Senator Clinton has come in. Senator Clinton, your State is No. 1 in cancer deaths related to air. My State is No. 2. So you have people on this committee who view these nominations through a very different kind of lens, perhaps, than others.

Mr. Wehrum's record at EPA has demonstrated to me a pattern of discounting health impacts and ignoring scientific findings, and

substituting industry positions for the clear intent of Congress. I am going to very quickly in my remaining time go through some of the highlights of his record.

Let's start with the mercury rule. Mercury is, among other things, a potent toxin on the human nervous system. It is especially dangerous to developing fetuses and young children. Common sense would dictate that every effort be made to limit human exposure to this substance. A look at comments by the former chief of EPA's own Air Enforcement Division and the EPA Inspector General on the mercury rule are more than troubling, given Mr. Wehrum's position and documented direct involvement in the rule.

Here it is. EPA enforcement chief criticizes EPA for failing to rely on science in the mercury rule, and says, "a political agenda is driving the Agency's output, rather than analysis of science." Then chart 2 shows "EPA mercury rule ignores children's health. The Agency downplayed or ignored the significant threat of mercury to children's health, even in the face of persistent evidence-based concerns voiced repeatedly by the leading children's health experts in the country."

Chart 3, "EPA Inspector General critical of proposed mercury rule." I don't have time to read all of this. "Evidence indicates EPA senior management instructed EPA staff to develop a maximum achievable control technology standard for mercury that would result in national emissions of 34 tons annually, instead of basing the standard on an unbiased determination of what the top performing units were achieving in practice."

Then, I would say that I mentioned at the outset, fine particles are one of the most lethal forms of air pollution, causing thousands of deaths in California, New York and elsewhere.

Mr. Wehrum was running the air program at EPA when the EPA particle rule came out. Let's look at what children's health experts say about the rule. I am almost done, Mr. Chairman. They say, "EPA soot and toxic dust standards fail to protect children's health."

So here we go. We have a nominee here, and I would ask unanimous consent that the rest of my statement be placed in the record.

Senator INHOFE. Without objection.

Senator BOXER. Who is being rewarded? How is he being promoted after he has received criticism from people in his own Agency and from scientific experts and doctors and children's health experts? I think this is very troubling, Mr. Chairman, and I feel very strongly about it because, again, this is a position that is directly related to the lives and the health of my people at home.

Thank you.

Senator INHOFE. Thank you, Senator Boxer.

Senator Murkowski.

**OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S.
SENATOR FROM THE STATE OF ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman.

Welcome and good morning to all of the nominees here this morning, obviously very important positions, critical positions as they relate to all of our constituents.

Having just gone through a very lengthy and ultimately very contentious reauthorization of the Highway bill, I think we all know how important it is to make sure that we have a leader in place at the Federal Highway Administration who will see to it that the Agency functions, that it is smooth, that it is responsive. We look forward to ultimately your leadership there at Federal Highway Administration, Mr. Capka.

Similarly, the other two nominees that are before us today within EPA, very critical positions in terms of how we do answer to the air quality concerns of this country. We are all concerned about the toxics that we are exposed to. We want to be absolutely certain that whatever we do, we are doing the most that we can to make sure that the environment is healthy, that the air is clear, that we do have an environment that we want to live in and we want to know that our children are safe as well.

We know very well the importance of air quality, of emissions regulations. These are some very difficult discussions that we have as they relate to a healthy environment and climate.

Mr. Chairman, I just want to note also, I did find it curious in terms of the timing, the article just yesterday in the New York Times and in the Washington Post, as it related to this draft EPA rule, and recognizing that the draft did not come from the Agency itself, but the draft came through an environmental group.

I have not read it. I don't know the contents of it. Obviously, that will be something of much greater discussion as we move forward. I will tell you, however, having read that article, I don't think that we can dismiss out of hand if it is true that 8 or 9 of the Agency's 10 regional offices expressed concern about the draft and felt that they were being kept out of the decision loop. That is something that we need to be looking to.

But Mr. Chairman, I recognize that we probably all have a fair number of questions to the nominees this morning, so I will yield back the balance of my time. I, too, have two other conflicting committee meetings, so the questions for Mr. Wehrum will probably be submitted through the record, if they may.

[The prepared statement of Senator Murkowski follows:]

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM THE STATE OF ALASKA

Thank you, Mr. Chairman. I look forward to hearing the comments of the nominees before us today. These are all very important positions and need to be scrutinized carefully, as they affect all Americans every day.

Having just gone through a very lengthy and ultimately very contentious reauthorization of the Highway bill, I think we all know how important it is to ensure that we have a leader in place at the Federal Highway Administration who will ensure that Agency's smooth functioning and responsiveness to the issues.

I place similar value on the two positions in EPA we are considering about today. Throughout the country, Americans are concerned about toxics and want to be absolutely sure we are doing our best to keep their environment healthy. We know very well the importance of air quality and emissions regulations which are at the center of some of our most difficult discussions on health, the environment and the climate.

I found it striking that articles that were highly critical of a draft EPA rule appeared yesterday in the New York Times, the Washington Post and Congress Daily, just when Mr. Wehrum was coming before this committee. Just as interesting was the fact that the draft rules were apparently not released by the EPA, but by a national environmental group. However, we cannot simply dismiss the issue out of hand, if it is true that 8 or 9 of the Agency's 10 regional offices expressed concern about the draft and felt they were being kept out of the decision loop.

I noted comments ranging from an accusation that the rule would allow the release of up to 50,000 pounds more toxic material per year, to a rebuttal saying it would actually encourage companies to install control systems earlier than they are required to do under the current law.

My understanding is that current law requires companies to install Maximum Achievable Control Technology (MACT) [rhymes with “smacked”] which can be a great deal more expensive than more modest alternatives if toxics exceed 10 tons of any single substance or 25 tons overall. I haven’t seen the proposed rule, but understand it simply allows a company that exceeds this limit to avoid MACT if it can get back down to the acceptable range. I am very interested in hearing what Mr. Wehrum may have to say about this, and for that reason, I’m happy to forego the opportunity to give a speech in order to get us to that point even more quickly.

Senator INHOFE. Thank you, Senator Murkowski.
Senator Baucus.

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

Senator BAUCUS. Thank you, Mr. Chairman.

First, thank you for holding this hearing. These are very important nominees, all are dedicating their lives, virtually, to public service, certainly during the term in which they serve. I commend them and I thank them for making that sacrifice. It is difficult for them personally, as well as for their families. We all thank them and owe them a deep debt of gratitude. So thank you very much for scheduling this hearing.

I am going to focus on one in particular, and that is Mr. Capka, who has been nominated to be Administrator for the Federal Highway Administration. I will begin, Mr. Capka, by noting that my State, Montana, is a highway State. We are not a seaport State. We are not a barge State. We don’t have big international airports. We are a highway State. It is our lifeblood. We have more miles per capita of Federal highway than any other State in the Nation.

In my State of Montana, I might say that people think nothing of getting in the car at 4, 5, or 6 o’clock in the evening and driving maybe 60 or 80 miles for dinner or supper. With apologies and respect to my good friend sitting to my left, like in New Jersey or New York, which are States that are densely populated, we don’t want to drive 60 miles through New York or New Jersey. We do want to drive in those vast spaces of Montana, the mountains, the skies. It is just beautiful.

We are a highway State. We just love getting into the car and driving to go someplace. It is also to haul our grain, our products and so forth. I know you understand that. You told me you have visited Montana a couple of times, but I just want to reemphasize that point.

Much of my time, too, in this committee has been devoted to ensuring our highway system. I very much thank the Senators to my right, the Chairman of the committee, Senator Inhofe, Senator Jeffords, and Senator Bond. We are part of the core center that worked together to make sure we have a good solid highway program put together, and then working with the House. We are a good team. We work together. There is compromising. It is not partisan at all. I thank you, Mr. Chairman, for your help very much. Your chairmanship is one of the main reasons why we have a good Highway bill. I look forward to working with you in the future.

It is also I think important to remind ourselves that we have to really work to improve our infrastructure generally and the highway system particularly in this new competitive world. Some say the world is flat. If you come to Montana, it is not entirely flat, but it certainly is a new economy. It is a new globalization where we have to put even more emphasis on our infrastructure to make sure that we can get goods and products to market and back and forth.

We visit countries overseas, it is incredible the amount of time and energy they are spending on their infrastructure. I was in India just a couple of months ago. They just kept crying out, okay, where are you Americans? We need your help to build our infrastructure in India. The same is true in China, the highways they are building in China. I was in Chunking, China not too long ago. It is incredible the highway system they have there in Chunking, a city of 30 million people. It is a massive highway system, brand new. It is like interstate standards. It is incredible. So if we are going to be competitive, we have to maintain that same effort.

I wish you luck, Mr. Capka. It is a tough job. It is a job that is very, very important. It is critical to the safety and the competitiveness of our country. I look forward to working with you. As we discussed yesterday, I am especially interested, and you know what it is, it is to make sure that we get the funding for the Going-to-the-Sun Highway through Glacier Park in Montana.

I know Senator Lautenberg knows what I am talking about. I took him to Glacier Park not too long ago, and he was very impressed. I will never forget some of the words that he used when he was in Glacier. I won't say his eyes popped out, but he really appreciated the Going-to-the-Sun Highway. We want to make sure that we get that full funding that was provided for in the Highway bill.

As you know, this Congress said okay, \$50 million to renovate the Going-to-the-Sun Highway, because the highway, as you know, it was built in the 1930s during the Depression. I think 10 or 12 miles was literally carved out of the mountain through Glacier Park, but over time it needs repair. This is a national treasure. People across the country travel the Going-to-the-Sun Highway in Glacier Park. It is a Montana treasure. It means so much to so many people. There aren't that many treasures like that left. It is certainly therefore important that that treasure be maintained.

So \$50 million was provided for it in the Highway bill. We also wrote the language according to the way that the Federal Highway Administration asked us to write it, to make sure that \$50 million is actually there. As you know, as we have discussed, lo and behold now the Administration has changed its mind subsequent to passing the Highway bill, and saying, "Oh, that language isn't quite exactly the right words."

I am just saying to you that we have to be sure that we get that full \$50 million right now, or frankly we are going to have to spend some time discussing your nomination. It is just that important, frankly, to not only Montana, but to the people of this Nation.

Now, it is a large project. It is going to cost probably around \$150 million total all together, but we are just asking to make sure that down payment is available and is there, because we have short con-

struction seasons in Montana. The Going-to-the-Sun probably is not going to open up this year until after the Fourth of July, there is so much snow, after the Fourth, and that is usually the opening date, some years earlier, some years later, or about July Fourth. There is so much snow now in Glacier that we don't get to open up the road until that date.

So I just want to emphasize, Mr. Capka, I want to work with you, but this is something we just have to resolve before we can proceed. So let me know what you have to do, and I hope that very soon we can reach an agreement with the Administration that that money is there so that we can proceed, and then we can go address all the other issues that this country is facing with respect to our highway system. There have been lots of times over the years we will be working together on issues, because they come up with the highway system, one thing or another. I frankly want to thank your boss, Secretary Mineta.

We had another problem in Montana. It is called the Bear Tooth Highway. You I'm sure knew about it. There was a big flood, a catastrophe, a lot of snow, then heavy rain. It just breached the highway in lots of places. It was an emergency to get that put back together again. Secretary Mineta was really good. I want to just make sure you thank him for his help in making sure we got that money to repair that highway.

So again, Mr. Capka, I wish you good luck, but we have this little issue we have to straighten out.

Thank you.

Senator INHOFE. Thank you, Senator Baucus.

Senator Thune.

**OPENING STATEMENT OF HON. JOHN THUNE, U.S. SENATOR
FROM THE STATE OF SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman.

I appreciate your holding today's hearing on three nominees that I believe are well qualified to fill the existing vacancies at Federal Highway Administration and at the EPA.

I have recently met with Mr. Capka and Mr. Gulliford, and feel that each nominee brings not only experience, but expertise to the positions the President has nominated them to. I have reviewed some of Mr. Wehrum's material that he has provided to this committee and feel as well that he will do an excellent job as Assistant Administrator.

I might add that I have worked fairly closely with the Air Office at EPA concerning renewable fuels issues. I appreciate very much the importance of having people in those positions who look at the science, who will take a balanced, common sense, science-based approach to these issues and try to sanitize some of, if we can, emotion out of these issues and look at it based on the facts and look at it based on the science. That certainly was my experience in working with the Air Office on an issue of great importance to my State and to the future of the renewable fuels industry in this country.

Mr. Chairman, each of today's nominees is particularly important in light of this committee's longstanding involvement in transportation and environmental issues. I strongly believe that each of the

existing vacancies should be filled by well qualified individuals. After all, our job of Agency oversight is particularly difficult when there is not an individual on the other end of the phone regarding issues that are important, not only to our respective States, but also to this committee.

So I appreciate very much the opportunity to have these nominees in front of the committee this morning to be able to respond to questions from members of the committee. I look very much forward in the future to working with each of these nominees as we pursue policies that are good for the environment, good for the economy, good for creating better jobs in this country for Americans. So I very much welcome them here today and thank them for their service.

I yield back.

Senator INHOFE. Thank you, Senator Thune.

Senator Clinton.

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

Senator CLINTON. Thank you very much.

Mr. Chairman, I would ask unanimous consent to submit my entire opening statement for the record.

Senator INHOFE. Without objection.

Senator CLINTON. Mr. Capka, with the strong support of the Chairman, we created the National Surface Transportation Policy and Revenue Study Commission. The idea behind that was to study the future needs of surface transportation, both highways and intermodal functions, and to determine how we were going to meet the needs of our country, because clearly, as Senator Baucus pointed out, other countries are moving ahead with their infrastructure development. We have old infrastructure. We not only need to repair and maintain that, we have new infrastructure we should be building.

So I would expect before your nomination gets to the floor that this commission will be underway. It was supposed to be put into place within 120 days after the bill was passed last August. So far, it has not been, although I just heard that the White House is going to make its nominations, but the report is due on July 1, 2007.

So I hope that you and the folks from the White House and from the department will make it a real priority to get those nominations made, and then secondly to make sure that they have the key staff from the Federal Highway Administration to do the work that we expect them to do, and whatever resources are necessary to carry out its functions.

I will certainly be looking to that as we move forward with your nomination because there is no reason this should drag on. We are now months behind the schedule that we should have to get that commission up and going.

With respect to the concerns expressed by several of my colleagues, in particular Senator Boxer, I just have to underscore the distress that many of us feel with respect to the constant manipulation of analyses and the failure to consider relevant scientific information, and to ignore the advice of key advisory panels.

In February 2005, the EPA Inspector General issued a report about the Administration's mercury rule. That report basically, after going through all of the decisions that were made, concluded that the nominee before us, Mr. Wehrum, and other EPA officials simply ignored the Clean Air Act's requirements and directed EPA staff to rig the mercury analysis so that reductions would mesh with the expected co-benefits of the Clean Air interstate rule.

The advisory committee that was supposed to be assisting in developing the mercury rule, requested specific information, requested a meeting. The meeting never happened. According to the L.A. Times in early 2003, Mr. Wehrum told the dozen or so EPA staffers that comparative studies would be postponed indefinitely. In fact, the advisory committee was disbanded. The studies were never conducted.

Similarly, the EPA ignored the recommendations regarding the mercury rule made by the EPA Children's Health Protection Advisory Committee.

Third, in addition to refusing to conduct the analyses requested by the advisory committee, Congress or others, EPA did not even consider all of the relevant scientific studies that were available. When finalizing the mercury rule, EPA ignored an EPA-funded study conducted by the Harvard Center for Risk Assessment which showed potentially greater health benefits from reducing mercury.

You know, it is very disheartening, Mr. Chairman, because we constantly have this problem. Now we get the article in the paper today that even the internal EPA regional directors are speaking out because they are so distressed about the direction that the political appointees are taking the Environmental Protection Agency.

I just have to underscore the point made by Senator Boxer. Every year that goes by, we get more evidence about the adverse affects of the environment in terms of the toxins that we breathe or we drink on our development, particularly of our children. Mercury is not safe in any amount for human beings, particularly for children. As we look at this record that this particular nominee presents, I just find it very discouraging that we keep being asked to support nominees who really seem to be so disregarding and even contemptuous of all of the research that has been done by a broad cross-section of independent analysts about the air we breathe.

Finally, Mr. Chairman, when we look at the New Source Review Act and the court that overturned what the EPA, with Mr. Wehrum's leadership, did was striking. This was the U.S. Court of Appeals including Janice Rogers Brown and the decision was unanimous. Now, you have to go a long way to get everybody unanimously against the government's position. In fact, the government's case rested on a bizarre and unlikely interpretation of the language and the court was absolutely contemptuous, and in fact said it was a humpty-dumpty world where Congress would use words that the Agency would basically ignore.

So I think, Mr. Chairman, that this nominee deserves the closes of attention. It is absolutely clear that if he expects to have my support, he is going to have to demonstrate a new attitude toward policy from everything from mercury to clean air, because he was at the center of all of these decisions that, in my view, did not re-

spect the law, did not consider all the available science, and did not put a premium on public and human health.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Clinton.

[Referenced letters follow:]



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STEPHEN E. SANDHERR
Chief Executive Officer

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sandhers@agc.org

March 29, 2006

The Honorable #FullName#
United States Senate
#CapAddressLine#
Washington, DC 20510

Dear Senator #LastName#:

The Associated General Contractors of America (AGC) enthusiastically supports Rick Capka to serve as the next Administrator of the Federal Highway Administration. I am writing to ask you to, not only support his nomination for this position, but to urge you to work to have him confirmed by the Senate as expeditiously as possible.

AGC members working under construction contracts in the Federal-aid Highway Program are directly impacted by decisions made by the Federal Highway Administration. Since his appointment as Deputy Administrator in 2002, Rick Capka has demonstrated an outstanding ability to address issues that impact the efficient and economic delivery of needed transportation infrastructure projects. AGC has always found him to be a tough but fair arbitrator of issues of concern between the construction industry and the FHWA.

AGC members were impressed by his leadership in addressing the several transportation emergency situations that arose during his tenure as Deputy FHWA Administrator, including hurricanes Katrina, Rita and Ivan as well as a barge accident on Interstate 40. In fact, our members felt so strong in their support of his nomination that they unanimously passed the enclosed resolution during AGC's 87th Annual Convention on March 21, 2006.

Rick Capka brings nearly 30 years of dedicated service to this nation as a Brigadier General in the Army Corps of Engineers involved in that agency's construction program. He is well qualified to lead FHWA as the agency works in partnership with State Departments of Transportation and the construction industry to address the Nation's pressing transportation infrastructure needs.

AGC urges that the Senate swiftly confirm Rick Capka as the next Federal Highway Administrator.

Sincerely,

Stephen E. Sandherr

SES/bd

Enclosure

Building Your Quality of Life

March 17, 2006



Hon. James M. Inhofe, Chairman
Committee on Environment and
Public Works
SD-410 Dirksen Senate Office Bldg.
Washington, DC 20510

Hon. James M. Jeffords, Ranking Member
Committee on Environment and
Public Works
SD-456 Dirksen Senate Office Bldg.
Washington, DC 20510

Dear Chairman Inhofe and Ranking Member Jeffords:

I am writing to offer the American Highway Users Alliance's strong endorsement of J. Richard Capka to be the next Federal Highway Administrator. We have worked closely with Mr. Capka in his current capacity as Acting Administrator and Deputy Administrator and have found him to be an effective, professional leader who advances the public interest in safer and better roads. We applaud the decision by President Bush to nominate a highly-regarded professional with a strong understanding of highways.

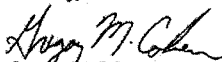
With only one month's experience as Acting Administrator, Capka managed the Federal Highway Administration's response to Hurricane Katrina. While other agency's were criticized for their performance during this disaster, the Federal Highway Administration under Capka's leadership earned unqualified praise for meeting the difficult tasks of re-building essential bridges and roads in record time.

Capka's ability to perform well under pressure is not limited to the Federal Highway Administration's response to Hurricane Katrina. In 1997, President Clinton praised Capka for leading the swift and effective Army Corps of Engineers response to flooding in California.

His long and distinguished career at the Corps led to his selection by the Massachusetts Turnpike Authority in 2001 to manage the day-to-day operations on the Central Artery project in Boston, Massachusetts. Capka was selected after cost overruns and scope changes ballooned the project's price tag from \$2.5 billion to more than \$14 billion. Under his leadership, cost increases were minimal. He left the agency on his own accord after developing a streamlined and less bureaucratic management plan that eliminated his own position.

In the interest of the American motoring public, we are pleased to offer our strong support to you as you move Mr. Capka's nomination through the committee hearing process. He deserves a swift endorsement from the Committee and confirmation from the entire Senate. Thank you for your consideration of our views.

Sincerely,


Gregory M. Cohen
President and CEO



American Association of
State Highway and
Transportation Officials

Harold E. Linnenkohl, President
Commissioner
Georgia Department of Transportation

March 17, 2006
John Horsley
Executive Director

Senator James Jeffords
United States Senate
413 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Jeffords:

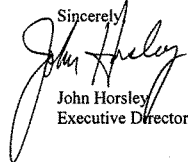
AASHTO, and the state Departments of Transportation we represent, believe Rick Capka is well-qualified to serve as Federal Highway Administrator and we strongly support his confirmation by the Senate.

When he was appointed as Deputy FHWA Administrator four years ago, we were impressed by his 30 years of construction management experience in the U.S. and abroad as a decorated Brigadier General in the Army Corps of Engineers. Since then he has consistently demonstrated outstanding leadership at Federal Highways. His oversight over megaprojects such as the Springfield Interchange and the Woodrow Wilson Bridge here in the Capitol region and elsewhere in the Nation, show us he is a tough, but fair manager we can work with.

As you are aware, when a barge slammed into the Interstate 40 bridge at Webbers Falls Oklahoma in 2002, within hours Oklahoma DOT and FHWA put a plan into action to restore service. Using an incentive contract approved by FHWA, the bridge was reopened for business only 64 days after the collapse. That is the type of partnership state DOTs have seen under Rick Capka's leadership.

The one federal agency whose performance clearly stood out in its response to Hurricane Katrina was that of FHWA in rebuilding highways in Louisiana and Mississippi in record time. Under Rick Capka's leadership, contracts were expedited, red-tape cut, funding provided and creative solutions approved. As Secretary Mineta said to our members at our conference in Nashville, Tennessee on September 18, 2005, "On Katrina, Rick, you and FHWA have done a tremendous job."

Your committee should subject Mr. Capka's qualifications and performance to a thorough review. When you do we are confident you will conclude, as we have, that he is remarkably well-qualified to lead this important federal agency and that his appointment should be swiftly confirmed.

Sincerely,

John Horsley
Executive Director





April 4, 2006

The Honorable James M. Inhofe
Chairman
U.S. Senate Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Inhofe:

The American Road & Transportation Builders Association (ARTBA) supports J. Richard Capka's nomination to be Federal Highway Administrator. We urge the Environment & Public Works Committee to report Mr. Capka's nomination favorably and expeditiously.

We have found Mr. Capka to be thoughtful, accessible and open-minded during his service at the Federal Highway Administration as deputy administrator and acting administrator. Whether ARTBA agrees or disagrees with him on a particular issue, he has always been willing to work with us in order to enhance all sides' understanding of the matter in question. Mr. Capka's resume reflects the decades of valuable experience that he will bring to his new assignment.

We look forward to continuing to work with Mr. Capka in the pursuit of enhanced safety and mobility for all Americans.

Thank you for your consideration of our views.

Sincerely,

T. Peter Ruane
President & CEO



THE ARTBA BUILDING, 1219 28TH ST., N.W., WASHINGTON, D.C. 20007
Phone: (202) 289-4434 • Fax: (202) 289-4435 • Internet: www.artba.org



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Bill Graves
President and Chief Executive Officer

April 4, 2006

The Honorable James Inhofe
Chairman
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

The Honorable Jim Jeffords
Ranking Member
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Inhofe and Ranking Member Jeffords:

On behalf of the American Trucking Associations, the national representative of the trucking industry, I am pleased to offer our organization's strong support for Richard Capka's nomination as Administrator of the Federal Highway Administration (FHWA).

Under Mr. Capka's leadership, first as Deputy Administrator and then as Acting Administrator of FHWA, the agency has placed an emphasis on solving the many challenges associated with the movement of freight. Administrator Capka recognizes the critical importance of freight movement to the national economy. He has reached out to the freight community and sought our assistance in coming up with practical solutions to difficult problems, establishing relationships that recognize the inherent benefits of collaboration and cooperation.

We look forward to working with Administrator Capka in the future. We believe that the private sector relationships he has fostered and the many innovative programs established during his tenure at FHWA will continue to flourish under his leadership. We respectfully request that you support Mr. Capka's nomination.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Graves", is written over a horizontal line.

Bill Graves



Senator INHOFE. General Capka, we will recognize you for your opening statement.

**STATEMENT OF RICHARD CAPKA, NOMINATED TO BE
ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION**

Mr. CAPKA. Thank you, Mr. Chairman, Senator Jeffords, and members of the committee.

I have brief introductory remarks and request your permission to provide a more complete statement for the record.

Senator INHOFE. Without objection.

Mr. CAPKA. I would like to thank Senator Warner for his very kind introduction. I have been a resident of Virginia off and on for about 15 years of my 35 years of public life, and have enjoyed every minute of living in Virginia, even with the congestion.

I appreciate the opportunity to appear before you today as you consider my nomination to be the Federal Highway Administrator. I am honored to have earned the confidence of President Bush and Secretary Mineta for this important position. I know, Mr. Chairman, you and the committee have a very important obligation to the American people. If confirmed, I pledge to work with this committee and Congress to ensure our Nation is strengthened through the work done at Federal Highways.

It is an honor to be considered for this opportunity to continue to serve our great Nation. Most of all, I am honored and proud to be blessed with the love and support of my wonderful wife Susan and a family that includes two sons, their wives, three grandchildren and three more on the way. They have been beside me for a career in public service that includes almost 30 years of proudly wearing the military uniform and numerous assignments both here and abroad, commanding some of the finest organizations in the U.S. Army Corps of Engineers.

Upon retirement, I continued my public service by accepting a challenging position in Massachusetts managing one of the Nation's largest and most complex public works projects. There, I earned the praise of the Department of Transportation Inspector General, while establishing for the first time a budget with the appropriate controls that has enabled cost forecasts to remain unchanged through today.

I have also served more than 3½ years here in Washington addressing the Nation's transportation needs as Deputy and now Acting Administrator of Federal Highways. I have focused my energy on enhancing the stewardship of the Federal-aid Highway Program, providing an effective Federal response to disasters, reducing highway fatalities, and relieving congestion.

If confirmed, I will look at the prospect to serve with great optimism and enthusiasm. I see opportunities for us to improve the system that we do have. We will be celebrating the 50th anniversary of the Interstate Highway System on June 29 of this year. Yet, our Nation continues to face serious challenges.

It is unacceptable that nearly 43,000 Americans are killed on our roads every year. Congestion is clogging the routes to and from work and our recreation destinations. It is also clogging the movement of freight, which is so vital to our economy. The quality of our environment and the vitality of our communities all depend upon

the quality of our transportation planning, efficient program delivery, and the effective management of our highways.

Innovation must and will be at the heart of our solutions. How we capture and invest the Nation's transportation resources; how we employ research and technology talent; how well we attract the right disciplines and the best and the brightest into the transportation profession will determine how successful we will be for the next 50 years.

If you confirm my nomination, I will work diligently with this committee, Congress, and the many transportation stakeholders to both effectively carry out SAFETEA-LU and to help shape the future of surface transportation.

Again, thank you, Mr. Chairman and members of this committee. I look forward to answering your questions.

Senator INHOFE. Thank you, General. I appreciate your excellent opening statement.

First, we have the required questions of you. Are you willing to appear at the request of any duly constituted committee of Congress as a witness?

Mr. CAPKA. I am, Mr. Chairman.

Senator INHOFE. Do you know of any matters which you may or may not have thus far disclosed that might place you in any kind of a conflict of interest if you are confirmed for this position?

Mr. CAPKA. There are no such matters, Mr. Chairman.

Senator INHOFE. Okay. Thank you.

I think Senator Clinton brought up a good point in talking about this commission, the National Surface Transportation Policy and Revenue Study Commission. I can recall over the last three reauthorizations that I have been here through that that has been a discussion, of recognizing that the old way of doing it is not going to provide adequate resources to take care of what I consider to be the second-most significant function of government just behind defending our Nation.

This time, because of that, we actually put the commission in here. I would like to get from you where you are on that right now, and what your thoughts are, and have you developed any kind of ideas for a new type of a system for funding, an overhaul of the old system?

It is my observation, and while I am a conservative, I feel this is an area where conservatives are big spenders, and that is that we have infrastructure needs. As large as this bill was that we reauthorized, I think you could give a persuasive argument that the amount of money that is going to be used will just barely maintain that which is already there.

So what thoughts do you have so far in terms of this commission and what they might come up with?

Mr. CAPKA. Thank you, Mr. Chairman.

I do share your concerns and the concerns of the committee over the importance of the commissions that were established under SAFETEA-LU. I also share your concerns that resourcing the requirements of the Nation's surface transportation is also critical to how well we are able to compete in the world economy in the not too distant future. We are all going to be depending on an excellent highway infrastructure, surface transportation infrastructure.

Regarding the commission, I can assure you that Secretary Mineta, the White House, and I are all very interested and are watching and moving the nomination process forward for the appointees that will come out of the White House here in the not too distant future. We are thinking that we can say by the middle of May, within 6 weeks that we will be seeing the nominations emerge.

It is vital that we have the right people. As you and the members of the committee and others have identified your nominees, the White House is also being very deliberate and careful in conducting the appropriate background checks to ensure that we have the right folks there.

Regarding the support that Federal Highways will provide to these commissions, it is also extremely important that the commissions are readily armed with the information, the data, and the analysis that will be required to investigate the many alternatives that will be presented to them as to where the future of surface transportation will go.

Senator INHOFE. I was going to ask you, the report is due in July 2007, 15 months from now. Do you think that getting the confirmation of these people is going to give you adequate time to do that? One of the things that we don't like in this committee both Democrats and Republicans, is when we establish a deadline and then we don't meet that deadline. Do you feel committed right now to reaching your conclusions, giving a report by the deadline of July 2007?

Mr. CAPKA. Sir, we are committed to providing those results by July 2007.

Senator INHOFE. Okay. General, in your career with the Army Corps and since you have managed several major projects such as that that was referred to by Senator Bond, the Big Dig in Boston, what was your role and what did you achieve in leading that effort? How can you use these experiences to improve FHWA's project oversight?

Mr. CAPKA. Yes, sir, I appreciate your question and understand the importance of you reviewing my credentials for this position. Certainly, the position that I held in Boston as the Chief Executive Officer for the Massachusetts Turnpike Authority was a very responsible position.

I was hired in the year 2000 and selected by the Governor, and, at the time, reported to a board of directors of three members. The goals that I was given at the time, because of the significant cost overruns that had seemed to plague the project, and most recently up to that point unexpectedly, I was given the challenge of getting my arms around what it was going to take to complete the project in terms of cost, to develop a budget, and then to focus on the ongoing and future work of the Big Dig project, to get it completed as efficiently as we could.

Shortly after I got there, I reviewed the project cost history. I looked at the work and the risks that remained in front, and developed a new estimate, which I presented to the members of the State legislature, to the Governor's office, and to my board of directors. The estimate that was developed at that time, and that I released in the summer of 2001, remains true to today. I am very

proud of the fact that we were able to nail that and allow the project to be completed under that estimate.

I also worked on management controls to ensure that we maintained close tabs on costs as cost data came in and requirements for management intervention popped up. So we had the controls in place. We had a good budget to work from, and we had the resources to complete it.

In March 2001, after I had put the controls in place and nailed down the budget, the Department of Transportation Inspector General called for a meeting of the Massachusetts delegation here in Washington, where he complimented the work that I had accomplished, which I believe he said was improved by more than 1000 percent of what he had seen before, and subsequently called off a number of the investigations that the IG had underway at the time. I was very proud to be there with the Massachusetts delegation and the Federal Highway Administrator to receive that report from the Department of Transportation IG.

It ensured us that the finance plan would be approved, which again provided the continuing Federal funding for the project, which was critical at that particular point in time. Lessons were learned on the project that I could only learn personally by being part of it. Secretary Mineta and Administrator Peters asked me to come to Washington to be in a position where I could share those kinds of lessons with other very large undertakings around the country. We have been doing that ever since I have been there.

I am proud of the management and I am proud of what I have been able to achieve. Sir, if confirmed, I will continue to work with you and make those improvements as we move forward.

Senator INHOFE. Thank you, General Capka.

Senator Jeffords.

Senator JEFFORDS. Mr. Capka, while their estimates differ slightly on the date, both the Congressional Budget Office and the Treasury Department project dire near-term financial straits for the Highway Trust Fund. Given our current level of investment, the Treasury Department estimates the fund will be insolvent before the end of this authorization period.

This problem is not unique to the Federal program. In my home State of Vermont, State legislators are looking for ways to pay for needed infrastructure improvements including raising the gas tax. Does your vision for the future financial health of the Federal aid program include raising the gas tax, more innovative financing, increased opportunities for public/private partnerships, or some combination of alternatives?

Mr. CAPKA. Senator Jeffords, thank you very much for that observation. In fact, it puts an exclamation point behind the discussion we had about the importance of the committee that is being formed to look at the future of the Highway Trust Fund.

With respect to the situation with the Trust Fund today, if you recall, it was our intent to bring the Trust Fund down to zero at the end of the SAFETEA-LU period. We have done that. The Treasury has said we may be a little bit below, on the order of \$2.3 billion. The Congressional Budget Office has provided estimates that say we will be a little bit above. So I think the estimate is

within the margin of error that tells us that, yes, we are going to be tangent in the Trust Fund at the end of the period.

There are opportunities for us to adjust as we go forward, and with the budget 2008 coming up next year, we will have an opportunity to look at it again. We will maintain a close finger on the pulse of what is happening, and I will assure you that if confirmed, I will not let the issue out of my sight.

As far as the future, and I think it also puts an exclamation point behind the fact that perhaps we have relied too much on the Trust Fund up to this point, we are going to have to look for additional innovative sources of revenue to keep the Nation's highway infrastructure in good shape and to improve it where it needs to improve. Yes, sir, the innovation that I referred to in my remarks applies specifically to where we look for these additional sources of revenue to do our work.

If confirmed, I will continue to seek those innovative solutions for you.

Senator JEFFORDS. Thank you.

In the recently passed Transportation bill, Congress granted States more flexibility in the types of stormwater mitigation projects eligible for Federal aid funds and accounts used to pay for these projects. Based on your experience with the corps, can you comment on how the Federal aid highways might impact water quality in surrounding water bodies, and why you believe it is important to address these water quality impacts on both new construction and older existing highways?

Mr. CAPKA. Thank you, sir, for that question.

As we all know, projects and our highway system, just by virtue of the fact of where it goes and why it needs to go to the various places that it serves, it does and will have an impact on the environment. The impacts are many. Stormwater impacts are one of those, and very certainly we need to evaluate the impacts and address them so that the economy is enhanced and not harmed.

If confirmed, I will continue to work with you and the members of this committee to identify those problems and to determine the best way of investing our resources.

Senator JEFFORDS. Thank you very much for that answer, sir.

Senator INHOFE. Senator Lautenberg?

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

Mr. Capka, as I indicated in my opening remarks, I am very much concerned about the commitment to New Jersey on the multi-year funding. Generally speaking, does the Administration believe that multi-year funding is an appropriate financing mechanism or doesn't it?

Mr. CAPKA. Thank you, Senator Lautenberg.

As you had pointed out in your opening remarks, we had a very productive session with the commissioner of the New Jersey Department of Transportation and his staff and our staff at Federal Highways yesterday. We readily recognize that we need to maintain open communications to ensure that both we at the Federal Highway level and at the State Department of Transportation level are working together to ensure the proper stewardship of the resources that are entrusted to us, and to meet the needs of the citizens of New Jersey.

So we are moving in that direction.

Senator LAUTENBERG. Can we be more specific, Mr. Capka, and say that you worked out an arrangement with New Jersey Transportation Commissioner Lettiere last year regarding the use of multi-year funding, and I just want to be sure that if the money is committed for the first 2 years—2006 and 2007—and reasonably available in later years, would you as head of the FHWA continue to approve New Jersey's State transportation plan, which incorporates these multi-year funding projects, similar to Pennsylvania, by the way?

Mr. CAPKA. Sir, we have not backed away from the commitment that we made to New Jersey this past fall when we were working through some very challenging financial situations in the State of New Jersey. We have not backed away from that and will hold true to our commitment.

We will look to the outputs of the plans that are submitted by New Jersey and work with New Jersey to ensure that they meet the requirements of the legislation, our authorizing legislation, and Title 23.

Senator LAUTENBERG. They have taken pains to do that. You know, we have a new Governor who used to serve here. He is aware of the fact that we have got to keep our transportation funds available and plan to do that.

I wanted to ask you this question. The job you undertook up in Massachusetts, you were the CEO of the corporation that was running that job, the Massachusetts Turnpike Authority.

Mr. CAPKA. That is correct, sir.

Senator LAUTENBERG. You were in charge. Now, that job, complicated I will admit, but I think in its final analysis came out to be a pretty significant addition to the functioning of Boston in that area. However, there was a significant overrun there. I think it was about \$500 million-plus during your service as the CEO there. How did that come about, Mr. Capka?

Mr. CAPKA. Sir, when I arrived in Boston in December of 2001, January of 2001, the estimate for the project was at \$14.075 billion. I immediately undertook a review of the cost history, a review of the project status and the risks that were ahead, and revised the estimate at that time to \$14.475 billion.

That was based upon my assessment right after I arrived in Massachusetts. That particular estimate has held true to today. There has been an adjustment that was requested from the Inspector General as an accounting adjustment, but was not a requirement for additional resources or wasn't any additional cost. It was merely an accounting adjustment that brought it up to what you will see today, \$14.625 billion. That is correct. Yes, sir.

Senator LAUTENBERG. Yes. So was it an uncontrollable expansion of costs?

Mr. CAPKA. Sir, in my review of the cost, it was the situation that existed when I arrived in Massachusetts and reflected what had brought the project to where it was at that point in time, and what I estimated it would take to complete the project. So it was a point in time that I adjusted finally the estimate for that job.

Senator LAUTENBERG. If I may digress for a moment, Mr. Chairman, I am sorry that our friend isn't here from Montana, Senator

Baucus, because he talked about Glacier National Park, which was a beautiful sight when I went there. But the bad news is that one of the biggest glaciers in that park has lost 90 percent of its mass, and park scientists predict that if global warming trends continue, the Grinnell Glacier in the park will be gone by 2032.

In 1850, there were 150 glaciers in the park. Now there are 27. This has nothing to do with General Capka, but it was an observation that I wanted to note as we talked to some of the other candidates here, that the glaciers are rapidly disappearing. One can debate all they want, but the result of global warming is definitely there and we ought to be looking at ways to control the car emissions that we have in our society.

Mr. Capka, I am sorry to run over a minute.

Senator INHOFE. Two minutes.

Senator LAUTENBERG. Two minutes over?

There is such a kind, generous Chairman in this committee.

[Laughter.]

Senator LAUTENBERG. I am overcome with emotion.

So Mr. Capka, you have had a lot of experience. You have served your country well. I am relying on you, based on your affirmation just now, that we won't run into any problems with our funding. That is an agreement that you have established, and I heard your qualifying it, but we hope that there will be no problems. Our highway system is just as important to New Jersey as it is in Montana or any of the other States. As a matter of fact, we spend more time, Mr. Chairman, in our cars going places than they do in Montana. Sometimes it takes us a couple of hours to go five miles, so we are in that car, we love it, and we want the highway to be in good shape to support it.

Thank you very much.

Senator INHOFE. Thank you, Senator Lautenberg.

I wouldn't want my silence to in any way infer that I agree with the good Senator from New Jersey. When in fact the glaciers you are referring to, whether you are talking about those glaciers or the Arctic or the Antarctic or Greenland, the science quite frankly does not come to the same conclusion that you do. While sometimes there is a receding around the edges such as Greenland, it is actually thickening in the middle. In terms of Antarctica, the trend is it has been much colder than warmer in the last 40 years.

General we appreciate your responding to our questions. I would ask Senator Voinovich if he has any questions for you.

Senator VOINOVICH. All I would like to say is that I really enjoyed visiting with you yesterday, and I am pleased that someone of your capability and background is willing to take on this new role. It is very, very important to the future of our country.

Mr. CAPKA. Thank you, Senator Voinovich. I really appreciate that. I also enjoyed you sharing your time with me yesterday afternoon.

Senator INHOFE. I agree with Senator Voinovich.

We will excuse you at this time. Thank you very much for your appearance.

We ask our second panel to come forward. Our second panel is James Gulliford, nominated to be Assistant Administrator of EPA,

and William Wehrum, nominated to be Assistant Administrator of EPA.

Let me first of all get the required questions out of the way. If you would please respond, each one of you, to these two questions.

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

Mr. GULLIFORD. Yes, I am.

Mr. WEHRUM. Yes, Senator.

Senator INHOFE. Do you know of any matters which you may or may not have thus far disclosed that might place you in any conflict of interest if you are confirmed to this position?

Mr. GULLIFORD. Mr. Chairman, there are no such matters.

Mr. WEHRUM. No, Mr. Chairman.

Senator INHOFE. All right. I would like to ask each of you prior to your opening statement if you have any members of your family here. Please feel free to introduce them, and we will begin with you, Mr. Gulliford.

Mr. GULLIFORD. Mr. Chairman, I do have two members of my family, my wife Von is with me, and my daughter Keri.

Senator INHOFE. Where are they? All right. Which one is your daughter?

[Laughter.]

Mr. GULLIFORD. The taller one.

Senator INHOFE. I see. All right. You are recognized for your opening statement.

STATEMENT OF JAMES B. GULLIFORD, NOMINATED TO BE AN ASSISTANT ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. GULLIFORD. Thank you, Mr. Chairman, Senator Jeffords, members of the committee.

I am honored to appear before you today and I am seeking your confirmation to serve as Assistant Administrator for the Office of Prevention, Pesticides and Toxic Substances. It has been my pleasure to serve as EPA Region VII Administrator for the past 4½ years, and it is truly an honor to have the support of President Bush and Administrator Johnson to serve the American people in this new capacity.

I also want to thank Senator Bond for his kind introduction. It has truly been a pleasure to transfer fairly deep roots from the State of Iowa to the State of Missouri and I enjoy living there now.

The environmental challenges we face today are complex. They demand a focused and unyielding commitment to fully understand the issues, to seek solutions and to facilitate change. I believe that working together with Congress, the States, the regulated community and the public interest community, that we can accelerate our environmental progress, foster a strong and vibrant economy, and assure that our citizens enjoy a safe and healthy environment in which to live, work and play.

I am dedicated to that belief, and the knowledge and the experience that have brought me here today will serve me and the environment well. I bring a strong and abiding respect for America's natural resources. I majored in forestry management at Iowa State University. In addition to a forestry traditional curriculum, I

minored in agronomy, recognizing the importance of soil science, of nutrient management and soil conservation.

My MS in forestry economics and marketing added additional tools to help solve complex environmental and natural resource management problems.

Before coming to EPA, I worked for 25 years in the fields of mine reclamation, soil conservation and water quality protection. I understand well the complexities of natural resource management. I also bring a healthy appreciation for the work of OPPTS, and office that is at the forefront of protecting public health and the environment.

Growing up west of Chicago, my anticipation each summer was for several weekend camping trips and one major family vacation visiting any number of our Nation's national parks. Hiking, camping and seeing the incredible beauty of our country sparked my interest and my career in natural resource management and environmental protection. My wife Von and I chose to pass those same experiences, the love of the land, on to our children as well. With my son Jason, I backpacked the Sierras, I canoed the Boundary Waters, and I have hiked the Grand Canyon.

If I am confirmed for this position, I know that I will be stepping up to the plate on a number of strategically important environmental issues, issues that are important to many members of this committee. These include pesticide registrations, the challenges of lead, and endangered species, just to name a few.

I can say unequivocally that I will approach each of them with an open mind, a commitment to fully understand and appreciate all sides of an issue, and most importantly, with the paramount objective of protecting public health and the environment.

I will use the best and most appropriate tools to get the job done. If a regulatory approach makes sense, that is what I will choose. If I can get the job done quicker and more efficiently by advocating a stewardship or partnership approach, then I will proceed down that path. If a combination of tools makes the most sense, I will move in that direction.

I believe that this job requires flexibility, creativity, common sense and I believe that I bring those skills to the job.

Finally, I want to close by acknowledging the importance that my family's love and support means to me in this work. I am blessed that my family, my parents, continue to live healthy productive lives back home in Illinois, and the values and training that they have given me over the years continue to be central to my being.

My daughter Keri is a constant example of strength, character and determination as a nurse in a neurosurgeon's office and as a part-time student, finishing her bachelor's degree. My son Jason is one of the finest, caring young men I know and a great outdoor adventure partner. He and his wife Heidi are beginning their life together and constantly remind me why the work that we do today to assure a safe, healthy future of our planet is important to young people that are just beginning their lives together.

Finally, the love, the strength and partnership of my wife Von inspires and sustains me. With this support, I am confident that if confirmed as Assistant Administrator, my service will reflect

positively on my family and the needs of all families who rely on OPPTS and EPA for a safe, healthy environment.

Thank you for the opportunity to appear before you today. I am happy to answer your questions.

Senator INHOFE. Thank you, Mr. Gulliford.

Mr. Wehrum, start with your family. Do you have any family here today?

Mr. WEHRUM. Yes, I do, Mr. Chairman, and thank you for that. First, I will note my wife unfortunately was not able to be with me today. She had a higher calling, but I know she is watching over the webcast, and I certainly appreciate her support and patience over the past few years and hopefully for another couple.

I am joined by my mother, Mary Ann; my two twin sisters, Lisa and Laura; my brother-in-law Van; and I think most importantly, two nieces, Katy and Sarah from Bowling Green, KY; and two nephews, Matthew and Coleman from Nashville.

Senator INHOFE. I want each one of you to hold your hand up anyway, so we can figure it out. All right. Thank you for being here today.

Mr. WEHRUM. I appreciate their support.

STATEMENT OF WILLIAM L. WEHRUM, NOMINATED TO BE AN ASSISTANT ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. WEHRUM. Mr. Chairman, Senator Jeffords, members of the committee, thank you for the opportunity to testify before you today as the nominee for the position of Assistant Administrator of Air and Radiation at the U.S. Environmental Protection Agency. I am grateful to President Bush for nominating me for this position and I appreciate your consideration.

President Bush has provided consistent and clear expectations to Administrator Johnson at EPA to accelerate the pace of environmental progress, while maintaining our Nation's economic competitiveness. We have taken this task to heart in my time at EPA and I am proud of what we have accomplished.

The air is cleaner today than it has been in generations. EPA programs have resulted in a substantial reduction in air pollution and correspondingly dramatic improvements in air quality. Much of this progress is attributable to the good work of those who came before us over the past 35 years of EPA's history, but under the leadership of President Bush, and due to the hard work of my predecessor and EPA career staff, we have made significant progress during my tenure.

Perhaps highest on our list of accomplishments is the Clean Air Interstate Rule. This standard will reduce emissions from powerplants by millions of tons, help solve some of the toughest and most persistent air quality problems in the Nation, and deliver the largest health benefits of any EPA rule in more than a decade.

Other notable rules include the Clean Air Mercury Rule, the Clean Air Visibility Rule, and the Non-Road Diesel Engine Rule. These rules will assure continued significant progress toward cleaning our air. If confirmed, I promise to build on these successes.

Mr. Chairman, I am appreciative of this committee's efforts to pass Clear Skies legislation. Similar to the President and Administrator Johnson, I believe enactment of legislation to reduce and cap emissions of sulfur dioxide, nitrogen oxides and mercury from powerplants is a priority, and I intend to work to that end.

Other near-term priorities will include the renewable fuel standard, a standard for locomotive and marine engines, and the review of the particulate matter, ozone and lead national ambient air quality standards.

My priorities also include the continued growth of our many successful voluntary and public/private partnership programs. Perhaps the best example is the Energy Star Program. Last year alone, Americans with the help of Energy Star prevented the release of 334 million metric tons of greenhouse gas emissions, equivalent to the emissions from 23 million vehicles and saved about \$12 billion on their utility bills.

These programs are particularly noteworthy because they accomplished significant improvements in human health and the environment, but do so in a collaborative way, rather than through our usual regulatory approach.

All of these efforts will be guided by the goal of protecting human health and the environment, but doing so in the smartest and most efficient way possible.

I believe that I am well qualified for this position. I started my career as a chemical engineer, and most of my time was spent in a specialty chemical plant. I had responsibility for implementing a multitude of health, safety and environmental rules that applied to our operations. I became acutely aware of the value of clear and concise rules, which are particularly important to the operators, engineers and maintenance crews directly responsible for actions needed for day-to-day compliance.

I also experienced first-hand the frustration and challenge of decoding complicated rules that sometimes seem to be written without apparent understanding of the real consequences for those who are required to implement them in the field. This work inspired me to pursue a law degree which I obtained by attending classes at night, while still working in the plant during the day. I was fortunate to have the opportunity after graduation to come to Washington to work with two top-flight law firms. I learned not only the business of law, but also the complex legal and policy questions that drive the regulatory process.

I worked extensively with EPA and came to appreciate the dedication and energy that motivates EPA employees and moves our Nation toward continuing environmental progress.

I was given the opportunity to join EPA in 2001. I came on-board as Counsel to the AA for Air. In that capacity, I had the privilege of advancing some of the greatest environmental issues of our day. I consider it a rare privilege to now have the opportunity to serve as Assistant Administrator.

I will close by saying that I have an added interest in clean air both by vocation and avocation. Running is one of the few pastimes I have that has survived the last few years of engineering, law school, law practice and government service. I run well over 1,000

miles in a typical year, and most of this within inches of major roadways here in the DC area.

I can tell you this experience has indelibly impressed upon me the need for and value of clean air. The occasional smoking truck or bus and the occasional smoking stack are stark reminders to me of the progress we have made and the challenges that remain.

Mr. Chairman and members of the committee, I thank you again for the opportunity to be here, and I am happy to answer any questions that you may have.

Senator INHOFE. Thank you very much, Mr. Wehrum.

I will go ahead and start. We will only have one round of questions because of our timing.

Mr. Gulliford, last year, the Administration published a rule reiterating years of Federal policy that pesticide sprays did not have to have NPDES permits for pesticide sprays if they did it in accordance with FIFRA, the approved labels. As you know, I have introduced legislation to codify the policy with some important modifications in statute.

If I had all the faith in the world that we would have a permanent rule on this, it might not be necessary. I would just ask you, do you know what the status of this rule is and whether or not you support its finalization?

Mr. GULLIFORD. Yes, Mr. Chairman. The Agency did establish a position that pesticides applied in accordance with the FIFRA recommendations on, near or adjacent to waters need not have NPDES permits. That is the Agency's position. The rule has been proposed. I don't know the exact timetable for completion of that rule, but I would be happy to get back to the committee with that.

Senator INHOFE. For the record, if you could do that, I would appreciate it.

Mr. GULLIFORD. I will do that.

Senator INHOFE. Mr. Wehrum, there have been assertions made by Senators Lautenberg and Boxer in their opening statements that the EPA management instructed staff to develop a maximum achievable control technology, the MACT standard for mercury that would result in the emission of 34 tons annually. It is my feeling that the EPA developed this rule, no commercially demonstrated mercury technology was in use at any coal-fired powerplants across the country, but the MACT rule must be based on actual emissions reductions already achieved at the best plants. So clearly, the EPA had to base its rule on the level of reductions achieved as a co-benefit of the controls installed to reduce sulfur dioxide and nitrogen oxide within each subcategory evaluated.

I would ask you, how did you determine the emissions for the purpose of the mercury MACT? Was this something that was dictated prior to the study taking place?

Mr. WEHRUM. Thank you, Mr. Chairman, for your question.

I will start by saying, as I indicated in my remarks, the Clean Air Mercury Rule as we came to call the final regulation, we hold that as one of the most significant accomplishments of this EPA, our office, and this Administration as it relates to clean air. It is the first-ever regulation in the world to regulate mercury emissions from coal-fired powerplants, and we are quite proud of the progress that we have made, and we are quite proud of the reductions that

will be achieved through that regulation. It was a substantial undertaking. The issues were quite complex and we feel like we did a very good job on that rule.

As you alluded to in your question and in response to your particular question, Mr. Chairman, it was very important to us that the proposed MACT standard be based on a thorough analysis of what we believe could in fact be accomplished by the better-performing sources in the category, as the law requires. That was the law. That is what we attempted to do in structuring the proposed rule, and I believe we accomplished that.

Senator INHOFE. Thank you.

I know you addressed this, but I would like to get down to the specifics of the assertion that was made by two individuals up here in opening remarks that the EPA prematurely disbanded the Mercury Federal Advisory Committee Act, FACA, and did not provide all cost-benefit modeling information promised to the group.

One of my staff members was 1 of the some 50 people that participated in FACA. It is my understanding that FACA met for almost 2 years and had more than a dozen meetings and many dozens of sub-group meetings. Few clean air advisory groups have ever met so frequently or produced so much work for EPA to consider. I would challenge some of those who don't agree with that to show me where there has been one that has exceeded the scrutiny that this has.

It is my understanding also that the Inspector General failed to report that most members of the FACA process believe that the issue was discussed thoroughly and it was not until after the conclusion that a minority of members wanted to reopen the process. That was Nikki Tinsley, a Clinton appointment. It is my understanding that she did not interview all the members of FACA, but only those individuals who were on that letter, some 15 out of the 50. That is my understanding, that they met for more than a dozen day-long meetings, and had many sub-group meetings and so forth.

I would ask you, did the Inspector General interview every member of FACA? If not, could that oversight have influenced the findings of the report?

Mr. WEHRUM. Mr. Chairman, let me start again by saying we are indebted to the work of the FACA. That group did in fact meet over an extended period of time. They were given an important task, which was to help us understand the nature of the mercury emissions problem from domestic coal-fired powerplants.

As I mentioned a moment ago, the issues are complex. The information is voluminous and complicated, and they were very, very helpful to us in understanding what the issues are and ultimately in issuing a report at the end of their work which made a series of recommendations. The group was not able to reach a recommendation supported by every member of the committee, so the report reflected a variety of positions that were supported variously by sub-groups within the total FACA.

Senator INHOFE. But part of the question I asked you is whether or not the Inspector General did interview all members of FACA.

Mr. WEHRUM. Not to my knowledge, Mr. Chairman.

Senator INHOFE. All right.

Senator Jeffords.

Senator JEFFORDS. Bill, the Clean Air Scientific Advisory Committee has now indicated twice that the annual standard for particulate matter should be lower. EPA in its proposed rules declined to accept that advice. Is there a scientific or public health reason for disregarding the Advisory Committee's advice?

Mr. WEHRUM. Thank you for your question on that important topic, Senator Jeffords. I often tell people there is not a single more important issue that we will deal with in the next couple of years at EPA, in the Air Program at least, than the review of the particulate matter ambient air quality standards. It is an enormously important review and one that we take very, very seriously.

What I can tell you, and what I am sure you know, Senator, is that while a tremendous amount of work has been done already to get us to where we are in the review process, and that includes substantial effort invested in compiling science and understanding the nature of the science, and developing policy recommendations for consideration by myself and Administrator Johnson, we are still only at the proposed rule stage. The comment period is still open, as a matter of fact.

So the proposal includes, and we thought it was very important that it include a particular proposed level for each of the various PM standards that we tentatively believed was correct, and that the Administrator tentatively believed was correct as of the time of the proposal, based on our understanding of the science and the relevant policy issues.

We also felt it was very, very important in this proposal, Senator, to reflect the fact that there is a diversity of opinion among very knowledgeable and informed people on what the right standard should be and how they should be supported and how we should interpret and apply the science.

So our proposal includes a range of other alternative outcomes that we know various folks support. We did that so that we could solicit good, solid public information and additional data and public comment, and have the benefit of that later this year when we have to bring it together and consider that information and make a final decision.

So Senator, we have enormous respect for CASAC. They play a very, very important role in the NAAQS review process. We take their advice very, very seriously, but the short answer to your question is, at least with respect to the proposed primary approach in the regulation, it differed from the CASAC recommendations in some respects. That is exactly right, Senator.

Senator JEFFORDS. As reported in yesterday's New York Times, the EPA is developing a proposal to amend the rules relating to toxic air pollution. A memo from the EPA regions raises numerous questions about the legality and wisdom of this approach. I am going to assume that you were aware of this proposal prior to yesterday, unless you tell me differently now.

Mr. WEHRUM. I was aware of it, Senator, yes.

Senator JEFFORDS. With regard to this proposal, will it require additional reductions in toxic air pollutants beyond current rules? Or will it allow additional emissions of toxic air pollutants when compared to current rules?

Mr. WEHRUM. Senator, again you have asked a highly relevant question, particularly in light of the articles that were published yesterday about this draft proposed regulation. This is a draft proposal that has been underway for some time within our office. In fact, work to my recollection began almost 2 years ago when we first began talking about the possibility of conducting a rulemaking to establish within our rules itself a method for addressing this particular issue.

The Agency has spoken to the question in the past and in an interpretive memoranda issued by our predecessors a number of years ago now, took a position that many people support and many people believe is not the correct position to take on this particular issue.

So it is my belief that it is important for an issue of this nature to be codified in our rules. We should not rely on interpretive guidance documents for important interpretations like this. Part of the value of that is that people can pick up the rule book and know what they have to do, and not have to rely on guidance memoranda that exist in other places and that are sometimes difficult to find.

But also, it is important to go through the public comment process and the notice and comment rulemaking process because that lets everybody with an interest in these issues to offer us their thoughts and we have the benefit of those thoughts as we take final action. So we have not even yet proposed this regulation, Senator.

When we propose, and I hope we propose the regulation sometime soon, we look forward to receiving the public comments so that we understand the diversity of views, we understand better the kind of concerns that were expressed in these newspaper articles, and have the benefit of that as we decide what kind of final action to take.

Senator JEFFORDS. Again, I understand there may be more recent documents related to this proposal than were discussed in yesterday's articles. Will you provide those documents to the committee as part of your nomination process?

Mr. WEHRUM. Senator, I would be happy to work with you and to work with your staff in identifying relevant documents and talking about what we may be able to provide you.

Senator JEFFORDS. I appreciate that response very much. Thank you.

Mr. WEHRUM. Thank you, Senator.

Senator INHOFE. Thank you, Senator Jeffords.

Senator Voinovich.

I quite often say when I am turning it over to Senator Voinovich, he is probably the most knowledgeable person on this committee on air issues. He headed that committee when he was Governor of Ohio, and actually testified before this committee in that capacity.

Senator Voinovich.

Senator VOINOVICH. Thank you, Mr. Chairman.

First of all, Mr. Wehrum, I want to thank you very much for sticking with this Agency and not tipping your hat and leaving it. You have been there since 2001. You would like to be appointed to head up the Air Office. You and I have talked, and in all probability you are going to take a lot of flak from some of the members

of this committee, and they are going to probably stop you from getting it, and the President will probably have to give you a recess appointment.

But I want your family to know how much I really dearly appreciate the sacrifice that this young man has made for our country. I want you to know that. If you read about stuff in the paper about this and that, let me tell you, this is a good man. I worked with him on Clear Skies and he put in hour after hour after hour, an honorable man.

The record of that Agency may be controversial, but the fact of the matter is in terms of our mercury rule, we are the first Nation in the world to have a rule dealing with mercury. It is a reasonable rule, even though some of the members of this committee may not agree with it.

I am also Chairman of the Clean Air, Climate Change and Nuclear Safety Subcommittee. Even though the Chairman and I have a little difference of opinion about the issue of climate change, we have a situation in this committee where one of the members thinks it is the worst problem facing the world, and the Chairman has said on a couple of occasions that it is a hoax.

But the fact of the matter is, that this Administration has done more to deal with climate change than any government in the world. The money that we have spent dealing on technology and so forth to deal with climate change shows that we are doing something. We provide more money to the United Nations probably more money for climate change than all of the rest of the members of the United Nations.

So I think that it is a record that you ought to be proud of. It doesn't mean that there isn't room for improvement.

Now to the issues that I have. No. 1, is I think that the Agency has got to do more about getting the word out about what you indeed are doing. I know that is public relations, but I think it needs to be put forward. I would like you to answer the question as to what you can do to try and clarify more to the public what you are actually doing, and your sincerity about cleaning up our environment and air and the world's air.

The second issue is the one that Senator Inhofe and I have been working on for a long time, and that is to somehow harmonize our environment, our energy and our economy. I am very, very worried about where we are going in regard to that issue because today if you look at the testimony that I read before the Foreign Relations Committee, and by the way, that is where I was. We are talking about a new relationship with India dealing with nuclear power. This country is more reliant today than ever before on foreign oil. The demand for oil is up dramatically, actually a 40 percent increase because of China. The sources of it are less reliable than ever before.

We are really in a very, very vulnerable position. In the area of natural gas, we have the same thing. We have seen industries close down, move to other places like the fertilizer industry. In other words, what has happened here is that for some reason this Nation, I think it is myopic, hasn't recognized that somehow we have to get to the table and work together for our economy and for our national security.

I would like to find out from you, what are you going to do in the 2½ years you are going to have, to try and get these folks to the table to start to put each other's shoes on and realize that if we don't start working together, God help this country. A Stanford report said that in the next 10 years, there is an 80 percent chance of a crisis in the area of oil that could bring us to our knees.

It is a very serious issue today, and we are dealing with these problems, in due respect to Senator Jeffords, like we used to deal with them, Jim, 10 years ago or 15 years ago. But the world has changed. What are you going to do about it?

Mr. WEHRUM. Senator Voinovich, first I want to thank you for your kind words. I appreciate your support. I think we have done a lot of good work so far and I look forward to continuing that trend over the next couple of years.

In response to your first question about public relations and trying to get the message out, that is a very important issue for us. I will be honest and say something that frustrates me, but also energizes me about these issues is that on the one hand people care and they care passionately about environmental issues, and that animates the public debate, and that is part of why I like to do what we do here, because these issues matter to people.

On the other hand, what frustrates me is much of the public debate to my mind is misinformed. People don't understand all the facts. They are relying on limited information and limited voices and limited perspectives. So I think that one of the most important things we can do at EPA is just get full information out there, make sure that people understand the issues, and have the information that is necessary to evaluate those issues, and then the chips fall where they do.

There will always be divided minds on the issues we deal with, but that is part of what makes this country strong and this country great, because we can have these debates. We can feel very passionately, and at the end of the day we pick a path and we go, and we make real progress.

With regard to energy security and just striking a balance, I believe that is enormously important. I think our record to date reflects the efforts that we have made in that regard. The Clean Air Interstate Rule is a great case, a great example of that where public health demands significant reductions in emissions from SO₂ and NO_x and mercury from powerplants. But the public health and the good of society demands that we have a reliable power supply and an affordable power supply to drive the economy, to drive businesses, and to allow people to lead lives with the quality that they do right now.

So we worked very hard and care to establish appropriate limits, to make sure we protect human health and the environment, but to do it in the smartest way we possibly could and still get those results. We are very proud of those results, Senator.

Senator VOINOVICH. My time is up.

Senator INHOFE. Thank you, Senator Voinovich. Let me make sure that we are accurate in quoting what I have said about global warming.

[Laughter.]

Senator INHOFE. I didn't say it was a hoax. I said it was perhaps the greatest hoax ever perpetrated on the American people.

[Laughter.]

Senator INHOFE. I might also add in 1977 I used those same words for the same individuals who are now predicting that the world is coming to an end. Back then it was coming to an end because of an ice age that was coming. I said at that time that it was a great hoax.

Senator Lautenberg.

Senator LAUTENBERG. I am overpowered by your comments, Mr. Chairman.

[Laughter.]

Senator LAUTENBERG. Thanks very much. Despite our somewhat obvious differences in view, there is good friendship and good respect for each other, while I am sorry that the Chairman and some of the others don't see how right I am in my views.

[Laughter.]

Senator LAUTENBERG. Mr. Wehrum, was there a change in the targets for reductions of mercury that was recently put into place where it was expected or believed at one time that it was going to be a 90 percent reduction in 3 years, and now we are talking about a 70 percent reduction by 2018? What occasioned that change of view, can you tell me?

Mr. WEHRUM. Senator, when we proposed our clean air mercury rule, as we came to call it, we love our acronyms at EPA as you know, a CAMR rule. It included two distinctly different mechanisms of regulation. On the one hand, we proposed to regulate mercury emissions from powerplants using the authority of section 112 of the Clean Air Act. I was cautioned against charging out into the weeds, and I will try not to do that, but section 112 is the part of the Act that tells us to establish toxic air emission standards for various sources of pollution.

The second and the alternative proposal was to regulate under section 111, which is the authority we use to set new source performance standards.

Senator LAUTENBERG. Can we clarify and get to the specific targets, as opposed to quotes from the various sections? How we get there is my concern, how quickly we get there is my concern. So are these similar measurements? Are the reductions definable reductions? Are we talking about something that is measurable, something that is clear in its intent?

Mr. WEHRUM. Senator, I guess I would say this. Regardless of the mechanism used to regulate mercury emissions from powerplants, the actual way in which the mercury would be reduced is the same. We had to undertake a very complicated inquiry in preparing both of those proposed regulations as to how we thought mercury emissions could be reduced from powerplants in the relative near future, because that is most important for the toxics rule if we had chosen to do that. As you say, it would have required compliance by existing sources within 3 or 4 years.

So we would have had to identify emissions controls that could be employed now, or close to now, for those powerplants, versus controls that might be available over a longer period of time because we believed and we ultimately promulgated a regulation

based on the idea that we can regulate in phases over time, which is what we have tried to do in part to accommodate advances in technology and to allow those advances to be rolled out through the industry and used to meet later compliance obligations.

So it is a complex area and we had to undertake a very intensive analysis, and that analysis is what caused us to propose what we did on the toxic side and to propose what we did on the mercury.

Senator LAUTENBERG. Forgive the interruption, but I would ask that you submit something in writing to my office and to the committee in terms of how the variation developed, because it is a little complicated. I am very much results-oriented.

Would the report that came out in the newspaper, the now-infamous report as I hear it described here, there was considerable disagreement by the 7 of your 10 regional colleagues. Do you think that 70 percent of your field officers were wrong when they were critical of the attempt to lift the emissions controls on toxic chemicals?

Mr. WEHRUM. Senator, first to respond to your request. We would certainly be happy to work with you in providing additional information about the questions you raise as to how the mercury proposal was put together and the information we had available.

Second, as I indicated a second ago, one of the great things, one of the great attributes of EPA is it still is a very collaborative work environment. We have a lot of very capable people, people who understand the issues and frankly people have diverse opinions on where we should go on these issues. You see that reflected in our policy debates. You see that reflected in the articles like you saw yesterday in the Post and the Times. But that is part of what makes us strong.

We have the ability to accept diverse opinions. We have the ability to factor that into our decisionmaking and ultimately that does result in better policies, better regulations, and a better approach for the Nation. So I think you are seeing a great process in action, and as I said a little while ago, we haven't even proposed this rule yet. We are still working on the draft proposal. So I am hoping to get that done soon, and then I am hoping we can have the debate in earnest in public by way of the public comment period.

Senator LAUTENBERG. Well, if I may just say, "the Regional Offices therefore appreciate the opportunity to review and comment on the drafts. However, we are disappointed that the OAQPS formulated revisions to the OI/AI policy without seeking Regional input and was reluctant to share the draft policy with the Regional Offices. This trend of excluding the Regional Offices from involvement in rule and policy development efforts is disturbing."

Do you consult with the regional offices? Do you credit them? You said that individuals have diverse opinions and that makes it more challenging. I don't know. These are experienced people, are they not, who have had these important assignments in the field?

Mr. WEHRUM. Sure. We rely a lot on the efforts and the judgment of our regional offices. In fact, we have a structure in place by which we provide draft regulations of the sort that we are talking about here, to the regional offices for their review and for their input. That is a normal part of the process and that is the process that you see unfolding in front of you now.

Senator LAUTENBERG. So then they are just plain wrong?

Mr. WEHRUM. Well, they care deeply about the opinion and I am glad they care deeply about the rule. I am glad they expressed their opinion and we are certainly going to make sure they have a seat at the table as we go forward, Senator.

Senator LAUTENBERG. Thanks, Mr. Chairman.

Senator INHOFE. Thank you, Senator Lautenberg.

Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

I just want to ask Mr. Gulliford, how is the hearing going?

[Laughter.]

Mr. GULLIFORD. Senator, thank you for your question. It is going very well for me.

Senator CARPER. It is nice to have you here. I am sorry I didn't get to meet your family.

Mr. Wehrum, I am delighted to have met part of yours. I understand your wife is from Delaware?

Mr. WEHRUM. That is correct.

Senator CARPER. I am sorry she couldn't join us today, but thank you for coming, and thank you both for your service to our country.

Mr. Wehrum, last October, I am sure you recall, you joined Administrator Johnson and a number of your colleagues from EPA to make a presentation to this committee following a modeling that was done on Senator Jeffords' proposal for a multi-pollutant bill, the Administration's proposal and a bipartisan proposal that I had worked on with a number of our Republican colleagues.

One of the questions that has consistently come up since that presentation involved EPA's determination that under our bill, the Carper-Alexander-Chafee bill, that there would be about a \$1 offset for a ton of carbon from our proposal.

Let me just ask, do you have any idea how EPA came up with that conclusion?

Mr. WEHRUM. Yes, Senator Carper. The provisions in the Clean Air Power Act imposed mandatory carbon requirements on the power sector, but allowed that obligation to be satisfied by achieving offsets that could be obtained outside of the industry. So our estimate of the cost of the offsets that would be necessary for compliance was a dollar or two a ton. It was based largely on the fact that the powerplants could go off-sector and find other ways to satisfy that obligation.

Senator CARPER. I think you may have answered this. Let me ask this anyway, what is it about our proposal that allows offsets to be purchased so cheaply, for example, compared to the cost of similar approaches, say, in Europe?

Mr. WEHRUM. Well, an excellent comparison is the Clean Air Power Act versus the legislation introduced by Senator Jeffords, which also included mandatory carbon constraints, but required those reductions to be achieved in-sector. We estimated that the cost of those provisions would be very high because it would require significant fuel shifting out of coal and into natural gas and other forms of generation that produce much less carbon.

So that is a good basis of comparison, where the ability to go off-sector in your legislation resulted in an estimate of much less cost

than the comparable, or at least similar provisions in Senator Jeffords' legislation.

Senator CARPER. So when you say "off-sector," we are talking about the ability for an emitter, somebody that is putting out the carbon dioxide, to go to a farmer and say we would like for you to change the way you till your fields, the way you run your animal feedlots, to encourage the maintenance or actually the planting of additional forests? Is that the sort of thing you are talking about?

Mr. WEHRUM. That is correct, Senator.

Senator CARPER. All right. We had quite a public dispute over the last really 3 years trying to get information out of EPA. You may recall we tried for, I guess starting in 2002, to try to get EPA to model Senator Jeffords' proposal, the President's proposal and our bipartisan proposal with respect to the health consequences of each of the three, what are the economic consequences of each of the three approaches, what are the environmental consequences of each of the three.

It took forever to get the modeling done. I think back in 2004, we got a letter from EPA that said that this committee was not preparing to move multi-pollutant legislation that year, and EPA would not conduct the analysis that we were seeking. That was just one of a variety of responses that slowed down the process.

I think if EPA had actually done the analysis that we requested starting in 2002 or 2003, we may have a bill passed and enacted at this point in time. I am pleased we finally got the analysis. I frankly was pleased with the analysis itself. But I guess my question is, could you just take a minute and explain to us how, if you were actually the Assistant Administrator for Air, and you are running the office, how your office's cooperation might be any different than it was for those 3 years when you were the prior Assistant Administrator's chief advisor?

Mr. WEHRUM. Senator, I was not involved in all the discussions related to the analysis that was conducted on the various competing legislation. Your question was mostly forward looking, and what I can tell you is I will commit to work with you and your staff and with other members and the Chairman, to identify information needs and analytical needs that you have, and I will try to work with you to satisfy those needs.

Senator CARPER. I hope so.

The last thing I want to mention, I am going to submit one question for the record on the toxic inventory question. But I understand that not too long ago, maybe a month or so ago, EPA published a study, I think it was centered in Ohio, where you looked at the mercury that is coming back down onto the ground from sources emitted. They found out, I understand the EPA study said about 75 percent of the mercury that was measured coming back down to earth in Ohio was found to have come from sources within 400 miles or less of where it came back to the earth.

The Administration's is proposing to deal with mercury in a multi-pollutant bill on a cap-and-trade system. I question the wisdom of the cap-and-trade approach on mercury, given the results that you just published from Ohio.

I would just ask you, how do you reconcile the two? The EPA approach and the analysis from Ohio?

Mr. WEHRUM. Senator, there are two aspects to your question I would address. The first is how did those results, which were a product of measurements in the field, folks went out and took samples and did the analysis, how did that compare to the analysis that we did just before the Clean Air Mercury Rule? The answer is, it squares up pretty closely. They are not exact and we wouldn't expect them to be exact, but they square up pretty closely.

Our models predicted significant deposition in the Steubenville area, which is the area addressed by the study, from domestic powerplants and that is exactly what the Steubenville data seemed to show. That report has not been published yet, so it is not final, but it is getting close.

So we were frankly gratified by that. It shows that there is a pretty high degree of consistency between our analysis and the actual study that was done with Steubenville.

The second thing I would say is when you look at the further analysis we did with the Clean Air Mercury Rule, you see that we predict substantial reductions in deposition in the Steubenville area on the order of 70 percent to 80 percent, after application of the Clean Air Mercury Rule. So we predicted and the analysis shows there is deposition attributable to domestic powerplants and our analysis further shows that that will be substantially addressed by application of the Clean Air Mercury Rule.

So we think that is very important information and certainly helpful to us as we assess the implementation of the Clean Air Mercury Rule.

Senator CARPER. I don't have time to get into it further. It would seem strange to me if in our cap-and-trade system with respect to Steubenville, I am almost done here Mr. Chairman and I know my time has expired, but for Steubenville to go out maybe to folks in Des Moines or someplace in Nebraska or South Dakota or North Dakota and say, well, we are going to get you to work out a deal where they reduce mercury emissions there in order to help offset the situation in Steubenville, that just doesn't add up.

I think the EPA's own analysis would undermine that argument. That is an argument, I guess, for another day, and we will have a chance to revisit it.

But I have a question, Mr. Chairman, that I want to submit for the record on the toxic release inventory changes that EPA is proposing. We welcome your input there.

Thank you.

Mr. WEHRUM. Thank you.

Senator INHOFE. Thank you, Senator.

I understand that Senator Jeffords has one more question. That is perfectly all right.

Senator JEFFORDS. Mr. Gulliford, your academic training was in forestry and most of your professional experience relates to soil conservation issues. Please describe your experience on toxic substances and chemical issues.

Mr. GULLIFORD. Thank you, Senator, for the question.

My last 4 years working at EPA in Region VII in Kansas City, we have done a lot on what I consider the application of the work that OPPTS does here in headquarters. They develop the programs. They develop the risk assessments that are helpful to us in

setting thresholds for cleanups on our Superfund work that we do, our site cleanups that we do.

As we analyze programs in the field, we look to that information. Another toxics area that we worked at, we have one of the few sites in Coffeyville, KS, where PCBs are actually processed and treated and dealt with. We permit that site, for example. We do the inspections on that site to assure that they are meeting the terms of their permits. So there are a lot of application sites to the toxic program that we implement in the fields, and that is what I have been a part of in Region VII.

Senator INHOFE. Thank you very much, and thank you to both the witnesses. It has been a long morning. We appreciate your straightforward answers.

We are adjourned.

[Whereupon, at 11:35 a.m., the committee was adjourned.]

[Additional statements submitted for the record follow.]

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

Mr. Chairman, thank you for holding this hearing. I welcome the three very qualified individuals before us this morning who have been nominated for key positions at the Department of Transportation and Environmental Protection Agency. I first want to thank all of you for your willingness to serve, and even more importantly, I thank your families for their sacrifices.

Our first nominee this morning is Richard Capka to be Administrator of the Federal Highway Administration. You have extensive experience in dealing with our nation's and the world's infrastructure. In addition, I know you were very helpful in helping begin the restoration process in the Everglades. With Masters Degrees in Engineering and Business Administration, you served in the Army Corps of Engineers, for the State of Massachusetts, and as Deputy Administrator for FHWA since 2002.

I have become increasingly concerned that we are ignoring our physical infrastructure needs. According to FHWA's 2002 Conditions and Performance Report, \$106.9 billion through 2020 is needed annually to maintain and improve our highways and bridges. To address this need, I introduced the National Infrastructure Improvement Act of 2006 (S. 2388) with Senators Carper and Clinton. I hope to hear your thoughts on this legislation and how we can address our needs.

Second, we have James Gulliford who has been nominated to be Assistant Administrator of EPA's Office of Prevention, Pesticides, and Toxic Substances. In addition to serving as EPA's Region 7 Administrator, you bring more than 25 years of experience of administering environmental programs pertaining to agriculture and mining including for the State of Iowa.

The last nominee is Bill Wehrum to be Assistant Administrator for EPA's Office of Air and Radiation. When EPA Administrator Steve Johnson was before this committee for his hearing, I told him that he was taking on one of the most difficult positions in the Federal Government. Bill, this is the most difficult job within EPA. As I told the Administrator, no matter what you do it is either too far for industry or not enough for the environmental groups.

The fact of the matter is that you understand this very well. You currently serve as the Acting Assistant Administrator and were counsel since 2001. In addition, you bring a wealth of experience and knowledge to the position as a Registered Professional Chemical Engineer and former environmental attorney. As Chairman of the Subcommittee on Clean Air, Climate Change, and Nuclear Safety, I have had the pleasure to work with you over the past few years and found you to be balanced, conscientious, and hard-working. I look forward to working with you more on how we can better harmonize our environment, energy, and economic regulations.

Again, I thank all you for being here today and for your desire to serve this country.

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

Thank you, Mr. Chairman. I would like to join you in welcoming the nominees this morning. Mr. Capka has been nominated to be the Administrator of the Federal Highway Administration (FHWA). Prior to his appointment in the FHWA, Mr. Capka oversaw the Massachusetts Turnpike Authority after a 29-year career with the Army Corps of Engineers. At the Turnpike Authority he directed oversight of the \$14.5-billion Central Artery/Tunnel project in Boston, the largest and most complex infrastructure project in the United States. I look forward to working with Mr. Capka to ensure that civil projects continue to be completed on a prompt and fiscally responsible schedule and that the safety of our interstate highway system continues to improve.

This morning, the committee is also considering two nominees to be Assistant Administrators at the Environmental Protection Agency (EPA). Mr. Gulliford has been nominated to serve as the head of the EPA Office of Prevention, Pesticides and Toxic Substances. Mr. Gulliford currently serves as the EPA Region 7 Administrator, and has a great deal of experience with pesticide issues and natural resource management in the Midwest. Should Mr. Gulliford be approved for the Assistant Administrator position, I encourage him to visit Rhode Island and other New England States where lead and other toxic substances such as mercury continue to be plague our housing stock and our aquatic environments.

Mr. Wehrum has been nominated to serve as Assistant Administrator for the EPA Office of Air and Radiation. After serving with EPA for nearly 4½ years and several years in private law practice on air regulatory issues previously, Mr. Wehrum has a great deal of expertise in the Federal air policy arena. I agree with Mr. Wehrum that this Nation continues to have challenges ahead in terms of attaining clean air, but we have also come a great distance. While I continue to oppose the Administration's Clear Skies proposal, I remain a strong supporter of the cap-and-trade concept for addressing the four major pollutants from the powerplant sector. I look forward to continuing to work with this committee and EPA to craft a Clean Air reauthorization bill that moves us toward the ultimate goal of clean air for all Americans.

I look forward to hearing from each of the nominees. Thank you.

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

Mr. Wehrum comes before the Senate Environment and Public Works Committee today as President Bush's nominee to the position of Assistant Administrator for Air and Radiation at the Environmental Protection Agency. For several years now, Mr. Wehrum has been an influential attorney in the EPA air office. In that role, he has shaped and promoted a series of Agency decisions that needlessly threaten to prolong and even increase the high concentrations of industrial air pollution that millions of Americans are forced to breathe. Unfortunately, a review of even just a sample of the harmful initiatives that have emanated and continue to emanate from EPA's Air Office with Mr. Wehrum's active participation and support raises troubling concerns about this nomination. These episodes and several others will be the subject of written questions that I will submit to Mr. Wehrum.

By his own account, Mr. Wehrum was deeply involved in developing the so-called "Clean Air Mercury Rule" that EPA issued on March 15, 2005. That rule rescinded the Agency's prior commitment to mandate that, within 3 years, coal-fired powerplants control their toxic mercury air pollution to the maximum extent achievable. In place of that unmet promise, which would have yielded 80 to 90 percent cuts in mercury emissions at each of the Nation's coal-fired plants by 2008, EPA left the public with a rule that will take until sometime after 2026 to reduce coal-plant mercury emissions by 70 percent. Moreover, the rule will allow many coal plants to avoid substantial control by buying mercury emissions credits from cleaner plants. In a study recently conducted at a site in the Ohio River Valley, 70 percent of the mercury found in the rainwater originated at nearby coal-burning plants. The fact that mercury emissions might decrease elsewhere in the country will be no consolation for the families living near plants that buy permission to keep their emissions high.

Mr. Wehrum was also a central participant in EPA's October 2003 promulgation of an "Equipment Replacement Provision" that dramatically expanded a regulatory exemption from the Clean Air Act requirement that large industrial facilities accompany emissions-increasing renovations with the installation of up-to-date pollution controls. Two months before EPA issued the final provision, the General Accounting Office determined that EPA's stated reasons for the change were based on self-serv-

ing, unsubstantiated industry anecdotes, rather than on reliable data. Shortly after EPA published its rule change, the U.S. Court of Appeals for the District of Columbia stayed the action after finding that it was likely unlawful and would cause irreparable harm to the public if allowed to take effect. Nine months later, EPA's inspector general found that the Agency's support for the expanded exemption had already "seriously hampered" Clean Air Act enforcement against coal-fired powerplants and that the exemption would "result in significant amounts of lost emissions reductions."

Despite mounting condemnations from both within and outside of EPA, Mr. Wehrum and his colleagues refused to rescind the expanded exemption. On March 17, 2006, however, a unanimous panel of the D.C. Circuit found the EPA rule unlawful and vacated it. The panel wrote that EPA's attempted legal defense of the rule a defense crafted in no small part by Mr. Wehrum would make sense "[o]nly in a Humpty Dumpty world."

Rather than abandoning its misguided effort to undermine the Clean Air Act, Mr. Wehrum's air office is forging ahead with a new proposal to neutralize the same pollution-control requirement that it unsuccessfully targeted in its 2003 rule. EPA's stated goal for the new rule is conformity with the result of a decision by the U.S. Court of Appeals for the Fourth Circuit, which rejected EPA's longstanding interpretation of key Clean Air Act language. That Fourth Circuit interpretation was later superseded, however, by a D.C. Circuit holding that upheld the erstwhile EPA position in a decision that, by law, establishes the governing rule across the entire country. Thus, EPA is ignoring a binding court decision in order to bring air-quality protection across the entire country down to the level prescribed by a ruling that never applied outside of one region and is in any event no longer controlling law. Mr. Wehrum's office is again pursuing an approach that would make sense only in a Humpty Dumpty world. The current, ill-conceived EPA air initiative, like the one in 2003, is having a negative impact even before it becomes a final rule. Just last week, the power company defendant in one of the largest-ever Clean Air Act enforcement suits filed a brief in the U.S. Court of Appeals for the Sixth Circuit arguing that it should not be liable for its pollution increasing activities since, under EPA's new proposed rule, those activities would not trigger the Clean Air Act's control requirements.

I cannot close without briefly mentioning two additional, related examples of the work that Mr. Wehrum has done in EPA's air office. Mr. Wehrum has been an enthusiastic advocate of a multi-pollutant powerplant bill that fails to address carbon dioxide pollution. He has also helped to craft a recently issued EPA interpretation of the Clean Air Act that makes it easier for companies building new coal-fired powerplants to avoid using technology that sequesters carbon dioxide waste so that it can be placed into permanent storage. Carbon dioxide pollution from powerplants is contributing to man-made climate change on a global scale. We must start achieving substantial cuts in that pollution now if we are to avoid devastating harm to our economy and the health and the wellbeing of our population. I find deeply disappointing the persistent aversion of senior EPA officials to meaningful action to address this problem. As for EPA's steps to hinder the spread of technology that could allow us to continue relying on coal without worsening global warming, those actions simply defy explanation.

I urge Mr. Wehrum, in responding to my questions and concerns, to indicate whether he has changed any of the views that led him to advocate policies that I find starkly antithetical to the Environmental Protection Agency's mission. I also encourage him to pledge specific steps that he would take as assistant EPA administrator to return the Agency's air office to the task of achieving the dramatic reductions in industrial air pollution that, as EPA's own studies show, return benefits to the American public far in excess of the costs those cuts impose on industry.

STATEMENT OF RICHARD CAPKA, NOMINATED TO BE ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION

Chairman Inhofe, Senator Jeffords and members of the committee, I appreciate the opportunity to appear before you today as you consider my nomination to be the Administrator for the Federal Highway Administration. I am honored to have earned the confidence of the President Bush and Secretary Mineta for this important position. But I know, Mr. Chairman, that you and the committee have a very important obligation to the American people. If confirmed, I pledge to work with this committee and Congress to ensure our Nation is strengthened through the work done at Federal Highways.

It is an honor to be presented with an opportunity to continue to serve our great Nation. Most of all I am honored, proud and blessed to have the love and support of my wonderful wife, Susan; and a family of our two sons, our daughters-in-law, three grandsons and three grandchildren who are on the way. They have been beside me for a career of public service that includes almost 30 years of proudly wearing the uniform of a career military officer in numerous assignments here and abroad while commanding some of the finest organizations in the U.S. Army Corps of Engineers.

Upon retirement I continued my public service as a professional engineer by accepting a challenging opportunity to serve in Massachusetts and manage one of the Nation's largest and most complicated public works projects. There, I earned the praise of the DOT-IG while establishing, for the first time, a budget with the appropriate controls that has enabled cost forecasts to remain unchanged through today. It became the basis for the Federal approval of the Central Artery's 2002 Finance Plan and has remained unchanged through today.

I have also served the last 3½ years in Washington addressing the Nation's transportation needs as the Deputy, and now, Acting Administrator for the Federal Highway Administration. I have focused my energy on increased stewardship of the Federal Aid Highway program, providing effective Federal response to natural disasters, reducing highway fatalities, relieving congestion and efficiently addressing the needs of our Nation's highway requirements.

I had a unique opportunity when I retired from military service. I was able to select a new career direction from a number of different opportunities. Without hesitation I chose transportation. I did so based upon my personal, worldwide observations of the positive correlation between the quality of a Nation's transportation system and the strength of that Nation's economy and quality of life. Our Nation's economic strength, our security, our individual freedom to travel, and our quality of life are all tied to the quality of our transportation systems.

I have learned over the years that the greatest accomplishments are not the results of a single individual's efforts but the combined, collective efforts of a "team of teams" one that is focused on a clear mission and motivated with a common understanding of success. I have learned through the management of many large projects, programs and organizations that, no matter how challenging, the "technical engineering" is often the easy part of the delivery process. The engineers will tell you, "Just tell us what you want done, provide us the resources and we'll get it done!" But I have learned that it takes a great deal of synchronized effort from a skilled pool of diverse talent across a wide and varied set of stakeholder interests to get to the point of knowing what needs to be done and providing the direction. Whether achieving an important piece of legislation such as SAFETEA-LU, responding to a disaster, solving a complex environmental issue or delivering a complex megaproject, the quality of success will be directly related to the quality of the team. If confirmed, teamwork at all levels has been and will always be my focus.

If confirmed, I will look at the prospects of this new opportunity to serve with optimism and enthusiasm. I see opportunities for us to improve the system that we have. We will be celebrating the 50th Anniversary of our Interstate Highway System on June 29 of this year yet our Nation faces significant challenges to the continued success of our highway and multi-modal surface transportation systems. It's tragic that nearly 43,000 Americans are killed on our roads every year. Congestion is not only clogging the routes to and from work and recreation it is also clogging the movement of freight that is so vital to our economy. The quality of our environment and the vitality of our communities all depend upon the quality of our transportation planning, program delivery and the efficient management of what we have.

Innovation must and will be at the heart of our solutions and I am excited about the prospects of helping to create an environment that encourages innovation from all sectors of the transportation community: innovative materials and techniques, innovative policy, and innovative partnerships. Solutions will require the serious attention, coordination and cooperation among a whole range of stakeholders, at all levels of the public sector, the private sector and academia. With your confirmation I would be excited about the prospects of working with the commissions that you have wisely chartered to address these very issues as we move toward our next re-authorization.

I have been honored to be part of a great team of dedicated professionals who make up the Federal Highway Administration and the State Departments of Transportation. I have learned great respect and admiration for the whole host of stakeholders who make up the transportation community and, if confirmed, I will look forward to continuing solid and very productive relationships.

If confirmed, I will continue to work with my colleagues at U.S. DOT, at other Federal and State agencies, and with other transportation stakeholders. Most importantly, if confirmed, I will work diligently with you and Congress to both effectively carry out SAFETEA-LU and to help shape the future of surface transportation.

Again, thank you, Mr. Chairman, and members of the committee. I look forward to answering your questions.

RESPONSES BY RICHARD CAPKA TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. Highway Trust Fund.—By all estimates, the Highway Trust Fund will run out of money by the end of the life of this bill. This year's budget proposal shows the trust fund running out of money late in fiscal year 2009. This is obviously of great concern to all involved. Secretary Mineta has taken the position that we should wait and see what receipt estimates look like next year.

The President's fiscal year 2006 budget proposed adjusting how we account for certain fuel tax refunds, specifically ending the current practice of the Trust Fund reimbursing the General Fund for certain types of tax refunds that are of questionable benefit to highway users. This change would have resulted in about \$1 billion a year of additional funds being credited to the trust fund. Wouldn't it have been prudent to include a similar proposal in the fiscal year 2007 budget to put the estimates back in the black?

Response. Chairman Inhofe, we are optimistic that the outlook for the Highway Trust Fund's status will improve. Currently there is sufficient funding available in the highway trust fund to meet the near term cash demand. The President's fiscal year 2007 budget has not proposed to depart from the authorization spending levels. The Administration is monitoring the highway trust fund balances closely. If confirmed, I will continue to apprise Congress of its status.

Question 2. Environment.—SAFETEA-LU included several environmental provisions that will require regulations or guidance to implement. Could you tell me where we are in implementing these provisions? In particular, I am interested in hearing how soon we will see something on the surface transportation project delivery pilot program, 4(f) and transportation conformity.

Response. Chairman Inhofe, the Federal Highway Administration (FHWA) has begun implementation of SAFETEA-LU's environmental provisions. Implementation guidance has been posted on the Agency's Web site and we will continue to update those materials. We have several significant actions underway.

On April 5, 2006, FHWA published a notice of proposed rulemaking (71 FR 17040), which provides the application requirements for the surface transportation project delivery pilot program. The final rule will be supplemented with guidance concerning audits, performance measures, legal responsibilities, and termination of the pilot program.

Section 6009 of SAFETEA-LU amends the section 4(f) statute to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by section 4(f). FHWA is currently working with the Federal Transit Administration (FTA) on the NPRM to establish standards for use in determining alternatives that are feasible and prudent, as required by section 6009. On December 13, 2005, FHWA and FTA jointly issued guidance entitled "Determining *De Minimis* Impacts to Section 4(f) Resources." FHWA also issued guidance for applying the 4(f) exemption for the Interstate Highway System on January 13, 2006.

Section 6011 of SAFETEA-LU made a number of revisions to the Clean Air Act's transportation conformity provisions. On February 14, 2006, the Environmental Protection Agency (EPA) and the U.S. Department of Transportation issued joint guidance to address these revisions and explain how to implement these changes during the period before the Federal transportation conformity rule is revised. Section 6011(g) requires that EPA, within 2 years of the date that SAFETEA-LU was enacted, revise the transportation conformity rule as necessary to address the new statutory provisions.

Question 3a. Highway Safety.—Since the passage of SAFETEA-LU, how has the Federal Highway Administration assisted states in developing their strategic highway safety plans outlined in section 1401 of the Act, and what steps do you plan to take in continuing these efforts as the target date for completion of State safety plans draws near (October 1, 2007)?

Response. Chairman Inhofe, FHWA has taken a number of steps to assist States in developing their Strategic Highway Safety Plans (SHSP). In October 2005, FHWA, in conjunction with the National Highway Traffic Safety Administration,

Federal Motor Carrier Safety Administration, Federal Transit Administration, and Federal Railroad Administration, issued interim guidance on SHSPs that provided the background for discussions at the Strategic Highway Safety Plan Peer Exchange in November 2005. At the Peer Exchange, all States were invited to share experiences, best practices, and questions. FHWA also conducted a “listening session” at this conference to solicit input on guidance needs.

Subsequent to the conference and after presenting and discussing SHSP requirements across the country at various State and regional meetings, on April 6, 2006, FHWA issued final guidance entitled “Strategic Highway Safety Plans: A Champion’s Guide to Saving Lives.”

Assisting the states in this endeavor is important to me. If confirmed, FHWA will continue working with States to meet the deadline for developing SHSPs.

Question 3b. Do you expect all states to achieve compliance with their safety plans within the timeframe designated in SAFETEA-LU?

Response. Chairman Inhofe, I expect all States will have developed and implemented a Strategic Highway Safety Plan by October 1, 2007. Approximately 22 States had some form of a strategic or comprehensive highway safety plan prior to the passage of SAFETEA-LU. Since the enactment of SAFETEA-LU, FHWA has been working with the States to create new plans and to bring existing plans into compliance with the new requirements.

Question 3c. Have you encountered any obstacles or identified any areas that need improvement specifically within the safety provisions of SAFETEA-LU?

Response. Chairman Inhofe, SAFETEA-LU provides a major improvement overall for the future of highway safety, particularly with the emphasis on strategic safety plans and the comprehensive nature of the highway safety requirements. I believe the current program structure will serve us well over the coming years.

Question 4. Leasing of Toll Roads.—There have been two very high profile cases of private partnerships paying billions of dollars for long-term leases of existing toll roads: the Chicago Skyway and the Indiana Toll Road, which has not closed yet. The two deals are very different. Indiana intends to use the proceeds for transportation uses while the Chicago does not. The Chicago Skyway received very few Federal-aid highway dollars, however, I am concerned about the potential leasing of a road that has received substantial Federal investment and where the proceeds would not go to transportation improvements.

I know FHWA has been following these types of deals very closely. What are your thoughts on a constraining the use of proceeds from the lease of a road that has received Federal investment?

Response. FHWA has examined the issue of the use of proceeds from the sale or lease of a highway. Section 156 of title 23, U.S. Code, applies to toll road sale and leases. That section provides that if any of the real property (including land and any improvements thereto) for the sold or leased toll road was acquired with Federal assistance, the State is required to use the Federal share of the net income from the sale or lease only for projects that would be eligible under title 23, U.S. Code. The non-Federal share is not subject to this restriction.

If confirmed, I will ensure that the provisions of title 23 are enforced appropriately. While I would personally prefer that all proceeds be reinvested in transportation-related activities, I would defer to the State to determine how the non-Federal share will be used.

Question 5a. Emergency Relief Program.—Based on your experience, most recently at FHWA, and also your leadership role in the Federal flood system recovery response to the 1997 California floods, do you feel that the Emergency Relief Program has responded well to damage caused by Hurricane Katrina? Given your latest experience, what changes would you make in the program or its management?

Response. Chairman Inhofe, I am satisfied that Federal and State highway response to Hurricane Katrina and other recent natural disasters was timely, effective, and appropriate. The successful response is attributable largely to the relationship between Federal Highway Administration Division Offices and State departments of transportation, which existed prior to the disaster. Our Division Office staff in the affected States were immediately available to the State departments of transportation to provide program and technical assistance, as well as preliminary surveys and inspections of damaged roadways. For Louisiana and Mississippi, each State received a small amount of Emergency Relief funding to help get them started in the recovery of damaged Federal-aid highways, even as more detailed assessments of damage were taking place.

We are evaluating our experiences with the Emergency Relief program based on the response to the recent Gulf Coast hurricanes. That evaluation will help us deter-

mine what enhancements could be made to the Emergency Relief program and its management. We also plan to incorporate the results of findings and recommendations from reviews of the Emergency Relief program by the U.S. Department of Transportation's Office of Inspector General and by the General Accounting Office that are underway.

Question 5b. What actions is FHWA taking to prevent fraud and abuse in Emergency Relief Program supported projects?

Response. Chairman Inhofe, financial stewardship is a very important issue to me personally. If confirmed, I commit that it will remain a top priority at the Agency. FHWA is undertaking a number of actions to prevent fraud and abuse in Emergency Relief program supported projects. Under the Emergency Relief program, States must apply for reimbursement for eligible expenses. FHWA reviews these applications to ensure the Emergency Relief funding is spent on eligible work. Additionally, Emergency Relief funding is not disbursed until FHWA has received a legitimate bill.

All contracts for permanent repairs are competitively bid, since the competitive bid process ensures that awarded contract costs are as reasonable as possible. Contractors' payments are based on the actual work performed with inspection, oversight, measurement and payment provided by the State department of transportation. Payment is based on competitively bid unit prices.

Question 5c. The Administration sent up a supplemental appropriations request on October 28, 2005 to pay for the Emergency Relief claims from Katrina, Rita and everything prior.

Since then, estimates for Katrina and Rita related repairs have increased, preventing the backlog from being cleared out. Why has the Administration not submitted a new request to liquidate the backlog (as was their intent at the time of the last submission)?

Response. Chairman Inhofe, the magnitude of the natural disasters, which have occurred over the past 2 years, has exceeded the capacity of the Emergency Relief program. FHWA has had to rely on supplemental appropriations to address the additional needs of the Emergency Relief program in the past couple of years. We have provided necessary information to Congress about the Emergency Relief backlog, as well as the Gulf Coast Emergency Relief needs. We are continuing to work with the Gulf States to further refine what costs are eligible for Emergency Relief funding as a result of the 2005 Gulf Coast hurricanes. If confirmed, I will continue to work Congress to address the backlog needs.

Question 6. Open Road Tolling.—The 2007 President's budget included a proposal to transfer \$100 million from states' formula funds to a new program to facilitate and encourage the use of open road tolling initiatives (which is a form of tolling without the toll plazas). This program was not included in the Administrations reauthorization proposal and comes just a few months after passage of the reauthorization bill. I was a bit surprised to see a new program included in the budget so shortly after passage of SAFETEA-LU. I am also a bit confused about the actual purpose of this funding. Any projects that would qualify for a grant under this program would have to be well on the way to developing or implementing a qualifying tolling mechanism. Do you think that this money would actually generate any new open road tolling projects or is it just rewarding projects already in the works? I'm not sure taking \$100 million from the states formula funds to reward a specific type of project is the best use of our limited funding.

Response. Chairman Inhofe, it is critical that we initiate activities that will advise all of us about the viability of options that may exist to help address the many challenges that will certainly face the Highway Trust Fund at the expiration of SAFETEA-LU. We intend to use the Open Roads program to facilitate new projects that will demonstrate the value of innovative ways to finance highways. We hope that an Open Roads applicant will test pricing on a broader network of roads to better demonstrate the potential for financing highways as a network, rather than as a single facility.

The \$100 million of proposed funding will assist up to five States in demonstrating and evaluating innovative and more efficient methods of charging for the use of major portions of their highway system. In implementing the program, we will look for innovative mechanisms that can augment existing sources of State (not Federal) highway funding, enhance highway performance, and reduce congestion. The lessons from this pilot program will inform the next reauthorization act.

Question 7a. Research.—What is your vision for the FHWA's research program, particularly the primary objectives and key deliverables of that research?

Response. Chairman Inhofe, FHWA's research program is mission-oriented and stakeholder driven. Our mission is to enhance mobility through innovation, leadership, and public policy. One of the roles that we have defined for ourselves is to be innovators for a better future. I think that the research we are conducting is critical to the future of success of highway planning. My goal will be to identify, develop, and accelerate the transformation of new ideas into better transportation systems, processes, and services.

Question 7b. As you know, SAFETEA-LU includes a provision that calls for research for the advancement of processes and products related to the three major building blocks of highway construction: concrete, asphalt, and aggregate. How do you intend to administer this program to ensure that all stakeholders' interests are equitably and adequately represented?

Response. Chairman Inhofe, if confirmed, I will engage stakeholders from a variety of disciplines, including State and local agencies, metropolitan planning organizations, academia, and industry. Technology or innovation end users will be engaged early in the process to help ensure successful research, deployment, implementation, and evaluation. FHWA considers merit reviews by stakeholders to be vital to the continued success of our research and technology program.

Question 7c. TEA-21 included both a provision and a formula for applied research for materials used in highway construction. TEA-21 specifically calls for an 80/20 match by industry toward the FHWA's research program, and notwithstanding that fact, that ratio has been altered to 50/50. What is the status of the proposed match waiver? When and how do you expect to resolve this issue so that the research agenda may be advanced without further delay or interruption?

Response. As you know Chairman Inhofe, section 5101(b) of SAFETEA-LU changed the Federal cost share requirement for highway research to 50 percent. If confirmed, I intend to honor Congress' intent that a 50 percent match be required for highway research projects. I am committed to working with industry leaders to carry out and maximize the effectiveness of the infrastructure research and technology programs, and we look forward to working with the Congress to ensure that Federal research programs are administered as effectively as possible.

Question 8. Private Activity Bonds.—How is the FHWA coming along in implementing the Private Activity Bond program?

Response. Chairman Inhofe, FHWA, the Office of the Secretary, and the Department of the Treasury are working closely on the implementation of this provision. We worked with these offices to develop the notice published January 5, 2006, in the Federal Register (71 FR 642-01), which solicits applications for authority for tax-exempt financing of highway projects and surface freight transfer facilities.

The January 5, 2006, Federal Register notice solicits requests for such allocations from interested entities that meet the statutory requirements. There is no window for applications; rather, applications will be accepted at any time. Further, the notice explains that there is no specified form for the applications and no specific standards, beyond those in applicable laws or regulation that apply to the consideration of the applications. Upon receipt, U.S. DOT will consider an application in light of the applicable statutory requirements and the availability of tax-exempt authority for the type and location of the project for which the allocation is requested. U.S. DOT is particularly concerned that once an allocation is made, the tax-exempt bonds are issued in a timely manner. If agreed upon schedules are not met, the allocation of bonding authority can be withdrawn.

Together with the Office of Assistant Secretary for Transportation Policy, which has the lead for implementing this provision within U.S. DOT, we have already met with several prospective applicants for private activity bond allocations. The first applications for allocations are expected over the next 3 to 6 months.

RESPONSES BY RICHARD CAPKA TO ADDITIONAL QUESTIONS
FROM SENATOR VOINOVICH

Question 1. I introduced the National Infrastructure Improvement Act of 2006 with Senators Carper and Clinton. This legislation will address the deteriorating conditions of our nation's roads, bridges, drinking water systems, dams, and other public works. If enacted, the legislation will create a National Commission on Infrastructure of the United States charged with aiding in the nation's economic growth and ensuring the ability of the nation's infrastructure to meet current and future demands. What are your thoughts on this legislation? In particular, what steps do you believe need to be taken in order to improve our nation's infrastructure to ensure continued long-lasting economic growth?

Response. Senator Voinovich, the Administration and I strongly support the need for the study of present conditions and future needs. We must ensure that our nation's infrastructure needs are identified and prioritized before we develop a coordinated strategy that addresses those needs. SAFETEA-LU establishes two commissions to address surface transportation needs and financing that should assist the Administration and the Congress in formulating the next generation of surface transportation legislation. I note that your bill calls for coordination with the Commission established by section 1909 of SAFETEA-LU. I believe these Commissions will assist us immensely in identifying the actions we need to take to improve our nation's infrastructure to ensure continued long-lasting economic growth. U.S. DOT will be supporting the efforts of the Commissions and we will make certain that we are well-positioned to move forward based on the results and recommendations of these studies. If confirmed, I look forward to working with you and Congress to identify and address our nation's infrastructure needs.

Question 2. Your testimony mentions the need to encourage innovation from all sectors of the transportation community. If you are confirmed, what actions will you undertake to achieve this goal of innovation and encourage collaboration among the many stakeholders within the transportation community?

Response. Senator Voinovich, if confirmed, I would continue the philosophical direction demonstrated in a number of recent efforts already underway. In the past year, FHWA designated a Program Manager for Public-Private Partnerships, who serves as a central point of contact for State and local transportation officials who want to explore new and creative ways to design, develop, and deliver highways and bridges. With enactment of SAFETEA-LU, the Highways for LIFE program is designed to encourage innovative approaches in support of the accelerated adoption of new ideas in the highway community. We will continue developing financial innovations to extend our resources. Our innovative finance tool kit, which includes Private Activity Bonds, increased flexibility for tolling, TIFIA loans, and State Infrastructure Banks, will attract private sector investment and participation.

Question 3. Pursuant to section 5514 of SAFETEA-LU (to ensure competition in the specification of culvert pipe), I understand an FHWA rulemaking is imminent. What can you reveal about the timing and substance of this rulemaking? Will you commit that FHWA will give favorable consideration to comments designed to craft the final rule in a way that solves the problem of anti-competitive practices in some states? Are you prepared to have FHWA take remedial enforcement steps if it is determined that certain states continue to evade competition requirements in this area?

Response. Senator Voinovich, on April 17, 2006, the FHWA published a notice of proposed rulemaking (NPRM) in the Federal Register (71 FR 19667), as required by section 5514 of SAFETEA-LU. As with any proposed rulemaking, the FHWA will review and consider all comments submitted to the docket.

I am committed to the principles of competition, and FHWA will continue to provide oversight for all activities in the Federal-aid highway program, including the provisions in the pipe material and product selection regulation.

RESPONSE BY RICHARD CAPKA TO AN ADDITIONAL QUESTION
FROM SENATOR MURKOWSKI

Question. Mr. Capka, I want to thank you for meeting with my staff the other day. I apologize for not being able to clear my schedule at that time, but I understand you had a frank and detailed discussion and hope you found it helpful. I just want you to know I appreciate your courtesy.

One of the issues raised, and it is one that is very important to me, is the issue of ensuring that we are making solid decisions on major transportation projects. It has been suggested by some that the EIS process can be altered so that only one favored alternative is given full analysis, and others are dismissed quickly. I have some trouble with that concept. The entire purpose of an EIS or draft EIS is to ensure that we are not overlooking anything important. For example, we have a project being planned in Alaska for which there has been a strong push to eliminate alternatives early, so that the draft EIS can concentrate largely on a single favored alternative. This process appears to have been sanctioned by the local FHWA office. I am all for streamlining the regulatory process where possible, but I also believe a primary purpose of an EIS is to examine a range of alternatives so that a clear favored alternative emerges as a result. *What is your view of the NEPA process?*

Response. I support the Council on Environmental Quality (CEQ) process, which requires that all reasonable alternatives to the proposal be examined in the environ-

mental impact statement (EIS). Reasonable alternatives include those that are practical or feasible from a technical and economic standpoint, rather than simply desirable from the standpoint of the applicant. CEQ's regulations state that the comparative analysis of alternatives, including the proposed action, is the heart of an EIS. CEQ's regulations require a rigorous exploration and objective evaluation of reasonable alternatives, including the "no action" alternative.

The environmental review process should ensure that the impacts of any potential highway undertaking are considered fully and appropriately. I appreciate the effort that Congress continues to undertake to further refine the efficiency of the environmental process. We will continue to be good stewards of the environment, while we seek ways that can improve the efficiency through which we are able to address the nation's highway needs.

RESPONSES BY RICHARD CAPKA TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. Mr. Capka, I know that the *Boston Globe* has supported your nomination being considered by the Senate. However, there is criticism of your leadership of the Central Artery Project when you held the position of CEO of the Massachusetts Turnpike Authority. Even the *Boston Globe* wrote, "J. Richard Capka may not have covered himself with glory during his tenure as chief executive of the Massachusetts Turnpike Authority . . ." Can you please discuss your role in the Central Artery Project, especially any problems, as well as address any concerns that your leadership was inadequate?

Response. In December 2000, after a tumultuous year where the forecasted cost of the Central Artery and Third Tunnel (CA/T) Project unexpectedly increased from \$10.8B to \$14.075B, the Governor of Massachusetts hired me as the Chief Executive Officer (CEO) at the Metropolitan Turnpike Authority (MTA) and the "Big Dig." Soon after I arrived, the CA/T Project Management Team undertook a rigorous and lengthy review of the Project. We concluded that the Project would require an additional \$400 million to complete, for a total project cost of \$14.475 billion—a budget that remains in place today. As a direct result of my efforts to determine actual project costs and institute new management reporting controls, the USDOT Inspector General and the FHWA Administrator announced their approvals of a new Finance Plan in March 2002, and the Inspector General closed several on-going investigations and withdrew his oversight team from the project.

I strongly believe that recovering costs incurred through the mistakes of contractors, consultants, or others is an important priority in any project. I also believe that the timing of such actions must complement the efficient and cost effective completion of the project. My assessment of the situation with the CA/T Project was that I needed to focus on the current and future problems facing the Project, before turning to a closer examination of past mistakes. By the time I arrived, the Project had a long and complex history, with many yet-to-be-substantiated allegations of cost growth, mismanagement, and mistakes. I was aware that the Board was taking action concerning cost recovery, and recommendations would be made to me to pursue specific cost recovery steps.

I was directed by MTA Board Members to authorize severance packages for three attorneys working for the Turnpike Authority.—The severance packages were limited in both scope and time and provided a lump sum payment of a portion of their annual salary if the employees were involuntarily separated from their positions for reasons other than malfeasance. The packages also included a "sunset" provision. Although these severance packages were initiated by the Board Members and not by me, I determined that they were reasonable.

Contrary to what you may have heard, I was not fired from the Turnpike Authority. After the Acting Governor dismissed two of the MTA Board Members and the Chairman resigned for personal reasons, the Acting Governor restructured the MTA to include a full-time Chairman with greater authority and responsibility than the departing Chairman had possessed. The new "full-time" nature of the Chairman's position made the CEO position redundant. When the Board was finally reconstituted, I proposed to the Board Members that the CEO position be eliminated, arguing that the redundancy was inefficient, costly, and not in the best interest of the MTA. The Board voted 2 to 1 to eliminate the CEO position, and I left the MTA in July 2002. To date, there is no CEO at the MTA and those responsibilities continue to be handled by the Board Chairman.

I am proud of my accomplishments during my time at the CA/T Project. My experience with the CA/T Project has reinforced my personal commitment to the careful stewardship of the public resources entrusted to us. It has also strengthened my management skills and has provided me with invaluable insights concerning the ef-

fective management of megaprojects that I have shared and if confirmed, will continue to share with others across the Nation.

Question 2. Mr. Capka, you were the Acting Administrator for the Federal Highway Administration during Katrina and the rebuilding efforts. What lessons have you learned from that situation? How would you apply this knowledge to rebuilding highways, roads, and bridges after another natural disaster such as a major earthquake in California?

Response. During Katrina, Wilma and other recent hurricanes, the FHWA and the affected State departments of transportation validated the assumption that effective, pre-existing personal and professional working relationships among Federal and State highway officials will create the “working shoulder to shoulder” environment necessary to achieve positive results during a crisis. Together we were able to assess the situation rapidly, review lessons learned from past disaster situations, and shape strategies that provide the most efficient response. We have learned the great value in sharing past lessons. For example, we helped Mississippi and Louisiana work with Florida experts to address bridge damage that was quite similar to what Florida had experienced during the previous hurricane season. Once again, contracting incentives were employed successfully to expedite highway repairs as in past disasters.

As we did after the 2004 hurricane season, we are analyzing with our State partners the events of the 2005 hurricane season for lessons learned that can be applied to future situations. There are always opportunities to improve and share experiences. FHWA also is assisting the Office of the Secretary and the Department of Homeland Security in developing the Catastrophic Hurricane Evacuation Plans Report to Congress as mandated by SAFETEA-LU.

RESPONSE BY RICHARD CAPKA TO AN ADDITIONAL QUESTION
FROM SENATOR BAUCUS

Question. Acting Administrator Capka, based on FHWA’s January 31 Final Rule on “Project Authorization and Agreement” (Part 630, Subpart A) the Department of Transportation in my home State of Montana has been told that it will no longer be able to program Federal-aid highway funds for partial “preliminary engineering” (PE). This is not consistent with the long established business processes in the Montana Department of Transportation. The Montana DOT has been very successful at conserving obligation authority by programming a modest percentage of the total preliminary engineering costs at the beginning of a project, performing detailed field scoping activities, and then modifying the project to go to full PE costs based on a well detailed project cost estimate. FHWA has now informed MTDOT that this business practice is no longer possible and that full PE is needed as soon as a project is authorized. The specific language in the rule that is cited as the obstacle concerns the need for a cost estimate to support authorization of funds. The intent of this rule is to improve the efficiency in the use of Federal funds. I applaud this intent but believe that an unintended consequence of the rule is that fewer Federal funds will be available for actual construction, as more funds will be dedicated very early in the process to full PE costs. In Montana, this could be a difference of as much as \$25 million a year. Could FHWA review its interpretation of this rule so that the Montana Department of Transportation may continue to program partial PE at the initiation of a project authorization?

Response. As I understand them, appropriation law principles require a Federal obligation to be supported by a written cost estimate. These principles further limit Federal officials from agreeing to fund an activity, but not obligating funds for it, because such an action would put the Federal Government in a position of not being able to meet its commitments. The practice by some States of obligating a small amount on PE projects is not an appropriate practice under this appropriation law principle.

If confirmed, I assure you that I will review FHWA’s rule and its application to the practice that MT DOT has followed on partial PE. Our Montana Division Administrator has already been in contact with senior MT DOT officials to discuss this matter. We are committed to working with MT DOT to find a solution that is consistent with Federal law and achieves Montana’s goals for delivering its Federal-aid highway program.

RESPONSES BY RICHARD CAPKA TO ADDITIONAL QUESTIONS
FROM SENATOR LAUTENBERG

Question 1. Regarding New Jersey's continued use of multi-year funding as an accepted financing method for infrastructure projects, you stated that you have not backed away from the agreement you reached with the New Jersey Department of Transportation last fall. The statement in that agreement pertaining to multi-year funding indicates that FHWA will continue to honor New Jersey's multi-year funding approach. Can you confirm my understanding that this agreement applies to both the current statewide Transportation Improvement Program (fiscal year 2006—fiscal year 2008) as well as the fiscal year 2007—fiscal year 2010 statewide Transportation Improvement Program, which is now under development?

Response. Senator Lautenberg, the agreement between the FHWA and the NJDOT was written specifically to cover fiscal year 2006-fiscal year 2008 State Transportation Improvement Program (STIP). New Jersey met the required fiscal conditions for its STIP for fiscal years 2006 to 2008, which FHWA and FTA approved last September. That approval is still valid and remains in effect for all authorized Federal projects, which continue to receive full Federal funding. No projects have been denied approval or Federal support. As for future STIPs, FHWA and FTA have determined that the State must document the availability of necessary revenues to complete the projects as programmed and to maintain and operate the existing highway and transit system.

Question 2. I appreciate your recent efforts to meet with New Jersey's Transportation Commissioner, along with senior staff from the Agency and the Secretary's Office. At this meeting, did FHWA commit to the Commissioner to approve New Jersey's use of multi-year funded projects in the fiscal year 2006—fiscal year 2008 and fiscal year 2007—fiscal year 2010 statewide Transportation Improvement Programs?

Response. FHWA did commit to the Commissioner to allow multi-year funding in future STIPs, including fiscal year 2007—fiscal year 2010. As for any programming approach, approval of future programming documents (STIPs) will depend upon the State's ability to provide financial information to demonstrate that it will have the needed Federal or non-Federal revenues to complete federally funded or regionally significant highway, bridge, and transit projects and that sufficient funding is available to operate and maintain the transportation system. The specific financing method used to advance those projects, such as NJ DOT's multi-year funding, is the prerogative of the State. We are awaiting NJ DOT's STIP submittal for fiscal year 2007—fiscal year 2010.

Question 3. If you are confirmed as Administrator, will FHWA continue to approve New Jersey's use of multi-year funding in statewide Transportation Improvement Programs beyond FY 2007?

Response. Senator Lautenberg, FHWA is ready and willing to approve any State's STIP without regard to the financing method used to advance projects, including multi-year financing. If confirmed, I will continue to work with the State DOT on the STIP.

Question 4. Since your meeting with New Jersey Transportation Commissioner Kolluri, are you confident that all FHWA regional officials understand how states use multi-year funding as a financing method for infrastructure projects? Is there a document on this subject describing a uniform agency policy? If so, can you provide it to the committee?

Response. Senator Lautenberg, since the issue of multi-year funding and the ability of a State DOT to adequately document the fiscal constraint requirements has only arisen in New Jersey up to this point, we have not previously issued a document or guidance to FHWA and FTA field offices on it. In light of the many questions that have arisen, I agree that we should provide clarifying information to our field offices, which will be consistent with the principles reflected in our answers to the foregoing questions. We will be happy to provide the committee a copy of this guidance when it is issued.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING

WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement For Completion By Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and forty (40) copies of the requested information should be made available to the Honorable James M. Inhofe, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Marty Hall: Deputy Staff Director) as soon as possible.

Name of Nominee: J. Richard Capka

Business Address: Federal Highway Administration
400 7th Street, SW
Washington, DC 20590

Business Phone: (202) 366-2240

Home Address: _____
Fairfax, VA 22030

Home Phone: _____

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Capka Joseph Richard
(Last) (First) (Middle)

Position to which nominated: Administrator, Federal Highway Administration

Date of Nomination: 7 March 2006

Date of birth: 16 Mar 1949 Place of birth: Tokyo, Japan (US Parents on military assignment)
(Day) (Month) (Year)

Marital status: Married Full name of spouse: Susan Jean Capka

Name and ages of children: David Edward (31); Richard Terrence (29) (Three grandchildren and three on the way)

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	United States Military Academy	1967 – 1971	BS	1971
	University of California (Berkeley)	1975 – 1977	MS	1977
	Chaminade University of Honolulu	1981 – 1983	MBA	1983

Employment record:

List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

(Note: "USACE" refers to the "US Army Corps of Engineers".)

1971 – 1975 US Army	249 th Engineer Battalion Platoon Leader	Germany
1975 – 1977 US Army	Student UCA -Berkeley Masters Program	Berkeley
1977 – 1978 US Army	Student, Engineer Officer's Advanced Course	Ft. Belvoir, VA
1978 – 1980 US Army	Company Commander, 43d Engineer Company	Ft Bliss, VA
1980 – 1983 US Army	Project Engineer (Hospital Construction)	Honolulu, HI
1983 – 1984 US Army	Student, Army Command & General Staff	Ft Leavenworth, KS
1984 – 1987 US Army	Branch Chief, Military Combat Developments	Ft Belvoir, VA
1987 – 1988 US Army	Exec Officer to Chief of Engineers	Washington, DC
1988 – 1990 US Army	Battalion Commander	Ft. Riley, KS
1990 – 1991 US Army	Student, National War College	Ft. McNair, DC
1991 – 1992 US Army	Chief, USACE International Activities	Washington, DC
1992 – 1994 US Army	Commander, USACE Baltimore Engr. District	Baltimore, MD
1994 – 1996 US Army	Chief Engineer, US Forces, Korea	Seoul, Korea

1996 – 1998 US Army	Commanding General, USACE S. Pacific Div	San Francisco, CA
1998 – 2001 US Army	Commanding General, USACE S. Atlantic Div	Atlanta, GA
2001 – 2002 MassPike	CEO Massachusetts Turnpike Authority	Boston, MA
2002 – 2005 USDOT	Deputy Administrator, Federal Highway Admin.	Washington, DC
2005 – present	Acting Administrator, Federal Highway Admin.	Washington, DC

Note: In accordance with the Vacancy Act upon completing 210 days in my Acting Administrator capacity and without a nomination being forwarded to the Senate I reverted to my former position of Deputy Administrator on 26 Feb '06. With the nomination having been forwarded on 7 Mar '06 I have reassumed my position as Acting Administrator.

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Academic: Distinguished Cadet (Graduated top 5% of United States Military Academy Class of '71)
Phi Kappa Phi

Military: Distinguished Service Medal (Highest ranking peacetime decoration)
Defense Superior Service Medal, Legion of Merit, other medals and service ribbons.

Society of American Military Engineers: Fellow

Army Engineer Association: Bronze and Silver DeFleury Medal Award Winner

US Dept of Transportation: 2004 Outstanding Achievement Gold Medal Award Winner (for service to the Department in Iraq).

American Society of Civil Engineers: 2005 Civil Government Award Winner (most outstanding Civil Engineer in an appointed public position.)

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
American Society of Military Engineers	Post President (x3) Member	1989, 1993, 1995 1973 – Present
American Society of Civil Engineers	Member	2004 – Present
Army Engineer Association	Regional VP Member	1999-2000 1999 - Current

Qualifications: I have successfully led and managed large public sector organizations. I have been responsible for multi-billion dollar construction programs and have been directly responsible for both highway operations and the development of highway policy in the public sector since January 2001.

- (1) As a senior military officer (I retired as a US Army Brigadier General) I have managed large organizations including a Combat Engineer Battalion of more than 900 soldiers; the US Army Corps of Engineers (USACE) Baltimore District; the USACE South Pacific Division (four Districts); the USACE South Atlantic Division (four Districts); and I was the senior staff Engineer for all US military forces in Korea. I managed the highly successful exigent levee recovery operation in California following the devastating 1997 winter floods.
- (2) I was the CEO of the Massachusetts Turnpike Authority and was also responsible for the management of the Central Artery and Third Tunnel Project (Big Dig) in Boston. (I was given credit by the US DOT IG for bringing the project's finances under control.)
- (3) I have been the Deputy Administrator for the Federal Highway Administration since August of 2002 and have been the Acting Administrator since August 2005.
- (4) As a result of my public service positions of responsibility I have had the opportunity to interact with many Members of Congress, staffers, state and local officials and have provided testimony at numerous hearings.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I have been employed by the Federal Highway Administration since August 2002

I have no other employment or outside organization connections to be severed.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no foreseen plans to resume any employment with a former employer.

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Not a Fixed Term appointment

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No known limitations

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I am currently serving in a schedule C position and it is the only such position to which I have been assigned. I would be leaving the position of Deputy Administrator to be appointed to the position of Administrator.

Financial Statement:

Note: The Office of Government Ethics will provide the Committee with a copy of your Executive Personnel Financial Disclosure Report (SF-278).

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF-278, Schedule A.

I have no anticipated receipts of any kind other than my Military Retirement Pay that I receive monthly and the Massachusetts Turnpike Authority's 457 Plan (listed on my financial disclosure form) in which I participate.

2. Are any assets pledged?

I have no pledged assets.

3. Are you currently a party to any legal action?

I am not currently a party to any legal action

4. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

I have filed a Federal Income Tax return for each year since 1967.

5. Has the Internal Revenue Service ever audited your Federal tax return? if so, what resulted from the audit?

I have never been audited.

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing of interest: dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

I have no financial or deferred compensation agreements or any other continuing of interest dealings whatsoever. I participate in the Massachusetts Turnpike Authority's 457 Plan, which is listed on my financial disclosure report.

2. List any investments, obligations, liabilities, or other relationships that might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

My investments are in mutual funds, 457 Retirement Plan, Thrift Savings Plan (TSP) and bank accounts none of which involve any potential conflict of interest or appearance of a conflict of interest.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

(1) Jun 1971 to Jan 2001: I was on active military duty. My dealings with the Federal Highway Administration, the US DOT or any other federal agency were through the US Army Corps of Engineers and strictly for official government business.

(2) Jan 2001 to Aug 2002: I was CEO of the Massachusetts Turnpike Authority and had an official relationship with FHWA as a recipient of Federal Aid funding for the construction of the Central Artery and Third Tunnel (Big Dig) project in Boston. FHWA provided federal oversight for the project.

There are no current conflicts of interest as a result of those relationships.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

Please refer to the Deputy General Counsel's opinion letter.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

Please refer to the Deputy General Counsel's opinion letter..

Political affiliation and activities:

List all memberships and offices held in, or financial contributions (in excess of \$1,000), and services rendered to any political party or election committee during the last 10 years.

- (1) I have made no financial contributions in excess of \$1,000.
- (2) I used personal time to support the Bush-Cheney '04 Campaign in Pennsylvania.
- (3) I have held no political party offices or memberships.

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

Articles: Public Roads Magazine	Guest Editorial
Jan/Feb 2004	Guest Editorial – “Managing a Public Journey”
Jul / Aug 2004	“Megaprojects – Are they a Different Breed?”
	“A Well Conceived Plan Will Pull It All Together”
Sept/Oct 2005	Guest Editorial – “Financing Tomorrow’s Roads”
Nov/Dec 2005	Guest Editorial – “Public-Private Partnerships”
Jan / Feb 2006	“Financing Megaprojects”

Speeches: (See Attached)

Additional Matters:

1. If there is any additional information that you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

None

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

AFFIDAVIT

J. RICHARD CAPKA ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 13th day of March, 2006.

Notary Public


J. RICHARD CAPKA

Washington, District of Columbia
Subscribed and sworn to before me, in my presence,
this 13th day of March, 2006
by Maureen S Taylor

Notary Public
My Commission Expires _____

MAUREEN S. TAYLOR
Notary Public of District of Columbia
My Commission Expires August 31, 2007

**FHWA Acting Administrator J. Richard Capka
External speaking events
September 2002 to present**

2002

National Association of Governors Highway Safety Representatives, September 9, 2002, St. Louis, Missouri -- highway safety

Associated General Contractors of America, September 21, 2002, Boston, Massachusetts -- agency priorities/reauthorization

Southern Association of State Highway and Transportation Officials, September 30, 2002, Nashville, Tennessee -- congestion relief

Dunn Loring Fire Department, October 8, 2002, Vienna, Virginia -- highway safety

Washington Department of Transportation's Forum on Transportation Megaprojects, October 9, 2002, Seattle, Washington -- Federal Expectations and Resources

Mississippi Transportation Institute Safety Summit II, October 30, 2002, - partnering to reduce fatalities

Civil Engineering Research Foundation Executive Program Series, November 6, 2002, Washington, DC -- innovation.

Transportation Research Board, Research and Technology Coordinating Committee, November 8, 2002, Washington, DC -- research goals

Research and Special Programs Administration Transportation Issues in Bioterrorism Workshop, November 19, Washington, DC -- FHWA anti-terror effort

2003

National Local Technical Assistance Program Association, January 12, 2003, Washington, DC -- cooperative efforts

Transportation Research Board Annual Meeting, January 15, 2003, Washington, DC -- Estimating Mega Construction Projects

Annual Long Term Pavement Performance Coordinators Meeting
January 12, 2003, Washington, DC -- research priorities

National Stone, Sand and Gravel Association, Orlando, Florida, Feb. 11, 2003 – reauthorization/budget.

Alabama Annual Transportation Conference, Montgomery, AL
Feb. 12, 2003 -- highlights of proposed budget/reauthorization

Road Gang monthly luncheon meeting, Washington, DC, March 20, 2003, -- stewardship, major projects, research and technology.

Annual Meeting, National Association of County Engineers, Biloxi, MS, March 24, 2003 -- partnering agreement, budget, and reauthorization

Indiana Annual Transportation Conference, West Lafayette, IN
March 25, 2003 -- budget and reauthorization.

Transportation Research Board Research and Technology Coordinating Committee, Washington, DC, April 3, 2003, panel on reauthorization: R&T proposals and perspectives

Michigan Road Builders Association industry fly-in, Washington, DC, April 9, 2003 - reauthorization.

National Association of State Highway and Transportation Unions, April 30, 2003, Washington, DC – stewardship and reauthorization.

Petersen Asphalt Research Conference, July 14, 2003, Laramie, Wyoming -- megaproject plans and SAFETEA status

Mississippi Valley Conference of State Highway and Transportation Officials, July 17, 2003, Chicago, Illinois -- SAFETEA, emphasizing safety.

International Road Federation Annual Conference, August 5, 2003, Alexandria, VA - “The Reconstruction of Iraq”

FHWA/NHTSA National Crash Analysis Center 10th Anniversary & Ceremonial Groundbreaking of Crash Test Facility, Sept. 10, 2003, Ashburn, Virginia -- importance of partnerships and research toward the goal of saving lives

Precast/Prestressed Concrete Institute Convention/Bridge Conference, Oct. 20, 2003, Orlando, Florida -- longer life infrastructure requires high performance materials.

Ribbon-cutting ceremony for the Paris Pike Project, Dec. 2, 2003, Lexington, Kentucky -- support for context sensitive solutions

Annual Convention of the American Concrete Pavement Association, Dec. 3, 2003, Scottsdale, Arizona -- long-term asset management, status on reauthorization, Highways for LIFE

2004

National Local Technical Assistance Program Association, Jan. 11, 2004, Washington, DC -- safety, workforce issues

Eisenhower Fellows, Jan. 13, 2004, Washington, D.C. -- careers in transportation.

National Asphalt Pavement Association Annual Convention, Jan. 21, 2004, Phoenix, Arizona. -- current reauthorization message, research programs

Maryland Quality Initiative Conference, Jan. 29, 2004, Hunt Valley, Maryland -- jobs, economic development, reauthorization message, mega-projects, Highways for LIFE

National Tribal Transportation Conference, March 1, 2004, Albuquerque, New Mexico -- importance of knowledge sharing & training. reauthorization, ongoing safety efforts

Polymer Composites Conference, March 30, 2004, Morgantown, West Virginia -- research aspects of SAFETEA, new opportunities for composite applications

National Association of County Engineers, April 5, 2004, Orlando, Florida -- reauthorization, innovation

Project Management – National Study Results Conference, April 27, 2004, Miami, Florida -- effective project management practices

Transportation and Construction Divisions, Boston Society of Civil Engineers, May 5, 2004, Boston, Massachusetts, reauthorization

National Association of State Highway and Transportation Unions, May 7, 2004, Washington, DC, reauthorization, stewardship and project oversight

Right-of-Way and Utilities Annual Meeting, May 10, 2004, Seattle, Washington, cost estimates, stewardship, project oversight, public trust.

National Transportation Week Transportation and Travel Conference, May 18, 2004, DC Convention Center, panel discussion on freight movement.

Florida Institute of Consulting Engineers/Florida DOT Consultants Conference, May 26, 2004, Orlando, Florida, megaproject oversight, reauthorization

Great Outdoor Week – American Recreation Coalition, June 9, 2004, Washington, DC, recreation-related programs emphasizing scenic byways and Federal Lands.

American Association of State Highway and Transportation Officials Mississippi Valley Conference, July 15, 2004, Chicago, Illinois, reauthorization to Midwest transportation leaders

International Forum on Traffic Records & Highway Safety Systems, July 26, 2004, Nashville, Tennessee, importance of good data

National Local Technical Assistance Program, August 2, 2004, Santa Ana Pueblo New Mexico, importance of cooperative programs to technical assistance program staff, tribal elected officials.

Southern Area State Highway and Transportation Officials, August 23, 2004, Norfolk, Virginia -- security planning.

Launch of Kansas City Scout, a bi-state traffic management system, September 27, 2004, Lee's Summit, Missouri, timely traveler information can reduce congestion.

2004 Roadway Work Zone Safety Conference, Nov. 3, 2004, Baltimore, Maryland, work zone safety

Natchez-Adams County Chamber of Commerce annual dinner, Dec. 13, 2004, Natchez, MS, status of major programs with emphasis on security

2005

Local Technical Assistance Program Meeting, Jan 9, 2005 at TRB, Washington, DC success of the past year, status on key programs

Creating Dynamic Stakeholder Networks, Jan 10, 2005, The Key to Effective Research and Technology Deployment," Washington, DC

Transportation Research Board Annual Meeting, Jan 12, 2005 Washington, DC - Highways for Life

Groundbreaking for North-South Road, February 9, 2005, Hawaii -- reauthorization and agency programs.

Transportation and Highway Engineering Conference, Urbana-Champaign, IL, February 23, 2005

Specialized Carriers and Rigging Association, March 3, 2005 Albuquerque, New Mexico, keeping America moving, status of major issues such as reauthorization, financing infrastructure, Highways for LIFE.

State Department of Transportation Officials public private partnership meeting
March 14, 2005 Richmond, VA.

Work Zone Awareness Week Kick-off, April 5, 2005, work zone dangers and importance of safety measures.

Design Build in Transportation Conference, April 14, 2005, Dallas, Texas.

Civil Engineering Research Foundation 2005 Spring Executive Conference, April 13, 2005, project innovations

National Border Station Conference, April 25, 2005, San Diego, California

University of Rhode Island Transportation Center National Transportation Week Breakfast, May 19, 2005, Warwick, Rhode Island

Environmental Excellence Awards ceremony, April 22, 2005, Washington, DC

American Association of State Highway and Transportation Officials, May 7-9, 2005, Seaview, NJ.

Portland Oregon Business Alliance fly-in, May 13, 2005, Washington DC.

ENO Transportation Foundation Leadership Development Conference, May 25, 2005, Washington, DC.

International Symposium on "Utilization of High Strength/High Performance Concrete," June 21, 2005, Arlington, VA

International Bridge Conference, June 13, 2005, Pittsburgh, PA.

International Symposium on "Utilization of High Strength/High Performance Concrete," June 21, 2005, Arlington, VA

International Symposium on Highway Geometric Design, June 29, 2005, Chicago, IL

Service Disabled Veterans Small Business Conference, June 30, 2005, Washington, DC.

Advanced Research Think Tank Forum: "Advancing Future Transportation with Breakthrough Innovations," July 12, 2005, Boston, MA, FHWA's commitment to advanced research.

Mississippi Valley Association of State Highway Transportation Officials, July 14, 2005, Chicago, Illinois.

International Bridge Engineering Conference, July 18, 2005, Boston, MA.

Southern Association of State Highway Transportation Officials, August 20, 2005, Fajardo, Puerto Rico

Ceremony launching Florida's statewide ITS system, September 1, 2005, Orlando, Florida.

American Association of State Highway and Transportation Officials, September 15-20, 2005, Nashville, TN.

National Scenic Byways and All-American Roads, Union Station, September 22, 2005, Washington, DC.

American Road and Transportation Builders Association, Public-Private Ventures in Transportation, October 7, 2005, Washington, D.C.

U.S.-Canada Shared Border Accord Coordinating Committee Meeting, October 19, 2005, Arlington, VA.

India's Transportation Infrastructure: Challenge and Opportunity Conference, October 25, 2005, Washington, DC -- the U.S. National Highway System, from Ike till Now

National Chamber Foundation, November 3, 2005, Washington, DC -- the future of Highway and public transportation financing.

ITS World Congress, November 7, 2005, San Francisco, CA.

Advisory Council on Historic Preservation, November 10, 2005. Washington, DC

National Roadway Safety Awards Ceremony, November 15, 2005, Washington, DC.

Kickoff of Florida's statewide 511 service, November 17, 2005, Orlando, FL.

Public Private Partnership Americas Summit Pre-Conference Seminar, December 5, 2005, Washington, DC.

FHWA Accelerated Bridge Construction Conference. December 15, 2005, San Diego, California

2006

Re-opening ceremony for westbound side, I-10 Twin Spans Bridge, New Orleans, Louisiana, January 5, 2006.

Local Technical Assistance Program/Tribal Technical Assistance Program, Transportation Research Board Meetings, Jan. 22, 2006. Washington. DC.

Transportation Research Board January 23, 2006. Washington, DC. Public Private partnerships and the highway community.

US DOT Administrator's Panel, Transportation Research Board, January 23, 2006, Washington, DC, SAFETEA-LU.

Dwight David Eisenhower Transportation Fellowship Program Research Showcase, January 24, 2006. Washington, DC, 50th Anniversary of the Interstate Highway System.

Signing ceremony for Strategic Highway Research Program II, Jan. 25, 2006. Washington, DC.

American Association of State Highway and Transportation Officials Washington Briefing, February 7, 2006. Washington, DC.

American Trucking Associations Leadership Meeting, February 13, 2006. Tampa, Florida, FHWA's future direction on tolls and other alternative financing mechanisms

Fargo, ND-Moorhead, MN Business and Community Leaders, February 22, 2006. Moorhead, Minnesota.

Women's Transportation Seminar, DC Chapter, February 23, 2006. Washington, DC. 50th Anniversary of the Interstate Highway System.

The Industrial College of the Armed Forces, March 3, 2006, Washington, DC.

Resolution of the Associated General Contractors of America
In Support of Richard J. Capka as Federal Highway
Administrator
87th Annual Convention
March 21, 2006
Palm Springs, California

Whereas, President Bush has nominated Richard J. Capka to serve the nation as the next Federal Highway Administrator;

Whereas, Rick Capka has served the Nation for 30 years in construction management in both the U.S. and abroad as a decorated Brigadier General in the Army Corps of Engineers;

Whereas, Rick Capka showed outstanding leadership as he headed up the Federal Highway Administration's assistance to the states hard hit by Hurricane Katrina and other hurricanes.

Whereas Transportation Secretary Norman Mineta praised the efforts of FHWA under Rick Capka's leadership as the one federal agency whose performance clearly stood out in its response to Hurricane Katrina, in rebuilding highways in Louisiana and Mississippi in record time.

Whereas, Rick Capka has always maintained an open and fair policy in dealing with the construction industry as we join in partnership to address the Nation's transportation infrastructure needs.

Therefore AGC believes that Rick Capka is well-qualified to serve as Federal Highway Administrator and AGC urges the United States Senate to expeditiously confirm his nomination to serve as the next Federal Highway Administrator.

STATEMENT OF JAMES B. GULLIFORD, NOMINATED TO BE THE ASSISTANT ADMINISTRATOR, OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Jeffords, and Members of the committee. I am honored to appear before you today, and am seeking your confirmation to serve as Assistant Administrator for the Office of Prevention, Pesticides and Toxic Substances (OPPTS). It has been my pleasure to serve as the EPA Region 7 Administrator for the past 4½ years, and it is truly an honor to have the support of President Bush and Administrator Johnson, to serve the American people in this new capacity.

The Environmental challenges we face today are complex. They demand a focused and unyielding commitment to fully understand the issues, to seek solutions, and to facilitate change. I believe that working together with Congress, the States, the regulated community, the public interest community, and the American people, we can accelerate our environmental progress, foster a strong and vibrant economy, and assure that our citizens enjoy a safe and healthy environment in which to live, work and play.

I am dedicated to that belief, and the knowledge and experience that have brought me here today will serve me and the environment well. I bring a strong and abiding respect for America's natural resources. I majored in Forestry Management at Iowa State University. In addition to a traditional forestry curriculum, I minored in Agronomy, recognizing the importance of soil science, nutrient management, and soil conservation. My MS in Forestry Economics and Marketing added additional tools to solve complex environmental and natural resource management problems. Before coming to EPA, I worked for 25 years in the fields of mine reclamation, soil conservation, and water quality protection. I understand well the complexities of natural resource management. I also bring a healthy appreciation for the work of OPPTS; an office that is at the forefront of protecting public health and the environment.

Growing up west of Chicago, my anticipation each summer was for several weekend camping trips, and one major family vacation visiting any number of our Nation's National Parks. Hiking, camping and seeing the incredible beauty of this country sparked my career in natural resource management and environmental protection. My wife Von and I chose to pass those same experiences and love of our land to our children. With my son Jason, I have backpacked the Sierras, canoed the Boundary Waters, and hiked the Grand Canyon.

If I am confirmed in this position, I know that I will be stepping up to the plate on a number of strategically important environmental issues—issues that are important to many members of this committee. These include pesticide registration, lead and endangered species just to name a few. I can say unequivocally that I will approach each of them with an open mind, a commitment to fully understand and appreciate all sides of an issue, and most importantly, with the paramount objective of protecting public health and the environment.

I will use the best and most appropriate tools to get the job done. If a regulatory approach makes sense, then that is what I will choose. If I can get the job done quicker and more efficiently by advocating a stewardship or partnership approach, then I will proceed down that path. If a combination of tools makes the most sense, then I will move in that direction. I believe this job requires flexibility, creativity and common sense, and I believe I bring those skills to the job.

Finally, I want to close by acknowledging the importance that my family's love and support means to me. I am blessed that my parents continue to live healthy productive lives back home in Illinois, and the values and training they gave me years ago continue to be central to my being. My daughter Keri is a constant example to me of strength, character and determination as a nurse in a neurosurgeon's office and a part-time student finishing her BA degree. My son Jason is one of the finest, caring young men I know, and a great outdoor adventure partner. He and his wife Heidi are beginning their life together and constantly remind me why we work today to assure the safe, healthy future of our planet. Finally, the love, strength and partnership of my wife Von inspire and sustain me. With this support, I am confident that if confirmed Assistant Administrator, my service will reflect positively on my family, and the needs of all families who rely on OPPTS and EPA for a safe, healthy environment.

Thank you for the opportunity to appear before you today. I am happy to answer any questions you have.

RESPONSES BY JAMES B. GULLIFORD TO ADDITIONAL QUESTIONS
FROM SENATOR INHOFE

PESTICIDES

Question 1a. ESA.—How will the Office of Pesticide Programs assure that endangered species effects determinations under the Counterpart Regulation for pesticide use are completed in a timely manner, giving appropriate concern to thorough risk assessment? How does EPA plan to provide clear guidance to the States on their role in implementing EPA's Endangered Species Protection Program?

Response. Through the Counterpart Regulations EPA worked with the Fish and Wildlife Service and National Marine Fisheries Services to establish an efficient and effective process, which incorporates best available information and accepted scientific methods, to make certain effect determinations without further consultation with the Services. To implement the Counterpart Regulations, EPA and the Services completed training to certify 50 Pesticide Program senior managers and scientists to make appropriate "not likely to adversely effect" determinations. EPA and the Services also established a standing interagency committee that meets regularly to enhance coordination and planning and to pursue information and technology exchange. Over the last year the Program has been increasingly incorporating risk assessment procedures consistent with the Counterpart Regulations within on-going regulatory actions. In addition, the Program identified 11 active ingredients that are currently being evaluated with the Services to amass information on a wide range of listed resources, which will be widely applicable to additional pesticide assessments, and to identify opportunities to add efficiencies to future assessments. Even with these significant developments, fully implementing the Counterpart Regulations will be a massive undertaking, with approximately 600 active ingredients in over 19,000 products, each of which may have multiple uses, and approximately 1,200 listed species, each with diverse habits and habitat requirements. As discussed with our stakeholders on the Pesticide Program Dialogue Committee, based on current and projected resources and existing ESA-related litigation, EPA anticipates focusing its work for new and existing pesticides in the registration and registration review programs.

Question 1b. How does EPA plan to provide clear guidance to the States on their role in implementing EPA's Endangered Species Protection Program?

Response. In my role as Regional Administrator for Region VII and in previous positions working in State Government, I bring extensive experience in collaborating with the States. Currently EPA is working closely with the States in their roles to educate pesticide users, enforce labeling requirements, review county maps that will be used in Endangered Species Protection Bulletins, and identify any listed species issues for section 18 emergency exemption applications under FIFRA. EPA is also presenting information and responding to questions about State roles at meetings of the Association of American Pesticide Control Officials (AAPCO) and its three workgroups of the State FIFRA Issues Research and Evaluation Group (SFIREG). Planning is underway to hold a national State pesticide Agency workshop this summer. In addition, EPA will continue to rely on regional EPA offices to keep State regulatory agencies apprised of activities and progress in the Endangered Species Protection Program. States are important partners in this effort and I am committed to working closely with them.

Question 2. PRIA—EPA put together an extraordinary coalition of environmentalists, farm commodity groups, the pesticide industry, farm workers and labor to support the Pesticide Registration Improvement Act, enacted in 2004. PRIA brings new funding stability, improves predictability for approval times for registration of new products, and provides the resources needed to complete tolerance reassessment and re-registration.

In support of a strong PRIA program, how will you ensure that the funding stability it provides will be preserved and the deadlines it incorporates will be met? Further, what assurances can you give us that EPA will keep this coalition together and support the reauthorization of PRIA?

Response. The Agency has monthly meetings with the fee coalition to keep it informed of progress in meeting due dates and responding to other informational requests. In addition, members of the organizations in the coalition also participate in the PRIA Process Improvement Workgroup, under the auspices of the Pesticide Program Dialogue Committee (PPDC). The PPDC is the Pesticide Program's Advisory Committee and this workgroup is providing advice on improvements in registration processes for additional efficiencies.

I fully support the efforts of such diverse stakeholders getting together on any issue. EPA has met virtually all of the deadlines under PRIA. Implementation of

PRIA is a success story. One of the hallmarks of PRIA's success has been the continued collaboration between the Agency and all the stakeholders on pesticide fees. I look forward to this continued collaboration working with the Administration, with you and other Members of Congress, as well as the various stakeholders, on all the various pesticide fee issues. To date over 99.8 percent of actions completed by the Agency have been completed on or before their due dates.

Question 3. NPDES/CWA.—The last draft of the proposed rule excluded from NPDES permitting only those circumstances where pesticides are applied, in compliance with FIFRA, directly into, over or near water—so-called aquatic uses and dealing with pests found in or near aquatic environments. As you know, my legislation (S. 1269) also excludes these pesticides from NPDES permits but also those sprayed further from a waterway. This is an important difference between my legislation (S. 1269) and the Agency's proposed rule and one of the primary reasons, I introduced my legislation and continue to push for its passage despite your rule. Should not the rule also exclude those pesticide uses that take place further from water?

Such uses almost by definition should result in less pesticide reaching water. I know that it is the Agency's longstanding operational approach not to require NPDES permits under these circumstances. Would it not be wise to extend this proposed rule to cover all pesticide uses applied in compliance with FIFRA?

Response. As I noted at the hearing, EPA's longstanding practice has been not to require an NPDES permit for the application of pesticide products in accordance with its EPA-approved labeling. EPA has issued an Interpretive Statement that a pesticide, when applied to or over (including near) waters of the United States in accordance with relevant requirements of the EPA approved labeling, is not a "pollutant" under the statutory definition of that term, and that such an application does not require an NPDES permit. At the same time as it issued the Interpretive Statement to this effect, EPA announced a proposed rule for public comment that would codify this interpretation. The Agency believes it is important to finalize the proposed rulemaking to address the specific situations that have been the primary focus of litigation under the CWA. Accordingly, EPA expects to issue the final rule this summer.

Like EPA's proposed rule, S. 1269 would clarify the interaction between the Clean Water Act (CWA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). It is helpful to note that Benjamin Grumbles, Assistant Administrator for Water, testified in September 2005 before the Subcommittee on Water Resources and Environment of the House Committee on Transportation and Infrastructure about H.R. 1729, a bill introduced by Representative Otter that is similar to S. 1269. Mr. Grumbles expressed support for H.R. 1729 to the extent it produced the same result as EPA's proposed rule, but he noted a number of ways in which that bill moves beyond the scope of EPA's proposal. The Administration has not taken an official position with respect to either S. 1269 or H.R. 1729.

Question 4. TSCA.—Do you agree that voluntary and cooperative actions with industry (e.g., the High Production Volume (HPV) Challenge program) are useful? What other areas might be susceptible to voluntary approaches that complement OPPTS's activities?

Response. Yes, the voluntary and cooperative actions that OPPTS has engaged in with industry have proved to be useful. For example, the High Production Volume (HPV) Challenge Program has resulted in unprecedented collection of existing and generation of new hazard information. This basic screening level information is now available in a searchable data base known as the High Production Volume Information System (HPVIS). The success of the HPV Challenge Program effort has served as a successful model for other stewardship and voluntary efforts. Also, OPPTS is currently implementing a stewardship program to reduce and work toward eliminating PFOA product content and emissions.

As for areas for additional stewardship opportunities, let me highlight ongoing work in three areas: nanotechnology, the Green Suppliers Network (GSN), and the Electronic Products Environmental Assessment Tool (EPEAT). EPA is currently developing a stewardship program for nanoscale materials, including obtaining input from various stakeholders. GSN is a collaborative venture among industry, the EPA and the Department of Commerce to work with all levels of the manufacturing supply chain to achieve environmental and economic benefits. EPEAT is an environmental procurement tool designed to help institutional purchasers in the public and private sectors evaluate, compare and select desktop computers, notebook computers and monitors based on the products' environmental attributes. Among others, these are areas of cooperative actions and stewardship programs that are an important tool to facilitate the Agency's success in protecting human health and the environment. For industrial chemical issues where risk mitigation can be achieved faster

through voluntary partnerships, EPA will pursue that course. As I mentioned during the hearing: "If I can get the job done quicker and more efficiently by advocating a stewardship or partnership approach, then I will proceed down that path. If a combination of tools makes the most sense, I will move in that direction."

Question 5. Do you believe that risk-based approaches to chemical decisionmaking are the most effective means of regulating in this area?

Response. A risk-based approach allows the Agency to address specific, real world concerns by applying targeted decisionmaking, including restricting uses, addressing personnel protective requirements, addressing specific manufacturing issues, or other options to address potential risks in a targeted manner. In implementing TSCA, EPA will continue to consider the risks, costs, and benefits, as called for by the statute, taking into account the state of and certainty of the science and will take action to protect public health and the environment. This approach assures that critical uses and other unique circumstances are factored into the Agency's decisionmaking.

Question 6. Will EPA take steps to promote the timely (sooner rather than later) implementation of EPA's product stewardship program for nanomaterials?

Response. EPA is moving toward a decision on a possible stewardship program for nanoscale materials in an open, transparent, inclusive and expeditious process. EPA is considering the input provided in an overview report prepared by the National Pollution Prevention and Toxics Advisory Committee (NPPTAC) in November 2005. Scientific peer consultations for material characterization and management practices will engage stakeholders on these key elements of the program this spring. The current schedule is for EPA to make a decision on implementation in the fall of 2006.

Question 7. Lead.—Do you agree that EPA should coordinate lead cleanups with HUD to ensure that multiple lead sources are addressed in urban communities where interior lead based paint is a significant contributor?

Response. Coordination should occur with the Department of Housing and Urban Development (HUD) and others to assess the potential to address the lead problems in a community on a holistic basis during Superfund actions. However, should these other sources of funding and response actions not be available, the cleanup of the contaminated yard soils should not wait for the other organizations. CERCLA and the National Contingency Plan limit Superfund authority to address interior lead-based paint.

At the Omaha Lead Site, for instance, the selected remedy provides for coordination with other agencies and organizations contributing toward a comprehensive remedy. EPA is coordinating with the HUD-funded Omaha Lead Hazard Control Program and a recently formed 501(c)(3) focusing on all sources of lead exposure in the Omaha community. EPA was instrumental in the award of the initial 2003 HUD grant to the city of Omaha, and provided a letter of recommendation in the City's most recent successful application that resulted in an additional \$2 million HUD grant award. In addition, EPA is working with the city of Omaha to develop a model for communities that are threatened by multiple lead exposure sources under a \$500,000 project funded by Congress under a special appropriation.

Question 8. Do you agree that under EPA's Lead Policy that all sources of lead contamination must be identified and take into account before deciding on a cleanup program? If so, during your tenure w/Region 7 what steps did you take to ensure consistent implementation of EPA's lead policy at all lead contamination sites?

Response. For the residential soil lead cleanups performed as Superfund remedial actions, we have (1) evaluated the soil, dust, and water pathways of exposure, (2) performed risk calculations using site specific data, and (3) followed the "Superfund Lead-Contaminated Residential Sites Handbook." We have clearly communicated that there are multiple sources of lead exposure in communities, including interior and exterior lead-based paint. We have also coordinated with local HUD and Health Department officials to determine if funds are available to address the other sources.

Question 9. Where interior lead-based paint is a major contributor of lead contamination, would you support remediating indoor paint as opposed to extensive excavation activities?

Response. I agree that non-soil sources of lead exposure need to be addressed.

Question 10. Are you aware that there are two different standards for abating lead exposure risks implemented by EPA: one under Superfund and one under TSCA? Will you please explain why two standards and approaches exist? Do you support the continuation of two standards? If so, why and if not, why not?

Response. The TSCA Title X rules establish standards for defining a lead hazard in paint, dust, and soil and clearance levels for interior dust following lead-based paint abatement. The paint and dust standards are generally applied the same way at both Superfund and TSCA sites. The Superfund program does not use a cleanup standard and determines cleanup levels at site using the IEUBK lead model. The Superfund soil lead screening level is 400 ppm to determine if a potential lead problem in soils exists and this is the same value used under TSCA to determine if a lead hazard exists in residential soils in play areas. Superfund cleanup levels could fall either above or below the 400 ppm level depending on the site specific inputs to the IEUBK model. Running the IEUBK model using only the model default parameter values will result in a cleanup level of 400 ppm. For this reason, 400 ppm is used as a cleanup level prior to measuring the site-specific model inputs.

The difference between CERCLA and TSCA comes in the definitions of “play area” and “the rest of the yard”. Superfund uses the entire residential yard as the “play area” while “the rest of the yard” under TSCA may be interpreted more narrowly.

Question 11. At the Omaha Lead Site, has EPA collected any lead-based paint samples to assess the potential for recontamination? How much money has been spent removing yard soils without evaluation of recontamination from exterior-lead based paint?

Response. To date, EPA has performed more than 400 exterior lead-based paint assessments in Omaha and expects paint stabilization actions to begin later this year. Deteriorating exterior lead-based paint and contaminated interior dust will be addressed at all remediated properties before completion of the cleanup. Prior to the 2004 ROD, EPA had expended approximately \$35 million evaluating and responding to the risk at the Omaha Lead Site, most of which was directed to soil cleanups. Following the 2004 ROD, EPA has expended approximately \$15 million directed to soil cleanups.

RESPONSE BY JAMES B. GULLIFORD TO AN ADDITIONAL QUESTION
FROM SENATOR BOND

Question. In 1998, the EPA mistakenly approved a split registration for the Cry9C protein in StarLink corn, allowing the corn to be used for feed but not for human food. Since the same corn is manufactured into both feed and food products, that EPA action resulted in the presence of the unapproved protein in food products and their subsequent recall. That caused unfounded questions about the safety of foods with biotech content, and U.S. corn farmers have lost millions of tons of domestic and export markets.

I understand no health effects of consuming foods with Cry9C protein have been reported. Yet industry still tests every lot of corn intended for food use, and USDA and industry have conducted more than 3 million analyses for the presence of Cry9C in corn with no positive detections in many months.

How will you work to have the testing program for Cry9C protein in corn ended as quickly as possible in a manner that does not cause disruption to the industry, and would ensure no Federal enforcement action for food products found to contain trace amounts of Cry9C protein?

Response. EPA and other Federal agencies continue to work with the industry to ensure that appropriate testing is conducted and are discussing strategies to change the current testing protocol. EPA will be working with StarLink Logistics, Inc. (SLLI), the grain industry, food processors, and other Federal agencies to determine the best path forward that could eliminate testing, while still being protective of public health.

RESPONSE BY JAMES B. GULLIFORD TO AN ADDITIONAL QUESTION
FROM SENATOR MURKOWSKI

Question. Mr. Gulliford, thank you for being here. I understand your academic training focused on forestry issues, and that your experience with the State government in Iowa related primarily to surface mining and reclamation issues. Have you had any significant experience with the regulation of pesticides and toxics? How you feel your experience has prepared you to take on that role?

Response. For the past four and a half years as Regional Administrator, I have been responsible for the implementation of all EPA programs and regulations in Region 7 including FIFRA and TSCA. Examples of regional activities or actions include:

Pesticides and Agriculture.—The Pesticide Program, in conjunction with many other partners, has undertaken a number of specific initiatives and provided funding for a variety of projects to achieve real and lasting environmental improvements. As one example, various funding sources were used to assist farmers in reducing pesticide runoff, including atrazine, into Smithville Lake in Missouri. This resulted in significant water quality improvements which contributed to the State of Missouri and EPA removing the lake from the State's impaired water list.

Pesticide Enforcement.—In conjunction with our State partners, approximately 4,500 pesticide inspections are conducted each year. Depending upon the seriousness of any violations which are identified, the State pesticide agencies and/or EPA Region 7 follow up and take appropriate enforcement actions. In fiscal year 2005, EPA Region 7 issued approximately 25 enforcement actions with penalties for the most serious violations which included the sale of restricted use pesticides to uncertified applicators and distribution of unregistered, canceled and misbranded pesticides.

Pesticide Education, Outreach and Compliance Assistance.—In fiscal year 2005, Region 7 responded to over 500 phone calls and distributed approximately 19,000 pesticide outreach materials to the public, State partners, and the regulated community. Specific outreach initiatives include development of an English/Spanish brochure to inform pesticide workers and handlers about Worker Protection Standards. This publication has been adopted nationally by other Regions and States. Another brochure was developed in conjunction with the Prairie Band Potawatomi Nation in Region 7 to inform pesticide users of the importance of native plants, the impact pesticides may have on such plants, as well as the role pesticides can play in controlling invasive species.

In addition, we have been actively involved in promoting the use of Integrated Pest Management practices in schools as a means of reducing the risks of pesticide exposure to children.

PCBs in Paint.—On former Army ammunition plant sites, the Army had proposed to burn buildings containing explosives-contaminated structures and equipment, some of which are also coated with PCB containing paint. Cleanup is complicated by the presence of explosive residues impregnated in the walls, ceilings and floors. The traditional disposal method for explosive residue is open burning. However, the presence of PCBs at very high levels (24,000 ppm) limited open burning as a viable option. Long term, cost effective solutions are still under investigation, although a stripping/deconstruction/TSCA landfill solution has been employed at the Iowa Army Ammunition Plant site.

Lead.—Lead is a priority issue of concern in Region 7. Children in the region have multiple exposure pathways through lead mining and smelting, and domestic lead paint. I have made the President's goal of eliminating childhood lead poisoning by 2010 a high priority for Region 7. We are taking comprehensive action to address lead issues using CERCLA, TSCA, RCRA and CAA authorities.

Specific to OPPTS, we are supporting State programs through cooperative agreements, working directly with local health departments, and providing educational outreach at community and professional events. We are currently working with 57 priority city/county/district health departments in the region at high risk for childhood lead poisoning.

Asbestos in Schools.—Region 7 has been working toward the EPA goal of reducing public exposure to asbestos hazards through education, outreach and timely customer service. We have reached more than 2 million children in Region 7 schools through our Healthy Schools initiative.

RESPONSES BY JAMES B. GULLIFORD TO ADDITIONAL QUESTIONS
FROM SENATOR JEFFORDS

Question 1. As I mentioned in my opening statement, a number of recent scientific developments have changed our understanding of the human health risks posed by industrial chemicals. Studies have found widespread human exposure to untested chemicals and linked many of these chemicals to cancer and neurodevelopmental disorders. However, the EPA has required testing of less than 200 of the 62,000 chemicals in commerce since 1979 and regulated only five. EPA's voluntary programs are helping to generate basic screening level data on many chemicals, but the vast majority remain unevaluated. If confirmed, what will you do to ensure that basic health and safety data is developed on all industrial chemicals so we can identify those that may threaten public health?

Response. Since 1998 the Agency's focus has been on the subset of approximately 3,000 High Production Volume (HPV) chemicals, which are produced and/or im-

ported in annual volumes of 1 million pounds or more across all U.S. companies. The Voluntary Children's Chemical Evaluation Program (VCCEP) involves data collection and evaluation of chemicals that are of concern based on their potential risk to children. Additionally, the Existing Chemicals Program's data development efforts also focus on improving our understanding of the sources and pathways of exposures to PFOA. Data received through these voluntary and regulatory mechanisms will assist EPA in choosing the most effective risk management actions.

Recent regulatory activities have been associated with development of Significant New Use Rules (SNURs) for perfluorooctyl sulfonate (PFOS) derivatives and two polybrominated diphenylethers (penta- and octa-PBDE).

Question 2a. There are approximately 2800 chemicals in the voluntary High Production Volume (HPV) Challenge program. In President Bush's budget proposal for fiscal year 2007, he states that, under the HPV program, EPA will "identify chemicals of potential concern that may require additional work, currently anticipated to involve 5 to 10 percent of screened chemicals." Based on this statement, am I correct that EPA anticipates that approximately 140 to 280 chemicals of potential concern are likely to warrant additional review?

Response. EPA has undertaken a screening and assessment effort that will result in identifying chemicals for further review based on the chemicals' potential for concern. The review of these HPV chemicals will begin in early fiscal year 2007. The need for further work on a subset of these chemicals will be determined after the initial reviews are completed.

Question 2b. The budget also states that EPA plans to "complete review of 50 chemicals" and "initiate review of 15 more". Does this mean that in fiscal year 2007, EPA will complete review of 50 HPV chemicals and initiate review of 15 additional HPV chemicals? If so, why isn't EPA going to initiate review of all chemicals of potential concern?

Response. The numbers cited in this question refer to HPV chemicals sponsored under the auspices of the Organization of Economic and Cooperative Development (OECD)/Screening Information and Data Sets (SIDS) and would be in addition to EPA's work under the HPV Challenge Program. Again, EPA has begun a screening and assessment process which will identify those chemicals for further work that are of the most concern. The purpose of the screening process is to facilitate the order of review of the data in the Challenge Program submissions and to provide a structured review process for determining hazard potential for substances. The key features of the screening process are as follows:

Tier I. Automated Screening: Tier I is an automated process in which key data are screened against predetermined criteria to establish logical groupings from which OPPT can select chemicals/categories for further review;

Tier II. Manual Review and Characterization: In Tier II the Agency will conduct a more in-depth review of the data from the Challenge Program submissions for quality and completeness; develop a screening level hazard assessment based on hazard data provided by the sponsors; and inform sponsors and the public of its findings. Tier II review could potentially include additional or updated hazard information of which EPA and/or sponsors or other parties have become aware.

Question 2c. Given the needs of the chemical review program, does EPA have the resources it needs to review High Production Volume chemicals of concern?

Response. Enactment of the President's budget for fiscal year 2007 will provide EPA with adequate resources for the HPV Challenge Program, enabling the Agency to maintain its planned pace for reviewing and making basic screening level hazard data obtained through the program available to the public.

Question 3. EPA recently announced a voluntary nanotechnology stewardship program to assemble basic information about how nanomaterials are being used by industry. If confirmed, will you work to ensure that this program is implemented as soon as practicable? In addition, if confirmed, will you follow the recommendation of the EPA Advisory Panel and issue an information gathering order under TSCA section 8 to provide the Agency with a minimum amount of information from all companies using nanomaterials and to encourage participation in the stewardship program?

Response. EPA is moving toward a decision on a possible stewardship program for nanoscale materials in an open, transparent, inclusive and expeditious process. EPA is considering the input provided in an overview report prepared by the National Pollution Prevention and Toxics Advisory Committee (NPPTAC) in November 2005 which includes a discussion of the use of TSCA section 8 reporting rules for nanoscale materials in an evaluation phase of a stewardship program. Scientific peer consultations for material characterization and management practices will en-

gage stakeholders on these key elements of the program this spring. The current schedule is for EPA to make a decision on implementation in the fall of 2006.

Question 4a. During your tenure as Regional Administrator, EPA Region 7 learned that houses near the St. Louis Airport were being demolished in violation of the applicable EPA NESHAP asbestos rules. Rather than take enforcement action to prevent further violations and impose appropriate penalties, Region 7 issued an Administrative Order on Consent on May 1, 2003 that essentially allowed the demolition of houses to continue with a specific waiver from the asbestos rules. (a) Is this information accurate?

Response. EPA and the St. Louis Airport Authority (SLAA) entered into an Administrative Order on Consent effective May 1, 2003, resolving issues relating to the demolition of asbestos-containing structures. Under the Order, the SLAA was allowed to demolish certain residential and commercial structures following work practices specifically designed to minimize the release of any dust, including potential asbestos fibers, without first removing wall systems or ceilings with asbestos-containing joint compound and ceilings with asbestos texturing material, so long as all other regulated asbestos-containing material in the structure was removed prior to demolition, and the remaining joint compound and ceiling texture material was thoroughly wetted.

Question 4b. If so, please comment on whether you believe that order was consistent with your obligation to enforce EPA rules and protect human health and the environment.

Response. When EPA learned in January 2003 that the SLAA had been demolishing homes with small amounts of asbestos in joint compounds and texturing materials still in place, that practice was halted until we could put in place an enforceable agreement with the SLAA that required specific measures designed to be protective of the environment and nearby residents. The resulting Administrative Order on Consent was consistent with my obligation to enforce EPA rules and protect human health and the environment.

Question 4c. The Region 7 order appears to have been revoked in August 2004 soon after it received attention from the media. Please explain what occurred and why you took the actions taken.

Response. On March 3, 2004, the Order was extended for an additional 1-year period, but was then rescinded in August 2004, based on Clean Air Act statutory language limiting the duration of compliance orders to 1 year.

Question 4d. Some have suggested that your management of this issue shows a willingness to let political pressure outweigh protection of human health and compliance with the law. Please respond.

Response. I share your concerns for protecting human health and the environment. I based my decision on what I understood to be the scientific and legal situation at that time. I agree that it is appropriate for decisions to be driven by sound science.

Question 5. What is the status of EPA's evaluation of the application to register the wood treatment chemical Acid Copper Chromate?

Response. The Agency has five pending applications for new wood preservative products containing acid copper chromate (ACC) from three different registrants. In 2004, a letter was sent to each of these companies, along with the registrant of the only currently registered ACC product (Osmose Inc.), outlining the data the Agency needed in order to make a decision regarding the safety of ACC. These data included worker exposure data and studies to determine the potential for exposure to chromium on treated wood surfaces. This data has only recently been submitted.

The studies are now under review and once the reviews are completed, the Agency will conduct a risk assessment to determine the level of risks these proposed applications pose to people who might be exposed to ACC (including workers and residential deck owners). Only after the appropriate scientific questions have been addressed will the Agency be in a position to make decisions on the applications, including potential risk mitigation. The registered product has not been produced or marketed for several years and the company has said they have no intention to do so at this time.

Question 6. Please explain how this effort is consistent with EPA's initiative to phaseout arsenic treated wood.

Response. Chromated copper arsenate (CCA) was voluntarily removed from virtually all uses in the residential market in 2003. It is no longer legal to treat wood intended for residential use with CCA. Therefore, the Agency has completed the "phase-out" of newly available arsenic-treated wood. Limited industrial uses of CCA remain (e.g. utility poles, piers etc.).

Acid copper chromate (ACC) registrations are being sought by applicants as an alternative to CCA for general wood preservation. ACC does not contain arsenic, but chromium.

Question 7. Please also describe the status of EPA's investigation into recent claims that the chromium industry failed to disclose all data regarding the health and safety effects of hexavalent chromium.

Response. The allegations recently made regarding the failure of the chromium industry to disclose all health and safety data were made in reference to the recently completed reevaluation of the Occupational Safety and Health Administration (OSHA) safety standards for chromium. We are not aware if OSHA is conducting any investigations into the allegations.

FIFRA section 6(a)(2) requires companies holding a registration to report adverse environmental, safety and health information to the EPA if they become aware of such data. To the best of our knowledge, neither the current nor potential registrants of ACC or CCA generated or were aware of the subject data. If it is determined that a violation of FIFRA section 6(a)(2) may have occurred, we will take appropriate action.

RESPONSES BY JAMES B. GULLIFORD TO ADDITIONAL QUESTIONS
FROM SENATOR LAUTENBERG

Question 1. What are your views on the rights of States to adopt public health protections stronger than Federal laws?

Response. As a general matter, I support the States' rights to adopt public health protections that are stronger than Federal laws, unless inconsistent with Federal law.

Question 2. A GAO report last year found that EPA "lacks sufficient data to ensure that potential health and environmental risks of new chemicals are identified." What are your plans for addressing this lack of information regarding the safety of new chemicals?

Response. I have not been briefed on the findings in the GAO report. I would be happy to discuss the GAO findings and recommendations as well as the TSCA new chemicals program at some point in the future. EPA is proud of the progress it has made in protecting human health and the environment. OPPTS, in its written response to the GAO report, stated, "the Agency utilizes a variety of tools including modeling, voluntary and innovative approaches, international coordination, and information gathering and dissemination to ensure that we have the ability to make informed decisions and that there is transparency for a wide range of stakeholders and the public."

RESPONSES BY JAMES B. GULLIFORD TO ADDITIONAL QUESTIONS
FROM SENATOR BOXER

INTENTIONAL HUMAN PESTICIDE TESTING

Question 1. Please list and describe any pesticide industry representatives that EPA or its contractors or agents met or conferred with in 2005 or 2006 to discuss the testing of pesticides on humans. Please provide me with all documents, including calendar entries, meeting notes, memoranda, e-mails and other documents that relate to the dates, times, participants, and subject matter of any such meetings or conference calls. Please provide me with all documents, including calendar entries, meeting notes, memoranda, e-mails and other documents that EPA or its contractors received from or transmitted to pesticide industry representatives regarding the testing of pesticides on humans during 2005 or 2006, including copies of any human studies involving pesticides, any EPA evaluation or review of such studies, and any suggestions or comments on EPA policy or rules for such studies from the industry.

Response. EPA has conducted a search for documents that are responsive to your request. Attached are documents identified in that search that are non-privileged and public. We have withheld documents that are deliberative in nature, subject to attorney-client privilege, and/or have been claimed to be confidential business information.

Question 2. Please describe the amount of funds, time and other resources, if any, that EPA or its contractors spent processing, reviewing, evaluating or otherwise handling studies in which humans were exposed to pesticides after the date of enactment of the 2005 EPA appropriations amendment regarding the testing of pes-

ticides on humans. Please provide any records reflecting EPA or its contractors' work on pesticide human testing issues, or in processing, reviewing, evaluating or otherwise handling any studies involving pesticide testing or exposure on humans, since the enactment of the 2005 EPA appropriations amendment regarding the testing of pesticides on humans.

Response. Immediately upon enactment of EPA's fiscal year 2006 Appropriations Act (Public Law 109-54), the Agency ceased all types of work that were prohibited by that law. The law directed EPA, in effect, not to "accept, consider, or rely on . . . third-party intentional dosing human toxicity studies for pesticides" until EPA issued a final rulemaking on that issue. Thus, from the date the prohibition took effect, August 2, 2005, until EPA issued the final rule on January 26, 2006, neither the Agency's staff nor its contractors spent resources reviewing, evaluating, or otherwise handling covered studies.

As part of its general management systems, the Agency monitors expenditures of staff and contractor resources for particular program activities, such as registration and tolerance reassessment. Nearly all of the effort involved with working on covered human studies has occurred under the tolerance reassessment program, but such work constitutes only a small portion of the overall resources devoted to this program. EPA does not maintain records that permit an estimate of the amount of resources involved in review of any specific human study or, for that matter, any other particular study. In general, most of EPA's work on these studies since January 26, 2006 has involved preparations for meetings of the Human Studies Review Board. As noted earlier, from August 2, 2005 until EPA issued the final rule on January 26, 2006, neither the Agency's staff nor its contractors spent resources reviewing, evaluating, or otherwise handling covered studies.

Question 3. Please provide me with all documents, including calendar entries, meeting notes, memoranda, e-mails and other documents that reflect comments or other input from the Office of Management and Budget or any other component of the Executive Office of the President during 2005 or 2006 on EPA's policies, rules, or actions involving the testing of pesticides or other toxic substances on humans.

Response. In 2005, EPA submitted the proposed rule (NPRM) to OMB on August 1 for review under E.O. 12866. A copy of the submission package is included in the public docket as part of the E.O. 12866 Review Documentation package, which also documents changes made during the review period and identifies any that were made at the recommendation of OMB as required by the E.O.

On August 4, EPA did an introductory briefing for OMB and other E.O. 12866 reviewers. OMB sent out the invitation to the external reviewers.

On August 9, OMB invited EPA to attend an E.O. 12866 meeting with CropLife America. OMB set-up the meeting with CropLife and has documented the meeting in the OMB docket (e.g., list of attendees & summary).

On August 10, OMB arranged for EPA to brief the Human Subjects Research Subcommittee (HSRS), Committee on Science, National Science and Technology Council. Attached is the EPA calendar entry for this meeting, which includes a copy of the HSRS e-mail and agenda.

On August 23, EPA held a conference call with OMB to discuss revisions to the NPRM.

On August 29, EPA did a briefing about the revisions to the NPRM for other E.O. 12866 reviewers (mostly HSRS). OMB sent out the invitation to the external reviewers.

On September 2, OMB concluded the E.O. 12866 Review of the NPRM. This is documented on their Web site, but here is an e-mail that confirmed it for EPA.

In 2006, on January 13, EPA held a conference call with OMB to discuss the status and schedule for the Final Rule (FRM).

On January 18, EPA did a "heads-up" briefing for HSRS members. OMB sent out the invitation to HSRS.

On January 20, the FRM package went to OMB for review under E.O. 12866. A copy of the submission package is included in the public docket as part of the E.O. 12866 Review Documentation package, which also documents changes made during the review period and identifies any that were made at the recommendation of OMB.

On January 25, EPA had a conference call with OMB to finalize any edits and OMB concluded review.

The calendar entries referenced above are attached. We have also included calendar entries for Susan Hazen, the Acting Assistant Administrator for OPPTS.

Question 4. Please provide me with all documents, including calendar entries, meeting notes, memoranda, e-mails and other documents that reflect any meetings or discussions EPA or its contractors or agents have had with industry representa-

tives or scientists working with or for industry involving any reevaluation of the toxicity or carcinogenicity of arsenic compounds in 2005 or 2006.

Response. EPA has conducted a search for documents that are responsive to your request. Attached are documents identified in that search that are non-privileged and public. We have withheld documents that are deliberative in nature, subject to attorney-client privilege, and/or have been claimed to be confidential business information.

Question 5. Please provide me with all documents, including calendar entries, meeting notes, memoranda, e-mails and other documents that relate to the Office of Management and Budget's involvement in EPA risk assessment policies and peer review policies during the years 2005 and 2006. Please provide a list and description of any chemicals affected, including by a delay, by OMB's actions and a description of the chemical's current status in EPA's regulatory process.

Response. EPA has conducted a search for documents that are responsive to your request. Attached are documents identified in that search that are non-privileged and public. We have withheld documents that are deliberative in nature, subject to attorney-client privilege, and/or have been claimed to be confidential business information.

Question 6. Please provide me with all documents, including calendar entries, meeting notes, memoranda, e-mails and other documents that relate to any comments or input EPA received from the Office of Management and Budget, the Department of Defense, or their agents or contractors, regarding the human health or environmental risks or toxicity of perchlorate, or EPA policies or standards for cleaning up perchlorate.

Response. EPA has conducted a search for documents that are responsive to your request. Attached are documents identified in that search that are non-privileged and public. We have withheld documents that are deliberative in nature, subject to attorney-client privilege, and/or have been claimed to be confidential business information.

Question 7. Please list and describe the number of times, if any, that EPA has met with Syngenta or its representatives or any other person who is not an employee or contractor for the government to discuss atrazine since EPA initiated the process of developing the Interim Reregistration Eligibility Determination and Reregistration Eligibility Determination for atrazine and triazine herbicides that have a common mechanism of action?

Response. EPA has conducted a search for documents that are responsive to your request. Attached are documents identified in that search that are non-privileged and public. We have withheld documents that are deliberative in nature, subject to attorney-client privilege, and/or have been claimed to be confidential business information.

Question 8. Please provide me with all documents, including calendar entries, meeting notes, memoranda, e-mails and other documents that relate to such meetings.

Response. EPA has conducted a search for documents that are responsive to your request. Attached are documents identified in that search that are non-privileged and public. We have withheld documents that are deliberative in nature, subject to attorney-client privilege, and/or have been claimed to be confidential business information.

Question 9. Do you support additional studies be conducted or supported by EPA similar to the CHEERS study?

Response. EPA Administrator Stephen Johnson canceled the CHEERS study on April 8, 2005. I support that decision.

It is necessary that the EPA continues to pursue the goal of protecting children's health through quality and credible research. A fundamental aspect of scientific progress is the continual review and reassessment of our research processes that formulate studies. An Agency Human Studies Review Board (HSRB) has been established to review study protocols to purposely ensure that ethical safeguards are upheld. I fully intend to use the ethical knowledge of the HSRB and will continue to be committed to ensure that EPA's research studies are based on sound science and the application of highest ethical standards.

Question 10. Do you support non-intentional dosing studies with pesticides on orphans or abused children?

Response. I do not and will not support the use of any pesticide study, internal or external that involves intentional or non-intentional dosing, which does not meet the ethical standards as put forth in the Common Rule and the extension of those

standards as stated in EPA's Third Party Rule, which specifically applies to all children and pregnant women. To assure that these ethical safeguards are upheld, EPA has established a Human Studies Review Board (HSRB) to review study protocols and studies submitted to the Agency. I fully intend to use the newly formed HSRB and their guidance in adhering to ethical standards.

SUPERFUND

Question 11. Did you request more funds than you received in connection with the Omaha lead site in any fiscal year?

Response. The Omaha Lead site is currently among the highest funded Superfund cleanups in the country. Over the last two fiscal years (2005 and 2006) we have or will receive all of the funding requested for the project. We have been or will be obligating in excess of \$15M each of these years.

Question 12. Do you believe that 10–15 years was ever an acceptable timeframe for cleanup given the continuing exposure to young children at the site?

Response. With over 30,000 properties to sample and potentially over 15,000 properties to remediate, the EPA was aware that the time to address all of these properties would be extended. As a result, EPA chose to issue an Interim Record of Decision (ROD) to address the highest risk properties (e.g., properties with soils contaminated with lead concentrations above 800 ppm, properties such as day care facilities used frequently by young children, and properties where a child with an identified elevated blood lead level reside) over the next 3 years. The remaining properties at a lower risk level will be addressed in subsequent years, relying in the interim on health education and lead hazard awareness to reduce risk.

We are currently funding health education and outreach through the Douglas County Health Department. The Community Advisory Group has been active in delivering lead awareness messages widely across Omaha. The EPA was able to clean up over 1000 properties in 2005—more than at any other site nationwide since inception of the Superfund program—and plans to complete the same number in 2006, 2007, and 2008.

Question 13. What efforts are underway to conduct enforcement against PRPs at this site? Could these efforts have been begun sooner? If not, why not?

Response. Enforcement efforts are underway at the site. The EPA has identified and notified four parties of their potential liability at the site, including ASARCO, Inc., Union Pacific Railroad Company, Aaron Ferer & Sons, Co., and Gould Electronics, Inc. The EPA is continuing discussions with each of these parties concerning their liability at the site. The discussions with ASARCO are in response to its filing of bankruptcy in August 2005. In addition, the EPA is continuing to collect information to determine if other parties may be responsible for site contaminants.

Enforcement efforts at the Omaha Lead site were initiated immediately upon identifying the need to take response actions at the site. In 1999, the EPA notified ASARCO of their potential liability at the site and requested that ASARCO perform response actions at the site to address lead contaminated soils. In 2002, after proposing the site for inclusion on the National Priorities List, the EPA asked each of the four identified parties to conduct the remedial investigation and feasibility study (RI/FS). Each of the four parties declined to perform the RI/FS work. After completing the Interim Record of Decision in December 2004, the EPA requested an offer from the parties to perform the necessary cleanup work. An acceptable offer was not presented, so EPA proceeded with a fund-lead cleanup to address those properties posing the highest risk to children.

Question 14. Why were parks and schools not tested at Omaha lead earlier in the process? How long will this take and how much will it cost? Is it in the current budget?

Response. The Omaha Public School District (OPS) tested their properties during the early stages of the project and also performed any remediation work that was found to be necessary. The OPS coordinated this work with EPA. Most Private schools were also sampled by EPA early in the site investigation, although earlier this year EPA identified eight private schools that had not yet been sampled. EPA has since completed sampling at five of these private schools and is currently arranging for access to sample the remaining three.

The EPA did sample 7 parks early in the site investigation. This sampling did not find any of these properties to be contaminated above levels of concern. Children have less potential exposure to contaminated soils in public parks than at private residences, since contaminated soils at a residence typically get brought into the house through tracking or pets, and represent a 24-hour exposure source. For this

reason, EPA has prioritized the sampling and remediation of private residences over parks.

Site-specific sampling plans are being developed for some of the larger parks which are hundreds of acres in size. EPA plans to complete the park sampling this year. There are a total of 65 public parks identified in the focus area at the Omaha Lead Site.

Funding for completing both the private school sampling and park sampling is included in the current project budget.

Question 15. Could anything be done to accelerate cleanup at the Omaha lead site including requesting additional funding? Does the pace of cleanup affect the number of children expected to ingest sufficient levels of lead to exceed 10 µg/dl blood lead levels?

Response. The current pace of cleanup is at an extremely high level, which may not be able to be accelerated (even with additional funding) without creating logistical problems in a residential setting like Omaha. In addressing the highest risk properties early and generating a high level of awareness in the community through our actions and health education efforts by local community groups and health departments, the number of children with elevated blood lead levels has been reduced. Soil remediation and health education outreach have proven to be very effective in controlling the number of children with elevated blood-lead levels in the short term. For the long term, soil remediation removes a primary source of lead exposure providing protection for the children of Omaha.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING

WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement For Completion By Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and forty (40) copies of the requested information should be made available to the Honorable James M. Inhofe, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Marty Hall: Deputy Staff Director) as soon as possible.

Name of Nominee: James B. Gulliford
Business Address: 901 N. 5th St.
Kansas City, KS 66101
Business Phone: 913.551.7006
Home Address:
Parkville, MO 64152
Home Phone:

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Gulliford James Bradley
(Last) (First) (Middle)

Position to which nominated: Assistant Administrator for Toxic Substances

Date of Nomination: January 17, 2006

Date of birth: 27 December, 1950 Place of birth: St. Paul, MN
(Day) (Month) (Year)

Marital status: Married Full name of spouse: Yvonne M. Gulliford

Name and ages of children Keri Anne Gulliford, age 29

Jason Bradley Gulliford, age 25

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	University of Iowa	1969 – 1970	coursework	
	Iowa State University	1970 – 1973	BS	May, 1973
	Iowa State University	1973 – 1975	MS	May, 1975

Employment record:

List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

October 2001 to present: Region 7 Administrator, US Environmental Protection Agency, Kansas City, KS

Responsible for the planning, programming, implementation, control and direction of the technical and administrative operations of the US Environmental Protection Agency in Region 7 for the states of Nebraska, Iowa, Kansas and Missouri, and nine (9) tribal nations within those state boundaries. Pursuant to authority delegated by the Administrator, implements policy, manages communication, and resolves issues central to environmental actions affecting a diverse group of stakeholders within states, tribes, industry and citizens. Also, reviews and awards program and project grants and contracts to states, tribes local governments, and non-government organizations. The region employs 564 staff with an annual budget of approximately \$500 million.

July 1986 - October 2001: Director, Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship, Des Moines, IA

And

January 1982 – July 1986: Director, Department of Soil Conservation, State of Iowa, Des Moines, IA

Responsible for the development and management of soil conservation, water quality and mining programs for the State of Iowa, including all matters of legislation, budget, administrative rules, employee supervision, interagency coordination and annual reporting. Program authorities included (1) direct supervision and responsibility for field services support to Iowa's 100 soil and water conservation districts, (2) financial incentive support for installation of soil and water conservation practices, (3) program authorities for surface and groundwater quality protection, and (4) regulatory authority for coal and non-coal mining within the state and reclamation responsibility for abandoned mined lands. Total program responsibility: 210 staff and \$26 million annual budget.

April 1979 – December 1981: Assistant Director for Institute Operations, Coal Extraction and Utilization Research Center, Southern Illinois University, Carbondale, IL

Responsible for the management of the Illinois Mining and Mineral Resources Research Institute including program operation, research project development and implementation, fellowship/scholarship program administration, and direction of the state's Small Operator Assistance Program for the coal mining industry.

January 1978 – March 1979: Assistant Ecologist II, Fossil Energy Environmental Program Development Coordinator, Ames Laboratory, Iowa State University, Ames, IA

Responsible for the development of a fossil energy environmental research program including the coordination and development of research proposals for a multidisciplinary environmental research team, and the discovery and development of federal funding sources within the US Department of Energy and the US Environmental Protection Agency.

July 1977 – December 1977: Assistant Ecologist II, Assistant Division Chief of the Mining and Restoration Division, Iowa Coal Project, Iowa State University, Ames, IA

Supervised the mining and restoration operations of the Iowa Coal Project demonstration surface mine during the final reclamation phase of the project.

June 1975 – June 1977: Assistant Ecologist I, Environmental Program Leader, Iowa Coal Project, Iowa State University, Ames, IA

Directed the 15 member interdisciplinary environmental research team responsible for the environmental assessment of surface mining operations at the Iowa Coal Project demonstration surface mine and coal preparation plant.

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Annual EPA performance awards – 2002, 2003, 2004, 2005

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Natl. Assoc. of State Conservation Agencies	President (89)	1982 - 2001
Soil and Water Conservation Society	Iowa Chapter President (96)	1982 - present
Iowa Certified Crop Advisor Board	none	1994 - 2001

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

I have six (6) years of secondary education and more than thirty (30) years of university and public service in the environmental field, all of which have prepared me to serve effectively in the position Assistant Administrator for Toxic Substances.

I have a Bachelor of Science degree in Forestry Management with a minor in Soil Sciences, and a Master of Science degree in Forestry Economics and Marketing. This science and social science background is helpful in understanding the issues and challenges one faces when developing and implementing programs.

My work in two university positions was directed at applied environmental research to develop knowledge and solutions to time critical issues associated with emerging state and federal mine reclamation legislation. Later, I was in a senior management position in the state of Iowa to enforce those federal and state environmental performance and reclamation statutes.

Directing soil and water conservation programs in the State of Iowa required me to address environmental challenges of nonpoint-source pollution where there are no direct enforceable statutes. My leadership skills of two-way communication, creativity, and collaborative problem solving were essential to develop a framework for change within both agricultural and urban environments. These programs featured sediment control, nutrient and pesticide management, and animal waste management and utilization. My work on the Iowa Certified Crop Management program developed a more responsible approach from the industry sector serving agricultural producers.

Over the past 4+ years as Region 7 Administrator I have been responsible for implementing and enforcing the nations environmental statutes in partnership with states and tribes. I have also gone beyond compliance by developing productive relationships with communities, industry sectors, and agriculture. This work has broadened my experience in all EPA program areas and has helped me develop a more complete understanding of the complex policy issues the agency faces daily. This practical, applied experience will help shape my leadership in the program development responsibilities of the Office of Prevention, Pesticides, and Toxic Substances (OPPTS).

My work experience in both the State of Iowa and the Environmental Protection Agency have included budget, financial management, personnel and accountability responsibilities. These management skills are essential to effective leadership, program and policy development, and accountability for the agency.

In summary, I believe my education, experience, management skills and demeanor are very well suited to provide the leadership critical to address the important scientific and policy issues before OPPTS.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No - I am currently a senior EPA management executive.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no plans or agreement to return to any prior employer.

3. Has anybody made a commitment to you for a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Does not apply.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I am currently in an appointed position within the Executive Branch. I would leave this position if confirmed as Assistant Administrator for Toxic Substances.

Financial Statement:

Note: The Office of Government Ethics will provide the Committee with a copy of your Executive Personnel Financial Disclosure Report (SF-278).

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF-278, Schedule A.

None.

2. Are any assets pledged?

No.

3. Are you currently a party to any legal action?

No.

4. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes.

5. Has the Internal Revenue Service ever audited your Federal tax return? if so, what resulted from the audit?

No.

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing of interest: dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships that might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

Not Applicable.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

I have no additional or necessary actions to take to comply with conflict of interest laws or regulations.

Political affiliation and activities:

List all memberships and offices held in, or financial contributions (in excess of \$1,000), and services rendered to any political party or election committee during the last 10 years.

None.

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

No books, articles or reports. I testified before Congress on five occasions, a summary is attached. A list of speeches is also attached.

1. If there is any additional information that you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

None

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

AFFIDAVIT

James B. Allford ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 25th day of January, 2006.



Notary Public

KENT JOHNSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 7/2/07

**Congressional Testimony
James B. Gulliford**

I have testified before Congress on the following occasions:

June 13, 1983 - Subcommittee on Soil and Water Conservation, Forestry, and Environment of the Committee on Agriculture, Nutrition, and Forestry, United States Senate

Subject matter - Conservation Title of the 1985 Farm Bill

September 27, 1983 - Subcommittee on Soil and Water Conservation, Forestry, and Environment of the Committee on Agriculture, Nutrition and Forestry, United States Senate

Subject matter - Farm Bill Conservation Provisions and the 'Payment in Kind' Program

October 12, 1987 - Subcommittee on Department Operations, Research and Foreign Agriculture of the Committee on Agriculture, House of Representatives

Subject matter - Groundwater Contamination from Agricultural Sources

August 9, 1988 - Subcommittee on Conservation, Credit and Rural Development of the Committee on Agriculture, House of Representatives

Subject matter - Implementation of Conservation Compliance Provisions of the 1985 Farm Bill

October 4, 1988 - Subcommittee on Nutrition and Investigations of the Committee on Agriculture, Nutrition and Forestry, United States Senate

Subject matter - Alternative Conservation System Implementation of Conservation Compliance Provisions of the 1985 Farm Bill

Speeches
James B. Gulliford

I have given many speeches in my current position as EPA Region 7 Administrator. A list of speeches given is attached. Copies are available.

I have given many speeches and presentations over the twenty (20) years I was employed as:

- Director, Department of Soil Conservation
- Director, Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship

In both of these positions, I was an employee of the State of Iowa. There is no written record of these speeches

2002 RA SPEECHES

1/16	Welcome - National Environmental Performance Track	KCKS
1/17	Iowa Watersheds dinner	Osceola, IA
1/18	Iowa Assoc of Water Agencies	Des Moines, IA
1/23	Schilling AFB Site Briefing	
2/6	52 nd Annual KU Environmental Engineering Conference	Lawrence, KS
2/7	"How Far have We Come" Symposium	KCKS
3/1	Iowa on-Farm Nitrogen Conference	Ames, IA
3/4	Agriculture & Environmental Conference	Ames, IA
3/24	Missouri Water Environmental Conference	Osage Beach, MO
3/26	Case Conclusion Date Sheet Training	KCKS
4/2	Regional Wetlands 7 Water Resources Meeting	KCMO
4/21	Earth Day Activities	St. Louis, MO
4/24	Animal testing talking points	
5/21	Regional Awards Ceremony	KCKS
6/13	Capacity Development Workshop	KCKS
6/20	Educating for a Cleaner & Better America Conference	Nebraska City, NE
7/8	National Assoc of conservation Districts Meeting	Branson, MO
7/30	Application of Waste Remediation Tech to Ag Contamination of Water Resources Conference	KCMO
8/1	Missouri Chamber of Commerce	Osage Beach, MO
8/8	Smart Growth Grant Remarks	Des Moines, IA
8/12	20 th Annual College & University Hazardous Waste Conference	Ames, IA

8/20	Tribal ROC Meeting	Mayetta, KS
8/26	Missouri Governor's Conference on Clean Water	St. Louis, MO
8/26	Smart Growth Grant Remarks	St. Louis, MO
9/7	Iowa Environmental Council Annual Conference	Des Moines, IA
9/9	Meat Processors Recognition Event	Des Moines, IA
9/13	Lead Free Conference	St. Louis, MO
9/17	Hispanic Heritage Month Opening Event	KCKS
9/20	Associated Industries of Missouri	KCMO
9/20	Pollution Prevention Awards Ceremony	KCMO
9/24	SWCS Fall Forum on Wetlands	Jefferson City, MO
9/26	Society of American Military Engineers	KCMO
10/3	RA's State of the Region Address	KCKS
10/9	Relationship of Ag & Environmental Quality	Moline, IL
10/17	Remarks at Brownfields Event	Wellston, MO
10/18	Remarks at Roosevelt High School	St. Louis, MO
10/18	Wood Treaters Presentation at RCGA	St. Louis, MO
10/18	Community Award Remarks	St. Louis, MO
10/24	Association of Iowa Water Agencies	Des Moines, IA
10/24	World Food prize presentation	Des Moines, IA
10/25	Ag Advisory Meeting	Joplin, MO
10/25	Water Quality Advisory Committee Meeting	Ridgedale, MO
12/3	3M Nevada Event	Nevada, MO
12/12	Missouri Cattlemen's Association Meeting	Osage Beach, MO

2003 RA SPEECHES

1/14	National Farm Broadcaster's Association	Kansas City, MO
1/22	Husker Feed, Grains & Soybean Expo	Lincoln, NE
1/30	Missouri Dept. of Natural Resources Environmental Conf	Osage Beach, MO
2/7	Missouri Dairy Association Meeting	Osage Beach, MO
3/14	NASCA Conference	Orlando, FL
2/16	Missouri Coalition for the Environment	St. Louis, MO
2/20	Cleanup of the Missouri River & Lower Kansas River Meeting	Kansas City, MO
2/26	All-Employee Meeting on National Program Priorities	Kansas City, KS
3/5	Nebraska Governor's Ag Conference	Kearney, NE
4/15	Aging Initiative Public Listening Session	Iowa City, IA
4/22	Earth Day St. Louis "Clean Water, Livable Cities: Models That Work"	St. Louis, MO
4/22	Watershed Conference Panel participation	St. Louis, MO
4/26	Earth Day Event at the Kansas City Zoo	Kansas City, MO
5/1	Lewis & Clark Event at Kaw Point	Kansas City, KS
5/9	Asthma Workshop at Children's Mercy Hospital	Kansas City, MO
5/12	Keynote at 2003 Specialty Water Quality Conference	Kansas City, MO
6/6	Press Event at Former Diller Battery Superfund Site	Des Moines, IA
7/31	2003 Environmental Conference at the Lake	Osage Beach, MO
8/5	Conservation Protection & Restorations for Wetlands & Streams Conference	Overland Park, KS
8/21	Rathbun Lake watershed Initiative Announcement	S. of Des Moines, IA
8/23	Watershed Strategic Initiative Announcement	McCook, NE
8/24	Kansas Economic Policy Conference	Lawrence, KS
9/19	National Federation of Independent Businessmen Meeting	
10/2	State of the Region Address	KCKS
10/9	St. Francis Hospital Energy Star Designation	St. Francis, MO
10/17	Iowa Bar Association Annual Seminar	Des Moines, IA
10/25	Ribbon Cutting Ceremony, Natural Trail	KCKS Community College
11/3	ISU Ag/Water Quality Issues	Ames, IA
11/4	FEB's "Greening the Government" Seminar	Kansas City, KS
11/18	Brownfields Grant Announcement	Des Moines, IA
11/24	Iowa Water Summit	Des Moines, IA
12/15	Brownfields Event	Kansas City, MO

2005 RA Speeches

2/4	St. Louis Brownfields announcement (Pres announcement of \$210.1m to bf fund)	St. Louis	Kris
2/28	Hispanic Stakeholders Forum	RO	Alma, Kris
3/10	EPA R7 Performance Track Members Conference opening remarks	RO	Kris
3/17	"A Vision for Water Quality Protection" - Annual Water & the Future of Kansas Conf	Topeka, KS	Bill Hargrove, K-State, Kris
4/6	"Stormwater Program Enforcement Issues - Ties to the Clean Water Act" - Iowa Assoc of Municipal Utilities Annual Storm Water Conference	Des Moines, IA	Bill Ehm, Kris
4/22	"Ag and the Environment" at Ag Business Council of KC	KCMO	Gina Bowman, Kris
4/25	Children's Mercy Hospital (Natl Env Leadership Award recipient)	KCMO	Kevin Perry, REGFORM
4/25	Environmental Regulations Update at REGFORM meeting	KCMO	Jeff Robichaud, Kris
5/2	Opening remarks for EPA's Risk Assessor's Conference	KCMO	Kris
5/9	Opening at Big Rivers Meeting	RO	Kris
5/11	MARC Meeting on K.C. Air Quality remarks	KCMO	Kris
5/16	Kansas City Brownfields Announcement	KCMO	Kris
6/9	Regional Awards Ceremony	Reardon Center	Kris
6/14	Keynote address at American Meat Institute's Annual Environmental Conference	KCMO	Jennie Meeker, Kris
6/30	"What Farmers Can Do About Air & Water Quality" - Iowa Conservation & Environmental Issues Conference	Des Moines	Rick Robinson, Iowa Farm Bureau, Kris
9/13	"It's the Water" Workshop welcome & conference overview	Hannibal, MO	Lyle Assel, IDNR, Beckie
10/12	NASCA North Central Meeting Speech	Duluth, MN	
10/18	World Water Monitoring Day Event (with Ben Grumbles)	St. Louis, MO	Kris/Beckie
10/20	Performance Track Recruiting Event	Lincoln, NE	Kris
10/26	CSREES Heartland Regional Conference	Overland Park	Damon Frizell, Kris
11/3	Annual National Groundwater Foundation Conference speech	Nebraska City, NE	Beckie
11/10	National Association of Farm Broadcasters "Trade Talk" interviews	KCMO	Kris, Karen



U.S. Environmental Protection Agency

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News & Events

James B. Gulliford

Information for Citizens for Businesses for Government & Tribal Nations

Jim Gulliford has been the Region 7 administrator for the U.S. Environmental Protection Agency since September 13, 2001. As regional administrator, he is the interface between EPA headquarters in Washington and the citizens of Iowa, Kansas, Missouri and Nebraska. That means that while he represents EPA in the four-state region, he also represents the concerns of the region to EPA headquarters.

Education Resources

Jim had 25 years of professional experience administering environmental programs in the agricultural and mining areas before he was appointed regional administrator. He received a bachelor's degree in forestry management and a master's degree in forestry economics and marketing from Iowa State University. He worked at Iowa State University and Southern Illinois University in mine reclamation and environmental protection program areas until 1982, when he became director of Iowa's Department of Soil Conservation. Jim was named director of the Division of Soil Conservation when the Department of Soil Conservation merged into the Department of Agriculture and Land Stewardship.

Employment

Environmental Topics



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For more information: [James B. Gulliford Bio \(PDF\)](#)

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Last updated on Friday, February 18th, 2005
URL: http://www.epa.gov/Region7/james_gulliford.htm

STATEMENT OF WILLIAM L. WEHRUM, NOMINATED TO BE AN ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Jeffords, Members of the committee, thank you for the opportunity to testify before you today as the nominee for the position of Assistant Administrator of Air and Radiation at the U.S. Environmental Protection Agency. I am grateful to President Bush for nominating me for this position and I appreciate your consideration.

I am pleased to see so many friends and colleagues here today. I am especially pleased to be joined by my wife, my mother, my two sisters, and my nieces and nephews.

President Bush has provided consistent and clear expectations to Administrator Johnson and EPA—to accelerate the pace of environmental progress while maintaining our Nation's economic competitiveness. We have taken this task to heart at my time at EPA, and I am proud of what we have accomplished.

The air is cleaner today than it has been in generations. EPA programs have resulted in a substantial reduction in air pollution and correspondingly dramatic improvements in air quality. Much of this progress is attributable to the good work of those who came before us over the last 35 years. But, under the leadership of President Bush, my predecessor, and the tireless efforts of EPA career staff, we have made significant progress during my tenure.

Perhaps highest on our list of accomplishments is the Clean Air Interstate Rule. This standard will reduce emissions from powerplants by millions of tons, help solve some of the toughest and most persistent air quality problems in the Nation, and deliver the largest health benefits of any EPA rule in more than a decade. Other notable rules include the Clean Air Mercury Rule, the Clean Air Visibility Rule, and the non-road diesel engine rule. These rules will assure continued, significant progress toward cleaning our air. If confirmed, I promise to build upon these successes.

Mr. Chairman, I am appreciative of this committee's efforts to pass Clear Skies legislation. Similar to the President and Administrator Johnson, I believe enactment of legislation to reduce and cap emissions of sulfur dioxide, nitrogen oxides, and mercury for powerplants is a priority and I intend to work to that end. Other near-term priorities will include the Renewable Fuel Standard, a standard for locomotive and marine engines, and the reviews of the particulate matter, ozone, and lead national ambient air quality standards.

My priorities also will include the continued growth of our many successful voluntary and public/private partnership programs. Perhaps the best example is the Energy Star program. Last year alone, Americans with the help of Energy Star prevented the release of 334 million metric tons of greenhouse gas emissions—equivalent to the emissions from 23 million vehicles—and saved about \$12 billion on their utility bills. These programs are particularly noteworthy because they accomplish significant improvements in human health and the environment, but do so in a collaborative way rather than through our usual regulatory approach.

All of these efforts will be guided by the goal of protecting human health and the environment, but doing so in the smartest and most efficient way possible.

I believe that I am well qualified for this position. I started my career as a chemical engineer. Most of my time was spent in a specialty chemical plant. I had responsibility for implementing the multitude of health, safety, and environmental rules that applied to our operations. I became acutely aware of the value of clear and concise rules, which are particularly important to the operators, engineers, and maintenance crews directly responsible for the actions needed for day to day compliance. I also experienced first hand the frustration and challenge of decoding complicated rules that sometimes seemed to be written without apparent understanding of the real consequences for those required to implement them in the field.

This work inspired me to pursue a law degree, which I obtained by attending classes at night while still working in the plant during the day. I was fortunate to have the opportunity after graduation to come to Washington to work with two top-flight law firms. I learned not only the business of law, but also the complex legal and policy questions that drive the regulatory process. I worked extensively with EPA and came to appreciate the dedication and energy that motivates EPA employees and moves our Nation toward continued environmental progress.

I was given the opportunity to join EPA in 2001. I came on board as Counsel to the Assistant Administrator of Air and Radiation. In that capacity, I had the privilege of advancing some of the greatest environmental issues of our day. I consider it a rare privilege to now have the opportunity to serve as the Assistant Administrator.

I will close by saying that I have an avid interest in clean air by both vocation and avocation. Running is one of my few pastimes that has survived the last several years of engineering, law school, law practice, and government service. I run well over 1,000 miles in a typical year. Most of this takes place within inches of major roadways here in the DC area. I can tell you that this experience has indelibly impressed upon me the need and value of clean air. The occasional smoking truck or bus and the occasional smoking stack are stark reminders to me of the progress we have made and the challenges that remain.

Mr. Chairman and members of the committee, I thank you again for the opportunity to be here today. I am happy to answer any questions you have.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR INHOFE

Question 1. If a powerplant wants to make energy efficiency improvements or install pollution control devices under the current regulations could these changes trigger New Source Review?

Response. Under the current regulations, major new source review (NSR) is triggered if there is an emissions increase at the unit and a significant net emission increase at the stationary source following a physical change or change in the method of operation. It is certainly possible that some energy efficiency improvements and pollution control device installations at powerplants could trigger major NSR under the current regulations.

I believe promoting energy efficiency improvements and pollution control device installation is good environmental policy. For example, where emissions are capped by other programs under the Clean Air Act, such as is the case with utility SO₂ and NO_x emissions, efficiency improvements will encourage productive capacity of existing units without increasing emissions. Flexibility concerning pollution control device installation is also critical to agency programs. For example, installation of flue gas desulfurization (scrubbers) and selective catalytic reduction are important to implementation of the Clean Air Interstate Rule, which will achieve significant reductions in utility SO₂ and NO_x emissions and with our other Clean Air programs, bring most of the eastern United States into attainment with the ozone and fine particulate matter standards.

Our continuing goal is to make further improvements in the NSR program to maintain the environmental effectiveness of the program yet eliminate some of the barriers to energy efficiency improvements and pollution control device installations at industrial sources across the United States.

Question 2. IGCC is a promising technology which is still being improved and refined. However, I am concerned that the Agency is pushing this technology at the expense of other viable alternatives. Could you explain what role you see the Agency providing in terms of encouraging all new technologies?

Response. To meet the growing demand for electricity in the United States, the Administration recognizes that coal must play a significant role well into the future. To protect public health and the environment, the United States should develop a cleaner, more efficient means of utilizing coal resources to generate electricity. One such promising option is Integrated Gasification Combined Cycle (IGCC). EPA has been actively engaged over the past 18-24 months with the Department of Energy (DOE) and the Gasification Technologies Council exploring the feasibility of deploying IGCC units in the electric power market.

While IGCC is a promising technology, it is currently not cost-competitive with competing technologies, such as super-critical pulverized coal. In a memorandum issued by Steven Page earlier this year, we explain that the NSR program should not be used to force IGCC to replace pulverized coal technology as a matter of law. It is my view that IGCC soon will become cost-competitive and may begin to replace pulverized coal technology, but that this shift should be dictated by market forces.

The President's goal in introducing the Clear Skies initiative was, in part, to put in place a cap-and-trade market that sets targets and dates that would advance a market for clean coal instead of forcing fuel switching to other kinds of generation fuels. Our Clean Air Interstate Rule and Clean Air Mercury Rule follow the same goal. In this kind of marketplace, many types of technologies can flourish.

In addition to efforts related to IGCC, EPA has several Clean Energy Programs that are designed to help energy consumers in all sectors, State policymakers and energy providers improve their knowledge about Clean Energy technology and policy options by providing objective information, creating networks between the public and private sector and providing technical assistance. EPA also offers recognition to leading organizations that adopt Clean Energy policies and practices.

Question 3. Did EPA make changes to the proposed PM standard based on recommendations of the CASAC? Was there any information which CASAC lacked in terms of new studies?

Response. Under the Clean Air Act (CAA), CASAC is charged with reviewing both the air quality criteria published under CAA section 108 and the national primary and secondary national ambient air quality standards (NAAQS) promulgated under CAA section 109, and recommending to the Administrator any new standards and revisions of existing criteria and standards as may be appropriate under sections 108 and 109. Because of this statutory advisory role, the Administrator always considers the advice of CASAC carefully in formulating decisions regarding the NAAQS. In the preamble to the proposed PM NAAQS rule, the Administrator explains the extent to which his proposed decisions correspond to the recommendations of CASAC. Where his proposed decision on the PM NAAQS differs from the committee's advice, he addresses the rationale for his proposed decision and identifies the points of departure from CASAC's recommendations, as required by CAA section 307(d)(3).

Question 4. The scientific basis for a coarse PM standard in any area, urban or rural, appears to be weak and many scientific studies have been ignored. In addition, the program you have proposed would be nearly impossible to implement. Could you comment on these studies and the implementation proposal?

Response. While there are a limited number of studies of the health impacts of exposure to thoracic coarse particles, the Administrator has proposed to conclude that these studies provide sufficient evidence to support regulating those particles through an indicator focusing on the ambient mix of particles generally present in urban environments, while taking comment on other interpretations of these studies. As stated in the proposal preamble in the section outlining the proposed $PM_{10-2.5}$ indicator (71 FR 2666–2667):

Ambient concentrations of thoracic coarse particles generally reflect contributions from local sources, and the limited information available from speciation of thoracic coarse particles and emissions inventory data indicate that the sources of thoracic coarse particles in urban areas generally differ from those found in nonurban areas. As a result, the mix of thoracic coarse particles people are typically exposed to in urban areas can be expected to differ appreciably from the mix typically found in non-urban or rural areas. Ambient $PM_{10-2.5}$ exposure is associated with health effects in studies conducted in urban areas, and the limited available health evidence more strongly implicates the ambient mix of thoracic coarse particles that is dominated by traffic-related and industrial sources than that from uncontaminated soil or geologic sources. The limited evidence does not support either the existence or the lack of causative associations for community exposures to thoracic coarse particles from agricultural or mining industries. . . . Collectively, this evidence suggests that a more narrowly defined indicator for thoracic coarse particles should be considered that would protect public health against effects that have been linked with the mix of thoracic coarse particles generally present in urban areas. Such an indicator would be principally based on particle size, but also reflect a focus on the mix of thoracic coarse particles that is generally present in urban environments and the sources that principally generate that mix. . . . This indicator would also be consistent with an appropriately cautious interpretation of the epidemiologic evidence that does not potentially over-generalize the results of the limited available studies.

Based on this rationale, the Administrator concluded that it was appropriate to propose a $PM_{10-2.5}$ NAAQS despite the limitations and uncertainties in the information available.

EPA is now considering the issues associated with transitioning from current PM standards to any new standards that may result from EPA's December 20, 2005 proposal. On February 9, 2006, EPA published an Advance Notice of Proposed Rulemaking (ANPR) on Transition to New or Revised Particulate Matter National Ambient Air Quality Standards (71 FR 6718–6729). As part of this ANPR, EPA is requesting comment on numerous issues associated with implementing the proposed $PM_{10-2.5}$ NAAQS. The comment period for the ANPR will close July 10, 2006, and will be followed by a proposed rule on transition. We welcome public comment on issues associated with implementing the $PM_{10-2.5}$ NAAQS throughout this process.

Question 5. I realize the Administrator's final decision in September will be based solely on public health considerations. But many Governors, mayors, Members of Congress and businesses are interested in knowing what might happen if the standard is revised. EPA has projected the number of counties in 2010 and 2015 that it says would "record violations" if the standard is revised. Is it likely that the number

of non-attainment counties would be greater than the number of counties that record a violation?

Response. It is highly likely that the number of nonattainment counties would exceed the number of counties with violating monitors. However, at this time, it is not possible for EPA to predict which counties would be included in any nonattainment area designated under revised PM_{2.5} or PM_{10-2.5} NAAQS. Designation decisions are extremely complex, and required the Administrator to weigh multiple factors besides proximity to a violating monitor. In the past, EPA has considered factors such as MSA boundaries; emissions; air quality; population density and degree of urbanization; traffic and commuting patterns; expected growth (including extent, pattern, and rate of growth); meteorology (weather/transport patterns); geography/topography (mountain ranges or other air basin boundaries); jurisdictional boundaries (e.g., counties, air districts, Reservations, etc.); level of control of emission sources. Factors such as these will be considered in future designation decisions, and would determine the number and location of counties that would be designated nonattainment.

Question 6. Can or should we have emission limits on substances where there is no consensus on emission measurement technique, except that no known protocol is accurate?

Response. It would be difficult to formulate an emission limit for a source category for which we do not have reliable direct emission measurement techniques or technically sound surrogates for emissions. Where the Agency faces such a circumstance, I believe the solution is to focus on developing the needed measurement techniques. We actively work with stakeholders in the public and private sectors to improve measurement techniques.

Question 7. Please provide your view on EPA setting standards and allowing free markets to determine how compliance is achieved?

Response. EPA is committed to establishing national ambient air quality standards that protect public health with an adequate margin of safety. Once the standards are set, EPA works in partnership with States, industry, environmental groups and other stakeholders to find the most cost-effective ways of meeting the nation's air quality goals. We have seen evidence from the Acid Rain program and other examples that utilizing free market approaches, such as cap and trade programs, can help the Nation to reach its air quality goals more quickly and cost-effectively than other approaches. This is why we developed Clear Skies and the related rulemakings, the Clean Air Interstate Rule (CAIR), which relies on market-based cap and trade mechanisms to reduce levels of ozone and PM in an effective way across the eastern United States, and the Clean Air Mercury Rule (CAMR), which also relies on a nationwide cap-and-trade program.

Question 8. Should environmental standards ever be used to mandate process technology selection by an industry?

Response. We typically set emission limits on sources, rather than requiring a particular technology to be put in place. Our goal is to provide maximum flexibility for industry to meet the limits in the way they see fit.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR JEFFORDS

Question 1a. On March 24, 2006, the Democratic members of the Environment and Public Works Committee wrote to you regarding the inclusion of language in the proposed Clean Air Mercury rule that was drawn directly from memoranda authored by your former colleagues at Latham and Watkins. This letter and your response are attached. In addition, I wrote to EPA Administrator Michael Leavitt regarding this same issue on March 16, 2004 and received a response on July 2, 2004. Both of these letters are also attached.

My understanding of the facts is as follows. On September 4, 2003, Claudia O'Brian of Latham and Watkins transmitted two documents regarding the mercury rule to EPA career staff via e-mail. The transmittal memo mentions that these documents would be discussed at a meeting between Edison International and Jeffrey Holmstead the following week. You were invited to this meeting. On September 11, 2003, representatives of Latham and Watkins, on behalf of Edison International, briefed EPA staff, including Assistant Administrator Jeffrey Holmstead, about these papers and provided Mr. Holmstead with these documents. Portions of this material later appeared in the proposed mercury rule.

In your most recent response, you indicated that you received a copy of the Latham and Watkins memorandum prior to EPA proposal of the mercury rule. You

also indicated that “the memorandum was in wide circulation and was placed in the docket on October 1, 2003.” In addition, you stated that “I contributed to virtually all aspects of the rule, including the provisions for a trading program.” Further, you indicated that “the Latham and Watkins language used in the rule came from two places. Some was provided to us by another agency as a comment during the interagency review process and that comment was placed in the docket for the rule-making as required. The other language was inserted by EPA.” On January 31, 2004, in an article relating to the inclusion of this language in the proposed rule, Jeffrey Holmstead was quoted in the Washington Post as saying that “Neither Bill [Wehrum] nor I had any idea this language came from Latham and Watkins. . . . Our technical folks who did the subcategorization used it.” Mr. Holmstead is also quoted in that article as saying that “the law firm’s language was part of the public record and was passed along to EPA by the White House Budget Office and the Energy Department.”

Are any of the facts above inaccurate? If your answer is yes, please indicate which facts are not accurate and detail the specific inaccuracy.

Response. To the best of my knowledge, your assertions above are accurate.

Question 1b. Did you attend or participate in the meeting on September 11, 2003 with Edison International?

Response. I do not recall attending the meeting. At the time, meetings scheduled for the Assistant Administrator of OAR were often placed on my calendar for informational purposes only; I attended many but not all of these meetings.

Question 1c. When did you first receive a copy of the memorandum or memoranda?

Response. I first received a copy of the memoranda on September 5, 2003.

Question 1d. Did you read it prior to issuance of the proposed rule?

Response. Yes.

Question 1e. Did you have any discussions with Latham and Watkins representatives relating to the mercury rule prior to issuance of the proposed rule?

Response. Yes.

Question 1f. Did any of these discussions relate to mercury trading or to the Latham and Watkins memoranda or legal theories relating to mercury trading?

Response. Yes.

Question 1g. Is it your contention that the inclusion of mercury trading theories in the proposed rule was completely unrelated to any communications between Latham and Watkins and you or Mr. Holmstead?

Response. I believe that the Latham and Watkins memorandum played little or no role in EPA’s decision to propose mercury trading options.

Question 2a. In your response of April 4, 2006, you indicate that some of the information was provided to EPA as a comment during the interagency review process, and that comment was placed in the docket for the rulemaking, as required. You also indicated that you reviewed “most of the comments received through the interagency review process.”

In order to avoid any confusion, please provide us with this comment or a link to the precise location of this comment in the rulemaking docket.

Response. Please find enclosed a copy of the comment as it was received by EPA. The comment addresses the Agency’s authority under section 112(n) of the Clean Air Act. The comment may be found in the CAMR rulemaking docket at OAR-2002-0056-0108, p. 148.

Question 2b. Was the comment, which included the Latham and Watkins language, ever provided to you or Mr. Holmstead prior to issuance of the proposed rule?

Response. Yes, it was provided to me in an e-mail from the Department of Energy.

Question 2c. Did you or Mr. Holmstead review or approve this comment? Did you indicate in any way to EPA staff that it should be accepted into the rule?

Response. I reviewed the comment but I do not recollect if I directed staff to include the comment in the proposed rule. During the interagency review process for the proposed rule, I received many of the comments from other agencies, and I in turn forwarded the comments to others at EPA for their review. Interagency comments were often discussed within EPA and with the other agencies before decisions were made about whether to accept them.

Question 2d. If your answer is no, or that you do not recall, is it your contention that this comment was accepted for inclusion into the proposed rule solely on the initiative of the career staff?

Response. No, it would not have been included in the rule solely on the initiative of career staff.

Question 2e. Had you ever indicated, prior to proposal, to the career staff, that a mercury trading concept would need to be included in the proposed rule?

Response. Yes, the proposed rule included two alternative approaches to controlling mercury from utilities—a MACT standard and an NSPS standard incorporating a trading program. Discussion of a possible trading approach began in the summer of 2003, before EPA received the Latham and Watkins memorandum, and was widely discussed both inside and outside the Agency prior to proposal.

Question 2f. Including yourself, Mr. Holmstead and any other political appointees in the Office of Air and Radiation, how many staff in the Office of Air and Radiation were involved in the actual drafting of the proposed rule and capable of including the Latham and Watkins language in the rule?

Response. The proposed rule was primarily drafted by staff of the Office of Air Quality Planning and Standards' Combustion Group, with input from other Agency staff. Senior staff in that group were responsible for making edits to the final draft of the proposed rule and inserting, following discussion with EPA management and representatives of other Agency offices, the recommended changes from the Office of Management and Budget (OMB) and other interagency workgroup members that were accepted by EPA.

Question 2g. Did these staff all work under your close guidance and supervision?

Response. Staff of two offices within OAR were involved in the drafting the proposed rule, and I worked closely with a subset of that staff and provided them with guidance. But at the time we were developing the proposed rule, I served as Counsel to the Assistant Administrator of the Office of Air and Radiation (OAR). In that capacity, I did not supervise any staff.

Question 2h. How many staff were provided with an entire copy of the proposed rule prior to its issuance?

Response. The final draft of the proposed rule was broadly reviewed by staff in EPA's Office of General Counsel (Air and Radiation Law Office), Office of Air Quality Planning and Standards (Emission Standards Division/Combustion Group, Air Quality Strategies and Standards Division/Innovative Strategies and Economic Group, Emission Modeling and Monitoring Division/Group), Office of Atmospheric Programs (Clean Air Markets Division), Office of Water, Office of Research and Development, Office of Policy Analysis and Review, and Office of Policy, Economics and Innovation. From among these offices, approximately 18–24 staff would have been asked to review the final package as it moved through the Office of Air and Radiation signature process.

Question 3a. In your response of April 4, 2006 you also indicate that "other language was inserted by EPA."

Who at EPA made the decision to insert this language in the proposed rule? Was it you or Mr. Holmstead?

Response. Staff at OAQPS included the language in a draft of the proposed rule. Successive levels of EPA managers, including myself, reviewed and concurred with the draft proposal that included the language.

Question 3b. Is it your contention that this language was inserted by EPA staff without your or Mr. Holmstead's knowledge or approval, whether explicit or tacit?

Response. I reviewed and concurred with the draft proposal prior to its signature by the Administrator. At the time, I was unaware of the origin of the language.

Question 3c. Did you, prior to the issuance of the proposed rule ever have any discussions with career staff regarding the Latham and Watkins memoranda?

Response. Yes. The language at issue related to subcategorization by coal type. This concept was a generally recognized alternative that was widely discussed with stakeholders during the FACA process, within EPA, and with other Federal agencies.

Question 4a. As noted above, in your response of April 4, 2006, you indicated that "the memorandum was in wide circulation," that you "received a copy of the memorandum" prior to proposal and that you "contributed to virtually all aspects of the rule, including the provisions for a trading program." You also indicated that EPA was briefed regarding the Latham and Watkins memorandum on September 11, 2003. Records indicate that Mr. Holmstead attended that meeting.

In light of these facts in what way was it accurate for Mr. Holmstead to state that "Neither Bill [Wehrum] nor I had any idea this language came from Latham and Watkins"?

Response. Thousands of pages of documents containing information and analysis were developed by EPA and stakeholders for the proposed rule. I read many of these documents, including the Latham and Watkins memorandum. Given the very large

volume of information involved, I did not recognize the language from the Latham and Watkins memorandum in the draft of the proposed rule.

Question 4b. In particular, please address the notion that neither you nor Mr. Holmstead had “any idea” the language came from Latham and Watkins.

Response. Please see my response to question A above.

Question 4c. Was the statement in any way misleading, inaccurate or incomplete as applied to you? Or is it an accurate statement of the facts?

Response. The answer was not misleading, inaccurate or incomplete as applied to me.

Question 5. In the March 16, 2004 letter that I sent to EPA regarding the verbatim inclusion of materials from Latham and Watkins in the proposed mercury rule, I asked for the following information regarding the “borrowed language.”

“—The Agency and the person that provided it to EPA through the interagency process.”

“—A detailed description of the route that it followed at EPA, including identification of the person and office receiving it to the person and office that decided to include it in the proposed rule package.”

Please provide the description requested in the format described above.

Response. The language received through the interagency process was provided in an e-mail from Darlene Downing of the Department of Energy.

The e-mail from Ms. Downing was addressed to me. I forwarded the e-mail to OAQPS staff, who participated in intra- and interagency discussions regarding the language and who ultimately inserted the language into the draft rule. Successive levels of EPA managers, including myself, reviewed and concurred with the draft proposal that included the language.

Question 6a. Regarding the proposed mercury rule, the EPA Inspector General concluded that “senior EPA management instructed EPA staff to develop a [MACT] standard for mercury that would result in national emissions of 34 tons annually.” In your response, dated April 4, 2004, you indicated that the agency did conduct “modeling analyses of mercury caps of less than 34 tons per year nationwide.” According to the Inspector General report, the initial IPM run attempting to reach the 34 ton target resulted in emissions of 29 tons. A second model run resulted in national emissions of 27 tons. These runs were not included in the rulemaking docket according to the Inspector General.

Please provide us with the 29 and 27 ton runs and all related information, including e-mails between EPA staff regarding these analyses or regarding other levels that were considered as these analyses were being developed.

Response. EPA has considered the 29 and 27 ton runs and related information to be protected by the deliberative process privilege. EPA has defended its assertion of the privilege with respect to those runs in a case brought by the Commonwealth of Massachusetts (*Reilly v. EPA*) in Federal district court in Boston. We are aware that the magistrate judge in the case recently ruled against the Agency, but we are currently considering whether to appeal his decision and believe it would be inappropriate to release the runs in the interim.

Question 6b. Did you or Mr. Holmstead instruct staff to develop a MACT standard for mercury that would result in national emissions of 34 tons annually. Please answer yes or no before providing further elaboration.

Response. No, I did not decide that any particular analysis should be developed. Such decisions were not mine to make. I did, however, advise that very careful attention should be given to the capability of the power sector to achieve mercury emission reductions within the 3- or 4-year compliance period for MACT standards. EPA compiled extensive information about utility mercury emissions and control techniques in the process of developing the MACT standards and the Administration’s Clear Skies initiative. That information led us to conclude that while mercury reductions could be achieved in the power sector within the MACT compliance period, for the most part those reductions would not come from mercury-specific controls such as activated carbon injection. Consequently, we based the proposed MACT on air pollution controls designed to remove SO₂ or NO_x. In particular, as part of the Clear Skies effort, EPA had extensively studied the capacity of the power sector to install SO₂ and NO_x controls during the period up to 2010. That work showed that 34 tons per year was the lowest level of mercury emissions that we could reasonably expect the power sector to achieve through the aggressive application of SO₂ and NO_x controls up to 2010.

Question 6c. While EPA was developing the proposed MACT standard for mercury emissions from powerplants, did EPA staff suggest to EPA senior management that

analysis should be done for any other possible MACT standards other than the standards described in the Inspector General's report?

Response. In developing the proposed rule, there were numerous discussions between EPA staff and senior management where alternative approaches, including standards in addition to those described in the IG's report, were outlined and debated. The content of those deliberations are privileged. In developing the proposed approach, the ultimate decision about which standards to explore and propose was guided primarily by the available time (i.e., remaining time before the court deadline) and resources. Additionally, there were also numerous discussions in the FACA working group regarding alternative analyses; but again, the ability of EPA to explore some of these options was limited by time and resources.

Question 6d. If the answer to the (c) is yes and other analyses were done, please provide the standards that were analyzed and the results of those analyses.

Response. Discussions between EPA staff and senior management regarding possible alternative approaches are privileged. Due to the time and resource constraints mentioned above, we were unable to conduct analyses for all of the approaches discussed within EPA.

Question 6e. If the answer to question (C) is yes and other analyses were not done, please explain (i) what options were suggested for analysis, and (ii) why you agreed with the Agency's decision not to do the suggested analysis if you agreed with that decision.

Response. Please see my answer to question D above.

Question 7a. In your April 4, 2006 response you also indicate that, with regard to the low risk exemption included in the plywood rule, "Please note that OGC did not issue any memorandum relating to this rule."

Please find attached a draft memorandum from Paul Cort, Air and Radiation Law Office, Office of General Counsel, dated 3/04/02. Were you aware of this document when you responded on April 4, 2006?

Response. Yes.

Question 7b. Is it your contention that this memorandum does not "relate" to the low risk exemption in the plywood rule? Or was your answer based solely on the draft nature of the memorandum?

Response. My answer was based on the facts that the memorandum is a staff-level draft, does not purport to represent the views of the General Counsel, and does not specifically address the plywood rule.

Question 7c. Are there any other written analyses, draft or otherwise, provided to you by the Office of General Counsel relating to the basis for the low risk exemption found in the plywood rule? Please provide any such documents.

Response. The Office of General Counsel (OGC) was involved in the preparation of the legal analysis set forth in the preamble of the rule. OGC's legal advice was integral to our development of the rule. That legal advice is privileged.

Question 7d. Do any of these documents indicate that the exemption approach in the rule does not raise legal concerns related to consistency with the Clean Air Act?

Response. Legal advice provided by OGC personnel to me or any other Agency official is privileged communication.

Question 7e. Are there any documents that indicate that the opinions expressed in the draft memorandum are incorrect?

Response. EPA received a number of public comments that expressed views similar to some of the points explored in the draft memorandum. EPA also received numerous comments that are at odds with those views. The comments can be found in the docket for the rulemaking. Any document prepared by Agency attorneys for the purpose of giving legal advice is privileged. Any other internal EPA document conveying or concerning that advice is also privileged.

Question 7f. Was this draft memorandum part of the basis for discussions relating to the legal risk associated with the low risk exemption approach in the plywood MACT?

Response. The content of internal discussions related to legal advice provided by Agency counsel is privileged.

Question 7g. Did the Office of General Counsel ever advise you in any way that including this approach in the rule would involve significant legal risk or high legal risk?

Response. Legal advice provided by OGC personnel to me or any other Agency official is privileged communication.

Question 8a. In your April 4, 2006 response, you also refused to provide any documents related to your recusal from matters that you worked on while at Latham

and Watkins. You indicated that you were not able to provide your recusal memorandum and any related documents because “it contains information that may be subject to attorney-client privilege.” You stated that you were “consulting with the law firm regarding whether any privilege attaches and to what extent.” When will the law firm render such an opinion?

If the memorandum does contain attorney-client privileged information, how did you avoid breaching or otherwise waiving that privilege when you provided your recusal memorandum to government ethics officials?

Response. Please find enclosed a copy of the ethics memorandum issued to me on November 7, 2001, by Kenneth J. Wernick, EPA’s then Alternate Agency Ethics Official. Since the April 4 response, I have determined that the memorandum does not contain attorney-client privileged information.

Question 8b. Does your recusal memorandum actually describe or relate any attorney-client privileged communications?

Response. Please find enclosed a copy of the ethics memorandum issued to me on November 7, 2001, by Kenneth J. Wernick, EPA’s then Alternate Agency Ethics Official. Since the April 4 response, I have determined that the memorandum does not contain attorney-client privileged information.

Question 8c. Is it your view that the mere fact of representation is attorney-client privileged?

Response. Please find enclosed a copy of the ethics memorandum issued to me on November 7, 2001, by Kenneth J. Wernick, EPA’s then Alternate Agency Ethics Official. Since the April 4 response, I have determined that the memorandum does not contain attorney-client privileged information.

Question 8d. Do you or the law firm of Latham and Watkins claim that providing the recusal memorandum, or otherwise indicating the matters that you worked on, and the clients that you represented, constitutes, in and of itself, a violation of attorney-client privilege? Please provide any legal authority in support of such a position.

Response. Please find enclosed a copy of the ethics memorandum issued to me on November 7, 2001, by Kenneth J. Wernick, EPA’s then Alternate Agency Ethics Official. Since the April 4 response, I have determined that the memorandum does not contain attorney-client privileged information.

Question 8e. Does the Office of General Counsel agree with your position that you cannot provide the memorandum due to concerns related to attorney-client privilege?

Response. Please find enclosed a copy of the ethics memorandum issued to me on November 7, 2001, by Kenneth J. Wernick, EPA’s then Alternate Agency Ethics Official. Since the April 4 response, I have determined that the memorandum does not contain attorney-client privileged information.

Question 8f. According to the attached Energy and Environment Daily article published on February 13, 2004, your predecessor, Jeff Holmstead said that “both he and Wehrum have recused themselves from all matters associated with their previous employer.” Was this statement completely accurate?

Response. As set forth in the ethics memorandum referenced above, I was barred for 1 year starting September 29, 2001, from participating in the particular matters listed in Attachment A of the memorandum and from taking official action on any particular matter in which my former clients, listed in Attachment B, were or represented a party to the matter. The ethics memorandum also addressed the general rulemakings on which I had represented various clients. In the memorandum, Mr. Wernick determined that my participation in most of the rulemakings listed in Attachment C would not create an appearance of a conflict of interest. With respect to the ethylene MACT rule and the semiconductor MACT rule, he concluded that it would be prudent for me not to handle these matters during my first year at EPA. Subsequent to that time, there was no bar to my participating as an EPA official in these rulemakings.

Question 8g. Did you recuse yourself from all matters associated with your previous law firm in your recusal memorandum or at any time prior to September 2002? If you claim that answering this question is attorney-client privileged, please provide applicable legal authority in support of your contention that answering this question violates attorney-client privilege.

Response. In accordance with the ethics memorandum referenced above, I refrained for 1 year starting September 29, 2001, from participating in the particular matters identified by the memorandum and from taking official action with respect to any particular matter involving the entities listed in the memorandum. I also did not participate in the ethylene and semiconductor MACT rules in my first year at EPA.

Question 8h. Did you recuse yourself from all matters associated with your previous employer at any time after February 13, 2004?

Response. As indicated by the ethics memorandum referenced above, the limitations on my participation in the matters identified in the memorandum expired on September 29, 2002.

Question 8i. Have you, at any time after your arrival at the agency, worked on any matters associated with your previous law firm? Please list these matters.

Response. Consistent with the determinations set forth in the ethics memorandum issued to me, I have worked at EPA on Clean Air Act rulemakings to reform the New Source Review program, establish MACT standards for industrial boilers and wood products, develop a NESHAP for miscellaneous organics, and issue guidance related to BART.

Question 8j. Have any former EPA Assistant Administrators or EPA General Counsels asserted that their recusal memorandum is attorney-client privileged? Please provide any recusal memoranda prepared by former EPA General Counsels since 1994, unless the Office of General Counsel indicates that such memoranda are attorney-client privileged.

Response. I am not aware that any former EPA Assistant Administrators or EPA General Counsels have asserted the attorney-client privilege with respect to their recusal memoranda. I would be happy to discuss with you any need you may have for the recusal memoranda of these former officials.

Question 8k. Please provide your recusal memorandum and any related documents. If you feel it necessary, please provide a redacted version that does not reveal any attorney-client privileged information.

Response. I have enclosed the ethics memorandum issued to me by EPA's then Alternate Agency Ethics Official.

Question 8l. Please indicate whether, on arrival at EPA, you recused yourself from any matters, including New Source Review related matters, that you worked on while at Latham and Watkins.

Response. I acted in accordance with the ethics memorandum, which clearly describes the limitations on my work at EPA based on my prior representation of clients.

Question 9. At your hearing on April 5, 2006, I asked you some questions relating to a draft proposed air toxics rule that was reported on in the New York Times and Washington Post on April 4, 2006. In particular, I asked you whether this proposal will "require additional reductions in toxic air pollutants beyond current rules or will it allow additional emissions of toxic air pollutants when compared to current rules?" Please answer this specific question.

Response. We are in the early stages of revisiting and re-evaluating the Once In, Always In policy. Any changes to the policy will go through the formal rulemaking process and we will ask for public review and comment.

The draft proposal was not written to "require" additional reductions in toxic air pollutants from any source. The draft would have *allowed* sources to achieve additional reductions in toxic air pollutants to achieve emission levels of area sources. Sources opting to reduce emissions to area source levels, however, would have to take effectively enforceable limitations on their potential to emit. The draft proposal would have provided the industry an incentive to voluntarily reduce toxic emissions below major source thresholds. Such emission reductions would clearly benefit the environment.

In addition, the draft would allow some sources currently emitting air toxics below "area source" levels to establish permit limitations at levels that could, but not necessarily, result in some emission increases in the future. I believe there are several factors, though, that would tend to minimize those increases in many cases. For example, some sources want to be a good corporate citizen and would choose not to change current emission levels. Other companies would want to avoid the negative publicity associated with increases in toxic air pollutants. Additionally, at many sources, emissions reductions are needed for other reasons, such as netting, trading or meeting criteria pollutant standards, and thus may not be increased for those reasons. Last, I believe most sources would want to establish "potential to emit" emission limits well below the major source threshold so as not to jeopardize their area source status.

We have not yet attempted to determine the net effect of any increases and decreases of toxic air emissions that would result from such a rule.

Question 10a. With regard to the draft proposed air toxics rule described in the Washington Post and New York Times, you indicated at your hearing that "work to my recollection began almost 2 years ago when we first began talking about the

possibility.” According to the draft proposal, STAPPA/ALAPCO met with EPA to explore ways to revise the “Once In, Always In” (“OIAI”) policy to promote pollution prevention. The draft proposal goes far beyond that, and would allow sources to no longer be subject to MACT standards regardless of whether they instituted pollution prevention programs.

Where did the idea originate to expand the change to the OIAI policy beyond sources with pollution prevention programs, and to allow participation by sources that increase emissions up to the 10/25 tons thresholds? Was it either your idea or Mr. Holmstead’s idea?

Response. This policy has been discussed and debated since its inception in 1995, both internally and externally. Work on the rule began in earnest in 2004.

Question 10b. In your opinion as an attorney and legal expert regarding the Clean Air Act, is the change contemplated in the proposed rule compelled by the statutory language of the Act? How?

Response. As we proceed through the rulemaking process, we will seek the advice of the Office of General Counsel on questions of statutory interpretation. The General Counsel is responsible to developing and issuing legal opinions. We will seek public comment on all aspects of any proposal.

Question 11. At the April 5, 2006 nominations hearing, I asked you for any more recent documents related to the draft air toxics proposal. You indicated that you “would be happy to work with you and to work with your staff in identifying relevant documents and talking about what we may be able to provide.” Please provide these documents. If it is your contention that a privilege applies, please indicate in writing, to myself and Chairman Inhofe, by way of a separate letter, which privilege applies and provide a legal analysis of how such a privilege applies to Congress. Please provide such a letter by close of business on April 15, 2006, so that we may discuss this issue prior to finalization of your responses to the committee.

Response. Please find enclosed the documents responsive to your request that are not privileged. My letter to you concerning the privileged documents was submitted on April 17, 2006.

Question 12. The draft air toxics proposal states that EPA believes companies will not increase their emissions because of their desire to “avoid negative publicity and to maintain their appearance as responsible businesses.” Do you think that relying on a corporate desire to “avoid negative publicity,” instead of enforceable emission limits is an appropriate strategy for protecting our citizens from dangerous emissions of toxic air pollutants?

Response. As stated earlier, this is a preliminary draft and we are still examining the issues. I believe the desire to be seen as a good corporate citizen is one factor most companies consider in making decisions about controlling their emissions. EPA’s experience with the Toxics Release Inventory (TRI) confirms that demonstrating environmental progress has become a selling point for many companies. For example, the Boeing Company posts TRI release data on its web site and uses the information to track the company’s environmental progress. The web site notes that overall toxic chemical releases have decreased by more than 82 percent since 1991. Concern about potential negative publicity is another factor in companies’ decisionmaking. Additional factors that could lead companies to maintain their current emission levels are noted in the response to question 9 above.

Question 13. At your nominations hearing on April 5, 2006, I also asked you whether there was “a scientific or public health reason” for disregarding the advice of the Clean Air Scientific Advisory Committee regarding lowering the annual standard for fine particulate matter. In your response, you did not answer this specific question. Please do so.

Response. In formulating his decision regarding the proposed annual standard for fine particles, the Administrator carefully considered all of the available evidence and the advice of CASAC. Over the years, CASAC has consistently provided EPA with sound, well reasoned and thoughtful scientific advice. In developing the proposal for an annual fine particles standard, the Administrator was “mindful that considering what standard is requisite to protect public health with an adequate margin of safety requires policy judgments that neither overstate nor understate the strength and limitations of the evidence or the appropriate inferences to be drawn from the evidence” (71 FR 2651). It was the Administrator’s judgment, based on all of the currently available evidence and focusing on the key mortality and morbidity studies, that proposing a standard set at a level of 15 µg/m³ would be requisite to protect public health with an adequate margin of safety from serious health effects, including premature mortality and respiratory morbidity that are likely causally associated with long-term exposure to PM_{2.5} (71 FR 2651).

As also discussed in the preamble to the proposal, in proposing this level, the Administrator recognized that the CASAC Panel did not endorse retaining the annual standard at the current level of 15 $\mu\text{g}/\text{m}^3$. The Administrator carefully considered the reasons CASAC provided for its recommendation for lowering the annual standard. CASAC noted that some cities have relatively high annual $\text{PM}_{2.5}$ concentrations, without much day-to-day variation, and such cities would only rarely exceed a 24-hour standard even when set at levels below the current 24-hour standard. As a result, a 24-hour standard would have little effect on long-term mean concentrations of $\text{PM}_{2.5}$ in such cities, and thus would not likely reduce health effects associated with long-term exposure. The Administrator agrees conceptually with CASAC that any particular 24-hour standard may not result in reductions in the level of long-term exposure in areas with those kinds of air quality distributions, and further agrees that this supports relying on the annual standard, and not the 24-hour standard, to achieve the appropriate level of protection from long-term exposures to $\text{PM}_{2.5}$. However, as stated in the preamble, “the Administrator does not believe that this advice necessarily translates into a reason for setting the annual $\text{PM}_{2.5}$ standard at a level below the current level of 15 $\mu\text{g}/\text{m}^3$ The Administrator believes the principal basis for selecting the appropriate level of an annual standard should be the evidence provided by the long-term studies, in conjunction with judgments concerning whether and over what range of concentrations reported associations are likely causal, and this evidence reasonably supports retaining the current level of the annual standard” (71 FR 2651–2).

Question 14. With regard to trading of mercury, in your view, would it have been legally acceptable for EPA, taking into account the requirements of the Clean Air Act, to propose and adopt a facility specific mercury MACT that did not allow trading? Or was a trading regime compelled by your reading of the statute?

Response. After considering the utility unit emissions that would remain following imposition of the requirements of the Act, EPA determined that it was neither appropriate nor necessary to regulate utility units under section 112 of the Clean Air Act. Once EPA made that determination, it would not have been legally appropriate for EPA to issue a MACT standard. The Clean Air Mercury Rule was promulgated under CAA section 111, which allows, but does not compel, a trading regime.

Question 15. In your testimony on April 5, 2005, you indicated that with regard to the mercury proposal, “we hold that as one of the most significant accomplishments of this EPA, our office and this Administration as it relates to Clean Air. It is the first ever regulation in the world to regulate mercury emissions from coal fired powerplants and we are quite proud of the progress that we have made and we are quite proud of reductions that will be achieved through that regulation. It was a substantial undertaking. The issues were quite complex and we feel like we did a good job on that rule.” Did EPA limit mercury emissions from powerplants on its own initiative or was EPA obligated to address the mercury issue pursuant to a settlement agreement?

Response. EPA was acting under authority of the Clean Air Act in deciding to regulate mercury emissions from utilities. Following litigation over the timing of our action, EPA issued the erroneous December 2000 determination and subsequent proposed MACT standard for powerplants pursuant to a settlement agreement with NRDC. However, before the deadline in that agreement for final action, EPA revisited and revised its earlier finding and determined that it was not “appropriate or necessary” to regulate mercury emissions from electric utility steam generating units under section 112 of the Act. Thus, EPA was no longer under an obligation to issue a MACT standard. Nonetheless, in the Clean Air Mercury Rule, EPA chose to further reduce domestic emissions of mercury from coal-fired powerplants.

Question 16a. On April 3, 2006, EPA released the results of a review of the process for setting National Ambient Air Quality Standards (NAAQS) that you co-chaired. The review indicates that you support eliminating the staff paper and replacing it with a “policy assessment” document. In the memo initiating this process, authored by Deputy Administrator Peacock, he states that “the Administrator is interested in determining whether those practices reflect the most rigorous, up-to-date and unbiased scientific standards and methods.”

What role did you play in drafting the December 15, 2005 memo signed by Deputy Administrator Peacock? Did you review drafts of this memo prior to its signature?

Response. My participation in the drafting of the December 15, 2005 memo was limited to providing review comments on one draft of the document. I gave my comments to the Deputy Administrator prior to the memo being issued.

Question 16b. Did the idea for conducting the review originate with you?

Response. No, the idea did not originate with me.

Question 16c. Did this idea originate with parties outside the Agency?

Response. As far as I am aware, the idea did not originate outside the Agency.

Question 16d. Did you discuss this idea with parties outside the Agency prior to December 15, 2005?

Response. No, I did not discuss this idea with parties outside the Agency prior to issuance of the memo.

Question 16e. With regard to the question of whether the NAAQS reflect “unbiased scientific standards and methods”, what evidence did EPA have prior to the initiation of the review of “bias” in scientific standards and methods?

Response. The purpose of this review is to see if the NAAQS review process can be improved. As summarized in the workgroup report, over the last 25 years, EPA or CASAC have conducted several reviews of the process. The recent review focused on the “timeliness of the NAAQS review process; consideration of the most recent available science; distinctions between science and policy judgments; and addressing uncertainties in scientific information.” In deciding to conduct this review, we did not consider bias as one of the key issues in past NAAQS reviews, but are aware that some outside commenters have raised this as a concern.

Question 16f. Did EPA find any credible evidence during the review that the process suffers from a lack of “unbiased scientific standards and methods?” If so, please detail this evidence.

Response. As explained in the answer to question E above, we did not consider bias as a key issue. Therefore, we did not investigate possible bias during our review.

Question 17a. In the memo from you and Assistant Administrator George Gray dated April 3, 2006, you recommend that the “Staff Paper” should be replaced with more narrowly focused “policy assessment document” that “reflect the Agency’s views, consistent with EPA practice in other rulemakings. This recommendation is contained only in the memorandum signed by you and Dr. Gray, and is not included in the Review prepared by the EPA’s NAAQS Process Review Workgroup. As you know, the Staff Paper, prepared by EPA scientists, has served as the basis for all previous NAAQS decisions and a key strength of that document has been the lack of political intrusion into the science based process that produces the Staff Paper. This is appropriate given that the Clean Air Act requires the National Ambient Air Quality Standards to be based on the “latest scientific knowledge” and to be based on air quality “criteria” reviewed by the Clean Air Scientific Advisory Committee. It requires EPA to establish an independent scientific review committee that is to “recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards.” This process has worked well since its inception and NAAQS have repeatedly been upheld by the Courts, including the Supreme Court. You now recommend that the staff paper be replaced by a previously unheard of “policy assessment” document that will “reflect the agency’s views.” In the past, the Staff Paper reflected the best scientific judgment of the EPA and the Administrator used that document to inform her/his views.

How will replacing the Staff Paper with a “policy assessment” document enhance adherence “to the highest scientific standards” as described in the Peacock memorandum.

Response. The workgroup recommendation for replacing the staff paper as currently constituted with a policy assessment document was contingent on implementing a series of changes to earlier steps in the process, especially an improved and focused integrated assessment of the scientific information and a separate risk assessment document. The workgroup recommended that the science assessment document be a more concise evaluation, integration, and synthesis of the policy relevant science, and include key science judgments that will inform the later policy assessment document. The recommended reformulation of the science assessment and risk assessment documents eliminates the need for the staff paper to develop a duplicative and time consuming assessment of the policy relevant science (as has been the case historically) or to incorporate a chapter summarizing the risk assessment.

This more narrowly focused policy assessment document would be based on the science and risk/exposure assessments and would include policy-relevant air quality analyses. This document could focus on identifying approaches for reaching policy judgments; considering the adequacy of the current standards and whether alternative standards should be assessed for consideration; and identifying a range of options for alternative standards (in terms of indicators, averaging times, forms, and ranges of levels) that might be considered by the Administrator in making policy choices. The workgroup believed this approach would permit a more timely and fo-

cused review of both the science and policy issues that arise in the NAAQS review process, helping to ensure consideration of the most recent available science.

The separate question of management involvement is still being debated within the Agency. I would be happy to report back once these deliberations are complete.

Question 17b. Will the “agency’s views” that are to be “reflected” in the “policy assessment” document be solely science based? Or will they also reflect political considerations? Will they reflect considerations of cost or implementation of other programs?

Response. While George Gray and I recommended that the policy assessment document incorporate an Agency perspective, we are still in the process of considering alternative approaches and have made no final decisions on the issue. Nevertheless, if such an approach were to be adopted, the Agency views would be founded on the available science. The policy assessment would reflect Agency policy views but would not reflect cost or other considerations not permitted in making NAAQS decisions.

Question 17c. What document prepared by agency scientists and looking solely at scientific issues will replace the Staff Paper? Will you commit to allowing the creation of such a document and to relying on its recommendations as the basis for NAAQS decisions?

Response. The review of the science in the current criteria document as well as the integrated review of relevant scientific information contained in the staff paper would both be addressed by the restructured science assessment document. The workgroup recommended that this be a more concise evaluation, integration, and synthesis of the most policy-relevant science (with comprehensive annexes with generally descriptive information), and that it include key science judgments that are integral to the risk/exposure assessments. This science-based document will continue to serve as the foundation for the development and assessment of policy options and will ultimately inform any NAAQS decision.

Question 17d. Please summarize for the record the specific recommendations of the workgroup that lead you to decide to replace the Staff Paper with a “policy assessment” document. Did the career staff endorse the approach of replacing the Staff Paper?

Response. The specific recommendations of the workgroup on this matter are summarized in the responses to A) above and are presented in full in section 3.2.4 of the workgroup report. The career staff on the workgroup, several of whom have worked on the NAAQS for many years, fully endorsed the recommendation for transforming the staff paper into a policy assessment document. The Workgroup took no position on whether that document would reflect staff or Agency views.

Question 17e. With whom did the idea to replace the staff paper with a policy assessment document originate? Career staff? Political staff? Or outside the EPA?

Response. The concept of transforming both the criteria and staff documents into more focused science assessment, risk assessment, and policy assessment documents originated with the Agency staff most heavily involved in the NAAQS review process over the years. It reflected the staff’s understanding of the basic functional elements of the NAAQS review process and on the nature of the linkages between the documents currently prepared as part of the a NAAQS review. The workgroup was unanimous in recommending this change in approach.

Question 17f. Why do you believe it is better to have CASAC comment on a document that reflects the Agency’s views rather than the current process where CASAC comments on the Staff Paper?

Response. As noted above, the Agency has not reached any decision with respect to whether or how to incorporate Agency views into the policy assessment document. We place great weight on our interactions with CASAC as well as their recommendations regarding the NAAQS, and any changes we ultimately adopt will preserve the nature of the CASAC role and contribution in the process.

Question 17g. Please provide any documents that you have reviewed that recommend changing the process so that CASAC comments on the Agency’s views rather than the current process where CASAC comments on the Staff Paper.

Response. Other than the final version of the Peacock memorandum, any internal documents that I reviewed that make the recommendation described above are privileged. Comments from external stakeholders that make the recommendation are enclosed.

Question 18. A recent court decision found EPA’s Equipment Replacement Rule to be invalid. In reaching its decision, the court was highly critical of EPA’s legal rationale for this rule, saying it only made sense in a “humpty-dumpty” world. Given that this rule was obviously legally risky, what were the public health bene-

fits sought by that rule and did EPA have a quantitative or empirical analysis showing that the rule would lead to actual emissions reductions in absolute terms?

Response. While the EPA acknowledges that the Equipment Replacement Provision (ERP) could have allowed emissions to increase at a particular facility, EPA evaluated the emissions impact of the rule on a national level. The national evaluation is more appropriate here, since the ERP would have national application. Based on review and analysis of emissions models and case studies, both for electric utilities and for six other major industrial sectors, EPA determined that the ERP, as a whole, would have resulted in equal or better environmental protection than currently provided by the existing regulations, and in a more streamlined and effective manner. Specifically, EPA concluded that maintaining safe, reliable and efficient operations would have the corresponding environmental benefit of reducing the amount of pollution generated per unit of product produced.

Question 19. On October 13, 2005 EPA proposed changes to the New Source Review program for electric generating units. Did EPA, prior to proposal, conduct a quantitative or empirical analysis showing that this proposal would lead to decreases in emissions in absolute terms either nationally, regionally, statewide or on a facility specific basis? If so please provide this analysis.

Response. We did not include specific quantitative or empirical analysis at proposal. However, as described in the proposal, we are now developing a supplemental proposal containing quantitative and empirical analyses that will address this issue. We expect to publish this supplemental proposal in the near future.

Question 20. In reaching the decision to move forward with the Equipment Replacement Rule, were you provided with legal advice indicating that there was a high legal risk associated with this rule? If so, what motivated your decision to continue pursuing this approach to the law? Would it have been detrimental to public health if you had simply abandoned this regulatory exemption and used the resources of the agency on other projects? How?

Response. Our internal discussions of the legal merits of a rule or any other official agency action are protected by attorney-client privilege.

Question 21a. As reported in the Los Angeles Times, you were instrumental in developing a proposal to exempt so called "low risk" sources from certain requirements relating to toxic air pollution under section 112 of the Clean Air Act. The legality of that approach was questioned by the EPA Office of General Counsel. Thousand of tons of air toxics are emitted each year and yet EPA has failed to fulfill many of its statutory duties under section 112.

What actions have you championed to increase the effectiveness of the air toxics program in decreasing emissions of cancer causing air pollutants? Please provide documentation of those efforts.

Response. EPA has invested substantial money and resources to complete our obligation to establish technology-based standards for major source categories, and to implement residual risk and area source rules and other related rulemakings. These actions increase the effectiveness of the air toxics program by reducing emissions of hazardous air pollutants. In addition, President Bush's 2007 budget includes a \$2 million request to expand our efforts in this area.

Question 21b. Why hasn't the EPA conducted the periodic review and revision, where appropriate, of the list of toxic air pollutants which present or may present a threat of adverse human health effects, as required under section 112(b)(2) of the Clean Air Act?

Response. Our review and revision of the list of toxic air pollutants is guided by petitions requesting us to add or delete a substance from the list. To date we have received eight petitions to remove an individual HAP or component(s) of a HAP grouping. These are: five of the glycol ethers group (denied); caprolactam (granted); long chain glycol ethers (granted); ethylene glycol monobutyl ether (granted), methyl ethyl ketone (granted), and methanol (denied). Petitions to delist methyl isobutyl ketone and methyl diphenyl diisocyanate are pending. We have received one petition to add the mixture diesel exhaust (pending), and a request to add the compound hydrogen sulfide (pending).

Question 21c. In your capacity as legal advisor to the previous Assistant Administrator for Air and Radiation, did you ever bring attention to this responsibility and suggest a course of action to comply with the requirement to review as appropriate?

Response. Our legal obligation is to periodically review the list and revise where appropriate. As noted above, our review and revision of the list has been guided by petitions to list or de-list a substance.

Question 21d. Do you have plans to move forward aggressively with the residual risk program as required under Clean Air Act section 112(f)? What are those plans

and what is your plan for fulfilling the statutory requirements that EPA promulgate such standards within 8 years of the time a MACT standard is set for each source category?

Response. Yes, we are planning to invest substantial Agency resources in implementing the residual risk requirements. To date we have finalized five residual risk rules and proposed one more. Our plan is to address each of the source categories in the order the technology-based standards were finalized.

Question 22a. In December 2000, the EPA added utilities as a source category for mercury and other air toxics under section 112 of the Clean Air Act. Pursuant to section 112(c)(5), EPA is required to promulgate standards covering each and every emitting unit within that source category within 2 years after addition of a source category and compliance is required within approximately 3 years at the most.

The Administration did not comply with the Act's specific legal requirements in this case. Why not?

Response. The schedule for this rulemaking was established in the prior Administration through litigation with the Natural Resources Defense Council. EPA was required by settlement agreement to propose regulations for this source category by December 15, 2003; this date was met by the Agency. The same settlement agreement called for final rules to be in place by December 15, 2004. By consent of the litigants, this date was extended to March 15, 2005. Once EPA determined that it was not appropriate or necessary to regulate utility units under section 112, however, EPA no longer had a legal obligation to issue a MACT standard applicable to those units.

Question 22b. Did you ever provide advice to Mr. Holmstead regarding means by which the Agency could avoid complying with the requirements of section 112(c)(5)?

Response. No.

Question 23. Assume that each and every coal-fired electric generating unit had been required by EPA to achieve at least a 34 percent reduction in mercury emissions, which EPA testified in 2002 and 2003 was the approximate co-benefit level obtained by cost-effective, feasible SO_x and NO_x reductions, according to the compliance requirements schedule of section 112(c)(5)—meaning full compliance not later than 2005. Since the Clean Air Mercury Rule does not require any utility to make reductions in mercury for many years, please provide the exact time in the future at which each and every coal-fired powerplant in the Nation is likely to achieve a 34 percent reduction in mercury emissions.

Response. It is incorrect to state that the Clean Air Mercury Rule (CAMR) does not require any utility to make reductions in mercury for many years. In fact, the rule puts a hard cap of 38 tons on emissions in 2010, requiring about 10 tons of reductions from the current level of mercury emissions from powerplants. Because of the incentives provided by the ability of sources to bank SO₂ allowances under the Clean Air Interstate Rule, EPA estimates that mercury emissions will be reduced to about 31 tons by 2010, or approximately a 35 percent reduction from current levels. As is the nature of a cap-and-trade program, not every plant will be reducing emissions by this percentage; however, EPA predicts that many of the largest and most polluting coal-fired powerplants in the United States will be reducing emissions by far more than 35 percent during the first phase of CAMR. Further, CAMR will permanently cap mercury emissions at 15 tons at full implementation, which is about a 70 percent reduction from current levels. Many plants are expected to achieve far greater than a 70 percent reduction. EPA has not done an analysis of the policy scenario referenced in the question, and thus we do not know at which point a 34 percent reduction from every plant would be achieved in that scenario. However, under CAMR, emissions reductions will be greater and more cost-effective than the scenario described in the question.

Question 24. Have you, at any point, in your service at EPA engaged in communications with the White House or the OMB that had the effect of avoiding the information collection, public transparency or docketing requirements of section 307(d) of the Clean Air Act?

Response. Section 307(d)(4)(B)(ii) of the Clean Air Act requires the docketing of drafts of proposed and final rules submitted by the Administrator to OMB for any interagency review process, all documents accompanying such drafts, all written comments thereon by other agencies, and all written responses by the Administrator to such comments. I believe that we have complied with the letter and spirit of section 307(d)(4)(B)(ii).

Question 25a. During your nominations hearing on April 5, 2005, you were asked about study of mercury deposition in Steubenville, OH, that shows that about 70 percent of mercury deposition is from local sources, especially local powerplants. You

testified that “it squares up pretty closely” with the analysis EPA did for the Clean Air Mercury Rule (CAMR) and that you were “frankly gratified by that.” Your testimony suggests that even before CAMR was finalized, you were aware that, in some areas, powerplants are a significant source of mercury deposition. This is consistent with a March 1, 2005 e-mail from Jason Burnett to Elizabeth Stolpe which states that “Most of the powerplant deposition is in the Ohio river valley. In some places of Pennsylvania, for example, powerplant deposition represents more than half of the current deposition.”

A review of the primary documents released to the public at the time EPA issued CAMR provides a different impression. In the main public documents, EPA does not appear to mention that powerplant mercury emissions may be a significant source of mercury deposition in some areas. For example, EPA’s Fact Sheet on the Clean Air Mercury Rule, in a section labeled “Mercury Emissions—A Global Problem” states that EPA’s analyses “conclude that regional transport of mercury emission from coal-fired powerplants in the U.S. is responsible for very little of the mercury in U.S. waters.” In the “Charts and Tables” section on the EPA mercury rule web site, EPA included one chart, “Mercury Deposition in the U.S.” that, when updated, showed that powerplants contributed 11.1 tons out of the total national mercury deposition in the United States of 144 tons. Also in the “Charts and Tables” section, the “Mercury Emissions Are a Global Problem” chart shows that U.S. powerplant emissions are 1 percent of the global total.

Given that EPA’s modeling done before it finalized CAMR showed significant deposition in Steubenville, OH, and other areas from domestic powerplants, why didn’t EPA point that out in CAMR documents geared to the press and general public?

Response. EPA believes it is important to communicate that we cannot expect a quick fix to the global mercury problem because U.S. emissions represent just a few percent of global man-made mercury emissions. Most of the mercury deposited in the United States comes from sources outside the United States, and most mercury exposure in the United States is the result of consumption of fish and shellfish from the ocean environment. Moreover, nearly 80 percent of the ocean-dwelling fish and shellfish consumed in the United States are imported. In addition, we have consistently stated, including in congressional testimony, that there are regional differences in mercury deposition estimates for the United States. For example, U.S. sources represent a greater fraction of the total deposition in parts of the Northeast because of the direction of the prevailing winds. See www.epa.gov/mercury/control-emissions/global.htm, www.epa.gov/air/clearskies/pdfs/testimony052605.pdf, and www.epa.gov/air/clearskies/pdfs/presentation052605.pdf. This same information is presented in even more detail in the technical support documents supporting the Clean Air Mercury Rule. See, for example, www.epa.gov/ttn/atw/utility/aqm-oar-2002-0056-6130.pdf.

Question 25b. Did EPA have any maps that showed local deposition levels from powerplants? If so, why weren’t these maps placed in the “Charts and Tables” or “Basic Information” section of the Web site?

Response. The maps that you request were made available on the web link, “Technical Information,” directly below the “Charts and Tables” link upon promulgation of the final rule. There is always a choice to be made about what level of detail to provide in summary tables and what level of information to provide in more detailed technical documents. I was not involved in making those decisions for the Clean Air Mercury Rule.

Question 25c. Do you believe it is misleading to have provided information on global and national emissions and national deposition without providing information in the same places about areas where the deposition from domestic powerplants is a significantly higher percentage than the national average?

Response. As described above, all of the requested information has been made available to the public through our web site and through additional outreach since the promulgation of the final rule. For most Americans, mercury exposure is largely the result of global emissions, and this is important information for the public to receive.

Question 25d. Do you plan on updating the “Basic Information” or “Charts and Tables” section of the CAMR web site to provide information geared to the press and general public regarding areas of the country, like Steubenville, OH, that have significant deposition from domestic powerplants?

Response. EPA is always looking for ways of improving our communication of complex issues to the public. We have taken the opportunity to update the “Charts and Tables” section to reflect the deposition maps described above, so that information on regional variations in deposition patterns are available in more places on EPA’s web page.

Question 26a. Section 112(d)(6) requires EPA to review the technology-based standards “every” 8 years—in other words even beyond the one-time residual risk review. This is an assessment of the technology-based decisions made with the original promulgation of the technology-standards. There is no mention of a risk-based exemption from this review. Yet in the final residual risk rule for coke oven batteries, the preamble states that no further review or revision will be required for source categories that are below specified risk levels.

Did you play a role in development of that position and the legal interpretation behind it?

Response. Yes.

Question 26b. What is the basis in the language of the Act for this interpretation?

Response. Your statement that the final residual risk rule for coke ovens provides that “no further review or revision will be required for source categories that are below specified risk levels” is an overstatement of the position laid out in the preamble to the coke ovens rule. We stated that the findings that underlie the section 112(f) determination should be a key factor in the section 112(d)(6) determination, and added that if the section 112(f) analysis was not based on the availability or cost of controls, then advances in control technologies “should not justify revising the MACT standard pursuant to section 112(d)(6);” we did not take the position that no further review would be required. Moreover, in several final residual risk rules signed on March 31, 2006, and due to be published in the near future, we clearly state our position that section 112(d)(6) requires that review of the standards every 8 years.

Question 27. The goal of the residual risk program is to ensure that major sources of hazardous air pollutants (HAPs) are held to emissions levels that are demonstrated to protect public health with an ample margin of safety. The EPA, however, has decided to break major sources into component parts for purposes of setting standards. How will you ensure that at the end of the day, when the risks posed by each component part is added together, that all major sources will meet the ample margin of safety requirement?

Response. Section 112(f) of the Clean Air Act instructs EPA to look at the residual risk that may remain for certain source categories for which EPA has issued a section 112(d) standard. EPA’s residual risk rules have followed this instruction.

Question 28. Section 112(f) of the Clean Air Act directs EPA to assess the risk to the maximum individual risk, which means EPA will find that one source in the category that poses the greatest risk, and then use this risk determination to set standards for the “category.” In other words, the directive of 112(f) is to use the worst-case source to drive the standards for the category. This was obviously the protective approach Congress believed appropriate for addressing the national air toxics problem. It was a reasonable approach given that residual risk is not a recurring requirement. By looking at the worst example within a category, EPA can provide reasonable assurances that everyone will be protected even as things change over time. Yet EPA seems determined with concepts like the “Total Facility Low Risk Demonstration” and the “Generic Residual Risk Rule” to undermine this protective approach by letting sources individually assess their own risks and determine whether more stringent standards are necessary for them. How is this consistent with the statutory directive to use the risk to the most exposed individual to set standards for the entire category?

Response. The “Total Facility Low Risk Demonstration” and “Generic Residual Risk Rule” concepts are being discussed within the Agency. At this time, it is premature for EPA to comment on what those concepts may entail, or the specifics of how they comply with section 112(f).

Question 29. Among the emissions often allowed by current technology standards are periods of excess emissions during startup, shutdown and malfunction. Do you agree that these allowed emissions need to be evaluated to assess potential acute risk posed during these events?

Response. Sources are required to minimize emissions at all times, including periods of startup, shutdown, and malfunction. To the extent that these emissions can be appropriately quantified and anticipated, we plan to include them in any assessment of acute risk.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR VOINOVICH

Question 1a. EPA has designated 495 counties across the nation—38 in Ohio—as in nonattainment for the particulate matter and ozone air quality standards.

How is EPA working with States to provide technical and legal guidance as they develop implementation plans?

Response. EPA regional office and headquarters offices are working with States and regional planning organizations on a number of technical and legal issues related to the development of State implementation plans. These issues include guidance and technical assistance on CAIR implementation, emission inventory development and review, air quality data analysis, evaluation of available control measures, and air quality modeling and assessment. EPA also provided STAPPA/ALAPCO with grant funds to develop its March 2006 guidance document, “Controlling Fine Particulate Matter Under the Clean Air Act: A Menu of Options.” In the past, EPA has also supported STAPPA/ALAPCO in efforts to develop similar documents for State and local agencies on controlling ozone precursors. More generally, EPA has issued numerous guidance documents to assist States in developing their air quality plans, and is sharing technical and analytical tools to help States (see response to part b. of this question).

Question 1b. What is EPA doing to make sure that States have maximum flexibility and numerous tools at their disposal to address their unique air quality situations?

Response. First, EPA has developed many rules (such as CAIR, the NO_x SIP call, and rules for diesel and gasoline on-road and non-road vehicles and engines) to address key sources of air pollution at the regional and national levels, reducing, in many cases, the burden on local sources. States will be able to count on reductions from Federal programs as they develop their own plans for attainment. Second, to the extent possible, EPA has developed or is developing implementation policies for “new” 8-hour ozone areas and fine particulate matter areas under the more flexible provisions of subpart 1 of section 172 of the Clean Air Act. Third, EPA has issued numerous technical guidance documents to assist States in developing their air quality plans. For example, to make it easier for States to use non-traditional measures in air quality plans, we have issued recent guidance documents on topics such as how to obtain emission reduction credit for emerging and voluntary measures, energy efficiency and renewable energy, truck and locomotive idling reductions, and “bundled” groups of measures. Fourth, we are sharing technical and analytical tools to help States characterize air quality problems and craft solutions. Examples of guidance documents and tools are listed in an attachment to my November 10 testimony on implementation of the ozone and fine particle standards before the Senate EPW Subcommittee on Clean Air, Climate and Nuclear Safety.

Question 1c. Ohio Governor Taft sent a letter in February 2006 to the EPA Administrator on the State’s efforts to replace a vehicle emissions testing program in the Cincinnati and Dayton areas with industrial pollution control programs and clean fuels (RVP 7.8). The Governor’s letter describes several situations where Ohio EPA was led to believe that they were proceeding properly. However, it is now unclear whether U.S. EPA will approve of Ohio’s plan. How will the Agency make sure that this miscommunication does not occur in the future as more States look to U.S. EPA for guidance?

Response. EPA has been working with the State of Ohio in their efforts to replace the vehicle I/M programs in Dayton and Cincinnati. The States are given primary responsibility to design SIPs so that they reflect local needs, and EPA gives significant deference to those air quality planning decisions. In working through this particular process, the EPA has to apply certain Clean Air Act provisions that specifically address adoption of State fuel measures like the low RVP program submitted by Ohio. We are committed to working with the State in a timely manner to address the question that these unique provisions raise.

Question 2a. What is the role of the Clean Air Scientific Advisory Committee (CASAC)? What is the purpose and nature of CASAC’s recommendations to the EPA Administrator regarding a National Ambient Air Quality Standard (NAAQS)?

Response. Pursuant to the Clean Air Act, the CASAC is an advisory body that offers advice and recommendations to the Administrator in the process of reviewing the NAAQS. CASAC generally provides the Administrator both advice on how to interpret the science underlying the NAAQS and recommendations on the interface between that science and the policy decisions involved in setting or revising a NAAQS. The Administrator is charged under the CAA with making the final decision on whether and, if so, how to adjust the standard.

As you note in your letter, the authority of the CASAC derives from section 109(d) of the Clean Air Act (CAA), which requires the Administrator to appoint “an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.” This committee is charged with reviewing both the air quality criteria published under section 108 of the CAA, and the national primary and secondary ambient air quality standards promulgated under section 109 of the CAA, and recommending to the Administrator any new standards and revisions of existing criteria and standards as may be appropriate under sections 108 and 109. As described in CASAC’s charter, and consistent with section 109 of the CAA, the committee’s duties are advisory in nature, and include several activities beyond review of the criteria and standards. Specifically, the charter states that CASAC will:

- a. Review the criteria published under section 108 of the CAA and the national primary and secondary ambient air quality standards and recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate;
- b. Advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards;
- c. Describe the research efforts necessary to provide the required information;
- d. Advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and
- e. Advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

Question 2b. How does the EPA Administrator take into consideration the recommendations of CASAC and is the Administrator required to follow them?

Response. Because of CASAC’s statutory advisory role and the expertise that it brings to the NAAQS reviews, the Administrator carefully considers the committee’s advice in making decisions about the NAAQS. CASAC’s advice is formed via a deliberative public process in which the accumulated scientific evidence is scrutinized by the scientific experts on the CASAC panel. Stakeholders also present their comments during a public comment period. Recent NAAQS reviews have involved the publication of a comprehensive “criteria document,” prepared by EPA’s Office of Research and Development to characterize, assess, and integrate the scientific evidence about the health effects of the pollutant under review, and a “staff paper,” prepared by EPA’s Office of Air Quality Planning and Standards to provide additional policy-relevant information (e.g., quantitative estimates of exposure and risks to public health) and advice to the Administrator. CASAC reviews drafts of each of these documents and holds public meetings during which the committee hears comments on the documents from other scientists and stakeholders.

The Clean Air Act grants specific authority to the Administrator to make revisions periodically to the NAAQS. As 109(b) clearly states: “the Administrator shall complete a thorough review of the criteria . . . and the NAAQS . . . and shall make such revisions . . . as may be appropriate in accordance with section 108 . . . and [109(b)]” (emphasis added). CAA section 109(b) provides for the establishment of “ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator . . . are requisite to protect the public health” (emphasis added). Again, this phrasing clearly and unequivocally establishes that the ultimate decisions about whether to establish or revise a NAAQS, including decisions about the appropriate form and level of such standard, must be made by the Administrator. Thus, although the Administrator carefully considers the advice of CASAC, according to law, the final decision clearly rests in the Administrator’s hands.

Question 2c. How does the EPA Administrator take into consideration technical, legal, and other pertinent information from EPA staff and credible experts in making policy judgments?

Response. In addition to the advice received from CASAC, the Administrator may receive advice about how to interpret the scientific evidence from a variety of stakeholders besides CASAC. This advice may come in the form of written and oral public comments, meetings with the Administrator and senior EPA staff, and, in the time period immediately preceding proposal and final promulgation of a NAAQS decision, comments on the draft rule from other Federal agencies via the interagency review process. In addition, the Administrator generally requests comment on a range of alternatives to his proposed decision on the NAAQS reflecting alternative interpretations of the science or alternative policy conclusions. Generally, all parties wishing

to provide advice are asked to provide their rationale for their interpretations of the science and policy recommendations and relevant supporting documentation. Thus throughout the NAAQS process, the Administrator can draw from a variety of sources with alternative interpretations of the scientific evidence and alternative policy conclusions.

Question 2d. What considerations and circumstances might cause the EPA Administrator to reach a policy conclusion that differs from CASAC's recommendations?

Response. The considerations and circumstances under which the Administrator might reach a policy decision that differs from CASAC's recommendations will vary based on the nature of the scientific evidence and the nuances of the policy decision at hand. Each NAAQS decision rests on myriad pieces of evidence, and only a case-by-case examination of the specific pieces upon which the Administrator chose to place the most emphasis in any given decision can clarify why that decision might depart from CASAC's advice. For example, there may be instances in which the Administrator reaches public health policy judgments about what standards are requisite to protect public health with an adequate margin of safety that may differ from the policy recommendations made by CASAC. In those instances where his decision on the NAAQS deviates from the committee's advice, he takes special care to address the rationale for his decision and to identify the points of departure from CASAC's recommendations. As required by CAA section 307(d)(3), the notice of proposed rulemaking for any NAAQS decision must "summarize and provide reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 109(d). . . and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences."

Question 3a(i). EPA has proposed to revise the particulate matter NAAQS. EPA's Interim Regulatory Impact Analysis (RIA) for the proposed revisions includes a projection of the counties that would contain monitors recording levels in excess of the proposed revision. When EPA designated nonattainment areas for the current particulate matter standard, the Agency included all counties in the metropolitan statistical area that contained a monitor in violation of the standard.

Assuming that this method would again be used to designate areas, please identify each county that would be listed as in nonattainment according to the RIA estimates and provide a map of the United States with these counties highlighted.

Response. The Interim RIA issued by EPA in January 2006 focused on projections of which counties would contain violating monitors under revised PM_{2.5} NAAQS. At this time, EPA cannot predict which counties would be included in any designated nonattainment area under the proposed standard combination of 15 µg/m³ annual and 35 µg/m³ daily. The designation process is complex and requires the Administrator to weigh multiple factors besides proximity to a violating monitor. In the PM_{2.5} designations completed in April 2005, EPA utilized the MSA as a presumptive starting point in determining the boundaries of PM_{2.5} nonattainment areas. However, we allowed these presumptive boundaries can be modified based on a number of factors, including conformity with boundaries of designated ozone nonattainment areas, identification of specific source related violations limited to specific geographic areas, emissions in areas outside the MSA, air quality in areas outside the MSA, population density and degree of urbanization outside the MSA, traffic and commuting patterns, expected growth, meteorology, geography/topography, jurisdictional boundaries, and level of control of emission sources.

Thus not all counties within the MSA were necessarily included in the designated nonattainment area in the designations for the current PM_{2.5} NAAQS, and in some instances counties or partial counties outside an MSA were included in the nonattainment area. However, for the purposes of your question, we followed a strict presumptive definition based on using MSA boundaries for nonattainment area boundaries. Thus the enclosed list could change significantly based on specific factors evaluated at the time of designation.

Question 3a(ii). Please provide this list and map for the initial designations, 2010, and 2015.

Response. We have provided the list requested and maps of the counties and maps requested. The list and maps are based on EPA's interim RIA, which analyzed projected PM_{2.5} attainment scenarios. The emissions projections and air quality modeling are being revised for the final PM NAAQS RIA and will result in modifications to the list and maps provided here.

As noted in the answer above, EPA cannot project which counties will be included in nonattainment areas under any future standard.

Question 3a(iii). Include the counties that will not have met the current particulate matter and ozone standards at each interval.

Response. Please see enclosed maps.

Question 3b. Please describe the requirements for any areas that would be designated as in nonattainment under the proposal.

Response. The statutory requirements for areas designated nonattainment are set forth in CAA section 172(c), and a proposed interpretation of these requirements for the 1997 NAAQS is presented in our recent PM Implementation proposal. These include requirements for reasonably available control measures, reasonably available control technology, reasonable further progress, an emissions inventory, new source review and permits, contingency measures, an attainment demonstration, and other requirements as specified. More information on this proposal and its provisions is available at <http://www.epa.gov/pmdesignations/regs.htm>. Furthermore, if new or revised PM NAAQS are promulgated, EPA will issue a rule to guide the transition from the current standards to the revised standards, providing flexibility where appropriate and consistent with statutory obligations. In the ANPR on transition issues published in the Federal Register on February 9, 2006, EPA requested comment on a number of issues, including: the timing of revocation of the current PM_{2.5} standards and PM₁₀ standards if the standards are revised; the need for an anti-backsliding rule and the necessary contents of such a rule; the effect of any revised standards on New Source Review requirements; and how the transition would affect general and transportation conformity programs.

Question 3c. Please describe the incremental requirements for any areas that are in nonattainment for the current standard and would be designated as in nonattainment for the proposed standard.

Response. All areas that EPA has designated nonattainment for particulate matter, whether already designated under an existing NAAQS or newly designated following a revision to the NAAQS, are obligated to meet the same requirements (described above).

Question 3d. Please describe the sanctions that would be applied to an area that would not meet the proposed standard by 2015.

Response. The CAA does not provide for any sanctions based on an area's failure to attain by the required attainment date. The sanctions provisions of the Act, sections 110(m) and 179(a) and (b), only apply when a State fails to submit a complete SIP, EPA disapproves a SIP, or EPA finds a State is failing to implement its SIP. The Act does, however, impose requirements for areas that fail to reach attainment. According to section 179(c) of the CAA, EPA must determine, no later than 6 months after the applicable attainment date for any nonattainment area, whether the area has attained the standard by that date. For all areas for which the Administrator publishes a notice of failure to attain, CAA section 179(d) requires that, within 1 year, each area submit a revised State implementation plan that is consistent with sections 110 and 172 and that contains any other measures that EPA may require.

It should be noted that 2015 is the earliest possible date that these requirements would come into play, assuming that no attainment date extension has been granted for the area in question. According to the timeline estimated by EPA, we expect to complete designations for any revised PM_{2.5} NAAQS no later than December 2009, with an effective date in early 2010. CAA section 172(a)(2) requires States to reach attainment with the standards as expeditiously as practicable but no later than 5 years after the effective date of designation, with a possible extension of up to 5 additional years based on the severity of nonattainment and the availability and feasibility of pollution control measures. According to the estimated timeline, this would mean that all States would be required to reach attainment with any revised PM_{2.5} NAAQS as expeditiously as practicable, but no later than early 2020. Attainment determinations would be based on data from the immediately preceding three calendar years. If necessary, the State may also apply to the Administrator for up to two additional 1-year extensions. These can be granted if: (1) the State has complied with all requirements and commitments pertaining to the area in its SIP; and (2) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant standard have occurred in the area in the previous year. If granted, these extensions could push attainment dates for particular areas out to 2022 at the very latest. The requirements of sections 179(c) and (d) would not come into play until after the extended attainment date for any area receiving such an extension.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR CLINTON

Question 1. In February 2005, the EPA Inspector General issued a report about the Administration's mercury rule. The key finding of that report stated that:

"Evidence indicates that EPA senior management instructed EPA staff to develop a Maximum Achievable Control Technology (MACT) standard for mercury that would result in national emissions of 34 tons annually, instead of basing the standard on an unbiased determination of what the top performing units were achieving in practice. The 34-tons-per-year target was based on the amount of mercury reductions expected to be achieved from implementation of nitrogen oxide (NOx) and sulfur dioxide (SO₂) controls under a separately proposed, but related, air rule. According to EPA officials, 34 tons represents the most realistic and achievable standard for utilities. However, because the results of the MACT standard were prescribed and prior estimates were lower than what was proposed, the standard likely understates the average amount of mercury emissions reductions achieved by the top performing 12 percent of utilities, the minimum level for a MACT standard required by the Clean Air Act."

How do you justify directing staff to reach a predetermined 34 ton result, with dangerous emissions of toxic mercury at issue? Do you continue to stand by that decision, even if it means that the amount of mercury reductions from the rule will be less than the minimum level for a MACT standard as required by the Clean Air Act?

Response. I was not the Assistant Administrator for Air and Radiation at the time the proposed rule was being developed. I did not decide that any particular analysis should be developed for the proposal because such decisions were not mine to make. I did, however, advise that very careful attention should be given to the capability of the power sector to achieve mercury emission reductions within the 3- or 4-year compliance period for MACT standards. EPA compiled extensive information about utility mercury emissions and control techniques in the process of developing the MACT standards and analyzing the Administration's Clear Skies initiative. That information led us to conclude that while mercury reductions could be achieved in the power sector within the MACT compliance period, for the most part those reductions would not come from mercury-specific controls such as activated carbon injection. Consequently, we based the proposed MACT on air pollution controls designed to remove SO₂ or NOx. In particular, as part of the Clear Skies effort, EPA had extensively studied the capacity of the power sector to install SO₂ and NOx controls during the period up to 2010. That work showed that 34 tons per year was the lowest level of mercury emissions that we could reasonably expect the power sector to achieve through the aggressive application of SO₂ and NOx controls up to 2010.

Beyond that, I support the regulatory finding that it is neither appropriate nor necessary to regulate utility units under section 112. That finding was not based on a comparison of a section 112 MACT standard versus a section 111 standard.

Question 2. To assist in development of the mercury rule, EPA established an advisory committee with members representing a wide variety of interests with different points of view to explore technical issues and see whether there was common ground. The advisory committee requested analysis of four different alternative sets of standards for source-specific controls. EPA staff working with the committee set a date for a committee meeting at which they would present the results and started preparing to do the studies. The meeting never happened. According to the LATimes, in early 2003, Mr. Wehrum, you "told the dozen or so [EPA] staffers that comparative studies would be postponed indefinitely." In fact, the Advisory Committee was disbanded and those studies never were conducted. Similarly, EPA ignored the recommendations regarding the mercury rule made by the EPA Children's Health Protection Advisory Committee.

Why were recommendations of these key advisory panels ignored? Why the "indefinite" postponement? Was the reason you did not allow these analyses to be performed because you were concerned they might call into question the predetermined 34 ton figure?

Response. The FACA working group fulfilled its charter by issuing a final report, which was presented to the Clean Air Act Advisory Committee (CAAAC) in October 2002. In this report, it was clearly evident that the FACA working group did not reach consensus; rather the report set out a series of divergent recommendations supported by the various stakeholders involved in the FACA. These recommendations provided guidance for EPA about how it could proceed in the regulatory development process. Each of these recommendations was considered as EPA developed the proposed rule.

We have made it clear from the start of the rulemaking process that the health effects of greatest concern are possible developmental effects in fetuses and young children exposed to unsafe levels of methylmercury. Unlike most other rules that EPA develops, this rulemaking is singularly directed at developing an appropriate regulatory approach for addressing the potential impacts on children. Evidence of this can be seen in EPA's first guiding principle in the development of a final mercury rule which states that the rule will concentrate on the need to protect children and pregnant women from the health impacts of mercury.

Question 3. In addition to refusing to conduct analyses requested by advisory committees, Congress or others, it is clear that the EPA did not consider all relevant scientific studies that were available. When finalizing the mercury rule, EPA ignored an EPA-funded study conducted by the Harvard Center for Risk Assessment. This study showed potentially greater health benefits from reducing mercury. According to press reports, information from the study was shared with EPA the summer before EPA finalized the rule, and EPA officials were briefed on the study about 2 months before the rule was finalized. Although EPA claimed that it had insufficient time to consider the study because it was not officially submitted until February 22 (3 weeks before EPA had to finalize the rule), in other rules, EPA has considered last minute studies when it has been to EPA's advantage to do so.

Is this any way to conduct public policy and to write scientifically sound rules that provide the maximum benefit to the public? Is it your contention that there was no legal way at all that you could consider these studies? Will you at least admit that the benefits from reductions in mercury are significantly larger than EPA estimated in its rule?

Response. As is common practice to preserve fairness for all stakeholders, EPA did not consider any documents submitted after the close of the public comment period for the Notice of Data Availability (NODA) (the comment period had been open essentially the entirety of 2003 due to the Notice of Proposed Rulemaking and the Supplemental Notice of Proposed rulemaking; the comment period for the NODA closed on January 5, 2004). During the entire process, there were several opportunities to comment on the regulatory approach—proposal, supplemental proposal, and notice of data availability. Over the entire rule development process, the public had 11 months to submit comments before the final comment period closed on January 3, 2005. Thus, the Agency believes ample opportunity was provided to insert information into the rulemaking docket.

EPA was aware of the Harvard study and had been promised the final results in a timely manner, but the Agency, in fact, did not have permission to use the study until the 3 weeks prior to signature that you note. Given that the final rules had already been drafted and were undergoing final interagency review, we could not adequately consider, and incorporate, the results of the Harvard study.

Well before the rulemaking deadline, EPA requested that the NESCAUM and Harvard researchers share the report with the Agency. EPA staff were briefed by one of the report authors in late August 2004 on some of the approaches the report authors were considering and on January 3, 2005, received a brief summary of NESCAUM's forthcoming report. However, the submitted summary comments did not contain sufficient detail on the report's final methodology or results for EPA to rely on the information in the rulemaking. More importantly, EPA's review of these preliminary documents led the Agency to determine that the NESCAUM approach did not raise new issues not previously considered by the Agency that would be material to the rule.

In response to your inquiry, the Administrator asked EPA's experts to take a close look at the NESCAUM report. Their review of the full report only reinforces our assessment of the preliminary materials. Having been briefed on the report, I believe that, had the report been submitted in a timely manner, our analysis of the CAMR would not have changed in any material way.

The issues raised in the Harvard study are among the issues on which EPA has granted reconsideration, and we will again address that study and the other comments we received in making our final determination, which we expect to complete by May 31, 2006.

Question 4. I want to give you an opportunity to indicate that you would take air pollution policy in a different direction if you were confirmed. In that regard, I want to ask you about a recently released, EPA-funded study which found that 70 percent of the mercury in rain collected in Steubenville, OH, is from nearby coal-burning industrial plants. This stunning finding is very much at odds with the rationale that EPA consistently provided for proposing a cap-and-trade approach to the mercury problem. Yet EPA's response to the press regarding the Steubenville study was that EPA knew all along that the Midwest stands out as a region where mercury emis-

sions would be driven up by regional sources. This recent acknowledgment of high regional impacts from regional sources contrasts sharply with the message EPA sent when it issued the mercury rule, and confirms that trading is a bad idea. Do you think that citizens of Steubenville should be subject to such high deposition rates of toxic mercury? Will you commit to withdrawing the mercury trading proposal in light of the Steubenville study?

Response. EPA's air quality modeling in support of its rules estimated that about half of the mercury deposited in the area around Steubenville comes from U.S. powerplants while up to 70 percent of mercury deposition in areas just east comes from U.S. powerplants. The Steubenville study cannot be directly compared with the model results in part because the Steubenville study used a different timeframe for its analysis. However, the results appear to be generally consistent with our modeling in suggesting that a significant fraction of the mercury deposited in the area comes from powerplants. As powerplants in the area respond to CAIR and CAMR by installing emission control equipment, this fraction is expected to be significantly reduced. Based on the modeling used to develop those rules, EPA estimates that there will be more than an 80 percent reduction in mercury deposition in Ohio and about a 90 percent reduction in the neighboring States of Pennsylvania and West Virginia.

Once the Steubenville study is published and available, its research findings will be incorporated in the Agency's ongoing efforts to better understand mercury transport and to control utility emissions.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR MURKOWSKI

Question 1. Mr. Wehrum, thank you for being here. There are very few agencies in the center of more controversies than EPA. A number of those controversies seem to deal with air quality, and you seem to be right in the middle. We in Alaska may escape some of the interstate issues, but our municipalities and industries are nonetheless affected by the Agency's regulations.

Before we get into the larger picture, I want to explore your view about situations in which no violation is occurring, but one interest feels that another interest should be more strictly regulated regardless, and has asked the Agency to do so.

How do you feel about that? I'd like to know your view on the role that science should play, and whether you think it's appropriate for the Agency to defer a decision if the parties in dispute are working to develop a mutually acceptable solution.

Response. I believe that your question refers to our pending review of the Organic Liquids Distribution (OLD) maximum available control technology (MACT) standard and the potential effect this may have on the Alyeska Marine Terminal ballast water treatment facility. As you note, we are not aware of any violations at this facility. Our action underway in this case is a reconsideration of our prior decision not to establish a MACT standard for air emissions from wastewater collection and treatment at OLD facilities. This action was triggered by an administrative petition submitted to us by the Prince William Sound Regional Citizens Advisory Council (RCAC) and a lawsuit filed by one of its members challenging our previous decision and asserting that the Alyeska facility has significant uncontrolled air toxics emissions. In a letter dated April 16, 2004, the Agency agreed to reconsider the decision, and as a result, the parties agreed to a stay of the litigation pending our administrative review.

In situations where parties have a disagreement, we fully support addressing any issues through a process of dialog and facilitation, where appropriate. In this case, we have been working collectively with RCAC and Alyeska, as you suggest, and are encouraged by their efforts to work out a solution that could possibly resolve RCAC's concerns.

Thank you. Let's get back to the MACT issue. We are all concerned about clean air, and we certainly don't want to see our air quality getting worse when we've expended so much effort on it. I understand that we're only talking about a draft, not a plan the Agency has approved, but I'm looking for plain speaking here—your own words, without any bureaucratese. . . .

Question 2. Do you think the new rule would increase or decrease toxic emissions as a nationwide total, on a regional basis, and as a factor for individual operations? Why do you think so?

Response. We have not yet conducted an analysis that would answer your question. But there is good reason to believe that a rule such as the one included in the draft proposal would create a strong incentive for certain sources to reduce emissions below current levels. Such a rule would also theoretically allow other sources

to increase emissions. We will seek to determine what this balance is as we proceed with the rulemaking. Please see the answer to question 9 from Senator Jeffords if you would like a more detailed explanation.

Question 3. What would prevent a company from letting itself exceed its limit temporarily, knowing it would not be penalized for doing so? Why wouldn't it do that over and over?

Response. Virtually all sources must take effectively enforceable limits on their potential to emit to qualify as an area source. Sources are expected to meet these limits on a continuous basis, which will be documented through appropriate monitoring, recordkeeping, and reporting. Deviations or exceedances of the limits will be treated as enforceable actions as with any other rule.

Question 4. Mr. Wehrum, you are being considered for a very important job—one that requires you not only to be a technical expert, but to be an effective administrator. You obviously have some dissension in the ranks over this new air quality issue, at least. How do you propose to go about ensuring that you have the confidence and support of EPA's regional offices and staffs?

Response. EPA has longstanding procedures for involving the Agency's regional offices in the development of rules of national significance. Regional staff bring valuable experience, perspectives and ideas to the task of designing effective and efficient regulatory programs. With respect to the draft proposed rule regarding the once-in-always-in policy, the regions were involved in reviewing drafts of the proposal, as their comments indicate. To the extent any regional office has not had an adequate opportunity to participate in the rule development process, I will certainly try to provide it with that opportunity as the process moves forward.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR CARPER

Question 1. Toxic Release Inventory.—Late last year, EPA announced that it would like to reduce the burden to industry of the reporting requirements of the Toxics Release Inventory. The Toxics Release Inventory requires industries to monitor and annually report their emissions of toxic chemicals. In order to reduce the burden EPA has proposed to raise the threshold for reporting from 500 lbs. to 5000 lbs. and require companies to report every 2 years instead of annually. I understand that EPA has merely announced its "intent" to propose these changes. Will you rescind this notice of intent?

Response. The Toxics Release Inventory program is implemented by EPA's Office of Environmental Information (OEI). Upon your request, I would be pleased to forward your inquiry to OEI.

Question 2. Clean Air Mercury Rule.—During the hearing you mentioned the merits of the Clean Air Mercury Rule. It is my understanding that a large portion of the reductions assumed in the Mercury Rule are the result of co-benefits from the Clean Air Interstate Rule. Please explain how much mercury will be removed from powerplant emissions as a *direct* result of the Mercury Rule, and when those reductions will be realized.

Response. EPA examined the incremental impact of the Clean Air Mercury Rule (CAMR) on top of the Clean Air Interstate Rule (CAIR) during the CAMR rule-making process. EPA projects that CAMR will result in an annual incremental mercury emissions reduction of 6.7 tons in 2010, 6.5 tons in 2015, and 9.7 tons in 2020. Cumulatively, over the years 2010 to 2020, EPA estimates that CAMR will provide about 80 additional tons of mercury emissions reductions relative to CAIR alone.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR LIEBERMAN

Question 1. Following the February 8, 2006 oral argument in *New York v. EPA*, D.C. Circuit Case No. 03-1380, you told a reporter that you were optimistic and "confident of success on the merits" in the case. Less than 6 weeks later, the panel issued a unanimous decision vacating the rule and declaring that EPA's attempted defense of it would make sense "[o]nly in a Humpty Dumpty world." How, if at all, has the court's unequivocal opinion changed your view of the Equipment Replacement Provision and the EPA legal theory underlying it?

Response. While we are certainly disappointed that the Court vacated the Equipment Replacement Provision (ERP), EPA respects the opinion of the court and we will act in accordance with their decision unless the decision is reversed. We are

considering options for how to proceed in light of the decision, and have not ruled out requesting panel rehearing or rehearing en banc and/or seeking certiorari. We also plan to continue to work on efforts to improve and streamline the NSR program in accordance with the Court's opinion.

Question 2. At a June 10, 2004 American Bar Association Event entitled, "Update: Clean Air Act—Satellite Seminar," you stated that, notwithstanding the D.C. Circuit's stay of EPA's Equipment Replacement Provision, the Office of Air and Radiation would continue to apply the legal interpretation expressed in that rule, "about how we think routine maintenance, repair, and replacement ought to be implemented," to EPA's preexisting four-factor test for determining whether a given physical activity should be considered "routine" and thus not "any physical change." In light of the D.C. Circuit's recent vacatur of the Equipment Replacement Provision, and considering the legal interpretation expressed in the panel's unanimous opinion, do you commit that, under you, EPA's air office will no longer implement, in any way, the legal interpretation expressed in the Equipment Replacement Provision?

Response. EPA respects the opinion of the Court on the Equipment Replacement Provision and will act in accordance with that decision unless it is reversed.

Question 3. In August 2003, the General Accounting Office found that "EPA relied primarily on anecdotal information from industry in concluding that the NSR program, prior to the final rule, discouraged some energy efficiency projects—such as upgrades to industrial boilers—including some projects that would have reduced air emissions. . . . [B]ecause EPA relied on anecdotal information rather than a statistically valid sample or industry-wide survey, the Agency's findings do not necessarily represent NSR's effect on energy efficiency projects throughout the industries subject to the program." In September 2004, EPA's own inspector general found that the Agency's "October 2003 NSR rule change has seriously hampered [Office of Enforcement and Compliance Assurance's] settlement activities, existing enforcement cases, and the development of future cases." What, specifically, have you done to ensure that EPA's air office will not produce any more regulations that are based on self-serving, unsubstantiated anecdotes and that cripple EPA's enforcement of congressional mandates contained in the Clean Air Act?

Response. The Office of Inspector General's (OIG) September 30, 2004 report made findings about the Equipment Replacement Provision (ERP), and made several recommendations to address these findings. In comments we submitted to the OIG, we identified several major flaws in that draft which, if not corrected, would in our view result in an inaccurate, misleading, incomplete, and superficial report. While some of our comments were incorporated, we believe the major flaws that we identified were not satisfactorily addressed. As a result, we believe that the conclusions in the report—that the final rule seriously hampered NSR enforcement and will nullify the reductions that will result from NSR enforcement activity—are not justified.

Also, while the OIG Report was narrowly focused to consider the effect of the ERP on pending enforcement cases, it failed to consider whether the Rule is appropriate on a cross-industry basis going forward, as did EPA. Moreover, the Report specifically did not compare the merits of CAIR and non-utility programs to the NSR utility enforcement initiative. Thus, the OIG Report's recommendations do not reflect a complete weighing of the factors EPA considered in adopting the ERP.

Question 4. Under your watch at the air office, EPA has proposed to allow electric utility units "to use the same maximum achievable hourly emissions tests we apply under NSPS to determine whether a physical change in or change in the method of operation of. . . results in an emission increase of either NO_x or SO₂ emissions under the major NSR program." 70 Fed. Reg. 61081, 61088/2 (Oct. 20, 2005). Do you acknowledge that such a provision would contravene the D.C. Circuit's holding that "Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions" (*New York v. EPA*, 413 F.3d 3, 40 (D.C. Cir. 2005))?

Response. The opinion by the U.S. Court of Appeals for the District of Columbia in *New York v. EPA*, 413 F.3d 3 (D.C. Cir. June 24, 2005), held that "the plain language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions." *Id.*, slip op at 40. I respect the decision of the Court. Unless the decision is altered or reversed, I will be sure that our final rule is consistent with that decision.

Question 5. On February 3, 2005, EPA's inspector general found that "EPA senior management instructed EPA staff to develop a Maximum Achievable Control Technology (MACT) standard for mercury that would result in national emissions of 34 tons annually, instead of basing the standard on an unbiased determination of what

the top performing units were achieving in practice.” What, specifically, have you done to ensure that EPA’s air office will never again short-circuit and suppress internal technical inquiry in furtherance of a scheme to disobey a congressional mandate?

Response. In considering a MACT standard for mercury, it was important for EPA to pay careful attention to the capability of the power sector to achieve mercury emission reductions within the 3- or 4-year compliance period for MACT standards. EPA compiled extensive information about utility mercury emissions and control techniques in the process of developing MACT standards and analyzing the Administration’s Clear Skies initiative. That information led us to conclude that while mercury reductions could be achieved in the power sector within the MACT compliance period, for the most part those reductions would not come from mercury-specific controls such as activated carbon injection. Consequently, we based the proposed MACT on air pollution controls designed to remove SO₂ or NO_x. In particular, as part of the Clear Skies effort, EPA had extensively studied the capacity of the power sector to install SO₂ and NO_x controls during the period up to 2010. That work showed that 34 tons per year was the lowest level of mercury emissions that we could reasonably expect the power sector to achieve through the aggressive application of SO₂ and NO_x controls up to 2010.

Question 6. Do you believe that EPA’s December 13, 2005 letter to E3 Consulting, in which the Agency interprets the Clean Air Act to exclude integrated gasification combined cycle technology from the required search for the best available control technology for a new coal-fueled powerplant, qualifies as a “regulatory approach[] that will encourage advancements in environmental technology” at coal powerplants (Report of the National Energy Policy Development Group, Ch. 5, at 15)?

Response. Yes, we believe this approach is consistent with the goal of encouraging advancements in environmental technologies while maintaining diversity of electricity generation across the country. In particular, this approach encourages improved control technology for plants fueled with pulverized coal.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR LAUTENBERG

Question 1. Were you ever advised by your General Counsel’s Office that the “Equipment Replacement Rule” was at odds with the Clean Air Act?

Response. EPA’s Office of General Counsel (OGC) is responsible for providing authoritative legal advice to Agency management, and that Office prepared the legal analysis on which the Equipment Replacement Rule was based. OGC’s legal advice was integral to our development of the rule. Information regarding legal advice from OGC is covered by the attorney-client privilege.

Question 2. Were you advised by the Enforcement Office that the “Equipment Replacement Rule” would undermine the Agency’s existing lawsuits against polluting powerplants?

Response. It is EPA’s long-standing policy not to comment on enforcement-sensitive aspects of ongoing cases. Advice received from the Office of Enforcement and Compliance concerning rules being developed by the Agency is privileged.

Question 3. Did you read, or were you aware of, the August 2005 memo from EPA’s Air Enforcement Division Director warning that the Emissions Increase rule you proposed in October would “adversely impact our enforcement cases and is largely unenforceable as written”?

Response. I was aware of the August 2005 memo from EPA’s Air Enforcement Division Director, but I did not review the Kushner memorandum prior to release of the NSR–EGU proposal. The memorandum was reviewed by my staff. The NSR–EGU proposal reflects the Agency’s determination regarding this matter.

Question 4. If your answer to the previous question is affirmative, why did you go forward with the rule in the face of that warning from the head of Air Enforcement?

Response. The Office of Enforcement and Compliance Assistance concurred with the NSR–EGU proposal issued on October 13, 2005, and we proceeded with the proposal since the rule will remove unnecessary regulatory obstacles to achieving significant clean air and public health advancements. The public has had an opportunity to comment on the proposed rule, and we are in the process of developing a supplemental proposal providing enforceable regulatory language. We will carefully review the comments received in making decisions about the final rule.

RESPONSES BY WILLIAM L. WEHRUM TO ADDITIONAL QUESTIONS
FROM SENATOR BOXER

PROPOSED NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

Question 1. The Environmental Protection Agency must ensure the Clean Air Act's National Ambient Air Quality Standards (NAAQS) protect public health using the best scientific information. On February 3, 2006, I wrote to Administrator Johnson regarding EPA's proposed NAAQS for Coarse Particulate Matter. As I mentioned then, I have deep reservations about the legality and wisdom of EPA's proposed approach, which would effectively eliminate the coarse particulate standard in many rural areas, and which would undermine the overall integrity of these long-standing, health-based air standards.

The Clean Air Scientific Advisory Committee also voiced concern over EPA's actions and has asked the Agency to reconsider its PM proposal in significant respects. According to CASAC "The CASAC neither foresaw nor endorsed a standard that specifically exempts all agricultural and mining sources, and offers no protection against episodes of urban-industrial PM_{10-2.5} in areas of populations less than 100,000."

Evidence appears to demonstrate that many of the unscientific changes to the coarse particulate standard were made by the Office of Management and Budget ("OMB"), which struck language that would have provided a protective standard. The OMB also made edits that emphasize alleged scientific uncertainty in a way that was not reflected in the draft document that EPA provided to OMB. During this Administration, OMB's role in altering scientific conclusions and information provided by Federal agencies has been highly controversial.

Have you served as a primary or major contact point with OMB in regard to EPA Clean Air Act rulemakings? If so, please provide a list and description of such rulemakings.

Response. Yes. I have served as a primary point of contact with OMB in regard to the following EPA Clean Air Act rulemakings:

(1) The New Source Review (NSR) I Final Rule (published 12/31/02), which reformed the NSR program by establishing or revising provisions for plant wide applicability limits (PALs), pollution control and prevention projects, clean units, and the emissions calculation test methodology.

(2) The Equipment Replacement Provision (ERP) Proposed Rule (published 12/31/2002), which proposed changes to the "routine maintenance, repair and replacement" provisions of the NSR regulations.

(3) The ERP Final Rule (published 10/23/2003), which made changes affecting when routine equipment replacement activities require a detailed permit review.

(4) The Clean Air Mercury Proposed Rule (published 1/30/2004), which proposed mercury emission reduction requirements for utilities.

Question 2. Have you attended meetings with OMB regarding EPA rules alone or accompanied only by other political appointees? If so, please provide a list and description of such rules.

Response. Yes. Please find enclosed a list of all rules on which I had any substantive involvement since joining EPA. I do not have a complete recollection of which of these rules involved meetings with OMB where I attended alone or only with other EPA political appointees.

Question 3. Please provide me with all documents, including calendar entries, meeting notes, memoranda, e-mails and other documents that relate to any meeting with OMB regarding rules in which you served as the primary or major contact point, including the proposed particulate matter rule.

Response. Please find enclosed the documents responsive to your request that are not privileged. The documents were obtained by conducting a search with respect to the four rules listed in my answer to question 1a above. Please note that all responsive calendar entries have been printed and enclosed. For the remaining documents, we have provided an index which lists the docket numbers of responsive materials (in the case of the NSR Final and ERP Final and Proposed Rules), and a CD containing responsive documents (for the Clean Air Mercury Proposed Rule).

Question 4. Please provide me with all documents that reflect your review, approval or editing of rulemaking documents while at EPA, including handwritten annotations of rules, e-mails, notes, and other documents.

Response. The documents you request are, by nature, deliberative and thus privileged. In my capacity as one of the Administrator's principal advisors on rulemakings under the Clean Air Act, I frequently review, approve or edit rulemaking documents drafted by OAR staff for the Administrator's ultimate approval

or disapproval. As such, my contributions to the rulemaking process are part of the Agency's deliberative process.

Question 5. Did you review some or all of OMB's comments and indicate to EPA career staff that you found OMB's edits and suggestions acceptable?

Response. I review many of the comments that OMB submits on rules as part of the interagency review process, and I indicate to EPA staff on various occasions which of those edits are acceptable. Other EPA managers, both career and political, also perform this role as part of their responsibilities in the rule development process.

Question 6a. Did you review and approve all of OMB's changes to the coarse particle standard, including those referenced in my previous letter? If not, who did? And, whoever reviewed and approved such changes, did that person seek approval from you to approve those changes or did you delegate approval authority to that person?

Response. I reviewed most but not all of OMB's recommended changes to the draft proposed standard for coarse particles. I concurred on the final draft proposal that was signed by the EPA Administrator.

The interagency review of the coarse particle standard involved EPA staff and management at virtually every level. Ultimately, I concurred on the final draft proposal that was signed by the Administrator.

Question 6b. What process did you undertake to determine the effect and advisability of these changes?

Response. EPA staff and management involved in the development of the proposal collaborated extensively in determining which changes were appropriate. Ultimately, the proposal reflects the Administrator's preliminary judgment regarding what standards are requisite to protect public health with an adequate margin of safety.

Question 7. Please provide all documents and comments in your possession relating to the proposed coarse particulate standard, including all documents related to OMB and any changes suggested or required by OMB.

Response. I have enclosed all non-privileged documents and comments in my possession that are responsive to your request.

Question 8. The OMB's reported decision to strike the words "not enriched with contaminants typical of urban sources" in the EPA's proposed NAAQS for particulate matter means that rural areas will not have the same protection as urban areas from contaminants that EPA admits are harmful to public health. As you know, EPA may not consider costs in establishing the NAAQS, but can consider costs as a factor in determining how entities comply with these standards. Thus, what is the public health basis for accepting this change suggested by OMB?

Response. The change in language was intended to help clarify the precise nature of the indicator for $PM_{10-2.5}$ that is being proposed by the Agency. As noted in the preamble to the proposed rule outlining EPA's decision on the PM NAAQS, the Administrator "sought to define the indicator in a way that more clearly focuses on the nature of the mix of thoracic coarse particles intended to be included and the sources that principally generate that mix" (71 FR 2667). The indicator, which is qualified so as to include any ambient mix of $PM_{10-2.5}$ that is dominated by resuspended dust from high-density traffic on paved roads and PM generated by industrial sources and construction sources, and to exclude any ambient mix of $PM_{10-2.5}$ that is dominated by rural windblown dust and soils and PM generated by agricultural and mining sources, "is not defined by nor limited to any specific geographic area, but includes the mix of $PM_{10-2.5}$ in any location that is dominated by these sources" (71 FR 2668). We are taking comment on whether there are other classes of sources that should be included or excluded from the indicator, and on this general approach to defining the indicator in terms of both particle size and categories of named sources.

Question 9. Is monitoring the only way to be sure that no coarse particulate matter of concern is present in rural areas? If not, please provide me with a list and description of other effective means of ensuring such protections for public health.

Response. In general, EPA will rely on ambient concentration and speciation data, emissions inventory information, and weather data to assess the strength of different sources' contributions to elevated PM concentrations in any location. As noted in response to your previous question, EPA's proposed indicator of coarse particles is intended to regulate "any ambient mix of $PM_{10-2.5}$ that is dominated by resuspended dust from high-density traffic on paved roads and PM generated by industrial sources and construction sources, and to exclude any ambient mix of $PM_{10-2.5}$

that is dominated by rural windblown dust and soils and PM generated by agricultural and mining sources” (71 FR 2667–8, emphasis added). Thus, it is quite likely that some particulate matter of concern will be present in rural areas, just as it is possible that some windblown dust and soils, or PM generated by agricultural and mining sources, will be found in urban areas. EPA’s monitoring efforts will focus on distinguishing when the ambient mix is dominated by one type of particle or the other. The proposed 5-part suitability test for the siting of required monitors is designed to ensure placement of monitors in locations that are likely to be dominated by coarse particle matter of concern. We think it is generally unlikely that coarse particulate matter of concern would dominate the ambient mix in rural areas. However, we have requested comment on alternative approaches to monitor siting that would examine areas where States may wish to place non-required monitors that do not meet the proposed 5-part suitability test, but are locations of industrial emissions or high density traffic on paved roads which create the potential for ambient mixes of coarse particles of the type intended to be included in the indicator.

Question 10. Please provide me with all documents, including but not limited to memos, briefing papers, e-mails, meeting notes and other records that describes your participation in the development of the PM proposal.

Response. Enclosed please find the non-privileged documents that describe my participation in the development of the PM proposal.

EPA’S RULES TO CONTROL MERCURY EMISSIONS FROM POWER PLANTS

Question 11a. Cap and trade program for mercury.—The EPA’s Children’s Health Protection Advisory Committee wrote four letters to the Agency voicing concerns and presenting data that a cap and trade program for mercury might create contamination hotspots that endanger public health. The advisory committee members also met with you personally in September, 2004 to discuss their concerns over EPA’s proposal to address mercury emissions from powerplants. A recent EPA-funded study found that nearly 70 percent of mercury in rain collected in the Ohio River Valley comes from nearby coal-fired powerplants. Were you aware of studies showing that mercury from powerplants could be deposited locally prior to EPA’s proposal of its rule to address mercury emissions from powerplants?

Response. During the development of the Clean Air Mercury Rule (CAMR), I was aware of studies and modeling indicating that some mercury emitted by utilities is deposited near the source. I was also aware that the relative proportion of mercury that deposits close to a utility source is highly variable and depends on many factors.

Question 11b. What activities did you participate in related to EPA’s development of its rule to control mercury emissions from powerplants?

Response. I was extensively involved in many aspects of EPA’s development of the Clean Air Mercury Rule, not limited to but including reviewing drafts of the proposed and final rules, participation in some Federal Advisory Committee proceedings and involvement in the interagency review process.

Question 11c. Please provide me with all documents, including meeting notes, memoranda, e-mails, briefing material, and other documents that describe your participation in EPA’s development of a mercury emissions rule for powerplants.

Response. Please find enclosed the documents responsive to your request that are not privileged. All responsive calendar entries have been printed and enclosed. For the remaining documents, we have provided a CD containing all non-privileged documents that describe my participation in the development of the mercury emissions rule for powerplants.

Question 12a. EPA’s decision not to conduct a comprehensive assessment of children’s health in relation to the Agency’s mercury rule.—The New York Times reported that you told EPA staffers at a meeting held in the Spring of 2003 that EPA would indefinitely postpone doing comparative studies of proposals to reduce mercury emissions from coal-fired powerplants, including studies on public health and economic effects. The Times quoted one staffer who had served under several administrations as saying, “I was floored . . . We pointed out that the studies were required . . .”

The Agency’s Children Health Protection Advisory Counsel and EPA’s Inspector General recommended that EPA conduct such a study on children’s health. The EPA did produce a document that assessed the rule’s benefits to children’s health. However, the Agency failed to put this document out for public comment prior to the final rule and, moreover, the document is not the comparative study recommended by EPA’s children health advisors and Inspector General. Did you tell EPA staffers

that such a comparative analysis would be indefinitely postponed in the Spring of 2003?

Response. I do not recall making that statement, although I did attend and actively participate in a series of meetings held at or about that time regarding analysis related to the Clean Air Mercury Rule (CAMR). In developing the final rule, the Agency analyzed several policy options and the respective health benefits, including to children, of those options. These policy options included the Clean Air Interstate Rule (CAIR) alone; the CAMR as finalized with a first phase cap set at 38 tons in 2010 and a second phase cap set at 15 tons in 2018; two options involving moving up the date of the second phase cap; and a hypothetical bounding case of zeroing out all mercury emissions from powerplants. These options are detailed in the final Regulatory Impact Analysis (RIA) and other supporting documents to the CAMR. EPA did not analyze a particular MACT option for the final rule because the Agency determined that it was neither appropriate nor necessary to regulate powerplants under section 112 of the CAA. Our analyses quantify the neurological health benefits to children as a result of this rule based on reduced inutero exposure mercury from freshwater, recreationally caught fish. EPA considered all potential benefits, even those we concluded could not or should be quantified (e.g., effects for which the weight of the evidence is not as strong as it is for childhood neurological effects.)

Question 12b. Please provide me with all documents, including meeting notes, memoranda, e-mails, briefing material, and other documents that describe EPA's rationale for failing to conduct the requested study on children's health.

Response. As indicated above, since we believe we conducted an analysis that, among other things, compared the relative benefits to children of several regulatory options, we do not have documents responsive to your request.

EPA'S RULES TO WEAKEN EMISSIONS OF HAZARDOUS AIR POLLUTANTS FROM THE WOOD PRODUCTS INDUSTRY

Question 13a. Questions related to your involvement in EPA's decision to produce a risk-based maximum achievable control technology rule for the wood products industry.—The American Forest and Paper Association provided EPA with memoranda proposing a rule that uses estimated risk levels to exempting facilities that emit formaldehyde, a substance that we know causes cancer, from controls required by the Clean Air Act's hazardous air pollution program.

A draft internal EPA enforcement memo dated March 4, 2002 states that a risk-based exemption for such facilities was contrary to Clean Air Act's language and the law's legislative history. The memo concludes by saying, "EPA would have a difficult time articulating any rational basis to defend such a risk-based . . . scheme." However, in February 2004, EPA issued a risk-based rule that went against its own internal advice.

Prior to EPA's issuance of the rule, did you know that the EPA's Office of General Counsel had conducted an analysis that concluded such a risk-based rule was contrary to the Clean Air Act's requirements?

Response. The analysis referenced above was in a draft staff memorandum that was never finalized and that did not purport to represent the views of the General Counsel. Advice of OGC personnel given to me or to other Agency officials is privileged communication.

Question 13b. What activities did you participate in related to EPA's development of a maximum achievable control technology rule for the wood products industry?

Response. With respect to EPA's maximum achievable control technology rule for the wood products industry, I focused primarily on the development of the rule's risk-based provisions.

Question 13c. Please provide me with all documents, including meeting notes, memoranda, e-mails, briefing material, and other documents that describe your participation in EPA's development of a maximum achievable control technology rule for the wood products industry.

Response. I have enclosed the non-privileged documents that describe my participation in the development of the MACT rule for the wood products industry.

Question 13d. What is the detailed basis for your assertions that the scientific findings related to leukemia risk and formaldehyde should not be considered at this time.

Response. There is a significant body of evidence relating to the potential linkages between formaldehyde and leukemia that is still growing and under discussion within the scientific community today. At the time of the rulemaking, we made the determination that the best-available scientifically credible information concerning the

carcinogenicity of formaldehyde did not include the still-evolving information regarding leukemia. However, we acknowledged at that time that the EPA was in the midst of a complete scientific review of the carcinogenicity of formaldehyde and that the provisions of the rule would encompass the results of that work once it is completed. Currently, that scientific review is scheduled for completion in the summer of 2007.

CREATION OF THE CLEAN AIR INTERSTATE RULE

Question 14. In EPA's preamble to the Clean Air Interstate Rule (CAIR), EPA indicates that as a precondition of "calling in" a State Implementation Plan under section 110(a)(2)(D), its interpretation of the Clean Air Act is that such future action must "bring a significant number of areas into attainment." This language is at odds with the clear language of section 110(a)(2)(D) stating that each SIP must "prohibit[] consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to such national primary or secondary ambient air quality standard."

The EPA has never before suggested that this language means something other than what it says or, more specifically that it only applies in situations where any future action would bring a significant number of areas into attainment. Such a requirement constitutes a very high threshold and would preclude most future actions under this provision. How is this interpretation consistent with the plain language of the Clean Air Act?

Response. The introduction to the questions above incorrectly characterizes EPA's statement in the preamble to the CAIR, which addressed when EPA would consider issuing future broad multi-state rulemakings under section 110(a)(2)(D) regarding transported emissions. EPA's statement in the CAIR does not address the circumstances under which EPA might issue a SIP call to an individual State. Therefore, the responses below relate only to the approach for determining whether a broad, multi-State transport rulemaking is appropriate.

EPA believes that broad multi-state rules must be justified by a careful evaluation of the air quality improvement that will result from the controls under consideration. The Agency intends to undertake any future broad, multi-state rulemakings under section 110(a)(2)(D) regarding transported emissions only when they—as was the case for CAIR and the NO_x SIP call—produce substantial air quality benefits across a broad area and have beneficial air quality impacts on a significant number of downwind nonattainment areas, including bringing many areas into attainment. EPA is not adopting this as a statutory interpretation, but as a policy about when to initiate broad multi-state rulemakings under section 110(a)(2)(D). The notice rejected an alternative suggestion, supported by some commenters, that would have created a quantitative criterion specifying a minimum percentage of nonattainment areas before invoking this section.

Question 15. What is the purpose of including this discussion in the CAIR?

Response. The discussion was intended to clarify EPA's position on the most appropriate circumstances for issuing broad multi-state rules to address interstate transport issues.

Question 16. Is this language simply included in the CAIR as a means of imposing an additional, non-statutory hurdle on future SIP calls?

Response. No. This is a clarification of our position and is wholly consistent with the Agency's prior use of section 110(a)(2)(D) in CAIR (2005) and the NO_x SIP call (1998).

Question 17. Is there a public health based reason for doing so?

Response. The NAAQS must be attained by specified deadlines whatever implementation strategy is ultimately adopted. The issue here is related to the efficiency, effectiveness, and timing of implementation actions to protect public health. The issuance and implementation of regulations under section 110(a)(2)(D) calls for a substantial effort on the part of EPA, affected States, and source categories. It is incumbent upon the Agency to ensure that the scale and nature of the pollution problem to be addressed is commensurate with the implementation approach. Depending upon the circumstances, risk reduction may be more effectively and rapidly addressed by local as opposed to widespread regional controls.

Question 18. Will this language make it easier or more difficult for a future EPA Administrator to issue a SIP call under this section?

Response. Neither. As stated in the response to question 1 above, this language reflects EPA's preference for future rulemakings of this type. EPA rejected suggestions that it develop specific quantitative criteria.

Question 19a. What is the origin of this idea? Did this idea originate with you or another political appointee at EPA?

Response. To the best of my knowledge, this idea originated at the Department of Energy during interagency review of the draft proposed CAIR rule. Douglas Carter (retired) of DOE was primarily involved in developing these ideas. On EPA's part, negotiations with DOE on the topic for both the proposal and final rules were led by then Assistant Administrator Jeffrey Holmstead. I became involved in the discussions on the specific language for the final rule. EPA career staff reviewed and provided comments on language for both proposal and final CAIR actions. As part of these negotiations, we agreed to solicit public comment on DOE's original, more expansive suggestion in the CAIR proposal.

Question 19b. Did this idea originate outside the EPA? If so, please describe the organization and/or individual that originally suggested this idea.

Response. To the best of my knowledge, this idea originated at the Department of Energy during interagency review of the draft proposed CAIR rule. Douglas Carter (retired) of DOE was primarily involved in developing these ideas. On EPA's part, negotiations with DOE on the topic for both the proposal and final rules were led by then Assistant Administrator Jeffrey Holmstead. I became involved in the discussions on the specific language for the final rule. EPA career staff reviewed and provided comments on language for both proposal and final CAIR actions. As part of these negotiations, we agreed to solicit public comment on DOE's original, more expansive suggestion in the CAIR proposal.

Question 19c. Did you solicit this idea or similar ideas from outside the EPA?

Response. To the best of my knowledge, this idea originated at the Department of Energy during interagency review of the draft proposed CAIR rule. Douglas Carter (retired) of DOE was primarily involved in developing these ideas. On EPA's part, negotiations with DOE on the topic for both the proposal and final rules were led by then Assistant Administrator Jeffrey Holmstead. I became involved in the discussions on the specific language for the final rule. EPA career staff reviewed and provided comments on language for both proposal and final CAIR actions. As part of these negotiations, we agreed to solicit public comment on DOE's original, more expansive suggestion in the CAIR proposal.

Question 20. Have you ever solicited ideas regarding ways in which future EPA Administrations could be prevented from taking certain actions to control air pollution?

Response. No, I have not solicited such ideas.

Question 21. Have you ever had meetings with people outside EPA regarding such a subject?

Response. No, I have not had such meetings.

Question 22. Please provide me with all documents, including meeting notes, memoranda, e-mails, briefing material, and other documents that relate to this concept, or any concept intended to limit or constrain the ability of a future Administration to act to reduce air pollution under the Clean Air Act.

Response. Please find enclosed the non-privileged documents that relate to the concept addressed by your question.

Question 23. Please provide me with all documents, including meeting notes, memoranda, e-mails, briefing material, and other documents that relate to any of the questions asked above.

Response. The documents I am providing you in response to question 9 are also responsive to the other questions asked above.

EPA'S DRAFT PROPOSED RULE THAT WEAKENS PUBLIC HEALTH PROTECTIONS ON THE
EMISSION OF HAZARDOUS AIR POLLUTANTS

Question 24. The Washington Post and New York Times have recently reported that a draft EPA rule would weaken nearly 100 toxic air pollution standards and allow facilities to increase toxic air emissions, such as arsenic, mercury and lead, by up to 50,000 pounds a year. An internal EPA memo dated December 13, 2005 shows that seven of ten EPA Regional Administrators said that the proposal would allow polluters to "virtually avoid regulation and greatly complicate any enforcement action against them" and eliminate the ability to adequately enforce safeguards against polluters.

Reports are that EPA officials dismissed regional officials' concerns by saying that polluters would not increase their emissions because they feared "negative publicity" and because they wanted to "maintain their appearance as responsible businesses."

Do you believe that fear of negative publicity or maintaining appearance as a responsible business ensures that facilities will not increase emissions and can substitute for enforceable requirements?

Response. The press reports concern a preliminary draft of a proposed rule, and we are still examining the issues. I believe there are several factors, though, that would tend to minimize those increases in many cases. For example, some sources want to be a good corporate citizen and would choose not to change current emission levels. Other companies would want to avoid the negative publicity associated with increases in toxic air pollutants. Additionally, at many sources, emissions reductions are needed for other reasons, such as netting, trading or meeting criteria pollutant standards, and thus may not be increased for those reasons. Last, I believe most sources would want to establish "potential to emit" emission limits well below the major source threshold so as not to jeopardize their area source status.

Question 25. EPA Regional personnel have complained that they have been excluded from full participation in the formulation of this and other proposals. You indicated in the hearing that you conduct a collaborative process. What do you intend to do to increase the collaborative nature of the draft rulemaking process? Do you agree with the Regions that their participation could be increased?

Response. The Agency has well established procedures for internal review and comment. The regions have reviewed the first complete draft of these amendments as well as a second draft. Numerous revisions have been and will be made as a result of their input and comments. The normal collaborative rulemaking process has been followed.

YUCCA MOUNTAIN ISSUES

Question 26. Do you believe that naturally occurring background levels of radiation that result in thousands of deaths annually is a safe level of radiation to apply as a regulatory standard for human exposure?

Response. Given the complexities present at Yucca Mountain, and the extremely long time periods contemplated for regulation, potential exposures in the range of natural background radiation represent a reasonable level of safety. From a global perspective, doses in the range of natural background radiation do not threaten life or limit the ability of future generations to pursue their interests. It is important to note that the proposed dose standard would apply only to the hypothetical Reasonably Maximally Exposed Individual, who is among the most highly exposed members of the population. This level would not represent exposures for the population as a whole.

Question 27a. EPA looks at a range of risk, starting with a risk of one additional death in 1 million and sometimes considering death rates of 1 in 10,000, when contemplating risk for the purpose of establishing regulatory standards. Risk levels under consideration by EPA for Yucca Mountain are far less protective. Please answer questions a-c with a yes or no and include an explanation.

Do you believe cancer risk levels approaching 1000 times less protective than the risk range typically employed by EPA (described above) are acceptable?

Response. Starting from a figure of 1 in 10,000, EPA's current risk estimate for radiation-induced cancers is an order of magnitude smaller than the values cited in your question. The current U.S. baseline cancer risk is about 22 percent, or 1 in 5. Using EPA's current cancer risk coefficients, we estimate that members of a population receiving an extra 350 mrem/yr for their whole life would have an additional cancer mortality risk of 1 to 2 in 100. It is important to note that these estimates of cancer incidence relate to the dose standards proposed to apply only to the hypothetical Reasonably Maximally Exposed Individual, who is among the most highly exposed members of the population. Therefore, these estimates do not represent a prediction of increased cancer incidence for the population as a whole. Given the complexities present at Yucca Mountain, and the extremely long time periods contemplated for regulation, potential exposures in this range represent a reasonable level of safety.

Question 27b. Are the cancer deaths that would be associated with the proposed Yucca risk standard acceptable in your view?

Response. Given the complexities present at Yucca Mountain, and the extremely long time periods contemplated for regulation, potential exposures in the range of natural background radiation represent a reasonable level of safety. The current U.S. baseline cancer risk is about 22 percent, or 1 in 5. Using EPA's current cancer

risk coefficients, we estimate that members of a population receiving an extra 350 mrem/yr for their whole life would have an additional cancer mortality risk of 1 to 2 in 100. It is important to note that these estimates of cancer incidence relate to the dose standards proposed to apply only to the hypothetical Reasonably Maximally Exposed Individual, who is among the most highly exposed members of the population. Based on potential pathways of contamination, most of the population near Yucca Mountain would be exposed at much lower levels, if at all.

Question 27c. Is there a cancer risk level that you consider unacceptable—such as greater than 1 in 100? 1 in 25? 1 in 12, or must the risk of cancer be even higher than that?

Response. Each situation requires an assessment of factors specific to that situation. EPA works to maintain exposures within the risk range; however, site cleanups and other actions recognize exceptions and mitigating factors, such as cost and technological capability. The complexities present at Yucca Mountain and the extremely long time periods contemplated for regulation represent such mitigating factors.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING

WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement For Completion By Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and forty (40) copies of the requested information should be made available to the Honorable James M. Inhofe, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Marty Hall: Deputy Staff Director) as soon as possible.

Name of Nominee: William Ludwig Wehrum, Jr.

Business Address: 1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Business Phone: 202. 564.7404

Home Address: _____
Silver Spring, MD. 20910

Home Phone: _____

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Wehrum William Ludwig
(Last) (First) (Middle)

Position to which nominated: Assistant Administrator for the Office of Air and Radiation, U.S. EPA

Date of Nomination: 2-28-06

Date of birth: 2 - 26 - 64 **Place of birth:** Memphis, TN
(Day) (Month) (Year)

Marital status: M **Full name of spouse:** Cynthia Jean Longobardi

Name and age of Children: none

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	Widener University Law School	1/91 – 12/93	JD	12/93
	Purdue University	9/82 – 5/86	BS Chemical Engineering	5/86

Employment record:

List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

Principal Deputy Assistant Administrator, EPA Office of Air and Radiation,
 Washington, D.C. 8/05 to Present
 Counsel to the Assistant Administrator, EPA Office of Air and Radiation
 Washington, D.C. 10/01 to 8/05
 Associate, Latham & Watkins,
 Washington D.C. 9/98 to 10/01
 Associate, Swidler and Berlin
 Washington, D.C. 4/94 to 1/98
 BF₃ Production Team Leader, AlliedSignal Inc.,
 Claymont, DE 1993 - 1994

Supervisor, Health, Safety, and Environmental, AlliedSignal Inc.,
Claymont, DE 1988 - 1993
Environmental Engineer, AlliedSignal Inc.,
Morristown, NJ 1986 - 1988

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognition for outstanding service or achievement.

None

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
<u>DC Bar</u>	<u>None</u>	<u>1995 to present</u>
<u>DE Association of Professional Engineers</u>	<u>None</u>	<u>1991 to present</u>

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

I have dedicated the majority of my professional career to environmental matters. I first developed experience from the technical perspective as an engineer and supervisor with a major industrial firm. I then moved to the field of law, whose all but a small part of my practice was devoted to clean air issues. Lately, I have now served for over four years at EPA in the air office. For the past six months, I have acted as the Assistant Administrator for air. I am a registered Professional Engineer and a member of the DC Bar.

**Future
employment
relationships:**

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I currently work for the EPA and plan to continue this affiliation.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no plans with regard to future work.

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I currently serve in an appointed position. My departure would be required if I am confirmed to the position for which I am nominated.

Financial Statement:

Note: The Office of Government Ethics will provide the Committee with a copy of your Executive Personnel Financial Disclosure Report (SF-278).

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF-278, Schedule A.

I continue to have money invested in a (401K) Marshall & Isley account maintained by Latham & Watkins. The value of this account is \$15,000 to \$50,000.

2. Are any assets pledged?

No.

3. Are you currently a party to any legal action?

No.

4. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes.

5. Has the Internal Revenue Service ever audited your Federal tax return? if so, what resulted from the audit?

No.

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing of interest dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships that might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

In my capacity as an attorney in private practice, I represented corporate clients on several EPA matters. These are addressed in the attached Ethics Statement from Roger Martella, EPA's Ethics Official.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I do not believe there is any current conflict of interest or appearance of a conflict of interest.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

I do not believe there is any current conflict of interest or appearance of a conflict of interest. A Statement from EPA's Ethics Official is attached.

Political affiliation and activities:

List all memberships and offices held in, or financial contributions (in excess of \$1,000), and services rendered to any political party or election committee during the last 10 years.

None.

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

Robert M. Sussman and William L. Wehrum, *Will EPA Advance an Aggressive Clean Air Enforcement Policy?*, Washington Legal Foundation Legal Backgrounder, Vol. 16, No. 1 (Apr. 20, 2001).

Elizabeth C. Browne et al., *Pesticide Regulation Deskbook*, Environmental Law Institute (2000).

Kenneth Weinstein et al., *The Food Quality Protection Act: A New Way of Looking at Pesticides*, 28 Environmental Law Report 10553, 10555 (1988)

William L. Wehrum et al., *EPA Develops a Plan for Facilitating Changes Under the Pharmaceutical MACT Standard*, Air Pollution Consultant, Jan.-Feb. 1999, at 6.1.

William L. Wehrum, *Case Study of a Hydrogen Peroxide Related deflagration in a Wastewater Treatment Tank*, 12 Process Safety Progress 199 (1993).

Additional Matters:

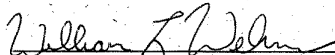
1. If there is any additional information that you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

N/A

2. Do you agree to appear before all Congressional Committees which seek your testimony?

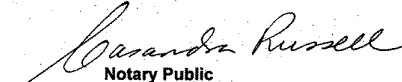
Yes

AFFIDAVIT

 ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 3rd

day of March, 2006


Notary Public

Cassandra Russell
Notary Public - District of Columbia
My Commission Expires: April 30, 2008

