

**DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2009**

**TUESDAY, MARCH 4, 2008**

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

The subcommittee met at 10 a.m., in room SD-124, Dirksen Senate Office Building, Hon. Dianne Feinstein (chairman) presiding.  
Present: Senators Feinstein, Leahy, Stevens, Craig, and Allard.

**ENVIRONMENTAL PROTECTION AGENCY**

**STATEMENT OF HON. STEPHEN L. JOHNSON, ADMININSTRATOR**

**ACCOMPANIED BY:**

**MARCUS C. PEACOCK, DEPUTY DIRECTOR**

**BENJAMIN H. GRUMBLES, ASSISTANT ADMINISTRATOR, OFFICE OF WATER**

**SUSAN PARKER BODINE, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE**

**OPENING STATEMENT OF SENATOR DIANNE FEINSTEIN**

Senator FEINSTEIN. Good morning, ladies and gentlemen, and welcome to the Interior Subcommittee's hearing on the EPA agency's fiscal year 2009 budget.

This one is a series of budget hearings that the subcommittee will be holding. But, I'd like to take a moment and set the stage for the challenges that this administration's request presents, before we begin with the EPA budget.

The President has requested \$25.715 billion in discretionary spending for the agencies and programs in the Interior budget. That's a cut of \$842 million, or 3.2 percent, from the currently-enacted level.

The real cut, of course, is much higher, when you factor in some \$300 million in fixed costs that must be covered, an extra \$200 million for fire suppression to meet the 10-year average, and approximately \$150 million to cover increased health care costs for the services provided by the Indian Health Service.

In short, this Interior budget is a very difficult one, and we are going to have our work cut out for us, as we proceed with this year's appropriation process.

With respect to this morning's hearing the administration's request for the EPA's budget is \$7.142 billion, a \$329 million—or a 4 percent cut—from the 2008 enacted level. This proposal calls for

the smallest budget for EPA, since 1997. The smallest budget for EPA, since 1997.

#### GRANTS TO STATES

Grants to States for environmental protection, in general, are slashed \$304 million, a 10 percent cut, for a total of \$2.6 billion. As in previous years, the largest cut is to the Clean Water State Revolving Fund. The administration's request for this program is \$555 million. That's a 20 percent cut from the 2008 enacted level.

Now, this happens despite the fact that EPA just released a report, citing a need for \$20 billion to keep pace with clean water infrastructure funding in the United States over the next 20 years.

The budget proposes \$186 million in State grants for reduction of air pollution—that's a 14 percent cut—and it eliminates \$9.8 million in funds added to clean up air pollution in the San Joaquin Valley, and South Coast air districts of my State—the two most polluted air districts in the country.

Finally, EPA budget cuts \$14 million in funding for climate change programs—including the outright elimination of \$3.4 million added last year for a greenhouse emissions reporting rule. This comes, despite the fact that Congress has required a final rule on this by June 2009, and we know additional funds are badly needed to complete this important work. Under this budget, though, that money is just gone.

We're here today to talk about more than the budget, too. As you know, I am strongly opposed to the administrator's decision last December to deny the State of California its authority to regulate greenhouse gas emissions from automobiles.

I'm going to ask Administrator Johnson to justify how he could have reached this decision, that California's need to regulate greenhouse gases was not compelling or extraordinary, when his decision looks to be plainly contradicted by both the Clean Air Act, and by 40 years of agency policy.

What's even more unprecedented, is that he has denied this waiver, without offering a shred of legal or technical evidence for this decision. Incredibly, EPA released its justification for the waiver decision just last Friday—more than 2 months after the decision was made. You would think it would be done before the decision was made. I want to know why.

This issue is much bigger than California. Sixteen States around the country have asked to implement California's emission standards, and take action against climate change. The people in those States deserve answers to these important questions.

I'd like to turn now to our distinguished ranking member, Senator Allard, for any opening comments you might make.

#### OPENING STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. Thank you, Madam Chairman.

Just to make a brief comment here, I want to thank you for holding this hearing, and I want to thank Mr. Johnson for joining us this morning to testify on the fiscal year 2009 budget for the Environmental Protection Agency.

EPA has one of the most important and difficult missions of all Federal agencies. The agency's jurisdiction ranges from responsi-

bility for clear-up of Superfund sites, to funding clean water and drinking water infrastructure programs, to the enforcement of a long list of environmental laws.

The administration has requested \$7.1 billion in total budget authority for fiscal year 2009—this is \$330 million below the enacted level.

While I'm a supporter of this agency's—and the administration's—effort to curb spending, I am concerned that the bulk of the reduction in EPA's budget is in the form of a \$134 million to the Clean Water SRF.

As I have mentioned in past years, I am uneasy with continued increases in enforcement budget at EPA. The \$9 million increase above the enacted level, \$563 million total budget for enforcement. I hope that the agency will work in good faith with small and rural communities who do not always possess the expertise to comply with new regulations.

#### LEADVILLE MINE DRAINAGE TUNNELL

Mr. Administrator, I am sure that you are familiar with the issues surrounding the Leadville Mine drainage tunnel in Lake County, Colorado. I am extremely concerned that Lake County officials were forced to declare a state of emergency on February 13, to prepare for a possible toxic flood as a result of water trapped in a collapsed drainage tunnel.

Now, EPA is not the only entity that bears responsibility for the Leadville Tunnel, but I would like your word, Mr. Johnson, that your agency will continue to work toward a long-term solution for this situation, so that the residents of Lake County can rest easy.

I was pleased that your representative in our Colorado meeting took the bull by the horn, so to speak, and came up with a short-term solution. So, we're talking about a long-term solution for this problem, and I am appreciative of him stepping forward at a time when we had a couple of agencies, sort of, knowing at each other, and you brought—you took some leadership out of your agency and brought about a consensus, and I appreciate that.

Senator Feinstein, I do not necessarily agree on all aspects of the greenhouse debate, but I'm concerned by reports that the agency may have disregarded standard protocols in denying California's Clean Air Waiver Request.

There are a number of States, including Colorado, which would have considered in California's footsteps to adopt a law to reduce greenhouse gas emissions from automobiles, if a waiver was granted to that State. As a supporter of States' rights, I am also troubled by the suggestion that the State of California's rights may have been curtailed.

I'm confident that Senator Feinstein has a number of questions for you, Mr. Johnson, on this topic so I look forward to a healthy debate during the question round of this hearing.

Mr. Administrator, thank you again for being here today, and I look forward to working with you on the many challenges you face at the helm of the agency.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator.

I'd like to suggest this, that we hear from Mr. Johnson and then we have 10-minute rounds. Since it's the two of us, we go back and forth—if that's agreeable with you.

Senator ALLARD. That sounds fine, thank you.

Senator FEINSTEIN. Good, thank you.

Mr. Johnson.

#### SUMMARY STATEMENT OF HON. STEPHEN L. JOHNSON

Mr. JOHNSON. Thank you, Madam Chairman.

Chairman Feinstein, and Senator Allard and members of the committee, I'm pleased to be here to discuss the President's fiscal year 2009 budget request for the Environmental Protection Agency.

This marks the 8th, and final, budget introduced by the President during his tenure. As the Bush administration sprints to the finish line, I believe this budget will keep EPA on a course for a cleaner tomorrow.

At EPA, we are proud—our Nation's air is cleaner, our water is purer, and our land is healthier than just a generation ago. So, we appreciate the President's \$7.14 billion budget proposal, which will help the EPA keep pace with the environmental challenges of tomorrow.

One important challenge is in the arena of clean and affordable energy. With both demand and cost on the rise, innovators are moving forward to advance the clean power solutions. At the same time, industry is searching for new, domestic energy supplies, to help reduce the Nation's dependency on foreign oil.

In doing so, we estimate that industry will explore thousands of new oil and gas wells on tribal and Federal lands alone, as well as proposing many energy projects.

To ensure these projects move forward in an environmentally responsible manner, this budget requests \$14 million to hire additional technical experts, and provide grants to our partners to increase their capacity to review and assess proposed projects.

In addition, the budget contains sufficient funding to meet our commitment to addressing the serious challenge of global climate change. In order to advance clean air technologies, the President requested \$49 million for EPA's diesel retrofit grant programs.

Another challenge is to improve our Nation's aging drinking water and waste water infrastructure. The budget requests \$842 million to fund Drinking Water State Revolving Fund grants—an increase of \$13 million from last year. This will help meet the President's commitment to achieve a \$1.2 billion revolving level by 2018.

For Clean Water State Revolving Funds, the President proposes an investment of \$555 million in fiscal year 2009. This will enable the program to meet its long-term revolving target of \$3.4 billion by 2015.

In addition, we once again, propose to create Water Enterprise Bonds, as innovative financing tools for State and local partners to cost-effectively provide for resident's water needs.

#### WATER INFRASTRUCTURE

As we address our water infrastructure, the budget continues to support EPA's collaborative work to protect America's great water

bodies. It provides \$35 million for the Great Lakes, \$29 million for the Chesapeake Bay, and \$4.6 million for the Gulf of Mexico.

As you know, EPA is not only a guardian of our environment, it is a guardian of our homeland. I'm proud of our response to Hurricanes Katrina and Rita, and to a number of other natural events in recent years.

However, we recognize the need to expand our capabilities to respond to multiple, simultaneous, catastrophic events. So this budget requests an extra \$32 million, for a total investment of \$170 million to train staff volunteers, increase decontamination capabilities, and fully fund 5 water infrastructure security pilots. This additional funding also includes a \$5 million increase to support our bio-defense research.

In order to keep pace with the environmental challenges of tomorrow, we have a responsibility to advance the state of our science. In this budget, the President requested \$15 million, to help EPA study nanotechnology, as well as \$15 million for computational toxicology.

At EPA, we're working with our community partners to pass down a healthier, more prosperous future. The President's budget provides over \$1.2 billion for the Superfund Program—to continue transforming contaminated, hazardous waste sites back into community assets. This is a \$10 million increase from fiscal year 2008.

The President also requested \$165.8 million for our successful Brownfields program. We project the grantees will help assess the renovation of 1,000 properties, and create leverage for more than 5,000 jobs.

So, while cooperative initiatives are important, we must continue to vigorously enforce our Nation's environmental laws. This budget proposes the highest dollar amount for enforcement in EPA's history, \$563 million, an increase of \$9 million over fiscal year 2008.

As EPA works to fulfill our responsibilities to the American people, I'm pleased this budget not only continues to deliver environmental results today, and keeps EPA on course to deliver a cleaner, healthier tomorrow.

#### PREPARED STATEMENT

Bottom line—this budget represents good government. It helps EPA meet our environmental goals, while being responsible stewards of taxpayer dollars.

Thank you, and I request that my full written statement be submitted for the record.

Thank you, Madam Chairman.

[The statement follows:]

#### PREPARED STATEMENT OF HON. STEPHEN L. JOHNSON

Madam Chairman and members of the committee, I appreciate the opportunity to discuss our proposed fiscal year 2009 Budget request for the Environmental Protection Agency (EPA) budget.

The President requests \$7.14 billion for fiscal year 2009 to support EPA's mission to protect human health and the environment both directly and through EPA's state, local and tribal partners nationwide. Since its founding, EPA has laid a strong foundation of environmental progress. Our air, water and land are cleaner today than they were just a generation ago. This budget continues this progress, supports the environmental commitments that the President and I have made and institutionalizes EPA's major management and performance improvements.

In particular, the budget meets the major priorities that I've set for my final year of service:

- Advancing clean, affordable and safe energy,
- Safeguarding our nation through stronger homeland security,
- Encouraging stakeholder collaboration to address energy and climate change issues,
- Improving our water infrastructure and programs,
- Continuing Superfund remediation of the most highly contaminated hazardous waste sites,
- Encouraging economic development through revitalization with our successful Brownfields program,
- Ensuring full compliance with the nation's environmental laws,
- Building a stronger EPA for my successor—including strengthening our protection of human health and the environment through best available science, and
- Demonstrating fiscal responsibility for all our successors.

#### ADVANCING CLEAN, AFFORDABLE AND SAFE ENERGY

We all know that our Nation faces multiple challenges to assure a future of clean, affordable and safe energy. With both demand and costs on the rise, innovators are moving forward to propose cleaner power solutions that are good for our environment and good for our energy security. Industry is searching for many new domestic alternatives to help reduce our dependence on foreign energy. We estimate that over the next several years industry will propose drilling thousands of new oil and gas wells on Federal, state, and Tribal lands, apply to renew up to 100 nuclear plant licenses, consider building dozens of new liquefied natural gas terminals, and propose many other projects. This budget recognizes that industry's increased efforts will mean a larger workload in our existing air and water permitting programs as well as our enforcement programs—especially out West.

This budget includes an additional \$14 million to help ensure environmentally sound decision-making—with proper permitting and review and in full compliance with the law. The \$14 million will support our state and tribal partners' efforts to increase their capacity to review and assess all the proposed energy projects and pay for the additional technical experts the Agency needs to meet permitting, technical review, and NEPA requirements.

One related clean energy initiative that I'm glad that we and the appropriating committees agreed upon is the Diesel Emission Reduction Act (DERA) program grants. In fiscal year 2009, \$49 million will fund 250–300 diesel retrofit grant programs that target older diesel engines which are not subject to the new regulations. A combination of strategies including engine retrofits, rebuilds or replacements, switching to cleaner fuels, and idling reduction strategies can reduce particulate matter emissions by 95 percent, smog forming hydrocarbon and nitrogen oxide emissions by up to 90 percent and greenhouse gases by up to 20 percent. These strategies will allow us to make continued progress in five sectors: freight, construction, school buses, agriculture and ports.

#### HOMELAND SECURITY

Homeland Security continues to be one of EPA's top priorities. EPA has responded to five major disasters and catastrophic incidents in recent years, including response actions to the 9/11 terrorist attacks, the anthrax terrorist incidents, the Columbia Shuttle disaster and recovery efforts, the Ricin incident on Capitol Hill, and the Gulf Coast hurricanes. Our experience from these responses, coupled with EPA's externally driven mandates such as Homeland Security Presidential Directives and Emergency Support Function mission assignments, lead me to propose that EPA heighten its preparedness.

This budget ensures that we can meet these commitments by proposing an additional \$32 million over last year's enacted budget for a total of \$170 million to advance the EPA's capabilities to respond to multiple incidents, strengthen bio-defense research, and continue to support the Water Security Initiative.

As a part of this request, we remain committed to funding five Water Security Initiative pilots to secure a broad range of data so water utilities across the country will have the necessary information to install and enhance contamination warning systems. With the fiscal year 2009 request we will have initiated all five pilots and expect to complete them by 2012. EPA is also advancing its preparedness to respond to multiple, large-scale, catastrophic incidents, and in particular, potential chemical, biological and/or radiological agent terror attacks.

## CLIMATE CHANGE

For fiscal year 2009, EPA requests a total of \$114.7 million to continue to achieve real reductions of carbon dioxide, methane, per fluorinated compounds (PFCs) and other greenhouse gases, and continue research to better understand climate change and its ramifications.

EPA will continue to achieve real reductions in greenhouse gases by promoting energy efficiency through partnerships with consumers, businesses and other organizations. We will continue to see real results in the home, building, industrial and transportation sectors by spurring our partners' investments in energy efficient and greenhouse gas saving technologies, policies and practices. Based on a historical analysis, we estimate that for every dollar spent by EPA on its climate change programs, greenhouse gas emissions are reduced by up to the equivalent of one metric ton of carbon.

One cornerstone of our partnerships is the ENERGY STAR program, which has helped speed new lighting technologies to market, fostered development of more energy efficient computers, and increased Americans' understanding of how they can help the environment by purchasing cleaner and more efficient machines. To give one example, ENERGY STAR qualified light bulbs use 75 percent less electricity and last up to 10 times longer than traditional bulbs. If every American household switched just one traditional bulb to a high-efficiency ENERGY STAR bulb, America would save enough power to light more than three million homes . . . save \$600 million in energy costs . . . and prevent greenhouse gas emission equal to more than 800,000 cars annually.

A Washington Post article 2 weeks ago on how pollution can be blown to the United States from overseas reminded me that our international programs are essential to realizing American ecological goals. If we don't help China, India and other developing countries build energy efficient technologies into their infrastructure, their increases in greenhouse gas emissions will far out-weigh any reduction that we achieve here. That is why it remains essential that we move forward with the Asia Pacific Partnership, Methane to Markets and other international programs.

In climate change research, EPA will invest \$16.4 million to continue to better understand climate change and its ramifications. EPA will investigate how climate change affects air and water quality to protect the gains in public health made by the Agency. We will explore opportunities to anticipate the impacts and incorporate climate change considerations into regulatory processes. We will use research findings to support the development of a proposed rule on the geological sequestration of carbon dioxide to ensure that underground sources of drinking water are protected. We will continue to reach out to all our potential 300 million "green" partners by making available free, online decision support tools to enable resource managers to incorporate climate change considerations into their day-to-day operations.

## COOPERATIVE PROGRAMS

Our cooperative programs also provide an outstanding example of how we can find "win-win" solutions that make sense both environmentally and economically. They allow us to work with businesses and individuals to achieve environmental results while improving the bottom line. They allow EPA to start addressing environmental challenges as soon as we recognize them and give us the opportunity to test innovative approaches to meet today's challenging environmental problems. To date, our conservative estimate is that over 20,000 businesses and other groups across America have participated in cooperative programs. We are proud of the record of success of these programs and want to encourage our talented employees to continue to use their creativity in finding innovative ways to improve environmental results.

## WORKING WITH FEDERAL PARTNERS

Cooperation with Federal partners is also crucial for EPA to meet its mission. In the fiscal year 2009 budget, I want to highlight our efforts to work with Federal partners to better understand the environmental impact of the almost \$2 trillion worth of imported goods coming into the U.S. annually. To meet this challenge, the President directed agencies with import/export responsibilities to work together to create an International Trade Data System (ITDS) within an expanded Automated Commercial Environment (ACE). EPA's \$3.1 million investment in fiscal year 2009 will help build the linkage with ITDS to identify, track and confirm vital environmental details about imported goods in 6 areas: (1) vehicles and engines, (2) ozone depleting substances, (3) fuels, (4) pesticides, (5) toxic substances, and (6) hazardous waste.

This is not a pie-in-the-sky dream. It builds on a successful pilot test by our Office of Enforcement, which showed that accessing useable records lead to timely action. One pilot test identified imported engines in several planned shipments that did not meet U.S. specifications and allowed us to block their entrance. One bad engine can make a big difference in emissions of particulate matter. Another pilot test proved that even child's play can be harmful to the environment. Detailed records highlight many batches of innocent-looking "silly-string" which contained banned chlorofluorocarbons (CFCs). These tests make clear that prompt data retrieval translates into prompt protection.

This is also an example of how our long term planning has paid off. EPA can efficiently link to ITDS because of the Agency developed a Central Data Exchange, a standard set of IT systems and protocols for sharing information among multiple partners.

#### WATER INFRASTRUCTURE AND PROGRAMS

This President's budget meets our commitments to finance state revolving funds, proposes new financing options, continues WaterSense and other collaborative water-efficiency projects, strengthens our wetlands and watershed protection, and furthers our successful geographic initiatives.

We propose \$842 million for Drinking Water State Revolving Fund (DWSRF) grants, an increase of \$13 million. This funding will help achieve the target of 445 additional infrastructure improvement projects to public water systems—and help reach a long term target \$1.2 Billion revolving level. The DWSRF program supports states by providing low-interest loans and other assistance to water systems to help provide safe, reliable water service on a sustainable basis, protect public health and achieve or maintain compliance with the Safe Drinking Water Act (SDWA).

For Clean Water State Revolving Funds (CWSRFs), we propose a fiscal year 2009 investment of \$555 million to help meet the program's long term revolving target of \$3.4 Billion. This program is able to meet EPA's \$6.8 billion total capitalization goal for fiscal years 2004–2011 with a reduced budget request due to higher than anticipated funding levels in previous years. The CWSRF program provides funds to capitalize state revolving loan funds that finance infrastructure improvements through low interest loans for public wastewater systems and other water quality projects.

The President's fiscal year 2009 budget continues to support the Water Enterprise Bond Initiative that proposes financing wastewater and drinking water infrastructure projects using Private Activity Bonds (PABs) that are exempt from unified state PAB volume caps. We estimate this initiative will increase capital investment in the nation's water infrastructure by up to \$5 billion per year over time through public-private partnerships. These bonds will complement local efforts to move towards full-cost pricing for wastewater and drinking water services, help localities become self-financing and minimize the need for future Federal expenditures.

These financing proposals work together with our continuing efforts to increase efficiency, protect our wetlands and watersheds, accurately monitor the condition of our waters and wetlands and target vital geographic areas.

For example, in June 2006 EPA launched the WaterSense program to reduce water use across the country by creating an easy-to-identify label for water-efficient products. The WaterSense label certified that products had been independently tested to meet strict efficiency and performance criteria. In less than two years, WaterSense has become a national symbol for water efficiency among utilities, plumbing manufacturers, and consumers. More than 125 different models of high-efficiency toilets and 10 bathroom faucets have earned the label and more than 600 manufacturers, retailers, utilities and professionals have joined the program as partners. In fiscal year 2009 EPA will continue supporting development of new products and working with utilities, retailers, distributors, and the media to educate consumers on the benefits of switching to water-efficient products.

EPA's Wetlands Program supports the Administration's goals to achieve "no net loss" of wetlands in the Sec. 404 regulatory program and an overall increase in wetland quantity and quality. Wetlands provide numerous ecological and economic services: they help to improve water quality; recharge water supplies; reduce flood risks; provide fish and wildlife habitat; offer sites for research and education; and support valuable fishing and shellfish industries. In fiscal year 2009, EPA will work with its state and Tribal partners to promote up-to-date wetlands mapping tied with GIS (Geographic Information Systems) analysis, strengthen monitoring and assessment programs to report on wetlands condition, and improve data to better manage wetlands within a watershed context. Two key activities will be implementing the 2006 Supreme Court decision in the Rapanos case, and working with our federal agency

partners to accelerate the completion of the digital Wetlands Data Layer within the National Spatial Data Infrastructure (NSDI).

Watershed protection runs through our budget and strategic plan as one of the overarching principles for clean and healthy communities. Our strategic plan, our daily activities and our proposed fiscal year 2009 budget all reflect the importance of core regulatory and stewardship programs prevent water pollution and protect source waters. With our partners we launched a Green Infrastructure Strategy on January 17, 2008 to reduce sewer overflows and storm-water runoff. We also continue to urge Congress to enact targeted, bipartisan clean water legislation to encourage "Good Samaritan" cleanup of abandoned hard rock mines. This simple step will remove legal and bureaucratic obstacles, keep environmental safeguards in place, save tax payer dollars and help clean up watersheds.

We continue to place a high priority on improving the states' ability to accurately characterize the condition of their waters. In fiscal year 2009, we will continue our water quality monitoring initiative by providing grant funding totaling over \$18.5 million to states and tribes that participate in collecting statistically valid water monitoring data and implement enhancements in their water monitoring programs.

The fiscal year 2009 budget continues funding for geographic initiatives, including:

- In the Great Lakes, EPA's \$35 million investment in the Great Lakes Legacy Act will give priority to working with states and local communities to achieve improvements in water quality and reducing the number of toxic "Areas of Concern". "Areas of Concern" include areas with damaged fish and wildlife populations, contaminated bottom sediments and past or continuing loadings of toxic and bacterial pollutants.
- In the Chesapeake Bay, the \$29 million investment will be committed to substantially accelerating the restoration of the Bay's aquatic habitat and achieving the pollution reduction targets for 2010.
- For the Gulf of Mexico, EPA's \$4.6 million investment will continue to support efforts to reduce nutrient loadings to watersheds. We will identify the top 100 nutrient-contributing watersheds in the Mississippi River Basin and use a computer model determine the location of major sources of nitrogen and phosphorus and where to target hypoxia- reduction efforts.

#### SUPERFUND REMEDIATION OF HIGHLY CONTAMINATED HAZARDOUS WASTE SITES

The President's budget requests a \$10 million increase for a total of \$1.264 Billion for the Superfund program to continue our progress cleaning up contaminated sites and strengthening our emergency preparedness and response capabilities. The vital goals of the Superfund program remain assuring the health and safety of neighboring citizens during cleanups and protecting human health and the environment in the long-term. Within this budget request, funding for Superfund clean-up remains at essentially the same level as enacted in fiscal year 2008.

EPA takes seriously its responsibility to take actions to protect human health by controlling exposure to hazardous substances during clean ups. Before or during long-term remedial action, the Superfund program often completes removal actions to mitigate immediate health threats prior to completing investigations and starting long-term cleanup construction. For example, to date, EPA has provided more than two million people living near contaminated sites with alternative sources of drinking water, has completed more than 9,400 removals at hazardous waste sites to reduce the immediate threat to human health and the environment, and has conducted 351 emergency response and removal cleanup actions in fiscal year 2007 alone.

Developed more than a decade ago, EPA's construction completion measure continues to show substantial progress in the Superfund program. As of the end of fiscal year 2007, cleanup construction had been completed at 1,030 of the National Priorities List (NPL) sites—66 percent of the sites listed on the NPL. EPA plans to complete clean up construction at 30 sites in fiscal year 2008, and 35 sites in 2009. This will keep EPA on track to complete construction at 165 sites during the fiscal year 2007 to fiscal year 2011 time period—EPA's goal in the current Strategic Plan.

To better measure long-term progress, the program added a Site-Wide Ready for Anticipated Use measure in 2007. This measure tracks the number of NPL sites where the remedy is constructed (construction complete) and all of the controls are in place to ensure that the land is protected for reasonably anticipated uses over the long term. EPA expects to make at least 30 sites ready for anticipated use in 2009, building upon its 2007 achievement of doubling the original goal of 30 by making 64 Superfund sites ready for anticipated use.

## BROWNFIELDS AND LAND REVITALIZATION

The President's fiscal year 2009 budget request provides \$165.8 million for the Brownfields program, including \$93.6 million to fund program assessment, cleanup, revolving loan fund, and job training grants. This will fund 129 assessment grants, 96 cleanup grants, 7 revolving loan fund grants, and 12 job training grants. Through this work, we project that Brownfields grantees will assess 1,000 properties, clean up 60 properties, leverage 5,000 cleanup and redevelopment jobs, and leverage \$900 million in cleanup and redevelopment funding.

Experience has taught us that one of the best ways to clean up contaminated sites and to address blighted properties in communities is to expressly consider the future uses of this land. The country has accepted the economic and ecological importance of recycling various consumer products—and our understanding of sound resource management must now also embrace the recycling of contaminated properties. In addition, by incorporating “green” and sustainable approaches into Brownfields redevelopment, we can further increase the environmental benefits from land revitalization. We remain committed to the goal of restoring our nation's contaminated land resources and enabling America's communities to safely return these properties to beneficial economic, ecological, and societal uses.

## ENFORCEMENT

Experience has also shown that we cannot always rely on collaboration to attain all our goals. This budget doesn't neglect that lesson. Once again I request the largest enforcement budget in history, \$563 million—an increase of \$9 million—to maintain our vigorous and successful enforcement program.

These dollars will prove to be a wise investment. Last year, EPA's enforcement programs succeeded in:

- Having defendants agree to \$10.6 billion in investments to reduce pollution;
- Achieving private party reimbursements of \$252 million for Superfund; and,
- Reducing water pollution by 178 million pounds and air pollution by 427 million pounds.

This all-time record budget request includes a \$2.4 million increase to a total budget of \$52.2 million for criminal enforcement. These dollars are vital to help us increase the number of criminal investigators.

## STRONGER EPA—SOUND SCIENCE

As a 27-year Agency veteran, one of my most solemn duties is to leave behind an EPA that is stronger than when I came in. As both a scientist and a long time manager—I am convinced that the only way that a technical, regulatory agency can meet its mission is by doing a lot of hard thinking to ensure that we keep our technical, legal and scientific base strong—and that we hone our management goals and measures to guide our efforts. This budget builds on the progress we've made by strengthening our workforce, sharpening our management and performance measurement and increasing our scientific knowledge.

First, as a scientist, I want to continue to provide strong support for research addressing our nation's and our world's critical and increasingly complex environmental issues. In fiscal year 2009, I propose that EPA invest extra resources to understand two critical, growing areas: nanotechnology and computational toxicology.

For nanotechnology, I ask for an additional \$4.5 million, for a total budget of \$14.9 million to strengthen understanding of health and ecological implications arising from new routes of exposure and/or toxicities associated with exposure to these novel materials. We must identify and develop risk assessment methodologies for use by risk assessors, and evaluate the adequacy of current exposure assessment approaches. We will coordinate this research closely with the President's National Nanotechnology Initiative (NNI), which emphasizes the need for the government to understand which processes govern the environmental fate of nano-materials and what data are available or are needed for accurate nano-material risk assessment. This includes determining the release potential of nano-materials in the environment, researching the state of science for sampling and measuring nano-materials in environmental media. We must also study effects on human and ecological receptors and determine which technologies and practices minimize risk.

I also remain strongly committed to improving our computational toxicology work and ask for a \$2.7 million increase—for a total budget of \$14.9 million for this vital area. In fiscal year 2009, we want to improve EPA's ability to more efficiently understand chemicals' toxicity through advanced modeling. One aspect of this work that is particularly important is that it can reduce the need to use animals for toxicity testing.

To help further these initiatives and ensure EPA's ability to attract and retain the highest caliber scientists, the budget proposes expanded special authority that will allow EPA to hire up to 40 scientists quickly and competitively.

#### STRONGER EPA—PERFORMANCE AND MANAGEMENT

As a manager, I want to make sure that we focus on something we can all take pride in—delivering results. And I'm proud to tell you about what we've accomplished to date in the planning and management fields. EPA:

- Scored “green” in the President's Management Agenda on all initiatives in the first quarter of fiscal year 2008—one of only a few agencies to reach that goal, and
- Improved outcome measures to more directly link the results of our work and resources to environmental, on-the-ground, results.

We've addressed specific challenges as well. For the first time in ten years we've succeeded in removing grants management as a “management challenge” or “material weakness”. We've fixed problems identified by the Government Accountability Office (GAO) and the Office of Inspector General (OIG) and built a system of internal controls fully integrated into the grants management process that includes:

- Improved mandatory training,
- Heightened grants performance standards,
- Quarterly management close-out reviews,
- New post-award monitoring orders, and
- EPA's new grants management system.

Finally, as I conclude my tenure at EPA, I want to fulfill my responsibility to cultivate the next generation of EPA leaders. This budget includes funding for a Leadership and Professional Development rotation program to ensure that our talented GS-13, 14 and 15 employees can expand knowledge and expertise, develop leadership skills and enhance professional growth through short term rotational assignments. For more senior leadership, we propose to continue our SES mobility program to make sure that we populate the highest levels of the agency with proven managers.

#### CONCLUSION

Madam Chairman, when I look at the candidates who are getting the opportunity to broaden their skills in these programs, I am heartened that I'll be leaving the agency in good hands. I look forward to working with you to enact this budget.

I am confident that this budget gives them an excellent basis on which to build. I hope that together we can see prompt action on these budget proposals so that we can implement your funding decisions.

Thank you. I will be happy to respond to any questions you may have.

Senator FEINSTEIN. Thank you very much, Mr. Johnson. Let us begin.

#### CALIFORNIA WAIVER

The legal justification for denying California's waiver rests heavily on your view that in 1967, Congress intended that waivers would only be issued if California had a unique problem. The waiver decision cites 1967 committee reports and floor statements 9 times.

If the pollutant is global, and therefore exists to a similar extent in other States, you conclude that this is grounds for a waiver denial.

Well, in 1977, Congress amended the Clean Air Act, changing both the words, and intent, of section 209. The House committee report from 1977, explains the section 209 revisions by saying, and I quote, “The committee amendment is intended to ratify and strengthen the California waiver provision, and to affirm the underlying intent of that provision, i.e., to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare. The Administrator, thus, is not to overturn California's judgment lightly. Nor is he to

substitute his judgment for that of the State. There must be clear and compelling evidence that the State acted unreasonably, in evaluating the relative risks of various pollutants in light of the air quality, topography, photochemistry, and climate in that State, before EPA may deny a waiver.”

Your waiver justification document does not mention congressional intent in 1977. Why?

Mr. JOHNSON. Well, Madam Chairman, as I evaluated the petition from California, as you correctly point out, I am bound by section 209 of the Clean Air Act, and there are three very specific criteria.

I did not make judgment on two of the criteria. The one that I did was that California does not need such California standards to meet compelling and extraordinary conditions. Again, based upon the record and the evidence before me.

Clearly, we looked at legislative history—as you pointed out—but again, as I point out, even with affording California the broadest possible discretion, evaluation under section 209 does not mean a rubber stamp. It does not mean that it’s a popularity contest, it means that I need to thoughtfully and carefully think evaluate the data that are before me under section 209, and in this case, I determined that California did not need its own greenhouse gas standards to meet compelling and extraordinary conditions.

Senator FEINSTEIN. Even though that same section allows other States to accept California’s standards? I mean, it seems to me if Congress intended for waivers to be limited to problems unique to California, why did it give other States the right to adopt the same standards?

Mr. JOHNSON. Well, you raise a very good point, Madam Chairman, and in fact the section 209, and the law and the criteria by which I am to judge the standard does not allow me to consider what other States may or may not do—it’s very specific to California.

#### GREENHOUSE GAS EMISSIONS

As I pointed out, and I think it’s worth pointing out here—that the more States that believe that greenhouse gas emissions is a problem, are in fact, making the very point that California is not unique—it is not exclusive in its need for addressing greenhouse gas emissions.

Rather, it is a national problem, requiring a national solution, and that’s certainly what my 48-page decision document goes through, very carefully, and addresses.

Senator FEINSTEIN. Thank you.

According to the Washington Post, you made the decision to deny the waiver over the unanimous recommendation of your legal and technical staff. Here’s the question. When you went around that room full of staff, and asked each person’s recommendation last October, did a single one of your legal and technical staff support a flat denial of the waiver?

Mr. JOHNSON. Well, when I met with and had a—literally hours of briefings with my technical and legal staff, which included career as well as my policy staff, as well, they presented me with a wide range of options, ranging from approving the waiver, to deny-

ing the waiver. They were all presented to me as legally defensible option.

Yes, I did seek their comments, I appreciate the ability to have that candid input to me. But, according to the Clean Air Act, and certainly I take the responsibility very seriously, the decision rests with me, and me alone, and I made the decision as is evidenced in our final agency decision document.

Senator FEINSTEIN. Yeah, let me understand, then. You are saying that technical staff, and legal staff, gave you a recommendation to deny the waiver, is that correct?

Mr. JOHNSON. The technical and legal staff presented me with a range of recommendations, which included improving the waiver, and included denying the waiver. That, based upon their input, based upon my evaluation, thoughtful and careful consideration of the record before, and what the requirements are under the Clean Air Act under section 209, I determined that California did not meet the waiver criteria.

Senator FEINSTEIN. Did you ask them what they thought? As individuals?

Mr. JOHNSON. I—generally it is my approach on all agency decisions to ask for input, and if people want to give their person input, that's fine. If they choose to pass, that's fine. But I routinely, at least what I recall—as routinely as for all major decisions, seek input.

Senator FEINSTEIN. Well, I mean, we've been told, informally, that none of the staff was for denying California's waiver.

Mr. JOHNSON. Well, as I said, I received a range of options—

Senator FEINSTEIN. I understand, it's not what I'm asking.

Mr. JOHNSON [continuing]. I also, I also—

Senator FEINSTEIN. I receive a range of options on many things—here's the best case this way, here's the best case that way—but what do you think? Is my question.

Mr. JOHNSON. Well, I—

Senator FEINSTEIN. Did any of the legal or technical staff believe you should deny the waiver? You can say yes, if yes is the answer.

Mr. JOHNSON. Well, again, I appreciate the ability to have candid comments from my staff, and I want to protect that ability to, for them to give me candid advice. What I said is, is that I received a—not only a wide range of options, clearly as both the record indicates, and certainly the press indicates—there's a wide range of opinions. It's not—my decision is not based upon, again, a popularity contest of the opinions. It has to be based—and was based—on what the law directs me to do.

Senator FEINSTEIN. Bottom line, Mr. Johnson, you're not answering my question. But there's nothing I can do, other than to believe what a non-answer to the question means.

DETERMINE WHETHER CARBON DIOXIDE CONTRIBUTES TO CLIMATE  
CHANGE

Let me go on. You are under remand from the United States Supreme Court to determine whether carbon dioxide contributes to climate change, and endangers public health and welfare, and I would like to know by when you intend to respond. You have missed your own deadline of completing this finding by the end of

2007. In January, you told the Senate Environment and Public Works Committee that EPA's reaction to the Supreme Court's remand had been delayed by passage of the Energy Independence and Security Act, even though this new law did not amend section 202 of the Clean Air Act which governs your decisions regarding endangerment.

We are rapidly approaching the 1-year anniversary of that landmark decision. Will you commit that your agency will respond to the remand of the highest court in the land, by the anniversary of this ruling, which is April 2, 2008?

Mr. JOHNSON. Well, Madam Chairman, what I will commit to is we will be responding to the Supreme Court decision. As, I believe I have indicated—or staff have indicated in correspondence with you regarding funding issues for this year, is that right now I am in the process and, if you will, to have taken a step forward and said, we have, obviously, the *Mass v. EPA* decision that is pending before the agency. We also have the implementation of the Energy Independence and Security Act and again, congratulations, Madam Chairman and Senator Allard, for great work, for—and certainly the President signing that.

We are looking to, and working on the implementation regulations for that. We also have a number of pending petitions before the Agency, as well as a number of corridor deadlines.

One of the unique things is—

Senator FEINSTEIN. Excuse me, my time is—all I'm asking of you is when might we expect this, which was due in 2007?

Mr. JOHNSON. Well, what I was—as I've communicated with you, I don't have a date, but I can assure you we will be responding to the *Mass v. EPA*, and that what I was beginning to try to explain is that we have many pending actions before the agency, and I'm assessing those before I make a final determination as to what the next steps are on all of them—including *Mass v. EPA*.

Senator FEINSTEIN. My time is up.

Senator.

Senator ALLARD. Thank you. As I mentioned in my opening remarks, I have some concerns about enforcement from the perspective that I hope that EPA's approach to many of the infrastructure problems that we have in meeting some of your rules and regulations will take more of a helpful approach to small communities, because they don't have the staff and the expertise—as opposed to just a strict enforcement approach.

#### ARSENIC LEVELS

We have a couple of issues in Colorado where this is brought—one of them is the arsenic levels which was passed by the Congress, and you don't have a lot of flexibility in that—but we do have communities that have—they're small communities, so they don't have a large tax base—are faced now with the increased arsenic levels of reducing that arsenic level in their drinking water.

Now this is a natural background level, it's been there for years, we've tightened it up, and now they have to spend the money to improve that water over and beyond what the natural background level of arsenic would be. Yet those standards are below the public health requirements, but the Congress felt necessary to go below

that. So that creates a real problem for small communities, and I'd like to know what you're doing to help them out.

You have—you just promulgated or are working on a radon rule. Again, it's a small community problem, Colorado has a lot of uranium in their soil, naturally, the background radiation in Colorado is higher than most States, and so radon is around, but what they need is help in developing the technology and being able to afford this, as opposed to straight enforcement, because it's naturally in the background level. There's no industry in that water stream, that stream, that's causing the problem, it's there naturally.

So I'd like to have you comment as to what you're doing to assist small and rural communities in meeting new regulations, instead of just imposing fines.

Mr. JOHNSON. Senator, thank you. There are really three things that I would like to point out. One is that a request for increased funding for the Drinking Water State Revolving Loan Fund of \$13 million, that will help. Obviously, we think other steps will help, whether it is Good Samaritan legislation to help with these abandoned mines, or private activity bonds—all of those will help from a financial standpoint, and environmental.

Second is, we have been investing—and again, thanks for your collective support—of new technologies; technologies that help, that are particularly focused on small communities, and actually I have some statistics, I'd be happy to share with you.

Then the third is what you started out with, is the importance of flexibility. We want to make sure, and ensure, that small communities are able to meet the new health protective standards, but we want to be able to do so in a way that recognizes the limitations that may exist at a community, small community level—local level—and the need for flexibility to achieve those is very important.

Senator ALLARD. Now, I have a small community that wants to find out about these technologies—how do they go about getting that information from the Environmental Protection Agency?

Mr. JOHNSON. Well, you've just asked, and we'd be happy to respond.

Senator ALLARD. Okay, thank you.

[The information follows:]

EPA has developed a set of user-friendly multimedia products to help small drinking-water utilities meet revised regulations to control arsenic. The tools will provide owners and operators with information to guide them in making treatment decisions. The anchor product of this suite of tools is the Arsenic Virtual Trade Show, a learning portal for arsenic-treatment technology. The website features a database of vendors, a treatment "decision tree," and tips for evaluating and selecting treatment options. Other products on the website include:

1. A brochure, Evaluating Arsenic Treatment Providers: A Guide for Public Water Systems, which includes a checklist of questions that owners and operators of small utilities should ask treatment providers.
2. A CD-ROM disk, Interactive Workshop on Arsenic Removal from Drinking Water, features commentary from the nation's top experts. The disk is a companion to 11 arsenic-training events EPA held across the country during 2005.
3. A DVD collection of videos, the Arsenic Treatment Technology Showcase, which highlights arsenic treatment technologies currently being pilot-tested through EPA's Arsenic Treatment Technology Demonstration Program.

The website is located at [www.arsenictradeshow.org](http://www.arsenictradeshow.org)

Mr. JOHNSON. Just to give you—we've been doing demonstration projects through our Office of Research and Development, that, in

fact, are now 37 sites that have treatment systems that have been installed. Twenty-seven completed projects and systems are now being installed for those. We have 14 sites that are under development, we have 15 different technologies that we've been evaluating, and as a result—at least as of the most recent data that I have, which is August 2007—about 2,400 of the estimated 4,100 effective systems are now meeting the new standard of 10 parts per billion.

So, we want to continue and certainly have our commitment to continue to work with your State and all States and local communities to see that the health protective standard is met in a flexible and appropriate way.

Senator ALLARD. I appreciate that last paragraph on your comments, I appreciate the willingness to be able to work with those small communities.

#### ENERGY DEVELOPMENT

Let me move on to the energy development—I'm pleased that the administration included the additional \$14 million for EPA to meet the Nation's need for clean and affordable energy development and production.

Can you tell me how the agency intends to use the additional \$14 million for energy development if the dollars are appropriated?

You know, we have a lot of energy development systems that happens at the Department of Energy.

Mr. JOHNSON. Yes.

Senator ALLARD. So what are you doing that would be separate from what they're doing in the Department of Energy, or if it is what they're doing, and you're doing similar—what effect is that having, an added effect on your efforts?

Mr. JOHNSON. Sure, and again, I appreciate the—your interest in this, and certainly appreciate the President's recognition and support for this additional \$14 million.

There are three offices that will be within EPA, will be the principal recipients of these additional monies. In addition to monies made available to States and tribes, our Office of Air has responsibilities for permanent application NEPA reviews, our Office of Water is working on carbon sequestration regulations, as we speak, and also has NPDS Permit responsibility, and our enforcement Office also has responsibilities under the NEPA program, as well.

So, those are the three areas which are unique. In addition, out of that \$14 million, I think it's approximately \$6.3 million has been identified to help support State, local, and tribal activities in this area, and the permitting area.

So, we think it's a well-rounded proposal that helps us at EPA, but also will help our partners at the State, local, and tribal level.

Senator ALLARD. I want to cover the Leadville Mining Drainage Tunnel again, that's another issue that I alluded to, in my remarks.

On February 21, in Colorado, I hosted with the staff from the EPA's regional aid office, and the Bureau of Reclamation, a meeting on the Leadville Mining Drainage Tunnel problem.

As you well know, this situation had reached untenable proportions and required immediate attention, and I'm cautiously optimistic about the briefing that I received from the folks in the Re-

gion 8 office. Can you give me an update on how things are progressing since the briefing we received out in Colorado?

Mr. JOHNSON. Well, yes, sir. Again, thank you for your leadership on this very important issue. In fact, on February 27, EPA began pumping water from the shaft, to help to relieve some of the pressure. We've been working on a new well that would be in the tunnel. I'm told that we're—that effort is underway. I'm also told that by March the 7th we will have a more permanent pump in place that will help.

Again, I appreciate the good comments about Robbie Roberts, our Regional Administrator—he's been doing a fantastic job of helping to stay on top of it, and certainly you have my assurance, to stay on top of it and to do everything that we can.

Senator ALLARD. Is this going to require a new treatment plant, or expansion of that current treatment plant there?

Mr. JOHNSON. I'm not aware of, certainly, what I've been told that some of the early analysis of the water that's being pumped was okay, from an environmental standpoint. But, I think we'll, you know, that's something we need to continue to monitor and watch.

Senator ALLARD. So, they talked about cadmium and zinc and those two and, let's see, another product that they thought might be elevated, but you didn't pick up any of that in the water that you pumped out?

Mr. JOHNSON. My understanding, at least in the initial sampling we did not, but that's something, we certainly will go back and continue to watch.

Senator ALLARD. Good. All right, now, I guess, again I hope that you would continue to work on a long-term solution, I hope we can get a commitment to work on that long-term solution to that—the way that water's trapped in there. It probably will just be a matter of time before that tunnel is going to break open, which was caused by collapse of the tunnel and then so we've got about a billion gallons of water backed up in that system of tunnels. So, again, I think it's important to work on a long-term solution, we have your commitment on that?

Mr. JOHNSON. Yes, yes.

Senator ALLARD. Okay, thank you.

#### ABANDONED MINES

Mr. JOHNSON. Yes. Senator, if I might, just to add one other comment that—what we're finding around the United States is some number approximating 500,000 abandoned—key word—abandoned mines. That we have a citizen army of volunteers that want to go in and help to clean these up—again, key word, abandoned—and they are reluctant, in fact, won't, because of liability concerns.

We see the Good Samaritan as a wonderful legislative fix to allow Good Samaritans to go in and help clean up these abandoned mines, and certainly would encourage you and the members of the Committee to strongly consider Good Samaritan legislation, because it makes sense—it make sense for the environment, it certainly makes sense for water, water quality and also—

Senator ALLARD. Those States like Colorado that have a lot of abandoned mines, and you're right—abandoned—there's no interest

in there, nobody—there's no ownership of them, they're just a hole in the ground that are causing pollution problems, there are people that would like to have those mining sites for various reasons, but they won't—most of it—and in order for them to use it for whatever reason they want to, they have to clean it up.

You don't have the discharge into the river, which causes problems for wildlife and quality of the water. I think it's kind of a common sense piece of legislation, and I'm hoping the Congress will see that—it's no loophole for any kind of solution, and I'm glad to hear you agree with that, it's a common sense solution, where we can get a volunteer group out there, working in cleaning up the pollution from these old abandoned mines.

So, I appreciate your comments in this regard.

Mr. JOHNSON. Thank you.

Senator ALLARD. Thank you, Madam Chairman, I see my time's expired.

Senator FEINSTEIN. Thank you very much, Senator.

We are joined by Senator Leahy—it's great to have you here, Senator, we're on 10-minute rounds.

Senator LEAHY. Thank you.

Senator FEINSTEIN. At the present time, so I'll recognize you.

Senator LEAHY. Thank you. Appreciate it, and I appreciate your holding this hearing. I think it's very important, certainly the questions you've raised on California's efforts—a very commendable efforts—to protect the environment are significant.

#### MERCURY POLLUTION

I'm going to just divert just a moment, Administrator, from the budget proposal, I want to talk about an issue that's extremely important, also, in my State, and I've been working on it for years, for decades, actually, and that's mercury pollution.

Your agency had the Clean Air—what you called the Clean Air Mercury Rule to regulate mercury admissions from power plants, it turned out that part of it was just written by the lobbyists from same power plants—somehow the fox got in the chicken, came to mind.

I said at the time that I thought it was wrong, I raised that question with you that it was wrong, urged that there be a change, and on February 8 this year the U.S. Court of Appeals for the D.C. Circuit—a very conservative, Republican-oriented court—agreed with my position, they struck down EPA's Mercury Rule as insufficient to protect public health. I think if your agency had been willing to listen to some us on the Hill, it could have saved taxpayers an awful lot of legal fees.

Now, there are cost-effective technologies today that can dramatically reduce mercury emissions from power plants, far beyond what your administration has proposed. So, I'm asking, does EPA, under your leadership now, plan to abide by the Clean Air Act, will it abide by what the Court said, will it issue a mercury regulation that will follow the law, will protect human health, and the environment from this harmful neurotoxin?

Mr. JOHNSON. Well, Senator—

Senator LEAHY. Are you going to follow the law, in other words?

Mr. JOHNSON. Thank you for the question. Yes, and I always follow the law, sir.

In the case of the mercury decision, we—both EPA and Department of Justice are currently evaluating the decision you refer to. We haven't decided what our next steps are. Having said that—

Senator LEAHY. An easy one—an easy one would be simply to follow the law as the decision said.

Mr. JOHNSON. Having said that, that we—we also recognize that because of the—another rule that I put in place, the Clean Air Interstate Rule, which controls SO<sub>x</sub> and NO<sub>x</sub> emissions, upwards to 70 percent, also have early reductions of mercury—which we certainly think that that's a good thing.

However, saying that—we are disappointed, in face this is the first regulation of mercury from coal-fired power plants in the Nation's history that would have achieved a 70 percent reduction.

Senator LEAHY. Well, I think—

Mr. JOHNSON. The Court decision did not get into the merits of cap-and-trade or using section 111 as the vehicle. It was focused on the delisting.

Senator LEAHY. Well, the Court—

Mr. JOHNSON. Regardless, we're evaluating that now.

Senator LEAHY. You'll have to issue new regulations now, based on that Court—the Congressional Review Act will come in place, if they're not strong enough, but I'm also thinking the Court based their actions on what they heard from the arguments. During that hearing the EPA represented to the Court that States could adopt more protective mercury provisions, should they wish, and EPA would not disapprove of those plans solely on the basis that the States opted out. Made it clear that they're not going to threaten the States.

But then, the Associated Press now reports that EPA officials had threatened States with disapproval for adopting more protective mercury control programs, or the Department, EPA's approach that they use a more protective way. They said it's not their job to pressure States, that's what they said in court, but it appears that they had. Now, I'll ask that—not only is it appropriated, but wearing another hat as chairman of the Senate of the Judiciary Committee, if there is a misrepresentation by the government to the Federal Courts in this area, that becomes a fairly serious matter, as you can well imagine. Has anyone with the EPA ever pressured any State against instituting more restrictive mercury regulations because they conflicted with the agency's mercury rule?

Mr. JOHNSON. I'm unfamiliar with the Associated Press report, and I don't have any firsthand knowledge of what you speak, but—

Senator LEAHY. No, I'm asking you a very specific question, has anyone at the EPA ever pressured any State against instituting more restrictive mercury regulations?

Mr. JOHNSON. As I said—

Senator LEAHY. Because they conflicted with your rule?

Mr. JOHNSON [continuing]. I don't recall having any firsthand knowledge of that. What I was going to say—

Senator LEAHY. I'm not asking you if you have any firsthand—do you know whether they have, yes or no?

Mr. JOHNSON. I don't know that they have, no. I don't know.

Senator LEAHY. Okay, well then let me ask for the record, will you go back and check. Remember it's very—you're in a congressional hearing, will you tell me whether EPA has ever pressured any State against instituting more restrictive mercury regulations because it conflicted with what we now see by the Court ruling, was a flawed mercury rule from your agency?

Mr. JOHNSON. I'd be happy to respond, for the record.

[The information follows:]

#### STATE MERCURY PROGRAMS

EPA did not pressure any State to not institute mercury regulations because they restricted mercury emissions more than the agency's mercury rule.

The environmental stringency of a State program was never an issue for us as long as the State was at least as stringent as CAMR. If a State chose to participate in the multi-state CAMR trading program, its program was required to be consistent with certain core requirements in the rules promulgated in 2005 that did not prevent them from being more stringent. These core requirements were included in the rules to ensure that the trading program would work correctly.

Unfortunately, that has apparently been misinterpreted by some—as reflected in the AP story—as an EPA effort to discourage States from providing stronger, more protective programs, as they are entitled to under the Clean Air Act. That was never our intent, and I believe the record of our review of state programs bears that out.

States were permitted to be more stringent than the Federal requirements. States could, and some did, seek greater emission reductions than CAMR required and were in the process of approving those plans.

EPA offered States considerable program flexibility to meet their assigned mercury budgets. In addition to the option of joining the multi-state emissions trading program that we offered to run, states could have source-specific control requirements, have intrastate trading, combine trading with source-specific controls, or go from trading to source-specific controls over time.

If a state did not adopt EPA's multi-state trading program, EPA evaluated the State's plan to ensure it was at least as stringent as EPA's trading program. This evaluation included determining whether the mercury emissions from all of the state's EGUs would remain at or below the annual state emissions cap each year, and ensuring that these emissions would be measured and reported using specific rigorous protocols. Based on this type of evaluation, EPA proposed approval of Pennsylvania's stringent source-specific control program and was working towards approval of source-specific controls in final state plans in seven additional States.

If a state chose to participate in the multi-state trading program, there were certain core provisions that we required that they adopt. These core requirements were intended to ensure the program was environmentally- and cost-effective. For example, allowances had to be allocated and available sufficiently ahead of compliance deadlines, and had to be freely transferable, so that companies could use allowance trading where it would be cost-effective and would result in compliance with the emissions cap.

EPA had issued final approval of trading programs for Louisiana, Iowa, and Missouri and proposed approval of the Kansas trading program. EPA was working toward approving trading programs for 18 more States, 8 of which had either added source-specific control requirements or had tightened the emissions cap by not distributing all the state's allowances. This latter group of 8 State programs was more stringent than CAMR would have been. At the time of the court decision, 36 States had adopted rules and 2 others were in the rule development process.

Sixteen of these State plans were more stringent than CAMR and we were in the process of approving them when the court decision was issued.

Mr. JOHNSON. I was going to point out that you raise another important issue, in our evaluation, is given the recent court decision, not only what are our next steps as an agency working with the Department of Justice, but then, what does that mean with respect to State programs? That's another important question that I don't know the answer today, but certainly, we're working on.

Senator LEAHY. Okay, well, I appreciate that, and I would like to know the answer, because if the Associated Press is correct, then the EPA gave misleading information to the courts, which would be an extremely serious matter, the courts would consider it extremely serious, the Judiciary Committee would consider it a very, very serious matter. I'm sure that the lawyers doing it would value their licenses, probably consider it serious.

Now, you also adopted the Mercury Trading Rule in 2005, and you committed to—you, EPA—committed to remedying mercury hot spots. There's a 2006 peer-reviewed study co-authored by EPA scientists who found that coal combustion was the dominant contributor to mercury deposition, in an enhanced monitoring site in Steubenville, Ohio. Then a meteorological analysis found that a majority of the mercury deposition found at the site was due to local and regional sources.

In the 2007 peer-reviewed study documented biological mercury hot spots in fish and wildlife, in the Northeastern United States, in the area I'm from, and I live in. Do you have a plan to address these, and other documented hot spots?

Mr. JOHNSON. Well, again, that's another important question that has come up as, post the publication of our final rule. Of course, we haven't decided what we're doing with the final rule, at this point, given the court decision. Obviously there's science—which we certainly support—continues to evolve and get a better understanding.

Certainly, at that time it was our belief that given the way the cap-and-trade program would work for mercury that it was likely that those—if there were potential hot spots, that they would be the first ones that would be addressed, just by the nature of how companies sign up to cap-and-trade, but that's certainly an important question as the science has continued to evolve.

Senator LEAHY. But, if you know of hot spots now, do you have a plan to take the known hot spots and address them?

Mr. JOHNSON. Well, again, that's part of our—what are our next steps, given the court decision, we haven't decided yet.

Senator LEAHY. Will you let us know when you decide?

Mr. JOHNSON. Yes, sir. We will be happy to.

Senator LEAHY. The court matter, I would like a detailed response on that, because if the court wasn't misled, it's one thing. If they were misled—and I'm asking you the question because I don't know, if they were misled as the story appears, then I think we'd all agree that we have a very, very serious matter. But I'd be happy to hear your response.

Mr. JOHNSON. Thank you.

Senator LEAHY. Thank you.

Thank you, Madam Chair.

Senator FEINSTEIN. Thank you very much, Senator and we're joined by Senator Craig.

We are in 10-minute rounds, Senator, so—

Senator CRAIG. Thank you.

Senator FEINSTEIN. Please proceed.

Senator CRAIG. Thank you, Madam Chairman, and Administrator Johnson, it's good to see you again. Serving at EPW, we get two bites at you—

Mr. JOHNSON. So to speak.

Senator CRAIG. So to speak. So today I won't chew quite as hard.

#### NEW STANDARDS FOR LARGE ANIMAL CONFINED OPERATIONS

But I do want to come back to an issue that I discussed with you at EPW as it relates to your new standards for large animal confined operations, and what you plan to do as it relates to change. I know—I sense there are steps in the right direction, however, I believe some media reports might have misconstrued the rule, particularly in making references to changes in the Clean Air Act requirements.

Can you clarify the scope of the regulations and perhaps correct the record so, as to what will be continued to be required of these animal operations, versus what no longer will be required?

Mr. JOHNSON. Well, it a very important issue, or the KFOE issue, as it's known.

Senator CRAIG. Yes.

Mr. JOHNSON. We are working to finalize regulations that will move forward. Our intent is we—as I think you're well aware—next year we do have compliance dates that are in place.

Senator CRAIG. Right.

Mr. JOHNSON. So, we want to keep those compliance dates in place while we work to finalize the regulations.

In addition to that, I think as you're well aware, and certainly appreciate everyone's support of, the National Academy of Sciences' recommendation, and that was to conduct the first-ever nationwide study of air emissions, particularly from poultry and dairy and swine, from the animal feeding operations. It's a 2-year monitoring study I believe last year was the first year that the actual monitoring began.

So, as we get that information and certainly as we move to look at the final regulations, and we move to ensuring compliance, all of this will help better inform our approach on this important issue.

Senator CRAIG. Well, timeliness is going to be very important here, I think the industry is anxious to move toward compliance, and the flexibility to get there is going to be important, I think, as we get there. So, your urgency on this is appreciated.

#### BLUEGRASS FIELD-BURNING

Let me become very regional or parochial at this moment, if I can. A very big industry in my State is bluegrass seed. And one of the only ways to get rid of the stubble and to stimulate next year's crop into a level of production that's profitable are to burn the fields. Field-burning, of course, has become a very difficult issue for Idaho, in an area that is not only the largest bluegrass seed raising area in the Nation, it is also a beautiful recreation destination location.

Now, after lengthy processes and lengthy issues, we've come to an agreement, between EPA Region 10 and the State of Idaho, the State legislature is now moving to implement the necessary policy language—it's going to be extremely helpful for Region 10 to expedite the evaluation and the approval of the newly negotiated State

Implementation Plan so that the burning in some areas under this Plan can resume.

It is just a big chunk of a very important economy, at the same time, it is controversial, there's balance been struck, so I guess that's not a question as much as it is a flag going up. All things are moving in the right direction, at the moment to most everyone's satisfaction, including your office in Seattle, and in Region 10. So, timeliness, again, there—once the State has acted—is going to be important.

Mr. JOHNSON. Well, again, thank you. It's an issue that I am aware of and I know that we have had a very cooperative and collaborative working relationship with State officials to be able to make sure that air quality is being maintained at the same time, recognizing the use of field burning to be able to produce high-quality bluegrass seed. I will be happy to get back to you for the record as to what our, what we believe are the next steps, and a sense of the timing for that. Again, understand the importance of the issue.

[The information follows:]

#### BLUEGRASS SEED BURNING

EPA is expecting to receive new regulations from Idaho allowing burning within the next several months. We are working closely with the State of Idaho to coordinate the schedule for processing the State's regulations, taking every opportunity to expedite the process. Specifically we are dedicating extra resources to work with the State upfront during its development of its regulations and for expedited processing once the regulations are received. Once the regulations are submitted, EPA will process them under the Federal Clean Air Act, which requires a 30-day public comment period and EPA to respond to all comments before it takes final action. The time it takes to finish the process will depend in part on the level of public interest.

#### DECREASE OF CLEAN WATER STATE REVOLVING FUNDS

Senator CRAIG. Okay, thank you very much. Last question, Madam Chairman, I didn't get a chance to ask it, although it was discussed and I understand that Senator Allard had mentioned it in his comments—what was your reason behind the decrease of the Clean Water State Revolving Funds by such a large amount? They have been so critical to States like mine and others—Colorado and California, I think, has similar problems?

Mr. JOHNSON. Well, first, we recognize that there is a significant need. In fact, Madam Chairman, you spoke of \$20 billion, in fact our clean water survey actually showed \$202 billion, is my recollection. So, there's no doubt a large need.

What the President has done is said, "Look, we recognize there's a large need. Here is the commitment, and the commitment for the Clean Water State Revolving Loan Fund was to achieve a revolving level of \$3.5 billion." So the budget reflects that commitment, in fact, it does reflect that we did receive higher-than-anticipated levels in enacted prior year budgets.

It's, again, here's the target, what the commitment is—and again, it's \$3.5 billion. But at the same time, we recognize both for clean water, as well as for drinking water, the needs are large. They are in the, literally, hundreds of billions of dollars.

So, that's why, yes, SRF plays an important role, but all steps that we can take—whether it's private activity bonds, whether it's helping clean up abandoned mines, whether it is other steps that we can take, like we're doing with our Water Sense program, helping consumers to make better choices, such as we have for Energy Star on the energy side—all of those add up, and of course as a rate-payer, rate-payers also have a responsibility, as well.

Senator CRAIG. Understanding all of that—how lenient will you be? When there's a good effort on the part of a location to respond and comply, but it's obviously—you said there's a need but here's all we can do, here's what we will sustain, when maybe it ought to be over here. Because it is a Federal mandate, where in almost every instance compliance is being struggled with and there are other costs involved—when there's reasonable due diligence on the part of the locale, depending which the issue—how's the lenience going to fit into that if the government says, "This is all we can do, get in line, it may be 5, 10 years before you get there."

Mr. JOHNSON. Well, we want all of the communities to be able to meet the health protective standard of whatever the contaminant might be—arsenic or radio nucleides or whatever it might be. But we also recognize that we have to be flexible in achieving that. An unintended consequence would be if there's a small community water system that is working to achieve that, if it's forced so quickly—to quickly—and the community water system is shut down, people still need water, and they dig wells, and then the water quality hasn't changed.

So, we recognize that we need to one, do everything that we can to help communities achieve the health protectiveness, but do so in a reasonable and flexible way. That's what we have been working on, and that's what we will continue to work on.

Senator FEINSTEIN. Thank you very much.

#### CALIFORNIA WAIVER

Let me see a couple of things on the California waiver. We've—my staff has reviewed all of the documents and I believe very clearly that your legal staff and your technical staff were in favor of a waiver, unless you tell me that is not the case, that is what we have found.

My question is—did anyone outside of EPA, part of this government, weigh in with you against the waiver?

Mr. JOHNSON. Well, Madam Chairman—

Senator FEINSTEIN. The answer to that is yes, or no.

Mr. JOHNSON. I received many opinions, the point is, is that under the Clean Air Act it was my decision, my decision alone, nobody directed me to make the decision I made, I made the decision, on my own, and the record will indicate that, does indicate that and it's the right decision. I know you disagree, and I know that there are others that would disagree—

Senator FEINSTEIN. Did you discuss it with the White House?

Mr. JOHNSON. As I have said in previous testimonies, yes, I discuss major issues with the White House, I think that's good government, I discuss it with my colleagues across the administration. But, again, the decision, the final decision, rests with me, and I made the decision—mine, mine alone—and I recognize that people

disagree with it, as I've said earlier, the 48 pages goes into great detail as to how I came to the decision I did, on the scientific basis, as well as what the legal rationale is for making that.

Senator FEINSTEIN. Well, candidly, I read the 48 pages, and I find them not at all impressive. But, that's your view. I obviously very much regret it. I think it is harmful—not only to our State, but to our country. I think the recalcitrance with respect to global warming is harmful to the people's health of this country.

I'd like to go back to the remand. You have not given me a firm date, I have asked in writing, I'd like to enter those records into the—those letters into the record.

I'd also like to enter a letter to Mr. Bookbinder of the Sierra Club, in which you again say you do not have a specific time, and I'd like to read you the Supreme Court decision on this subject.

“Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change, or if it provides some reasonable explanation, as to why it cannot or will not exercise its discretion to determine whether they do.

“To the extent that this constrains agency discretion to pursue other priorities of the administration, or the President, this is the Congressional design.”

So, as I read this—and I believe as your lawyers will probably tell you—this is the decision of the Supreme Court. I don't understand—you've got 4 people working on this, you've had one thing or another as to why you can't do it. The only conclusion that I can draw, is that you are under pressure not to do it.

Mr. JOHNSON. Well, I'd like to—

Senator FEINSTEIN. I find this unbelievable, on behalf of what is called an Environmental Protection Agency, not an Administration Protection Agency, but an Environmental Protection Agency.

Mr. JOHNSON. Well, I respectfully—

Senator FEINSTEIN. There's a finding of the United States Supreme Court telling you to do something.

#### CLEAN AIR ACT

Mr. JOHNSON. Well, Madam Chairman, I respectfully disagree that this is an easy decision. In fact, when the Supreme Court—and if you refer back to, I think, Justice Scalia, actually set it up as, in essence, a three-part test for me, and this would be my brief summary. That is, if the Agency finds—if I find that there's endangerment, then under the Clean Air Act I must regulate. If I find that there is not, that's test one. If I find that there is not endangerment then I should not regulate. Or third, if there are other circumstances, including—and then goes through some description of that.

What I have found is I have looked at and continue to evaluate the issue of endangerment. It's that it's not only just the science of, and the endangerment, but it's also—what is the potential impact of that decision?

The way that the Clean Air Act operates, is that a decision in the area of mobile sources, could have a significant impact on what happens in stationary sources. That is all part of the reason why I'm taking time, I think appropriate—I know people are anxious for

me to get on with business, but I believe that it's important—this is an issue that's been debated since 1978. It's clearly—as I said, climate change is a serious issue, and it's one that I'm carefully considering. Mass v. EPA, the issue of endangerment, but also we have a number of pending petitions before the Agency, including airlines, including off-roads, including marine, including stationary sources, including NSPS, including PSD, and I can go on and on.

I have a responsibility—

Senator FEINSTEIN. Let me ask you this. All right, let me ask you this question—how many personnel, right now, are working on the endangerment finding.

Mr. JOHNSON. I don't know how many people, specifically, at this time, how many people are or are not working on specific pieces of our work.

Senator FEINSTEIN. Well, we've been told no one is working on it, currently.

Mr. JOHNSON. Well, I would have to check with—

Senator FEINSTEIN. Well, if you would ask your staff, I would appreciate knowing what the answer is.

#### RENEWABLE FUEL STANDARD

Mr. JOHNSON. Well, I know that we are focusing our attention on the moment on several parts. One is, working on the regulation to implement what the Congress and the President signed on the Energy Independence and Security Act, the renewable fuel standard. Working with—

Senator FEINSTEIN. Is anyone working on this, at the present time, Mr. Johnson? This isn't a question I shouldn't answer, this is a question to which I'm entitled to know the answer.

Mr. JOHNSON. Well, we are—I know I am working on what are the next steps, what's the framework that I should be evaluating the endangerment issue, as well as, as has been the traditional practice, of endangerment, and what the regulatory approach would be, and that's what I'm currently evaluating.

Senator FEINSTEIN. How many members of your staff are currently working on this?

Mr. JOHNSON. I don't know the answer to that.

Senator FEINSTEIN. Does anybody know the answer? You have numerous staff in this room, somebody must—this is a Supreme Court finding—you quote the dissenter, not the majority opinion.

Mr. JOHNSON. As I said, we are evaluating—I am currently evaluating what are the next steps that the agency should take, in response to the Supreme Court, in response to the Energy Independence and Security Act, in response to the myriad of petitions that are pending before the agency. That responsibility rests with me, and as I make the decision as to what the next steps are, then we will be deploying staff—as I said, I know I have staff that are working on a myriad of issues, from renewable fuel standard to carbon sequestration and injection under the UIC program. I know we have people who are working on the major economies, I know that we have people that are reviewing McCain-Lieberman legislation, the scientific piece of that—we have a lot of activities, important activities, not the least of which, you mentioned, the green-

house gas registry that we're working on, as well. So, we have a lot of activities that our staff are working on.

#### STONEWALLING

Senator FEINSTEIN. Well, the answer that I deduce from your answer is that you have no one currently working on it. I want the record to reflect that, unless some—and I give you every opportunity to change that, to give me a number. If you can't give me a number, on something that is a Supreme Court finding, and that has asked you to respond, then I've got to believe you're stonewalling. I want the record to reflect that.

Mr. JOHNSON. Madam Chairman, I am not stonewalling, I've shared with you very openly and candidly of the importance of the issue of endangerment, not only in the mobile source context, but in the context of the Clean Air Act, and that we are—since the Energy Independence and Security Act which again, complement—it's been 32 years since the CAFE standard has been changed—that's significant and very important. But we're looking at—I am looking at—all of these, and then determining what our best steps should be in deploying our 2008 resources. That's what I'm working on.

Senator FEINSTEIN. Okay.

#### EMISSION REDUCTION

I think, let me ask this—at my request, Congress included \$9.8 million in funding last year for emission reduction projects for the San Joaquin Valley, and the South Coast air management districts. These districts face an almost-impossible task of meeting Federal air quality standards for particulate matter and ozone, including requirements to be in attainment for particulate matter by no later than 2015. They are not going to be able to meet that standard, which triggers some very complicated and special things which can have disastrous economic impacts on both of these districts.

Last year at this hearing, you gave me your commitment that you would work with me to come up with solutions to help these districts, and yet, your budget now eliminates this funding to help these regions improve their air quality. Why was it not a priority for EPA to continue this funding?

Mr. JOHNSON. Well, Madam Chairman, as has been routinely the case, certainly my 27 years at EPA is that the President's budget does not carry over congressionally-directed funding, the so-called earmarks, from year to year—

Senator FEINSTEIN. Yes, this is an earmark, I admit it, and I put it in.

Mr. JOHNSON. This was, and this is the reason.

Now, having said that—having said that, we recognize, and certainly the President recognized the importance of dealing with diesel emissions, and that's why the President is asking for \$49 million.

Further, we believe that it's very important for us to focus attention on the ports, and as you know, because I've had the great pleasure of visiting the Port of Los Angeles area and the need for helping, particularly in the ports.

So, we have identified \$15 million of the \$49 million, to focus on ports, and help in this area.

## EARMARKS ELIMINATED

Senator FEINSTEIN. So, you are saying to me that because this was an earmark, you've taken it out, and you're not going to do it. Have you taken every earmark out of this budget? Because you'll be sure—you can be sure of one thing, that I'm going to find that out.

Mr. JOHNSON. I am told by our budget staff, the answer is yes.

Senator FEINSTEIN. So, any congressional add, is essentially eliminated from your budget.

Mr. JOHNSON. Every earmark has been eliminated.

Senator FEINSTEIN. That's a congressional add. That's the only way we can add.

Okay, that should be very interesting. Well, let me give you another one—\$8 million in the fiscal year 2008 omnibus to accelerate cleanup activities at the Hunter's Point Naval Shipyard. EPA must continue to work with the Navy to ensure and do everything in its power to ensure that this site is cleaned up. Have those funds been transferred to the Navy yet, so they can be used promptly?

Mr. JOHNSON. Well, Madam Chairman, I know we have been working very diligently with the city of San Francisco and the Navy in establishing both a timetable, as well as a cleanup strategy of construction of either a football stadium, or commercial and/or residential use. The \$8 million, I'm told, will be transferred from EPA to the Navy very soon, and I'd be happy to keep you posted on that.

Senator FEINSTEIN. I would appreciate it.

Thank you very much, my time is up.

[The information follows:]

The agency is currently engaged in the apportionment approval process for the \$8.0 million in funding for the Hunters Point Naval Shipyard site along with other agency funding. There were several legal and technical issues to resolve regarding this new account, and we are working to finalize the apportionment in order to transfer the funds to the Navy as soon as possible.

Senator FEINSTEIN. Senator Allard.

## CLEAN AIR MERCURY RULE

Senator ALLARD. Mr. Chairman, I just have three more questions and they have been—those issues have been asked to a certain degree, I want to follow up on those three areas a little bit more and then I will wrap up what questions I have for the Administrator.

It's been a year now since Colorado submitted a program which meets EPA's Clean Air Mercury Rule, and provides—in our view—a cost-effective mercury reduction for coal-fired powerplants, and you approved that.

So, then the court has overturned that. So, where does that put States like Colorado's proposal? That wasn't clear, and Senator Leahy was focusing more on the legal argument, we're focusing more on the practical aspect—so where do we stand? Do we—does that rule for the State continue to stand until you come out with a new one, or do we have to consider—we'll be in—will we be in a position where we have to re-do that rule?

Mr. JOHNSON. Well, you're asking the very question we're asking ourselves. Given the court's decision, what does this mean for the

State programs? Either ones that have been approved, or ones that are pending. I don't know the answer to that, and that's certainly part of the conversation that we're having, is in light of the Court's decision, what should be our next step? As I've already mentioned, that EPA and Department of Justice are looking at that to determine what our next steps are, and then that may or may not impact where States are.

So, it's an important question we're looking at, and obviously the clock continues to tick, and we will—we are expeditiously looking at that, and I hope to have a response, soon.

Senator ALLARD. These mercury levels do become kind of an industry issue, between soft coal and hard coals—perhaps you're aware. I know, States like Colorado, we have hard coal, and we market a lot of our hard coal to the East, because they burn soft coal and there's a lot of discharge, and so we clean up the air by burning our coal, and then if you have a mercury requirement on that—how does that impact those cities that have to require, on the hard coal, to meet the Clean Air standards?

Mr. JOHNSON. Well, again, we think that mercury is a problem, we are disappointed in the court's decision, because it's the first time in the Nation's history that we've regulated mercury from coal-fired power plants, and our program was designed to eliminate 70 percent. So, we believe that it's a neurotoxin, we need to deal with it. Again, our next steps, we're not sure.

I did want to point out, I did have the opportunity, because mercury is not just from coal-fired powerplants, but if you own an automobile that was before the vintage of about 2003—not every one, but many—had little mercury switches, about the size of a pencil eraser. Working with industry and the environmental community and others—put together a program to actually collect these.

Senator ALLARD. I remember that.

Mr. JOHNSON. I had the opportunity last week to pull the millionth switch from an automobile. Doesn't sound like much, but just the switches alone in all of these old automobiles account for about 75 tons of mercury that would have otherwise gotten into the environment.

Senator ALLARD. Well, we under—

Mr. JOHNSON. So, we take our responsibilities very seriously, and whether it is dealing with the air issue or mercury switches, we need to continue to eliminate these.

Senator ALLARD. I don't think anybody's arguing with you on the toxicity of mercury. You know, we've pretty well established that.

Mr. JOHNSON. I trust not.

Senator ALLARD. You don't see mercury thermometers anymore.

I just, my question was, you know, it does have an economic impact on some of those communities that have to use hard coal to burn their soft coal. Is mercury a problem to those communities that have to use that coal for, to reduce air pollution?

Mr. JOHNSON. We believe, and certainly in our final regulation, believe that a cap-and-trade program was the most efficient way of eliminating mercury, and that our experience indicated that those communities that may have had more of a problem were ones likely—that those industries would have adopted the newest technology to help with that.

Again, we're now evaluating this court decision, and deciding what's our next step.

#### DIESEL EMISSIONS REDUCTION

Senator ALLARD. Now, again, this is another program that was mentioned—it's your Diesel Emissions Reduction Grant Program. You clarified that \$15 million of the \$49 million requested for DERA has been set aside for EPA's Sustainable Ports Initiative. I'd like to have you explain in more detail how this \$15 million is going to be used, that was appropriated for a new initiative?

Mr. JOHNSON. In the 2009 budget, what our plan is, is to actually run a competitive program among the ports, and that is obviously, will be designed once we are sure that we have those appropriated funds.

But, we recognize that diesel emissions are a challenge and one that is a great opportunity for improving the environment. One of the statistics is to bulldozers, which I think—certainly I have grandchildren, and they—grandsons—that understand a bulldozer—but to retrofit 100 bulldozers—just retrofitting 100 bulldozers, eliminates 16 tons of pollution every year.

Senator ALLARD. That's particulate matter, because usually diesel, because the—

Mr. JOHNSON. It's that black puff of smoke that we're all very familiar with.

Senator ALLARD. It's the visible part of air pollution, not the invisible.

Mr. JOHNSON. It is, it is the visible part that you see. So, we recognize that investment in clean diesel—whether it's retrofitting, whether it's replacing—is a great investment in protecting public health.

#### CLEAN WATER

Senator ALLARD. Okay. Let me move on to the Clean Water, to the State Revolving Fund, I think Senator Craig brought that up. Again, in light of what I mentioned here, on my first question, about some of these mandates that are requiring problems for small communities to comply with—can you tell me how EPA intends to help rural and poor communities maintain sewage plants and mitigate non-profit source pollution, in the face of those reductions in the State Revolving Fund?

Mr. JOHNSON. Well, again, we believe it's multiple approaches. One is through support of the SRF; two, for continuing to provide flexibility in implementation; three, research and development; four, through a variety of—what I would characterize as—innovative approaches, whether it's, again, dealing with runoff from these abandoned mines to private activity bonds, which we have seen very successful implementation, to the technology that we're continuing to do our research and development.

Again it's—unfortunately—

Senator ALLARD. Now, if—

Mr. JOHNSON. We do have a challenge. It's going to take all of those pieces coming together to really, I believe, accelerate the progress that we all want to make.

Senator ALLARD. If the Congress puts more money in the State Revolving Fund, how are you going to treat those dollars?

Mr. JOHNSON. Well, I support the President's budget, and look forward to continuing to work with you and other Members of Congress as you consider the fiscal year 2009 request.

Senator ALLARD. What was the commitment that you said that you had made, you would just fund a certain percentage of that, and that has been met, and you felt that justified a reduction this year in the State Revolving Fund because they put extra money in there in previous years. So, how do you—so, again, if we put more money in there, what happens to that money—does it just sit there, does it end up getting diverted over to another program, or does it stay in the State Revolving Fund and you spend it out?

Mr. JOHNSON. Again, all dependent upon how—if you Members of Congress made a decision to appropriate funds to that account, it is at least my experience that we recognize that and honor that commitment.

Again, look forward to working with you, the President's budget recognizes that there's a need, the President's budget recognizes a commitment that he's made to achieve a revolving loan fund, both in drinking as well as safe water—

Senator ALLARD. I understand—

Mr. JOHNSON. Also recognizes that as the Madam Chairman has pointed out—it's a challenge.

Senator ALLARD. I understand the President wanting to stay to the bottom line figure, but—

Mr. JOHNSON. It would just go to the States with the rest of the money.

Senator ALLARD. Okay, yeah. Yeah, I understand the President's need to try and reach the balance, you know, that total budget figure for your agency, or agencies. I understand that, but, you know, we can shift money around a little bit, we can take—we can get money someplace else and put in here and do those kind of things.

So, I just wanted to know how you would treat that.

Thank you.

Mr. JOHNSON. Thank you.

Senator ALLARD. Thank you, Madam Chair.

Senator FEINSTEIN. Thank you very much, Senator.

#### PERCHLORATE CONTAMINATION

I have three questions, they are California-related questions. The first relates to perchlorate. As you know, it's a by-product of rocket manufacture, it leeches into the ground, it contaminates ground water. We have many drinking water wells that are contaminated.

The small city of Rialto has 22 of them, has had to declare water emergencies. Santa Monica has had half of its water supply contaminated by perchlorate, and we have a half million residents in San Bernardino now who, for 6 years, have had additional charges on their water bill, to try to clean up perchlorate.

Local water people—both locally elected officials as well as water contractors have requested that EPA seek replacement orders that require that parties who contaminated the water, in the first place, to help provide a solution. However, EPA does not appear to have taken any significant action.

In 1999, I worked with EPA, other Members of Congress, on this similar situation in Santa Monica, and EPA did issue a water replacement order against Shell Oil Company. That was an effective solution, it cleaned up the MTBE contamination in Santa Monica. So, there's a track record of success, using this mechanism.

I've been asked, by the locally-elected officials, and by the water contractors, to ask you to sit down with us and see if we can't work out a solution. It can't go on the way it's going, because there is so much insecurity about water, and the need to increasingly have water emergencies in this area—particularly in San Bernardino County. So, I'd like to ask you if you would be willing to do that.

Mr. JOHNSON. Madam Chairman, I would be pleased to have our staffs sit down. Again, I appreciate the great collaborative work that we have enjoyed through the years, and you certainly have my commitment. We will sit down and see if we can identify a solution.

Senator FEINSTEIN. All right, I would appreciate that, very much.

#### MARINE DIESEL AND LOCOMOTIVE EMISSION CONTROL RULE

Now, the press has reported that OMB has approved the final Marine Diesel and Locomotive Emission Control Rule. Is that true? If so, when can we expect the final rule to be released?

Mr. JOHNSON. It is my understanding that, in fact, the Marine Diesel Rule—a very important rule, as you're well aware—is just cleared Interagency Review, and we and the Agency are now—and particularly my team—are looking at communication and rollout strategy for that. I expect us to be able to roll out that final rule soon, within the next few weeks.

Senator FEINSTEIN. Oh, good. Good. That's the first good thing I've heard, thank you.

Mr. JOHNSON. Well, thank you.

Senator FEINSTEIN. Now, under Federal law, the deadline in South Coast to attain the annual particulate matter 2.5 national ambient air quality standard is 2015. So, the district is thus required to demonstrate that attainment in the year 2014.

I'm informed that the district needs advance control of nitrogen oxides created by locomotives, i.e., Tier 4 standards, to comply with this deadline. I also understand that the Draft Locomotive Rule EPA issues, only requires such advanced controls for locomotives first sold in 2015. This is after the Federal attainment deadline. What will the final rule do to speed up this schedule to ensure that Southern California can meet Federal attainment deadlines?

Mr. JOHNSON. Well, Madam Chairman, as you correctly point out, that was what our proposal was, of 2015, and that's also one of the issues that did come up during the public comment period for the agency, and that will be addressed in our final rule. So, a very important issue, and I look forward to moving our final rule in this area, again, because the diesel emissions, we understand the significant opportunity to advance public health protection. So, that issue will be addressed in our final rule.

Senator FEINSTEIN. All right.

#### SUSTAINABLE PORTS INITIATIVE

Your budget includes a new proposal to target \$15 million of the \$49 million you request for Diesel Emissions Reduction Act grants

toward a Sustainable Ports initiative. This initiative will provide a low-cost way for ports to pay for diesel retrofits, or other emission controls.

As you know, California is home to some of the world's busiest ports—L.A. Long Beach has 40 percent of the container traffic coming into the Nation, coming into this port. Goods movement through these ports is a major contributor to ozone and particulate matter.

How will these new funds be spent? How will EPA prioritize those funds so that the lion's share will reach ports like Long Beach L.A., because they handle so much of the traffic?

Mr. JOHNSON. I thank you for the opportunity to actually visit the L.A. port, and I've had the opportunity to visit other of our Nation's busiest ports, as well. It was very clear to me of a need and an opportunity and that's why we have designated \$15 million, to help in this arena.

Our plan is to develop a competitive program that, when they—would enable us to get these advanced technologies, whether it's replacing or new equipment or retrofitting, and to look at those areas that both have the greatest need and the opportunity for making a difference. Making a difference, not only from an environmental, but from a public health standpoint. So, we're still working on what the criteria would be for competitive, but that's the general area.

Certainly, there is a need and an opportunity. We're going beyond that, because we're also, certainly, recognize the opportunity internationally, and we're working as part of the IMO arena, in the International Marine Organization and others, of what steps can be taken both in the area of clean diesel fuel, as well as in the technology for these large, ocean-going vessels.

Certainly we have funded as an agency—through Congress' support, and the President's support—some innovative approaches in helping to reduce that air pollution. So we're going to continue on that front, as well.

Senator FEINSTEIN. Well, I appreciate that.

I'd just like to add, and you probably know this—that people living in areas related to this now have a 1 in 500 risk of achieving cancer from air pollution. I want you to know that it is a very serious problem in the area, that the asthma rate is going up, and that if you ask people in the Los Angeles area, this is going to be one of their major environmental concerns.

We're joined by Senator Stevens, and Senator, I think everybody has come and gone, so I'll turn it over to you for any questions you might have.

Senator STEVENS. As Senator Simpson said once, "Everything's been said, but not everyone's said it."

#### ALASKA NATIVE VILLAGE GRANTS

I've come by from—we've just had a hearing with Homeland Security in the other subcommittee, and I've come by to discuss some of the problems that we've got in Alaska, and in particularly, I want to raise the question to you of the Alaska Native Village grants—this is part of the Alaska Native Rural Program.

## ANTI-EARMARK SYNDROME

We had hoped that we could go forward with that list of priorities—there's now an anti-earmark syndrome around here, as you know, but it seems this budget has been written with the idea that we would increase several items, because in the past we've done that.

Did you take into account, at all, the probability that the various earmarks that members have put in, in the past, would probably not be achievable this year?

Mr. JOHNSON. Well, Senator, as we prepared the budget, and certainly as the President made decisions as to what the budget should look like across the government, we as an agency—and that's certainly been my experience, as I've commented earlier to Madam Chairman—as an agency, we don't carry over congressionally directed funding, or so-called earmarks, and we did not in the 2009 budget, as well.

Then, we constructed the budget based upon where the priorities are, where we think there is significant opportunity for delivering results to the American people.

Senator STEVENS. Do you carry over the funds if you don't spend them?

Mr. JOHNSON. Many of our funds are 2-years funds, and so those funds—for example, like the Greenhouse Gas Registry—in the omnibus appropriation, we have \$3.5 million this year—those are 2-year funds, and so we'll use those this year for working on the Registry, as well as next year as we move forward in developing one. So, that's just an example.

Senator STEVENS. Well, we—I thought we had an understanding, sort of a plan with the administration going back to 2007, when there'd be a target for 92 percent coverage for drinking water and sanitation in rural Alaska villages. Last year, for 2008, we had a request for \$15.5 million, we raised that \$9 million. We're still not going to achieve the goal of having even 92 percent of the villages of Alaska have water and sewer facilities.

There was the Federal Government—if they don't have water and sewer, they have higher costs, basically, of medical costs, frankly. We've traced a lot of the diseases that the children's had to bad disposal systems for sewage, we call them “honey buckets.” Now, this budget goes back to \$15.5 million.

Did you spend the money we gave you last year? Have you obligated it for 2008?

Mr. JOHNSON. I'll have to check with our—I don't believe that we've obligated it, Senator Stevens. I also just want to make sure, because the staff have pointed out that the Alaska Native Village Funding increase is not considered an earmark, however, we did not sustain the 2008 increase in the budget.

Senator STEVENS. Not considered an earmark? Do you have a definition for earmarks that I don't know of? I raised a budget item in this subcommittee from \$15.5—I raised it \$9 million last year.

Mr. JOHNSON. I think the current funding of the 2009 President's budget is—

Senator STEVENS. Fifteen point five.

Mr. JOHNSON. Fifteen point five.

Senator STEVENS. That's what it was last year, and we added \$9 million on top of that. I don't think it was spent, but beyond that, we had a target of—hopefully of trying to reach 100 percent of the villages to be covered by 2011, currently your—by the way, when we started this we were at about 41 percent—we've done pretty well with the program, and people in the area are very appreciative. But it looks like we're abandoning the program. It's not going to keep up the level we had last year.

Now, how did you—you said that was not considered an earmark? When I asked the subcommittee, and they did increase that by \$9 million, that wasn't an earmark?

Mr. GRUMBLES. Senator, it was an increase, however, we didn't sustain that 2008 increase as we went through and made tough budget decisions.

Senator STEVENS. What do you mean, you mean you didn't even plan to spend it?

Mr. JOHNSON. No, no. Whatever has been appropriated we will spend, and spend as directed.

Senator FEINSTEIN. Excuse me, you just told me you weren't going to spend any money that was an earmark.

Mr. JOHNSON. No, no—there was a—let me make sure that it's clear—my Deputy, Marcus.

#### ALASKA NATIVE VILLAGES

Mr. PEACOCK. Well, I have some familiarity with this program, although this budget, not recently. It's a longstanding program, as you know, Senator, to as you pointed out to help the Alaska Native Villages. We've kept the funding flat despite the fact that it was increased last year, in our proposal for 2009. As you pointed out, it has been successful but we have had problems in the past, in terms of getting the money spent, once it was obligated.

Senator STEVENS. Well, you have trouble getting the money spent if you don't put it up and give it to the area office.

Mr. PEACOCK. The vast majority of it has been obligated—not all of it—for this year. But the vast majority of it has been obligated for this year.

Senator STEVENS. Well, am I to report to my people that you decided that 2011 is not the target for 100 percent of water and sewer for these villages?

Mr. PEACOCK. Within the budget constraints, we think the same amount that was, that we requested last year is sufficient for 2009.

Senator STEVENS. That's not my question. Have you abandoned 2011 for 100 percent of all of these villages having water and sewer?

Mr. PEACOCK. I think our goal has remained the same, but we'll have to get back to you after we talk to the Office of Water. We do try and, of course, what we want to make sure is that not only Alaskan villages, but that all of the water systems throughout the country eventually reach the goal of 100 percent.

Senator STEVENS. Well, eventually is, you know, I'm trying to seek reelection right now, but 6 years is 6 years. You know? We've been involved in this one for longer than 6 years, already. I do not understand why it's been reduced.

I would like to have you put in the record what you consider to be the date for completion of the water and sewer facilities for Alaska rural villages under this program. Our target was 100 percent, at one time. Is that—put in the record—is that still your target? If so, what's the date for that?

Mr. PEACOCK. We'll get that information to you, Senator.

[The information follows:]

EPA and the State of Alaska estimate that the EPA Alaska Native Village infrastructure program will be able to provide 100 percent of "serviceable" rural Alaska homes with access to drinking water and wastewater services by the end of fiscal year 2018. This fiscal year 2018 end date is based on current EPA and USDA funding levels. (Unserviceable homes are defined as residences that cannot be serviced due to reasons such as being structurally unsound, seasonally occupied, or located in areas that are too costly to serve. In addition, whole communities may be unserviceable due to the dangers of erosion and flooding or because they are financially unable to operate water/wastewater systems due to local economic constraints or limited community size.)

Senator STEVENS. All right.

I'm a little concerned about the \$134 million reduction in the Clean Water State Revolving Fund, could you explain that to me?

Mr. JOHNSON. Yes, sir. As you said, this issue has come up—the President's budget invests \$555 million, and that it meets the President's commitment to achieve \$3.4 billion—

Senator STEVENS. You guys put the President—what did you ask the President for?

Mr. JOHNSON. As I said, this represents—

Senator STEVENS. What did you ask the President for? On this item?

Mr. JOHNSON. This is what I represented to the President, this is again, meeting the President's commitment, and—

Senator STEVENS. Don't tell me that.

Mr. JOHNSON. I support the President's budget.

Senator STEVENS. What was the amount you requested from the Office of Management and Budget for this account?

Mr. JOHNSON. As I said, I support the President's budget, and this is an important area—

Senator STEVENS. Are you going to answer my questions, Mister?

Mr. JOHNSON. Well, as I said, this is the President's budget, it doesn't—

Senator STEVENS. I didn't ask you that. I asked you, what did you ask OMB for?

Mr. JOHNSON. Senator, may I ask Ben Grumbles to come to the table? He's head of our water program.

#### CLEAN WATER STATE REVOLVING FUND

Mr. GRUMBLES. Senator, in the process, through the Chief Financial Officer in the engagement and the development of the 2009 budget, what was agreed to back in 2004 was a long-term plan for the Clean Water State Revolving Fund that would be reflected in each of the President's budget requests, including fiscal year 2009. So, when we engaged with the OMB in terms of the national water program, we looked at what Congress had previously appropriated, and measured that against the level, and that's how we came up with the \$555 million.

But, we didn't have a separate dollar amount, other than looking at, well, the previous year we had asked for \$600 million in the 2008 President's budget request we had requested \$688 million. We then looked at what Congress had appropriated for the fiscal year 2008 budget and based on that, and the math—taking into account the 2004 commitment to provide \$6.8 billion through 2011—that's how we came up with the \$555 million. Jointly with OMB, Senator.

Senator STEVENS. What I'm hearing you to say is that you set a target back several years ago—

Mr. GRUMBLES. Yes, sir.

Senator STEVENS. This year, you looked at how much had been appropriated by Congress, so far, toward that target?

Mr. GRUMBLES. That's correct.

Senator STEVENS. You asked for the balance, is that right?

Mr. GRUMBLES. That's the way it would work out, yes.

Senator STEVENS. Did you—that's the amount now, I asked—you know, I sat at those tables when I was with the Eisenhower administration. I know what you're under in terms of what you can and can't do. But you can tell me what you requested of OMB for this year, can't you? There's no par on that.

Mr. GRUMBLES. Right. We—

Senator STEVENS. How much did you ask OMB for this year?

Mr. GRUMBLES. We requested—when we went to OMB, we requested the amount that would be consistent with our 2004 commitment that we reached with OMB, in terms of the administration's \$6.8 billion request. So, we went to OMB saying, "Let's do the math, and figure out what the appropriate level is." So, that's how we jointly got—

Senator STEVENS. Was that amount, that 2004 level, was that approved by Congress?

Mr. GRUMBLES. No, it was part of the present—the administration's vision on how much continuing seed money to put into the Clean Water SRF and each budget request since then has been consistent with that. Budget requests have declined over the last several years, taking into account—

Senator STEVENS. What you're telling me, I hope you're hearing this, Madam Chairman, because they decline based on how much we put up—you reduce the next year by the amount we added to the previous year, in effect.

Mr. GRUMBLES. That, coupled with the vision on sustainable infrastructure and the innovative technologies, and the full-cost pricing—that has been the approach on the State Revolving Fund to get to a final level that revolves at \$3.4 billion a year.

Senator STEVENS. This is not a spending program, this is a loan program. You understand that, don't you?

Mr. GRUMBLES. Yes, sir.

Senator FEINSTEIN. Senator, what the staff just informed me, is that we have never agreed to this. They just arbitrarily did it.

Senator STEVENS. I understand that. We've never agreed to it, and as a matter of fact, until last year, we didn't even know about it. But this policy of having an ongoing—the more Congress adds, the more it's reduced in succeeding years is an additional—it really forces earmarks. Because you're saying, in order to maintain the

same level that we had last year, we've got to earmark the additional monies. I've never heard of it.

I really think—if you'll pardon the phrase—it's bureaucratic arrogance. Having served a, you know, 8 years in the administration—another administration—I want you to know I don't appreciate that. We didn't have that kind of arrogance, and I really think you ought to listen to what Congress is doing, in terms of setting national goals.

It sounds to me like your 2004 decision was sacrosanct as far as the Federal Government was concerned—nothing Congress can do about it, you just keep reducing down by the amount we increase. It's a crazy system.

#### GREENHOUSE GAS REGISTRY

Now, let me ask you about another one, though. That is the Greenhouse Gas Registry. The White House proposed no funding for this new program, it was put into the appropriations bill in December, Senator Klobuchar came and talked to me, as a matter of fact, and others about it. But—why didn't you put money in for the Greenhouse Gas Registry? There's so much talk about this, but without such a Registry, no one is really going to know what they're talking about.

Mr. JOHNSON. Well, we have \$3.5 million this year as part of the omnibus appropriation. We are working on a draft regulation, we intend to meet the omnibus, congressionally directed schedule, which we expect that by the—September of this year, that we will have a proposed regulation on Greenhouse Gas Registry.

We've also begun the work with the States—there's California, plus, I believe either 6 or 7 other States that have, or are developing, registries, and we think that's a good thing. But we're working on developing—and intend to have a—proposed regulation by what the schedule that was in the omnibus appropriations was, as I recall, September.

Senator STEVENS. Let me tell you—is there any direction Congress would give you with regards to spending money, you would follow?

Mr. JOHNSON. Well, we are, sir. We're following the direction and—

Senator STEVENS. I haven't heard any so far.

Mr. JOHNSON. Well, we're working on—

Senator STEVENS. What you're saying is, the money we put up for 2008, you take into account as you reduce 2009.

Fully understanding that there is a new paradigm, no add-ons. No earmarks. So, that under the rules here, that program is going to have to be slashed.

Senator FEINSTEIN. Senator, you're right—I put in the \$3.5 million last year. It takes 2 years. So, they need \$3.5 million this year, assuming they're doing it.

Senator STEVENS. I agree.

Senator FEINSTEIN. So that would have to be, I guess, an earmark, which they are now saying, they won't follow.

Senator STEVENS. That's right.

Mr. JOHNSON. Madam Chairman, just to make clear for the record, we are working on a draft regulation, and I intend to

make sure that we meet our mandate of having a proposal, and I believe the date is September.

Senator STEVENS. Did you know how the Congress dealt, no, the administration—Congress dealt with an administration official that wouldn't follow their suggestion, back in the old days, the Bureau of Land Management? The next bill, they just eliminated the job of the person that would refuse to obey their direction.

Senator FEINSTEIN. Well, I'll tell you, this budget is disastrous when you look—

#### LAND PROTECTION AND RESTORATION

Senator STEVENS. I've never seen such arrogance as there is in this EPA budget, as a matter of fact. The Land Protection and Restoration line item for oil spills response was slashed by \$183,000 for 2009. Why?

Mr. JOHNSON. Are you referring to our—

Senator STEVENS. The Land Protection and Restoration line item for oil spills response was reduced by \$183,000.

Mr. JOHNSON. Let me ask Susan Bodine who heads up our program.

Ms. BODINE. Yes, we believe we can still—we can carry out the program within the requested amounts. So, we don't anticipate—

Senator STEVENS. What led you to that belief? What led you to believe that we don't need money for land response for oil spills?

Ms. BODINE. We have funding for the oil spill program.

Senator STEVENS. But you reduce it by \$183,000 over 2008.

Ms. BODINE. That's correct, but—

Senator STEVENS. But what was the rationale for bringing it down?

Ms. BODINE. The rationale was that we believe we can carry out our responsibilities within the requested amount of funding.

Senator STEVENS. I don't know, I'm really disturbed at some of the things they're doing, because the administration is taking the position that you can't have earmarks, we're not supposed to make add-ons. But at the same time, they're using formulas which punish us for past earmarks, and past add-ons. And it puts us in an absolutely untenable position as to maintaining a level of ongoing programs that we've funded in the past.

Senator FEINSTEIN. I was thinking the same thing. I outlined the percent cuts. The percent cuts in critical programs are very large. This means there is no way for us to restore those cuts, if they're going to ignore any congressional add, which they call an earmark.

I don't even know if we want to pass this budget, if that's the case. I mean, at some point, you've got to the conclusion, why run for the Senate of the United States, why sit as an appropriator—I come from a State that gives far more in taxes than it gets back in services. If you've got a major environmental problem in the State—and we have several, I've outlined the non-attainment standards for Fresno, and for the Los Angeles area, the port problems—yet we can't add money to solve those problems. So, why put out—why put our names on a budget that we know is going to fail to accomplish the purpose? I think that's the problem we have.

Senator STEVENS. Well, that's the conclusion that's got to be reached, that we're better off under the 2008 budget. We're better

off not to give you anything for 2009, and just to travel on a continuing resolution into October 2009. The programs that affect my State would be better off under 2008, than they would under 2009. Did you ever think about that?

Mr. JOHNSON. Again, we believe that this budget is a good budget, it balances the needs of moving forward with the pace of environmental protection, at the same time recognizes that we have to be good stewards of taxpayers dollars.

Senator STEVENS. I don't have any more questions. I don't think it's—you might carry back the message that, in all probability, if the Senate follows my advice, we'll give the President a continuing resolution for 2009.

Senator FEINSTEIN. You know, it's very hard, because we have a 20 percent cut in the Clean Water State Revolving Fund, a 10 percent cut in grants to States for environmental protection, a 14 percent cut in State grants for reduction of air pollution, and it goes on and on and on.

I, you know this—for the first time he's said, in so many words, "We're not going to recognize any congressional add." Well, maybe we join the issue, and we don't pass a budget. Because I don't know why you'd want to run for the United States Senate—particularly, I come from 37.2 million people—and not be able to do anything that benefits a real need of my State.

If the President doesn't do it, then what you're saying, the President conditions all spending, and the Congress has no voice. So, we don't even need an Appropriations Committee, if that's the case.

Senator STEVENS. They ought to read the Constitution. That's for sure. Well, we can talk and talk but I share your feelings about this, and I think there is a total breakdown in regard to the process that we're involved in. I've been through this process now for well over 30 years, and I've never seen it in worse shape. But, it's because of what we're getting from downtown. You refuse to recognize what we've done in the past, which was approved by the President. What you do is, then, offset that against a goal you set in 2004? Notwithstanding, all the goals we set in, we established in legislation and the President signed in 2005, and 2006, and 2007 and 2008. That's arrogance. Pure arrogance.

Senator FEINSTEIN. Well, I—no, I think there is no jointness with this administration. There is no real consultation with the Congress. There is no real understanding that the Congress plays a role in all of this. It's that we're to be a rubber stamp for the President's request, and—

Senator STEVENS. It's really not the President.

Senator FEINSTEIN. Well, Mr. Johnson pointed out, over and over again during this hearing, "This is the President's budget."

Senator STEVENS. He's says that, but I don't think the President even knows of some of these items, I'm sure he doesn't it is the OMB and the Assistant Secretary in each Department dealing with this budget process.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator FEINSTEIN. There will be some additional questions which will be submitted for your response in the record.

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

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

CALIFORNIA WAIVER DECISION/GREENHOUSE GAS REGULATION

*Question.* The “Federal Register Notice of Decision Denying a Waiver of Clean Air Act Preemption for California’s 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles” (The Notice of Decision) concludes that Congress intended that waivers would only be issued if California had a “unique” problem, based on both Committee Reports and Floor statements from 1967. In 1977, Congress amended the Clean Air Act, changing both the words and intent of section 209. The Federal Register notice does not mention congressional intent in 1977.

- a. Did you consider the intent of Congress in 1977 when making your decision?
- b. If so, why didn’t the Federal Register Notice discuss this intent?
- c. Is it correct to infer that you do not find the 1977 amendments relevant to your decision to deny a waiver to California?

*Answer.* In 1977, Congress amended section 209, but did not change section 209(b)(1)(B), the waiver criterion at issue in this waiver decision. The decision document describes in detail the bases for the decision including the legislative history of section 209(b)(1)(B). The decision document discusses the issue of deference to California’s judgments, at 73 FR 12158 and 12162, noting that EPA’s role in applying section 209(b)(1)(B) is not to substitute its judgment for California’s on the value or benefit that might be derived from a specific set of greenhouse gas standards, and noting that with respect to sections 209(b)(1)(A) and (C) EPA is not addressing or changing its approach to deferring to California’s policy judgments on the best way to protect the public health and welfare of its residents. This discussion of deference is based in part on the 1977 legislative history behind section 209.

As explained in the decision document, EPA appropriately exercised its own judgment in determining the limits or confines of state authority established by section 209(b)(1)(B). This does not change EPA’s consistent view that within such confines it should give deference to California’s policy judgments.

*Question.* The Notice of Decision asserts that in 1967 Congress intended waivers to address problems “unique” to California. But in 1977, Congress added section 177 to the act, which allows other States to adopt California’s standards. If Congress intended for waivers to be limited to problems unique to California, why did it give other States the right to adopt the same standards?

*Answer.* The decision document discusses in detail EPA’s interpretation of section 209(b)(1)(B), including the legislative history of that provision. That waiver criterion was not amended by Congress in 1977. In the 1977 amendments, Congress did afford States the option of adopting and enforcing California’s motor vehicle emission standards, under section 177, if certain conditions were met. The legislative history indicates that section 177 was added to give States more flexibility in determining how to “protect public health while still permitting reasonable new growth. Still another element of flexibility for States that is afforded in this section is the authority for States with nonattainment areas for automotive pollutant pollutants (other than California) to adopt and enforce California new-car emission standards if adequate notice is given . . . this should pose no significant burden to the manufacturers. It permits the State to decide whether or not such standards should be adopted in order to permit more stationary source growth and jobs in the State.” [Report by the Committee on Interstate and Foreign Commerce (95th Congress, 1st Sess. Report No. 95–294, at pgs. 213 and 310–311)].

*Question.* In 1984, EPA Administrator William Ruckelshaus issued a waiver decision that stated, in part:

“Motor Vehicles Manufacturing Association, Auto International Association, General Motors and Volkswagen also argue that in order to be granted a waiver for its particulate standards California must have a ‘unique’ particulate problem; i.e., one that is demonstrably worse than in the rest of the country. However, as CARB points out, there is no indication in the language of section 209 or the legislative history that California’s pollution problem must be the worst in the country, for a waiver to be granted.”

The Notice of Decision asserts that the legislative history of section 209 requires that California’s pollution problem must be “unique.” Upon what legal basis have you rejected the precedent set by the 1984 ruling?

Answer. EPA's waiver decision discusses in detail the 1984 waiver decision at 73 FR 12159–12160. As stated in the 1984 waiver decision, the phrase “compelling and extraordinary conditions” refers to “certain general circumstances, unique to California, primarily responsible for causing its air pollution problem,” like thermal inversions, topography, and California's motor vehicle population. Thus, in 1984, EPA reasoned that the term compelling and extraordinary conditions “does not refer to the levels of pollution directly.” Instead it refers primarily to the factors that tend to produce higher levels of pollution—“geographical and climatic conditions (like thermal inversions) that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems.” 73 FR 12160.

EPA's waiver decision concerning California's greenhouse gas standards does not reject the focus of the 1984 decision on the factors that cause air pollution. EPA's decision document describes the 1984 waiver decision, which addressed a local or regional air pollution problem like ambient levels of particulate matter and discusses in detail the appropriate way to implement section 209(b)(1)(B) in the very different context of a global air pollution problem, like elevated concentrations of greenhouse gases. In the context of greenhouse gases, EPA determined that the appropriate criteria to apply is whether emissions of California motor vehicles, as well as California's local climate and topography, are the fundamental causal factors for the air pollution problem of elevated concentrations of greenhouse gases, and in the alternative whether the effect in California of this global air pollution problem amounts to compelling and extraordinary conditions. 73 FR 12162.

*Question.* Mr. Johnson, you are under remand from the United States Supreme Court to determine whether carbon dioxide contributes to climate change and endangers public health and welfare. I have requested that you set an internal deadline by which you intend for EPA to respond, and you have refused.

a. Please provide a detailed list of benchmarks that EPA must meet before it can respond to the Supreme Court's remand.

b. Please determine how many of these benchmarks have been completed to date.

c. Please state how many EPA staff members are working on each remaining benchmark at this time.

d. Please provide an explanation for why you stated in your March 3, 2008 letter that “I am currently unable to provide you and the Committee with the ‘detailed timeline’ requested.”

e. Please explain what impedes the EPA from setting a timeline for completion of this work.

f. Please explain why it was possible for EPA to set such a timeline in 2007, but it is not possible to set a timeline today.

Answer. As you know, EPA had previously planned to issue a proposed endangerment finding and vehicle GHG standards under the Clean Air Act (CAA) by the end of last year. However, after enactment of the Energy Independence and Security Act in December, it was appropriate for the agency to consider the impact of the new law, with its requirement for tighter vehicle fuel economy standards, on EPA's regulatory plans.

As I explained in my March 27, 2008 letter to you, I have decided that the best course of action for responding to the Supreme Court's remand is to issue an Advanced Notice of Proposed Rulemaking (ANPR) later this Spring. That notice will build on the agency's work to date on a potential endangerment finding and vehicle GHG standards under Clean Air Act section 202. It will also explain the broader Clean Air Act implications of taking such actions. My letter describes some of those implications and explains why it is important to consider them in developing a strategy for potentially regulating GHGs under the CAA.

I have asked my staff to develop an ANPR for publication by late Spring. Because of the breadth of issues the ANPR will cover, including the regulatory implications for stationary sources if the vehicle GHG standards are set under the act, staff from several offices within the Office of Air and Radiation as well as staff from the Office of General Counsel are involved in drafting the notice. They are drawing from, and in some cases adding to, the information that was developed and compiled last year as part of EPA's efforts to respond to the Supreme Court's decision and the President's 20-in-10 Executive order.

The ANPR will give the public an important opportunity to comment on the many issues that need to be considered in moving forward with any Clean Air Act regulation of GHGs. Following the public comment period, I will assess how best to respond to the Supreme Court's decision in light of the comments received. While I cannot give you a detailed timeline for issuance of the ANPR or for next steps following receipt of public comments, I can assure you that I intend to proceed expeditiously and lay a solid foundation for future decisions on addressing climate change.

## AIR POLLUTION IN NATIONAL PARKS

*Question.* EPA recently participated as the science lead in the Western Airborne Contaminants Assessment Project (WACAP) to determine the levels and sources of airborne pollutant deposition in ecosystems that are traditionally regarded as the most pristine and intact ecosystems in the America: western national parks. The National Park Service recently released the results of this study and they are alarming: over 70 different contaminants, including toxic heavy metals like Mercury and pesticides such as DDT, were found at significant levels in parks from Sequoia-Kings in California to Glacier in Montana to Denali in Alaska.

In many parks, the toxicity levels in native fish in high mountain lakes exceeded the recommended consumption guidelines, not only for humans, but for other mammals and birds that rely on fish as a key source of caloric intake. These contaminants are weakening the ecosystems of national parks and a potential danger to human health.

1. What are the implications of the WACAP study in terms of the ability of current regulations to effectively prevent air pollution, not only in our national parks, but across our country? Do these results not suggest additional action to improve air quality is warranted?

2. Will EPA present policy recommendations for Congress and/or the Administration in the wake of these results? Please provide details.

*Answer.* EPA commends the National Park Service and the interagency contributors for the WACAP study. This valuable research has demonstrated that a number of environmental contaminants are more persistent and widely distributed than previously understood. The study also showed that, for many contaminants, local and regional sources may contribute more to contamination in the western parks, outside of Alaska, than international or intercontinental transport of airborne contaminants.

All of the contaminants identified by the study as being of highest concern are the subject of existing regulations or on-going regulatory actions under the Clean Air Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Toxic Substances Control Act. In addition, most of the contaminants identified in the study as being of potential concern are subject to existing regulations or are being considered for further regulation under these statutes. Many of these contaminants and their sources are also subject to state and local controls. EPA is aware that the National Park Service is working at the level of individual parks to address the few local sources identified in the study. While the study did not address how the levels of contamination in the parks would be affected by further environmental regulations, EPA will evaluate this study, as well as other recent and ongoing studies (e.g., EPA's Great Waters program and newly-initiated National Academy of Sciences study on the significance of the international transport of air pollutants), in determining future research and regulatory needs for these pollutants.

Many of the contaminants identified by the study are the subject of international cooperation, through bilateral and trilateral relationships with Canada and Mexico and through multilateral institutions, such as the Stockholm Convention on Persistent Organic Pollutants (POPs) and the United Nations Environment Programme's Mercury Programme. The United States' ability to address some of the contaminants of concern, particularly those that are no longer used in this country, would be significantly enhanced if Congress were to complete legislation enabling the United States to ratify the Stockholm Convention, as well as the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC) and the Convention on Long Range Transboundary Air Pollution POPs Protocol (LRTAP POPs), and to work through these institutions to reduce their use globally.

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 QUESTIONS SUBMITTED BY SENATOR JACK REED

*Question.* Recently, the Rhode Island Treasurer, the Rhode Island Department of Health, and the Rhode Island Clean Water Finance Agency contacted my office regarding a proposal by the EPA Office of the Inspector General to prevent states from using revenue bonds to provide the necessary 20 percent match for the State Revolving Funds. Is EPA considering changing this policy? If so, what process is EPA using to evaluate if this change is necessary?

*Answer.* The fiscal year 2009 President's budget continues the policy of allowing States to use revenue bonds repaid from interest earnings to provide the State match for the State Revolving Funds. No decision has been made on how or whether to change this policy.

*Question.* For over 10 years, EPA has failed to issue a final rule to protect children from lead poisoning during home renovation and remodeling in target housing, despite a 1992 congressional mandate to adopt a rule by October 28, 1996. The fiscal year 2008 Consolidated Appropriations conference report included language requiring EPA to finalize its Renovation, Repair, and Painting Rule by March 31, 2008, and encouraging that the rule be at least as protective as HUD's Lead-Safe Housing Rule. What progress has EPA made towards finalizing the Renovation, Repair, and Painting Rule by the deadline at the end of this month, and what are the plans for implementation of the rule in fiscal year 2009? Specifically, how does the agency plan to provide sufficient training and outreach opportunities within the bounds of the current budget request?

*Answer.* EPA finalized its Renovation, Repair, and Painting Program rule on March 31, 2008 (available at: <http://www.epa.gov/lead/pubs/renovation.htm>). Implementation of this program is a priority for our lead poisoning prevention program. We expect many States to seek authorization to run the program and will be working with our State partners to develop efficient approaches to implementation.

EPA will work with a broad range of stakeholders, including States, community groups, trade associations and other industry groups in conducting outreach and training. Central to this outreach is the pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Facilities and Schools*. This brochure, which is jointly sponsored by EPA and the Department of Housing and Urban Development (HUD), provides renovation-specific lead hazard information for persons who contract for or perform renovation, repair and painting projects in pre-1978 target housing and child-occupied facilities. EPA is also developing information specifically for contractors, including the brochures *Contractors Lead Safety During Renovation and Steps to Lead-Safe Renovation & Remodeling*. To effectively conduct outreach and training within the current budget request, the agency will build on the infrastructure and successes of its outreach and training program for abatement activities.

EPA will facilitate having training providers for abatement expand their training courses to include formal training of renovators by developing a model training course for renovators required by the regulation. In addition, EPA will continue to encourage the training of a broad range of stakeholders, including community groups, in the use of lead-safe work practices.

*Question.* The fiscal year 2008 Appropriations language encouraged the EPA Renovation, Repair, and Painting Rule to be at least as protective as HUD's Lead-Safe Housing Rule. What steps has the agency taken to respond to concerns about the proposed rule, in particular, the fact that the proposed rule did not ban dangerous lead practices (such as dry sanding), and did not include requirements to test for lead dust at the end of a renovation, painting or repair job involving lead-based paint in older housing?

*Answer.* The final rule prohibits or restricts the use of dangerous practices such as removing lead paint by power sanding, use of a torch or by the use of a high temperature heat gun. EPA is allowing the use of dry hand sanding based on the results of a study the Agency conducted of renovation activities. In this study, when the work practices being required by EPA's rulemaking were used, including containment and specialized cleaning, renovation activities involving dry hand sanding did not result in lead levels above EPA's regulatory hazard standards.

The work practices required by this rule have been demonstrated to be effective at protecting children from the lead-based paint hazards generated by renovation activities. Renovations covered by this rule will be performed in many homes all over the country. They will be performed for many reasons, most of which have nothing to do with lead-based paint or lead-based paint hazards. Moreover, EPA has determined that the work practices in the final rule, including containment and specialized cleaning effectively minimize exposure to lead-based paint dust generated during renovations. Thus, EPA has determined that requiring dust clearance sampling and clearance, which is required for abatements in which all lead hazards must be removed, is not warranted. In addition, dust clearance sampling and clearance would not provide added value in terms of protecting children to balance the time and effort and the cost to home and building owners associated with requiring this additional step to the work practices.

*Question.* Last year the Supreme Court ruled that the Clean Water Act only applied if there was a "significant nexus" of jurisdictional waterways. This test put a significant onus on the agencies to make a determination of what waters were or were not under the protection of the Federal Pollution Control Act. In response to this the U.S. Army Corps of Engineers increased the amount of funding to go toward these jurisdictional judgments, but no increases have been seen in the EPA's budget for this additional work. How is the agency addressing these increased de-

mands and where is the funding coming from to deal with the increased bureaucratic burden?

Answer. The U.S. Army Corps of Engineers is given the primary responsibility under the Clean Water Act (CWA) for work related to the issuance of section 404 permits. These responsibilities include conducting CWA jurisdictional determinations and review and issuance of permits. It is these activities where workload has increased the most in recent years as a result of, for example, recent court decisions. While EPA's workload has increased somewhat as a result of these same factors, EPA expects to be able to continue to meet our responsibilities under the CWA by adjusting the level of resources applied to the 404 regulatory program from within the available wetlands protection resources.

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QUESTIONS SUBMITTED BY SENATOR WAYNE ALLARD

DELAY IN IMPLEMENTING A SOLUTION TO THE LEADVILLE MINE DRAINAGE TUNNEL

*Question.* We now have a locally declared emergency situation in Leadville involving a Superfund Site declared in 1983, 25 years ago. Why is this the case 25 years after recognizing the need for a solution?

Answer. The California Gulch Superfund Site (Site) was listed on the National Priorities List (NPL) in 1983 to address hazardous releases associated with historic mining activity. The Site is comprised of approximately 17.9 square miles of mountainous terrain in and around the Town of Leadville in Lake County, Colorado. Since 1983, this large and complex Site has been divided into 12 separate Operable Units (OU). EPA has conducted studies, removal actions and remedial actions at various OUs, and many of the OUs have been completed in part or in full. Two OUs have been deleted from the NPL and EPA is in the process of deleting parts of other OUs. The emergency situation referenced in your question is a relatively new development. Since 2001, additional investigations have indicated that groundwater and mine pool levels are increasing over time, and are likely due to blockages in the Leadville Mine Drainage Tunnel (LMDT). Over the last three years, EPA, the State and local community have become concerned that the increasing mine pool levels may cause an uncontrolled release of contaminated water.

In view of the recent concerns of rising groundwater and mine pool levels, EPA, in coordination with the Bureau of Reclamation and the State of Colorado, is now conducting a removal action. This work commenced in February 2008 and includes two major activities. EPA installed a pumping system in the Gaw mine shaft and has been pumping at a rate of 450 gallons per minute since late February. This action may lower water levels in the mine pool. In addition, it appears to have diminished seeps and springs that had recently appeared in the lower California Gulch. Second, EPA is taking steps to drill a relief well into the LMDT to lower the level of water in the LMDT and mine pool. EPA plans to have the relief well, pump and pipe to the LMDT installed and ready to operate in Summer 2008.

*Question.* As you know, the Bureau of Reclamation is responsible for the Leadville Mine Drainage Tunnel and the EPA is responsible for the Superfund site. In your view, what has prevented the various involved entities (EPA, Bureau of Reclamation, the State of Colorado, locally elected officials) from fixing this well known problem?

Answer. EPA issued a Record of Decision (ROD) in 2003 for Operable Unit 6 (OU6) of the California Gulch Superfund Site (Site). Part of the remedy included addressing the Leadville Mine Drainage Tunnel (LMDT).

Specifically, the OU6 ROD called for:

- Installing an engineered plug, approximately 4,300 feet from the LMDT portal.
- Installing dewatering wells in the tunnel to manage tunnel and hydrologically connected mine pool water levels behind the engineered plug.
- Installing a pumping system to deliver water to the LMDT treatment plant from the dewatering well.

The LMDT is owned by the Bureau of Reclamation (Reclamation), as is the LMDT treatment plant.

In view of the recent concerns of rising groundwater and mine pool levels, EPA, in coordination with Reclamation and the State of Colorado, is now conducting a removal action<sup>1</sup> to install dewatering wells in the tunnel and a pumping system to

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<sup>1</sup>While Section 111 of CERCLA limits EPA's authority to expend Superfund dollars to carry out remedies (i.e., remedial actions) at federally owned facilities, EPA's authority to conduct certain removal actions under CERCLA is not limited. However, the Federal agency that owns the

deliver water to the LMDT treatment plant. EPA, Reclamation and the State are working on a plan to implement a long-term solution to address these concerns and long-term operation and maintenance.

*Question.* Why is the EPA, rather than the Bureau, now the lead Federal agency on the Leadville situation? Who made that decision and for what reasons?

Answer. That decision has not been made. EPA is the lead Federal agency with respect to the California Gulch Superfund Site. EPA, the Bureau of Reclamation and the State are working on a plan to implement a long-term solution to address the high water levels in the mine pool and the Leadville Mine Drain- age Tunnel. Among the items under discussion is what authority to use to implement that solu- tion.

*Question.* What can the EPA do to permanently fix this mine drainage problem?

Answer. EPA, acting alone, cannot permanently fix this problem. EPA, the Bu- reau of Reclamation and the State are working on a plan to implement a long-term solution to address the high waters in the mine pool and the Leadville Mine Drain- age Tunnel.

*Question.* When is the mine pool (elevated ground water) going to be at a level that is not a threat to residents, local water supply and the environment? What level is considered a safe level?

Answer. The Bureau of Reclamation is conducting a risk assessment that may help determine the appropriate mine pool level. Lowering the elevation of the groundwater will decrease risk to residents, the local water supply and the environ- ment.

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#### QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

##### ARSENIC STANDARDS AND COMMUNITY ASSISTANCE

*Question.* In January 2006, the EPA began enforcing a new arsenic standard that requires public water systems to reduce arsenic levels to 10 ppb, down from 50 ppb. My home State of New Mexico has high levels of naturally occurring arsenic in its volcanic soils which filter into the water supply. New Mexico is also one of the poor- est states in the Union, with high levels of poverty.

The costs of compliance facing New Mexico run upwards of \$500 million. Accord- ing to the New Mexico Bureau of Geology and Mineral Resources, 20 percent of the State's municipalities will have to treat their drinking water to meet the standard. The new arsenic standard disproportionately impacts my State because only 5.5 per- cent of municipalities nationwide will have to treat their drinking water to meet the standard.

Of the communities in New Mexico requiring water treatment, 93 percent of them are small communities that probably cannot afford the cost associated with meeting this new standard. Indeed, for the average New Mexican, meeting the standard could increase the cost of water by \$50-\$90 per month.

Would you discuss what resources, if any, are being marshaled by EPA to assist communities faced with the extraordinary costs in meeting the new arsenic stand- ards?

Answer. EPA has promoted the use of the Drinking Water State Revolving Loan Fund (DWSRF) for arsenic projects, and has worked with The Department of Agri- culture's Rural Utilities Service to make arsenic treatment a priority for their fund- ing programs. Currently 167 loans, totaling approximately \$380 million, have been made for arsenic compliance through the DWSRF. Together with the Rural Utilities Service loan program, nearly \$500 million as been made available to communities for arsenic compliance.

To help reduce water utility costs for arsenic treatment, the Agency has developed a toolkit that facilitates decision-making, including choosing the most cost-effective technology. The kit includes websites ([epa.gov/safewater/arsenic](http://epa.gov/safewater/arsenic) and [arsenicradeshow.org](http://arsenicradeshow.org)), a print brochure, a training CD and a treatment technology DVD. Program managers and scientists at EPA have collaborated to promote the latest high-performing, cost-effective advancements in arsenic treatment tech- nologies, particularly through EPA's Office of Research and Development's Arsenic Treatment Technology Demonstration Program. In addition, EPA has partnered

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facility is required to provide reimbursement pursuant to Executive order 12580, section 9(i) "Funds from the Hazardous Substance Superfund may be used, at the discretion of the Adminis- trator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody or control of Executive departments and agen- cies but must be reimbursed to the Hazardous Substance Superfund by such Executive depart- ment or agency."

with technical assistance providers such as the American Water Works Association (AWWA), National Rural Water Association (NRWA) and Rural Community Assistance Partnership (RCAP) to provide training opportunities and innovative outreach materials.

*Question.* Would it be appropriate to try and assist those communities faced with debilitating costs in trying to meet the high standard through some legislative means, perhaps in targeted assistance in treatment facility construction?

*Answer.* We believe that Congress has already provided an appropriate vehicle for assistance through the Drinking Water State Revolving Loan Fund (DWSRF). Since 1997, the EPA, through the DWSRF, has leveraged approximately \$8.1 billion in federal grants to States into \$14.4 billion in funds available to assist with drinking water infrastructure needs, including compliance with new arsenic standards. Through these funds, over 5,300 loans for over \$12.6 billion have been made to projects to address the public health goals of the Safe Drinking Water Act. Almost all of these loans are provided at a reduced interest rate and almost 600 with some principal forgiveness. Nearly 75 percent of loans go to communities with 10,000 people or fewer.

*Question.* Because New Mexicans do not exhibit a higher rate of cancer due to the States higher levels of arsenic, and because studies released after the EPA issued its new arsenic standard do not tie the new arsenic standard to reduced health impacts, have you considered reviewing whether this more stringent arsenic drinking water regulation is appropriate?

*Answer.* The agency is currently performing its second review of existing drinking water standards and we expect to release the preliminary results by summer of 2009. One of the key steps in our review uses a final, peer-reviewed health risk assessment. While arsenic is one of the 70 plus drinking water regulations included in the second review effort, the Agency is currently updating the arsenic risk assessment and it is not expected to be complete in time to consider for this review.

For the revised risk assessment, EPA is considering all relevant studies published since the 2001 Arsenic Regulation. We presented the draft cancer assessment to EPA's Science Advisory Board (SAB) in September 2005. EPA is considering the SAB's June 2007 final report<sup>2</sup> and public comments as the Agency works to update and finalize the arsenic risk assessment.

*Question.* What conclusions has the EPA drawn from the two studies conducted by Dr. Steven Lamm and published by the NIH, which challenge the data from Taiwan used by EPA to establish the current standard?

*Answer.* Dr. Lamm presented his findings to EPA's Science Advisory Board (SAB) in September 2005. And the SAB record of the arsenic advisory meetings, report development and public meetings<sup>3</sup> contains Dr. Lamm's subsequent comments and responses (to SAB), representing his 2003, 2005, and 2006 studies.<sup>4</sup> The final 2007 SAB report<sup>5</sup> directed EPA to identify criteria to evaluate all relevant human studies and include information on the factors that affect the risk estimates. EPA is considering the 2007 SAB report and public comments as the Agency works to update and finalize the arsenic risk assessment.

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#### QUESTIONS SUBMITTED BY SENATOR HARRY REID

*Question.* EPA's budget request only briefly mentions the environmental standards that the Agency is required by statute to develop for the proposed Yucca Mountain Project. In 2004, a Federal Court of Appeals rejected the EPA's original standards. Over three years later, EPA still has not promulgated final radiation standards. When will EPA release its final standards?

*Answer.* The radiation standard for Yucca Mountain has not yet been determined and is the subject of ongoing rulemaking proceedings. There are many complex

<sup>2</sup> Available at [http://yosemite.epa.gov/sab/sabproduct.nsf/EADABBF40DED2A0885257308006741EF/\\$File/sab\\_07\\_008.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/EADABBF40DED2A0885257308006741EF/$File/sab_07_008.pdf).

<sup>3</sup> Available at <http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyNameBOARD!OpenView>.

<sup>4</sup> Lamm SH, DM Byrd, MB Kruse, M Feinleib, and S-H Lai. (2003). Bladder Cancer and Arsenic Exposure: Differences in the Two Populations Enrolled in a Study in Southwest Taiwan. *Biomedical and Environmental Sciences* 16:355-368.

Lamm SH and MB Kruse. (2005). Arsenic Ingestion and Bladder Cancer Mortality—What do the Dose-Response Relationships Suggest About Mechanism? *Human and Ecological Risk Assessment*, 11:433-450.

Lamm SH, A Engel, CA Penn, R Chen, and M Feinleib. (2006). Arsenic Cancer Risk Confounder in Southwest Taiwan Data Set. *Environmental Health Perspectives* 114:1077-1082

<sup>5</sup> Available at [http://yosemite.epa.gov/sab/sabproduct.nsf/EADABBF40DED2A0885257308006741EF/\\$File/sab\\_07\\_008.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/EADABBF40DED2A0885257308006741EF/$File/sab_07_008.pdf).

issues involved in establishing regulations applicable for up to one million years that make it difficult to predict when these rulemaking proceedings will conclude. EPA continues to review public comments on its proposed rule and participate in the interagency review process pursuant to Executive Order 12866. Accordingly, EPA is not in a position to state when its final rule will be promulgated.

*Question.* What is EPA's reason for not finalizing the radiation standards?

*Answer.* The radiation standard for Yucca Mountain has not yet been determined and is the subject of ongoing rulemaking proceedings. There are many complex issues involved in establishing regulations applicable for up to one million years that make it difficult to predict when these rulemaking proceedings will conclude.

*Question.* Where is the EPA's final radiation standard in the rulemaking process?

*Answer.* EPA continues to review public comments on its proposed rule and participate in the interagency review process pursuant to Executive Order 12866. Accordingly, EPA is not in a position to state when its final rule will be promulgated.

#### SUBCOMMITTEE RECESS

Senator FEINSTEIN. Well, let me sum up by saying, this is a very unhappy budget, and we'll have to consult among ourselves, and come up with a course of action.

I thank you very much. The subcommittee will stand in recess.

[Whereupon, at 11:55 a.m., Tuesday, March 4, the subcommittee was recessed, to reconvene subject to the call of the Chair.]