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Committee on Environment and Public Works
United States Senate
Hearing May 25, 1993

Answers to Questions for the Record

The Honorable Robert M. Sussman
Deputy Administrator
U.S. Environmental Protection Agency

ENVIRONMENTAL TOBACCO SMOKE

As you know, on January 7, 1993, the EPA issued a risk assessment on Environmental Tobacco Smoke (ETS) that concluded that ETS was a Class A carcinogen like asbestos, benzene and arsenic. Does Administrator Browner or any other non-career official at EPA have any misgivings about the substance of this report? If not, do you support its conclusions?

Neither Administrator Browner nor I have any reservations about the ETS risk assessment. I understand that the assessment was an exhaustive one, and underwent extensive peer review by EPA's Science Advisory Board, which unanimously endorsed its conclusions and methodology. We fully support the risk assessment's conclusions that environmental tobacco smoke poses a significant public health risk to both children and adults.

The report seems to indicate that ETS has a disproportionately harmful effect on the health of children. Do you agree with this assessment?

The assessment clearly documents significant respiratory health effects in young children, which include increased frequency of respiratory disorders such as pneumonia and bronchitis as well as increased frequency and severity of asthma attacks. While the report documents more serious acute respiratory problems in children than those documented for adults, the fact that ETS has been classified as a known human carcinogen indicates that the potential risks for adults are also of great concern.

What policies would you recommend that would protect children from being exposed to ETS?

EPA recommends that every organization dealing with children should have and enforce a smoking policy that protects children from exposure to ETS.

Barbara Barruener 260-54117

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What type of policy could ensure protection of non-smokers from exposure to secondhand smoke? Is this policy consistent with the current policy at EPA and HHS?

Generally, the most effective smoking policies are those that eliminate involuntary exposure of nonsmokers to ETS either by prohibiting smoking indoors completely or by restricting smoking to special smoking rooms that exhaust-smoke to the outside and prevent smoke from drifting to other parts of the building. EPA's current policy is consistent with this approach. I am not certain of the exact nature of the HHS policy and they would be in a better position to respond to this question.

RADON

What areas of your program have been reviewed by the EPA Science Advisory Board?

EPA's Science Advisory Board (SAB) has reviewed and/or provided comments on many of the major scientific issues which form the basis for EPA's Radon Program. These include EPA's radon risk estimates and associated uncertainties, design of the National Residential Radon Survey and National School Radon Survey, the Radon Measurement Proficiency Program, cost-effectiveness analyses, and the Agency's analyses on the relationship of short-term to long-term measurements and the use of short-term measurements in making mitigation decisions. The SAB has also reviewed the presentation of the scientific information in the Agency's primary public information documents on radon: the *Citizen's Guide to Radon* and the *Home Buyer's and Seller's Guide to Radon*.

Are there any instances when you haven't followed its advice and why?

EPA's Radon Program strongly relies on the expertise and advice from the SAB to provide guidance on scientific issues. The Radon Program has worked closely with the SAB and consistently followed the advice provided by the Committee.

Has the Science Advisory Board reviewed and approved of the risk estimates you have developed for radon?

Yes. The Radiation Advisory Committee of the SAB has reviewed the Agency's radon risk estimates and associated uncertainties in April, 1991. The SAB responded to the Agency in January, 1992, finding the methods and data used by the Agency to be appropriate.

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Why is it important to reduce exposure to even slightly elevated levels of radon?

EPA's radon action level of 4 picoCuries per liter (pCi/L) is technology-based. Significant risks exist below this level and this is supported by agreement among the major radiation organizations that there is no evidence of a threshold for radon.

Although risks increase as total exposure increases, there has been no evidence that there is a safe level of exposure. There is also a great deal of evidence from radiobiology that alpha-particles exert their maximal effect at low doses and dose-rates. Therefore, it is important to reduce exposure to even slightly elevated radon levels.

Additionally exposures cannot be viewed in isolation since each is a contributor to total cumulative exposure. We may not know an individual's former exposure level and we cannot reliably predict the future levels of home, school and workplace exposure to which former and current exposures will be added. Therefore exposures should be kept "as low as reasonably achievable".

Some scientists have questioned the risk posed by radon because they have not found increased incidence of lung cancer in ecological studies. Do you use such studies in determining the risk posed by radon?

No. EPA does not use ecological studies in determining the risk posed by radon. Ecological studies, are crude incomplete studies which analyze groups rather than individuals. Selection of these groups is usually based on geographic parameters. While such studies are relatively inexpensive and relatively convenient to conduct, they are not recommended for identifying the cause(s) of a disease.

For ecologic studies of radon risk, the average radon exposure and the lung cancer mortality for each group can be identified. However, there is no way to relate the level of radon exposure for an individual to that individual's health status. The number of lung cancer patients with a history of elevated radon exposure or the number of individuals with elevated radon exposure who later developed lung cancer is not determined. Because the unit of analysis is the group, this study design is incapable of assessing individual smoking experience or the effects of family mobility, both very significant factors in radon risk assessment.

Because of the inherent methodological limitations of ecological studies, this type of study design was specifically "not recommended" for the study of residential radon risk by the Study Design Group of the International Workshop on Residential Radon Epidemiology held in Alexandria, Virginia in July, 1992. Stidley and Samet (in

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press) recently reviewed 15 ecological studies published through mid-1992, and provided an overview of ecologic methods used to investigate radon and lung cancer. Their paper also discourages further ecological studies of indoor radon and lung cancer.

I understand that there are residential epidemiological studies being conducted on the risk posed by radon. Will these studies conclusively establish the risks?

There is unfortunately no guarantee that the on-going residential epidemiological studies will conclusively establish the health risks of residential radon. Unfortunately, almost all the ongoing studies lack sufficient numbers of study cases to define the dose-risk radon lung cancer relationship. Only the German study has a case population approaching the required numbers.

To bypass this problem, there is an international effort underway, sponsored by the US Department of Energy and the Commission of European Communities, to pool the data from these on-going studies. However, this effort has its own difficulties. Since they were not designed to be pooled, not all the studies are compatible. They used different measurement devices, different measurement times, different case definitions, different exclusion criteria, different smoker/non-smoker mix of subjects, different definitions of smoking, and different questionnaires. There is a question about the validity of pooling the results of such diverse studies. The great differences in heredity, diet, and customs, make it questionable to extrapolate results from other countries, particularly those with less industrial development, to the US population.

Do your risk estimates assume that children have increased susceptibility to radon?

No. Scientists have long been concerned that children's higher metabolic and breathing rates coupled with the greater sensitivity of rapidly multiplying cells and organs place them at greater risk from exposure to cancer causing agents. Studies of atom bomb survivors indicate a greater cancer risk for childhood radiation exposure. Additionally, children would have a longer post-exposure lifespan during which the latent effects could express themselves. A recent Chinese miner study showed that the pattern of excess risk by age at first exposure is not consistent. Therefore, there is currently no conclusive data on risk of childhood exposure to radon. Our current risk estimates project risks for childhood exposures which are similar to equivalent cumulative exposures acquired as an adult.

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Are radon levels in schools uniformly higher when the schools are unoccupied?

No. A 1991 study in a limited number of schoolrooms found that there was no consistent pattern of fluctuations in radon levels in the sample classrooms. This same study found that radon levels are on average only about 10-20% higher during unoccupied hours than during occupied hours. In some cases, the radon levels were higher during occupied hours, in others they were lower. In some cases, radon levels dropped quickly during the day, in others they dropped slowly.

Why have you established a 4 picoCurie per liter action level for radon in schools?

We have established a 4 picoCurie per liter (pCi/L) action level in schools because there is agreement by the major radiation organizations that there is no evidence of a threshold for radon. Therefore, we assume that there is no level at which radon is considered safe. There is also a great deal of evidence from radiobiology that alpha-particles exert their maximal effect at low doses and dose rates. Because there is no safe level, radon action levels are technology-based. Schools, like homes, can consistently be reduced to 4 pCi/L or below with current technology.

Although children may only spend approximately 10% of their time in schools, these exposures cannot be viewed in isolation since each radon exposure, regardless of where it is acquired, is a contributor to cumulative exposure. It can be assumed that areas prone to elevated radon levels in schools are also more likely to exhibit elevated residential levels. Therefore, elevated school radon exposures are most likely added to high residential exposures and should be kept "as low as reasonably achievable."

How many of the nation's schools have tested for radon?

EPA has tested approximately 1,000 schools and estimates that approximately 20% of the nation's schools have been tested for radon. Although this figure is based on several reliable sources, it is difficult to get an exact estimate because most schools are not required to report their tests.

How many of the nation's schools are in radon priority areas?

EPA's National School Radon Survey estimated that approximately 16% of the nation's schools are in Zone 1 (high priority) areas. Approximately 6.8% of the schoolrooms in Zone 1 are estimated to have elevated radon levels (equal to or greater

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than 4 pCi/L), compared to the national estimate of 2.7%. Approximately 30,000 of the 70,000 elevated schoolrooms are located in Zone 1 areas.

How many states have used state grant funds to test for radon in schools?

41 states have conducted some type of measurement study or testing and 37 states are conducting outreach and training to schools using state grant funds. Only 8 states report conducting or assisting school mitigation projects in 85 schools. Only 19 states report some kind of mitigation activity.

Does EPA have any cost-effectiveness figures to accompany your guidance for testing and fixing radon in schools?

Although we haven't completed a rigorous analysis yet, preliminary information suggests that the cost-effectiveness of addressing radon in schools will likely be in the same range as efforts in homes. This is because while children, teachers, and other school personnel spend less time in schools than in homes, mitigation of a schoolroom is similar in cost to home mitigation, but will reduce the radon risk to a larger number of individuals (i.e., 10-30 people).

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

URGENT

November 15, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-937

TO: Legislative Liaison Officer -

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FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
Robert FAIRWEATHER (395-6834)

SUBJECT: EPA Proposed Testimony on Environmental
Justice

DEADLINE: 2:00 PM November ¹⁷ 1993

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
K. McGinty
B. Galston (see
page 5)
H. Paster
G. Simon
A. Erbach
B. Damus
A. Fraas

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I called in
comments to
OMB
Linda*

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**STATEMENT OF
KATHLEEN ATERNO
DEPUTY ASSISTANT ADMINISTRATOR
OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND HAZARDOUS MATERIAL
COMMITTEE ON ENERGY AND COMMERCE**

November 18, 1993

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss an issue of deep concern to all of us; environmental justice, and to present the Agency's views on this important issue. Administrator Browner, and all of us at EPA are totally committed to the principle of environmental justice for all persons regardless of race, religion, ethnic background, or income. We believe that the EPA has the responsibility to ensure a clean, safe environment for every American in every community.

We recognize the effect of past and present environmental conditions and remedies have not impacted equitably across racial and socioeconomic groups. People of color and low-income communities often face a much higher level of environmental risk than the majority population, with many of the problems arising in the areas of hazardous waste exposure, disposal, and containment. These communities continue to bear a disproportionate share of the nation's air, water, and waste contamination problems.

We at EPA are committed to addressing this issue and are assuming a leadership role in environmental justice initiatives in order to improve the environmental quality for all Americans, including minority and low income populations. Administrator Browner has named environmental justice among the Agency's highest priorities and directed all programs, both at headquarters and in the regions, to incorporate environmental justice initiatives into short term and long

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term planning processes in regulatory and policy making activities, enforcement, pollution prevention, education and economic development strategies. We realize that to achieve the goal of environmental justice, it is critical to involve minority and low income populations in the environmental decision making processes.

EPA PROGRAMS ARE MOVING FORWARD IN IMPLEMENTING ENVIRONMENTAL JUSTICE

As part of the National Performance Review process, EPA has committed to establishing a blueprint for Environmental Justice throughout all its operations. I am currently working with EPA headquarters and regional offices to meet the commitment we have made in the NPR process. I am encouraged by the strong actions taken by EPA career staff to incorporate environmental justice into our present and future operations. From Superfund administrative improvements and reauthorization to the internal reorganization and focusing of the Agency's enforcement function, Agency managers have demonstrated that they understand the environmental justice issue and have a commitment to action.

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Superfund and RCRA

Specifically, in the areas of this Committee's jurisdiction, EPA is committed to increased public participation at an earlier stage in the process of siting decisions for hazardous and solid waste facilities. A proposed RCRA rule, on this subject, is hoped to be ready for comment in the Spring. Superfund administrative improvements announced by EPA last June included enhancing public outreach efforts to low income and minority communities with respect to Superfund sites. The Agency has surveyed its Regions and has identified more than twenty environmental justice pilot projects which will allow us to experiment and provide the basis for substantive policy development.

EPA is also charting a strategic course on environmental justice in the Superfund reauthorization process. Our discussions on reauthorization have

The Administration has not agreed on finalized its views on justice

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yielded an unprecedented level of public involvement on matters of concern to environmental justice advocates and other stakeholders. Under the umbrella of NACEPT (National Advisory Committee on Environmental Policy and Technology), Administrator Browner requested the formation of a working group to address these concerns. On the basis of the working groups proposals, the Agency is considering changes to the Hazard Ranking System which would give cleanup priority to Superfund sites located in areas burdened with multiple environmental stress.

The Agency is also looking seriously at ways to implement environmental justice demonstration projects in conjunction with President's Community Empowerment Initiative. Finally, EPA will ask Congress to require that communities have a more meaningful role in the decision making from the very inception of the clean-up process. These actions are based upon an open dialogue with the public and EPA program response, I believe, is in the right direction.

Enforcement Initiatives

In the area of enforcement, EPA is committed addressing environmental justice issues. To achieve this commitment, we are making fundamental changes in the way we are doing business. Historically, EPA has pursued violations of the environmental laws on a statute-specific basis. In other words, cases were filed alleging failure to comply with only a single environmental law. The Agency is now emphasizing a multimedia approach, in which we look holistically at all of the environmental problems presented by a particular facility or geographic area; we are concentrating enforcement actions on addressing those problems, alleging violations of more than one statute in our lawsuits. The Agency is devising strategies to target inspections, enforcement action, and compliance monitoring in communities that are exposed to multiple environmental stresses. We fully expect that the direct beneficiaries of this enhanced and focused enforcement activity

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will be those communities bearing the greatest exposure to cumulative environmental risks.

For example, Region 5 has heightened its scrutiny of facilities in the highly industrialized area of southeast Chicago and northwest Indiana, where industry has contributed to severe surface water and groundwater degradation and to the chronic air pollution problems. The communities in this area are largely low income and people of color. Dr. Benjamin Chavis has characterized southeast Chicago as the worst example of environmental racism in the country.

Just last March, EPA achieved a settlement with Inland Steel Corporation for violations of the Clean Water Act, RCRA, the Clean Air Act, and the Safe Drinking Water Act; the company agreed to \$3.5 million in penalties, a \$19 million project to clean up contaminated sediments that threatened Lake Michigan, and \$7 million in future supplemental environmental projects. This summer, we filed suit against a Sherwin-Williams paint manufacturing plant in the same corridor for violations of RCRA, The Clean Air Act, and the Emergency Community Right-to-Know Act.

Other Regional efforts abound. Region 10 has developed an enforcement targeting system with environmental justice as one of the decision criteria. Region 9 has initiated inspections based upon the justice concerns. These are only the beginnings of the future of enforcement.

A key aspect of using enforcement as a tool to help reduce the heightened risks borne by certain communities is implementation of supplemental environmental projects, or "SEPs." EPA insists upon recovering in cash the economic benefit that any company gained through non-compliance with environmental laws. But under our SEP policy, EPA can reduce penalties achieved above the economic benefit level in exchange for enforceable agreements to complete environmentally beneficial projects that go beyond the injunctive relief that EPA can order -- projects that promote pollution prevention, pollution reduction, environmental restoration and environmental auditing.

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SEPs are complex -- unlike the relatively simple payment of a penalty -- but they offer the Agency an opportunity to deal creatively with the problems besetting communities that have legitimate environmental justice concerns. We are working with the Department of Justice to identify those cases in which SEPs may offer a partial solution to these problems.

In our enforcement initiatives, EPA has not overlooked the role of federal facilities; these facilities are an enforcement priority due to their sometimes low rate of compliance with the environmental laws. The FY 1993/1994 federal facilities multimedia enforcement/ compliance initiative involves targeting at least two high priority facilities for inspections and follow-up enforcement. Environmental justice is one of the key ranking factors -- along with factors such as risk and pollution prevention opportunities -- for selecting facilities for this initiative.

Pesticides

A top priority is to reform our pesticides laws. We have moved to improve the safety of our nation's food supply to provide better protection for the people, usually low income and people of color, who work in the fields and orchards. Our goal is to subject all pesticides used on foods to a single, strong, health based standard; and replace dangerous pesticides with safe substitutes, and to reduce overall pesticides use for better protection of both consumers and agricultural workers.

Information Initiatives

In addition to strides in Superfund and Enforcement, information management and data initiatives are underway to identify the demographics around Superfund sites, solid waste facilities, and other polluting sources to determine which communities are disproportionately exposed to environmental hazards. We recently held a National Environmental Justice/Geographic Information Systems

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(GIS) Forum for EPA national and regional program managers. The forum brought environmental justice policy makers and technical experts together opening the line of communications necessary to build effective approaches using state-of-the-art data management systems. The ultimate goal is to develop consistent and credible GIS methodologies for environmental justice risk issues.

Under the Clean Air Act and as part of the Urban area source program, EPA is continuing a series of urban studies identifying risks to populations from aggregate exposures to many air toxics. Such studies typically evaluate cancer and non-cancer health endpoints at numerous urban locales and are a function of many parameters such as source type, proximity of persons to sources, and magnitude of exposures to multiple pollutants. Such studies allow an assessment of particular population groups that suffer from the highest levels of individual risk, including cancer. Overlaying risk distribution patterns from these studies with socioeconomic statistics available from census data gives some sense of differential risks seen by various population groups. This type of analysis provides an indication of environmental justice related to urban sources of toxic emissions.

We have begun to recognize that there is a bias intrinsic in some studies that link health risks, pesticides, and diet. We intend to correct this. We can no longer assume that people of all economic backgrounds and income levels eat the same kinds and amounts of food as presumed in some studies. Environmental justice dictates that we take into account cultural, ethnic, and income-related variations in eating habits when the Agency sets pesticides tolerances for food.

Fish consumption is an excellent example of this bias. Currently, our criteria for toxic contamination in fish are based on how much fish the average American eats over a lifetime. Yet some people -- low-income people-of-color, Asian communities, and Native Americans for example -- may eat much more than the average, and therefore face commensurately higher risks than the average American. We are examining changes in the manner criteria are set, because we

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believe we must protect not just the "average" person, but all people, including those of diverse cultures.

The National Human Exposure Assessment Survey (NHEXAS), currently being developed by EPA's Office of Research and Development (ORD), is designed to generate a human exposure database to address some of the geographic and demographic questions relevant to the issue of environmental justice. NHEXAS will address the exposure-based component by providing information on the magnitude, extent, and causes of human exposure.

A variety of health research studies will need to be conducted, and a combination of approaches developed, in order to address the effects-based component. EPA, in conjunction with the US Public Health Service, designed the Lower Rio Grande Valley Environmental Study to investigate human exposures to environmental contaminants along the US/Mexico border. This work began as a result of reports of increased rates of anencephaly (birth defects involving the brain) in Brownsville, Texas and Matamoros, Mexico. What we hope to learn are the sources of contamination and identify the pathways of exposure.

An upcoming interagency symposium on "Health Research and Needs to Ensure Environmental Justice" will develop constructive communication among key stakeholders, (e.g., affected communities, regulators, scientists, elected officials, etc.) in order to: a) develop research programs aimed at filling data gaps in several critical areas (e.g., health, exposure, prevention, intervention); develop methods to better identify areas and communities where environmental injustices arise, and design effective prevention and intervention strategies.

Economic Development

In efforts to empower communities, EPA has designed "self help" and financial assistance programs for high impact communities. In addition to environmental restoration, these programs are meant to stimulate economic growth

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through efforts to train, certify and employ residents in environmental remediation, lead and asbestos abatement, recycling and solid waste management programs.

Economic development demonstrations projects are currently underway in Washington, D.C. and Cleveland, Ohio as prototypes for national programs. In addition to these Agency sponsored projects, EPA will offer direct funding through a mechanism similar to the Superfund Technical Assistance Grants (TAG), scheduled to begin in January 1994. The grants will be issued in support of environmental-justice related projects local organizations engaged in community awareness, environmental or health assessments or research, monitoring activities or clean up demonstrations.

Through these projects and initiatives, EPA is moving in the direction of achieving environmental justice. I will be pleased to answer any questions that the Subcommittee may have. Thank you.

URGENT

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

November 2, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-861

TO: Legislative Liaison Officer -

**ENERGY - Bob Rabben - (202)586-6718 - 209
INTERIOR - Danny Consenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217**

**FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
Assistant Director for Legislative Reference**

OMB CONTACT: Richard MERTENS (395-6931)

**SUBJECT: EPA Proposed Testimony on Uranium Wastes on
Navajo Lands**

DEADLINE: 10:00 AM November 3, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

**I. James
L. Mori
H. Paster
K. McGinty**

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AS SENT TO OMB
FOR CLEARANCE
11/2/93

**STATEMENT OF
LARRY G. REED
DIRECTOR, HAZARDOUS SITE EVALUATION DIVISION
OFFICE OF EMERGENCY AND REMEDIAL RESPONSE
AND
KEITH TAKATA
DEPUTY DIRECTOR, SUPERFUND PROGRAMS
REGION 9
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
AND THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

NOVEMBER 4, 1993

Chairman Miller, Chairman Richardson, and Members of the Subcommittees: Thank you for the opportunity to appear before you today. I am Larry G. Reed, Director of the Hazardous Site Evaluation Division within the Environmental Protection Agency's (EPA's) Office of Emergency and Remedial Response. With me today is Keith Takata, Deputy Director of Superfund Programs within EPA's Region 9. We are here today to discuss the problems caused by uranium wastes on the lands of the Navajo Nation. Although EPA oversees the response to short-term and long-term threats to public health and the environment from uncontrolled releases of hazardous substances, a complex set of Federal, State and Tribal regulations governs uranium extraction and beneficiation activities.

The statutes (and associated regulations) include the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, and the Atomic Energy Act as amended by the Uranium Mill Tailings Radiation Control Act (UMTRCA). The primary Federal agencies

Steve Rollier 260-5417

responsible for implementing these statutes are EPA, the Nuclear Regulatory Commission (NRC), and the Department of Energy (DOE).

The Clean Air Act gives EPA the authority to establish National Ambient Air Quality Standards for "conventional" pollutants, like particulates, and to regulate emission of hazardous pollutants, such as radon. Both of these air pollutants are emitted by uranium extraction and beneficiation activities.

The Clean Water Act gives EPA the authority to impose effluent limits, via permits, on point-source discharges of pollutants in process wastewaters or stormwaters to waters of the United States from inactive and active mine sites, including uranium extraction and beneficiation operations.

EPA established an Underground Injection Control (UIC) program under the authority of the Safe Drinking Water Act. Through the program, EPA established a permit system to ensure underground sources of drinking water are protected from the injection of process fluids and liquid wastes, including those produced during uranium extraction and beneficiation, into the subsurface via wells.

Under the Uranium Mill Tailings Radiation Control Act (UMTRCA), EPA has the authority to establish standards that protect the public from radioactive materials originating from mill tailings and for cleanup and control standards for inactive uranium tailings sites and associated vicinity areas. It also authorized EPA to establish standards for managing uranium

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tailings and wastes at active sites. Also under UMTRCA, DOE's role is to actually clean up and control designated inactive uranium tailings piles to comply with EPA standards.

UMTRCA requires that the Department of Energy (DOE) obtain NRC concurrence for the remedies DOE selects for cleaning up and controlling inactive sites. Under UMTRCA, the NRC is also responsible for licensing active uranium mills and licensing inactive uranium tailings sites that have undergone remediation. Although the NRC has promulgated radiation protection standards that regulate active and inactive uranium milling sites, the NRC has no regulatory authority over uranium mines, except the aboveground activities of solution mines.

The authority of State agencies to regulate uranium extraction and beneficiation activities comes from two sources, federally authorized programs and State statutory authority. The Federal programs applicable to uranium extraction and beneficiation activities that can be transferred to the States include the Underground Injection Control program, the National Pollutant Discharge Elimination System (NPDES) program, and NRC licensing and radiation protection standards. For a State to be able to administer any or all of these Federal programs, the State must have requirements that are at least as stringent as the respective Federal programs.

We will now explain the system EPA uses in the Superfund program to ensure the most hazardous sites are addressed first. EPA has developed a detailed system to evaluate and prioritize

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sites. We call this the site assessment process. An understanding of this process will guide the Congress in helping EPA deal appropriately with the issues concerning the Navajo Nation.

To implement the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Congress mandated the creation of the National Oil and Hazardous Substances Pollution Contingency Plan, or NCP. The NCP defines the three authorities of Superfund: the removal, remedial, and enforcement programs. In general, the removal program is tasked to respond to emergencies, while the remedial program addresses long-term risk and environmental remediation or restoration. The enforcement program oversees the response by potentially responsible parties or seeks to recover expended funds.

When EPA learns of sites, it refers them to either the removal or remedial program for investigation, depending on the immediacy of the reported threat. Sites directed to the remedial program are entered into the Superfund Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). CERCLIS is EPA's tracking database for all Superfund sites. Inclusion on CERCLIS is not an indicator of documented contamination or determination of threat, but is a way to track all EPA response activities. After CERCLIS entry, EPA schedules a preliminary assessment (PA) within 12 months. The Site Assessment Branch of the remedial program characterizes threats posed by sites and identifies the nation's highest long-

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term remediation priorities. The primary objective of site assessment is to evaluate sites using the Hazard Ranking System (HRS) and identify which sites should be on the National Priorities List (NPL) for long-term remediation.

The NPL is EPA's list of those sites with the highest priority for long-term remediation. With few exceptions, sites listed on the NPL have had a remedial PA, site inspection, and HRS evaluation. Sites on the NPL include privately and publicly owned lands and facilities. Currently there are 1,266 sites on or proposed for the NPL. Sites are organized by State and Indian Tribe and categorized by HRS score. Score alone may not correlate with threat, although the score can be an indication of relative risk. As we stated before, scoring is done using the Hazard Ranking System: The HRS evaluates threats posed to human and environmental populations via four pathways: ground water, surface water, soil exposure, and air. The HRS considers actual and potential releases and exposures of hazardous substances together with the population that has been or might be affected. Evaluating the four pathways includes considering the likelihood of release or exposure, waste characteristics, and the targets or receptors that might be affected. Likelihood of release considers an observed (actual) release or the potential for release. Observed release may be based on visual evidence (e.g., outfall pipe discharging into surface water) or analytical results (e.g., soil contamination significantly above background levels). Potential for release considers such factors as depth

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to aquifer, waste containment, overland flow distance, flood frequency and containment, observed soil contamination, and gas and particulate air migration potential. Evaluating waste characteristics includes human and ecosystem toxicity, ground water and air mobility, sediment persistence, and aqueous food chain bioaccumulation of contaminants, as well as hazardous waste quantity. Targets include the nearby population, populations served by ground water and surface water within designated distance limits, consumer-related industries that might use water (such as agriculture and food preparation), human food chain production (such as fisheries), wellhead protection areas, and sensitive environments (such as wetlands and habitats for endangered and threatened species). The HRS also evaluates actual or potential surface water releases in ground water discharge areas. The HRS weighs heavily the evaluation of hazardous waste quantity and waste containment; the lower the waste quantity and the more reliable the containment, the lower the risk.

Data collection for HRS evaluation begins with the preliminary assessment. The PA is a screening assessment that distinguishes sites posing little or no potential threat to human health and the environment from sites that may pose a significant threat and warrant further investigation. The PA is a compilation of readily available information about the site and its surroundings. It identifies populations and other targets that might be affected by the site. It includes a reconnaissance

of the site and its surrounding environment but does not include sampling. The PA examines key HRS factors such as targets that can indicate a preliminary HRS score greater than the minimum score for NPL eligibility (28.5) and that can be evaluated within the investigation's limited scope. The PA identifies historical waste generation and disposal practices, hazardous substances associated with the site, potential sources of hazardous substances, important migration pathways, and affected targets. The PA sets priorities for conducting site inspections (SIs) and gathers existing data to facilitate later evaluation of the release pursuant to the HRS, if warranted.

Data important to the HRS evaluation—for example, analytical data indicating hazardous substance releases and targets exposed to actual contamination—may not be available during the PA. In these situations, the PA investigator applies his or her professional judgment in a reasonable and consistent manner to form hypotheses regarding the likelihood of release of hazardous substances and their migration to targets.

If the PA indicates that the site poses a significant threat with the need for possible long-term remediation, samples must be collected and a site inspection (SI) performed. The purpose of the SI is to eliminate from further NPL consideration those releases that pose no significant threat to public health and the environment; to collect or develop additional data to evaluate the release pursuant to the HRS, if appropriate; and to support remedial investigations or response actions under other

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authorities. Specifically, the SI investigates the release and migration (or potential release) of a hazardous substance to drinking water wells and intakes; the release and migration of a hazardous substance to surface water sensitive environments or fisheries; the presence of a hazardous substance on residential, school, or day care properties or in terrestrial sensitive environments; and the release of a hazardous substance to the air.

The scope of an SI can often be limited to sampling to confirm whether the site is a potential NPL candidate. A few strategically located samples may indicate that no further action is needed, and collecting all the information required for NPL documentation is unnecessary.

If it appears that the site will qualify for the NPL, an expanded SI will collect all data necessary to prepare an HRS scoring package to propose the site to the NPL. Expanded SI activities include collecting samples to attribute hazardous substances to site operations, establishing representative background levels, and obtaining any missing HRS data to document pathways of concern. The expanded SI may require extensive field activities such as monitoring well installation, air sampling, geophysical studies, and complex background sampling studies. The expanded SI typically requires 25 to 35 samples and 600 to 650 (additional) technical hours. The complexity of the site and the need for special procedures determine the scope of the investigation.

At the end of the SI, EPA decides whether the site should undergo further investigation (resulting in possible NPL placement and remediation) or be removed from further Superfund consideration. An HRS score of 28.5 or higher qualifies a site for NPL proposal. However, the decision to propose a site to the NPL is based on other factors as well. EPA has developed detailed guidelines for prioritizing sites for NPL proposal. The guidelines identify factors to help EPA regions decide the order in which they should consider sites with completed SIs for proposal to the NPL, including whether a potentially responsible party (PRP) has completed, scheduled, or undertaken a response action.

The site assessment process we have just described comprises the first steps in putting sites on the NPL; however, where we find acute and immediate threats, the Agency will take emergency or short-term removal actions to stabilize the threat. To date, we have done an initial assessment or a PA at 35,568 sites--94.48 percent of the total in our inventory.

NAVAJO NATION LANDS

EPA's Region 9 has been involved in addressing abandoned uranium mine sites located on Navajo Nation lands. Our discussion will focus on the following areas: Region 9's site assessment strategy for addressing other uranium mine sites; an overview of Region 9's response action at the Bluewater Uranium Mine Sites; and Navajo Superfund Program development.

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The Navajo Nation lands are geographically located in the states of Arizona, New Mexico, and Utah. These states fall within three different EPA Regions: Regions 6, 8, and 9. Although each region has worked with the Navajo Nation, beginning in October 1990, Region 9 assumed the lead for environmental issues on the Navajo Nation lands. The Superfund Program in Region 9 has been actively assisting the Navajo Environmental Protection Administration to address potential uncontrolled hazardous waste sites and to develop the capability to address those sites that cannot be remediated through the Superfund process.

SITE ASSESSMENT STRATEGY FOR OTHER URANIUM MINE SITES

Region 9 recognized that the large number of abandoned uranium mine sites located on the Navajo lands was more than the Agency could handle by itself and that other Federal Agencies involved may have an applicable regulatory authority. Therefore, a meeting was convened in New Mexico on January 22, 1992, to discuss the Federal Agencies role in the reclamation of abandoned uranium mines on the Navajo Nation. Present at the meeting were representatives of the Department of Interior's Office of Environmental Affairs (OEA), Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), Office of Surface Mining (OSM), and Solicitor's Office; EPA Region 9; ATSDR; and representatives from the Navajo Abandoned Mine Land Program (NAMLP) and Navajo Superfund Program (NSP).

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At the January 22 meeting, it was concluded that there exist numerous abandoned uranium mine sites on the Navajo Nation that pose significant safety, health and environmental hazards. It was agreed upon in principle that the OSM, under the authority of the Surface Mine Control Reclamation Act of 1977 (SMCRA), would continue to authorize the NAMLP to prioritize and reclaim abandoned uranium mine sites on the Navajo Nation. The NSP will assist the NAMLP in developing radiation and reclamation standards. It was also concluded that, through the use of EPA's Preliminary Assessment/Site Inspection grant, NSP would conduct preliminary assessments on sites that the NAMLP has not been able to adequately address in a timely fashion and on sites that have additional hazards that NAMLP can not address. Also, all agencies agreed to work together to review the progress of reclamation actions on the Navajo Nation. Therefore, in order to avoid duplication of efforts and costs, NAMLP and the NSP are coordinating their activities in consultation with EPA and OSM. Since the January 22 meeting, the NAMLP (under the Navajo Abandoned Mine Land Reclamation Department, or "NAMLRD") and the NSP (under the Navajo Environmental Protection Administration, or "NEPA") have formalized a memorandum of understanding which identifies areas of cooperation and coordination for the two programs, since both programs have the responsibility for protecting the environment and public health from mining pollution and other related hazards. The NAMLP will refer to the NSP all sites that are ineligible for action under the SMCRA for

assessment, while the NSP will refer additional abandoned mine sites, not recorded on the Mine Site Inventory, to NAMLP for listing. The NAMLP will use funds authorized by OSM to prioritize and reclaim referral sites that are eligible for reclamation under SMCRA. Pending the establishment of an Emergency Program within NAMLRD, mine sites requiring immediate attention as an imminent threat to the public health and the environment that AMLRD cannot reclaim expeditiously will be assessed by the NSP and referred to the EPA for further action if necessary. There are approximately 1104 sites where mining activities took place that generally need to be reclaimed but they are not. The sites of concern involve open pits, portals, waste rock, waste piles, equipment etc. Generally, these sites present physical and safety hazards. None of these sites are mill tailings piles sites, which are addressed under UMTRCA.

One limitation on the "reclamation" actions at these sites is that SMCRA does not allow the NAMLP to conduct activities off-site, to monitor groundwater, or conduct sampling, among other things. Federal agencies and the Navajo Nation originally believed that SMCRA reclamation was all that would be needed for most of the 1104 sites; however, Region 9 understands the Navajo Nation now believes that some of these sites may have groundwater contamination that need additional study to characterize fully.

These sites may need remediation that SMCRA cannot address. For those sites that need further study, the NSP will conduct further assessments under a PA/SI grant. If a site proves to be

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a NPL-caliber site, the NPL listing process will be continued. If a site does not score, we will refer the site back to the NSP. If a response action should be taken at sites that are ineligible for listing on the NPL, Region 9 will work with the appropriate Federal and Tribal agencies to look at alternate methods of cleaning up the sites.

STATUS OF ABANDONED URANIUM MINE SITES

To date, 47 abandoned uranium mine sites have been entered into the CERCLIS database by the EPA and the NSP. Forty-three have been evaluated with 17 being screened out as not requiring further action under CERCLA. Twenty-six sites were recommended as low priority for further work because these sites would be the subject of future site reclamation activities. If these sites are successfully reclaimed and required no additional cleanup, they will be screened out as not requiring further action under CERCLA. If, however, there are problems that cannot be addressed under SMCRA, we will continue the site assessment process to determine if the site conditions are serious enough to be cleaned up by EPA.

OVERVIEW OF RESPONSE ACTION AT THE BLUEWATER URANIUM MINE SITES

EPA Region 9 became aware of the Bluewater Uranium Mine Sites (Bluewater) in October 1990 after a notification from the Agency for Toxic Substances and Disease Registry (ATSDR) that potential health hazards might be associated with the abandoned uranium mines. The Bluewater Uranium Mine Sites are composed of the Brown-Vandever, Brown-Nanabah and Navajo-Desiderio Mines.

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The sites are located approximately five miles west of Prewitt, New Mexico and lie within the Grants Uranium Mining District. The Brown-Vandever and Brown-Nanabah mines are located on four parcels of land which includes two Native American allotment parcels, one Federal parcel administered by the Department of Energy and one privately owned parcel. At the request of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Navajo Superfund Program, EPA Region 9 conducted a site assessment of the property to determine the radiological conditions at the sites and to evaluate if a removal action was warranted. The radiological assessment was conducted in November 1990. EPA's Office of Air and Radiation in Las Vegas, NV assisted Region 9. Elevated gamma emissions (exceeding fifty times background in certain locations) were detected during the assessment. In addition, elevated concentrations of radionuclides were detected within on-site soil.

After review by Region 9, EPA's Office of Air and Radiation, and ATSDR, it was determined that a response action was warranted at the Sites. After several coordination meetings with the Department of Energy (DOE), Department of Interior's Bureaus of Indian Affairs and Land Management, it was decided that EPA should proceed with a response. DOE, which owns portions of the Brown-Vandever Site, would conduct its own response on its lands pursuant to Executive Order 12580.

To reduce the immediate potential radiological hazards associated with the mines, the following response would be taken:

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- 1) apply an earthen cover to effectively reduce gamma radiation emissions and potential for radionuclide migration;
- 2) fill, seal, and cap mine adits, inclines and ventilation shafts to reduce the migration of radon gas emissions; and
- 3) revegetate reclaimed areas and post warning signs.

The response actions for the Bluewater sites began in August 1991 and were completed in October 1991. Post response gamma surveys revealed that the gamma radiation levels have been actively reduced to natural conditions. EPA and ATSDR concur that the sites have been adequately reclaimed to levels that are protective of human health and the environment. The response actions were done at a cost of \$856,521 to the Federal government. Region 9 and DOI agreed to share the cost (\$581,521) for the two Native American allotted parcels. EPA has requested DOI to pay 1/2 of EPA's expense. DOE's cost was \$275,000.

TRIBAL SUPERFUND PROGRAM DEVELOPMENT

Region 9 has supported the NSP by providing funds to develop capabilities (including writing new laws, developing taxes, and developing revenue to clean up sites) so that the Navajo Nation can address these problems itself and make itself self-sufficient. Since October, 1990, Region 9's Superfund Program has invested approximately \$2,000,000 in financial assistance to the Navajo Superfund Program for site assessments and for non-site specific (administrative related) activities under a Core Program cooperative agreement. PA/SI funds have been used for site discovery and to conduct preliminary assessments and site inspections at some of the abandoned uranium

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mine sites. The Core Program cooperative agreement is being used by NSP to develop the capability to take on the responsibility for more sites, to write environmental regulations and procedures, to develop a tax structure and/or a plan to develop revenue to support response activities that currently do not have a funding source.

More specifically, the NSP has completed a study which identifies the present governmental mechanisms available to address environmental hazardous releases on Navajo Nation lands. This study revealed that, although the Federal government has many established programs to address sites containing hazardous substances on the Navajo Nation land, these programs do not address all of the sites which are priorities for the Navajo Nation. The study concluded that since many Federally ineligible sites will continue to be potential environmental hazards on the Navajo Nation, one potential solution is for the Navajo Nation to develop its own response mechanisms to address these sites. The NSP is now looking at options to develop their own hazardous waste program.

CONCLUSION

In conclusion, we would like to tell you briefly about the overall Superfund program's involvement with the Navajo Nation. Under the authority of CERCLA as amended by SARA, EPA provides financial and technical assistance to Indian tribal governments nationwide in an effort to build Indian tribal capacity to

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develop environmental regulations and participate in hazardous waste cleanups on Indian lands.

In addition to financial assistance, Superfund provides technical assistance to Indian tribal governments in many areas: conducting removal and remedial actions on tribal lands; implementing SARA Title III Community Right-to-Know Emergency Planning; administering CAs and SACAs; training response and planning personnel for tribal emergencies; conducting preliminary assessments and site investigations; as well as providing outreach to Indian tribal governments on a regular basis.

The Agency's Superfund program is working to realize its long-term strategy of facilitating Indian tribal participation by providing financial and technical assistance and encouraging Indian tribes to identify, assess, and implement remedies at hazardous waste sites.

Again, We thank you for your time and the opportunity to appear before you. We will be happy to answer your questions.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

October 27, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1557

TO: Legislative Liaison Officer -

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FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
Zach CHURCH (395-6944)

SUBJECT: EPA Proposed Testimony RE: S 656, Indoor Air
Quality Act of 1993

DEADLINE: 10:00 AM October 29, 1993

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

P. VanWie
A. Fraas
B. Damus
K. McGinty
H. Paster
D. Haun
S. Redburn

**TESTIMONY OF
ROBERT SUSSMAN
DEPUTY ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

NOVEMBER 1, 1993

Mr. Chairman, members of the Subcommittee, I am pleased to be here today to testify on the Environmental Protection Agency's (EPA) indoor air quality program, and to comment on HR 2919, the Indoor Air Act of 1993, which would amend the Public Health Service Act and authorize a national program to reduce the threat to human health from contaminants in the indoor air.

Indoor air quality is one of the most important emerging issues on the Agency's agenda. Comparative risk studies performed by EPA and its Science Advisory Board have consistently ranked indoor air pollution among the top four environmental risks to public health.

To date, EPA's indoor air program has been guided by Title IV of the Superfund Amendments and Reauthorization Act of 1986, which laid the foundation for EPA's indoor air quality research program and dissemination of information on indoor air quality problems and solutions. It also provided initial direction for the Agency's radon problem assessment activities and radon mitigation research program.

EPA's overall approach toward indoor air pollution has been to recognize that, while there is still much that we do not know about the impact of the indoor environment on human health, we can nonetheless achieve significant improvements now by incorporating pollution prevention approaches into the design, construction, maintenance, and operation of buildings, and by managing pollutant-specific risks when we know about them. EPA has found that practical, common sense solutions can often minimize indoor air quality problems.

The bill before you, HR 2919, is very consistent with the current direction of EPA's indoor air program and we believe that it would constructively augment existing Agency programs. We are therefore pleased to be able to support HR 2919.

I will outline for you our view of the scope of the indoor air problem and how we are attempting to address it, and then discuss the specifics of HR 2919.

Scope of the Indoor Air Quality Problem

Awareness of indoor air quality as an environmental issue is relatively new. Indoor air pollutants, which include environmental tobacco smoke, radon, and other chemical and biological contaminants, can cause long and short term health effects, especially when inadequate ventilation allows indoor concentrations to increase. EPA studies of human exposure to air pollutants indicate that indoor levels of many pollutants may be 2-3 times, and occasionally 100 or as much as 1,000 times, higher than outdoor levels. These levels of indoor air pollutants are of particular

concern because we estimate that most people spend as much as 90% of their time indoors.

Over the past several decades, our exposure to indoor air pollutants is believed to have increased due to a variety of factors, including the construction of more tightly sealed buildings, reduced ventilation rates to save energy, the increased use of synthetic building materials and furnishings, and the increased use of chemically formulated personal care products, pesticides and cleaners. EPA, in close coordination with other Federal agencies and the private sector, is making a concerted effort to better understand indoor air pollution and to reduce people's exposure to air pollution in offices, homes, schools and other indoor environments where people live, work and play.

Studies conducted to date by EPA, other Federal and State agencies, and the private sector have led to the concern that people are exposed to levels of pollutants indoors that may be significant in terms of long term risks of cancer and other chronic effects; thus the very high ranking for indoor air in the relative risk reports prepared by EPA and, most recently, by the Agency's Science Advisory Board. Our level of understanding about these risks, however, is limited except for relatively few pollutants, most notably radon, lead, environmental tobacco smoke, and asbestos. For example, EPA estimates that between 7,000 and 30,000 lung cancer deaths (best estimate is 14,000) in the United States are attributed to radon exposure. EPA recently reported that an estimated 3,000 lung cancer deaths in non-smokers and serious

respiratory health disorders in children are caused by exposure to environmental tobacco smoke. Lead has been shown to cause mental impairment in children and asbestos is a documented cause of lung diseases. The Agency has undertaken major risk management program, and we are engaging in a public education program to reduce exposure to environmental tobacco smoke. The long term risks associated with exposure to other common indoor pollutants, however, are not as well-characterized or understood.

Even less well understood are the more immediate effects of exposure to indoor contaminants in buildings. There appears to be an increasing number of health complaints associated with poor indoor air quality in the nation's public and commercial buildings, schools, residences, and other non-industrial buildings. These complaints can involve a variety of symptoms such as eye, nose, and throat irritation, headache, lethargy, dizziness and other symptoms for which specific causes cannot be identified and which have come to be known collectively as "sick building syndrome." While a number of hypotheses have been advanced to explain sick building syndrome, including exposure to low levels of individual or mixtures of volatile organic compounds (VOCs), most researchers believe that there is no single explanation, but rather that occupant perceptions of air quality indoors can be impacted by many factors which are often difficult to sort out. These factors include exposure to a variety of chemical and biological contaminants; comfort factors such as temperature and humidity; ventilation (outside air supply and air movement); lighting; noise;

odor, which has a very strong perceptive influence; and psychosocial factors, including job stress and environmental aesthetics.

At the same time, a number of illnesses can be directly and demonstrably related to environmental conditions inside buildings, ranging from well known and life-threatening illnesses such as carbon monoxide poisoning, Legionnaire's disease, and tuberculosis, to a variety of specific acute reactions such as irritation from formaldehyde or allergic reactions to biological contaminants.

Finally, there are emerging and highly controversial health concerns, such as the phenomenon of multiple chemical sensitivity (MCS), in which a segment of the population believes that their acute exposures to individual chemicals, or mixtures of chemicals, or perhaps even repeated exposure to very low levels of chemicals, result in a heightened sensitivity to many chemicals to which they are exposed in their everyday lives. While the cause or causes of their health problems are still the subject of much debate, there is no question that these people's lives are affected in devastating ways.

In sum, understanding the health impacts of indoor pollutants on people whose age, physical status, and susceptibility may vary greatly, is a complex issue which presents a distinct research and public policy challenge.

Efforts to estimate both the costs of indoor air pollution to society, as well as estimates of the costs of controlling indoor air pollutants, are in their infancy. An initial effort by EPA to

estimate the costs of indoor air pollution concluded that although specific cost estimates were highly uncertain due to data limitations, it was reasonable to estimate that the costs of indoor air pollution -- including second-hand smoke -- in terms of direct medical costs and lost productivity, were probably in the tens of billions of dollars per year. The Agency has undertaken a multi-year effort to look at the cost implications of a number of indoor air quality control strategies, and information from this effort will help to assess the suitability of various control technologies.

While these complexities make the indoor air issue difficult to define, we know enough about the problem to conclude that the risks, both acute and chronic, are significant, and warrant a coordinated and intensive Federal response.

EPA's Indoor Air Strategy

EPA is committed to a pollution prevention approach to indoor air quality. The key elements of that approach are to: seek to minimize peoples' exposure to all indoor air contaminants to the extent reasonable; transfer existing information to those in a position to improve indoor air quality; and conduct research and studies to develop sound scientific information to fill knowledge gaps.

EPA has been given broad authorities under the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to address chemical exposure risks. In addition, the Safe Drinking Water Act controls

contaminants in drinking water that may volatilize into indoor air from household uses. Several program initiatives are underway to sharpen the focus of our chemical screening and risk management programs under these statutes to ensure that chemicals that pose unreasonable risks indoors are identified and addressed. The Agency supports aggressive utilization of its combined statutory authorities to identify specific pollutants that present direct health risks in the indoor environment and to use a variety of means to reduce their level indoors.

Simultaneously, we are vigorously pursuing an indoor air research program. The results of EPA's indoor air research will improve our scientific understanding of the key factors that determine indoor air pollution health risks and the effectiveness of risk reduction strategies; provide critical scientific information to EPA program offices and regions; and promote private sector involvement in indoor air research.

We have also set a high priority on improving the way in which buildings are designed and operated. We believe this integrated buildings systems approach is appropriate, because there are a variety of building factors, pollutants, and sources in the indoor exposure equation, and because there are very real limitations to our understanding of the health effects of exposures to pollutant mixtures. The buildings systems approach seeks to achieve real and significant reductions in exposure to all biological and chemical contaminants indoors, quickly, by employing prevention techniques aimed at reducing risks across the board.

Our approach revolves around two simple policy principles: first, that it is prudent to minimize human exposure to biological and chemical contaminants indoors to the extent reasonable; second, that reductions in exposure can best be achieved by utilizing source management wherever feasible, adequate ventilation at all times to all occupied spaces, and, where appropriate, air cleaning as an adjunct to (but not a replacement for) source management and ventilation. This strategy stresses an integrated approach to indoor air quality, with an emphasis on building design, construction, commissioning, operation, and maintenance as the most practical approaches to exposure reduction along with efforts to reduce emissions from products used indoors. Focusing on building performance ensures that all potential indoor pollutant sources receive adequate attention, and that the critical elements of ventilation system performance, building maintenance, and occupant activities are integrated into a cohesive strategy. This minimizes the potential for indoor air quality problems to develop and occupant complaints to escalate, and ensures that practical, cost-effective problem identification and problem-solving tools are provided to those in a position to affect the quality of the indoor environment.

I would like to turn now to the specific provisions of HR 2919, and discuss their relationship to existing Agency policies and programs.

Guidelines for Identifying and Preventing Indoor Air Hazards

Like EPA's program, HR 2919 takes a comprehensive approach to addressing indoor air risks by requiring EPA to identify indoor air hazards and establish voluntary guidelines for reducing or eliminating those hazards. We think this approach is a good one, since it permits EPA to address not just chemical and biological contaminants, but also those situations which may be more directly attributable to building design, operation, or maintenance practices that might pose a hazard to building occupants. In cooperation with the National Institute for Occupational Safety and Health, EPA in 1991 published comprehensive guidance on how to prevent and resolve indoor air quality problems in public and commercial buildings. Entitled *Building Air Quality: A Guide for Building Owners and Facility Managers*, this book made the Government Printing Office's "best seller list" shortly after its release. More than 21,000 copies have now been sold. Since its publication, we have supported the training of more than 5,000 building owners and facility management personnel on the use of the Guide. This has been accomplished through the cooperative efforts of the Building Owners and Managers Association, International, and through the Agency's Regional Radon Training Centers.

Additional guidance for school personnel, for architects of new buildings, and for health professionals is expected to be published within the coming year and will provide additional guidance on how to prevent and resolve indoor air hazards.

These documents provide a good start in implementing Sec. 2702 of HR 2919.

Obviously, one of the elements of this bill which will likely engender lively and intense debate is the provision that would permit the EPA Administrator to make these guidelines mandatory. This provision, in essence, would give EPA its first comprehensive regulatory authority over indoor air quality and as such is likely to be viewed with a great deal of suspicion and trepidation by those whose activities might someday be regulated -- most notably those who manufacture products or are involved in the design, ownership, or management of buildings. Concern has also been expressed over the fact that this provision would, in essence, provide EPA with regulatory authority over the workplace, an area that has traditionally been the responsibility of the Occupational Safety and Health Administration (OSHA).

I will address these issues directly. It is, of course, impossible for an Agency to argue against the kind of flexibility embodied in this bill. However, in many cases, we have found that with the proper economic and other incentives, voluntary programs can often be more effective than the traditional command and control regulatory approach. We at EPA are committed to fully exploring the potential for voluntary actions to control indoor air quality before we would turn to a mandatory program.

With this in mind, in the coming year we will establish a voluntary partnership program designed to institutionalize the practical guidance in *Building Air Quality* by providing

opportunities to owners, managers, and occupants of public, commercial, and school buildings to enter into voluntary partnerships with EPA to implement these prevention and problem solving approaches in their buildings.

Despite the very real economic incentives that exist for many organizations to deal with IAQ issues -- including reduced labor costs and reduced liability -- it is also true that for many segments of society, these incentives are overshadowed by other considerations, mostly economic in nature. Energy conservation and limited budgets for maintenance and operations -- particularly in the nation's approximately 110,000 schools -- may limit the ability of strictly voluntary programs to effect the kind of change that may be necessary to ensure acceptable indoor air quality in the nation's buildings. Consequently, it is possible that despite our best efforts to stimulate voluntary actions to improve indoor air quality, these efforts may not be sufficient and sometime down the road it may be necessary to make some of these guidelines mandatory.

Should the EPA Administrator make such a determination sometime in the future, EPA would, of course, follow appropriate rulemaking procedures to ensure extensive public involvement and ample opportunity for notice and comment. To date, our indoor air program has had excellent working relationships with the other Federal agencies and many affected industries and groups, and any regulatory action would be taken with the full involvement of these groups and the public.

Of concern to some is the possibility that EPA may some day seek to regulate indoor air quality in the workplace, creating an untenable confusion of regulations which might overlap or even conflict with those of OSHA. The Administration agrees that good government does not create duplicative or conflicting legislative mandates. However, the Occupational Safety and Health Act (OSH Act) does not cover public sector employees in those States that do not have an approved plan for operating their own safety and health programs. Currently, there are 29 States without plans. If OSHA developed an indoor air quality rule to cover private sector employees, those States that operate their own, Federally approved occupational safety and health plans would be required to develop and enforce equally protective indoor air quality rules covering State and local government employees. No protection would be afforded public sector employees in the other 29 States, however. Consequently, thousands of workers in schools and government buildings would not be covered and we think it is appropriate that authority be conveyed to the Executive Branch to augment the OSH Act authority to ensure that these employees are protected from indoor air quality problems, should such a program be deemed necessary.

We would be pleased to work with the Subcommittee, as well as OSHA and other Federal agencies with overlapping legislative authorities, to ensure that HR 2919 augments -- rather than confuses -- the Federal government's ability to effectively address indoor air quality issues.

Indoor Air Contractors

EPA's indoor air program has been concerned for several years with the rapid expansion of businesses providing a wide range of indoor air quality diagnostic and mitigation services to the public. The complexity and diversity of indoor air issues has led to a huge increase in the number of companies that provide services ranging from duct cleaning and heating, ventilating, and air conditioning system repair to a variety of industrial hygiene, engineering and sophisticated chemical and biological sampling and analysis services. In addition, the public is bombarded with advertisements for a variety of devices designed to improve indoor air quality, from air cleaners, to dehumidifiers, to a range of pollutant monitoring devices. The potential for huge consumer losses certainly exists, through fraud, misrepresentation, or lack of competent service providers, and EPA has made an effort to improve the services available to consumers through a number of activities, although the Agency lacks explicit authority to develop certification programs for such contractors.

EPA recently completed a survey of firms that provide a range of indoor air quality services, and identified over 1500 such companies, although this may be an under-estimation of this rapidly expanding field. In addition, since 1990, EPA has served as the funding mechanism and catalyst for an interdisciplinary group of more than 100 organizations representing a cross-section of indoor air quality service providers. The purpose of this group is to promote and enhance the level of competence and training of IAQ

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Washington, D.C. 20503

SPECIAL

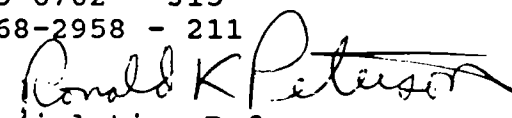
October 22, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-800

TO: Legislative Liaison Officer -

AGRIC-CR - Hal Gross (all testimony) - (202)720-7095 - 230
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
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NEC - Sonia Mathews - (202)456-6722 - 429
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FROM: RONALD K. PETERSON (for) 
Assistant Director for Legislative Reference

OMB CONTACT: Richard MERTENS (395-6931)

SUBJECT: EPA Proposed Testimony on Superfund - States'
Role

DEADLINE: 10:00 AM October 26, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

K. Turco
D. Baker
A. Fraas
K. Glozer

~~K. McGinty~~
C. Walden/B. Burke
H. Paster



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

TRANSMISSION NUMBER: 202/395-5836
VERIFICATION NUMBER: 202/395-6827

ENVIRONMENT BRANCH
ROOM 8222
NEW EXECUTIVE OFFICE BLDG.

To: Name RAND / LINDA BREGGIN Fax # 2710

From: Rick Morten

Message:

Attached are revised pp. 16-18 of the
Supers fund testimony that addressed our
concerns about discussing the matter
reauthorization. EPA is anxious to
get this testimony to the Committee. I've
asked them to hold it until CEP has
commented.

Number of Pages to Follow: 3

Date: _____

Time: _____

10/27/93 12:31 0202 260 3185

EPA CONG LIASON

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- 3) There must be viable potentially responsible parties (PRPs) willing to conduct a CERCLA-quality cleanup;
- 4) The state to which the site would be deferred has an adequate program to enforce and oversee PRP work; and
- 5) The affected community has to support the deferral and continues to be involved during the response.

In addition to piloting the deferral concept, a State Deferral work group has been established which is developing guidance for a full-scale State deferral program. The group is considering several issues, including criteria States should meet to be eligible for the deferral program, criteria for what sites would be likely deferral candidates (much like those identified for the pilots), appropriate cleanup levels for deferred sites, and guidance regarding process, oversight, financial assistance, and public involvement.

While we are confident that more sites will be addressed more quickly than they otherwise would, the cost-savings due to the shifting of responsibility to the States and the reduction in duplication of effort will be difficult to measure in the short-term.

Long-Term Reauthorization Opportunities

Numerous opportunities to enhance the State role in Superfund exist for a reauthorized Superfund. Issues such as allocation of cost share, control over selection of remedy, and applicability of ARARs could be resolved under a new mandate, but this depends again on what kind of a future we envision. EPA is indeed developing a vision for States--one which, in the long run, increases the role that States play in cleaning up hazardous

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EPA CONG LIASON

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waste sites, ultimately resulting in one agency having primacy for response at any given site.

However, several priorities need to be factored into this goal including protection of the environment and human health, public involvement, and accountable use of federal resources. To balance all of these priorities we must address numerous issues into our new superfund program. Specifically, we should give more authority to States to conduct cleanups, while also increasing their accountability at these cleanup sites. We should also seek to find ways to work with States to make the

cleanups quicker and more efficient. EPA is also working with other Federal agencies through the White House CERCLA Reauthorization Task Group on draft reauthorization language which concern Indian issues.

New wording instead of bullets

Incorporates not consult

15/8/83

Several

CONCLUSION

The States and EPA together have grown in expertise in our efforts to clean up hazardous waste sites. The Administrator's vision for a future Superfund program is one in which capable and willing States ultimately will have more authority, where appropriate, to conduct response actions. To achieve this vision, EPA must continue to foster the development of State capability and work to support partnerships that achieve quality cleanups more quickly and more efficiently. We also realize that we have many options before us which we need to consider before the Agency takes a position on how best to expand the role of the States. Ultimately, with our steps during reauthorization to

New wording

NEW
1st half
of sentence
rearranged to
delete mention of
"deferral program"

10:27:00 11:32 0202 200 5188

EPA CONG LIASON

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explore opportunities for greater State involvement, we hope to create an effective cleanup program in which all stakeholders share a mutual sense of responsibility to protect the environment and human health.

Mr. Chairman, thank you for the opportunity to address the Subcommittee on these issues. I am happy to answer any questions you may have.

800

DRAFT

10/22/93
9:15am

STATEMENT OF
ELLIOTT LAWS
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND HAZARDOUS MATERIALS
OF THE
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 28, 1993

INTRODUCTION

Mr. Chairman and members of the Subcommittee: Thank you for the opportunity to appear today to discuss the role of the States under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended. In her testimony before this Subcommittee on May 13 of this year, Administrator Browner voiced the Environmental Protection Agency's (EPA) commitment to working in partnership with all parties "that have an interest in the smooth, efficient operation of Superfund." Under Superfund, the Federal government, States, and Indian Tribes share responsibility for ensuring that the cleanup of the Nation's hazardous waste sites is efficient and protective of the public and the environment. Indeed, State and Indian Tribal involvement with the Superfund program has been evolving and growing since the inception of the program, and many States are working to develop the capability to implement their own cleanup programs. However, we have also heard many stakeholders in the Superfund program claim that the current system of shared Federal and State roles under Superfund often results in duplication of effort, as well as conflicts and delays

S. Rollins 260-541-7

in cleanups. The Agency desires to maximize the efficient use of resources of all the stakeholders involved in the program, and we are committed to continuing to encourage State participation in the Superfund program and increasing States' ability to conduct cleanups under their own authorities.

Today, I would like to discuss with you the structure of the Federal/State partnership under the Superfund program, considering accomplishments and criticisms of the Superfund program, as well as opportunities for expanding the role of States in Superfund, both in the short-term and the long-term.

STATE INVOLVEMENT IN CURRENT PROGRAM

Assurances

Although the Superfund program, as currently structured, is basically a Federally-implemented program, when Congress enacted CERCLA in 1980, it provided for the development of a Federal/State partnership by requiring States to provide certain assurances to EPA before a Fund-financed long-term cleanup action at a site could be initiated. Under CERCLA, as amended, States are required to provide five assurances. By not providing these assurances, a State may prevent EPA from selecting a remedy at Fund-lead site with which the State does not concur. States must assure:

- 1) Assumption of responsibility for the operation and maintenance of any CERCLA-funded cleanup;
- 2) A share in the cost of the Fund-financed portion of the cleanup at a site;

- 3) Availability of an acceptable hazardous waste disposal facility if off-site treatment, storage, or disposal is required;
- 4) Availability of adequate capacity to treat or dispose of all hazardous waste for a 20 year period, which commences on the date of the State/EPA agreement to Federally-fund the latest cleanup; and
- 5) Acceptance of title to property acquired with CERCLA funds in order to conduct a cleanup.

Of these five assurances, Indian Tribes must only make the assurance to accept title to property.

Substantial and Meaningful Involvement

The 1986 amendments to CERCLA strengthened the States' role in, and responsibility for, cleaning up hazardous waste sites. Under CERCLA, as amended, EPA is required to provide for "substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State."

State involvement requirements in CERCLA, as amended, include:

- State participation in decisions regarding performing preliminary assessments and long-term planning for all remedial sites;
- Opportunity for States to review and comment on all phases of response, including proposed remedial plans;
- EPA notification to the State of negotiations with potentially responsible parties (PRPs); and
- State concurrence before a site is deleted from the National Priorities List (NPL).

The law also explicitly requires remedial actions to attain a degree of cleanup that meets all (with some exceptions) State

applicable, relevant, and appropriate requirements (ARARs) in addition to Federal ARARs.

These provisions, and EPA's implementing regulations, establish significant Federal as well as State interests at many sites and provide many opportunities for coordination and interaction between EPA and States. However, as this Committee is probably aware, these same requirements, by their very design, can invite duplication of effort and inconsistent approaches to cleanup throughout the country.

CERCLA, as amended, also allows EPA to enter into cooperative agreements with States to conduct or support response actions. Additionally, Superfund regulations lay out how EPA can build State capability to undertake Superfund responses using State authorities and encourage States to enter into EPA/State Superfund Memoranda of Agreement (SMOAs) to improve communications among agencies.

ACCOMPLISHMENTS

State Programs

The Superfund program has had both a direct and an indirect impact on the role of States and Tribes in cleaning up hazardous waste sites. States have actively participated in cleanups at sites on the National Priorities List (NPL), and many have enacted their own laws and developed programs with authorities and capabilities to conduct cleanups similar to the Federal Superfund program. It is important to note, however, that there is wide variety among States with respect to individual

capabilities, preferences for involvement in Superfund, and relationships with EPA. Representatives of State associations have generally portrayed States as falling within four categories:

- 1) States with large, well-developed Superfund programs that would welcome a delegated/authorized-type program;
- 2) States with emerging programs that need Federal financial assistance to be fully capable;
- 3) States with fledgling programs that need Federal assistance to develop; and
- 4) States that have decided not to invest resources in developing Superfund programs.

In general, a State "Superfund" program has some or all of the following characteristics:

- 1) Procedures for emergency response actions and longer-term remediation of environmental and health risks at hazardous waste sites;
- 2) Provisions for a fund or other financing mechanisms to pay for studies and remediation activities;
- 3) Enforcement authorities to compel responsible parties to conduct or pay for studies and/or remediation; and
- 4) Staff to manage publicly-funded cleanups and oversee responsible-party-lead cleanups.

As of 1991, 29 States were actively conducting programs for removals and remedial actions at contaminated sites using their own funds and enforcement authorities. An additional 12 States also had the legal capability to conduct cleanups but were conducting limited cleanup activities, generally due to low fund balances or inadequate staffing levels.

In 1991, 50 States and Territories had established funding mechanisms for one or more purposes relating to mitigation of

hazardous waste risks; however, considerable variation exists in the authorized uses of these funds, including restrictions and preconditions. In 1991, States reported spending or encumbering nearly \$430 million in State funds on cleanups in the previous fiscal year. It is worth noting, however, that 11 States accounted for 83% of the total, while the majority of States (34) spent or encumbered less than \$5 million each that year.

Cooperative Agreements

Since 1987, the Superfund program has made a significant continuing investment in helping States build programs to conduct cleanup responses. As of 1993, EPA had obligated roughly \$85 million through Core Program Cooperative Agreements to 52 States, Territories, and Indian Tribes to assist them in developing the "core" or basic structure of their cleanup programs. These funds are not for site-specific purposes, but are used to develop States' legal authorities, to establish procedures for emergency and longer-term responses, to hire staff and develop expertise to manage publicly-funded cleanups, and to enhance State/EPA/Tribal interactions. We believe that the Core Program funds have played a significant role in strengthening the capability of numerous State cleanup programs.

EPA has also directly worked to encourage State involvement in site-specific activity conducted under CERCLA. As of 1992, EPA had obligated over \$1.25 billion to 51 States, Territories, and Indian Tribes in site-specific Cooperative Agreements. EPA's financial support to the States in the six years since CERCLA was

amended in 1986 has quadrupled the support we provided in the six years preceding 1986.

In these site-specific Cooperative Agreements, States have both taken the lead for, and provided support to EPA during, all phases of response at a site. For example, close to 60% of all preliminary site assessments (the first evaluation conducted after site discovery) completed since 1981 have been conducted by States under Cooperative Agreements with EPA. As sites have progressed through the different phases of remedial response actions, States have continued to take the lead responsibility, but with less frequency at each progressive phase of response: as of 1993, States have completed 35% of all site inspections, nearly 15% of all remedial investigations/feasibility studies, and close to 10% of all remedial designs/remedial actions.

Indian Tribal Programs

As sovereign nations, Indian tribal participation in the Superfund program has presented unique challenges. Tribal programs have grown slowly, but, with funding available through Core Program Cooperative Agreements, since 1989, we have seen the advent of unique collaborative relationships among the tribes to marshal and share resources to implement Superfund. Presently, four tribes or Tribal consortia representing a total of 51 tribes are receiving Core Program support. As a result, Tribes have been able to take on Superfund work in areas of assessment, investigation, and support to Federal action that they were previously unable to supply. These new capabilities have

provided the Tribes a larger voice in how Superfund cleanups are conducted, highlighting the unique issues of religious and cultural significance that bear on cleanups on Indian lands, and a greater ability to control impacts to Indian lands and jurisdictional areas from sources outside these lands.

Training

In addition to the Core Program funding, EPA has also assisted States in improving their capabilities by providing training opportunities. EPA trains its Remedial Project Managers (RPMs) through the CERCLA Education Center (previously the "Superfund Academy"), which States have attended on an "as available" basis. In response to the States' desire to make the Center's training available to more States, EPA offered two sessions of "States-only" training, attended by roughly 100 State representatives. These sessions were well-received by the States, and EPA has agreed to provide another two sessions of the "States-only" program in 1994.

In addition, many States participate in the EPA "Hazardous Materials Incidence Response" course which provides 40 hours of health and safety training required for on-site work. EPA also provides the States training focused on particular response activities such as early site assessment work, Superfund response agreements, and remediation of ground water contamination by dense non-aqueous phase liquids (DNAPLs). Training is often held near the EPA Regional offices and sometimes near State capitals.

State/EPA Interactions

Finally, I would like to mention several of the mechanisms we have in place to facilitate positive State/EPA interactions. Several EPA Regional and State offices have designed procedures for State/Federal interactions that have improved communications and led to positive results. These interactions range from all-day retreats for EPA and State managers to regular, joint planning sessions. Some Regions and States have mutually designed informal dispute resolution procedures in their respective offices to ensure timely resolution of issues.

Finally, EPA and States have held several National meetings to work through issues related to implementation of the Superfund program, and to enable EPA to receive State input on their experiences with similar issues at the State level. Two recent meetings with the States relating to the development of soil cleanup standards and procedures have been especially productive for both EPA and the States.

CRITICISMS OF THE CURRENT PROGRAM

You may already be familiar with several criticisms that have been raised about the Superfund program in regard to State roles. I would like to discuss briefly some of these issues and then share with you our plans to address some of these concerns in the short-term through administrative improvements. After that, I will explore with you several ideas for longer-term opportunities to enhance the role of States and hopefully

increase the efficiency and effectiveness of the Superfund program.

Efficient Use of Resources

While the goal of the consultative aspects of CERCLA is to engender a State/Federal partnership, many believe it is this shared aspect of the current program that contributes to inefficiencies and delays in cleanup. One of the most common criticisms has been that the simultaneous involvement of States and the Federal government at a single site results in a duplication of effort that wastes time and resources. Critics have argued that the extensive review and commenting that occurs throughout the remedial process not only frustrates State and EPA relations, but it also causes needless delays in the conduct of a response at a site and wastes resources that could otherwise be used to clean up that or other sites. Critics argue that CERCLA, as amended, and its implementing regulations include duplicative requirements for EPA and States: though they were originally designed to provide protective checks and balances for a newly-emerging program, these provisions and regulations may now hinder effective site cleanups where both the States' and EPA's expertise is highly sophisticated.

Remedy Selection

EPA solicits State comment on the preferred remedy for a site before publishing a proposed remedial plan, which usually includes either an EPA/State agreement or an explanation of the State's concern. When EPA is the lead agency for the response

action at an NPL site, it seeks, but is not required to obtain, State concurrence on the recommended remedy (though, as I mentioned before, a State may, in effect, veto EPA's decision at Fund-financed sites by not providing the CERCLA-required assurances). When the State is the lead agency at an NPL site with a Fund-financed remedy, the State may prepare the record of decision, but it generally must obtain EPA's concurrence and adoption of the State-recommended remedy. This arrangement has led to the conflict informally termed "dual primacy." Many active States believe they should be able to select remedies at NPL Fund-financed sites without EPA concurrence. This suggestion, however, raises the question of who would determine whether Federal funds are being spent effectively and efficiently by States.

Applicable or Relevant and Appropriate Requirements

The State/Federal relationship is also affected by the manner in which EPA must attain State cleanup standards in performing a remedy at an NPL site. Under CERCLA, as amended, EPA remedial actions must meet or waive a State's applicable or relevant and appropriate requirements (ARARs) for the remedial action. ARARs have a substantial impact upon remedy selection decisions and are a major area of tension between EPA and States. Generally, the State ARARs that cause the most conflict between EPA and States are those cleanup standards which tend to be more stringent than what EPA believes are necessary to assure adequate protection of the environment and human health. Critics argue

that the process of identifying and applying State ARARs both delays the implementation and drives up the cost of EPA-selected remedies. However, Regional decision-makers indicate that at half of the sites, Federal ARARs determine the clean-up level or remedy selected; while at the rest of the sites, State ARARs determine the remedies.

Cost Share and Operation and Maintenance Assurances

As I mentioned earlier, States are required to share in the cost (generally ten percent) of any Fund-financed remedial action. This is another source of concern for many States. EPA estimates that through fiscal year 1993, States have agreed to pay more than \$330 million in cost share for remedial actions; approximately \$45 million in such assurances have been made in fiscal year 1993 alone. Some States either already have or may soon have difficulty assuring the ten-percent cost share.

Several States have also argued that the Federal government should share more of the cost burden of conducting operation and maintenance (O & M) at a site. Currently, States are required to provide assurance for the entire cost of O & M (excluding, in some cases, groundwater treatment for up to ten years). Very preliminary estimates of such current and future costs indicate that these obligations could possibly total \$1 billion or more through fiscal year 2000, with costs currently accruing at a rate of about \$90 million per year and steadily increasing.

Furthermore, some States have expressed the view that EPA has no incentive to contain O & M costs. Critics argue that, to

preserve Federal resources, EPA tends to select remedies which have low capital costs and are O & M-cost intensive. In contrast, a 1991 study funded by EPA concluded that there is little difference between the average capital cost and O & M estimates of remedies that are Fund-financed and those that are financed by potentially responsible parties (PRPs). Nonetheless, EPA recognizes, and is sensitive to, the concern that States will have increasing difficulty in meeting the O & M assurances for responses at future sites.

Delays

The current approach which requires the continuous involvement of both EPA and the State in each cleanup necessarily requires significant amounts of time to ensure that both entities fully understand and agree with the many investigations and decisions required at each site. Even under the most harmonious circumstances, some inefficiencies and delays will be unavoidable; efforts to coordinate at the more difficult sites, however, can require substantial investments of time, while generating frustrations for all parties that might be avoided were one entity or the other in charge.

LOOKING INTO THE FUTURE

We believe that the current approach affords opportunities for meaningful State involvement in the Superfund program. Yet we recognize that problems have arisen that have demonstrated the need to improve the effectiveness and efficiency of the program. We have also long agreed with States that the universe of

hazardous sites potentially requiring cleanup is larger than either EPA or States can address alone. Additionally, we realize that, as State capabilities continue to improve, EPA needs to develop a vision of what should be the future role of States in the Superfund program.

Specifically we need to consider: How much of this program should remain a Federal responsibility? What should be the ultimate responsibility of a State to clean up hazardous waste sites? What role should the Federal government play to facilitate development of State capability to take on greater responsibilities? In conjunction with the program's stakeholders, our task is to define a role for States that ensures protection of the environment and human health while making best use of the resources at the Federal and State levels and minimizing the conflicts that currently exist within the Federal/State partnership.

As we make our way toward reauthorization of the statute, we have the opportunity to address these concerns using both short-term and long-term approaches. We hope to enhance the Superfund program in the short-term through our efforts to apply administrative improvements, which I will discuss next; and we look forward to considering more long-term reforms with you during reauthorization.

Short-Term Administrative Improvements (Deferral)

The "Superfund Administrative Improvements Final Report" of June 23, 1993, committed EPA to implement an initiative to

encourage earlier environmental cleanup by deferring a limited number of site cleanups to States, thereby enlisting their participation in a complementary cleanup program. This program would encourage qualified, interested States to address, under State laws, the large number of sites now in EPA's listing queue. We anticipate that this deferral program will accelerate cleanup and minimize duplicative State/Federal efforts. The program does not address all avenues of State participation in the Superfund program, but we believe it is a good stepping stone to further long-term enhancements in State involvement.

Currently in its pilot stages, our deferral initiative has identified sites in four States which we will defer to these States for their response. Additionally, we are working with a few States to determine whether the concept of a State-wide deferral program is feasible.

To become deferral pilots, sites had to meet certain conditions:

- 1) The sites are NPL-caliber (i.e., they are sites which we expect, but have not verified, would qualify for a CERCLA-funded remedial action);
- 2) Due to resource or other constraints, EPA will not likely address the sites within the next couple of years;
- 3) There must be viable potentially responsible parties (PRPs) willing to conduct a CERCLA-quality cleanup;
- 4) The State to which the site would be deferred has an adequate program to enforce and oversee PRP work; and
- 5) The affected community has to support the deferral and continues to be involved during the response.

In addition to piloting the deferral concept, a State Deferral work group has been established which is developing guidance for a full-scale State deferral program. The group is considering several issues, including criteria States should meet to be eligible for the deferral program, criteria for what sites would be likely deferral candidates (much like those identified for the pilots), appropriate cleanup levels for deferred sites, and guidance regarding process, oversight, financial assistance, and public involvement.

While we are confident that more sites will be addressed more quickly than they otherwise would, the cost-savings due to the shifting of responsibility to the States and the reduction in duplication of effort will be difficult to measure in the short-term. I expect to have better information on this in the Spring of 1994.

Long-Term Reauthorization Opportunities

Numerous opportunities to enhance the State role in Superfund exist for a reauthorized Superfund. Issues such as allocation of cost share, control over selection of remedy, and applicability of ARARs could be resolved under a new mandate, but this depends again on what kind of a future we envision. EPA is indeed developing a vision for States--one which, in the long run, increases the role that States play in cleaning up hazardous waste sites, ultimately resulting in one agency having primacy for response at any given site.

However, several priorities need to be factored into this goal including protection of the environment and human health, public involvement, and accountable use of Federal resources. To balance all of these priorities we must address numerous issues into our new Superfund program:

- Our approach should recognize the differences in capability and preferences among States and offer them options that let States build upon their strengths and take on more responsibility as their capability and level of involvement develops.
- We should decide whether the law should include the establishment of minimum National cleanup levels to ensure consistency in the quality of cleanups at sites across the States.
- We need to determine to what extent the Federal government and States should share in the combined burden of remedial and operation and maintenance expenses, especially where States are taking on increased responsibilities for cleanups.
- Our new approach should resolve whether to use the Fund only to clean up sites to meet Federal standards of protectiveness, or to allow the Fund to support the cleanup of sites to State standards which extend beyond Federal protectiveness levels. We also need to identify sites which should receive Federal cleanup resources.
- We will need to design oversight mechanisms which enable EPA to meet its fiduciary responsibilities related to the Fund and its oversight obligation to Congress as well as avoid a level of EPA intrusion which States would find objectionable.
- Any new approach that gives more authority to States to conduct cleanups should maintain and improve upon the levels of public involvement currently available.

CONCLUSION

The States and EPA together have grown in expertise in our efforts to clean up hazardous waste sites. The Administrator's vision for a future Superfund program is one in which capable and willing States ultimately will have primary responsibility, where appropriate, to conduct response actions. To achieve this vision, EPA must continue to foster the development of State capability and work to support partnerships that achieve quality cleanups more quickly and more efficiently. We also realize that we have many options before us which we need to consider before the Agency takes a position on how best to expand the role of the States. Ultimately, with our steps to develop a deferral program and our commitment to explore opportunities for greater State involvement during reauthorization, we hope to create an effective cleanup program in which all stakeholders share a mutual sense of responsibility to protect the environment and human health.

Mr. Chairman, thank you for the opportunity to address the Subcommittee on these issues. I am happy to answer any questions you may have.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

October 26, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-823

TO: Legislative Liaison Officer -

AGRIC-CR - Hal Gross (all testimony) - (202)720-7095 - 230
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SBA - Christine Swedin - (202)205-6702 - 315
OSTP - Chris Clary - (202)456-7116 - 288
NEC - Sonia Mathews - (202)456-6722 - 429

FROM: RONALD K. PETERSON (for) *Ronald K Peterson*
Assistant Director for Legislative Reference

OMB CONTACT: Zach CHURCH (395-6944)

SUBJECT: EPA Proposed Testimony on Implementation of
the Clean Air Act

DEADLINE: 5:00 PM October 27, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

C. Walden/B. Burke

~~K. McGinty~~

G. Simon

H. Paster

A. Fraas

**TESTIMONY OF
CAROL M. BROWNER
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

Oct. 29, 1993

Mr. Chairman and Members of the Committee, thank you for the opportunity to discuss with you today the Environmental Protection Agency's efforts to carry out the Clean Air Act Amendments of 1990. Mr. Chairman, I know that you and other Members of this Committee played an instrumental role in the authorship in these Amendments. I would like to commend you for your work in crafting this historic legislation to protect the health of the American people and the quality of our environment. The Clinton Administration shares your strong desire to clean up the nation's air. Moreover, I want you to understand that I have a personal commitment to ensure that the Clean Air Act Amendments are implemented in a manner which will protect health and the environment, minimize costs, and encourage pollution prevention and innovative technologies. We are continually looking for ways we can get the greatest air quality improvements for the least cost.

R. Mera

Guiding Principles

As EPA implements the Clean Air Act, there are four major goals and principles that will guide our efforts. Number one, we will greatly enhance EPA's efforts to work with state and local governments. We will build true partnerships. As more and more federal rulemaking occurs, state and local governments bear ever greater responsibility for implementing requirements ranging from the new operating permit program to enhanced vehicle inspection-and-maintenance programs. We need to provide the training, guidance, grant money, and technical support to ensure that state and local governments can successfully assume and manage strong programs that will solve their air pollution problems. Last May I announced the establishment of a satellite downlink network to broadcast training and informational programs to almost 100 state and local air pollution control agencies around the country for a fraction of the cost of traditional training programs.

Number two, we will seek to eliminate the adversarial nature of the rulemaking and regulatory process. An important part of public outreach efforts is to encourage consensus through broad consultation with outside parties. We must reach out to all who have an interest in and are affected by our rules and regulations. It is important to conduct regulatory negotiations, such as the one we are currently undertaking to reduce emissions of volatile organic compounds from architectural and industrial maintenance coatings. We recently established a subcommittee of the Clean Air Act Advisory Committee to examine ways to simplify and streamline

the "new source review" process under the Act while preserving the environmental benefits of the program. The Subcommittee is composed of representatives from several industries, environmental groups, states and federal agencies, such as the National Park Service. I believe these kinds of efforts result in better rules and programs, reduce chances of legal challenge, and enhance the ability of EPA and state and local governments to achieve effective implementation of the Act.

Another way to reduce controversy over rules is to have a good scientific basis for regulatory decision-making. To that end, I want to continue to promote public/private partnerships to help maximize resources and develop scientific consensus on the most effective ways to tackle persistent air pollution problems. An excellent example of this is the Southern Oxidant Study to investigate urban ozone problems in the South. EPA's contributions are more than matched by the private sector and other federal and state agencies. Working together benefits all of us through the maximization of resources and expertise.

My third broad goal in implementing the Act is to encourage pollution prevention and innovative control technologies. Where possible we will encourage solutions that set tough standards for pollution reduction, leaving the flexibility to regulated entities to devise the best means to prevent pollution. For example, our industrial process cooling tower rule eliminates chromium emissions through a change in feedstocks, not through end-of-the-pipe

controls. Here are just a couple of examples of the many new technologies under development that may contribute to cleaner air:

- AT&T: natural solvent found in cantaloupes substitutes for trichloroethylene in electronics manufacturing
- Custom Coals Corp.: new technology produces cleaner-burning coal by removing approximately 90 percent of sulfur through a combination of advanced coal cleaning and combustion techniques using additives

The Clean Air Act Amendments of 1990 have stimulated demand for pollution prevention and control technologies, and in the process have created new business opportunities and jobs in the billion-dollar air pollution control industry. We are working with the Department of Commerce and business community to identify these business opportunities. In September we held our second annual national conference exploring new business opportunities and markets created by the 1990 Amendments. Co-sponsored by a wide variety of state, local, environmental and business associations, the conference was a great success, laying the groundwork for increased jobs and expanded exports of pollution control technologies over the next several years. We also have established a "Clean Air Marketplace" database to document the vast array of technological advances and new business and export ventures that have arisen since passage of the 1990 Amendments.

Regulations that set firm goals for pollution reduction, but give sources flexibility on ways to comply, are the best way to encourage pollution prevention and innovative technologies. We

will encourage market-based solutions, such as those that the Congress wrote into the acid rain provisions of the Clean Air Act. The emissions trading market under the program is now developing; we expect this market will provide a model for future market-based systems. Also, we have worked with the South Coast Air Quality Management District in California to develop a trading program to cost-effectively reduce emissions of nitrogen oxides and sulfur dioxide. This program, known as RECLAIM, recently has been adopted by the district, and EPA believes it will be federally approvable.

In addition to encouraging pollution prevention in regulatory programs, we are promoting programs that encourage companies to reduce emissions voluntarily. EPA has initiated innovative voluntary programs that reduce emissions of greenhouse gases, including carbon dioxide and methane, and other air pollutants. Three of these non-regulatory "Green Programs" promote use of energy-efficient lighting, building energy systems, and computers. Other programs will encourage reductions in emissions from natural gas transmission and distribution; assist the profitable capture of methane from coal beds during and prior to mining; and encourage steps to prevent water and air pollution from feedlot waste stored in lagoons. In each program, emissions reductions are achieved through private-public partnerships with businesses and other organizations. Organizations sign an agreement with EPA and commit to making efficiency upgrades wherever it is profitable. Assisting organizations in making profitable energy efficiency and methane reduction investments helps save million of dollars and creates

thousands of jobs. The Green Programs are an example of how we are working cooperatively with the private sector to arrive at economically attractive ways to protect the environment while improving productivity and competitiveness.

My fourth major goal is to examine the environmental justice questions associated with implementing the Clean Air Act. Many of the rules I mentioned earlier, such as those reducing air toxic emissions from dry cleaners, will benefit inner city communities. I am interested in initiating other projects to identify and reduce air pollution that is disproportionately affecting the poor and people of color.

Progress in 1993

As you know, the Amendments require a regulatory undertaking of immense proportion, affecting virtually every sector of our society. Since assuming my job in January, I have signed more than 25 proposed and final rules implementing major provisions of the Act to reduce urban smog (ground-level ozone), combat acid rain, cut emissions of toxic pollutants, and protect the stratospheric ozone layer.

To protect the ozone layer, for example, I have signed a final rule requiring training and certification to recover and recycle refrigerant from air-conditioning and refrigeration units during repair and disposal. I also have signed rules that require labelling of products containing chlorofluorocarbons (CFCs) and ban class II nonessential uses of ozone depleting chemicals. I have

signed proposed rules accelerating the phaseout of the production of CFCs to January 1, 1996; and identifying safe alternatives to ozone depleting compounds.

In the past nine months we have taken several steps to reduce emissions of air toxics. For example, I have signed a final rule requiring technology controls and/or improved work practices at 25,000 industrial and commercial dry cleaners. This will reduce projected 1996 emissions of a hazardous air pollutant, perchloroethylene, by as much as 70 million pounds. This month I signed a final rule cutting hazardous coke oven emissions from steel plants by 84 to 92 percent. I have also signed proposed rules that would:

- eliminate chromium emissions from industrial process cooling towers;
- provide flexibility for states to establish their own air toxics programs under section 112(1);
- establish general provisions for all maximum achievable control technology (MACT) standards;
- establish procedures to help states make case-by-case technology air toxics decisions under section 112(j); and
- provide guidance for risk management plans and prevention programs to address accidental releases of air toxics.

One of the first great success stories from implementing the 1990 Amendments is the oxygenated gasoline program. This program began its first season on November 1, 1992, in 36 areas of the country not attaining the federal air quality standard for carbon

monoxide. Preliminary data for last year indicate an 80 percent decline in the number of violations of the carbon monoxide standard. Excluding areas that had oxygenated gasoline programs prior to 1992, the improvement is even more dramatic: a 95 percent decline in the number of carbon monoxide standard violations. Although normal year-to-year variations in meteorological conditions or patterns of vehicle use might have contributed to the improvements in some carbon monoxide areas, the aggregate national data strongly suggest that oxygenated gasoline is helping to improve air quality.

The Clinton Administration plans to aggressively enforce the Clean Air Act. In May Attorney General Reno and I announced an \$11.1 million penalty resulting from a settlement of an enforcement action against Louisiana Pacific Corporation. This is the largest penalty EPA has ever collected under the Clean Air Act and the second largest civil penalty under any environmental statute. The settlement also requires Louisiana Pacific to install new state-of-the-art controls built by American workers that will result in about 22,000 tons of reductions of volatile organic compounds, particulate matter, and carbon monoxide from 11 wood panel facilities nationwide.

These are just examples of the steps we have taken in the past nine months to implement and enforce the Clean Air Act.

Since Congress passed the Clean Air Act Amendments of 1990, EPA has issued over 150 proposed and final rules and guidance documents. When fully implemented in the year 2005, the Amendments

will remove an estimated 57 billion pounds of pollution from the air each year. To date EPA has proposed or promulgated rules that will account for 85 percent of those 57 billion pounds.

The Challenge of Expediting Implementation

We are all cognizant that despite this tremendous progress and the diligent efforts of Agency staff, EPA has not been able to meet all of the CAA statutory deadlines. The missed deadlines are unfortunate because health and environmental protection is provided later than Congress intended. As you know, environmental groups and others have initiated lawsuits to compel the agency to take action in those areas where we have missed congressionally mandated deadlines. The result has been a series of settlement agreements or court-ordered deadlines resulting from statutory deadlines missed in 1991 and 1992. Rules with court deadlines must be developed at the same time that the Agency is trying to meet statutory deadlines for additional rules. This situation compounds the challenge of meeting statutory deadlines and leaves the Administrator little flexibility to set regulatory priorities. This underscores the need to meet statutory deadlines in the first place.

One of my main goals in implementing the Clean Air Act is to try to reverse this trend of missed statutory deadlines. One of the major reasons for missed deadlines is the extended regulatory review some rules received under the previous Administration. Key rules -- including the rule establishing the new operating permits

program, the rule proposing significant acid-rain-related nitrogen oxide reductions from utility boiler operation, and the rule proposing significant emission reduction from the chemical manufacturing industry -- languished for month after month under this process. As you know, President Clinton abolished the Council on Competitiveness as one of his first acts in office. More recently, he signed an Executive Order which will further reform and streamline the process by which EPA rules are reviewed by OMB, and he has appointed a reform-oriented Administrator, Sally Katzen, to run the new process. Both Sally Katzen and myself have pledged to work together to forge a new and more productive relationship; we have already formed a management working group to implement this relationship. We fully expect this new arrangement to result in more timely OMB reviews.

In addition to these changes in our OMB relations, we are also developing a new, more streamlined regulatory process within EPA itself, consistent with the recommendations of Vice-President Gore. Mr. Chairman, you have asked for information on this effort. We have redesigned the EPA regulatory development process to ensure that the rules that need the most cross-Agency review receive the most attention, while streamlining the process for rules that don't require so much attention at top management levels. For those rulemakings that do require a lot of high-level cross-Agency attention, the new process will assure that EPA offices identify and agree upon issues and analytic requirements very early in the process, thereby eliminating the "late hit" syndrome which has

slowed us down in the past. For less significant rulemakings, the new process allows the delegation of effort down to the lowest level appropriate to the decisions required, eliminating many redundant steps of internal review. We expect the net result of these changes will be a much more efficient process overall -- one which we hope will significantly reduce the average time it takes EPA to develop a rule. We also expect it to foster a more timely and useful analysis of scientific and economic issues, better integration of these analyses into rule development, and ultimately to produce higher-quality rules. We plan to have this new process in place by January of 1994.

There are other reasons that EPA has fallen behind in implementing parts of the Act. The Act set out a very ambitious timetable, requiring 55 major regulatory actions in the first two years. Major programs had to be created from scratch or overhauled, a complicated task. Second, many rulemaking efforts have been contentious, with states, environmentalists and industry putting conflicting pressures upon the Agency. Reaching the degree of consensus necessary to issue rules and to lay the groundwork for effective implementation has proven to be a lengthy process.

A third reason for delays is that the 1990 Amendments created a massive new workload for EPA. Although the budget for air programs has increased significantly, there is still an immense job ahead of us, as the following figures demonstrate. Prior to the 1990 Amendments, EPA's air office issued five to eight major rules per year. Under the new law, EPA must promulgate more than 120

regulations by 1995, an average of 24 rules per year. A heavy regulatory agenda continues through the year 2000. The law also requires EPA to conduct major research programs and carry out more than 90 studies. We will be considering 120 new permit programs submitted by state and local air pollution agencies, which will lead to permits for 34,000 major sources of air pollution and potentially 350,000 smaller sources. In addition, we will be evaluating hundreds of state implementation plan revisions.

Mr. Chairman, your invitation letter said this hearing would examine how budget constraints are affecting EPA's ability to handle the large workload created by the 1990 Amendments. It is important to note that funding for air programs has increased substantially since 1990, and that EPA has made great progress in carrying out the Act. But it is also important to recognize that budget constraints are one of the reasons that the Agency has missed statutory deadlines. EPA has struggled to keep up with the workload imposed by the 1990 Amendments. For example, the number of state implementation plan revisions submitted for processing more than tripled between 1991 and 1993. But the regional personnel available to process SIPs rose by only 21 percent.

Both Congress and the executive branch have had to contend with the federal budget deficit in setting funding levels for CAA implementation. As a result of congressional cuts in fiscal 1993 EPA funding, a hiring freeze was in effect for the Office of Air and Radiation for most of the past year. Also, the office suffered a 21 percent (\$30.2 million) cut in contract funding from the

fiscal 1992 level. This contract funding is important to support CAA rulemaking activities. Unfortunately, the Congress has just approved a fiscal 1994 appropriations bill for EPA that cuts \$61 million from the President's budget request for EPA's abatement, control and compliance account, which will reduce money available for contracts. Other changes in the bill will make it difficult for EPA to fund all the full-time equivalent positions it has been allocated. We cannot yet detail the impact of these congressional actions because we have not decided how these funding shortfalls will be distributed among Agency programs. But these shortfalls inevitably will hamper a range of Agency efforts.

Although EPA has done much to implement the 1990 Amendments, much work is left to be done. Congressional support for adequate funding to implement the Act will be critical for years to come. To illustrate: In the air toxics program, 45 standards are to be promulgated by 1994, 61 more by 1997, and 68 more by 2000. Already, many of the 1994 rules are on court-approved deadlines. Yet it is unclear whether any additional resources will be available for the program, given budget constraints. Even after rules are issued, EPA has continuing responsibilities to implement and enforce rules effectively, and often faces litigation challenging its rules.

In light of budget constraints, we are attempting to do our job in the most efficient way possible. As I mentioned, we are streamlining our internal rulemaking processes. But there is a limit to how far efficiency improvements can take us. If the CAA

is to be a success, EPA must have sufficient personnel and funding to produce high-quality regulations that achieve our environmental and economic goals, and to implement and enforce them effectively. I would urge members of this Committee to continue in the future to work with the Appropriations Committee to provide the resources needed for Clean Air Act implementation.

Improved understanding of air pollution

Mr. Chairman, I would like to note two areas in which our understanding of pollution problems has improved since enactment of the Clean Air Act Amendments of 1990. One of these areas is the role of nitrogen oxides (NOx) in the formation of ground-level ozone. As you know, ozone is formed by the combination of volatile organic compounds (VOCs) and nitrogen oxides (NOx) in the presence of sunlight and heat. As required by the Amendments, EPA in conjunction with the National Academy of Sciences has examined the role of NOx. The Academy reported and EPA agrees that NOx control is necessary for effective reduction of ozone in many areas, and that NOx control should be emphasized more than it has been under past EPA strategy. The Amendments require that area-specific and regional analyses using photochemical grid models be used to assess the effectiveness of alternative control strategies in the more polluted areas of the country. As these data become available, EPA plans to encourage and support efforts to address mid-course corrections to state implementation plans in ozone nonattainment areas. The Clean Air Act does not appear to provide EPA the

flexibility to allow states to substitute NOx controls for VOC controls in obtaining the 15 percent reductions required by the year 1996. However, we have the flexibility to allow NOx substitution beyond that point, if necessary. In the meantime, we have already proposed or promulgated rules that will help states achieve significant reductions of both NOx and VOCs.

Another example of "new" information since the Clean Air Act Amendments were passed is our understanding of the contribution nonroad vehicles and engines make to air quality problems. Substantial air quality improvements can result from changes to reduce emissions from nonroad engines. EPA's landmark 1991 study found that lawnmowers, construction equipment, power boats, and other nonroad sources produce significantly more emissions than had previously been thought. The study found that operating a crawler tractor for one hour emits the same amount of ozone-forming nitrogen oxides as driving a car 900 miles. As on-highway vehicles become even cleaner over the next few years, nonroad sources could rival cars, trucks, and buses in total contribution to air pollution. This spring, EPA proposed initial regulations limiting NOx emissions from heavy-duty diesel nonroad engines. Over the next two years EPA plans to propose additional standards for emissions of volatile organic compounds from small gasoline engines and marine pleasure craft engines.

Commendable efforts by states

I would like to note briefly examples of state and local agencies that have done a good job in implementing certain aspects of the Clean Air Act to date. Kansas and Missouri were the first states to obtain redesignation of an ozone non-attainment area to attainment status under the provisions of the 1990 Amendments. The Kansas City metropolitan area was reclassified to attainment in July 1992 after both states fully complied with the relevant requirements, including submittal of a plan to maintain air quality for 10 years. The key to this success was a cooperative effort involving citizens, business community leaders, public officials, the metropolitan regional council, two state and three local air agencies, and regional EPA staff.

I am pleased to commend the initiative taken by several states to pass legislation early -- in 1991 or 1992 -- for the Title V operating permits program. The efforts of Florida, Rhode Island, Colorado, Georgia and Missouri are good examples. EPA Regional Offices are working with all of the states to develop fully approvable programs. The majority of states have now obtained some form of enabling legislation for the Title V program and are in the process of developing their implementing regulations. Several states, including Georgia, Colorado and Wisconsin, are well on their way to submitting solid programs to EPA on a timely basis.

Conclusion

Mr. Chairman, you included in your recent invitation letter a list of many issues that you would like me to address. I have responded to several of those issues in my testimony. I stand ready to respond to additional issues during the question-and-answer period, and to submit additional material in writing if the committee desires.

In conclusion, Mr. Chairman, I want to reiterate my commitment to improving the Agency's track record on meeting regulatory deadlines. I look forward to working with you and other members of the Committee as we continue to undertake the enormous challenge of bringing clean air to the American people.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

October 20, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-1514

TO: Legislative Liaison Officer -

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FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
Assistant Director for Legislative Reference

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Secretary's line (for simple responses): 395-6194
Pam BARR (395-5052)

SUBJECT: EPA Proposed Testimony RE: S 1547, Safe
Drinking Water Act Amendments of 1993

DEADLINE: 10:00 AM October 26, 1993

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

A. Fraas
A. Kolajan
S. Redburn
H. Paster
K. McGinty

C. Walden/B. Burke
C. Sloan
B. Damus

**TESTIMONY OF
ROBERT PERCIASEPE
ASSISTANT ADMINISTRATOR FOR WATER
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SENATE COMMITTEE ON PUBLIC WORKS
AND THE ENVIRONMENT
U.S. SENATE**

October 27, 1993

Good morning, Mr. Chairman. My name is Robert Perciasepe, Assistant Administrator for Water at the U.S. Environmental Protection Agency (EPA). With me today is James R. Elder, Director of the Office of Ground Water and Drinking Water at EPA. We are pleased to be here today to discuss a matter of great concern for all Americans, the safety of drinking water. I applaud you and the Committee for recognizing the importance of reforming the Safe Drinking Water Act (SDWA) and providing the leadership necessary to create a stronger, more effective drinking water program.

I would like to start today by discussing briefly my general views on drinking water safety and the challenges facing EPA and the States under the current SDWA mandate. I would then like to move onto a discussion of the Clinton Administration's specific proposals for SDWA reform, and provide you some initial feedback on the proposals in S.1547.

Importance of Safe Drinking Water

In Milwaukee this past spring, the safety of drinking water preoccupied the city as hundreds of thousands of residents became sick from water contaminated

B. Bruce

with the parasite *Cryptosporidium*. The value of safe drinking water was underscored again in the Midwest when the Mississippi river overran drinking water treatment plants and contaminated water supplies, and in New York City where people in some neighborhoods were advised to boil their water. As we learned from the nightly news this summer, the most commonplace, everyday activities of our lives would soon involve uncommon distress and discomfort if we experienced even a temporary loss of safe, accessible drinking water supplies. We are reminded by these events that our goal of providing wholesome, safe drinking water for all Americans is a challenge we must meet with our best efforts and a goal we must earnestly embrace. The simple act of turning on the faucet every day for drinking, bathing, and cooking represents a profound trust that citizens have in their public officials and water suppliers, a trust we must strive with our best abilities to uphold. It is with this goal in mind that the Clinton Administration submitted a comprehensive SDWA reform package to Congress in early September, and now seeks to cooperate with Congress to reform the Safe Drinking Water Act as expeditiously as possible.

Mr. Chairman, nearly ten years ago you expressed your commitment to strengthening the Safe Drinking Water Act by co-sponsoring legislation that later became the foundation for the 1986 SDWA amendments. At that time, which was May of 1984, you stated that *every individual is entitled to a clean and healthful water supply*. Your statement went on to say that while you were supportive of this goal, you were concerned that many small communities may be

unable to meet the extra burdens of the Act. I can tell you today that your concern was well founded. While the 1986 amendments were a major leap forward in the evolution of the drinking water program in the United States, many small systems and disadvantaged communities were left behind.

Perspective on Drinking Water Costs

Our Report to Congress, submitted to you on September 8, 1993, provides data showing that approximately 68 percent of the total costs of compliance with the SDWA falls on systems serving fewer than 3,300 persons. To put this figure into perspective, only about 10 percent of the population is served by small systems, yet they will likely bear more than two-thirds of the national costs. The average costs of implementing existing rules amounts to just over \$1.00 per month for the average household in the U.S., yet for the smallest systems the average cost per household is ten-fold higher. Small systems that need to install treatment to deal with contamination problems could conceivably experience household costs a hundred times higher than the average U.S. household. In short, while the average costs are reasonable nationally, these costs are unevenly distributed across households depending on system size.

The escalating cost of compliance for small systems clearly warrants a legislative response. However, the basis for action must be founded in fact, not misperception. In addressing the problems of small systems, I caution against sweeping arguments that the SDWA is a case of regulatory "over-reach." I would

be the first to admit that the program needs to better address priorities. It needs to be more efficient and more prevention-oriented. We must avoid unnecessary or wasteful expenditures for regulations with little public health benefit. We recognize these needed reforms, and our recommendations to Congress address these issues head-on. However, we must also honestly face the simple fact that ensuring the safety of our drinking water supplies in the future is going to cost more than we have traditionally paid for drinking water in the past. We can no longer take drinking water safety for granted.

A look at average household expenditures for basic services shows that the cost of drinking water has traditionally been a bargain for most families. The average family spends approximately one-half of one percent of its income on water and sewer service combined, nearly one percent on natural gas, over one and one-half percent on telephone service, and more than two percent on electricity. As we strive to improve the effectiveness and efficiency of the SDWA, we must also recognize that perhaps the most "basic" of our human needs -- safe drinking water -- is worthy of a greater national investment.

With these thoughts in mind, I would like to now discuss some of the specific issues we have addressed in the Administration's proposals for reauthorization of the Act, and provide an assessment of our first impressions of S.1547.

Drinking Water State Revolving Fund

The Administration's recommendations to Congress for reauthorization recognize the need for capital investment in the program as well as the need to reduce unnecessary expenditures. I am pleased that you have chosen to incorporate these underlying principles into S.1547. President Clinton's proposed Drinking Water State Revolving Fund (DWSRF), which is similar to the DWSRF in your bill, is the first step toward recognizing the critical need for investment in the nation's drinking water infrastructure. The Administration's proposal would provide \$599 million in Fiscal Year 1994, and \$1 billion for each Fiscal Year from 1995 to 1998. It is essential that the federal government demonstrate a commitment to safe drinking water by supporting State programs for low interest loans to systems that need to install treatment.

This proposal gets to the heart of the problem I discussed earlier. While the average costs of the SDWA are reasonable, these costs are unevenly distributed. The Drinking Water State Revolving Fund provides assistance to those systems that need to install costly treatment due to unfortunate contamination problems.

I encourage the Committee to establish a Drinking Water State Revolving Fund that is self-sustaining in the long term and focusses clearly on compliance-related infrastructure investment. The Administration's proposal provides for minimum set-asides and narrow loan eligibilities so that the revolving fund is tied directly to public health purposes and avoids financial management practices that would reduce the long term "purchasing power" of the fund.

Maintaining and Strengthening State Programs

While the Drinking Water State Revolving Fund provides much needed assistance to systems, the future success of any reforms depends on the ability of the States to expand their role in program implementation. An effective, efficient drinking water program cannot be managed directly from Washington or by EPA's ten Regional Offices. The States need to work with individual systems to find compliance solutions, to institute pollution prevention programs, to provide information and advice, and to train system operators. Some of our most fundamental reforms, such as more reliance on pollution prevention approaches, will require active participation by the States. In most cases, opportunities for increasing State flexibility also add complexity and increase State administrative costs, since multiple decisions at the State and system level are necessary to replace one-time decisions at the national level. Our recommended reforms will require greater State capacity, but in the end will provide a more tailored, cost-effective regulatory program that can keep overall implementation costs to a minimum.

To achieve this goal we need to overcome severe resource shortages in the States. Many States are already struggling to carry out minimum primacy responsibilities. In our Report to Congress, we estimate that the current State funding shortfall is approximately \$162 million. To address this shortfall, we support a mechanism to allow States to collect fees to support services related to SDWA implementation. Under our proposal, an SDWA fee would be authorized by

Congress which the States could collect, if needed, to cover State implementation costs. As we envision the fee, a State would have complete flexibility to incorporate the fee into existing State funding mechanisms, or to find alternative approaches suited to their needs and worked out with the water supply systems within the State. However, EPA could require a State to implement the SDWA fee if a State's program is inadequate due to resource shortfalls.

While S.1547 includes authorization for an SDWA fee, it appears that the fee could be activated only where EPA has withdrawn primary enforcement authority (primacy) from a State, rather than allowing States to use the fee to support their programs. We are concerned that this approach may fail to provide States with the incentives and tools necessary to maintain primacy, and relies too heavily on the threat of a federal take-over of failing State programs. We view that as a last resort. We do not believe that replacing State primacy with an EPA-run program is the best strategy to protect drinking water and public health. The success of the SDWA depends largely on the strength of the federal-State partnership. We would like to work with you to find an approach that encourages States to maintain primacy and expand the range of services that are provided.

Protecting Sources of Drinking Water and Pollution Prevention

One of the most fundamental reforms we are proposing for the SDWA concerns pollution prevention. The 1986 amendments provided a foundation for prevention-oriented approaches by requiring State Wellhead Protection Programs

designed to protect ground water sources of drinking water. The Wellhead Protection Program and the Sole Source Aquifer program were intended to be proactive approaches that would prevent contamination before it entered the drinking water facility. The Wellhead Program was a small program facing a major task. While billions have been spent to clean up contaminated ground water, proportionately very little has been spent on prevention. We believe the SDWA should increase reliance on prevention approaches as the first line of defense for public health, and to avoid the future need for expensive treatment or replacement of drinking water wells. In Dade County, Florida, for example, six public drinking water wells were closed due to contamination, at a replacement cost of \$800,000 per well. Stronger prevention approaches have also received support in two reports by the General Accounting Office on drinking water.

We are pleased to see that S.1547 broadens and strengthens the prevention provisions of the SDWA. However, I believe the benefits of prevention, which I will discuss further in a minute, justify an even stronger prevention requirement. I am convinced that pollution prevention is a wise long-term investment, and Administrator Browner has made pollution prevention one of her top priorities. Many States and thousands of systems have already made an investment in basic prevention programs; however we still have far to go to ensure that prevention becomes a reality for all 60,000 of our community water systems. We need to do more to encourage the rest to follow suit. For instance, as part of SDWA reform, we need to empower citizens to address community prevention needs. We also

need a Federal back-up approach -- perhaps by better defining linkages with existing SDWA prevention programs (e.g., the Wellhead Protection Program and the Sole Source Aquifer Program) and other Federally-funded water programs.

A strong prevention program supports several of our reauthorization goals. First, it represents an investment in the future. Second, it provides enhanced public health protection. Third and perhaps most relevant for today's hearing -- we expect it will result in short term and long term cost savings, particularly for monitoring costs. Under our proposal, EPA could approve alternative State-designed monitoring schemes where strong prevention programs are in place. An adequate prevention program will identify areas that need more frequent drinking water monitoring, and areas that need less frequent monitoring. Some States may choose to rely more extensively on geographically representative raw water monitoring, and less on contaminant-by-contaminant monitoring of finished water at individual systems. However, to provide this type of tailored regulation without unacceptably placing the public at risk -- we need adequate prevention and source characterization programs. I see a direct link between the desire to reduce monitoring costs and long-term treatment costs with the need to implement strong prevention programs. Legislative support in this area will provide a significant boost to efforts underway at EPA to promote those integrated approaches.

Multi-media Radon Risk Reduction

Concerning the radon provisions of S.1547, I see some conceptual similarities between your bill and several of our proposed reforms, including our prevention framework. Your radon provision would maintain a health-based requirement, but provide flexibility in the way that health goal is achieved. We agree that the mitigation of radon in indoor air could yield significant reductions in radon exposure, and we welcome Congressional support for stronger indoor air mitigation efforts. On the other hand, I would like to caution that the alternative program specified in S.1547 could pose significant implementation problems and could, in fact, require no further action beyond ongoing voluntary programs to reduce radon risks. Although the bill seeks to achieve an overall risk reduction from indoor radon mitigation, we are concerned that neither EPA nor the States will be capable of providing the oversight necessary to assure progress toward this goal. To the extent non-mandatory programs are included in a multi-media solution, they must be verifiable to assure risk reduction. In addition, we believe that radon resistant new construction standards, one of the elements of the proposed alternative compliance program, should only be required in high radon areas as defined by EPA's radon potential map. We appreciate your interest in finding an acceptable solution to the problem of radon in drinking water, and support your intention to promote cross-media risk reduction. We are taking a closer look at your proposal and would be happy to continue to work with the Committee on this issue.

Small System Viability and "Best Available Technology"

Given the understandable concern over regulatory costs for small systems, I applaud your effort to establish a systematic process by which States would assess the viability of systems and develop individual plans for systems that cannot otherwise achieve compliance through the usual approaches. Such plans would incorporate small system "Best Available Technology" similar to the concept the Administration proposed.

For over 15 years there has been national debate over the appropriate role of the federal government in assuring the technical, financial, and managerial viability of water supply systems. Long before the SDWA mandates began to impact systems, viability was a national concern. Now it is an even worse problem. A few States have been actively addressing this issue, but many have done little. It amazes me that you cannot operate a hotdog stand without a permit, but there is still opposition to the concept of having States authorize the start-up of a drinking water system. For those systems already on line, we believe States should fully explore opportunities for restructuring. In our Report to Congress, we estimate that 50 percent of water systems could benefit from restructuring. Through shared management and supply purchases, physical consolidation, alternative technologies, and many other approaches, small systems can benefit from the same economies of scale as large systems and bring down the costs of compliance. By identifying appropriate technologies for small systems, we hope to

spur private sector interest in environmental technologies that can be applied in a variety of settings.

While generally supportive of the objectives of your proposed "small system management plans," I have some concerns with the approach taken in S.1547. In the Administration's proposal, we have placed greater emphasis on defining the elements of State "viability" programs and allowing States considerable flexibility on implementation and documentation. While it is important that the legislation spell out the expectations and goals of the program, we have seen successful State programs that approach the issue of viability from widely differing views. We must allow States to find solutions appropriate to their individual circumstances. I am particularly concerned that statutorily prescribed procedures could result in considerable inefficiencies and unnecessary paperwork. For example, we would oppose EPA review of individual system programs. These programs could number in the tens of thousands, and EPA would be simply second-guessing State decisions with very little added benefit.

I am also concerned that S.1547 would allow systems to essentially ignore EPA standards for a period extending beyond 10 years -- a best case scenario assuming State small system programs remain on track. This problem would be compounded if monitoring frequency were reduced along the lines envisioned in S.1547. Under the Administration's proposal, a system would take the first steps by applying to the State for streamlined variances contingent on the system's implementation of EPA-specified small system Best Available Technology (BAT).

The State would need to determine at that time whether the system could restructure to achieve compliance. Even if the State fails to complete other aspects of the viability program, or places a system at the end of the State viability review schedule, the system would still be bound by the conditions of the variance to implement all relevant aspects of small system BAT. This approach assures that measures are taken to protect public health while the State works on viability solutions. A State's viability program should be coordinated with the small system BAT program, but the approach should not allow long-term noncompliance determined by the pace of the State's viability program.

New Process for Selecting Contaminants for Regulation

The next issue I would like to discuss concerns one of the most contentious issues of the SDWA debate in 1986 -- the selection of contaminants for regulation. In 1986 the Congress required EPA to establish standards for 83 specific contaminants and an additional 25 contaminants every three years. Eighty-four contaminants are now regulated, and the number is expected to rise to about 112 over the next 2-3 years. This mandate is bringing about impressive gains in public health protection. However, the "25 every 3 years" mandate limits the Agency's ability to concentrate on establishing and implementing national standards for only the highest priority contaminants. Further, the additional and unnecessary standards detract from the ability of States to fully implement more important regulations. The "regulatory rollercoaster" forces EPA onto inflexible court-ordered

schedules that can impair the quality of EPA's technical work and possibly produce regulations with low benefits.

The Committee has taken an important step toward resolving the "25 every three years" issue by creating a new process that allows EPA the opportunity to collect needed data and ~~then~~ determine an appropriate response. I am particularly supportive of EPA discretion *not* to regulate a contaminant after the necessary research and technical work has been completed. There are some significant differences between the approach the Administration recommended in September and the approach outlined in S. 1547. I would be happy to provide additional detail to the Committee as a follow-up to this hearing. For now, I want to express my support for your goal of providing a credible alternative to the current mandate. We must focus on regulating priority contaminants in the future if we wish to achieve the full potential of the SDWA.

Strengthening and Streamlining Enforcement

An important component of the drinking water program is effective enforcement. Our drinking water enforcement program, although improved by the 1986 amendments, has been hampered by a lack of those authorities which had been provided to other EPA programs. We are very pleased to see that S. 1547 contains many of the tools necessary to create and sustain a more efficient enforcement program. The tools provided bring the drinking water program more closely in line with the other environmental programs, most notably the Clean

Water Act. It should be noted that as we replace nationally uniform provisions with greater State flexibility -- a desired reauthorization goal -- It is important that EPA obtains the ability to enforce individual State determinations, regulations, and policies.

The enforcement provisions of the SDWA need to enable EPA to deal with violations in a swift, reasonable manner in order to assure that our drinking water supplies remain safe for all Americans. The authorities provided in S. 1547 achieve this, and I look forward to working further with the Committee on these provisions. There are some differences between the Administration's recommendations and the approach in S. 1547. I am willing to provide the Committee additional comments as a follow-up to this hearing.

Conclusion

In conclusion, we believe the framework proposed in S. 1547 is in line with the Administration's proposal. We strongly support the goals of your small system approaches, and would like to work closely with you to continue to develop all of your proposals, particularly the DWSRF, small system BAT, and viability programs. I assure you, as I begin my first days as Assistant Administrator for Water, that I am committed to reforming the SDWA and building the confidence and trust of all Americans in the safety of their drinking water.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

October 22, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-805

TO: Legislative Liaison Officer -

**· AGRIC-CR - Hal Gross (all testimony) - (202)720-7095 - 230
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
ENERGY - Bob Rabben - (202)586-6718 - 209
- INTERIOR - Danny Consenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
CEQ - - (202)395-5750 - 256
CORPS ENGINEERS - Susan Bond - (202)272-0030 - 239
ARMY CivilWORKS - Morgan Kees - (703)695-1370 - 205
NEC - Sonia Mathews - (202)456-6722 - 429
OSTP - Chris Clary - (202)456-7116 - 288**

**FROM: RONALD K. PETERSON (for) 
Assistant Director for Legislative Reference**

OMB CONTACT: Linda WIESMAN (395-6808)

**SUBJECT: EPA Proposed Testimony on The Use of the San
Louis Drain for Conveying Agricultural Drain
Water**

DEADLINE: 12:00 NOON October 25, 1993

**OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.**

**Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

**CC:
H. Paster
K. McGinty**

**TESTIMONY OF
CATHERINE KUHLMAN
CHIEF, WATER QUALITY BRANCH
WATER MANAGEMENT DIVISION REGION 9
U. S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

October 26, 1993

Good morning Mr. Chairman and members of the Subcommittee. It is a pleasure to be here today to discuss the issues related to the use of the San Luis Drain for conveying agricultural drainwater around the Grasslands Water District in California.

The U.S. Environmental Protection Agency (EPA) Region 9 has been involved with drainage issues in the San Joaquin River for 15 years. The issues are extremely complex, and solutions that satisfy environmental and public health concerns while allowing for the continued productivity of the agricultural lands have been very hard to find.

EPA recognizes that a tradeoff between clean water for wetlands and increased levels of selenium in Mud Slough exists, and that a compromise may be the best short-term solution that is available at this time. However, we continue to be concerned that the environmental impact analysis for the current project did not develop and explore alternatives that did more than simply move the contamination from the wetlands to Mud Slough.

- 2 -

As currently designed, the project:

- ▶ will result in acute toxicity to aquatic life in Mud Slough;
- ▶ will result in violation of the federal water quality standards for selenium;
- ▶ will result in violation of the water quality control plan of implementation; and,
- ▶ may not lead to further reductions of pollutant loadings to the San Joaquin River.

These problems are significant, but can be solved or mitigated. Everyone here is familiar with the toxic effects of agricultural damage at Kesterson National Wildlife Refuge (including wildfowl deformities causing chicks to die when hatched); this is but one dramatic example of a widespread problem.

It is EPA's position that the solution to the drainage problem is drainage reduction. Reductions in drainage throughout California are being achieved through conservation and tailwater recovery. Further reductions may be achieved through more aggressive implementation of the proposals presented in the San Joaquin Drainage Program Plan such as land retirement. We believe innovative market solutions and financial incentives can also play an important role, such as a pollutant trading scheme that has been proposed for a portion of the San Joaquin Valley.

EPA remains available to help work through the myriad of difficult environmental and legal issues surrounding reopening of the San Luis Drain.

Thank you Mr. Chairman; I would now be happy to answer any questions you or other members of the Subcommittee may have.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

October 15, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-769

TO: Legislative Liaison Officer -

AGRICULTURE - Marvin Shapiro - (202)720-1516 - 312
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
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HHS - Frances White - (202)690-7760 - 328
INTERIOR - Danny Consenstein - (202)208-6706 - 329
JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
STATE - Julia C. Norton - (202)647-4463 - 225
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
VA - Robert Coy - (202)535-8113 - 229
EPA - Thomas C. Roberts - (202)260-5414 - 326
GSA - William R. Ratchford - (202)501-0563 - 237
NASA - Jeff Lawrence - (202)358-1948 - 219
NEC - Sonia Mathews - (202)456-6722 - 429
OPM - James N. Woodruff - (202)606-1424 - 331
OSTP - Chris Clary - (202)456-7116 - 288
SBA - Christine Swedin - (202)205-6702 - 315
OGE - Jane Ley - (202)523-5377 - 261

FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
Robert TUCCILLO (395-4993)

SUBJECT: Congressional DISCUSSION DRAFT on "Department
of Environmental Protection Act"

DEADLINE: 3:00 PM October 20, 1993

COMMENTS: The attached congressional discussion draft is being circulated for your TECHNICAL REVIEW. We anticipate near-term Committee action on this legislation in the House. Accordingly, this Office must assume that your agency has no comment on the subject discussion draft if you do not respond by 3:00 PM, Wednesday, October 20, 1993.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

R. Fairweather
B. Tuccillo
J. Bruel/N. Shapiro
J. Coffey
A. Fraas
C. Vallina/B.
Coleman
R. Kogut
K. McGinty
H. Paster
J. Quinn
C. Walden/B. Burke
A. Kolaian
E. REA

[DISCUSSION DRAFT]

103D CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. CONYERS introduced the following bill; which was referred to the
Committee on _____

A BILL

To redesignate the Environmental Protection Agency as the
Department of Environmental Protection, and for other
purposes.

1 *Be it enacted by the Senate and House of Rep-*
2 *resentatives of the United States of America in Congress*
3 *assembled,*

4 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Department of Environmental Protection Act”.

- 1 (b) TABLE OF CONTENTS.—The contents of this Act
2 are as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Disclaimer.

TITLE I—REDESIGNATION OF ENVIRONMENTAL PROTECTION AGENCY AS DEPARTMENT OF ENVIRONMENTAL PROTECTION

- Sec. 101. Redesignation of Environmental Protection Agency as Department of Environmental Protection.
- Sec. 102. Assistant Secretaries.
- Sec. 103. Deputy Assistant Secretaries.
- Sec. 104. Office of the General Counsel.
- Sec. 105. Office of Inspector General.
- Sec. 106. Regional offices.
- Sec. 107. Continuing performance of functions.
- Sec. 108. Strategic management, planning, performance measurement, and reporting to Congress.
- Sec. 109. Information resources management.
- Sec. 110. Public access to and use of information resources.
- Sec. 111. Bureau of Environmental Statistics.
- Sec. 112. Office of Environmental Justice.
- Sec. 113. Scientific integrity.
- Sec. 114. Conflicts of interest of members of advisory committees.
- Sec. 115. Limitation on scope of certain umbrella contracts by Department for advisory and assistance services.
- Sec. 116. Prohibition on transferring to contractors inherently governmental functions of Department.
- Sec. 117. Disallowance of, and penalties for, improperly claimed costs under Department contracts and regulations.
- Sec. 118. Contractor employee gift, entertainment, or recreation costs specifically unallowable under Department contracts.
- Sec. 119. Documentation of contractor travel costs.
- Sec. 120. Effective dates; limitations on application.
- Sec. 121. Regulations.
- Sec. 122. References.
- Sec. 123. Savings provisions.
- Sec. 124. Conforming amendments.
- Sec. 125. Additional conforming amendments.

TITLE II—ADMINISTRATIVE PROVISIONS

- Sec. 201. Acquisition of copyrights and patents.
- Sec. 202. Gifts and bequests.
- Sec. 203. Official seal of Department.
- Sec. 204. Use of likeness of official seal of Department.
- Sec. 205. Use of stationery, printed forms, and supplies of Environmental Protection Agency.

TITLE III—DISALLOWANCE OF, AND PENALTIES FOR, IMPROPERLY CLAIMED COSTS UNDER CIVILIAN AGENCY CONTRACTS AND REGULATIONS

Sec. 301. Disallowance of costs; penalties.

Sec. 302. Effective date of amendments; limitations on application of amendments.

Sec. 303. Regulations.

Sec. 304. Section 117 not effective.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act:

3 (1) **DEPARTMENT.**—The term ‘Department’
4 means the Department of Environmental Protection
5 provided for in section 101(a).

6 (2) **INDIAN TRIBE.**—The term “Indian tribe”
7 has the same meaning as provided by section 4(e) of
8 the Indian Self-Determination and Education Assist-
9 ance Act (25 U.S.C. 450b(e)).

10 (3) **STATE.**—The term “State” means a State,
11 the District of Columbia, the Commonwealth of
12 Puerto Rico, the Virgin Islands, Guam, American
13 Samoa, the Commonwealth of the Northern Mariana
14 Islands, and any other territory or possession of the
15 United States.

16 (4) **SECRETARY.**—The term “Secretary” means
17 the Secretary of the Environment appointed under
18 section 101(b).

19 **SEC. 3. DISCLAIMER**

20 Nothing in this Act or the amendments made by this
21 Act shall be construed by the Secretary, any officer or em-
22 ployee of the Department, or by any court as altering, af-
23 fecting, amending, modifying, or changing, directly or in-

1 directly, any law which on the day before the date of the
2 enactment of this Act referred to and provided authorities
3 or responsibilities for, or was administered by, the Envi-
4 ronmental Protection Agency or the Administrator of the
5 Environmental Protection Agency, including the Federal
6 Water Pollution Control Act, title XIV of the Public
7 Health Service Act (the Safe Drinking Water Act), the
8 Clean Air Act, the Pollution Prevention Act of 1990, the
9 Toxic Substances Control Act, the Federal Insecticide,
10 Fungicide, and Rodenticide Act, the Federal Food, Drug,
11 and Cosmetic Act, the Motor Vehicle Information and
12 Cost Savings Act, the Federal Hazardous Substances Act,
13 the Atomic Energy Act, the Noise Control Act of 1972,
14 the Solid Waste Disposal Act, the Comprehensive Environ-
15 mental Response, Compensation, and Liability Act of
16 1980, the Superfund Amendments and Reauthorization
17 Act of 1986, the Ocean Dumping Act, the Environmental
18 Research, Development, and Demonstration Authorization
19 Act, the Pollution Prosecution Act of 1990, and the Fed-
20 eral Facilities Compliance Act of 1992, or any statute con-
21 taining amendment to any of such Acts. The provisions
22 of section 123 (relating to environmental justice) shall not
23 be construed to alter, affect, amend, or change such Acts,
24 and to the extent that the authorities provided under such
25 provisions are made applicable by the Secretary to pro-

1 grams, standards, or regulations under such Acts, the Sec-
2 retary shall ensure that such provisions do not alter, af-
3 fect, amend, modify, or change the objectives, require-
4 ments, procedures, or limitations of such Acts or make
5 them more or less stringent.

6 **TITLE I—REDESIGNATION OF**
7 **ENVIRONMENTAL PROTEC-**
8 **TION AGENCY AS DEPART-**
9 **MENT OF ENVIRONMENTAL**
10 **PROTECTION**

11 **SEC. 101. REDESIGNATION OF ENVIRONMENTAL PROTEC-**
12 **TION AGENCY AS DEPARTMENT OF ENVIRON-**
13 **MENTAL PROTECTION.**

14 (a) REDESIGNATION.—

15 (1) IN GENERAL.—The Environmental Protec-
16 tion Agency is redesignated as the Department of
17 Environmental Protection, and shall be an executive
18 department in the executive branch of the Govern-
19 ment.

20 (2) HEADQUARTERS.—The Department shall be
21 headquartered at the seat of Government.

22 (3) OFFICIAL ACRONYM.—The official acronym
23 of the Department shall be "D.E.P."

24 (b) SECRETARY OF THE ENVIRONMENT.—

1 (1) IN GENERAL.—There shall be at the head
2 of the Department a Secretary of the Environment
3 who shall be appointed by the President, by and
4 with the advice and consent of the Senate.

5 (2) OFFICE OF THE SECRETARY.—The Office
6 of the Secretary shall consist of—

7 (A) the Secretary and the Deputy Sec-
8 retary appointed under subsection (d); and

9 (B) such other officers as the Secretary
10 may determine to be necessary, who may in-
11 clude an Executive Secretary appointed by the
12 Secretary.

13 (c) TRANSFER OF FUNCTION, POWERS, AND DU-
14 TIES.—

15 (1) IN GENERAL.—The functions, powers, and
16 duties of each officer and employee of the Environ-
17 mental Protection Agency are transferred to, and
18 vested in, the corresponding officer or employee of
19 the Department.

20 (2) CONSTRUCTION.—This subsection may not
21 be construed to prohibit the delegation or redelega-
22 tion by the Secretary of functions, powers, or duties
23 transferred by paragraph (1).

24 (d) DEPUTY SECRETARY.—

1 (1) IN GENERAL.—There shall be in the De-
2 partment a Deputy Secretary of the Environment,
3 who shall be appointed by the President, by and
4 with the advice and consent of the Senate.

5 (2) FUNCTIONS.—The Deputy Secretary shall
6 perform such functions as the Secretary shall pre-
7 scribe, and shall act as the Secretary during the ab-
8 sence or disability of the Secretary or in the event
9 of a vacancy in the position of the Secretary.

10 (e) DELEGATION OF AUTHORITY.—

11 (1) IN GENERAL.—Except as provided in this
12 Act or other laws administered by the Department,
13 the Secretary may, consistent with other applicable
14 laws—

15 (A) delegate any functions, powers, or du-
16 ties, including with respect to the making of
17 regulations, to such officers and employees of
18 the Department as the Secretary may des-
19 ignate; and

20 (B) authorize such successive redelegations
21 of such functions within the Department as the
22 Secretary considers to be necessary or appro-
23 priate.

24 (2) CONSIDERATIONS.—In acting under this
25 subsection or subsection (c) to delegate or authorize

1 the redelegation of functions, the Secretary shall
2 take into consideration the need to ensure that regu-
3 lations, standards, and policies of the Department
4 (including changes and revisions to regulations,
5 standards, and policies) are promulgated and issued
6 by the Secretary or other officers of the Department.

7 (3) NOTICE; REVIEW.—The Secretary shall—

8 (A) maintain, in a central location that is
9 available to the public, copies of all orders and
10 other instruments making delegations and
11 redelegations of function under this subsection
12 (including all revisions to such delegations); and

13 (B) periodically review all such delegations
14 and redelegations.

15 SEC. 102. ASSISTANT SECRETARIES.

16 (a) ESTABLISHMENT OF POSITIONS.—There shall be
17 in the Department such number of Assistant Secretaries,
18 not to exceed 10, as the Secretary shall determine, each
19 of whom—

20 (1) shall be appointed by the President, by and
21 with the advice and consent of the Senate; and

22 (2) shall perform such functions as the Sec-
23 retary prescribes.

24 (b) FUNCTIONS.—

- 1 (1) IN GENERAL.—The Secretary shall assign
- 2 to the Assistant Secretaries of the Department such
- 3 functions as the Secretary considers appropriate, in-
- 4 cluding, subject to the discretion of and modification
- 5 by the Secretary—
- 6 (A) pollution prevention;
- 7 (B) resource recovery, recycling, and reuse;
- 8 (C) education;
- 9 (D) policy, planning, and evaluation;
- 10 (E) administration;
- 11 (F) resources management, including fi-
- 12 nancial and budget management;
- 13 (G) information resources management;
- 14 (H) procurement and assistance manage-
- 15 ment;
- 16 (I) personnel and labor relations;
- 17 (J) enforcement;
- 18 (K) compliance monitoring;
- 19 (L) research and development;
- 20 (M) air;
- 21 (N) radiation;
- 22 (O) water;
- 23 (P) pesticides;
- 24 (Q) toxic substances;
- 25 (R) solid wastes;

- 1 (S) hazardous waste;
2 (T) hazardous waste cleanup;
3 (U) emergency response;
4 (V) congressional affairs and public af-
5 fairs;
6 (W) intergovernmental affairs;
7 (X) Indian affairs, including Indian tribes;
8 (Y) international affairs; and
9 (Z) noise pollution control and abatement.

10 (2) NOTIFICATION REGARDING MODIFICA-
11 TIONS.—The Secretary may not modify the respon-
12 sibilities of any Assistant Secretary without prior
13 written notification, with explanation, of such modi-
14 fication to the appropriate committees of the Senate
15 and the House of Representatives.

16 (c) DESIGNATION OF FUNCTIONS PRIOR TO CON-
17 FIRMATION.—Whenever the President submits the name
18 of an individual to the Senate for confirmation as an As-
19 sistant Secretary under this section, the President shall
20 state the particular functions of the Department (as as-
21 signed by the Secretary under subsection (b)) such individ-
22 ual will exercise upon taking office.

23 SEC. 103. DEPUTY ASSISTANT SECRETARIES.

24 (a) ESTABLISHMENT OF POSITIONS.—There is au-
25 thorized in the Department such number of Deputy As-

1 sistant Secretaries as the Secretary determines is appro-
2 priate, not to exceed 20.

3 (b) APPOINTMENTS AND FUNCTIONS.—Each Deputy
4 Assistant Secretary—

5 (1) shall be appointed by the Secretary; and

6 (2) shall perform such functions as the Sec-
7 retary shall prescribe.

8 **SEC. 104. OFFICE OF THE GENERAL COUNSEL.**

9 (a) OFFICE.—There shall be in the Department the
10 Office of the General Counsel.

11 (b) GENERAL COUNSEL.—There shall be at the head
12 of such office a General Counsel who shall be appointed
13 by the President, by and with the advice and consent of
14 the Senate.

15 (c) FUNCTIONS.—The General Counsel shall be the
16 chief legal officer of the Department and shall provide
17 legal assistance to the Secretary concerning the programs
18 and policies of the Department.

19 **SEC. 105. OFFICE OF INSPECTOR GENERAL.**

20 The Office of Inspector General of the Environmental
21 Protection Agency, established in accordance with the In-
22 spector General Act of 1978 (5 U.S.C. App.), is redesi-
23 gnated as the Office of Inspector General of the Depart-
24 ment of Environmental Protection.

1 SEC. 106. REGIONAL OFFICES.

2 (a) REGIONAL OFFICES.—

3 (1) ESTABLISHMENT; NUMBER.—The Secretary
4 shall establish such Regional Offices of the Depart-
5 ment as the Secretary determines to be necessary to
6 carry out in an efficient and economic manner the
7 functions vested in the Secretary or other officials of
8 the Department. The number of such Regional Of-
9 fices may not exceed 10.

10 (2) ALTERATION, CONSOLIDATION, AND RELO-
11 CATION.—The Secretary may alter, consolidate, or
12 relocate any Regional Office taking into consider-
13 ation the needs of the Department and economy and
14 efficiency.

15 (b) REGIONAL ADMINISTRATORS.—

16 (1) IN GENERAL.—There shall be in each Re-
17 gional Office established under subsection (a) a Re-
18 gional Administrator, who shall be the head of the
19 Regional Office.

20 (2) APPOINTMENT.—Each Regional Adminis-
21 trator shall be appointed by, and serve at the pleas-
22 ure of, the Secretary.

23 (3) FUNCTIONS.—Each Regional Administrator
24 shall implement, execute, and enforce the national
25 program priorities and policies established, in ac-
26 cordance with this Act and other laws applicable to

1 the Department, by the Secretary, or by the Deputy
2 Secretary or an Assistant Secretary pursuant to a
3 delegation from the Secretary.

4 (c) INFORMATION REGARDING REGIONAL OFFICE
5 PERFORMANCE.—The Secretary shall periodically assess
6 the performance of each Regional Office in meeting the
7 program and enforcement priorities established or dele-
8 gated by the Secretary, and inform the appropriate com-
9 mittees of the Congress about that performance. The first
10 such assessment shall be completed within 2 years after
11 the date of the enactment of this Act.

12 **SEC. 107. CONTINUING PERFORMANCE OF FUNCTIONS.**

13 (a) REDESIGNATION OF POSITIONS.—

14 (1) ADMINISTRATOR.—The Administrator of
15 the Environmental Protection Agency is redesign-
16 ated as the Secretary of the Environment.

17 (2) DEPUTY ADMINISTRATOR.—The Deputy
18 Administrator of the Environmental Protection
19 Agency is redesignated as the Deputy Secretary of
20 the Environment.

21 (3) ASSISTANT ADMINISTRATORS.—Each As-
22 sistant Administrator of the Environmental Protec-
23 tion Agency is redesignated as an Assistant Sec-
24 retary of the Department.

1 (4) GENERAL COUNSEL.—The General Counsel
2 of the Environmental Protection Agency is redesign-
3 nated as the General Counsel of the Department.

4 (5) INSPECTOR GENERAL.—The Inspector Gen-
5 eral of the Environmental Protection Agency is re-
6 designated as the Inspector General of the Depart-
7 ment.

8 (b) NOT SUBJECT TO RENOMINATION OR RECON-
9 FIRMATION.—An individual serving at the pleasure of the
10 President in a position that is redesignated by subsection
11 (a) may continue to serve in and perform functions of that
12 position after the date of the enactment of this Act with-
13 out renomination by the President or reconfirmation by
14 the Senate.

15 **SEC. 108. STRATEGIC MANAGEMENT, PLANNING, PERFORM-**
16 **ANCE MEASUREMENT, AND REPORTING TO**
17 **CONGRESS.**

18 (a) RESPONSIBILITIES OF THE SECRETARY.—The
19 Secretary shall—

20 (1) develop and maintain, in accordance with
21 the statutes that authorize programs of the Depart-
22 ment, a strategic business plan for the Department
23 that clearly and specifically defines the mission of
24 the Department;

1 (2) establish and maintain a performance meas-
2 urement system to measure and report on specific
3 program performance from a policy, operational, and
4 economic standpoint, including information resources
5 management; and

6 (3) establish a permanent departmental senior
7 management committee, which shall—

8 (A) be chaired by the Secretary;

9 (B) consist of senior program managers of
10 the Department; and

11 (C) assist the Secretary in carrying out the
12 responsibilities of the Secretary in managing
13 the Department.

14 (b) REPORT TO THE CONGRESS.—Within 30 days of
15 the submission to the Congress of the budget of the Unit-
16 ed States Government for each fiscal year under section
17 1105 of title 31, United States Code, the Secretary shall
18 report to the Congress on the extent to which the strategic
19 business plan required by subsection (a) has been imple-
20 mented, especially with regard to the specific performance
21 measures established under subsection (a)(2).

22 **SEC. 109. INFORMATION RESOURCES MANAGEMENT.**

23 (a) RESPONSIBILITIES OF THE SECRETARY.—The
24 Secretary, consistent with section 111 and other provi-
25 sions of law, shall—

1 (1) manage information resources and informa-
2 tion technology so as to ensure—

3 (A) maximum net benefits from the appli-
4 cation of such resources and technology, and

5 (B) maximum accountability to the public;

6 (2) develop policies and mechanisms to commu-
7 nicate information management goals, priorities, and
8 practices effectively throughout the Department, in-
9 cluding policy guidance that describes the process by
10 which the Department shall initiate, approve, proc-
11 ess, and evaluate major automated information sys-
12 tems at key milestones;

13 (3) ensure that program management officials,
14 the Chief Financial Officer of the Department, the
15 Chief Information Officer of the Department, and
16 the Director of Environmental Statistics collaborate
17 in—

18 (A) defining the specific information and
19 developing the systems capabilities necessary to
20 meet program missions and goals;

21 (B) identifying specific opportunities to re-
22 design business practices and supporting infor-
23 mation systems;

1 (C) estimating the life-cycle costs of pro-
2 posed automated information systems and ob-
3 taining independent cost evaluations; and

4 (D) assuring that information included in
5 the annual budget request of the Department
6 includes life-cycle cost estimates for automated
7 information systems;

8 (4) develop management processes that assign
9 priority to information technology acquisitions and
10 measure the effect of those acquisitions on mission
11 performance;

12 (5) ensure substantive involvement of program
13 management and systems users with information re-
14 sources management staff in all information systems
15 projects;

16 (6) establish a management education program
17 to assist managers in identifying—

18 (A) areas in which information and tech-
19 nology are vital to mission accomplishment, and

20 (B) techniques that can be applied to ex-
21 ploit information technology successfully; and

22 (7) in accordance with all laws applicable to the
23 Department, coordinate the data collection and dis-
24 semination efforts of the Department with other rel-
25 evant Federal, State, and local agencies in order to

1 reduce unnecessary burdens and promote greater in-
2 tegration of information.

3 (b) INFORMATION RESOURCES MANAGEMENT
4 STEERING COMMITTEE.—

5 (1) ESTABLISHMENT.—The Secretary shall es-
6 tablish a permanent information resources manage-
7 ment steering committee, which shall—

8 (A) consist of senior program managers or
9 their representatives, and

10 (B) include the Chief Information Officer
11 of the Department and the Director of Environ-
12 mental Statistics.

13 (2) FUNCTIONS.—The committee established
14 under paragraph (1) shall—

15 (A) assist and advise the Secretary in car-
16 rying out information resources management
17 responsibilities of the Secretary under sub-
18 section (a);

19 (B) present Department-wide information
20 resources management issues to the depart-
21 mental senior management committee estab-
22 lished under section 108(a)(3) for resolution;

23 (C) establish specific performance meas-
24 ures for information resources management
25 that relate specifically to program missions;

1 (D) review and make recommendations to
2 the Secretary with regard to major automated
3 information systems of the Department at
4 predefined milestones throughout their life cy-
5 cles; and

6 (E) evaluate and make recommendations
7 to the Secretary with regard to significant in-
8 formation technology acquisitions of the De-
9 partment above a threshold to be defined by the
10 committee.

11 (c) CHIEF INFORMATION OFFICER.—

12 (1) DESIGNATION AND PRIMARY RESPONSIBIL-
13 ITIES.—

14 (A) IN GENERAL.—The Secretary shall
15 designate a Chief Information Officer of the
16 Department, whose primary responsibilities
17 shall include providing assistance to senior
18 agency management in ensuring that informa-
19 tion and technology resources are managed to
20 maximize benefits to the Department and ac-
21 countability to the public served by the Depart-
22 ment.

23 (B) INFORMATION COORDINATION FUNC-
24 TIONS.—The Chief Information Officer shall
25 serve as the senior official required to be des-

1 ignated for the Department under section
2 3506(b) of title 44, United States Code.

3 (2) **QUALIFICATIONS.**—To the maximum ex-
4 tent, the individual designated as Chief Information
5 Officer shall be selected from individuals who have—

6 (A) direct and substantial experience in
7 successfully achieving major improvements in
8 organizational performance through the use of
9 information technology; and

10 (B) demonstrated technical competence
11 and ability to work effectively with senior pro-
12 gram managers.

13 (3) **RANK; LIMITATION ON DUTIES.**—The Chief
14 Information Officer shall—

15 (A) hold a rank in the Department equiva-
16 lent to Assistant Secretary;

17 (B) report directly to the Secretary; and

18 (C) not be assigned any permanent duties
19 that are not related to information resources
20 management.

21 (d) **RESPONSIBILITIES OF THE CHIEF INFORMATION**
22 **OFFICER.**—The Chief Information Officer, consistent with
23 section 111 and other provisions of law, shall—

1 (1) design, develop, implement, and facilitate a
2 strategic information resources management process
3 for the Department that—

4 (A) establishes what information resources
5 management capabilities are necessary to sup-
6 port programs for accomplishing the mission of
7 the Department, including information re-
8 sources management policies, architectures, and
9 standards;

10 (B) includes information plans that set
11 forth what information systems and programs
12 will support the various programmatic and
13 management information requirements of the
14 Department;

15 (C) includes the development of annual op-
16 erating plans, coordinated with departmental
17 budgets, setting forth resource allocations for
18 specific information systems and programs that
19 support Department missions and goals; and

20 (D) includes performance review and re-
21 porting that identifies net benefits actually real-
22 ized from information system investments;

23 (2) design and maintain a strategic information
24 resources management plan;

1 (3) develop a comprehensive process for control-
2 ling information systems development and operations
3 life cycle, including explicit decision criteria and
4 early decision points for all information systems
5 projects;

6 (4) be responsible for assuring the effective and
7 efficient design, development, and delivery of infor-
8 mation products and services that support key pro-
9 gram responsibilities;

10 (5) in cooperation with the Chief Financial Of-
11 ficer of the Department, ensure that—

12 (A) Department-wide and component ac-
13 counting, financial, and asset management sys-
14 tems and other information systems that pro-
15 vide, at least in part, financial or program per-
16 formance data used in financial statements are
17 effectively designed, developed, and imple-
18 mented; and

19 (B) financial and related program perform-
20 ance data are provided on a reliable, consistent,
21 and timely basis to agency financial manage-
22 ment systems;

23 (6) identify, in cooperation with program man-
24 agers and the Chief Financial Officer of the Depart-
25 ment, specific opportunities to redesign business

1 practices and supporting information systems to im-
2 prove agency performance;

3 (7) regularly complete accurate post-implemen-
4 tation reviews for all information systems projects of
5 the Department;

6 (8) develop, in cooperation with the Chief Fi-
7 nancial Officer of the Department, full and accurate
8 information on—

9 (A) information technology expenditures
10 (including capital investment and expenses) by
11 the Department; and

12 (B) all expenses for Department staff who
13 carry out information resources management
14 responsibilities;

15 (9) develop requirements and mechanisms for
16 comprehensive information resources management
17 training and professional development of Depart-
18 ment staff;

19 (10) establish policies for communicating De-
20 partment-wide and component information systems
21 requirements and acquisition plans with industry, in-
22 cluding by—

23 (A) working with program managers and
24 component information resources management
25 officials to ensure that each major acquisition

1 plan contains an industry communications seg-
2 ment that informs industry of the acquisition,
3 presents its purpose, and solicits industry feed-
4 back on technology, schedule, and other signifi-
5 cant issues; and

6 (B) establishing Department-wide policies
7 for the use of requests for information, requests
8 for comment, and draft requests for procure-
9 ment proposals, as mechanisms for improving
10 acquisition effectiveness and increasing com-
11 petition; and

12 (11) work cooperatively with the Director of
13 Environmental Statistics, providing the technical
14 and other support necessary to fulfill the informa-
15 tion systems and other information requirements
16 identified by the Director as needed to carry out the
17 functions of the Bureau of Environmental Statistics.

18 (e) DEFINITIONS.—Terms used in this section have
19 the meanings set forth in section 3502 of title 44, United
20 States Code, to the extent the terms are defined in that
21 section.

22 (f) CONSTRUCTION.—This section may not be con-
23 strued as affecting or limiting in any way the functions
24 and authorities of the Director of the Bureau of Environ-
25 mental Statistics relating to—

1 (1) collecting, compiling, evaluating, analyzing,
2 reporting, preparing, and publishing data, statistics,
3 or other environmental and public health informa-
4 tion, or

5 (2) the making of grants or the conduct of any
6 related activities.

7 **SEC. 110. PUBLIC ACCESS TO AND USE OF INFORMATION**
8 **RESOURCES.**

9 (a) **ENCOURAGING PUBLIC ACCESS AND USE.—**

10 (1) **POLICIES AND METHODS.—**The Secretary
11 shall, in accordance with all provisions of law appli-
12 cable to the Department—

13 (A) identify and develop policies and meth-
14 ods for encouraging greater public access to,
15 and use of, departmental information collected,
16 stored, retained, or disseminated and available
17 to the public under such provisions of law; and

18 (B) make such public information available
19 in a variety of formats and through systems
20 that permit and encourage widespread use and
21 analysis.

22 (2) **BUREAU OF ENVIRONMENTAL STATIS-**
23 **TICS.—**For the purpose of the application of this
24 section to the Bureau of Environmental Statistics,

1 the Director of Environmental Statistics shall have
2 the responsibilities of the Secretary.

3 (b) INVENTORY AND LOCATOR OF INFORMATION

4 SERVICES.—The Secretary shall, in accordance with all
5 laws applicable to the Department, develop and maintain
6 a public access system providing a current, comprehensive,
7 and detailed inventory of the Department's public infor-
8 mation services, products, systems, and other holdings.

9 The system shall include the following:

10 (1) An inventory that lists each such service,
11 product, and system, and describes the type of infor-
12 mation available, the cost and other terms of public
13 access, and details about sources and methodology
14 used in preparation of the information. The inven-
15 tory shall—

16 (A) be updated regularly;

17 (B) be disseminated as widely as possible
18 in electronic and hard copy formats; and

19 (C) be printed at least annually.

20 (2) Provision of access to selected public infor-
21 mation holdings and databases. Such access shall—

22 (A) allow users to download information;

23 (B) include easy to use menus and other
24 enhancements to improve use; and

1 (C) be accompanied by support and tech-
2 nical assistance to current and potential users.

3 (3) A means for the public and other agencies
4 to communicate with the Department about public
5 information available through the system and about
6 improvements to the system.

7 (c) INTEGRATION AND AVAILABILITY OF SERV-
8 ICES.—In order to enhance public access and encourage
9 use of public information, improve the management of in-
10 formation resources, and assist Departmental multimedia
11 permitting and enforcement initiatives, the Secretary
12 shall, in accordance with all laws applicable to the Depart-
13 ment, develop policies, programs, and methods for inte-
14 grating and linking public information pertaining to the
15 environment, public health, environmental justice, and
16 other public policy concerns within the jurisdiction of the
17 Department.

18 (d) STRATEGIC PLAN AND REPORTS ON PUBLIC AC-
19 CESS TO AND USE OF INFORMATION.—

20 (1) STRATEGIC PLAN.—As part of the strategic
21 information resources management plan required
22 under section 109(d)(2), the Chief Information Offi-
23 cer shall develop a strategic plan on the use of infor-
24 mation technology to provide for dissemination of,
25 and public access to, departmental information that

1 is available to the public in accordance with applica-
2 ble provisions of law, and to facilitate implementa-
3 tion of subsections (b) and (c).

4 (2) CONTENTS OF PLAN.—The strategic plan
5 required by paragraph (1), where appropriate, shall
6 include—

7 (A) a description of current activities and
8 future initiatives to carry out requirements for
9 promoting public access to, and use of, publicly
10 available information under this section, includ-
11 ing a discussion of efforts to implement sub-
12 sections (b) and (c);

13 (B) an evaluation of the use of geo-
14 graphical information systems and spatial dis-
15 play technologies in fulfilling the public dissemi-
16 nation objectives of this section;

17 (C) an evaluation of the role of emerging
18 computer technologies, including CD-ROM
19 (compact-disk—read only memory) and other
20 suitable machine readable storage alternatives,
21 and online transaction-based reporting, in ful-
22 filling the public dissemination objectives of this
23 section;

24 (D) a plan for one or more pilot programs
25 to expand existing online information dissemi-

1 nation programs to include additional data
2 bases;

3 (E) efforts for considering and implement-
4 ing an electronic data interchange;

5 (F) the role of the existing or planned enti-
6 ties, including depository libraries and the Na-
7 tional Research and Educational Network, in
8 aiding dissemination objectives of this section;

9 (G) a review of alternatives and possibili-
10 ties for conversion of print material to machine
11 readable formats;

12 (H) an evaluation of a system linked to the
13 inventory established under subsection (b), for
14 indexing, locating, and obtaining publicly avail-
15 able information about facilities and substances
16 regulated by the Department; and

17 (I) the personnel, funding, and length of
18 time needed to implement the plan.

19 (e) OBTAINING PUBLIC ADVICE AND GUIDANCE.—

20 The Secretary shall establish an ongoing balanced process
21 for obtaining public advice, guidance, and rec-
22 ommendations on improving public access to, and use of,
23 Departmental information that is available to the public
24 under applicable provisions of law.

1 (f) USER FEES.—Fees for dissemination of Depart-
2 ment information products or services may be set at a level
3 sufficient to recover the cost of the dissemination, but no
4 higher.

5 SEC. 111. BUREAU OF ENVIRONMENTAL STATISTICS.

6 (a) ESTABLISHMENT.—There is established within
7 the Department the Bureau of Environmental Statistics
8 (hereinafter in this section referred to as the "Bureau").
9 The purpose of the Bureau is to provide in accordance
10 with this section such environmental quality and related
11 public health and economic information, and such evalua-
12 tion and analyses of such information, as may be appro-
13 priate, to meet adequately and fully the needs of the De-
14 partment in carrying out its functions under applicable
15 law, and the Congress.

16 (b) DIRECTOR OF ENVIRONMENTAL STATISTICS.—

17 (1) IN GENERAL.—The Bureau shall be under
18 the direction of the Director of Environmental Sta-
19 tistics (hereinafter in this section referred to as the
20 "Director"), who shall report directly to the Sec-
21 retary.

22 (2) APPOINTMENT, TERM, AND REMOVAL.—

23 (A) APPOINTMENT AND TERM.—The Di-
24 rector shall—

1 (i) be appointed by the Secretary for
2 a term of 4 years; and

3 (ii) be selected from individuals who
4 are well qualified through experience or
5 training in the collection and analysis of
6 environmental statistics.

7 (B) SERVICE AFTER EXPIRATION OF
8 TERM.—An individual may, at the request of
9 the Secretary, serve as Director after the expi-
10 ration of his or her term for not more than 3
11 months until his or her successor has taken of-
12 fice.

13 (C) REMOVAL.—An individual may be re-
14 moved as Director by the Secretary only for
15 malfeasance in office or neglect of duty.

16 (D) REAPPOINTMENT.—An individual serv-
17 ing as Director may be reappointed for addi-
18 tional terms.

19 (3) COMPENSATION.—The Director shall be
20 compensated at the rate provided for level V of the
21 Executive Schedule under section 5316 of title 5,
22 United States Code.

23 (c) FUNCTIONS OF DIRECTOR.—

24 (1) IN GENERAL.—The functions of the Direc-
25 tor shall include—

1 (A) collecting, compiling, analyzing, and
2 publishing a comprehensive set of environ-
3 mental quality and related public health, eco-
4 nomic, and statistical data for determining envi-
5 ronmental quality and related measures of pub-
6 lic health, over both the short- and long-term,
7 including assessing—

8 (i) ambient conditions and trends; and

9 (ii) the distribution of environmental
10 conditions and related public health condi-
11 tions across all affected populations, in-
12 cluding those populations identifiable on
13 the basis of income, race, ethnicity, or na-
14 tional origin;

15 (B) evaluating the adequacy of available
16 statistical measures to determine the Depart-
17 ment's success in fulfilling statutory require-
18 ments;

19 (C) ensuring that data and measures re-
20 ferred to in this subsection are accurate, reli-
21 able, relevant, and in a form that permits sys-
22 tematic analysis;

23 (D) collecting and analyzing such other
24 data as may be required by the Director to—

1 (i) efficiently and effectively fulfill the
2 Director's responsibilities, or

3 (ii) identify new environmental prob-
4 lems;

5 (E) conducting specialized analyses and
6 preparing special reports on particular subjects
7 whenever required to do so by the President, by
8 law, or by the Secretary, or when considered
9 appropriate by the Director; and

10 (F) making readily accessible or, to the ex-
11 tent practicable, disseminating all publicly avail-
12 able data collected under subparagraph (A) or
13 (B), in a timely manner and using dissemina-
14 tion methods that will maximize the utility of
15 such publicly available information to the pub-
16 lic.

17 (2) TECHNICAL CAPABILITIES TO PERFORM
18 ANALYSES.—The Director shall establish and main-
19 tain the scientific, engineering, statistical, and other
20 technical capability to perform analysis of environ-
21 mental quality and related public health and eco-
22 nomic data, to—

23 (A) verify the accuracy of items of environ-
24 mental quality and related public health data
25 submitted to the Director; and

and economic

1 (B) ensure the coordination and com-
2 parability of that data.

3 (d) POWERS OF DIRECTOR.—

4 (1) IN GENERAL.—The Director is authorized
5 on a nonexclusive basis, to exercise and enforce any
6 authority vested in the Secretary by law that relates
7 to the collection, gathering, reporting, evaluating,
8 analysis, or dissemination of environmental quality
9 data and related measures of public health in order
10 to carry out fully the functions of the Director.

11 (2) ACTIONS NOT SUBJECT TO APPROVAL.—
12 The Director shall not be required to—

13 (A) obtain the approval of any other officer
14 or employee of the Department in connection
15 with the collection, compilation, evaluation,
16 analysis, or dissemination of any information;
17 or

18 (B) obtain, prior to publication, the ap-
19 proval of any other officer or employee of the
20 United States with respect to the substance of
21 any reports prepared in accordance with law.

22 (3) PROVIDING ASSISTANCE.—The Director
23 may, upon request, provide technical assistance to
24 offices of the Department and to other Federal
25 agencies for the purpose of assuring the technical

1 quality and the coordination of statistical activities
2 of the Department. Such assistance may include re-
3 viewing data collection plans, survey designs, and
4 pretests, management of data, and quality of data.
5 The Director shall, upon request, promptly provide
6 any information or analysis in the possession of the
7 Bureau to any office within the Department which
8 such office determines relates to the functions of
9 such office.

10 (4) COLLECTION OF DATA FROM OTHER AGEN-
11 CIES, PERSONS, ETC.—Subject to other applicable
12 provisions of law, the Director, in carrying out re-
13 sponsibilities under this Act, may collect data from
14 such Federal agencies, State or local governments or
15 instrumentalities, Indian tribes, businesses, and
16 other individuals, persons, organizations, and insti-
17 tutions as the Director considers appropriate.

18 (5) USE OF DATA COLLECTED BY FEDERAL
19 AGENCIES.—

20 (A) IN GENERAL.—The Director may—

21 (i) use data collected by any Federal
22 agency, and

23 (ii) enter into interagency or intra-
24 agency agreements for the collection of
25 data for the purposes of this section.

1 (B) PROVISION OF DATA TO DIRECTOR.—

2 Subject to applicable law, all Federal agencies
3 (including agencies in the Department) shall
4 provide to the Director, in a timely manner and
5 to the extent possible in a usable electronic for-
6 mat, any data that the Director requires to
7 carry out responsibilities under this Act.

8 (C) COOPERATIVE COLLECTION OF
9 DATA.—The Director may—

10 (i) arrange with any agency, organiza-
11 tion, or institution for the cooperative col-
12 lection of data for the purposes of this sec-
13 tion, and

14 (ii) assign employees of the Bureau to
15 any such agency, organization, or institu-
16 tion to assist in such collection.

17 (6) OBTAINING EMPLOYEES AND SERVICES.—
18 The Director—

19 (A) may select, appoint, and employ such
20 officers and employees as may be necessary to
21 carry out the functions of the Bureau, subject
22 to—

23 (i) the provisions of title 5, United
24 States Code, governing appointments in
25 the competitive service, and

1 (ii) the provisions of chapter 51 and
2 subchapter III of chapter 53 of such title
3 relating to classification and General
4 Schedule pay rates; and

5 (B) may obtain services as authorized by
6 section 3109 of title 5, United States Code, at
7 a rate not to exceed the equivalent daily rate
8 payable for level V of the Executive Schedule
9 under section 5316 of such title.

10 (e) STAFF.—The Secretary shall ensure that the Bu-
11 reau of Environmental Statistics has staff sufficient to en-
12 able the Director to efficiently carry out the duties of the
13 Director.

14 (f) CONTINUING PERFORMANCE OF FUNCTIONS OF
15 DIRECTOR.—An individual who, on the effective date of
16 this Act, is performing any of the functions required by
17 this section to be performed by the Director may continue
18 to perform such functions until such functions are as-
19 signed to an individual appointed as the Director under
20 this Act.

21 (g) AVAILABILITY OF DIRECTOR TO CONGRESS; SPE-
22 CIAL REPORTS.—The Director—

23 (1) shall be available to the Congress to provide
24 testimony on subjects under the authority of the Di-
25 rector as any committee of the Congress may re-

1 quest, including on environmental quality data and
2 related measures of public health and analyses
3 thereof;

4 (2) shall, notwithstanding any limitation con-
5 tained in this section or any other provision of law,
6 make available to any committee of the Congress
7 having jurisdiction over any program of the Depart-
8 ment, upon written request of the committee, any in-
9 formation reported or otherwise obtained, and any
10 evaluation or analysis made, by the Director or any
11 officer or employee of the Bureau under this section
12 that relates to that program; and

13 (3) may provide, and charge for, statistical
14 records, compilations, surveys, and reports to State
15 and local officials, public and private organizations,
16 and individuals.

17 (h) CONFIDENTIALITY OF INFORMATION.—

18 (1) IN GENERAL.—The Director may not make
19 public any information obtained under this section
20 that is exempt from disclosure pursuant to sub-
21 section (b)(4) of section 552 of title 5, United States
22 Code, except as provided in subsection (d) of that
23 section and this section.

24 (2) ACCESS TO INFORMATION IN POSSESSION
25 OF OTHER FEDERAL AGENCY.—In furtherance and

1 not in limitation of any other authority, the Direc-
2 tor, on behalf of the Secretary, shall have access to
3 environmental and health related economic and sta-
4 tistical information in the possession of the Depart-
5 ment or any other Federal agency, except
6 information—

7 (A) the disclosure of which to another Fed-
8 eral agency is expressly prohibited by law; or

9 (B) the disclosure of which the agency hav-
10 ing possession determines would significantly
11 impair the discharge of authorities and respon-
12 sibilities that have been delegated to, or vested
13 by law, in such agency.

14 (3) OBTAINING INFORMATION TO WHICH AC-
15 CESS IS DENIED.—In any case in which the Director
16 is denied information that is necessary to achieve
17 the purposes of this Act, the Director shall take ap-
18 propriate action, pursuant to paragraph (2), to ob-
19 tain such information from the original sources of
20 the information or an alternate source. Such an al-
21 ternate source shall be notified of the reason for any
22 request under this paragraph for information.

23 (4) DISCLOSURE OF INFORMATION TO FEDERAL
24 AGENCIES.—Notwithstanding paragraphs (1) and
25 (2) and section 552(b)(4) of title 5, United States

1 Code, the Director may disclose any information ob-
2 tained under this section to—

3 (A) the General Accounting Office; and

4 (B) any department or agency of the Fed-
5 eral Government that requests the information
6 to carry out its lawful functions.

7 (5) CONTINUING APPLICATION OF OTHER RE-
8 STRICTIONS.—Any information disclosed by the Di-
9 rector under paragraph (4) shall continue thereafter
10 to be subject to any restriction, requirement, or con-
11 dition regarding the use or disclosure of the infor-
12 mation that applies to the Department.

13 (i) ESTABLISHMENT OF PUBLIC PARTICIPATION
14 PROCESS.—The Director shall establish an ongoing bal-
15 anced process for obtaining public advice, guidance, and
16 recommendations on the implementation of the functions
17 of the Director.

18 (j) PEER REVIEW OF BUREAU.—

19 (1) REVIEW REQUIREMENT.—The statistical
20 procedures and methodology of the Bureau shall be
21 subject to an annual peer review. Such review shall
22 be conducted by a Peer Review Team, which shall
23 prepare and submit to the President and the Con-
24 gress a report describing its investigation and find-
25 ings.

1 (2) PEER REVIEW TEAM.—The Peer Review
2 Team shall consist of at least 5 professionally quali-
3 fied persons who are officers or employees of the
4 United States, of whom at least—

5 (A) one shall be designated by the Director
6 of the Bureau of the Census;

7 (B) one shall be designated by the Com-
8 missioner of Labor Statistics;

9 (C) one shall be designated by the Director
10 of the National Center for Health Statistics;

11 (D) one shall be designated by the Admin-
12 istrator of the Energy Information Administra-
13 tion; and

14 (E) one shall be designated by the Comp-
15 troller General of the United States.

16 (3) CHAIRMAN.—The member of the Peer Re-
17 view Team appointed under paragraph (2)(E) shall
18 be the Chairman of the Team.

19 (4) RESPONSIBILITIES OF DIRECTOR AND SEC-
20 RETARY.—The Director and the Secretary—

21 (A) shall cooperate fully with the Peer Re-
22 view Team; and

23 (B) notwithstanding any other provisions
24 of law, shall make available to the Peer Review
25 Team such relevant data, information, docu-

1 ments, and services as the Peer Review Team
2 determines are necessary for successful comple-
3 tion of its peer review.

4 (5) CONFIDENTIALITY OF INFORMATION.—In-
5 formation made available to the Peer Review Team
6 under paragraph (4)(B) shall be subject to the con-
7 fidentiality standards applicable to the information
8 under subsection (h).

9 (k) SPECIFICATION IN BUDGET OF PROPOSED AP-
10 PROPRIATIONS.—The President shall include in each
11 budget submitted under section 1105 of title 31, United
12 States Code—

13 (1) an estimate of expenditures and appropria-
14 tions necessary to carry out this section for the fis-
15 cal year covered by the budget; and

16 (2) a statement of the difference, if any, be-
17 tween the estimate under paragraph (1) and the ap-
18 propriation request for the fiscal year that is submit-
19 ted to the President by the Director under section
20 1108 of that title.

21 **SEC. 112. OFFICE OF ENVIRONMENTAL JUSTICE.**

22 (a) OFFICE OF ENVIRONMENTAL JUSTICE.—The
23 Secretary shall establish in the Department an Office of
24 Environmental Justice (hereinafter in this section referred
25 to as the “Office”), which shall be independent of the De-

1 partment's single-medium program offices but shall have
2 the authority to advise such offices about environmental
3 justice matters. The Office shall be under the direction
4 of a Director appointed by the President, with the advice
5 and consent of the Senate. The Director shall be com-
6 pensated at level V of the Executive Schedule under sec-
7 tion 5316 of title 5, United States Code.

8 (b) FUNCTIONS.—The Director shall develop and,
9 with the approval of the Secretary, implement a strategy,
10 to promote, to the greatest extent practicable and consist-
11 ent with the provisions of this section and other provisions
12 of law applicable to the Department, environmental justice
13 for all people wherever they are located or work in the
14 United States, and regardless of income, race, ethnicity,
15 or national origin. 1

16 (c) ENVIRONMENTAL JUSTICE ADVISORY COMMIT-
17 TEE.—

18 (1) ESTABLISHMENT OF ADVISORY COMMIT-
19 TEE.—The Secretary shall establish an Advisory
20 Committee on Environmental Justice (hereinafter in
21 this subsection referred to as the "Committee"),
22 which shall advise the Secretary and the Director on
23 matters relating to the strategic direction, policies,
24 and programs of the Department under this section.

25 (2) APPOINTMENTS.—

1 (A) MEMBERSHIP.—The Committee shall
2 be composed of not more than 15 members ap-
3 pointed by the Secretary. The Director and the
4 Secretary (or their designees) shall be ex officio
5 members of the Committee. The Secretary
6 shall, in appointing members of the
7 Committee—

8 (i) ensure that the Committee is fairly
9 balanced with respect to points of view rep-
10 resented and with regard to racial, gender,
11 ethnic, and geographic representation;

12 (ii) include individuals who have
13 knowledge of, and experience with, environ-
14 mental conditions in racial minority, ethnic
15 minority, or moderate- and low-income
16 communities;

17 (iii) include individuals who are rec-
18 ognized experts in the fields of environ-
19 mental law, socioeconomic analysis, health
20 and environmental effects, exposure eval-
21 uation, and environmental health science
22 research; and

23 (iv) include individuals who represent
24 the regulated community, labor, commu-
25 nity-based groups, Federal, State, and

1 local governments, Indian tribes, and other
2 entities that the Secretary determines to be
3 appropriate.

4 (B) TERMS.—Except as provided in sub-
5 paragraph (C), members of the Board shall be
6 appointed for a 3-year term, and may be
7 reappointed for 1 additional term. Appointees
8 to vacancies shall serve for the remainder of the
9 original member's term.

10 (C) STAGGERED TERMS.—Of the members
11 first appointed to the Committee—

12 (i) $\frac{1}{3}$ shall be appointed for a 1-year
13 term; and

14 (ii) $\frac{1}{3}$ shall be appointed for a 2-year
15 term.

16 SEC. 113. SCIENTIFIC INTEGRITY.

17 (a) IN GENERAL.—The Secretary, in carrying out re-
18 sponsibilities of the Secretary under this Act and any
19 other Act that applies to the Department, shall—

20 (1) provide for the development and acquisition
21 of the best credible and unbiased scientific informa-
22 tion, and make such information available on a time-
23 ly basis, for use by, and guidance of, the Secretary;
24 and

1 (2) develop, publish, and implement, within 18
2 months after the date of the enactment of this Act,
3 meaningful peer review and quality assurance guide-
4 lines and policies for improved performance of the
5 Department and its activities, which guidelines and
6 policies shall identify, to the greatest extent possible,
7 the types or categories of science-based, science-de-
8 pendent, and technical products that will be subject
9 to them.

10 (b) **PRODUCTS DEFINED.**—In subsection (a)(2), the
11 term products—

12 (1) includes studies, reports, models, analyses,
13 and publications used to support rulemaking; and

14 (2) does not include the promulgation of a rule,
15 the issuance or denial of a permit, or the taking of
16 enforcement actions.

17 (c) **LIMITATION ON LEGAL EFFECT.**—This section
18 shall not be the basis for challenging actions taken under
19 other provisions of law, or the cause of delay of any action
20 required to meet a statutory or court-imposed deadline.

21 **SEC. 114. CONFLICTS OF INTEREST OF MEMBERS OF ADVI-**
22 **SORY COMMITTEES.**

23 (a) **CONFLICTS OF INTEREST REPORTING REQUIRE-**
24 **MENTS.**—Each member of an advisory committee of the
25 Department who is not an officer or employee of the Fed-

1 eral Government shall file with the Secretary an annual
2 written report disclosing—

3 (1) the member's principal employment;

4 (2) all other corporations, companies, firms,
5 partnerships, business enterprises, research organi-
6 zations, educational institutions, or other entities in
7 or to which the member serves as an employee, offi-
8 cer, adviser, director, owner, or consultant, including
9 a description of the nature of the member's service,
10 but only to the extent the entity or relationship is
11 relevant to the purposes and functions of the advi-
12 sory committee; and

13 (3) the identity, but not the value or amount,
14 of any sources of income or financial interests of the
15 member that are or may be relevant to the purposes
16 and functions of the advisory committee.

17 (b) PUBLIC ACCESS TO REPORTS.—The Secretary
18 shall, within 15 days after receiving any report under this
19 section, permit inspection of such report by, or furnish a
20 copy of such report to, any person requesting such inspec-
21 tion or copy, subject to the terms and conditions estab-
22 lished by section 104 of the Ethics in Government Act of
23 1978 (2 U.S.C. 704) for reports filed under that Act.

24 (c) BALANCED REPRESENTATION REQUIREMENT.—

1 (1) IN GENERAL.—The membership of each ad-
2 visory committee appointed by the Department shall
3 be balanced in terms of the points of view rep-
4 resented and the functions to be performed by the
5 advisory committee. In order to meet this require-
6 ment, each such advisory committee shall have rep-
7 resentatives appointed from among the following
8 groups:

9 (A) The affected industry.

10 (B) Consumer, labor, environmental,
11 health, and public interest groups.

12 (C) State and local governments and In-
13 dian tribes.

14 (2) TREATMENT OF CATEGORIES.—The cat-
15 egories described in paragraphs (1)(A), (B), and
16 (C)—

17 (A) are not exclusive, and

18 (B) may each be waived by the appointing
19 authority if a determination is made in writing
20 explaining why the category is not germane to
21 the work of the advisory committee.

22 (3) JUDICIAL REVIEW.—A determination under
23 paragraph (2)(B) is subject to judicial review.

24 (d) ADVISORY COMMITTEE COMPENSATION.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the Secretary may pay members of advisory commit-
3 tees of the Department at rates for individuals not
4 to exceed the per diem rate equivalent to the rate for
5 level V of the Executive Schedule under section 5316
6 of title 5, United States Code.

7 (2) CONDITION.—The Secretary may not pay
8 compensation to an individual under paragraph (1)
9 unless compensation is necessary because—

10 (A) the services of the individual are con-
11 sidered by the Secretary to be essential;

12 (B) failure to pay compensation would con-
13 stitute a financial hardship for the individual;
14 or

15 (C) the individual has professional exper-
16 tise that may not be obtained without com-
17 pensation.

18 **SEC. 115. LIMITATION ON SCOPE OF CERTAIN UMBRELLA**
19 **CONTRACTS BY DEPARTMENT FOR ADVISORY**
20 **AND ASSISTANCE SERVICES.**

21 (a) ENSURING COMPETITION FOR UMBRELLA CON-
22 TRACTS.—The Department may enter into an umbrella
23 contract only under the following conditions:

24 (1) The period covered by the contract does not
25 exceed—

1 (A) in the case of a response action con-
2 tract (as that term is defined in section 119(e)
3 of the Comprehensive Environmental Response,
4 Compensation, and Liability Act of 1980 (42
5 U.S.C. 9619(e), as in effect on the date of the
6 enactment of this Act), 10 years; or

7 (B) in the case of any other contract—

8 (i) 5 years; or

9 (ii) such longer period as may be
10 specified by the Secretary, if the Secretary
11 determines in writing that unusual and
12 compelling circumstances exist justifying
13 an umbrella contract for a longer period.

14 (2) Except as provided in subsection (e), the
15 contract is awarded pursuant to full and open com-
16 petition (as that term is defined in section 4 of the
17 Office Federal Procurement Policy Act (41 U.S.C.
18 403)), unless the Secretary determines in writing
19 that—

20 (A) the services to be procured under the
21 contract are available from only one responsible
22 source and no other type of services will satisfy
23 the needs of the Department; or

24 (B) the Department's need for the services
25 to be provided under the contract is of such an

1 unusual and compelling urgency that the Gov-
2 ernment would be seriously injured unless the
3 Department is permitted to limit the number of
4 sources from which it solicits bids or proposals.

5 (3) The contract does not authorize the con-
6 tractor to procure items on behalf of the Govern-
7 ment, except that the contract may authorize the
8 contractor to procure personal property if—

9 (A) it is procured under a response action
10 contract referred to in paragraph (1),

11 (B) it is procured for the performance of
12 the contract, and

13 (C) all right, title, and interest in the prop-
14 erty vests in the Government.

15 (b) PROHIBITION OF "CONTRACT SHOPPING".—

16 (1) LIMITATION.—Task orders may be made
17 under an umbrella contract awarded by the Depart-
18 ment only to carry out the mission of the office,
19 function, or program that requested the umbrella
20 contract.

21 (2) WAIVER.—The Secretary (or a designee
22 who is an officer of the Department at or above the
23 level of the senior procurement executive of the De-
24 partment designated pursuant to section 16(3) of
25 the Office Federal Procurement Policy Act (41

1 U.S.C. 414(3)) may waive the application of the lim-
2 itation set forth in paragraph (1) to a task order if
3 he or she determines in writing that—

4 (A) the task order is within the scope of
5 the umbrella contract;

6 (B) there is an identifiable emergency or
7 other urgent requirement that cannot be met by
8 other means; and

9 (C) there is no other contract available to
10 the office seeking the waiver that is suitable for
11 the task order.

12 (3) APPLICATION.—Paragraph (1) does not
13 apply to any contract which is determined by the
14 Secretary in writing, before the award of the con-
15 tract, as being necessary to meet the needs of more
16 than one office, function, or program.

17 (c) FOLLOW-ON COMPETITION.—Statements of work
18 in an umbrella contract awarded by the Department shall
19 be prepared so as to ensure full and open competition (as
20 that term is defined in section 4 of the Office Federal Pro-
21 curement Policy Act (41 U.S.C. 403) for any new contract
22 that results from, completes, or supplements the work per-
23 formed under the umbrella contract.

24 (d) SUBCONTRACTORS.—

1 (1) IDENTIFICATION OF SUBCONTRACTORS.—

2 Any solicitation for an umbrella contract awarded by
3 the Department shall require that all offerors iden-
4 tify in their proposals all prospective subcontractors
5 and the qualifications of those subcontractors.

6 (2) RESTRICTION ON ELIGIBILITY FOR SUB-
7 CONTRACTS.—A person who is not identified as a
8 prospective subcontractor in accordance with para-
9 graph (1) by the prime contractor for an umbrella
10 contract awarded by the Department shall not be eli-
11 gible to perform any task order as a subcontractor
12 under the umbrella contract.

13 (3) WAIVER.—

14 (A) The Secretary (or a designee who is an
15 officer of the Department at or above the level
16 of the senior procurement executive of the De-
17 partment designated pursuant to section 16(3)
18 of the Office of Federal Procurement Policy Act
19 (41 U.S.C. 414(3)) may waive the application
20 of the restriction set forth in paragraph (2) to
21 a task order if the Secretary determines in writ-
22 ing that unusual circumstances exist making
23 such a waiver in the interests of the Govern-
24 ment.

1 (B) For purposes of subparagraph (A), the
2 term "unusual circumstances" means—

3 (i) insolvency, nonresponsibility, sus-
4 pension, or debarment of all subcontractors
5 identified pursuant to paragraph (1) that
6 are qualified to perform a task order for
7 which the waiver is granted;

8 (ii) a lack of any technical skills nec-
9 essary to perform the task order for which
10 the waiver is granted, by all subcontractors
11 identified pursuant to paragraph (1);

12 (iii) other circumstances similar to
13 those referred to in clauses (i) and (ii); or

14 (iv) any identifiable emergency or
15 other urgent requirement determined by
16 the Secretary in writing to exist.

17 (4) COMPETITION.—In any case in which the
18 Secretary or his or her designee grants a waiver
19 under paragraph (3), the award by the prime con-
20 tractor to the subcontractor of a subcontract to per-
21 form a task for which the waiver is granted shall be
22 on a competitive basis unless the written determina-
23 tion under paragraph (3)—

24 (A) approves a noncompetitive award; and

25 (B) includes a finding that—

1 (i) an identifiable emergency or other
2 urgent requirement exists; or

3 (ii) no other qualified source is rea-
4 sonably available.

5 (5) LIMITATION ON APPLICATION.—This sub-
6 section shall not apply to a response action contract
7 (as that term is defined in section 119(e) of the
8 Comprehensive Environmental Response, Com-
9 pensation, and Liability Act of 1980 (42 U.S.C.
10 9619(e)), as in effect on the date of the enactment
11 of this Act).

12 (e) PROVISIONS NOT AFFECTED.—Nothing in this
13 section shall be construed as amending, modifying, or su-
14 perseding, or is intended to impair or restrict authorities
15 or responsibilities under—

16 (1) title IX of the Federal Property and Admin-
17 istrative Services Act of 1949 (40 U.S.C. 541 et
18 seq.), commonly referred to as the “Brooks Archi-
19 tect-Engineers Act”;

20 (2) the Small Business Act (15 U.S.C. 631 et
21 seq.), including section 8(a) of that Act (15 U.S.C.
22 637(a)); or

23 (3) title X of the Act of November 15, 1990
24 (42 U.S.C. 7601 note), popularly known as the

1 "Clean Air Act Amendments of 1990", relating to
2 disadvantaged business concerns.

3 (f) DEFINITIONS.—In this section—

4 (1) the term "advisory and assistance
5 services"—

6 (A) means services to support or
7 improve—

8 (i) agency policy development, deci-
9 sionmaking, management, and administra-
10 tion; or

11 (ii) the operation of management sys-
12 tems; and

13 (B) includes—

14 (i) management and professional sup-
15 port services;

16 (ii) the conduct of studies, analyses,
17 and evaluations; and

18 (iii) engineering and technical serv-
19 ices, including services provided under a
20 response action contract (as that term is
21 used in subsection (a)(1)(B)); and

22 (2) the term "umbrella contract" means a con-
23 tract by the Department that—

24 (A) provides for the performance of spe-
25 cific advisory and assistance services;

1 (B) does not procure or specify a firm
2 quantity of services;

3 (C) provides for services to be supplied to
4 the Government in response to specific task or-
5 ders to the contractor from the Government;

6 (D) requires the contractor to provide a
7 stated amount of effort over a given period of
8 time (commonly referred to as a "level of effort
9 contract");

10 (E) has a maximum potential value of
11 more than \$1,000,000 and is not a fixed price
12 contract; and

13 (F) is for a period longer than 1 year.

14 (g) LIMITATION ON APPLICATION TO EXISTING CON-
15 TRACTS.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), this section shall not apply to a contract
18 entered into before the effective date of this section.

19 (2) CONTRACTING REQUIREMENTS.—Sub-
20 sections (b) and (c) shall apply to—

21 (A) a task order or work assignment added
22 on or after the effective date of this section to
23 a contract entered into before that effective
24 date; and

1 (B) a contract that is extended, or for
2 which an option to renew is exercised, on or
3 after the effective date of this section.

4 (h) PUBLIC AVAILABILITY.—Waivers granted under
5 this section shall be available as provided in section 552(b)
6 of title 5, United States Code.

7 **SEC. 116. PROHIBITION ON TRANSFERRING TO CON-**
8 **TRACTORS INHERENTLY GOVERNMENTAL**
9 **FUNCTIONS OF DEPARTMENT.**

10 (a) POLICY.—It shall be the policy of the Department
11 to prevent the transfer of inherently governmental func-
12 tions of the Department to private sector contractors and
13 to ensure that inherently governmental functions of the
14 Department are performed only by officers and employees
15 of the Department or other agencies and instrumentalities
16 of the Government.

17 (b) FINAL ACTIONS.—Final actions of the Depart-
18 ment shall reflect the independent conclusions of Depart-
19 ment officials.

20 (c) RESPONSIBILITIES OF THE SECRETARY.—The
21 Secretary shall—

22 (1) ensure that the Department is in full com-
23 pliance with all statutes and regulations that govern
24 the performance of inherently Governmental func-
25 tions, including by periodically reviewing the oper-

1 ations of the Department with regard to compliance
2 with statutes and regulations governing performance
3 of inherently governmental functions (including this
4 section);

5 (2) ensure that no contract is solicited or
6 awarded by the Department, and no order is made
7 under a contract awarded by the Department, that
8 fails to comply with statutes and regulations that
9 govern the performance of inherently governmental
10 functions;

11 (3) provide enhanced scrutiny and management
12 oversight when the Department is contracting for
13 functions that, although not inherently govern-
14 mental, closely support the performance of inher-
15 ently governmental functions; and

16 (4) promulgate regulations in the Department's
17 supplement to the Federal Acquisition Regulation
18 that specify that inherently governmental functions
19 of the Department include—

20 (A) regulation of public health, industry,
21 commerce, or the environment;

22 (B) development (other than technical as-
23 sistance) and drafting of rules, standards, regu-
24 lations, and Government policies; and

1 (C) preparation of contractual documents,
2 including solicitations, specifications, state-
3 ments of work, and contract orders, except in
4 the case of specifications and statements of
5 work of a technical nature requiring expertise
6 not available in the Department.

7 (d) **DISCLAIMER.**—This section shall not be con-
8 strued as creating—

9 (1) any substantive or procedural basis on
10 which to challenge any agency action or inaction; or

11 (2) any right or benefit enforceable by law.

12 (e) **LIMITATION ON APPLICATION.**—

13 (1) **IN GENERAL.**—Except as provided in para-
14 graph (2), this section shall not apply to an inher-
15 ently governmental function performed under a con-
16 tract entered into before the effective date of that
17 section.

18 (2) **INHERENTLY GOVERNMENTAL FUNC-**
19 **TIONS.**—This section shall apply to an inherently
20 governmental function performed or sought to be
21 performed—

22 (A) under a task added on or after the ef-
23 fective date of that section to a contract entered
24 into before that effective date;

1 (B) under an order made on or after the
2 effective date of that section under a contract
3 entered into before that effective date; or

4 (C) on or after the effective date of that
5 section under a contract that is extended, or for
6 which an option to renew is exercised, on or
7 after that effective date.

8 (f) **RELATIONSHIP TO OTHER LAW.**—The require-
9 ments of this section are in addition to, and do not super-
10 sede or affect, other provisions of law.

11 **SEC. 117. DISALLOWANCE OF, AND PENALTIES FOR, IM-**
12 **PROPERLY CLAIMED COSTS UNDER DEPART-**
13 **MENT CONTRACTS AND REGULATIONS.**

14 (a) **COSTS DISALLOWED.**—If a contractor under a
15 covered contract submits a proposal for settlement of indi-
16 rect costs incurred by the contractor for any period after
17 such costs have been accrued, and if that proposal includes
18 the submission of a cost which is unallowable because the
19 cost violates a cost principle in the Federal Acquisition
20 Regulation promulgated under section 25 of the Office of
21 Federal Procurement Policy Act (41 U.S.C. 421) or in the
22 Department's supplement to the Federal Acquisition Reg-
23 ulation, or violates a provision of statute, the cost shall
24 be disallowed.

25 (b) **PENALTIES.**—

1 (1) IN GENERAL.—If the Secretary determines
2 that a cost submitted by a contractor under a cov-
3 ered contract in its proposal for settlement is ex-
4 pressly unallowable under a cost principle referred to
5 in subsection (a) that defines the allowability of spe-
6 cific selected costs, the Secretary shall assess a pen-
7 alty against the contractor in an amount equal to—

8 (A) the amount of the disallowed cost allo-
9 cated to covered contracts for which a proposal
10 for settlement of indirect costs has been submit-
11 ted; plus

12 (B) interest to compensate the United
13 States for the use of any funds which the con-
14 tractor has been paid in excess of the amount
15 to which the contractor was entitled.

16 (2) INCREASED PENALTY.—If the Secretary de-
17 termines that a proposal for settlement of indirect
18 costs submitted by a contractor under a covered con-
19 tract includes a cost determined to be unallowable in
20 the case of such contractor before the submission of
21 such proposal, the Secretary shall assess a penalty
22 against the contractor in an amount equal to twice
23 the amount of the disallowed cost allocated to cov-
24 ered contracts for which a proposal for settlement of
25 indirect costs has been submitted.

1 (c) WAIVER OF PENALTIES.—The Secretary may
2 waive a penalty under subsection (b) in the case of a con-
3 tractor's proposal for settlement of indirect costs if—

4 (1) the contractor withdraws the proposal be-
5 fore the formal initiation of an audit of the proposal
6 by the Government and resubmits a revised pro-
7 posal;

8 (2) the amount of unallowable costs subject to
9 the penalty is insignificant; or

10 (3) the contractor demonstrates, to the con-
11 tracting officer's satisfaction, that—

12 (A) it has established appropriate policies
13 and personnel training and an internal control
14 and review system that provide assurance that
15 unallowable costs subject to penalties are pre-
16 cluded from being included in the contractor's
17 proposal for settlement of indirect costs; and

18 (B) the unallowable costs subject to the
19 penalty were inadvertently incorporated into the
20 proposal.

21 Such waivers shall be available in accordance with section
22 552(b) of title 5, United States Code.

23 (d) DEPARTMENT ACTIONS.—An action of the Sec-
24 retary under subsection (a) or (b)—

1 (1) shall be considered a final decision for pur-
2 poses of section 6 of the Contract Disputes Act of
3 1978 (41 U.S.C. 605); and

4 (2) is appealable in the manner provided in sec-
5 tion 7 of that Act (41 U.S.C. 606).

6 (e) CERTIFICATION.—

7 (1) IN GENERAL.—A proposal for settlement of
8 indirect costs applicable to a covered contract shall
9 include a certification by an official of the contractor
10 that, to the best of the certifying official's knowledge
11 and belief, all indirect costs included in the proposal
12 are allowable.

13 (2) WAIVER OF CERTIFICATION REQUIRE-
14 MENT.—The Secretary may, in an exceptional case,
15 waive the requirement for certification under para-
16 graph (1) in the case of any covered contract if the
17 Secretary—

18 (A) determines in such case that it would
19 be in the interest of the United States to waive
20 such determination; and

21 (B) states in writing the reasons for that
22 determination and makes such determination
23 available to the public.

24 Such waivers shall be available in accordance with section
25 552(b) of title 5, United States Code.

1 (f) CRIMINAL PENALTIES.—The submission to the
2 Department of a proposal for settlement of costs for any
3 period after such costs have been accrued that includes
4 a cost that is expressly specified by law or regulation as
5 being unallowable, with the knowledge that such cost is
6 unallowable, shall be subject to the provisions of section
7 287 of title 18 and section 3729 of title 31, United States
8 Code.

9 (g) BURDEN OF PROOF IN PROCEEDINGS.—In a pro-
10 ceeding before a board of contract appeals, the United
11 States Court of Federal Claims, or any other Federal
12 Court in which the reasonableness of indirect costs for
13 which a contractor seeks reimbursement from the Depart-
14 ment is in issue, the burden of proof shall be upon the
15 contractor to establish that those costs are reasonable.

16 (h) DOCUMENTATION OF COSTS.—Costs shall be al-
17 lowable under a covered contract only to the extent that
18 such costs are supported by sufficient documentation (as
19 specified by regulations issued by the Secretary under sec-
20 tion 122) to permit audit.

21 (i) COVERED CONTRACT DEFINED.—As used in this
22 section and section 119, the term “covered contract”
23 means a contract for an amount more than \$100,000,
24 other than a fixed-price contract without cost incentives,
25 entered into by the Department.

1 SEC. 118. CONTRACTOR EMPLOYEE GIFT, ENTERTAINMENT,
2 OR RECREATION COSTS SPECIFICALLY UNAL-
3 LOWABLE UNDER DEPARTMENT CONTRACTS.

4 Costs of entertainment, gifts, or recreation for con-
5 tractor employees or members of their families provided
6 by a contractor to improve employee morale or perform-
7 ance or for any other purpose, are not allowable under
8 a covered contract in any amount, except that nothing in
9 this section precludes a contractor from providing such en-
10 tertainment, gifts, or recreation to their employees or
11 members of their families at no expense to the Govern-
12 ment.

13 SEC. 119. DOCUMENTATION OF CONTRACTOR TRAVEL
14 COSTS.

15 Costs of travel under a covered contract which are
16 otherwise allowable under section 24 of the Office of Fed-
17 eral Procurement Policy Act (41 U.S.C. 421) shall be al-
18 lowable only if supported by documentation, which shall
19 include documentation of, as specified by regulations is-
20 sued by the Secretary under section 121, amounts, times,
21 dates, origin, and destination of the travel, purpose of the
22 travel, and identities of all travelers to which the costs
23 relate.

1 SEC. 120. EFFECTIVE DATES; LIMITATIONS ON APPLICA-
2 TION.

3 (a) EFFECTIVE DATES.—Sections 115 through 119
4 shall take effect on the earlier of the date that is 90 days
5 after the date of promulgation of regulations under section
6 121, or the date that is 18 months after the date of the
7 enactment of this Act.

8 (b) LIMITATIONS ON APPLICATION.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), sections 117, 118, and 119 shall not
11 apply to a contract entered into before the effective
12 date of those sections.

13 (2) EXCEPTIONS.—Section 117 shall apply to—

14 (A) a task added on or after the effective
15 date of the section to a contract entered into
16 before that effective date;

17 (B) an order made on or after the effective
18 date of the section under a contract entered
19 into before that effective date; and

20 (C) a contract that is extended, or for
21 which an option to renew is exercised, on or
22 after the effective date of the section.

23 SEC. 121. REGULATIONS.

24 (a) IN GENERAL.—The Secretary shall promulgate
25 such revisions as may be necessary to the Department's
26 supplement to the Federal Acquisition Regulation imple-

1 menting sections 115 through 119 in final form within one
2 year after the date of enactment of this Act. The revisions
3 shall include binding guidance for granting waivers under
4 subsections (b) and (d) of section 115.

5 (b) PROCEDURES.—Section 25(c) of the Office of
6 Federal Procurement Policy Act (41 U.S.C. 421(c)) shall
7 apply to regulations issued under sections 115 through
8 119, except that the Administrator for Federal Procure-
9 ment Policy may rescind or deny the promulgation of any
10 such regulation, or take any other action authorized by
11 section 6 of that Act (41 U.S.C. 405), only with respect
12 to any inconsistency of the regulation with those sections
13 which shall be identified by the Administrator. The Ad-
14 ministrator shall notify the appropriate Committees of the
15 Congress with jurisdiction over the Department and ex-
16 plain the basis for such action.

17 SEC. 122. REFERENCES.

18 Reference in any other Federal law, Executive order,
19 rule, regulation, reorganization plan, delegation of author-
20 ity, or document—

21 (1) to the Environmental Protection Agency is
22 deemed to refer to the Department of Environmental
23 Protection;

1 (2) to the Administrator of the Environmental
2 Protection Agency is deemed to refer to the Sec-
3 retary of the Environment;

4 (3) to the Deputy Administrator of the Envi-
5 ronmental Protection Agency is deemed to refer to
6 the Deputy Secretary of the Environment; and

7 (4) to an Assistant Administrator of the Envi-
8 ronmental Protection Agency is deemed to refer to
9 the corresponding Assistant Secretary of the Depart-
10 ment of Environmental Protection who is assigned
11 the functions of that Assistant Administrator.

12 **SEC. 123. SAVINGS PROVISIONS.**

13 (a) **POWERS AND AUTHORITIES.**—Except as provided
14 in section 101(e), the Department and its officers, employ-
15 ees, and agents shall have all the powers and authorities
16 of the Environmental Protection Agency and its officers,
17 employees, and agents, respectively.

18 (b) **CONTINUING EFFECT OF LEGAL DOCUMENTS.**—
19 All orders, determinations, rules, regulations, permits,
20 grants, contracts, certificates, licenses, privileges, and
21 other administrative actions—

22 (1) which have been issued, made, granted or
23 allowed to become effective by the President, the Ad-
24 ministrator or other authorized official of the Envi-
25 ronmental Protection Agency, or by a court of com-

1 petent jurisdiction, which relate to functions of the
2 Administrator or any other officer or agent of the
3 Environmental Protection Agency actions; and

4 (2) which are in effect at the time this Act
5 takes effect;

6 shall continue in effect according to their terms until
7 modified, terminated, superseded, set aside, or revoked in
8 accordance with law by the President, the Secretary, or
9 other authorized official, by a court of competent jurisdic-
10 tion, or by operation of law.

11 (c) PROCEEDINGS NOT AFFECTED.—This Act shall
12 not affect any proceeding, proposed rule, or application
13 for any license, permit, certificate, or financial assistance
14 pending before the Environmental Protection Agency at
15 the time this Act takes effect, and such proceedings and
16 applications shall be continued. Orders shall be issued in
17 such proceedings, appeals shall be taken therefrom, and
18 payments shall be made pursuant to such orders, as if this
19 Act had not been enacted, and orders issued in any such
20 proceedings shall continue in effect until modified, termi-
21 nated, superseded, or revoked by a duly authorized official,
22 by a court of competent jurisdiction, or by operation of
23 law. Nothing in this subsection prohibits the dis-
24 continuance or modification of any such proceeding under
25 the same terms and conditions and to the same extent that

1 such proceeding could have been discontinued or modified
2 if this Act had not been enacted.

3 (d) **SUITS NOT AFFECTED.**—This Act shall not affect
4 suits commenced before the effective date of this Act, and
5 in all such suits proceedings shall be had, appeals taken,
6 and judgments rendered in the same manner and with the
7 same effect as if this Act had not been enacted.

8 **SEC. 124. CONFORMING AMENDMENTS.**

9 (a) **PRESIDENTIAL SUCCESSION.**—Section 19(d)(1)
10 of title 3, United States Code, is amended by inserting
11 before the period at the end the following: “, Secretary
12 of the Environment”.

13 (b) **DEFINITION OF DEPARTMENT IN CIVIL SERVICE**
14 **LAWS.**—Section 101 of title 5, United States Code, is
15 amended by adding at the end the following:

16 “The Department of Environmental Protec-
17 tion.”.

18 (c) **COMPENSATION, LEVEL I.**—Section 5312 of title
19 5, United States Code, is amended by adding at the end
20 the following:

21 “Secretary of the Environment.”.

22 (d) **COMPENSATION, LEVEL II.**—Section 5313 of title
23 5, United States Code, is amended by striking “Adminis-
24 trator of the Environmental Protection Agency” and in-
25 serting “Deputy Secretary of the Environment”.

1 (e) COMPENSATION, LEVEL III.—Section 5314 of
2 title 5, United States Code, is amended by striking “Dep-
3 uty Administrator of the Environmental Protection Agen-
4 cy.”.

5 (f) COMPENSATION, LEVEL IV.—Section 5315 of
6 title 5, United States Code, is amended—

7 (1) by striking “Inspector General, Environ-
8 mental Protection Agency” and inserting “Inspector
9 General, Department of Environmental Protection”;

10 (2) by striking each reference to an Assistant
11 Administrator, or Assistant Administrators, of the
12 Environmental Protection Agency; and

13 (3) by adding at the end the following:

14 “Assistant Secretaries, Department of Environ-
15 mental Protection.

16 “General Counsel, Department of Environ-
17 mental Protection.”.

18 (g) COMPENSATION, LEVEL V.—Section 5316 of title
19 5, United States Code, is amended by adding at the end
20 the following:

21 “Director, Bureau of Environmental Statistics,
22 Department of Environmental Protection.

23 “Director, Office of Environmental Justice, De-
24 partment of Environmental Protection.”.

1 (h) INSPECTOR GENERAL ACT OF 1978.—The In-
2 spector General Act of 1978 is amended—

3 (1) in section 11(1)—

4 (A) by inserting “the Environment,” after
5 “Energy,”; and

6 (B) by striking “Environmental Protec-
7 tion,”; and

8 (2) in section 11(2)—

9 (A) by inserting “Environmental Protec-
10 tion,” after “Energy,”; and

11 (B) by striking “the Environmental Pro-
12 tection Agency,”.

13 **SEC. 125. ADDITIONAL CONFORMING AMENDMENTS.**

14 After consultation with the Committee on Govern-
15 ment Operations of the House of Representatives and ap-
16 propriate committees of the Senate, the Secretary shall
17 prepare and submit to the Congress proposed legislation,
18 which the Secretary determines is necessary and appro-
19 priate, containing technical and conforming amendments
20 to the laws of the United States to reflect the changes
21 made by this Act.

1 **TITLE II—ADMINISTRATIVE**
2 **PROVISIONS**

3 **SEC. 201. ACQUISITION OF COPYRIGHTS AND PATENTS.**

4 The Secretary may acquire any of the following rights
5 if the property acquired thereby is for use by or for, or
6 useful to, the Department:

7 (1) Copyrights, patents, and applications for
8 patents, designs, processes, and manufacturing data.

9 (2) Licenses under copyrights, patents, and ap-
10 plications for patents.

11 (3) Releases, before suit is brought, for past in-
12 fringement of patents or copyrights.

13 **SEC. 202. GIFTS AND BEQUESTS.**

14 The Secretary may accept, hold, administer, and uti-
15 lize gifts, bequests, and devises of real or personal prop-
16 erty and donations of services for the purpose of aiding
17 or facilitating the work of the Department. Gifts, be-
18 quests, and devises of money and proceeds from sales of
19 other property received as gifts, bequests, or devises shall
20 be deposited in the Treasury and shall be available for
21 disbursement upon the order of the Secretary.

22 **SEC. 203. OFFICIAL SEAL OF DEPARTMENT.**

23 On and after the effective date of this Act, the seal
24 of the Environmental Protection Agency, with appropriate
25 changes, shall be the official seal of the Department, until

1 such time as the Secretary may cause an official seal to
2 be made for the Department of such design as the Sec-
3 retary shall approve.

4 **SEC. 204. USE OF LIKENESS OF OFFICIAL SEAL OF DEPART-**
5 **MENT.**

6 (a) **DISPLAY OF SEAL.**—Whoever knowingly displays
7 any printed or other likeness of the official seal of the De-
8 partment, or any facsimile thereof, in or in connection
9 with, any advertisement, poster, circular, book, pamphlet,
10 or other publication, public meeting, play, motion picture,
11 telecast, or other production, or on any building, monu-
12 ment, or stationery, for the purpose of conveying, or in
13 a manner reasonably calculated to convey, a false impres-
14 sion of sponsorship or approval by the Government of the
15 United States or by any department, agency, or instru-
16 mentality thereof, shall be imprisoned not more than 6
17 months, or fined under title 18, United States Code, or
18 both.

19 (b) **MANUFACTURE, REPRODUCTION, SALE, OR PUR-**
20 **CHASES FOR RESALE.**—Except as authorized under regu-
21 lations promulgated by the Secretary and published in the
22 Federal Register, whoever knowingly manufactures, repro-
23 duces, sells, or purchases for resale, either separately or
24 appended to any article manufactured or sold, any likeness
25 of the official seal of the Department or any substantial

1 part thereof (except for manufacture or sale of the article
2 for the official use of the Government of the United
3 States), shall be imprisoned not more than 6 months, or
4 fined under title 18, United States Code, or both.

5 (c) INJUNCTIONS.—A violation of subsection (a) or
6 (b) may be enjoined by an action brought by the Attorney
7 General in the appropriate district court of the United
8 States. The Attorney General shall file such an action
9 upon request of the Secretary or any authorized rep-
10 resentative of the Secretary.

11 **SEC. 205. USE OF STATIONERY, PRINTED FORMS, AND SUP-**
12 **PLIES OF ENVIRONMENTAL PROTECTION**
13 **AGENCY.**

14 (a) IN GENERAL.—The Secretary shall ensure that,
15 to the extent practicable, existing stationery, printed
16 forms, and other supplies of the Environmental Protection
17 Agency are used to carry out functions of the Department
18 before procuring new stationery, printed forms, and other
19 supplies for the Department.

20 (b) LIMITATION.—Notwithstanding subsection (a),
21 the Secretary may procure stationery, printed forms, and
22 other supplies for the specific use of the Secretary and
23 the Office of the Secretary.

1 **TITLE III—DISALLOWANCE OF,**
2 **AND PENALTIES FOR, IM-**
3 **PROPERLY CLAIMED COSTS**
4 **UNDER CIVILIAN AGENCY**
5 **CONTRACTS AND REGULA-**
6 **TIONS**

7 **SEC. 301. DISALLOWANCE OF COSTS; PENALTIES.**

8 The Office of Federal Procurement Policy Act (41
9 U.S.C. 401 et seq.) is amended by adding at the end the
10 following new section:

11 **"SEC. 29. INDIRECT COSTS UNDER CIVILIAN AGENCY CON-**
12 **TRACTS.**

13 “(a) **COSTS DISALLOWED.**—If a contractor under a
14 covered contract submits a proposal for settlement of indi-
15 rect costs incurred by the contractor for any period after
16 such costs have been accrued and if that proposal includes
17 the submission of a cost which is unallowable because the
18 cost violates a cost principle in the Federal Acquisition
19 Regulation promulgated under section 25 or in an execu-
20 tive agency’s supplement to the Federal Acquisition Regu-
21 lation, or violates a provision of statute, the cost shall be
22 disallowed.

23 “(b) **PENALTIES.**—

24 “(1) **IN GENERAL.**—If the head of an executive
25 agency determines that a cost submitted by a con-

1 tractor under a covered contract in its proposal for
2 settlement is expressly unallowable under a cost
3 principle referred to in subsection (a) that defines
4 the allowability of specific selected costs, the head of
5 the executive agency shall assess a penalty against
6 the contractor in an amount equal to—

7 “(A) the amount of the disallowed cost al-
8 located to covered contracts for which a pro-
9 posal for settlement of indirect costs has been
10 submitted; plus

11 “(B) interest to compensate the United
12 States for the use of any funds which the con-
13 tractor has been paid in excess of the amount
14 to which the contractor was entitled.

15 “(2) INCREASED PENALTY.—If the head of an
16 executive agency determines that a proposal for set-
17 tlement of indirect costs submitted by a contractor
18 under a covered contract includes a cost determined
19 to be unallowable in the case of such contractor be-
20 fore the submission of such proposal, the head of the
21 executive agency shall assess a penalty against the
22 contractor in an amount equal to twice the amount
23 of the disallowed cost allocated to covered contracts
24 for which a proposal for settlement of indirect costs
25 has been submitted.

1 “(c) WAIVER OF PENALTIES.—The head of an execu-
2 tive agency may waive a penalty under subsection (b) in
3 the case of a contractor’s proposal for settlement of indi-
4 rect costs if—

5 “(1) the contractor withdraws the proposal be-
6 fore the formal initiation of an audit of the proposal
7 by the Government and resubmits a revised pro-
8 posal;

9 “(2) the amount of unallowable costs subject to
10 the penalty is insignificant; or

11 “(3) the contractor demonstrates, to the con-
12 tracting officer’s satisfaction, that—

13 “(A) it has established appropriate policies
14 and personnel training and an internal control
15 and review system that provide assurance that
16 unallowable costs subject to penalties are pre-
17 cluded from being included in the contractor’s
18 proposal for settlement of indirect costs; and

19 “(B) the unallowable costs subject to the
20 penalty were inadvertently incorporated into the
21 proposal.

22 “(d) CONTRACTOR EMPLOYEE GIFT, ENTERTAIN-
23 MENT, OR RECREATION COSTS SPECIFICALLY UNALLOW-
24 ABLE.—Costs of entertainment, gifts, or recreation for
25 contractor employees or members of their families pro-

1 vided by a contractor to improve employee morale or per-
2 formance or for any other purpose, are now allowable
3 under a covered contract in any amount, except that noth-
4 ing in this section precludes a contractor from providing
5 such entertainment, gifts, or recreation to their employees
6 or members of their families at no expense to the Govern-
7 ment.

8 “(e) DOCUMENTATION OF CONTRACTOR TRAVEL
9 COSTS.—Costs of travel which are otherwise allowable
10 under section 24 shall be allowable only if supported by
11 documentation, which shall include documentation of, as
12 specified by regulations issued by the Council, amounts,
13 times, dates, origin, and destination of the travel, purpose
14 of the travel, and identities of all travelers to which the
15 costs relate. Such waivers shall be available in accordance
16 with section 552(b) of title 5, United States Code.

17 “(f) EXECUTIVE AGENCY ACTIONS.—An action of
18 the head of an executive agency under subsection (a) or
19 (b)—

20 “(1) shall be considered a final decision for pur-
21 poses of section 6 of the Contract Disputes Act of
22 1978; and

23 “(2) is appealable in the manner provided in
24 section 7 of that Act.

25 “(g) CERTIFICATION.—

1 “(1) IN GENERAL.—A proposal for settlement
2 of indirect costs applicable to a covered contract
3 shall include a certification by an official of the con-
4 tractor that, to the best of the certifying official's
5 knowledge and belief, all indirect costs included in
6 the proposal are allowable.

7 “(2) WAIVER OF CERTIFICATION REQUIRE-
8 MENT.—The head of an executive agency may, in an
9 exceptional case, waive the requirement for cer-
10 tification under paragraph (1) in the case of any
11 covered contract if the head of the executive
12 agency—

13 “(A) determines in such case that it would
14 be in the interest of the United States to waive
15 such determination; and

16 “(B) states in writing the reasons for that
17 determination and makes such determination
18 available to the public.

19 Such waivers shall be available in accordance with section
20 552(b) of title 5, United States Code.

21 “(h) CRIMINAL PENALTIES.—The submission to an
22 executive agency of a proposal for settlement of costs for
23 any period after such costs have been accrued that in-
24 cludes a cost that is expressly specified by law or regula-
25 tion as being unallowable, with the knowledge that such

1 cost is unallowable, shall be subject to the provisions of
2 section 287 of title 18 and section 3729 of title 31, United
3 States Code.

4 “(i) BURDEN OF PROOF IN PROCEEDINGS.—In a
5 proceeding before a board of contract appeals, the United
6 States Court of Federal Claims, or any other Federal
7 Court in which the reasonableness of indirect costs for
8 which a contractor seeks reimbursement from an executive
9 agency is in issue, the burden of proof shall be upon the
10 contractor to establish that those costs are reasonable.

11 “(j) DOCUMENTATION OF COSTS.—Costs shall be al-
12 lowable only to the extent that such costs are supported
13 by sufficient documentation, as specified by regulations is-
14 sued by the Council, to permit audit.

15 “(k) DEFINITION.—As used in this section, the term
16 ‘covered contract’ means a contract for an amount more
17 than \$100,000, other than a fixed-price contract without
18 cost incentives, entered into by an executive agency other
19 than the Department of Defense.”.

20 **SEC. 302. EFFECTIVE DATE OF AMENDMENTS; LIMITATIONS**

21 **ON APPLICATION OF AMENDMENTS.**

22 “(a) EFFECTIVE DATE.—The amendments made by
23 this title shall be effective on the earlier of—

1 (1) the issuance in final form of revisions to the
2 Federal Acquisition Regulation implementing those
3 amendments; or

4 (2) 270 days after the date of enactment of this
5 Act.

6 (b) LIMITATION ON APPLICATION.—The amend-
7 ments made by sections 301 shall not apply to a contract
8 entered into before the effective date of the amendments.

9 SEC. 303. REGULATIONS.

10 In accordance with section 25 of the Office of Federal
11 Procurement Policy Act (41 U.S.C. 421), the Federal Ac-
12 quisition Regulatory Council shall promulgate regulations
13 implementing the amendments made by this title in final
14 form within 270 days after the date of enactment of this
15 Act.

16 SEC. 304. SECTION 117 NOT EFFECTIVE.

17 On and after the effective date of section 301, the
18 provisions of section 117 and the regulations issued there-
19 under shall be considered to be superseded by the amend-
20 ment made by section 301 and the regulations implement-
21 ing that amendment, unless the Secretary, with the con-
22 currence of the Administrator for Federal Procurement
23 Policy, determines that the regulations implementing that
24 amendment are inconsistent with section 117 and the reg-
25 ulations thereunder. The Secretary shall notify the Con-

1 gress of that determination and of the continuing applica-
2 tion of section 117 to the Department.