SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-2523
(202) 224-2693 (FAX)

AL-9801296

United States Senate

WASHINGTON, DC 20510–1904

COMMITTEES:
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE ON AGING

April 27, 1998

Ms. Julie Anderson
Environmental Protection Agency
401 M Street
8th Floor, West Tower
Washington, DC 20460

Dear Ms. Anderson:

Enclosed is a copy of comments I have recently received from Ms. Exp. 6 of West Southport, Maine. Ms concerned about how the copper industry in Newfoundland, Canada may be negatively affecting air and water quality in Maine. I would appreciate it if you would review her comments and respond directly to her.

Thank you for your attention to this matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:dms
Enclosure

PRINTED ON RECYCLED PAPER

Author: "
Date: 3/26/98 7:27 AM
Priority: Normal
TO: senator at Collins-DC
Subject: Re: Grandbanks fishing

ENVOLAIR

Q17523

Dear Susan,
Thanks for responding so far, my address is:

> From: Senator <Senator@collins.senate.gov>
> To:
> Subject: Re: Grandbanks fishing
> Date: Wednesday, March 25, 1998 6:44 AM
>
> Please enclose your address along with your message so we can respond
> to you Thank you.
>
>
> _____ Reply Separator _____
> Subject: Grandbanks fishing
> Author: "TIGER/PEANUT" <kreative@lincoln.midcoast.com> at internet
> Date: 3/24/98 3:23 PM
>
>
> Dear Susan,
> I am a student at USM, and last summer I went on a field school to
> Labrador. We went to learn how the copper industry is effecting the native
> populations of Labrador. We learned that the largest copper and nickle
> mine in the world was recently discovered near the Davis inlet. In order

> for Canada to use this resource they will have to build an enormous
> smelter. Not only will such an endeavor, disrupt the migration patterns of
> the largest caribou herd in the world, but the effects will be felt here on
> the Grand Banks. The Labrador current flows down the coast inside the Gulf
> Stream, the pollution from the smelter will contaminate the Grand Banks for
> many years. The air currents will blow the pollution toward Europe. Do we
> (Mainers) have any say in what Canada can or cannot do since we will be
> effected by their decision? I'm really concerned that the People of Maine,
> U.S., Greenland, Iceland and Europe are not being informed of something so
> crucial to all our lives.
> Sincerely,
>
>

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

OFFICE OF THE
REGIONAL ADMINISTRATOR

May 26, 1998

West Southport, ME 04576

Dear Ms. (

I was forwarded your letter of March 24, 1998, to Senator Susan Collins regarding your concern over the planned copper and nickel mine near Davis inlet in Labrador. You specifically inquired whether residents of Maine had any say on projects across the border in Canada that may pose adverse cross boundary environmental impacts. The answer is yes -- and there is a mechanism in place to deal with these very issues.

The EPA, State and Provincial governments, and Environment Canada work cooperatively together through the International Joint Commission (IJC) on a wide range of environmental issues. Projects on the Canadian side of the border that may have environmental impacts on the U.S. side are elevated for review through the Joint Commission. Depending on the nature of the proposed project, the International Joint Commission can invoke whatever review actions may be appropriate to ensure that potentially adverse projects receive the highest level of environmental scrutiny. The Commission has set up more than 20 separate boards, made up of experts from the United States and Canada, to help it carry out its responsibilities. For more information on the IJC, you may contact Mr. Frank L. Bevacqua, Public Information Officer, International Joint Commission/U.S. Section, 1250 23rd Street N.W., Suite 100, Washington, DC 20440, Phone: 202 736-9024, Email: bevacquaf@washington.ijc.org.

If you have any further questions, please contact John Haederle of my staff at 617-565-4892.

Sincerely,

John P. DeVillars
Regional Administrator

cc: Senator Susan M. Collins

SUSAN M. COLLINS
MAINE

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AL-9801486

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE ON AGING

May 12, 1998

Ms. Julie Anderson
Environmental Protection Agency
401 M Street
8th Floor, West Tower
Washington, DC 20460

Dear Ms. Anderson:

Please find enclosed a letter from one of my constituents, Ms. Kapp of Castine, Maine. She is concerned about the inefficiency of an assistance hotline contracted by the EPA.

I would greatly appreciate it if you could respond to her concerns directly, providing me with a copy of any correspondence with her. Thank you in advance for your assistance with this matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:cih
Enclosure

PRINTED ON RECYCLED PAPER

Senator Olympia Snowe
250 Russell Senate Office Building
Washington, DC 20510

April 3, 1998

RECEIVED APR 07 1998

Dear Senator Snowe:

I manage the purchasing department for Maine Maritime Academy in Castine, and have run into a situation this past week that I want to bring to your attention. In the course of importing a marine sealant from England (used for caulking boards on the Schooner Bowdoin), Federal Express requested that I complete a Toxic Substances Control Act (TSCA) Certification form to release the material from customs. Basically the form asks only if the material being imported is regulated under TSCA or not, and if so, if it meets all rules and regulations of the act.

Being unfamiliar with the specifics of TSCA, I decided to contact the Environmental Protection Agency TSCA Assistance Hotline number noted on the form. The phone was answered by an automated answering machine indicating that I had reached the TSCA Assistance Information Hotline, contracted by the EPA to Garcia Consulting, Inc. When the recording finished and I spoke with an agent, he could only quote specifics of the TSCA (section such-and-such directing that I complete the form, etc.) but indicated that he could give me no specifics regarding the materials I was referencing. I asked if there was another number I could call where I could get information pertaining to the specific chemical in question, and was told that I could contact another 800 number where, for a fee, I would be told whether my chemical was listed or not.

I must say that this disturbed me tremendously. I can not believe that this type of public information must be purchased. Anyway, I went on to ask if there was another agency I could contact or if the state Department of Environmental Protection would be able to tell me for free. The man indicated that there was no other way for me to get the information unless I chose to fill out a different form, submit it to him and within thirty days I would receive word as to whether or not my chemical was listed. I declined this option as well.

I went on from this conversation to contact the Maine DEP and spoke with Michael Hudson who kindly put me in touch with some folks at a TSCA division in Massachusetts. His contacts only deal with PCBs (which is the only contact Maine DEP has with TSCA) but I was forwarded to Rose Toscano who actually knows what she's talking about and has efficiently and pleasantly answered my questions.

I am concerned and irritated from a taxpayers perspective, however, that the EPA has contracted services with a company which is supposed to provide

COPY

assistance to people in my situation and in actuality, this contractor can do nothing but refer yet another company which must be paid for its service. If taxpayers are footing the bill for this contract, why do we need to pay anyone else? It seems to me that I ought to at least be put in touch with an EPA employee if the consultants can't answer my questions. The business about waiting thirty days for written information is fine, however, when one is importing goods, customs will only hold the items for a few days. It's a fairly long stretch of time to wait for someone to simply look up a CAS number, as well.

In the future, I will understand what I need for information before any goods are imported and I will dutifully contact Ms. Toscano for information before the materials enter the country. I greatly resent, however, knowing that my tax dollars are paying for an "assistance hotline" that provides no real public service but blatantly expends public funds to further a private enterprise. As I understand the rules from working at a public institution, that's just plain wrong. Why is this being allowed to happen?

Sincerely,

Facilities Management Assistant
Maine Maritime Academy
Castine, ME 04420

pc: Senator Susan Collins
Congressman John Baldacci

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 14 1998

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

The Honorable Susan M. Collins
United States Senate
Washington, DC 20510-1904

Dear Senator Collins:

Thank you for your May 12, 1998, letter addressed to Julie Anderson, Deputy Associate Administrator of the Environmental Protection Agency's (EPA) Office of Congressional Affairs on behalf of your constituent, Ms. . Ms expressed concerns with the Toxics Substances Control Act (TSCA) Assistance Information Service, a contractor-run hotline, the TSCA section 13 import certification procedures, and the Chemical Abstract Service (CAS). The Office of Prevention, Pesticides and Toxic Substances has been asked to respond to your constituent's concerns.

Per your request, and a similar request received by Congressman John E. Baldacci, we have responded directly to Ms. A copy of the response is enclosed.

If you have questions or require further assistance, please contact me.

Sincerely,

Lynn R. Goldman

Lynn R. Goldman, M.D.
Assistant Administrator

Enclosure

AL

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Facilities Management Assistant
Maine Maritime Academy
Castine, ME 04420

Dear Ms.

This is in response to your letter of April 7, 1998, to Senator Olympia Snowe with copies to Senator Susan M. Collins and Congressman John E. Baldacci. Senator Collins and Congressman Baldacci requested that the Environmental Protection Agency (EPA) respond to you directly. In your letter, you raise concerns about the Toxic Substances Control Act (TSCA) Assistance Information Service (TAIS) and the TSCA section 13 import certification requirements.

I regret that the information provided by the staff of the TAIS did not meet your needs to verify the status of your imported material in a more efficient manner. Often, in our desire to assure that importers are fully cognizant of the import certification requirements, we lose sight of the fact that we must speak in plain English and that some of our customers are not as familiar as others with legal citations. You can be assured, that as EPA implements its Customer Service Standards, we will be working with TAIS and other information services to assure a customer service approach that is in keeping with the concept of an assistance service.

Regarding the specifics of your request:

To determine if the chemical you wish to import (or manufacture) is a "new" or "existing" chemical, you must search the TSCA Chemical Substances Inventory (TSCA Inventory). The TSCA Inventory is a list of approximately 76,000 "existing" chemicals in the United States. The TSCA Inventory Master File is maintained by the Chemical Abstract Service (CAS), a non-profit organization, under contract with EPA. If your chemical is not on the TSCA Inventory Master File, it is considered a new chemical subject to Premanufacture Notification requirements (TSCA section 5).

There are several mechanisms available for searching the TSCA Inventory. An importer can purchase the most current version of the non-confidential TSCA Inventory from the National Technical Information Service (NTIS) or request a search of the non-confidential Inventory directly from CAS for a fee. At no cost, Cornell University has posted the non-confidential

Inventory on the Internet. Also at no cost, a public version of the TSCA Inventory is maintained at Federal Depository Libraries. The Maine Library Association, at its Internet website, lists the Nutting Memorial Library at Maine Maritime Academy as a Federal Depository Library, and this suggests that the information you wanted may have been available to you on your campus.

If the chemical does not appear on the public version of the TSCA Inventory, the chemical may still be included on the TSCA Inventory Master File if the chemical's identity has been identified as confidential business information by the submitter. To conclusively determine whether a chemical substance is included on the TSCA Inventory, the Master Inventory File, which includes both the confidential and non-confidential portions of the Inventory, must be searched. To search the confidential TSCA Inventory requires a "notice of a bona fide intent to manufacture or import" according to the regulations in Title 40 CFR 720.25. The regulation allows 30 days for the Agency to conduct a "bona fide" search, if the submitter has provided EPA with the required information.

The Agency does not typically conduct searches of the public version of the TSCA Inventory for manufacturers or importers. The vast majority of intending importers of chemical substances are profit-making commercial organizations, and many thousands of imports require certification each year. Enclosed is a fact sheet describing the import certification process. Information is also available on the Internet at htt://www.epa.gov/opptintr/chemtest/sec13.htm.

I hope this information is helpful to you. It is important to us to know how we can improve the responses we provide, both through our own staff and through contractor assistance such as the TAIS. We are committed to carrying out all our work in a manner that shows respect for our customers and understanding of their needs and circumstances. If you have questions regarding TSCA requirements or the TAIS please feel free to contact Rob Esworthy, Chief of the Outreach Branch in the Environmental Assistance Division of OPPT at (202) 260-3790.

If I can be of further assistance, please contact me.

Sincerely,

Lynn R. Goldman

Lynn R. Goldman, M.D.
Assistant Administrator

Enclosures

cc: Senator Olympia J. Snowe
Senator Susan M. Collins
Congressman John E. Baldacci

SUSAN M. COLLINS
MAINE

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AL-9801500

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE
ON AGING

May 21, 1998

Ms. Carol Browner
Administrator, U.S. Environmental Protection Agency
401 M Street, SW
Room 1200, WT1101
Washington, D.C. 20460

Dear Administrator Browner:

I am writing to urge the Environmental Protections Agency's cooperation and flexibility during a period of uncertainty regarding the safety and the use of reformulated gasoline containing the additive MBTE in the State of Maine.

The recent discovery of public water supply contamination by MBTE has prompted a statewide debate on the appropriate use of this gasoline additive. The Maine Department of Environmental Protection is conducting comprehensive tests of the State's drinking water sources for the presence of MBTE.

I am seriously concerned about possible contamination of some of Maine's drinking water. Reformulated gasoline with the additive MBTE is used as one of several tools by Maine to comply with the Clean Air Act. Some credit MBTE with reducing air pollution in Southern Maine, but if the cost of clean air is a contaminated water supply, its use should be reassessed and alternatives explored.

I am also concerned about the prospect of the federal government withholding federal funds or forcing Maine to use a gasoline additive that may be polluting its ground water. The U.S. Environmental Protection Agency should exercise the highest degree of flexibility with respect to Maine's compliance with the Clean Air Act until either the concerns about MBTE contamination are dispelled or a harmless alternative is identified. I believe that the EPA's sensitivity to the concerns of Maine people about MBTE is essential to the long-term success of the Clean Air Act in Maine.

Again, I urge you to cooperate with the State of Maine during this period. Thank you in advance for your assistance in dealing with this critical matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

June 4, 1998

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senate
172 Russell Senate Office Building
Washington, D.C. 20510-1903

Dear Senator Collins:

This is in response to your May 21, 1998, letter to Administrator Carol Browner about gasoline containing methyl tertiary butyl ether (MTBE) being found in groundwater near three drinking water supplies in Maine. As you know, Governor King sent the Administrator a letter on May 21, 1998, informing EPA of his concerns. In that letter, the Governor outlined his efforts related to MTBE groundwater testing, and requested the opportunity to determine, in the future, whether or not reformulated gasoline should be part of Maine's overall strategy to secure a clean environment.

The Environmental Protection Agency (EPA) is concerned about any contamination of water supplies from gasoline, regardless if MTBE is in the fuel or not. EPA supports the State's efforts to identify potentially leaking underground storage tanks, and to repair or replace tanks with problems. EPA believes that fuel components reaching drinking water is an unacceptable situation. As you know, under federal Underground Storage Tank (UST) regulations, all USTs installed before 1988 must be upgraded, closed or replaced by December 1, 1998, and all USTs currently in use must meet leak detection rules. EPA also supports the continued use of oxygenates, such as MTBE, in fuels under such programs as the reformulated gasoline program. The Agency believes that there are significant air quality and public health benefits resulting from using cleaner burning fuels.

In summary, we support Governor King's efforts. EPA is committed to continue working with the Governor and the Maine Department of Environmental Protection to ensure that public health remains protected in the State of Maine.

If you need additional assistance, you or your staff should feel free to contact me or Bob Judge of my staff at (617) 565-4874.

Sincerely,

John P. DeVillars
Regional Administrator

SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
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AL-98 01615

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE
ON AGING

June 2, 1998

Ms. Diane Berger
Environment Education Grant Program
Mail Stop 1707
Washington, DC 20460

Dear Ms. Berger:

Last December, I wrote to you in support of an application by the Maine Conservation Corps for an environmental education grant (ME98HQ173).

Maine has developed an exemplary set of expected outcomes for K-12 education. The environmental education proposal will play an important role in linking environmental education programs in the state with these learning results. I believe that this approach to integrating environmental education with broader state education standards could become a national model. As you select the final proposals for funding, I urge you to consider this proposal.

I would appreciate any information you can provide me about the status of the Maine Conservation Corps Proposal.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:jfh

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL - 1 1998

OFFICE OF
COMMUNICATIONS, EDUCATION AND
PUBLIC AFFAIRS

Honorable Susan Collins
United States Senate
172 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your recent letter to Diane Berger supporting a grant proposal submitted to the Environmental Protection Agency (EPA) by the Maine Conservation Corps. I am responding to your letter since the environmental education program is located within my office.

This year, EPA headquarters received almost 300 proposals for environmental education grants and we have funding to support only twelve of those applications. All applications were scored and ranked after an extensive review by external reviews teams from academia and non-profit organizations. EPA subsequently selected the finalists from the proposals which received the highest scores from the external review teams. Final selections for funding were based on the quality of the proposals and other factors such as geographic location and educational priority addressed.

We regret to inform you that your constituent's proposal was not among those selected for funding. The evaluation forms listing strengths and weaknesses of the proposal were recently mailed to all applicants. Hopefully, those comments will be helpful in the preparation of a proposal for our next grant cycle. Later this summer we will publish our next Solicitation Notice requesting proposals for the next grant cycle. It is anticipated that the closing date for applications will be mid-November. Your constituent will be mailed a copy of the Solicitation Notice as soon as it is published.

We appreciate your support for EPA's Environmental Education Grants Program. Please feel free to contact Michael Baker, Acting Director, Office of Environmental Education, at (202) 260-4958, if you have any questions about the program.

Sincerely,

Loretta M. Ucelli
Associate Administrator

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SUSAN M. COLLINS
MAINE

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AL-9801721

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE
ON AGING

June 3, 1998

The Honorable Carol Browner
Administrator
Environmental Protection Agency
401 M Street S.W.
Washington, 20460

Dear Ms. Browner:

Please find enclosed comments from one of my constituents, Mr. Exp. Le of Freeport, Maine. He is concerned about EPA regulations pertaining to the chlorination of his well.

I would greatly appreciate it if you could respond to his concerns directly, providing me with a copy of your letter to him. Thank you in advance for your assistance with this matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:cih

Enclosure

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ENVCLWTR
FORISRLC

Author:
Date: 5/11/98 3:15 PM
Priority: Normal
TO: Constituent Opinions & Requests
Subject: comments

from: Portland Joe

name:

Freeport, ME 04032

subj: 1)EPA regs
2)Israeli peace process

comm: 1)He owns a small tourist business in Freeport. The EPA is going to make him chlorinate his well there even though it tested clean. This expensive procedure is ridiculous and useless and hurts small businesses.

2)The U.S. has been favoring Israel too much in the middle east peace talks. We're too biased. We should support both a Palestinian and an Israeli state or else we should butt out and let them solve their own problems.

COPY

Q19679

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

JUL 14 1998

Mr

Freeport, ME 04032

Dear Mr. Marstaller:

Thank you for your letter dated May 11, 1998, regarding the Environmental Protection Agency's (EPA) proposed Ground Water Rule as it pertains to disinfection of your well water.

EPA is required by the Safe Drinking Water Act Amendments of 1996 to develop a Ground Water Rule. This rule will not only specify the conditions under which disinfection is necessary but, just as important, will address other components of ground water systems to assure public health protection. Disinfection is an important step in ensuring that water is safe to drink; however, disinfection will only be required where necessary under conditions which States will apply to each water system individually. EPA is working to develop a proposal by March 1999 and a final rule by November 2000.

EPA is concerned with the effect of environmental regulations, such as the Ground Water Rule, on small business and has reached out to address their concerns. The Small Business Regulatory Enforcement Fairness Act established a formal mechanism to obtain the advice and recommendations of representatives of small entities like yourself potentially affected by proposed rules. Also, EPA held four public meetings between December 1997 and June 1998 during which stakeholders, including small water system owners, gave input on the Ground Water Rule. EPA will pay close attention to these concerns, and a final report will be part of the rulemaking record that will be considered in writing the Ground Water Rule proposal. EPA will solicit further public comments on the March 1999 proposal, and I encourage you to provide us with comments at that time.

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If you have further questions regarding the Ground Water Rule, please feel free to contact William R. Diamond, Director of the Standards and Risk Management Division within the Office of Ground Water and Drinking Water or Dan Olson of his staff at (202) 260-6269.

Sincerely,

Bob Perciasepe

Robert Perciasepe
Assistant Administrator

cc: Senator Susan M. Collins

SUSAN M. COLLINS
MAINE

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AL-9802126

United States Senate

WASHINGTON, DC 20510–1904

COMMITTEES:
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE
ON AGING

July 31, 1998

Mr. John Reeder
Deputy Associate Administrator of
Environmental Protection Agency
401 M Street, S.W.
8th Floor, West Tower
Washington, DC 20460

Dear Mr. Reeder:

Please find enclosed a letter from my constituents, Mr. and Mrs. of Hudson, Maine. The Bishops are concerned about the EPA's oversight of sludge and fertilizer testing.

I would greatly appreciate it if you could respond to their concerns directly, providing me with a copy of any correspondence with them. Thank you in advance for your assistance with this matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:mdc

Enclosure

PRINTED ON RECYCLED PAPER

June 28, 1998

ENUGENEX

Susan M. Collins
Dirkson Bldng. B. 40
Ste. 4
Washington, D. C.
20510

paper fiber Sludge

Dear Senator Susan Collins:

In response to your letter to us regarding the licensure of sludge application to local dairy farms: Of course we know that this is a local matter, but as the DEP is using the EPA levels to determine safety of toxic and heavy metals in the sludge, the issue becomes a larger one than simply relating to the State of Maine.

Some of the materials I had sent to you relate to the fact that the EPA is responsible for disposing of waste from municipal and industrial sources, as well as over-seeing the scientific decisions for safe levels. This must and has caused conflicts of interest within the department, and only federal oversight can correct EPA discrepancies.

Specifically, my husand and I have objected to the method of testing the material that is to be spread on the dairy farms. As occurs now, Mr. Haffner of the Bangor DEP relies upon Mr. Deabay of the Bowater/Great Northern Paper to select the samples and to send them in to the independent laboratory to be tested. We wish that the samples could be randomly selected from sites at the time of spreading, unannounced, the collection conducted by the DEP. Unless there is specific proof of fraudulent samples taken, the DEP now will not conduct random or unannounced tests. For people who have lived through the Love Canal debacle and the nuclear above ground testing in Nevada, this seems a ridiculous and naive assumption of corporate honesty.

I will also mention this matter to Governor King, but I do not believe that the federal government has no part in over-seeing sludge and fertilizer use. There is growing national concern over EPA laxness in testing and its use of questionable scientific levels.

Thank you for your attention.

WRAC 2 on same subject

1. 1/21 we contacted EPA ~~to~~ re: hazardous waste being used for fertilizer

2. 5/6 told that this is a state issue

Q 22640

BACK TO EPA Q22641

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 24 1998

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Hudson, ME 04449

Dear :. and

Thank you for your letter dated June 28, 1998 to Senator Susan M. Collins, in which you expressed concerns regarding the practice of sludge application to farmlands in your area. Senator Collins has referred your letter to the U.S. Environmental Protection Agency, and we are pleased to respond on her behalf.

In your letter you specifically expressed concern regarding the Maine Department of Environmental Protection's (DEP's) oversight approach to the sludge applications, and whether or not the federal government should also have a role in overseeing this practice. Based on the information provided in your letter and subsequent discussions with staff in the Maine DEP, it is our understanding that the paper mill sludges which you describe are generated from the processing of recycled newsprint. This type of sludge is classified as non-hazardous waste according to State and Federal regulations. Management of this type of waste is currently regulated under State law, but is not regulated at the federal level by the U.S. Environmental Protection Agency (EPA). Thus, EPA does not have oversight authority over this particular sludge application site.

We understand that the Maine DEP has issued a permit for the application site which you describe in your letter, and that you were actively involved in that permitting process. If you have continuing concerns regarding this site, we suggest that you contact:

Mr. Allan R. Ball, Director
Bureau of Remediation and Waste Management
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333
(207) 287-2651

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We appreciate your interest in protecting the environment. If we can be of further assistance, please do not hesitate to contact Mr. Dave Fagan of my staff, at (703) 308-0603.

Sincerely,

Elizabeth Cotsworth, Acting Director
Office of Solid Waste

SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
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AL-9801306

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE ON AGING

April 29, 1998

The Honorable Carol Browner
Administrator
Environmental Protection Agency
401 M Street S.W.
Washington, 20460

Dear Ms. Browner:

Please find enclosed correspondence from a constituent of mine, Mr. Charlie Brown of Portland, Maine. Mr. Brown is concerned with the Safe Drinking Water Act's provision regarding the mandatory use of lead-free plumbing parts by August 6, 1998.

I ask the Environmental Protection Agency to please provide Mr. Brown with a full and comprehensive explanation of the provision and its ramifications. If you could please send me a copy of any correspondence you send to him, I would greatly appreciate it.

Thank you for your time and efforts.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:cih
Enclosure

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ENVCLWTR

SONDIK
SUPPLY COMPANY OF MAINE
DISTRIBUTORS OF QUALITY PLUMBING AND HEATING PRODUCTS
215 PEARL STREET, PORTLAND, MAINE 04101 • 207-871-1101

April 7, 1998

RECEIVED 3 1 1998

The Honorable Susan Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

As a wholesaler of plumbing-heating-cooling –piping supplies located in Portland, Maine I am very concerned about how the EPA intends to interpret a provision of the Safe Drinking Water Act—due to take effect August 6, 1998.

The Act requires pipe, fittings and other plumbing products to be lead-free after August 6. In the past the EPA has interpreted similar effective dates to mean that all manufacturing of nonconforming products must stop as of the stated effective date. That is a workable interpretation that can be implemented by the industry with minimal disruption.

Now, however, the EPA says that, on the August 6 effective date, there can be no non-conforming product sold anywhere in the distribution chain. That interpretation would spell chaos for the plumbing industry. As a wholesaler, I have a broad range of plumbing products from multiple manufacturing sources in my inventory. Since the "conforming" and "nonconforming" product are not required to be labeled as such, often I have no easy way of knowing which of the hundreds or even thousands of pipe and plumbing fittings or fixtures in my inventory meet the specific requirements of the new law. Even if I were able to track the identity of nonconforming products, the EPA's current interpretation means that many of tens of thousands of dollars of my inventory becomes obsolete overnight. Furthermore, the EPA's present interpretation allows manufacturers to ship noncompliant products to me as late as August 5, 1998.

I wholeheartedly support the requirement for lead free plumbing products. Yet, the implementation of this requirement should not needlessly disrupt the entire distribution chain—particularly when there is a reasonable, common sense way to implement the provision that is consistent with prior agency policies.

15192

KOHLER ■ MOEN ■ STATE ■ NEWMAC ■ NEW YORKER ■ SLANT/FIN ■ SMITH BOILERS

COPY

Q137094

I ask you to contact the EPA Administrator and urge her to interpret the August 6 effective date to mean that no manufacturing of nonconforming products shall take place after that date. This is a common sense, nonintrusive, and equitable approach to implementing this important new law. Thanking you in advance for your assistance on this very important matter.

Sincerely,

Charlie Brown

Charlie Brown
President

CB/jgb

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 21 1998

OFFICE OF WATER

Mr. Charlie Brown
President
Sondik Supply Company of Maine
215 Pearl Street
Portland, ME 04101

Dear Mr. Brown:

Thank you for your letter of April 7, 1998, to Senator Collins, in which you expressed concern over how the U.S. Environmental Protection Agency (EPA) interprets a provision of the Safe Drinking Water Act (SDWA) requiring pipes, plumbing fittings or fixtures introduced into commerce after August 6, 1998 to be lead free. Your letter was forwarded to EPA for response. In your letter, you expressed particular concern about possible disruption to the plumbing products distribution chain and noted that a preferred interpretation of the statutory prohibition against nonconforming products would be that it apply only to manufacturers (i.e., not to wholesalers or retailers of plumbing products).

We certainly understand the legitimate concerns expressed in your letter. However, we believe the language of Section 1417(a)(3)(A) of SDWA is clear in this regard:

> *Effective 2 years after the date of enactment of this paragraph [i.e., August 6, 1998], it shall be unlawful for a person to introduce into commerce any pipe, or any pipe or plumbing fitting fixture, that is not lead-free, except for a pipe that is used in manufacturing or industrial processing.*

The language of the statute does not distinguish between manufacturing, wholesale, or retail activities when using the term, "introduce into commerce." Moreover, the June 24, 1996, report of the House Committee on Commerce, in discussing this provision, notes that "...it shall be unlawful to *sell* (or otherwise introduce into commerce) pipes or plumbing fittings or fixtures that are not lead free...." (House of Representatives Report 104-632, Part 1; page 39). We believe that the Committee Report's use of the word "sell" in this context indicates that a comprehensive interpretation of the term "introduce into commerce" was intended. For your reference, I am enclosing a copy of a December 10, 1996, letter from Cynthia C. Dougherty, Director of the Office Ground Water and Drinking Water, which also addresses this issue.

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You assert that EPA interpreted such language in the past as applying to manufacturers only and urge the Agency to follow this interpretation again. We believe this comment refers to an interpretation the Agency made of the term "introduce into interstate commerce" related to certain labeling requirements under Section 611 of the Clean Air Act. The Agency's approach here is based on the fundamental design and underlying purpose of Section 1417 of the SDWA. Extensive information is available documenting the serious health consequences associated with exposure to elevated levels of lead. In addition, non lead-free plumbing materials have been shown to have the potential to leach significant amounts of lead into drinking water. Therefore, any sale of non lead-free plumbing fixtures to any person poses an identifiable and potentially significant health risk to that individual. This is substantially different than the issue that was addressed in the rule under Section 611 of the Clean Air Act, which was an informational labeling regulation, not an issue in which each individual purchaser would have a direct, individualized health risk from their use of the product.

The Agency believes that Section 1417(a)(3) was enacted precisely to ensure that such adverse public health impacts would be avoided after the effective date of this provision. Narrowly construing the term "introduce into commerce" would, however, allow the sale of these devices directly to the public to go on indefinitely. Such a result cannot, in the Agency's view, be reconciled with the important public health objectives reflected in Section 1417. Moreover, Section 1417(a)(1) of the Act prohibits *any* use of non lead-free plumbing fixtures in any facility providing water for human consumption. In the Agency's view, it is difficult to conclude that Congress intended to allow plumbing retailers to continue selling these devices to the public after the effective date of Section 1417(a)(3), where the *use* of those devices is itself banned by the Act. EPA's interpretation, in contrast, appropriately reinforces the prohibition on using these devices, and thereby best implements the overall goals of Section 1417.

As you may know, plumbing products used to provide water for human consumption have been required to be "lead-free" (defined as containing no more than 8 percent lead) since the 1986 amendments to SDWA. The new provisions of the 1996 SDWA amendments add a performance standard to the definition of lead free, such that certain plumbing products must not *leach* unacceptably high quantities of lead as determined by a voluntary standard. The performance standard, which has been jointly developed for this purpose by EPA, industry representatives, and other experts is the National Sanitation Foundation (NSF) International Consensus Standard 61, Section 9. We believe that this standard is technologically achievable within a reasonable period of time. We further believe that the two years provided by Congress should, in most instances, allow the industry adequate time to phase in this requirement while preventing disruption in the distribution channels.

EPA does not plan to issue any implementing regulations since we believe the statute is clear and regulations are unnecessary. Further, implementation of Section 1417 of SDWA will be primarily conducted by state and local officials. Therefore, I would encourage you to contact the appropriate state and local officials to determine the specific requirements applicable to their situation.

I hope that this letter adequately responds to the concerns expressed in your letter. Please feel free to contact me or Mr. William Diamond, Director of the Standards and Risk Management Division within the Office of Ground Water and Drinking Water at 202-260-7575, if there are any further questions on this matter.

Sincerely,

Bob Perciasepe

Robert Perciasepe
Assistant Administrator

Enclosure

cc: Senator Susan Collins

SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-2523
(202) 224-2693 (FAX)

AL-9801/22

United States Senate

WASHINGTON, DC 20510–1904

COMMITTEES
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE
ON AGING

April 9, 1998

The Honorable Carol Browner
Administrator
Environmental Protection Agency
401 M Street S.W.
Washington, 20460

Dear Ms. Browner:

Please find enclosed a letter from one of my constituents, Mr. Exp Le of Fryeburg, ME. He is concerned with the EPA's reassessment of the Food Quality Protection Act of 1996, and I wanted to make his views known to you.

If you could update him on the status of any review the EPA may be conducting on this issue, and provide me with a copy of your correspondence to him, I would be greatly appreciative.

Thank you in advance for your assistance with this matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:cih
Enclosure

PRINTED ON RECYCLED PAPER

Exp. 6

Sen. Susan Collins
172 Russell Senate Office Building
Washington DC 20510

Dear Madam Senator:

I am a dry bean and corn farmer in Fryeburg, Maine. I am concerned about a matter currently under review by the EPA that will dramatically affect the options that I have available to protect my crop from weeds and pests.

In 1996, Congress passed the Food Quality Protection Act. This new law requires EPA to reassess more than 9,700 pesticide tolerances including all of the products that are critical to U.S. crop production. The EPA is currently reviewing the reassessment process and early indications are that the Agency is making overly conservative decisions based on insufficient information. As a result, we in the agricultural industry may lose valuable pesticides which would jeopardize U.S. farm production.

As a farmer, I work the land and treat it with respect much like you work and treat the law. And, just as you use judgment and discretion when interpreting the law, I, too, exercise judgment when targeting pesticides to supplement farming techniques such as Integrated Pest Management (IPM) and conservation tillage. These products are crucial to implementing these very important environmentally-sound farming practices.

I respectfully request that you urge the EPA to base decisions on data generated by the most accurate scientific information available. Please ask them to establish and communicate uniform policies based on actual pesticide use to guide consistent implementation of the new law. My future depends on it.

Sincerely yours,

Exp. 6

COPY

Q16725

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 6 1998

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

The Honorable Susan Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter concerning the Environmental Protection Agency's (EPA) implementation of the Food Quality Protection Act (FQPA). FQPA contains a number of important and complex provisions. EPA is working to ensure that these provisions are implemented well in a timely manner to achieve the higher standards of protection, especially for children, while preserving the strength of our Nation's agriculture and its farm communities.

FQPA requires EPA to reassess all existing tolerances within ten years, with milestone deadlines every three years, to ensure that they meet FQPA's new standards. During the first three years, we are reviewing existing tolerances for two classes of insecticides, the organophosphates and the carbamates. At this time, we expect to be able to meet the ambitious schedule laid out in the statute. EPA actions will not result in the broad class of organophosphates being unavailable to farmers for the 1998 growing season. Furthermore, we do not expect that current uses of organophosphates will be canceled this growing season.

EPA recognizes that how we implement FQPA will have important and far reaching consequences. In an April 8 memorandum (copy enclosed), Vice President Gore outlined the principles that are essential to proper implementation of FQPA: use of sound science in all decisions; ensuring that the regulatory process is transparent; providing appropriate, reasonable transition mechanisms which reduce the risk associated with pesticide use without jeopardizing U.S. agriculture; and, consultation with interested constituencies. To ensure the continued commitment to these principles, the Vice President directed EPA to work together with the Department of Agriculture to ensure that implementation of FQPA is informed by a sound regulatory approach, by appropriate input from affected members of the public, and by due regard for the needs of our Nation's agricultural producers.

In their April 10 memorandum to the Vice President (copy enclosed), EPA Administrator Carol Browner and USDA Secretary Dan Glickman committed their support to these principles and to applying the approach of pairing strong public health standards with flexible implementation to meet the requirements of FQPA. As described in this memorandum, we are

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establishing an advisory group, to be chaired by EPA Deputy Administrator Fred Hansen and USDA Deputy Secretary Richard Rominger, to seek advice and consultation from affected user, producer, consumer, public health, environmental, and other interested groups. This advisory group will be asked to assist in establishing the framework for EPA's decisions on organophosphates, including discussion of how to properly document and communicate decisions, ways to improve the pace of registering newer and safer pesticides and new uses of existing pesticides that meet the FQPA standard, and methods to foster public input during the decision process. We expect that approaches pioneered by focusing on the organophosphates can be applied broadly to all of our work in implementing FQPA. This advisory group is commencing immediately to ensure that consultation is consistent with meeting the tolerance reassessment deadlines established in FQPA.

The challenge we all face is in establishing an orderly process that will allow us to meet the mandates of FQPA while ensuring that producers have access to the tools they need to ensure a wholesome, adequate, and safe food supply. Through this new advisory group, as well as through existing mechanisms, we will work with growers, USDA, the registrants, and the research community to ease this transition so that as older products leave the marketplace new methods are made available. We are especially mindful of the potential impacts on minor crop growers, and will continue to work with the growers and registrants to focus attention on those situations where limited crop protection alternatives exist.

Thank you again for your continuing interest in the implementation of this important new law. For your further information, I have enclosed a copy of our report "FQPA: Status of Implementation at the End of Fiscal Year 1997," which details Agency achievements in implementing FQPA.

Sincerely yours,

Lynn R. Goldman

Lynn R. Goldman, M.D.
Assistant Administrator

Enclosures

SUSAN M. COLLINS
[illegible]
[illegible]
WASHINGTON, DC 20510
202-224-2523
202-224-2693 FAX

AL-9800813

United States Senate

WASHINGTON, DC 20510-1904

March 11, 1998

The Honorable Carol Browner
Administrator
Environmental Protection Agency
401 M Street S.W.
Washington, 20460

Dear Administrator Browner:

Please find enclosed correspondence from a constituent of mine, Mr. Thomas Smith of Bangor, Maine. Mr. Smith is concerned with the Safe Drinking Water Act's provision regarding the mandatory use of lead-free plumbing parts by August 6, 1998.

I ask the Environmental Protection Agency to please provide Mr. Smith with a full and comprehensive explanation of the provision and its ramifications. If you could please send me a copy of any correspondence you send to him, I would greatly appreciate it.

Thank you for your time and efforts.

Sincerely,

Susan M. Collins
United States Senator

SMC:cih

ENVCLNTR

BANGOR PIPE & SUPPLY, INC.

YOUR MAINe SUPPLIER

69 Farm Road • P.O. Box 1569 • Bangor, ME 04402 TEL. (207) 942-1200 - 800-439-7473 • FAX 942-8762 - 800-269-8762

COPY

February 26, 1998

RECEIVED MAR [illegible]

Senator Susan Collins
B-40 Dirkson Senate Office Building
Washington, D.C. 20510

Dear Senator Collins:

As a wholesaler of plumbing - heating - cooling - piping supplies located in Bangor, Maine, I am very concerned about how the EPA intends to interpret a provision of the Safe Drinking Water Act -- due to take effect August 6, 1998.

The Act requires pipe, fittings and other plumbing products to be lead-free after August 6. In the past, EPA has interpreted similar effective dates to mean that all manufacturing of nonconforming products must stop as of the stated effective date. That is a workable interpretation that can be implemented by the industry with minimal disruption.

Now, however, the EPA says that on the August 6 effective date, there can be no non-conforming product sold anywhere in the distribution chain. That interpretation would spell chaos for the plumbing industry. As a wholesaler, I have a broad range of plumbing products from multiple manufacturing sources in my inventory. Since the "conforming" and "nonconforming" product are not required to be labeled as such, often I have no easy way of knowing which of the hundreds or even thousands of pipe and plumbing fittings or fixtures in my inventory meet the specific requirements of the new law. Even if I were able to track the identity of nonconforming products, the EPA's interpretation means that thousands of dollars of my inventory becomes obsolete overnight. Furthermore, the EPA's present interpretation allows manufacturers to ship noncompliant products to me as late as August 5, 1998.

Q15192

I, wholeheartedly, support the requirement for lead free plumbing products. Yet, the implementation of this requirement should not needlessly disrupt the entire distribution chain, particularly when there is a reasonable, common sense way to implement the provision that is consistent with prior agency policy.

I ask you to contact the EPA Administrator and urge her to interpret the August 6 effective date to mean that no manufacturing of nonconforming products shall take place after that date. This is a common sense, nonintrusive way to implement the law.

Sincerely,

Thomas M. Smith

Thomas M. Smith
President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 8 1997

OFFICE OF WATER

Mr. Thomas M. Smith
President
Bangor Pipe & Supply, Inc.
P.O. Box 1569
Bangor, ME 04402

Dear Mr. Smith:

Thank you for your letter of February 26, 1998, to Senator Susan Collins, in which you expressed concern over how the U.S. Environmental Protection Agency (EPA) interprets a provision of the Safe Drinking Water Act (SDWA) requiring pipes, plumbing fittings or fixtures introduced into commerce after August 6, 1998 to be lead free. Your letter was forwarded to EPA for response. In your letter, you expressed particular concern about possible disruption to the plumbing products distribution chain and noted that a preferred interpretation of the statutory prohibition against nonconforming products would be that it apply only to manufacturers (i.e., not to wholesalers or retailers of plumbing products).

We certainly understand the legitimate concerns expressed in your letter. However, we believe the language of Section 1417(a)(3)(A) of SDWA is clear in this regard:

> *Effective 2 years after the date of enactment of this paragraph [i.e., August 6, 1998], it shall be unlawful for a person to introduce into commerce any pipe, or any pipe or plumbing fitting fixture, that is not lead-free, except for a pipe that is used in manufacturing or industrial processing.*

The language of the statute does not distinguish between manufacturing, wholesale, or retail activities when using the term, "introduce into commerce." Moreover, the June 24, 1996, report of the House Committee on Commerce, in discussing this provision, notes that "...it shall be unlawful to *sell* (or otherwise introduce into commerce) pipes or plumbing fittings or fixtures that are not lead free...." (House of Representatives Report 104-632, Part 1; page 39). We believe that the Committee Report's use of the word "sell" in this context indicates that a comprehensive interpretation of the term "introduce into commerce" was intended. For your reference, I am enclosing a copy of a December 10, 1996, letter from Cynthia C. Dougherty, Director of the Office Ground Water and Drinking Water, which also addresses this issue.

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You assert that EPA interpreted such language in the past as applying to manufacturers only and urges the Agency to follow this interpretation again. We believe this comment refers to an interpretation the Agency made of the term "introduce into interstate commerce" related to certain labeling requirements under Section 611 of the Clean Air Act. The Agency's approach here is based on the fundamental design and underlying purpose of Section 1417 of the SDWA. Extensive information is available documenting the serious health consequences associated with exposure to elevated levels of lead. In addition, non lead-free plumbing materials have been shown to have the potential to leach significant amounts of lead into drinking water. Therefore, any sale of non lead-free plumbing fixtures to any person poses an identifiable and potentially significant health risk to that individual. This is substantially different than the issue that was addressed in the rule under Section 611 of the Clean Air Act, which was an informational labeling regulation, not an issue in which each individual purchaser would have a direct, individualized health risk from their use of the product.

The Agency believes that Section 1417(a)(3) was enacted precisely to ensure that such adverse public health impacts would be avoided after the effective date of this provision. Narrowly construing the term "introduce into commerce" would, however, allow the sale of these devices directly to the public to go on indefinitely. Such a result cannot, in the Agency's view, be reconciled with the important public health objectives reflected in Section 1417. Moreover, Section 1417(a)(1) of the Act prohibits *any* use of non lead-free plumbing fixtures in any facility providing water for human consumption. In the Agency's view, it is difficult to conclude that Congress intended to allow plumbing retailers to continue selling these devices to the public after the effective date of Section 1417(a)(3), where the *use* of those devices is itself banned by the Act. EPA's interpretation, in contrast, appropriately reinforces the prohibition on using these devices, and thereby best implements the overall goals of Section 1417.

As you may know, plumbing products used to provide water for human consumption have been required to be "lead-free" (defined as containing no more than 8 percent lead) since the 1986 amendments to SDWA. The new provisions of the 1996 SDWA amendments add a performance standard to the definition of lead free, such that certain plumbing products must not *leach* unacceptably high quantities of lead as determined by a voluntary standard. The performance standard, which has been jointly developed for this purpose by EPA, industry representatives, and other experts is the National Sanitation Foundation (NSF) International Consensus Standard 61, Section 9. We believe that this standard is technologically achievable within a reasonable period of time. We further believe that the two years provided by Congress should, in most instances, allow the industry adequate time to phase in this requirement while preventing disruption in the distribution channels.

EPA does not plan to issue any implementing regulations since we believe the statute is clear and regulations are unnecessary. Further, implementation of Section 1417 of SDWA will be primarily conducted by state and local officials. Therefore, I would encourage you to contact the appropriate state and local officials to determine the specific requirements applicable to their situation.

I hope that this letter adequately responds to the concerns expressed in your letter. Please feel free to contact me or Mr. William Diamond, Director of the Standards and Risk Management Division within the Office of Ground Water and Drinking Water at 202-260-7575, if there are any further questions on this matter.

Sincerely,

Bob Perciasepe

Robert Perciasepe
Assistant Administrator

Enclosure

cc: Senator Collins

SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-2523
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AL-9800003

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE ON AGING

December 16, 1997

Ms. Diane Berger
Environment Education Grant Program
Mail Stop 1707
Environmental Protection Agency
401 M Street SW
Washington, DC 20460

Dear Ms. Berger:

I am writing to support the application of the Maine Conservation Corps (MCC) for its project "Using Networks to Integrate and Teach Environmental Science" (Maine U.N.I.T.E.S.).

The State of Maine has adopted an ambitious set of education standards, the Maine State Learning Results (MSLR). Maine also has five excellent environmental education programs, developed by environmental organizations. However, these programs are independent of each other and are not linked to the MSLR. The MCC proposal to the Environmental Protection Agency will incorporate these environmental curriculums into the MSLR. By training teachers and giving them the instructional materials they need to deliver sound environmental education as part of the MSLR, the program will effect a significant enhancement of Maine's education goals. Because it will be developing the tools for linking existing materials and resources to the State's education system, a small dollar investment will potentially have an impact on all Maine's students.

The incorporation of service learning as a component of Maine U.N.I.T.E.S. is particularly exciting. Experiential learning and active participation by students in environmental projects is an especially valuable educational tool. Besides teaching the participants about the environment, it will develop a wide range of social and personal skills in the participants. If this is successful, it could promote increased use of service learning and other experiential learning opportunities in areas other than environmental education.

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I urge you to provide funding for this excellent project. Please keep me informed of the progress of this application.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:jfh

cc: George R. Ezzy

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 10 1998

OFFICE OF
COMMUNICATIONS, EDUCATION AND
PUBLIC AFFAIRS

Honorable Susan M. Collins
United States Senate
172 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your recent letter to Diane Berger supporting a grant proposal submitted to the Environmental Protection Agency (EPA) by the Maine Conservation Corps of Augusta, Maine. I am responding to your letter since the environmental education program is located within my office.

This year, EPA headquarters received approximately 277 proposals for environmental education grants. We can assure you that the Maine Conservation Corps proposal will be reviewed and given very fair consideration during the extensive evaluation process that is used for all of the applications we receive. We expect to make our final decisions in the spring of 1998, and will notify your constituents regarding the status of their application.

We appreciate your interest and support for EPA's Environmental Education Grants Program. Please feel free to contact Michael Baker, Acting Director, Environmental Education Division, at 202-260-4958, if you have any questions about the program.

Sincerely,

Loretta M. Ucelli
Associate Administrator

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MAINE

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AL-9803305

COMMITTEES:
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE
ON AGING

United States Senate

WASHINGTON, DC 20510-1904

December 14, 1998

The Honorable Carol Browner
Administrator
Environmental Protection Agency
401 M Street S.W.
Washington, 20460

Dear Ms. Browner:

I am writing to support the application of the Maine Development Foundation (MDF) for a Sustainable Development Challenge Grant.

The MDF has an excellent track record of providing Maine communities with programs that promote leadership development and long-term economic planning. It has the resources and expertise needed to carry out the proposed project, and it has the support and backing of local governments, the state government and the Maine business community. The extent of the partnership the MDF has brought together in this project shows the depth of this support.

The approach that the MDF has chosen — focusing on the development of regions surrounding Maine's principal service centers — is an excellent one. This recognizes the importance of addressing environmental concerns on a regional basis as an individual community develops an economic plan. These communities particularly need the training that the MDF will offer at this time as Maine's traditional agricultural- and resource-based industries are being replaced by new industries.

I urge the Environmental Protection Agency to support the Maine Development Foundation's proposal.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:jfh

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

January 7, 1999

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senate
172 Russell Senate Office Building
Washington, D.C. 20510-1904

Dear Senator Collins:

Thank you for your letter to Administrator Carol Browner dated December 14, 1998, regarding the Maine Development Foundation's application to our Sustainable Development Challenge Grant Program. I have forwarded your letter to Rosemary Monahan, the Program Coordinator on my staff, who is managing our regional review process.

Nationally, the Environmental Protection Agency has received hundreds of proposals for the Sustainable Development Challenge Grant Program. These projects are being reviewed and scored by the Regions prior to a National Panel Review in February on which my office will serve. Final decisions are expected to be made in the March-April timeframe. While the competition will be tough, we look forward to advocating for and funding as many excellent proposals from New England as possible.

Thank you again for your interest and support for this program.

Sincerely,

John P. DeVillars
Regional Administrator

cc: Rosemary Monahan, EPA-New England

SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
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AL-9802424

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
GOVERNMENTAL AFFAIRS
LABOR AND HUMAN RESOURCES
SPECIAL COMMITTEE
ON AGING

September 1, 1998

Ms. Carol Browner
Administrator, U.S. Environmental Protection Agency
401 M Street, SW
Room 1200, WT1101
Washington, D.C. 20460

Dear Administrator Browner:

I am writing regarding new Environmental Protection Agency regulations requiring the publication on the Internet of speculative worst case scenarios for propane marketers and their customers with tanks greater than 10,000 pounds of propane. I have heard from a number of constituents who are gravely concerned that the new regulations create a burdensome additional regulatory requirement that duplicates existing requirements and may actually create a threat to the safety of workers in propane marketing facilities.

I support the need for community right-to-know requirements for many environmental threats; however, I am troubled about concerns expressed by constituents that these specific regulations may be duplicating reporting requirements already in existence. I understand that propane marketers in the State of Maine currently operate under a host of federal, state, and local safety regulations, including the submission of facility data to the EPA and state and local emergency response agencies under federal community right-to-know rules. Additionally, my constituents are concerned that the publication of detailed information could be used for nefarious purposes and threaten the safety of their employees and customers.

Please respond as to the EPA's rationale for the need to promulgate new regulations that are already covered by other federal, state, local law and what consideration has been given to the possible reduction in public safety because of the publication of potentially dangerous information on the Internet as proposed by the EPA.

Thank you for your consideration of this request. I look forward to your prompt reply.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 29 1998

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Susan Collins
U.S. Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your September 1 query concerning the Environmental Protection Agency's plans for implementing §112(r) of the Clean Air Act (CAA). Administrator Browner has asked me to respond to you. Specifically, you raised concern about how EPA's Risk Management Program affects propane retailers and distributors.

Section 112(r) required EPA to issue regulations to prevent chemical accidents. In June 1996, EPA issued final regulations that required some propane retailers and users to implement a risk management program and to file a risk management plan (RMP) with EPA by June 21, 1999. This rule applies to a wide variety of facilities that manufacture, store, or use toxic and flammable substances, including propane. Companies that handle, store, or use propane in excess of 10,000 pounds are covered by this regulation.

Several of your constituents listed a number of public safety and health standards and regulatory requirements already imposed on the propane industry, not only by EPA, but also by the National Fire Protection Association (NFPA), the Occupational Safety and Health Administration (OSHA), and the American Society of Mechanical Engineers (ASME).

EPA recognizes that the propane industry, as well as many other facilities that handle hazardous substances, already comply with a variety of standards and regulations that serve to prevent chemical accidents. The Agency also recognizes that for propane marketers, the Emergency Planning and Community Right-To-Know Act of 1986 already requires some reporting to the State, and most importantly, the Local Emergency Planning Committee. However, the CAA requirements passed by Congress established a critical link between prevention and right-to-know through a risk management program. Additionally, the OSHA Process Safety Management (PSM) standard is targeted at the workplace whereas EPA must protect the general public and the environment. In contrast with Section 112(r) of the CAA, there are no requirements under NFPA Standard 58 for written maintenance programs, procedures to control change, or refresher training for distribution plant operators and mechanics.

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Moreover, there is considerable accident data for propane that illustrates its potential to affect the public located nearby. As a result, EPA believes that the hazard posed by propane is inherent and does not vary with its use.

The good news is that many propane retailers and users already are complying with many of the prevention requirements of the risk management program under state law through the NFPA Standard 58. Likewise, if they are subject to OSHA PSM, their facilities are likely to be in compliance with almost all of the prevention program requirements and may need to take just a few more steps to satisfy this part of EPA's rule. And, use of tanks that meet relevant ASME standards and retention of the material safety data sheets required by OSHA will satisfy the safety information requirements of the risk management program.

I am enclosing a brochure written specifically for the propane retailers and users that includes many helpful compliance tips.

EPA also is working with the State of Delaware and other interested parties to develop a guidance document that will do even more to help propane retailers and users better understand RMP requirements. The guidance will make compliance less burdensome by providing industry-specific information and analyses.

Your constituents also raised concern about Internet access to RMPs. As you know, the CAA requires that RMPs be made publicly available. I would like to clarify that a decision on how the public will access RMP data has not yet been made. We are working with our Federal partners to identify options that will minimize the risk for misuse of information.

We have consulted with officials at the Federal Bureau of Investigation (FBI), the President's Commission on Critical Infrastructure Protection, the Central Intelligence Agency (CIA), Department of Justice (DOJ), and the Department of Defense (DOD). They have provided valuable assistance. The difficult task before us is to balance the benefits of community right-to-know with the risks of terrorism, but we have come a long way toward a common solution. We continue to explore options that will result in minimal risk.

I hope this information is helpful in addressing your concerns. If you have any questions or need additional information, please have your staff contact Carole Macko at (202) 260-7938.

Sincerely,

Kathy Jones for

Jim Makris, Director
Chemical Emergency Preparedness
and Prevention Office

Enclosure

SUSAN M. COLLINS
MAINE

461 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2523
(202) 224-2693 (FAX)

06-061-7433

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

September 22, 2006

Ms. Stephanie Daigle
Associate Administrator for Congressional
and Intergovernmental Relations
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Daigle:

I recently received a letter from a constituen. Eagle regarding action taken by the Environmental Protection Agency's New England Regional Office against the Lisbon Fuel Company. Ms. Ford is concerned that the fine for failing to comply with the Clean Water Act threatens the survival of the business. I have enclosed a copy of Ms. letter for your review, and would appreciate if you would respond to Ms. Daigle's concerns. Please send your response to the attention of Shaw Sprague in my Washington office.

Thank you in advance for your attention to this matter.

Sincerely,

Susan

Susan M. Collins
United States Senator

SMC:ss
Enclosure

RECEIVED
OCT 24 2006
OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

PRINTED ON RECYCLED PAPER

August 16, 2006

Senator Susan Collins
1 City Center Suite 100
Portland, ME.04104

Q 1643083
Log In 8/23/06
Code Oncoming
Log Out
Steve

Dear Senator

I called your office and explained this matter, and said I would send a letter. They were most courteous. Thank you for your attention.

The Times Record of Brunswick, on Aug. 1st published an article titled,

EPA WHACKS LISBON FUEL CO.

The Environmental Protection Agency's New England Regional Office notified the Lisbon Fuel Co. that the firm faces a $157,000 fine for failing to comply with the Oil Pollution Act of 1990, a part of the Clean Water Act. Spokesman David Deegan , for the EPA ,feels they are doing what they have to do to make companies come into compliance., like setting a small fine. In the past 6 months a number of small oil companies have been hit, Kaler of Bath is another. Both Lisbon Fuel and Kaler have been in business for over 50 years. Now an agency has the power to put them in debt, or out of business, causing lay-offs and unemployment. The EPA pats itself on the back, for they have enforced the law.

Certainly, those hired to enforce the law know that it is costly to meet the regulations , a million or more , therefore the small companies need help. The EPA should be working with the companies , supporting them. by seeking funds .

Federal dollars are a source to be explored
An exemption from taxes , state and federal, during this period.
Whatever it takes to keep them in business.

This is an example of throwing the baby out with the bath water.
These are costly preventions for oil spills that have NOT occurred and may NEVER occur .

I feel it is necessary to bring this to your attention.

Sincerely

AUG 18 2006

Letter to the Editor EPA whacks Lisbon Fuel Co.

Reading articles in your paper this week about the way businesses are "helped" by agencies to come into compliance with regulations is ruthless. Maine talks out of both sides of it's mouth ! We want to support and encourage small business
You sure do. Mr. Ly of the China Rose is treated like a criminal for keeping fish
Times Record front and back pages Tuesday July 25th.

EPA whacks Lisbon Fuel Co. on page 3 of Tuesdays Times Record August 1st
The Environmental Protection Agency , spokesman David Deegan, feels they are doing what they have to do to make companies come into compliance *like setting a SMALL fine of $157,000* . Now in the past 6 months they have cited at least a half dozen cases. One other is Kaler of Bath, a family business for 50 years. So fine him , put him in debt, or out of business, lay off employed workers, and pat yourself on the back because you have enforced the law. Yes. You 'whacked" these half dozen companies in the pocket..
What's a few hundred thousand dollars.
Instead of a fine you could offer sources of help, for example federal dollars that might be available if costs to comply is one of the problems. Certainly those hired to enforce the law , know that it is costly to meet the regulations required by the law. Let's say it is a guarter or a half million, which is what I have heard. That is not an expenditure that one faces easily . These agencies need to change their attitude and instead of saying, "I got ya, give support to those brave enough to be in business. Punishment is NOT the civil way to encourage cooperation or willingness to spend money to install costly preventions for oil spills that have not occurred nor may never occur

Dear Senator:
This is a copy of a letter I sent to the Times Record, printed Aug. 16th
I had a call from John Biela of appreciation
He needs our support. So I have written the letter enclosed, and mailing it to Rep; Sen; + Gov.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

November 7, 2006

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senator
461 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of September 22, 2006 regarding the administrative penalty action the New England Office of the U.S. Environmental Protection Agency (EPA) initiated against Lisbon Fuel Company in Lisbon Falls, Maine, for failing to comply with the federal Clean Water Act. Specifically, Lisbon Fuel was cited by EPA for not having a Spill Prevention Control and Countermeasure (SPCC) plan as required by federal regulations which have been in effect since 1974. Over the past 30 years, EPA has worked closely with industry and provided outreach on oil pollution prevention requirements, especially with businesses which are directly involved in oil storage and distribution, such as Lisbon Fuel. These regulations, in particular the requirement for oil storage facilities to have prepared and implemented SPCC plans, are critical to preventing oil contamination of our nation's waters. Generally speaking, while New England has smaller oil storage facilities than some other parts of the country, we have seen a large number of oil spills from these smaller facilities. This is often because the facilities do not have adequate SPCC plans and associated pollution controls in place as required by federal law. Important elements of SPCC plans include construction of impervious secondary containment systems to contain spills from oil storage tanks and transfer areas, tank inspection and testing programs, training on spill prevention and response, and requirements for spill reporting and cleanup.

Our records clearly show that the Lisbon Fuel facility has a fifteen-year history of oil spills and well-documented failures to meet local, state and federal requirements with respect to oil spill prevention and response. Prior to the EPA inspection on January 10, 2006, both the Maine Department of Environmental Protection (MEDEP) and the local Fire Marshal's Office repeatedly warned Lisbon Fuel's representatives of the need to take necessary steps to prevent oil spills at its facility, properly notify state agencies of releases that do occur, diligently investigate and remediate oil-contaminated soils and groundwater, and upgrade storage tanks and equipment in accordance with applicable requirements.

Enclosed for your information is a detailed list of all the oil spill events which have occurred at Lisbon Fuel and the notifications from all levels of government that the facility has received over the years, starting in the early 1990's. For instance, following a 1991 spill, MEDEP informed the facility's representatives in person of spill prevention requirements and of the need for adequate spill containment systems at the facility. Information on spill reporting and cleanup requirements was also conveyed to the facility, as well as directions to repair leaking equipment, upgrade storage tanks, and investigate and remove spilled oil from soils and groundwater underlying the property. The facility failed to take the necessary actions despite repeated warnings over the

years and continuing oil spills at the facility. Our record also includes evidence that the facility failed numerous times to report oil spills to state authorities and covered up spilled oil with clean fill without taking adequate cleanup measures.

Some of the specific problems noted at the facility include: (1) failure to prepare and fully implement an SPCC plan; (2) lack of secondary containment for tanks, loading racks and oil transfer areas; (3) lack of routine inspections and inadequate maintenance of tanks and equipment, including failure to perform integrity testing of bulk storage tanks; (4) failure to store oil and operate in accordance with good engineering practice, including failure to remove underground storage tanks which were being used for aboveground storage, though specifically directed to do so by the Maine State Fire Marshal's office in 1995; and (5) continued use and failure to repair vertical storage tanks which are in an advanced state of deterioration and improperly supported, though specifically directed to do so by MEDEP beginning in 1992, the Maine State Fire Marshal's office in 1995, and EPA in 2006.

Our record also shows that compliance assistance was offered to Lisbon Fuel beginning in 1991, when MEDEP discussed in person with Lisbon Fuel's representatives the need for spill containment systems as required by state and federal regulations. Outreach efforts to Lisbon Fuel included letters sent to the company by the Maine State Fire Marshal's office in 1995, as well as letters to the facility by MEDEP in 1992, 1995, 1996 and following an on-site visit by MEDEP compliance assistance personnel in 2004.

Based on the extensive history of noncompliance at this facility, EPA determined that a penalty action was warranted. While the complaint issued to the facility noted that the agency could seek penalties of "up to $157,500" (this being the statutory maximum for EPA's administrative penalty authority), the matter was settled for significantly less - a $20,000 penalty paid over time. A copy of the settlement is enclosed for your information.

The goal of EPA's Oil Pollution Prevention program is to reduce the risk posed by oil spills to our nation's waters. This is primarily accomplished through the Agency's outreach efforts to the regulated community and by working cooperatively with federal, state, tribal and local government agencies to respond to spills and promote high levels of environmental compliance. As some facilities fail to avail themselves of the assistance offered by the regulating agencies, however, EPA also utilizes the enforcement authorities granted to it by Congress to engage those facilities that only respond to the deterrent effect of fines.

Again, thank you for your letter. If you or your staff should require additional assistance, please contact Michael Ochs in the Office of Government Relations at (617) 918-1066, or Tonia Bandrowicz, Senior Enforcement Counsel, at (617) 918-1734.

Sincerely,

Robert W. Varney
Regional Administrator

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

November 7, 2006

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senator
461 Dirksen Senate Office Building
Washington, D.C. 20510

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Again, thank you for your letter. If you or your staff should require additional assistance, please contact Michael Ochs in the Office of Government Relations at (617) 918-1066, or Tonia Bandrowicz, Senior Enforcement Counsel, at (617) 918-1734.

Sincerely,

Robert W. Varney
Regional Administrator

Enclosures

06-000-8736

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 06 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office (GAO) report recommendations concerning the treatment and disposal of mercury-contaminated debris. The report is entitled Hazardous Waste: EPA Needs to Clarify the Types of Mercury Waste That Can Be Treated and Disposed of Using the Debris Regulations (GAO-06-99). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

To better ensure that the businesses that generate, treat, and dispose of hazardous waste are properly managed and reduce the risk of their mercury-containing waste, GAO recommends EPA clarify and better describe the types of waste that can and cannot be reported under the "debris" reporting category and include the definition of debris in the instructions for the Hazardous Waste Report.

EPA Response

EPA agrees and has already implemented this recommendation. The Agency has changed the definition of the reporting category for contaminated debris in the instructions for the 2005 Hazardous Waste Report to now include references to the regulatory debris definition found at 40 CFR 268.2(g) and the treatment requirements found at 40 CFR 268.45. These references will ensure that the waste identification that is made by the waste generator is also the basis for reporting under the Hazardous Waste Report.

GAO Recommendation

To better ensure that the businesses that generate, treat, and dispose of hazardous waste are properly managed and reduce the risk of their mercury-containing waste, GAO recommends that EPA conduct further outreach to communicate to states and hazardous waste landfills the types of mercury-containing wastes that can be treated and disposed of according to the alternative treatment standards for debris.

EPA Response

EPA agrees with this recommendation. EPA has highlighted this issue on its mercury and waste websites. The Agency will work with state counterparts to include discussion of this issue at EPA and state waste management forums. EPA has contacted the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and requested their assistance in conducting outreach to state waste management officials. Finally, EPA will request states to work with commercial hazardous waste landfills in their states regarding the appropriate classification of hazardous waste as hazardous debris.

The Agency will work with ASTSWMO to conduct outreach to state waste officials and commercial hazardous waste landfill operators on the classification and management of mercury-containing debris. The Agency will redistribute the October 23, 2003 "Treatment Standards for Mercury-Containing Debris" memorandum and highlight the discussion of which hazardous wastes can and cannot be classified as hazardous debris.

Thank you for the opportunity to respond to the recommendations. If you have any questions, please contact me or Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at 202/564-1859.

Best wishes,

Lyons Gray
Chief Financial Officer

06-001-7249

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 31 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office (GAO) report recommendation concerning better coordination of the Water Information Sharing and Analysis Center (WaterISAC) and Homeland Security Information Network (HSIN) systems. The report is entitled Securing Wastewater Facilities: Utilities Have Made Important Upgrades but Further Improvements to Key System Components May Be Limited by Costs and Other Constraints (GAO-06-390). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

GAO recommends that the Administrator of EPA work with the Department of Homeland Security (DHS) and the Water Sector Coordinating Council to identify areas where the WaterISAC and HSIN networks could be better coordinated, focusing in particular on (1) how operational duplications and overlap could be addressed and (2) how water systems' access to timely security threat information could be improved. GAO also recommends that EPA work with DHS and the Water Sector Coordinating Council to identify realistic time frames for the completion of these tasks.

EPA Response

EPA agrees with the recommendation and is involved in several initiatives to address the recommendation. The Association of Metropolitan Water Agencies (AMWA) operates the WaterISAC with a grant from EPA. The most recent grant agreement required AMWA to evaluate the merits of both the WaterISAC and HSIN systems. AMWA completed their

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evaluation in April 2006 and recommended that WaterISAC adopt components of HSIN and incorporate them into WaterISAC. These components include expansion of the WaterISAC to other critical interdependent sectors and, within the WaterISAC, establishment of a link from WaterISAC to HSIN and maintenance of highly sensitive and analyst-originated information. These actions will improve access to timely and authoritative security threat information. Currently, AMWA is developing its project plan for implementation and expects this work to be completed in the first quarter of calendar year 2007.

Thank you for the opportunity to respond to the recommendation. If you have any questions, please contact me or have your staff contact Lauren Mical in EPA's Office of Congressional and Intergovernmental Relations at 202/564-2963.

Best wishes,

Lyons Gray

Lyons Gray
Chief Financial Officer

06-000-7249

SUSAN M. COLLINS
MAINE

461 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-5523
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COMMITTEES:
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-1904

SCH
Charles
Stephanie
John
Catherine
Chris
Cynthia
Jim W

25 Sweden Street
Suite A
Caribou, ME 04736
May 4, 2006

Ms. Stephanie Daigle
Associate Administrator for Congressional
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Daigle:

I am writing on behalf of the owners of B&M Hydraulic Jack Repair of Madawaska, Maine who contacted U.S. Senator Susan Collins for assistance. U.S. Customs and Border Protection Agents are currently holding a shipment of small lightweight off-road utility vehicles from Japan at the Portland, Maine port. The arrival date was April 20, 2006 and the shipment number is 0227619. B&M Hydraulic and their employees is experiencing a great expense each day that this action continues, and a timely inquiry would be appreciated.

In their letter to Senator Collins, the owners indicate that they have been importing these vehicles from Japan for the past six months without incident through the port in New York City. They mention that other dealers in the United States are importing the same or similar vehicles without having them detained at ports of entry. U.S. Customs and Border Protection officials have informed Senator Susan Collins that EPA has now required EPA stickers on all off road vehicles of this type. A clarification from the EPA on this case would be very helpful.

I am providing a copy of the B & M Hydraulic owners' letter with this letter and will provide the legal documents to you electronically. Your assistance in reviewing this situation, and providing Senator Collins with information to respond to her constituents, would be appreciated. Thank you for your time and efforts on behalf of Senator Collins. I look forward to your response.

Sincerely,

Philip R. Bosse
State Office Representative for
Senator Susan M. Collins

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580 Main Street
Madawaska, Maine 04756
Ph: 207-433-0384
Fax 207-728-7777
www.bandmminitrucks.com

B & M
Hydraulic Jack Repair

Senator Susan Collins
461 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Collins:

We have been importing small lightweight off-road utility vehicles from Japan for the past 6 months, through to the port of New York, without difficulty. These vehicles cannot be driven on public highways and can only be used on farms, airports, military bases, and for other similar off-road purposes.

Recently, and without providing an opportunity for notice and comment, as statutorily required by 19 U.S.C. 1625(c), the port of Portland, Maine have advised us that we can no longer import the vehicles. However, numerous identical or substantially identical goods have been and are presently being imported by our competitors without incident.

This situation is of great concern to us as we have many vehicles sitting at the port as well as on ships bound for United States.

The ports' refusal to admit the vehicles gravely jeopardizes our ability to continue our business in Maine. Thus, we request your assistance in this matter. Specifically, we ask that you telephone and write Michael Chertoff, Secretary of Homeland Security (202-282-8000), Deborah Spero, Acting Commissioner of Customs (202- 344-2001), and EPA Administrator Stephen L. Johnson (202-564-4700).

We are attaching a legal document that our counsel submitted to Customs on behalf of our supplier dated April 24, 2006. It is our counsel's position that Customs' classification of our goods should be consistent with numerous identical or substantially identical vehicles currently imported by our competitors, free of duty as work trucks.

Counsel has also advised us that it is their view that our goods do not violate Department of Transportation or Environmental Protective Agency laws or regulations.

Finally, our counsel's communications with the EPA indicate that the EPA will not provide answers concerning the matter.

We are confident in our counsel's expertise, as our attorneys combined have served almost sixty years in the legal office at Customs, and approximately eighteen years in the private practice of Customs Law. Our Counsel can be reached at:

Harvey Fox
Adduci, Mastriani & Schaumberg L.L.P.
1200 17th Street N/W.
Washington, DC 20036
(202) 467-6300
(202) 466-2006

My employees, their extended family, and we greatly appreciate your assistance in this matter.

Sincerely,

Bob Cyr
Mark Cyr
Greg McEuen

UNITED STATES SENATOR–MAINE
SUSAN M. COLLINS
CARIBOU OFFICE
25 Sweden Street–Suite A
Caribou, Maine 04736
Phone: (207) 493-7873 Fax: (207) 493-7810

FACSIMILE COVER SHEET

TO: STEPHANIE DAIGLE FAX: 202-501-1519
FROM: Phil Bosse PHONE:
NO. OF PAGES (Including cover): 3 DATE: 5-4-06

COMMENTS: ATTN: CHRIS BROWN

RE: B+M HYDRAULIC JACKS
MINI-OFF-ROAD TRUCKS

MR. BROWN. I AM ALSO emailing A couple PDF FILES ON this issue that are too large to FAX. The SUBJECT LINE: will be B+M

Thank You,
Phil

I will be out of the office until MONDAY AND will towork Base with you then. I can be reach by email.
Phil_Bosse@COLLINS.SENATE.GOV

ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.

ATTORNEYS AT LAW

1200 SEVENTEENTH STREET, N W
WASHINGTON, D C 20036
Telephone (202) 467-6300
Facsimile (202) 466-2006
e-mail. [lastname]@adduci com
www adduci com

V JAMES ADDUCI II
LOUIS S MASTRIANI
TOM M SCHAUMBERG
BARBARA A MURPHY
HARVEY B FOX
WILL E LEONARD
JAMES TAYLOR, JR
MAUREEN F BROWNE
MICHAEL G McMANUS
RODNEY R SWEETLAND, III
MICHAEL L DOANE
WILLIAM C SJOBERG
DAVID F NICKEL*
SARAH E HAMBLIN*
MARK R LEVENTHAL
S ALEX LASHER
TALI LEAH ALBAN*
*ADMITTED TO A BAR OTHER THAN D C

OF COUNSEL

ROBERT A WESTERLUND
DAVID G POSZ
JAMES E BARLOW*
GREGORY C ANTHES
JOHN C STEINBERGER
PAUL G HEGLAND

AFFILIATE

AM&S TRADE SERVICES, LLC
CARLOS MOORE, PRESIDENT

April 24, 2006

URGENT

VIA FEDERAL EXPRESS, ELECTRONIC MAIL AND FACSIMILE (562-628-7900)

Ms. Aileen Suliveras
Acting Port Director
U.S. Customs and Border Protection
301 E. Ocean Blvd., Suite 1400
Long Beach, California 90802

Re: Tariff Classification of "Kei" Class Work Trucks

Dear Ms. Suliveras:

On behalf of our client, Ferguson Tractor, Inc. ("Ferguson Tractor"), of Emporia, Virginia, pursuant to 19 C.F.R. 177.11, we request that you seek internal advice as to the tariff classification under the Harmonized Tariff Schedule of the United States ("HTSUS") and the admissibility into the United States of certain work trucks, known as "Kei" class or "micro" trucks. **We request expedited treatment of this request because changes in the processing of our client's importations of these trucks are resulting in delay and jeopardize our client's ability to continue its business.**

We submit that the trucks, as described in this request, are classified in subheading 8709.19.0030, HTSUS (Annotated), and that they are admissible into the United States under all

U.S. Department of Transportation ("DOT") and Environmental Protection Administration ("EPA") requirements administered by U.S. Customs and Border Protection ("Customs").

As required by 19 C.F.R. 177.11(b)(3), this request includes a complete description of the transaction upon which internal advice is sought, the specific questions presented, the applicable law, and the reasons why the work trucks are classifiable in the proposed tariff classification and are admissible into the United States.

Numerous importations of similar or identical goods have taken place in the past. Certain current importations are now under consideration by U.S. Customs and Border Protection ("Customs") officials at various locations, including the Ports of Long Beach, CA, Newark, NJ, New York, NY, Norfolk, VA, Portland, ME, San Francisco, CA, Seattle, WA, Tacoma, WA, and Wilmington, NC.

We have consulted with the Director, National Commodity Specialist Division and the National Import Specialist responsible for the tariff classification of the merchandise under consideration (those officials concurred with the filing of this internal advice request). To the best of our knowledge, other than as specified herein and in published rulings cited herein, neither this transaction nor one identical to it has been considered or is currently being considered by Customs, the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, or any court of appeal therefrom.

I. FACTS

The subject ruling request concerns a type of small utility vehicle, generally referred to as a "Kei" class (in Japanese, "Kei" means lightweight) truck. These vehicles are produced by a number of manufacturers including Daihatsu (models: S81P, S83P, and S110), Honda (models:

HA2, HA4, and TC), Mazda (model: DK51T and DH41T), Mitsubishi (models: U12T, U15T, U19T, U42T), Subaru (models: KS4, KT2, KT6, and KT8), and Suzuki (models: DB41T, DB51T, DB71T, DD51T). A spreadsheet setting forth the dimensions and specifications of each model of truck is attached as Attachment A. The specifications may be generally summarized as follows:

Length:	3.19 – 3.29 meters
Width:	1.39 meters
Height:	1.73 – 1.92 meters
Engine Size:	550 – 660 cc (.55 – .66 liters)
Load Capacity:	350 kg
Horsepower:	28 – 52 PS[1]
Maximum Speed (laden):	28.5 – 31.5 mph
Turning Radius:	3.5 – 4.0 meters
Ground clearance:	.155 – .200 meters
Passenger capacity:	2 person

Kei class trucks are not appropriate for street usage nor do they comply with Department of Transportation ("DOT") regulations concerning vehicles that may be driven on the public roadways, for the following reasons:

1. The pick up truck style vehicles do not have a rear bumper.
2. Generally, these vehicles are not state emissions inspection certified.
3. Kei class vehicles would probably not pass side impact or roll over tests.

[1] 1 PS = .986 horsepower (hp).

4. Kei class vehicles do not have air bags available.

5. Kei class vehicles have a top speed, when laden, of approximately 30 mph.

Both the DOT and the Environmental Protection Agency treat Kei class trucks as other than "motor vehicles."

II. LAW AND ANALYSIS

A. Tariff Classification

Goods are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) pursuant to the requirements of the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, and if the headings or notes do not otherwise require, according to the remaining GRIs. GRI 2(a), HTSUS, is concerned with incomplete or unfinished articles. GRI 2(b), HTSUS, concerns mixtures and goods consisting of more than one material. GRI 3, HTSUS, provides, in pertinent part:

> 3. When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description.
>
> (b) [This provision concerns mixtures, composite goods, and sets and is not pertinent in this matter.]
>
> (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

In interpreting tariff provisions, Customs takes the position that the Explanatory Notes ("EN") of the Harmonized Commodity Description and Coding System, although not legally binding or dispositive, should always be consulted.

The tariff provisions potentially applicable to the work trucks at issue in this matter are:

- Subheading 8704.10.10, HTSUS ("Motor vehicles for the transport of goods: Dumpers designed for off-highway use: Cab chassis" (duty-free)) or subheading 8704.10.50, HTSUS ("Motor vehicles for the transport of goods: Dumpers designed for off-highway use: Other" (duty-free)).

- Subheading 8704.31.00, HTSUS ("Motor vehicles for the transport of goods: ... Other, with spark-ignition internal combustion piston engine: G.V.W. not exceeding 5 metric tons" (general rate of duty 25%)).

- Subheading 8709.19.00, HTSUS ("Work trucks, self-propelled, not fitted with lifting of handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transportation of goods ...: Vehicles: ... Other" (duty-free)).

As noted above, in GRI 1 and 6, tariff classification is initially determined by comparison of the potentially applicable tariff provisions at the 4-digit heading level (i.e., headings 8704 and 8709, HTSUS). In this case, both of these headings are so-called "use" provisions (*see, e.g.*, HQ 086863 (May 15, 1990), in which Customs stated in regard to classification of merchandise in heading 8704, HTSUS, "[t]he classification of motor vehicles is determined by their principal use", and HQ 965246 (Nov. 6, 2001), in which Customs stated that heading 8709, HTSUS, "is a provision governed by 'use' [and] [a]s such, it is the principal use of the class or kind of vehicles ... that governs classification").

Classification of principal use tariff provisions is governed by Additional U.S. Rule of Interpretation 1(a), HTSUS, under which "[I]n the absence of special language or context which otherwise requires—(a) a tariff classification controlled by use (other than actual use) is to be

determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." For purposes of this provision, principal use is that use "which exceeds any other *single* use" (*Lenox Collections v. U.S.*, 20 CIT 194, 196 (1996)) (emphasis in original).

Therefore, to be classifiable under either of those two provisions, articles must belong to the "class or kind" of goods described in the headings. *See Group Italglass U.S.A., Inc. v. United States*, 17 CIT 226, 228 (1993), wherein the court stated:

> [T]he language in heading 7010 'of the kind' preceding 'used for' simply buttresses the interpretative rule for use provisions that it is the use of the *class or kind* of goods imported that is controlling rather than the use to which the specific imports were put.

See also, *Len-Ron Mfg. Co. v. United States*, 20 CIT 948, 965, 118 F. Supp. 2d 1266 (2000), in which the Court stated:

> Articles of a kind normally carried in the pocket or in the handbag," invokes the concept of use due to its inclusion of the phrase "of a kind."' *See Primal Lite, Inc. v. United States*, 15 F. Supp. 2d 915, 917 (CIT 1998) ("The use of the term 'of a kind' is nothing more than a statement of the traditional standard for classifying [an] importation by [ ] use.

Principal use has long been interpreted as requiring a determination, as of the time of, or immediately prior to, importation, of: (1) the class or kind into which the goods under consideration fall; and (2) the principal (largest single use) of that class or kind of goods.

The Courts and Customs use the so-called "*Carborundum*" factors to make these principal use determinations. *U.S. v. Carborundum Co.*, 63 CCPA 98, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979 (1976); *see also G. Heileman Brewing Co. v. U.S.*, 14 CIT 614, 620 (1990)

(chief use under TSUS); *Kraft, Inc. v. U.S.*, 16 CIT 483, 489 (1992) (chief use under TSUS); *Hartz Mountain Corp. v. U.S.*, 19 CIT 1149, 1151 (1995); *Lenox Collections v. U.S.*, 20 CIT 194 (1996); *Minnetonka Brands, Inc. v. U.S.*, CIT Slip Op. 00-86 (p. 10 et seq.); *Automatic Plastic Molding, Inc. v. U.S.*, CIT Slip Op. 02-120 (p. 11 et seq.); *Inabata Specialty Chemicals v. U.S.*, CIT Slip Op. 05-48 (p. 10).

The *Carborundum* factors are: (1) general physical characteristics of the merchandise; (2) expectations of the ultimate purchaser; (3) channels, class or kind of trade in which the merchandise moves; (4) environment of sale (accompanying accessories, manner of advertisement and display); (5) usage in the same manner as merchandise which defines the class; (6) economic practicality of use in the same manner as merchandise which defines the class; and (7) recognition in the trade of use in the same manner as merchandise which defines the class. *U.S. v. Carborundum Co.*, 536 F.2d at 377.

In addition, in identifying "class or kind" for principal use purposes, some courts have held that "class or kind" is limited to goods that are "commercially fungible" or goods that are competitive with and can replace the imported goods. *Primal Lite v. U.S.*, 22 CIT 697 (1998), *aff'd* 182 F.3d 1362 (CAFC 1999); *Pistorino & Co., Inc. v. U.S.*, 607 F.2d 989 (CCPA 1979). Generally, the courts that have used the "commercial fungibility" standard applied that standard with the use of the *Carborundum* factors listed above.

The *Carborundum* factors support principal use of the Kei class trucks, as of the time of importation into the United States (as required under the principal use standard), as work trucks of heading 8709, HTSUS. That is, in regard to general physical characteristics, the trucks are relatively small, are not designed for comfort, have low power engines, have cargo beds not

suitable for the transportation of passengers, have 12 inch tires as opposed to the 14 inch tires found on the smallest of road-worthy vehicles, have a loaded speed of 28.5 to 31.5 mph (impracticable for use on public highways), and are unlicenseable for use on public roads.

The importance of the physical characteristics in determining principal use for vehicles of heading 8709, HTSUS, is emphasized by the Explanatory Notes (ENs) for the heading. The ENs are analyzed in greater detail below. However, in regard to the physical characteristic factor for analysis of principal use, we note that each of the characteristics cited in the ENs relate to physical characteristics (i.e., construction and design unsuitable for transportation of passengers or goods by road or public ways; top speed when laden of no greater than 30 to 35 KM/H, relatively small turning radius, and, usually, lack of a closing driving cab).

As explained in greater detail below, the Kei class trucks meet the three enumerated criteria of the ENs for heading 8709, HTSUS. As explained above, other general physical characteristics of the Kei class trucks also are consistent with inclusion in the class or kind of vehicles used as work trucks of heading 8709, HTSUS. Thus, the first *Carborundum* factor, and the factor invariably considered in principal use analysis, supports principal use as a vehicle of heading 8709, HTSUS.

In regard to the remaining *Carborundum* factors, the expectation of the ultimate purchaser is dictated by the physical characteristics of the Kei class trucks (i.e., as demonstrated above, they clearly are unsuitable for use on public roads, the advertising of the Kei class trucks makes clear that they are for "OFF-ROAD USE ONLY!!!" (Ferguson Tractor advertisement http://www.ferguson-tractor.com/specials.html), they are marketed by dealers such as Ferguson Tractor, which primarily supplies the trucks to contractors and agricultural businesses, they are

actually used as work trucks (e.g., in docks, harbors, lumber yards, mines, warehouses, fish farms, by chicken processors (*see* http://www.best-used-tractors.com/mini_truck.html), and their relatively inexpensive price indicates that they are for other than on-road use as motor vehicles).

In regard to the expectations of the ultimate purchaser, purchasers expect to use the Kei class trucks instead of a regular sized motor vehicle because it is, among other things, more maneuverable, less expensive to maintain, causes less turf damage, and is operated at a very low speed. In regard to channels of trade, these vehicles are not sold in dealerships that sell regular vehicles but, as stated above, are marketed by dealers such as Ferguson Tractor, which primarily supplies contractors and agricultural businesses. Finally, in regard to economic practicality, because Kei class trucks cost much less in the United States than regular sized vehicles, it is practicable to purchase Kei class trucks when the intended use is to transport goods or people for short distances over off-road surfaces.

The treatment of the trucks in this class by the U.S. DOT, described in greater detail below, is consistent with principal use as the DOT has issued a number of rulings regarding similar vehicles (enumerated below). DOT's criteria for determining that these vehicles are not "motor vehicles" for purposes of DOT safety requirements applicable to motor vehicles, are remarkably similar to the *Carborundum* factors. The DOT criteria are:

1. whether states or foreign countries have permitted or are likely to permit the vehicles to be registered for on-road use;

2. whether the vehicles are or will be advertised for use on-road as well as off-road, or whether they are or will be advertised exclusively for off-road use;

3. whether the vehicles' manufacturers or dealers will assist vehicle purchasers in obtaining certificates of origin or title documents to register the vehicles for on-road use;

4. whether the vehicles are or will be sold by dealers that are also selling vehicles that are classified as motor vehicles; and

5. whether the vehicles are or will have affixed warning labels stating they are not intended for use on the public roads.

See December 3, 1991, memorandum from Chief Counsel, National Highway Transportation Safety Administration ("NHTSA").

In regard to the first criterion above (permission by foreign countries or states to register the vehicles for use on public roads), the NHTSA has discounted the significance of the fact that some vehicles such as the Kei class trucks may be registered in foreign countries on the basis of the differences in the safety regulations and registration practices of foreign countries.

Specifically, in this regard, in response to a request for advice from Mitsubishi Motors Corporation's SH27 lightweight industrial truck would be treated as a "motor vehicle" in the United States, notwithstanding that it could be registered in foreign countries for on-road usage, NHTSA determined that the truck was not a "motor vehicle" for NHTSA safety purposes. *See* October 31, 1988, letter from Chief Counsel, NHTSA, to Mitsubishi Motors Corporations. Note also, in the request from Mitsubishi Motors Corporation, the statement that "we believe there is little basis for assuming that registration of the SH27 correlates to the likelihood of U.S. State registration."

Thus, consistent with the determination of principal use "in the United States at, or immediately prior to the date of importation" (Additional U.S. Rule of Interpretation 1(a)), the NHTSA has recognized that registration in a foreign country does not determine the ability to register a vehicle in the United States, and has discounted the fact of such registration.

Notwithstanding the fact that the Kei class trucks under consideration are properly classified in heading 8709, HTSUS, even if Customs finds that they cannot be established to be of the class or kind principally used as work trucks in heading 8709, HTSUS, or motor vehicles for the transportation of goods, Customs has consistently taken the position that, "if evidence submitted by an importer does not support principal use in one of the potentially applicable tariff provisions, "then classification may be determined by application of GRI 3(c)" (Customs General Notice, published in the Customs Bulletin of August 8, 2001, providing notice pursuant to 19 U.S.C. 1625(c) of the modification/revocation of 17 Customs rulings; *see also* HQ 966270 (June 3, 2003; HQ 964208 (January 4, 2002); HQ 965113 (June 29, 2001); HQ 963831 (January 11, 2001); HQ 961866 (July 29, 1998)).

At the heading level, the provisions which merit equal consideration, in the event that Customs determines that principal use of the Kei class trucks under consideration cannot be determined, are heading 8704 and 8709, HTSUS. Because heading 8709, HTSUS, is the heading which occurs last in numerical order, pursuant to GRI 3(c), the Kei class trucks must be classified in heading 8709 if Customs determines that principal use of the Kei class trucks under consideration cannot be determined.

Classification in heading 8709, HTSUS, pursuant to GRI 3(c), in the event that Customs determines that principal use of the Kei class trucks under consideration cannot be determined, is also consistent with the concept of relative specificity as set out in GRI 3(a). In *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1380 (Fed. Cir. 1999), the appellate court, in upholding the lower court's decision recognizing that an *eo nomine* provision may be more specific than a use provision stated that:

> When a product is *prima facie* classifiable under two or more headings, "[t]he heading which provides the most specific description shall be preferred to headings providing a more general description." GRI 3(a). Under this rule of "relative specificity," "we look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty." *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998).

In the event that Customs determines that principal use of the Kei class trucks cannot be determined, there is no question that both headings 8704 and 8709, HTSUS, describe the Kei class trucks under consideration. They are self-propelled work trucks, which are: (1) a type of motor vehicle that is (2) primarily used to transport goods. These two criteria satisfy the requirements of heading 8704, HTSUS.

However, a motor vehicle of heading 8709, HTSUS, must not only meet those two criteria, but it must not have lifting or handling equipment, must be limited to short hauling distances, must be fungible (of the same class or kind) with vehicles which are used in factories, warehouses, dock areas or airports, and must be designed to transport goods short distances.

Without question, heading 8709, HTSUS, is more restrictive and harder to satisfy than heading 8704, HTSUS. Therefore, under the concept of relative specificity as provided in GRI 3(a), the Kei class trucks are more specifically described by heading 8709, HTSUS, than heading 8704, HTSUS, and, to the extent that the concept of relative specificity controls classification, the trucks must be classified in heading 8709, HTSUS.

As stated above, Customs takes the position that the Explanatory Notes (EN), although not binding or dispositive, should always be consulted in tariff classification determinations. The EN for heading 8709, HTSUS, state in part that the headings cover vehicles that possess

certain features that distinguish them from the vehicles of headings 8703 and 8704, HTSUS. According to the EN:

> This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.
>
> ...
>
> The main features common to the vehicles of [heading 8709] which generally distinguish them from the vehicles of heading [8701, 8703, or 8704] may be summarized as follows:
>
> (1) Their construction and, as a rule, their special design features make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.
>
> (2) Their top speed, when laden is generally not more than 30 to 35 km/h.
>
> (3) Their turning radius is approximately equal to the length of the vehicle itself.

In addition, the EN notes that vehicles of heading 8709, HTSUS, do not usually have a closed driving cab.

Customs has applied the above EN to vehicles such as the Kei class trucks. In HQ 954173 (September 22, 1993), Customs noted that the foregoing factors were only approximations. In that ruling, Customs addressed the classification of certain Mule Utility vehicles. Customs noted that each of the vehicles had a turning radius from 22 to 54 inches longer than its length, and certain models had a top speed of over 35 km/h when fully laden. Customs concluded that the Mule Utility vehicles conformed to the Explanatory Notes and were classifiable in Heading 8709, HTSUS, despite the fact that the top speed and the turning radius was greater than the approximations stated in the EN.

The Kei class trucks clearly meet the first numbered criterion of the EN for heading 8709, HTSUS, in that their construction and special design features make them unsuitable for transport by road or other public ways. As noted above and more fully discussed below, in fact, the Kei class trucks under consideration may not be used on public roads pursuant to DOT requirements and, as also noted above, Ferguson Tractors and other dealers of Kei class trucks make clear to purchasers that they are for off road use only.

In regard to the 2nd and 3rd numbered criteria of the EN for heading 8709, both are in general or approximated terms (i.e., the top speed is qualified by the term "generally" and the turning radius is qualified by the term "approximately"). Accordingly, and very properly, Customs has applied the 2nd and 3rd criteria as intended, in "general" or "approximated" terms. That is, even though 35 km/h equals is 22 miles per hour, Customs has classified in heading 8709, HTSUS, a number of vehicles with a loaded speed of greater than 22 miles per hour and other vehicles in which the loaded speed is not specified. Similarly, Customs has properly classified a number of vehicles with turning radii greater than their length in heading 8709, HTSUS. *See*, in this regard, Attachment B, discussed below (Attachment B compares vehicle specifications of outstanding rulings by Customs in regard heading 8709, HTSUS).

Similarly, the statement in the EN that vehicles of heading 8709, HTSUS, *usually* do not have a closed driving cab does not preclude a vehicle classifiable under that heading from having one. "Usually," obviously, does not mean always and Customs has correctly classified vehicles in heading 8709, HTSUS, despite the presence of cabs and other comfort items.

In fact, the Micro Truks classified in heading 8709, HTSUS, in HQ 965246 (November 6, 2001), has "a cab for two people" and features including "4-wheel hydraulic brakes, 3-speed

manual transmission, electronic ignition, front bumper, headlights, taillights, brake lights, turn signals, four-way flashers, two-speed intermittent wipers with washer, heater/defroster, inside/outside rearview mirrors, seat belts, [and] dome light" (NY F82672 (February 11, 2000), revoked by HQ 965246. *See also*, the Multicab pickup truck of NY H87834 (January 28, 2002), discussed in greater detail below.

The ENs describe the vehicles of heading 8709, HTSUS, as being of the type used in "factories, warehouses, dock areas or airports." These areas are generally nonpublic areas that do not require work trucks to be roadworthy. When the above is applied to the Kei class trucks, there is no question that they fall within the same class or kind of vehicles as the vehicles used in the locations described in heading 8709, HTSUS. Specifically, the principal use of these vehicles is by entities with private road systems (e.g., airports, military bases, research centers, theme parks, universities, factories, farms, etc.) for purposes of grounds maintenance, facilities maintenance, moving injured players off the field, transporting personnel short distances and other similar uses. Such vehicles have been properly classified in heading 8709, HTSUS.

Pursuant to 19 U.S.C. 1625(c), Customs is prohibited from modifying or revoking an interpretative ruling or decision which has been in effect for at least 60 days without following notice-and-comment procedures specified in the statute. Importers may rely on existing interpretative rulings or decisions applicable to merchandise that is identical, or substantially identical to the merchandise in such interpretative rulings or decisions, and Customs must apply such rulings to identical or substantially identical transactions until it completes the statutorily required notice-and-comment procedures for modification or revocation of such interpretative rulings or decisions and until the required delayed effective date for modification or revocation has passed. *See American Bayridge Corp. v. United States*, 22 CIT 1129, 35 F. Supp. 2d 922 (1998), *vacated on other grounds*, 217 F. 3d 857 (Fed. Cir. 1999), *see also*, *California Industrial Products, Inc. v. U.S.*, CAFC Slip Op. 05-1087 (February 1, 2006); *International Custom Products, Inc. v. U.S.*, CIT Slip Op. 05-71 (June 15, 2005)).

In this matter, it is clear that the Kei class trucks **are identical or substantially identical** to the Micro Truk ruled upon in HQ 965246 (November 6, 2001), the Kawasaki Mule 500, 1000, 2510 and 2520 ruled upon in HQ 954173 (Sept. 22, 1993); the Carryall I through XL ruled upon in HQ 960303 (May 13, 1997); the Multicab Original Pick-Up Lift Up 4WD ruled upon in NY H87834 (Jan 28, 2002); the Sportsman 6x6 - Off-Road Vehicle ruled upon in NY J83208 (April

17, 2003)[2]; and the Utility Task Vehicle, Personal Task Vehicle, and Ranger ruled upon in NY J81427 (March 7, 2003)[3].

A side-by-side comparison of the Kei class trucks with the vehicles in the above rulings demonstrates that they are substantially identical, for purposes of 19 U.S.C. 1625(c), with the vehicles that Customs has ruled to be classified in heading 8709, HTSUS. *See* table attached as Attachment B. Indeed, the "Multicab" vehicle held in NY H87834 (January 28, 2002) to be a work truck of heading 8709, HTSUS, is described as having been "made in Japan and suitable for highway use for five to seven years." This vehicle, as well as the Micro Truk of HQ 965246 (November 6, 2001), are virtually indistinguishable from the Kei class trucks under consideration, as is clearly demonstrated by Attachment B.

B. <u>Admissibility</u>

We submit that the Kei class trucks are admissible into the United States under any possibly applicable "other government agency" requirement. That is, the entry of motor vehicles and engines is addressed in the Customs Regulations 19 C.F.R. §§ 12.73, 12.74, and 12.80.

Section 12.80 of the Customs Regulations (19 C.F.R. § 12.80) applies the Federal motor vehicle safety standards to motor vehicles to be imported into the United States. However, the NHTSA of the DOT, which is responsible for administration of the those standards, authorized

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[2] Classification of the Polaris ATP – All Terrain Vehicle in subheading 8703.21.00, HTUS, in this ruling is not inconsistent with classification of the Kei class trucks in heading 8709, HTSUS, because NY J83208 make clear that the reason for its determination in regard to the Polaris ATP was that "the rear cargo box [was] not substantial enough and [it was] depict[ed] ... as being used for more non-industrial/commercial uses (e.g., recreational uses) as an all terrain vehicle (ATV)."

[3] Classification of the ASL 300 All surface loader in subheading 8427.20.80, HTSUS, in this ruling is not inconsistent with classification of the Kei class trucks in heading 8709, HTSUS, because NY

footnote cont'd on next page

by the Motor Vehicle Safety Act of 1966, as amended, have clearly and repeatedly determined that Kei class trucks are not classified as "motor vehicles" and therefore are not subject to the Federal motor vehicle safety standards.

That is, the Motor Vehicle Safety Act defines "motor vehicle" as any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways ..." (15 U.S.C. 1391(3)). In applying this definition to Kei class vehicles, DOT has held that vehicles such as those under consideration should not be classified as motor vehicles, even though they may be registered for on-road use in foreign countries. In this regard, *see* Attachment C, consisting of opinion memoranda and letters from NHTSA holding that vehicles such as the Kei class vehicles are not motor vehicles and, therefore, are not subject to DOT motor vehicle safety standard, specifically:

1. Memorandum of December 3, 1991, from the Chief Counsel, NHTSA, reviewing the five factors used by the Agency to consider whether a vehicle is a "motor vehicle" when it has both off-road and on-road operating capabilities and holding that the Daihatsu HIJET general purpose off-road utility vehicles would continue to be treated as other than "motor vehicles" if Daihatsu continued to ensure that its customers do not plan to use the vehicles for on-road use.

2. Letter of March 7, 2002, from the Chief Counsel, NHTSA, to EPA confirming that the small vehicles Kawasaki Mule 520, Polaris Ranger 4 x 4, and Cushman White Truck 611 are advertised for off-road use and are not considered to be "motor vehicles" and citing earlier NHTSA interpretation letters addressing an earlier design of the Polaris Ranger and addressing vehicles which are similar to the other vehicles (citing letters to Mr. Undlin dated August 6, 1999, to Mr. Sanford dated January 25, 1999, to Mr. Garcia dated January 17, 1995, and to Mr. Kato dated October 13, 1988).

3. Letter of August 6, 1999, to Mr. Undlin from the Chief Counsel, NHTSA, concluding that "it appears that the [Polaris] RANGER is not a motor vehicle."

J81427 makes clear that the reason for its determination in regard to the ASL All Surface Loader is that it is fitted with lifting or handling equipment.

4. Letter of January 25, 1999, to Mr. Sanford from the Chief Counsel, NHTSA, concluding that certain Metro Motors Corporation small passenger-carrying vans and trucks "are not motor vehicles under the statutes [administered by NHTSA]."

5. Letter of January 17, 1995, to Mr. Garcia from the Chief Counsel, NHTSA, addressing whether the off-road light utility vehicle, the Kawasaki Mule KAF 450-B1, is a "motor vehicle" referring to the memorandum dated December 3, 1991, to Mr. Plache (see above), and the October 31, 1988, letter to Mr. Kato (see below) and stating that "the [five] criteria [in those letters] are easily applied and a determination whether the Mule is a motor vehicle may be made."

6. Letter of October 31, 1988, to Mr. Kato from the Chief Counsel, NHTSA, concluding that the Mitsubishi Motors Corporation SH27 lightweight industrial truck intended for "general or carrier work for off-road applications" "would not be a motor vehicle under the Safety Act." In regard to this decision by NHTSA, note the letter from Mr. Kato to which NHTSA was responding, in which it was stated that "there is little basis for assuming that foreign registration of the SH27 correlates to the likelihood of U.S. State registration.

As noted above, the criteria used by the NHTSA in making the above determinations are remarkably similar to the *Carborundum* factors, consisting of the likelihood that the vehicles may be registered for on-road use, whether the vehicles are advertised for on road as well as off road use, whether the vehicles' manufacturers or dealers assist purchasers to obtain registration for on road use, whether the dealers that sell the vehicles also sell motor vehicles, and whether it is made clear that the vehicles are not intended for use on the public roads (December 3, 1991, memorandum from Chief Counsel, NHTSA).

We submit that the Kei class trucks imported and sold by Ferguson Tractor meet each of these criteria. That is, as the above-described NHTSA determinations make clear, the Kei class vehicles are not likely to be registered in a State for on-road use, and would not qualify for such registration (as noted above, NHTSA has apparently determined that the fact that such vehicles may have qualified for on road registration in a foreign country, as in the case of the Mitsubishi

Motors Corporation SH27 lightweight industrial truck, did not preclude treatment of that vehicle as an off road vehicle).

In regard to the remaining NHTSA criteria, as discussed in regard to the *Carborundum* factor analysis, the vehicles are advertised in the United States for off road and not on road use, the vehicles are sold by dealers such as Ferguson Tractor, that deal in vehicles for construction, agriculture, and similar purposes, and not ordinary motor vehicles, and dealers make clear that the vehicles are not for on road use (*see* Ferguson Tractor advertising stating that the Kei class trucks are for "OFF-ROAD USE ONLY!!!", referred to above). In regard to the third criterion, whether dealers assist purchasers obtain registration for on road use, as the above quoted advertising makes clear, the dealers are well aware that the vehicles do not qualify for on road use and, of course, do not attempt to assist customers to obtain registration for such use.

In fact, in regard to the foregoing, dealers include disclaimers or waivers in bills of sale emphasizing that the vehicles are for "bought for 'non-highway/off-road' agricultural, horticultural, or forestry use only [and] [do] not meet the requirements for operation or use on the public streets, roads, highways, or any other public areas of any state in the United States of America" (Ferguson Tractor Terms of sale/purchase) "OFF ROAD USE ONLY [and] NOT LEGAL FOR ANY STREET OR HIGHWAY USE" (Bill of Sale used by Montana Mini Truck LLC). *See* Attachment C.

The restrictions applicable to motor vehicles and engines in section 12.73 and 12.74 of the Customs Regulations (19 C.F.R. 12.73, 12.74) are based on requirements of the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), which are administered by the EPA.

Section 12.73 of the Customs Regulations relates to EPA emission requirements under the Clean Air Act. As is true of the Federal motor vehicle safety standards implemented in 19 C.F.R. 12.80 (see above), the requirements of 19 C.F.R. 12.73 apply only to "motor vehicles" (*see* 19 C.F.R. 12.73(a), concerning *"[a]pplicability of EPA requirements*" ("The requirements apply to imported motor vehicles ...").

Section 12.73 refers to the EPA regulations, specifically 40 C.F.R. Parts 85 and 86, and provides that the latter regulations "should be consulted for more detailed information concerning EPA emission requirements."

The referenced EPA regulations include a provision interpreting section 216(2) of the Clean Air Act (42 U.S.C. 7550), which provides that "[t]he term 'motor vehicle' means any self-propelled vehicle designed for transporting persons or property on a street or highway." Pursuant to 40 C.F.R. 85.1703, titled "Application of section 216(2)", for purposes of the applicability of section 216(2):

> [A] vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, **unless any one or more of the criteria set forth below are met,** in which case the vehicle shall be deemed not a motor vehicle and excluded from the operation of
> the Act:
> (1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; **or**
> (2) The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear (except in the case of motorcycles), a differential, or safety features required by state and/or federal law; **or**
> (3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, such features including, but not being limited to, tracked road contact means, an inordinate size, or features ordinarily associated with

> military combat or tactical vehicles such as armor and/or weaponry.

40 C.F.R. 1703(a)(1) through (3) (emphasis added).

Thus, the above provision confirms the provision in 19 C.F.R. 12.73 that the EPA emission standards are applicable only to "motor vehicles." The above provision interprets the definition of "motor vehicles" in the Clean Air Act to include **only** vehicles that (1) are capable of exceeding a maximum speed of 25 miles per hour over level, paved surfaces, **and** (2) **lack features customarily associated with safe and practical street or highway use**, such features **including "safety features required by state and/or federal law, and** (3) exhibit features rendering use on a street or highway unsafe, impractical, or highly unlikely. As the above emphasis demonstrates, the EPA regulations require the criteria governing the definition of "motor vehicle" to be present in the conjunctive, i.e., each and every criterion must be present before a vehicle is deemed a "motor vehicle."

Thus, two of the three criteria used by EPA to interpret the term "motor vehicles" depend on the safety of the vehicle considered. As demonstrated above, Kei class trucks have been repeatedly determined by DOT not to be "motor vehicles" for purposes of the motor vehicle safety standards administered by that agency. The Kei class trucks do not meet DOT motor vehicle safety standards, as clearly recognized by DOT, and as Customs has recognized in its Carborundum analysis of such vehicles. Because the Kei class trucks clearly lack "safety features required by state and/or federal law (e.g., lack of a rear bumper, inability to pass side impact or roll over tests, absence of air bags), and because their features, although making them suitable for off street or highway use, "render [their] use on a street or highway unsafe, impractical, or highly unlikely."

We submit that the Kei class trucks are not "motor vehicles" for purposes of the Clean Air Act, as that term is required to be defined by EPA regulations, regardless of their maximum speed. Therefore, the restrictions of 19 C.F.R. § 19.73 and the EPA regulations applicable to "motor vehicles" cannot operate to result in the exclusion of the Kei class trucks under consideration.

Finally, 19 C.F.R. § 12.74 addresses the applicability of EPA emission standards to nonroad engines subject to such standards. Section 12.74 refers to the EPA regulations (40 C.F.R. Parts 89 and 90) and states that those regulations should be consulted for detailed information as to the admission requirements for nonroad engines.

Parts 89 and 90 include provisions establishing the effective dates of the restrictions in those Parts. The provisions of Part 89 are effective as follows: For engines of less than 19 KW (25.48 horsepower) the effective date of the restrictions is January 1, 2000 (40 C.F.R. § 89.102(a)(1)), for engines equal or greater than 19 KW (25.48 horsepower) but less than 37 KW (49.62 horsepower) the effective date of the restrictions is January 1, 1999 (40 C.F.R. § 89.102(a)(2)), and for engines equal or greater than 37 KW (49.62 horsepower) but less than 75 KW (100.58 horsepower), the effective date of the restrictions is January 1, 1998 (40 C.F.R. § 89.102(a)(3)). The provision of Part 90, applicable to engines at or below 19 KW (25.48 horsepower) are effective with the 1997 model year (42 C.F.R. § 90.2).

Thus, the provisions of Parts 89 and 90 are applicable to imported nonroad engines that were manufactured after the effective dates outlined above (*see* 40 C.F.R. § 89.2 *New* and 40 C.F.R. § 90.2 *New*; *see also* 40 C.F.R. § 1068.301, concerning the importation of engines, and

providing that engines that are imported must be covered by a certificate of conformity "unless they were built before emission standards started to apply."

The Kei class trucks imported by Ferguson Tractors were built before the applicable nonroad engine emission standards started to apply. Therefore, the restrictions on the importation of nonroad engines provided for in 19 C.F.R. § 12.74 cannot operate to exclude the Kei class trucks under consideration.

III. CONCLUSION

Based on the foregoing, we submit that it is clear that the Kei class trucks are properly classified in subheading 8709.19.00, HTSUS, on the basis of: (1) their principal use in the United States at, or immediately prior to, the date of importation; (2) the fact that, even if Customs were to determine that principal use cannot be determined, pursuant to GRI 3(c) they are classified in heading 8709, HTSUS, instead of heading 8704, HTSUS, because heading 8709, HTSUS, appears last in numerical order between those provisions; (3) the concept of relative specificity provided for in GRI 3(a), in that heading 8709, HTSUS, is more restrictive and harder to satisfy than heading 8704, HTSUS; and (4) 19 U.S.C. § 1625(c), in that the Kei class trucks are **identical or substantially identical** with vehicles in interpretive rulings or decisions by Customs classified in heading 8709, HTSUS.

We further submit that it is clear that the Kei class trucks are admissible under the correct interpretation of all applicable DOT and EPA requirements.

We respectfully request that you submit this internal advice request to the appropriate Customs officials as soon as possible so that this matter may be properly resolved, noting, as

stated above, that we have consulted with the appropriate Customs officers before submitting this internal advice and that they have confirmed our decision to do so.

In the event that Customs is contemplating issuing any decision that is inconsistent with this request, we respectfully request an opportunity to make an oral presentation to the appropriate Customs officials.

If you have any questions concerning the foregoing, or need additional information concerning this matter, please contact the undersigned.

Respectfully submitted,

Harvey B. Fox

HBF:cfk
Attachments
cc: Deborah Spero, Acting Commissioner, U.S. Customs and Border Protection ("CBP")
Sandra Bell, Acting Assistant Commissioner, Office of Regulations and Rulings (OR&R), CBP
Vera Adams, Executive Director, Trade Enforcement and Facilitation, Office of Field Operations, CBP
Laurence J. Rosenzweig, Acting Director, Trade Relations, CBP
Robert B. Swierupski, Director, National Commodity Specialist Division
James Seal, Senior Attorney, OR&R
Robert DeSoucey, National Import Specialist
Kevin Weeks, Director, Field Operations, Long Beach, CA
Steven J. Farquharson, Director, Field Operations, Boston, MA
Deborah Zwearcan, Port Director, Port of Portland, ME
Danny Johnson, Senior Import Specialist, Port of Long Beach, CA
John Foley, Import Specialist, Port of Portland, ME
Timothy Skud, Deputy Assistant Secretary, Tax, Trade and Tariff Policy, U.S. Department of the Treasury
Stephen L. Johnson, Administrator, EPA
Jacqueline Robles Werner, EPA
Robert Doyle, Office of Transportation and Air Quality, EPA

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Mfr.	Model	Year	Engine	HP	Max Speed	Load Speed	Total Weight w/load	Demensions	Gr. Cl.	Turn Radius	Driving Cab	Pass.	Heat-er	Wipers
Daihatsu	S81P 4X4	87-89	EB (547cc)	34	41.5mph	28.5mph	2711.1lbs	10.5' X 4.57' X 6.1'	6.7"	11.5'	Closed	2	Yes	Yes
Daihatsu	S83P 4X4	89-93	EF (660cc)	41	43.5mph	31.5mph	2579.4lbs	10.5' X 4.57' X 5.9'	6.7"	12.1'	Closed	2	Yes	Yes
Daihatsu	S110 4X4	94-95	EF (660cc)	41	43.5mph	31.5mph	2932.1lbs	10.5' X 4.57' X 5.9'	6.3"	12.5'	Closed	2	Yes	Yes
Honda	TC 4X4	85-87	EH (550cc)	34	41.5mph	28.5mph	2557.4lbs	10.5' X 4.57' X 5.6'	6.9"	12.5'	Closed	2	Yes	Yes
Honda	HA2 4X4	88-90	EO5A (550cc)	34	41.5mph	28.5mph	2667.6lbs	10.1' X 4.57' X 5.8'	7.9"	12.5'	Closed	2	Yes	Yes
Honda	HA4 4X4	91-94	EO7A (660cc)	41	43.5mph	31.5mph	2866lbs	10.5' X 4.57' X 6.1'	7.7"	12.5'	Closed	2	Yes	Yes
Mazda	DK51T 4X4	85-89	F5B (550cc)	34	41.5mph	28.5mph	2660lbs	10.5' X 4.57' X 5.6'	6.7"	13.1'	Closed	2	Yes	Yes
Mazda	DH41T 4X4	91-94	F6A (657cc)	41	43.5mph	31.5mph	2557.4lbs	10.5' X 4.57' X 5.6'	6.3"	12.5'	Closed	2	Yes	Yes
Mitsubishi	U12T 4X4	85-88	3G81 (547cc)	34	41.5mph	28.5mph	2645.5lbs	10.5' X 4.57' X 5.8'	6.3"	12.5'	Closed	2	Yes	Yes
Mitsubishi	U15T 4X4	86-90	3G81 (547cc)	34	41.5mph	28.5mph	2645.5lbs	10.5' X 4.57' X 5.8'	6.3"	12.5'	Closed	2	Yes	Yes
Mitsubishi	U19T 4X4	90-91	3G83 (657cc)	41	43.5mph	31.5mph	2623.5lbs	10.5' X 4.57' X 6.0'	6.4"	12.5'	Closed	2	Yes	Yes
Mitsubishi	U42T 4X4	91-95	3G83 (657cc)	41	43.5mph	31.5mph	2623.5lbs	10.5' X 4.57' X 6.0'	6.2"	12.1'	Closed	2	Yes	Yes
Subaru	KT2 4X4	81-85	(550cc)	34	41.5mph	28.5mph	2513.3lbs	10.5 X 4.57' X 5.6'	7.9"	12.8'	Closed	2	Yes	Yes
Subaru	KT6 4X4	85-87	EK23 (550cc)	34	41.5mph	28.5mph	2513.3lbs	10.5' X 4.57' X 5.6'	7.9"	12.8'	Closed	2	Yes	Yes
Subaru	KT8 4X4	87-89	(550cc)	34	41.5mph	28.5mph	2513.3lbs	10.5 X 4.57' X 5.6'	7.9"	12.8'	Closed	2	Yes	Yes
Subaru	KS4 4X4	91-95	(660cc)	41	43.5mph	31.5mph	2645.5lbs	10.5' X 4.57' X 6.0'	7.6"	12.8'	Closed	2	Yes	Yes
Suzuki	DB41T 4X4	85-89	F5A (550cc)	34	41.5mph	28.5mph	2513.3lbs	10.5 X 4.57' X 6.2'	6.7"	13.1'	Closed	2	Yes	Yes
Suzuki	DB51T 4X4	91-94	F6A (660cc)	41	43.5mph	31.5mph	2579.4lbs	10.5 X 4.57' X 5.8'	6.3"	12.5'	Closed	2	Yes	Yes
Suzuki	DD51T 4X4	91-94	F6A (660cc)	41	43.5mph	31.5mph	2579.4lbs	10.5 X 4.57' X 5.8'	6.3"	12.5'	Closed	2	Yes	Yes
Suzuki	DB71T 4X4	89-90	F5A-F5B (550cc)	34	41.5mph	28.5mph	2513.3lbs	10.5' X 4.57' X 6.2'	6.7"	13.1'	Closed	2	Yes	Yes

Additional Notes:

Non-DOT approved tires
No bumpers (front bumber is plastic facia only)
No crumple zones designed into the structure
No center body brake light
No certification for US highway crash testing
No side impact protection (doors are fascia only)
No front impact protection (Cab is not re-enforced to protect passengers

EXHIBIT
A

	Length (inches)	Width (inches)	Height (inches)	Engine Sz	Load Cap.	Horse Power	Max Sp. (MPH)	Turning Radius (inches)	Ground Clearance (inches)	Passenger Cap.
Kei Class	126-130	54.7	68.1 – 75.6	550-660 cc	350 KG	27.62-51.29	28-31.5 (loaded)	138 – 157	6.1-7.87	2 person
Micro Truk	130-145	55	73	800 cc	1900 lb.	38	25	137	6.5	2 person
Mule	108.7-112	51.8-57.5	72-75.6	454-617 cc	800-1030		25	126-134	6.7-8.1	2 person
Multicab*				500 cc						2 person
Sportsman	81	46	46	499 cc	800 lb.			119	5.5	2 person
UTV				425-500	1000 – 1500 lb.	24-30				
PTV				499 cc	800 lb.		25			1 person
Ranger	113	60	75	499 cc	1000 lb.	18-30	25	148	5.5	3 person
Carryall	100-165.5	49.25-50	48	351	800-1200	9-11	15-19	101-191	6.4	2 person

Note: Some of the specifications are from websites and other sources describing the vehicles:
http://www.polarispowersports.com/all-terrain-vehicles/6x6.shtml);
http://www.constructionequipment.com/newProductsDetail/CA478910.html ;
http://tknw.com/Products/ClubCar/Carryall1_Specifications.asp ;
"Mechanized Trail Equipment" U.S. Department of Agriculture, Forest Service, technology & Development Program (September 1996), pp 55-56 (Kawasaki Mule 1000, 2510

* Although there are few available specifications for the Multicab, we note that it is described as a rebuilt Japanese pickup truck, which was suitable for highway use in that country and so used for 5 to 7 years.

EXHIBIT
B

DATE: December 3, 1991

FROM: Paul Jackson Rice -- Chief Counsel, NHTSA

TO: Matthew J. Plache -- Esq., Gardner, Carton & Douglas

TITLE: None

ATTACHMT: Attached to letter 10-17-91 from Matthew J. Plache to Paul Jackson Rice (OCC 6577)

TEXT:

This responds to your request for an opinion of whether Daihatsu America, Inc. would be in violation of Federal law, including section 108(a)(1)(A) of the National Traffic and Motor Vehicle Safety Act ("Safety Act," 15 U.S.C. S 1397(a)(1)(A)), if it were to sell Daihatsu HIJET vehicles in accordance with specifications contained in a recent Request for Bid issued by the City of Los Angeles. According to your letter, HIJETS are general purpose off-road utility vehicles that are not intended for use on the public roads, streets or highways and, as such, do not comply with Federal motor vehicle safety standards. The City of Los Angeles Request for Bid, among other things, specifically required vehicles that are capable of being registered for street use in California and required the contractor to apply to register the vehicles and obtain license plates for them.

As discussed below, it is our opinion that it would be a violation of section 108(a)(1)(A) for a manufacturer or dealer to knowingly sell or offer to sell a HIJET vehicle to a customer for use on the public roads, streets or highways. A Request for Bid containing provisions similar to those set forth by the City of Los Angeles would indicate that the customer intends such use of the vehicle.

By way of background information, the issue of whether vehicles such as HIJETs are considered motor vehicles under the Safety Act was addressed by NHTSA in an October 31, 1988 interpretation letter addressed to Mr. Hiroshi Kato of Mitsubishi. That letter addressed the Mitsubishi SH27 lightweight industrial truck, which we understand, and you state, is very similar to the Daihatsu HIJET. At that time, Mitsubishi was considering whether to import the SH27.

In addressing the SH27, NHTSA noted that section 102(3) of the Safety Act (15 U.S.C. 1391(3)) defines a "motor vehicle" as "any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails." The agency has interpreted this language as follows. Vehicles that are equipped with tracks or are otherwise incapable of highway travel are plainly not motor vehicles. Further, vehicles designed and sold SOLELY for off-road use (e.g., airport runway vehicles and underground mining devices) are not considered motor vehicles, even though they may be operationally capable of highway travel. NHTSA has also concluded that vehicles that have an abnormal body configuration that readily distinguishes them from other highway vehicles AND a maximum speed of 20 miles per hour (mph) are not considered motor vehicles.

On the other hand, vehicles that use the public highways on a necessary

and recurring basis are motor vehicles. For instance, a utility vehicle like the Jeep is plainly a motor vehicle, even though it is equipped with special features to permit off-road operation. If a vehicle's greatest use will be off-road, but it will spend a substantial amount of time on-road, then NHTSA has interpreted the vehicle to be a "motor vehicle." Further, the agency has determined that a vehicle such as

EXHIBIT C

a dune buggy is a motor vehicle if it is readily usable on the public roads and is in fact used on the public roads by a substantial number of owners, regardless of the manufacturer's stated intent regarding the terrain on which the vehicle is to be operated.

In addressing the SH27, NHTSA noted that the vehicle was not easily classified under these groupings. On the one hand, it has a body configuration nearly identical to standard trucks, can obtain a maximum speed of approximately 25 mph, and could be registered for use on the highways of several foreign countries. These factors suggested that the vehicle should be classified as a motor vehicle. On the other hand, Mitsubishi stated that the vehicle was intended to be used only for off-road applications, that it would be advertised and promoted for off-road purposes only, and that it would contain four warning labels stating "Warning: Off Road Use Only." These factors suggested that the vehicle should not be classified as a motor vehicle.

In instances where the agency is asked whether a vehicle is a motor vehicle when it has both off-road and on-road operating capabilities, and about which there is little or no evidence about the extent of the vehicle's on-road use, the agency has applied five factors in offering its advice. These factors are:

1. Whether States or foreign countries have permitted or are likely to permit the vehicle to be registered for on-road use.

2. Whether the vehicle is or will be advertised for use on-road as well as off-road, or whether it is or will be advertised exclusively for off-road use.

3. Whether the vehicle's manufacturer or dealers will assist vehicle purchasers in obtaining certificates of origin or title documents to register the vehicle for on-road use.

4. Whether the vehicle is or will be sold by dealers also selling vehicles that are classified as motor vehicles.

5. Whether the vehicle has or will have affixed to it a warning label stating that the vehicle is not intended for use on the public roads.

Based on the representations in Mitsubishi's letter, NHTSA concluded that the SH27 did not appear to be a motor vehicle under the Safety Act. In addition to the other factors noted above which suggested that the SH27 should not be considered a motor vehicle, Mitsubishi had stated that its dealers would be instructed that the vehicle was to be used solely for off-road purposes-and that no assistance should be given to obtain a title for the vehicle or to register the vehicle in this country. NHTSA stated, however, that it would reexamine its conclusion if it learned,

for example, that the vehicle was in fact used on the public roads by a substantial number of its owners.

With this background information in mind, I will now address your question whether Daihatsu America, Inc. would be in violation of Federal law, including section 108(a)(1) of the Safety Act, if it were to sell HIJET vehicles in Accordance with City of Los Angeles bid specifications that require vehicles that are capable of being registered for street use in California and require the contractor to apply to register the vehicles and obtain license plates for them. Section 108(a)(1)(A) reads as follows:

No person shall --

(A) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate

commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this title unless it is in conformity with such standard and is covered by a certification issued under section 114 . . . .

It is our opinion that it would be a violation of this section for a manufacturer or dealer to knowingly sell or offer to sell a HIJET vehicle (which does not comply with Federal motor vehicle safety standards) to a customer for use on the public roads, streets or highways. The reason for this is that the only possible argument that a HIJET vehicle is not a motor vehicle is that it is intended solely for off-road use. The knowing sale to a customer for use on the public roads, streets or highways would nullify this possible argument. Moreover, a Request for Bid containing provisions requiring vehicles that are capable of being registered for street use in California and requiring the contractor to apply to register the vehicles and obtain license plates for them demonstrates that the customer intends such use of the vehicle.

Further, such action by Daihatsu or its dealers would demonstrate that HIJETs should be considered motor vehicles under the Safety Act and subject to Federal motor vehicle safety standards. I note that NHTSA's October 31, 1988 opinion that the similar Mitsubishi SH27 would not be considered a motor vehicle under the Safety Act was premised on certain representations by Mitsubishi. The knowing sale of such a vehicle to a customer for use on the public roads, streets or highways would be inconsistent with the representation that the vehicle was intended solely for off-road use. I also note that the provision in the City of Los Angeles Request for Bid requiring the contractor to apply to register the vehicle and obtain license plates for them is inconsistent with one of the specific understandings set forth in that opinion.

You stated that Daihatsu is concerned about this matter because it has recently received a number of similar solicitations for HIJET-like vehicles which could be interpreted as solicitations for on-road vehicles. You stated that because of its concerns about potential violations of Federal law, Daihatsu has refrained from submitting a bid in accordance with the City of Los Angeles request. You also expressed concern that

other suppliers of similar vehicles apparently do not share Daihatsu's concern and indicated that the Los Angeles contract was recently awarded to a supplier of the Mitsubishi SH27. Please be advised that we are referring your allegations to our Office of Enforcement to determine whether there has been a violation of section 108(a)(1)(A) of the Safety Act.

With respect to Daihatsu, I note that the receipt of a number of such solicitations may suggest a general perception that the HIJET is appropriate for on-road use. NHTSA has determined that a vehicle is a motor vehicle if it is readily usable on the public roads and is in fact used on the public roads by a substantial number of owners, regardless of the manufacturer's stated intent regarding appropriate use. Thus, if Daihatsu wishes to continue to classify the HIJET as a non-motor-vehicle, it should ensure that its customers do not plan to use them for on-road use.

I hope this information is helpful. If you have any further questions or need some additional information on this topic, please feel free to contact Marvin Shaw of my staff at this address or by telephone at (202) 366-2992.

Mr. Kerrin Bressant
United States Environmental Protection Agency
1300 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Bressant:

This is in reply to your fax to Stephen R. Kratzke, the National Highway Traffic Safety Administration's (NHTSA's) Associate Administrator for Safety Performance Standards, providing descriptions of three small vehicles--the Kawasaki Mule 520, the Polaris Ranger 4 x 4, and the Cushman White Truck 611. You asked whether these vehicles meet our definition of a "low-speed vehicle" even though they were designed or are advertised as "off-road" only use vehicles, and whether a vehicle can be considered both an off-road vehicle and a low-speed vehicle at the same time. Your questions are addressed below.

By way of background information, the National Traffic and Motor Vehicle Safety Act (Safety Act) authorizes our agency to issue safety standards applicable to new motor vehicles and new items of motor vehicle equipment. (49 U.S.C. § 30101 et seq.) NHTSA has no authority to approve or certify any commercial product. Instead, Congress established a self-certification process under which each manufacturer is required to certify that each of its products meets all applicable Federal Motor Vehicle Safety Standards.

The term "motor vehicle" is defined by statute as "a vehicle driven or drawn by mechanical power and manufactured primarily for use on the public streets, roads, and highways . . ." 49 U.S.C. § 30102(a)(6). Accordingly, only vehicles that are operated on the public streets, roads, and highways, as one of their primary uses, are considered to be motor vehicles, and vehicles which are solely used "off-road" are excluded.

For purposes of our regulations, "low-speed vehicles" are one of several categories of motor vehicles. The term "low-speed vehicle" is defined as "a 4-wheeled *motor vehicle*, other than a truck, whose speed attainable in 1.6 [kilometers] (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface." 49 CFR 571.3(b) (emphasis added). Other categories of motor vehicles include passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, and trailers.

As to your question of whether a vehicle can be considered both an off-road vehicle and a low-speed vehicle at the same time, I note that because low-speed vehicles are a type of motor vehicle, vehicles that are excluded from the definition of motor vehicle because they are solely used "off-road" are not considered to be low-speed vehicles under our regulations.

Some vehicles can, of course, be used for either on-road use or off-road use. As we have explained in a number of interpretation letters, vehicles that use the public highways on a necessary and recurring basis are motor vehicles. For instance, a utility vehicle like the Jeep is plainly a motor vehicle, even though it is equipped with special features to permit off-road operation. Moreover, if a vehicle's greatest use will be off-road, but it will spend a substantial amount of time on-road, NHTSA has interpreted the vehicle to be a "motor vehicle." Further, the agency has determined that a vehicle such as a dune buggy is a motor vehicle if it is readily usable

on the public roads and is in fact used on the public roads by a substantial number of owners, regardless of the manufacturer's stated intent regarding the terrain on which the vehicle is to be operated.

In instances where the agency is asked whether a vehicle is a motor vehicle when it has both off-road and on-road operating capabilities, and about which there is little or no evidence about the extent of the vehicle's on-road use, the agency has applied five factors in offering its advice. These factors are:

1. whether the vehicle will be advertised for use on-road as well as off-road, or whether it will be advertised exclusively for off-road use;

2. whether the vehicle's manufacturer or dealers will assist the vehicle's purchasers in obtaining certificates of origin or title documents to register the vehicle for on-road use;

3. whether the vehicle will be sold by dealers also selling vehicles that are classified as motor vehicles;

4. whether the vehicle has affixed to it a warning label stating that the vehicle is not intended for use on the public roads; and

5. whether states or foreign countries have permitted or are likely to permit the vehicle to be registered for on-road use.

I will now turn to the specific vehicles about which you inquire, the Kawasaki Mule 520, the Polaris Ranger 4 x 4, and the Cushman White Truck 611.

Because the Safety Act establishes a self-certification system, it is the manufacturer of each of these vehicles, and not this agency, that has the obligation to determine whether these products are motor vehicles. The manufacturers of each of these vehicles advertise them for off-road use and do not consider them to be motor vehicles.

NHTSA has issued interpretation letters addressing an earlier design of the Polaris Ranger and addressing vehicles which are similar to the other vehicles. I am enclosing copies of several of these letters for your information (addressed to Mr. Undlin, dated 8/6/99, Mr. Sanford, dated 1/25/99, Mr. Garcia, dated 1/17/95, and Mr. Kato, dated 10/13/88).

Finally, I would like to note that our definition of "low-speed vehicle" specifically excludes trucks. The vehicles you asked about all have cargo beds. If a manufacturer decided to produce vehicles similar to these for on-road use, they would not be low-speed vehicles under our regulations (regardless of their speed capability); they would be trucks.

I hope this information is helpful. If you have any questions, you may contact Robert Knop of this Office at (202) 366-2992.

Sincerely,

John Womack
Acting Chief Counsel

Enclosures
ref:571
d.3/7/02

Mr. Thomas J. Undlin
Robins, Kaplan, Miller & Ciresi L.L.P.
Attorneys at Law
2800 Lasalle Plaza
800 Lasalle Avenue
Minneapolis, MN 55402-2015

Dear Mr. Undlin:

This responds to your inquiry about whether the Polaris RANGER manufactured by your client, Polaris Industries Inc., is a motor vehicle that would have to comply with the applicable Federal motor vehicle safety standards. I apologize for the delay in our response. You state that the RANGER is a general purpose off-road utility vehicle with features that make it impractical to operate on public roads. You explain that the RANGER's certificate of origin states: "This general purpose, off-road utility vehicle is not intended for and may not be registered for on-road use." You also explain that the RANGER is designed to fit in the rear of a standard full-sized pickup truck so that it may be transported, rather than operated, on public roads. On the basis of the information you provided in your letter and the warning labels, photographs and owner's manual excerpts you enclosed, it appears that the RANGER is not a motor vehicle.

By way of background information, the National Highway Traffic Safety Administration (NHTSA) issues and enforces the Federal motor vehicle safety standards. NHTSA's statute defines the term "motor vehicle" as follows:

[A] vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, but does not include a vehicle operated only on a rail line. 49 USC § 30102(a)(6).

Whether NHTSA considers the RANGER to be a motor vehicle depends on its use. In the past, we have concluded that this statutory definition does not encompass mobile construction equipment, such as cranes and scrapers, which use the highway only to move between job sites and which typically spend extended periods of time at a single job site. In such cases, the on-road use of the equipment is merely incidental and is not the primary purpose for which they were manufactured. Other construction vehicles, such as dump trucks, frequently use the highway going to and from job sites, and stay at a job site for only a limited time. Such vehicles are considered motor vehicles, since the on-highway use is more than "incidental."

Based on the information you provided in your letter and the warning labels, photographs and owner's manual excerpts you enclosed, it appears that the RANGER is not a "motor vehicle" within the meaning of the statutory definition. This conclusion is based on the statements in your letter that the RANGER is designed to fit in the rear of a full-size standard pickup truck to move between off-road sites. It is also based on the statement that the RANGER is designed and sold for off-road use only and has certain features that make it impracticable to use on paved roads. We note that the vehicle lacks a differential for both the rear driven axles. The lack of a differential, which ordinarily facilitates turning by allowing the wheels to rotate at different rates, makes the RANGER difficult to drive on pavement. Other features of the RANGER, including the oversized-cleated tires and suspension system, are consistent with off highway use. Assuming your statements are correct, we would consider the RANGER to be an off-road vehicle. If we were to receive additional information indicating that the RANGER uses the public roads on more than an incidental basis or that Polaris is no longer selling it as an off-road vehicle, the agency would reassess this interpretation.

If you have further questions regarding NHTSA's safety standards, please contact Nicole Fradette of my staff at this address or by telephone at (202) 366-2992.

Sincerely,
Frank Seales, Jr.
Chief Counsel
cc: Leonard Goldstein

Office of General Counsel
U.S. Consumer Products Safety Commission
Washington, DC 20207

ref:VSA#591
d.8/6/99

Mr. William A.G. Sanford
Chairman
Metro Motors Corporation
12202 Timber Run Court
Monrovia, MD 21770

Dear Mr. Sanford:

This is in reply to your letters of April 28, 1998, July 3, 1998, and July 27, 1998, seeking an opinion that certain vehicles Metro Motors Corporation ("Metro" hereafter) wishes to import are not "motor vehicles" subject to regulation by this agency. Based on the information provided in your letter, it appears that the vehicles are not motor vehicles under the statutes we administer.

The vehicles in question have the appearance of small passenger-carrying vans and trucks and are manufactured by Asia Motors in Korea. Your letter of April 28, 1998 informed us that the vehicles "will be marketed to industrial equipment distributors (forklift dealers) and professional turf dealers (golf course equipment firms) and specialty houses (industrial sweeper & scrubber dealers)." Your letter of July 27, 1998 indicated that the passenger vans would primarily be used on "closed" college/university campuses. Product literature contains the warning "These vehicles are intended for off-road use only." The Certificate of Origin states that the vehicles do "not conform to all safety and emissions standards applicable to on road vehicles in the United States." Metro intends to affix to the vehicles a yellow placard (4 inches by 14 inches) with the same advisories and warnings as the literature, placard, and Certificate of Origin. Finally, the engine and transmissions of the vehicles will be modified to restrict the top speed to not more than 25 miles per hour.

Your letter of July 3, 1998, advises that the vehicles are equipped with headlamps, parking lamps, backup lamps, turn signal /hazard warning signal lamps, combination stop/taillamps, all of which comply with "federal DOT regulations for ON ROAD vehicles." Shoulder and lap belts "are standard on all models." Dual side mirrors and an interior mirror are also standard. The vehicles are equipped with four-wheel hydraulic brakes, radial tires, and "safety" glass. You also list a number of comfort and convenience items with which the vehicles are equipped. You have attached a certificate from the U.S. Environmental Protection Agency which approves Metro's importation of "motorized units." Finally, you have enclosed a Vehicle Emissions Inspection Certificate issued to one of the vehicles.

A "motor vehicle" for purposes of compliance with the Federal motor vehicle safety program is, in pertinent part, a vehicle that is "manufactured primarily for use on the public streets, roads, and highways." 49 U.S.C. 30102(a)(6). The issue raised by your letter is whether the vehicle you would be importing would be considered a motor vehicle under the statutes we administer.

I note that the factual situation you raise is similar to one we addressed in an October 31, 1988 letter to MMC Services concerning the Mitsubishi Motors Corporation SH27 lightweight industrial truck. As was the case in that situation, your vehicles are not easily classified. On the one hand, the vehicles have a body configuration nearly identical to standard trucks and vans and can reach a speed of 25 miles per hour. These factors suggest that the vehicles should be classified as motor vehicles. On the other hand, you stated that the vehicles are intended to be used only for off-road applications and that the vehicle will be advertised and promoted for off-road purposes only and will contain two placards stating "Warning: this vehicle is for off-use only. The use of this vehicle is not intended for on-road use, and it does not meet USDOT regulations for on-road usage. IT IS ILLEGAL FOR USE AS A LICENSABLE VEHICLE!" These factors suggest that the vehicle should not be classified as a motor vehicle.

In instances where the agency is asked whether a vehicle is a motor vehicle when it has both off-road and on-road operating capabilities, and about which there is little or no evidence about the extent of the vehicle's on-road use, the agency has applied five factors in offering its advice. These factors are:

1. Whether the vehicle will be advertised for use on-road as well as off-road, or whether it will be advertised exclusively for off-road use.

You stated that your product literature contains an advisory that the vehicles are for off-road use only. This factor suggests that the vehicles should not be considered motor vehicles.

2. Whether the vehicle's manufacturer or dealers will assist vehicle purchasers in obtaining certificates of origin or title documents to register the vehicle for on-road use.

The sample certificate of origin you enclosed in your letter states "THIS VEHICLE DOES NOT CONFORM TO ALL SAFETY AND EMISSIONS STANDARDS APPLICABLE TO ON-ROAD VEHICLES IN THE UNITED STATES." Therefore, this factor would indicate that the vehicles should not be considered motor vehicles.

3. Whether the vehicle is or will be sold by dealers also selling vehicles that are classified as motor vehicles.

As noted previously, you have informed us that the vehicles "will be marketed to industrial equipment distributors (forklift dealers) and professional turf dealers (golf course equipment firms) and specialty houses (industrial sweeper & scrubber dealers)." The vehicles sold by these dealers are not motor vehicles. This factor suggests that the vehicles should not be considered motor vehicles.

4. Whether the vehicle has or will have affixed to it a warning label stating that the vehicle is not intended for use on the public roads.

As noted above, two warning placards will be affixed to the exterior of the vehicle body. This factor would indicate that the vehicles are not motor vehicles.

5. Whether states or foreign countries have permitted or are likely to permit the vehicle to be registered for on-road use.

Since the vehicles closely resemble small trucks and vans used on the public roads, it is possible that states would permit them to be registered for highway use. In fact, the State of Maryland has issued an emissions approval certificate for one of the vehicles. Therefore, this factor suggests that the vehicles should be considered motor vehicles.

Based on the representations in your letter and considering all of the five factors discussed above, on balance, we believe that your vehicles are not "motor vehicles." However, we will reexamine this conclusion if we learn that, for example, the vehicles are in fact used on the public roads by a substantial number of owners.

If you have any questions, you may contact Taylor Vinson of this Office (202-366-5263).

Sincerely,
Frank Seales, Jr.
Chief Counsel

ref:571#591
d.1/25/99

TYPE: INTERPRETATION-NHTSA

DATE: January 17, 1995

FROM: Philip R. Recht -- Chief Counsel, NHTSA

TO: Mariano Garcia, Esq. -- Ricca & Whitmire, P.A.

TITLE: NONE

ATTACHMT: Attached to 10/24/94 letter from Mariano Garcia to NHTSA Chief Council (OCC 10463); Also attached to 12/3/91 letter from Paul Jackson Rice to Matthew Plache (VSA 102(3)); Also attached to 10/31/88 letter from Stephen Wood/Erika Jones to Hiroshi Kato

TEXT: Dear Mr. Garcia:

This responds to your request for an interpretation whether the Kawasaki Mule KAF 450-B1, with a top speed of 25 miles per hour, is a motor vehicle. You describe the Mule as an "off-road" light utility vehicle, and enclose a photocopy of what appears to be a Kawasaki brochure describing the Mule.

The Mule is similar to two on and off-road capable vehicles, reviewed by NHTSA for a determination whether the vehicles are motor vehicles. Enclosed are two interpretation letters, one to Mr. Matthew J. Plache, dated December 3, 1991, and one to Mr. Hir oshi Kato dated October 31, 1988. Both letters addressed vehicles which could attain a top speed of 25 miles per hour and were not intended by their manufacturers to be used on the public roads.

Both letters describe five criteria which NHTSA applies when determining whether a vehicle with on and off-road capability is a motor vehicle. We do not have sufficient information to apply the five criteria to the Mule. However, we believe that if the facts are known, the criteria are easily applied, and a determination whether the Mule is a motor vehicle may be made.

I hope this information is helpful. If you have any further questions, please contact Dorothy Nakama of my staff at this address or at (202) 366-2992.

Sincerely,

Mr. Hiroshi Kato
MMC Services Inc.
3000 Town Center
Suite 1960
Southfield, MI 48075

Dear Mr. Kato:

This is in response to your letter of April 19, 1988, concerning whether a Mitsubishi Motors Corporation SH27 lightweight industrial truck that you intend to offer for sale in the United States should be classified as a motor vehicle under Section 102(3) of the National Traffic and Motor Vehicle Safety Act ("Safety Act"). You stated that this vehicle is intended for "general or carrier work for off-road applications," and that it is capable of a maximum speed of approximately 25 mph. You further explained that your company planned to advertise, promote, and market this vehicle as an off-road vehicle. Based on the information provided in your letter, it appears that the SH27 would not be a motor vehicle under the Safety Act.

Section 102(3) of the Safety Act (15 U.S.C. 1391(3)) defines a "motor vehicle" as

any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

NHTSA has interpreted this language as follows. Vehicles that are equipped with tracks or are otherwise incapable of highway travel are plainly not motor vehicles. Further, vehicles designed and sold solely for off-road use (e.g., airport runway vehicles and underground mining devices) are not considered motor vehicles, even though they may be operationally capable of highway travel. Vehicles that have an abnormal body configuration that readily distinguishes them from other highway vehicles and a maximum speed of 20 miles per hour (mph) are not considered motor vehicles, because their use of the public roads is intermittent and incidental to their primary intended off-road use.

On the other hand, vehicles that use the public highways on a necessary and recurring basis are motor vehicles. For instance, a utility vehicle like the Jeep is plainly a motor vehicle, even though it is equipped with special features to permit off-road operation. If a vehicle's greatest use will be off-road, but it will spend a substantial amount of time on-road, then NHTSA has interpreted the vehicle to be a "motor vehicle". Further, the agency has determined that a vehicle such as a dune buggy is a motor vehicle if it is readily usable on the public roads and is in fact used on the public roads by a substantial number of owners, regardless of the manufacturer's stated intent regarding the terrain on which the vehicle is to be operated.

Your vehicle is not easily classified under either of these groupings. On the one hand, your vehicle has a body configuration nearly identical to standard trucks, can be registered for use on the highways of several foreign countries, and can obtain a a maximum speed of approximately 25 mph. These factors suggest that the vehicle should be classified as a motor vehicle. On the other hand, you stated that this vehicle is intended to be used only for off-road applications and that this vehicle will be advertised and promoted for off-road purposes only and will contain four warning labels stating "Warning: Off Road Use Only." These factors suggest that the vehicle should not be classified as a motor vehicle.

In instances where the agency is asked whether a vehicle is a motor vehicle when it has both off-road and on-road operating capabilities, and about which there is little or no evidence about the extent of the vehicle's on-road use, the agency has applied five factors in offering its advice. These factors are:

1. Whether States or foreign countries have permitted or are likely to permit the vehicle to be registered for on-road use.

You noted that several foreign countries including Japan and Taiwan register for on-road use the general export configuration of this vehicle. This suggests that your vehicle should be considered a motor vehicle. You attempted to distinguish this fact by stating that the vehicle to be sold in the United States has different specifications than the general export vehicles. The differences are that the United States version has a maximum speed of 25 mph while the general export version can achieve speeds of greater than 55 mph, the engine displacement in the United States version has an engine of 548 cc rather than the 796 and 783 cc for the general export version, and the United States version has an hourmeter (similar to agricultural vehicles) rather than a speedometer. You stated that these differences mean that there is little basis for assuming that the experience in other countries would correlate to the likelihood of States permitting the vehicle to be registered for highway use in the United States. Since the vehicle closely resembles a small truck for highway use, we believe it is likely that States would permit it to be registered for highway use, just as other countries have. Therefore, this factor suggests that your vehicle should be considered a motor vehicle.

2. Whether the vehicle is or will be advertised for use on-road as well as off-road, or whether it is or will be advertised exclusively for off-road use. You stated that your advertising and promotional materials will state that your vehicle should be used only for off-road purposes and will not depict or suggest that the vehicle can be used on-road. This factor suggests that the vehicle should not be considered a motor vehicle.

3. Whether the vehicle's manufacturer or dealers will assist vehicle purchasers in obtaining certificates of origin or title documents to register the vehicle for on-road use.

You stated that your dealers will be instructed that this vehicle is to be used solely for off-road purposes and that no assistance should be given to obtain a title for the vehicle or to register the vehicle in this country. Your company also will state on any ownership document that this vehicle is not intended for on-road use. Therefore, this factor would indicate that the vehicle should not be considered a motor vehicle.

4. Whether the vehicle is or will be sold by dealers also selling vehicles that are classified as motor vehicles.

You stated that this vehicle will only be sold by dealerships that sell vehicles other than motor vehicles, such as material handling equipment like lifts and agricultural equipment. This factor suggests that the vehicle should not be considered a motor vehicle.

5. Whether the vehicle has or will have affixed to it a warning label stating that the vehicle is not intended for use on the public roads.

You stated that four warning labels will be affixed to the interior and exterior of the vehicle body. Labels stating "Off Road Use Only" will be applied to the exterior front panel of the cab, the rear gate, and the instrument panel. Additionally, a label stating "Warning: Off Road Use Only" will be affixed to the exterior rear panel of the cab. This factor would indicate that the vehicle is not a motor vehicle.

Based on the representations in your letter, the agency believes that the Mitsubishi SH27 lightweight truck does not appear to be a motor vehicle under the Safety Act. However, we will reexamine this conclusion if we learn that, for example, the vehicle is in fact used on the public roads by a substantial

number of its owners.

I hope this information is helpful.

Sincerely,

Erika Z. Jones Chief Counsel

/ ref:VSA d:10/31/88

TYPE: INTERPRETATION-NHTSA

DATE: 04/19/88

FROM: HIROSHI KATO -- MMC SERVICES, INC

TO: ERIKA JONES, -- NHTSA CHIEF COUNSEL

TITLE: NONE

ATTACHMT: ATTACHED TO LETTER DATED 10/31/88 FROM ERIKA Z JONES TO HIROSHI KATO; REDBOOK A32, VSA 102

TEXT: Dear Ms. Jones:

As was discussed in a meeting held on March 14, 1988 with Mr. S. Kratzke of your office, we are requesting an interpretation as to whether Mitsubishi Motors Corporation's (MMC) lightweight industrial truck to be introduced for sale in the U.S. by its aut horized distributor, Mitsubishi Motor Sales of America, Inc. (MMSA), should be classified as a motor vehicle under 15 USC 1391(3) and Section 102(3) of the National Traffic and Motor Vehicle Safety Act.

The following provides a general description of MMC's lightweight industrial truck, hereafter referred to as SH27:

Purpose: General or carrier work for off-road applications such as factories, warehouses, dock areas, transportation terminals, golf course, and park settings.

Basic Specifications:

Engine: 548 cc, 3-cylinder

GVW: 2303-3196 lbs.

Length: 125.8 inches

Width: 54.9-59.8 inches

Height: 70.9-73.0 inches

Two-Wheel Drive Models:

* Full cab with doors or side bars

* Full cab with doors or side bars and with tilt-bed

* Flo-Thru (TM) model (full cab with side bars and without windshield or rear window)

Four-Wheel Drive Models:

* Full cab with doors or side bars * Full cab with doors and tilt-bed

{2}

Enclosed is a photograph showing the full cab version of the SH27.

The following information characterizes the SH27 under the criteria your agency has used to determine whether a vehicle should be designated a motor vehicle as described in your September 25, 1987 response to Mr. J. Niemela of Ranger International.

1. Whether States or foreign countries have permitted or are likely to permit the vehicle to be registered for on-road use.

Some configurations of the SH27 can be registered for on-road use in several foreign countries including Japan, Taiwan, Cyprus, Bangladesh, Sri Lanka and the Phillipines. However, the U.S. specification SH27 is different in several material aspects from these "general export" vehicles.

The primary differences are 1) the maximum speed of the U.S. SH27 is approximately 25 mph as opposed to a speed of greater than 55 mph for general export vehicles, 2) the engine displacement of the U.S. SH27 is 548 cc as compared to 796 and 783 cc for general export, and 3) the U.S. SH27 uses an hourmeter, similar to agricultural vehicles, in place of a speedometer.

Based on the specification differences between the SH27 and the general export vehicles and the differences in the safety regulations and registration practices of the foreign countries where these general export vehicles can be registered, we believe there is little basis for assuming that foreign registration of the SH27 correlates to the likelihood of U.S. State registration.

2. Whether the vehicle is or will be advertised for use on-road as well as off-road, or whether it is or will be advertised exclusively for off-road use.

MMSA will ensure that advertising and promotional materials will state that the SH27 should be used

{3} for off-road purposes only and will not depict or suggest that the vehicle can be used on-road.

3. Will the vehicle's manufacturer or dealers assist vehicle purchasers in obtaining certificates of origin or title documents to register the vehicle for on-road use?

Dealer personnel will be instructed by MMSA that the SH27 is to be used solely for off-road purposes and that no assistance should be given to obtain a title for the vehicle or to register the vehicle in the U.S.. Neither MMSA or Mitsubishi Motors Co rporation will be providing any similar assistance.

MMSA also desires to state on the face of any ownership documents (as permitted by applicable law) that the SH27 is not intended for on-road use.

4. Will the vehicle be sold by dealers also selling vehicles that are classified as motor vehicles?

Only dealerships engaged in the sale of non-motor vehicles, such as material handling equipment; (i.e. for lifts, and agricultural equipment) will be authorized by MMSA to sell the SH27.

5. Will the vehicle have a warning label affixed which states that the vehicle is not intended for use on

public roads?

There will be four warning labels affixed to the interior and exterior of the body. Labels stating "Off Road Use Only" will be applied to the exterior front panel of the cab, the rear gate, and the instrument panel. Additionally, a label worded "War ning: Off Road Use Only" will be affixed to the exterior rear panel of the cab.

Based on this information, we believe that the SH27 should clearly not be designated a motor vehicle within the meaning

{4} of 15 USC 1391(3). We would appreciate your expedited confirmation of our interpretation.

If you have any questions, please call D. Bakker of my staff at (313) 353-5444.

ENCLOSURE

ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.

ATTORNEYS AT LAW

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S. ALEX LASHER
TALI LEAH ALBAN*
*ADMITTED TO A BAR OTHER THAN D.C.

OF COUNSEL

ROBERT A. WESTERLUND
DAVID G. POSZ
JAMES E. BARLOW*
GREGORY C. ANTHES
JOHN C. STEINBERGER
PAUL G. HEGLAND

AFFILIATE

AM&S TRADE SERVICES, LLC
CARLOS MOORE, PRESIDENT

April 25, 2006

VIA ELECTRONIC-MAIL AND FEDERAL EXPRESS

Ms. Deborah Zwearcan
Port Director
Port of Portland, ME
312 Fore Street
Portland, Maine 04101

Re: Detention of "Work Trucks"

Dear Ms. Zwearcan:

We represent B&M Hydraulic Jack Repair, 580 Main Street, Madawaska, Maine 04756, concerning the detention of "Work Trucks" on April 20, 2006, No. 0227619, copy attached.

In accordance with 19 U.S.C. 1499(c)(2)(E), we are attaching a copy of an Internal Advice Request to U.S. Customs and Border Protection ("Customs") at the Port of Los Angeles/Long Beach dated April 24, 2006.

The work trucks you have under detention are (see attached) identical or substantially identical to the work trucks that are subject to the internal advice.

Identical or substantially identical work trucks have been the subject of numerous Customs binding rulings and importation, free of duty under subheading 8709.19.0030 Harmonized Tariff Schedules of the United States, for many years.

For reasons stated in our internal advice request, these work trucks are admissible into the United States under all U.S. Department of Transportation and Environmental Protection Administration requirements administered by U.S. Customs and Border Protection.

We would appreciate your review of this document in making your determination concerning the detention.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Harvey B. Fox

HBF:syp
Enclosures
cc: John Foley, Import Specialist
B&M700006.doc

312 Fore St.
Portland, ME 04101

U.S. Customs and
Border Protection

April 20, 2006

Notice of Detention

On March 21, 2006 entry # BAE – 00042854 was submitted to CBP Portland, ME by Marina Bay Customs Broker on behalf of B&M Hydraulic of Madawaska, ME. The merchandise entered was for 25 vehicles under HSUSA # 8709190030. It has been determined by this office in consultation with the National Import Specialists in New York that the vehicles in question were not classified properly, and in addition do not meet other Federal Government agency requirements. (EPA and DOT) Therefore, the merchandise will be detained pursuant to 19 CFR 151.16. This issuance of detention is not to be construed as a final determination as to the admissibility of the merchandise. The Port Director, Portland, ME in consultation with CBP Headquarters, Washington, DC, will determine the anticipated length of the detention. Any information that is supplied to CBP by the Customs Broker, Importer of record or other individuals working on behalf of such parties, may accelerate the disposition of this detention.
Questions regarding this detention may be directed to the Port Director, Portland, ME.

Glenn Page
Acting Supervisory CBP Officer

Glen Page

No. 0227619

U.S. CUSTOMS SERVICE

Detention Notice and Custody Receipt for Detained Property

Handbook 5200-09

1. Held for other agency? Yes ☐ No ☐
Name of Agency:
2. Certified Mail No.
3. Investigative Case No. —
4. General Order No. —
5. Exodus Command Center Notified? ☐ Yes ☐ No
Date: Time:

6. Port Code: 0101
7. Date of Detention (mm/dd/yyyy): 4/20/2006
8. Time (Use 24 Hours): 1530
9. Entry Number: BAE-0004285Y

10. Detained from: B+M HYDRAULICS
Name: " "
Address: 586 MAIN MADAWASKA, ME
Telephone No. ( ) —

11. Seal or Other ID No. —
12. Misc. Nos. —
13. Remarks: CONTAINER #S HLXU6119534 HLCU4538243 HLXU6259726 HLXU4529720
14. FPF No. (For Customs Lab Use Only)

15. Point of Contact Information - Send all correspondence to:
Telephone No. ( ) Fax No. ( )

16. Additional Information/Action Request from Importer/Exporter/Subject

17. Reason for Detention: CLASSIFICATION / NON CONFORMITY

18. Tests or Inquiries to be Conducted: —

19. PROPERTY (By Line Item) Attach CF 58 if conveyance

a. Line Item No.	b. Description	c. Packages Number	Type	d. Measurement Qty.	UM	e. Est. Dom. Value	f. Samples Sent to the Customs Lab Yes or No	Date
1	HLCU4538243	CONTAINER		1	EA	$11,000	Yes ☐ No ☑	4/12/2006
2	HLXU4529720	"	"	1	EA	$11,000	Yes ☐ No ☑	4/12/2006
3	HLXU6119534	"		1	EA	$11,000	Yes ☐ No ☑	4/12/2006
4	HLXU6259726	"		1	EA	$11,000	Yes ☐ No ☑	4/12/2006

20. Detaining Officer Name
GLENN PAGE — Glenn Page — 4/20/2006
Print — Signature — Date

21. ACCEPTANCE/CHAIN OF CUSTODY

a. Line Item No.	b. Description	c. Print Name/Title/Organization	d. Signature	e. Date

Shipments may be detained for up to 30 days, unless statutory authority or interagency agreement mandates that a longer period of time is required, or the importer/exporter/subject requests a longer detention period through the Port Director.

CF 6051A Continuation Sheet Attached? Yes ☐ No ☐

Customs Form 6051D (11/01)

ATTACH SHEET

B/L NO. NHLX602104

CONTAINER NO.	SEAL NO.	DESCRIPTION OF PACKAGES AND GOODS
HLXU4529720	HLCL158077	1. USED SUZUKI CARRY CHASISS NO. DF51V-608903 2. USED SUZUKI CARRY CHASISS NO. DD51B-200223 3. USED SUZUKI CARRY CHASISS NO. DD51T-420039 4. USED SUZUKI CARRY CHASISS NO. DD51T-119759 5. USED SUZUKI CARRY CHASISS NO. DD51T-118758 6. USED SUZUKI CARRY CHASISS NO. DD51T-238736
HLOU4538243	HLCL158078	1. USED MITSUBISHI MINI CAB V CHASISS NO. U42V-0406382 2. USED SUBARU SAMBER CHASISS NO. KG4 166707 3. USED DAIHATSU HIJET CHASISS NO. S83P-071383 4. USED MITSUBISHI MINI CAB CHASISS NO. U15T-0140393 5. USED DAIHATSU HIJET CHASISS NO. S83P-078408 6. USED DAIHATSU HIJET CHASISS NO. S83P-099988
HLXU6259726	HLCL158106	1. USED MITSUBISHI MINI CAB V CHASISS NO. U42V-0102500 2. USED HONDA ACTY CHASISS NO. HA4-1001054 3. USED HONDA ACTY CHASISS NO. HA4-2241548 4. USED HONDA ACTY CHASISS NO. HA4-2088667 5. USED HONDA ACTY CHASISS NO. HA4-2017945 6. USED MAZDA SCRAM CHASISS NO. DK51T-300020
HLXU6119534	HLCL158103	1. USED MITSUBISHI MINI CAB CHASISS NO. U42T-0150448 2. USED MITSUBISHI MINI CAB CHASISS NO. U42T-0407662 3. USED MITSUBISHI MINI CAB CHASISS NO. U42T-0156777 4. USED MITSUBISHI MINI CAB CHASISS NO. U42T-0030633 5. USED MITSUBISHI MINI CAR CHASISS NO. U42T-0020316 6. USED MITSUBISHI MINI CAB CHASISS NO. U42T-0025151 7. USED MITSUBISHI MINI CAB CHASISS NO. U42T-0225747

INNEX AMERICA
Innovation Express

COMBINED TRANSPORT BILL OF LADING

ORIGINAL

FMC 019544NF

B/L NO.
NHI X602104

Received by the Carrier from the shipper in apparent good order and condition unless otherwise indicated herein, the goods, or the container(s) or package(s) said to contain the cargo herein mentioned, to be carried subject to all the terms and conditions appearing on the face and back of this Bill of Lading by the vessel named herein or any substitute at the Carrier's option and/or other means of transport, from the place of receipt or the port of loading to the port of discharge or the place of delivery shown herein and there to be delivered unto order or assigns.
This Bill of Lading duly endorsed must be surrendered in exchange for the goods or delivery order. In accepting this Bill of Lading, the Merchant agrees to be bound by all the stipulations, exceptions, terms and conditions on the face and back hereof, whether written, typed, stamped or printed, as fully as if signed by the Merchant, any local custom or privilege to the contrary notwithstanding, and agrees that all agreements or freight engagements for and in connection with the carriage of the goods are superseded by this Bill of Lading.

Shipper
MITSUBKI CORPORATION
/02 YKB SHINJUKUGYOEN SINJUKU
SHINJUKU-KU TOKYO, JAPAN 166-0022
TEL +81-3 3360 8272 FAX: 101 3 3360-8278

Consignee
B & M MINI TRUCKS
576 MAIN STREET MADAWASKA, MAINE 04756
FERGUSON TRACTOR INC.
4938 DRINK RD EMPORIA, VIRGINIA 23847

Notify Party
MARINA BAY CUSTOMS BROKER
1125-B ARNOLD DRIVE #153
MARTINEZ, CA 94553

Party to contact for cargo release
INNEX AMERICA
550 E. CARSON PLAZA DR. #109
CARSON, CA 90746 U.S.A.
TEL: (310) 538-0020 FAX: (310) 538-0004

Pre-carriage by

Place of Receipt
NAGOYA OY

Vessel / Voy. No.
KOBE EXPRESS 46E06

Port of Loading
NAGOYA JAPAN

Port of Discharge
HALIFAX

Place of Delivery
MADAWASKA, ME DOOR

Final Destination (Merchant's reference only)

Particulars furnished by Merchant. All descriptions contained herein considered unknown to the Carrier.

Container No. / Seal No. Marks and Numbers	No. of Containers or Pkgs	Description of Packages and Goods	Gross Weight (KGS)	Measurement (M3)
NO MARK HLXU4529720/HLCL158077 (40'HC) 8 UNITS HLCU4538243/HLCL158078 (40'HC) 6 UNITS HLXU8259726/HLCL158108 (40'HC) 8 UNITS HLXU8119534/HLCL158103 (40'HC) 7 UNITS	4 CONTAINERS (25 UNITS) (40'HC X 4)	"SHIPPER'S LOAD & COUNT" "SAID TO CONTAIN" SECONDHAND TRUCKS AND VAN AS PER ATTACHED SHEET HS CODE: 8704.31 FIRST ORIGINAL "FREIGHT COLLECT AS ARRANGED"	18,430	203.390

Total number of Containers or other Packages or Units (in words) SAY : FOUR (4) CONTAINERS ONLY.

Merchant's Declared Value (See Clauses 17 & 26):

Note:
The Merchant's attention is called to the fact that according to Clauses 17 & 26 of this Bill of Lading the liability of the Carrier is, in most cases, limited in respect of loss of or damage to the Goods.

Freight and Charges	Revenue Tons	Rate	Per	Prepaid	Collect
		AS ARRANGED			

Exchange Rate

Prepaid at

Payable at
DESTINATION

Place and Date of Issue
NAGOYA, JAPAN FEB. 16. 2006

Total Prepaid in Local Currency

No. of Original B/L(s)
THREE (3)

In witness whereof, the undersigned has signed the number of Bill(s) of Lading stated herein, all of this tenor and date, one of which being accomplished, the others to stand void.

As Carrier INNEX AMERICA

Laden on Board the Vessel
Date FEB. 16. 2006

Vessel
KOBE EXPRESS 46E06

Port of Loading
NAGOYA, JAPAN

MC MITSUIKE CORPORATION
ADDRESS : 703 YICB SHINJUKUGYOEN SINJUKU
SHINJUKU-KU TOKYO, JAPAN 160-0022
TEL : +81-3-3350-6279 FAX : +81-3-3350-6276 EMAIL: [illegible]@mitsuike.jp

PACKING LIST

INVOICE NO:	BMM-05001-1
DATE:	06-Feb-06
CONSIGNEE	B & M Mini Trucks 576 Main Street Madawaska, Maine 04756 FERGUSON TRACTOR, INC. 4938 Brink Rd Emporia, Virginia 23847
NOTIFY PARTY	Marina Bay Customs Broker 1125 D Arnold Drive #152 Martinez, CA 94553
SHIPMENT FROM:	NAGOYA, JAPAN
TO:	Madawaska, Maine via HALIFAX
VESSEL:	KOBE EXPRESS V.46E06
SAILING ON:	2006/2/16

NO.	DESCRIPTION OF GOODS	CHASSIS NO.	QUANTITY	GROSS WEIGHT	M3
1	USED SUZUKI Carry V	DF51V-609903	1	880	8.506
2	USED SUZUKI Carry	DD51B-200223	1	810	8.140
3	USED SUZUKI Carry	DD51T 426830	1	710	8.094
4	USED SUZUKI Carry	DD51T-110759	1	710	8.094
5	USED SUZUKI Carry	DD51T-116758	1	710	8.094
6	USED SUZUKI Carry	DD51T-230736	1	700	7.888
1	USED MITSUBISHI Minicab V	U42V-0400382	1	800	8.735
2	USED SUBARU Sambar	KS4-100787	1	740	8.292
3	USED DAIHATSU Hijet	S83P-071303	1	700	8.140
4	USED MITSUBISHI Minicab	U15T-0140823	1	710	7.760
5	USED DAIHATSU Hijet	S83P-076408	1	690	7.774
6	USED DAIHATSU Hijet	S83P-099988	1	690	7.774
1	USED MITSUBISHI Minicab V	U42V-0102508	1	910	8.826
2	USED HONDA Acty	HA4-1001954	1	710	7.725
3	USED HONDA Acty	HA4-2241648	1	750	7.906
4	USED HONDA Acty	HA4-2088667	1	720	7.906
5	USED HONDA Acty	HA4-2017945	1	720	7.906
6	USED MAZDA Scrum	DK51T-300026	1	700	7.866
1	USED MITSUBISHI Minicab	U42T-0159448	1	760	8.460
2	USED MITSUBISHI Minicab	U42T-0407662	1	750	8.277
3	USED MITSUBISHI Minicab	U42T-0156777	1	700	8.369
4	USED MITSUBISHI Minicab	U42T-0030833	1	710	8.360
5	USED MITSUBISHI Minicab	U19T-0020316	1	790	7.933
6	USED MITSUBISHI Minicab	U42T-0025151	1	720	8.308
7	USED MITSUBISHI Minicab	U42T-0225767	1	700	8.369
			25 units	18,430KG	203.390M3

MITSUIKE CORPORATION

President TAKUYA ASAI

Attn: Harvey Fox

MC MITSUIKE CORPORATION

ADDRESS : 102 TKS SHINJUKUGYOEN SINJUKU
SHINJUKU-KU TOKYO, JAPAN 160 0022
TEL : +81-3-3350-6872 FAX : +81-3-3350-6276 EMAIL: asai@mitsuike.jp

COMMERCIAL INVOICE

INVOICE NO: RMM-05001
DATE: 06-Feb-06
MESSRS: R & M Mini Trucks
576 Main Street
Madawaska, Maine 04756
SHIPMENT FROM: NAGOYA, JAPAN
TO: Madawaska, Maine
via HALIFAX
VESSEL: KOBE EXPRESS V.46E06
SAILING ON: 2006/2/18

8709.19.0030 - Free No.

NO.	DESCRIPTION OF GOODS	CHASSIS NO.	YEAR	ENGINE MODEL	ENGINE NO.	QTY.	AMOUNT FOB NAGOYA JP
1	USED SUZUKI Carry V	DF51V-008903	1993	F6A	N/A	1	1 ¥220,000
2	USED SUZUKI Carry	DD51D 200223	1993	F6A	5800065	1	2 ¥330,000
3	USED SUZUKI Carry	DD51T-428039	1996	F6A	6373205	1	3 ¥210,000
4	USED SUZUKI Carry	DD51T-118759	1992	F6A	5505897	1	4 ¥190,000
5	USED SUZUKI Carry	DD51T-116758	1991	F6A	5553715	1	5 ¥190,000
6	USED SUZUKI Carry	DD51T-238736	1993	F6A	5943121	1	— ¥210,000
1	USED MITSUBISHI Minicab V	U42V-0408382	1995	3G83	728552	1	— ¥210,000
2	USED SUBARU Sambar	KS4-166787	1993	EN07	978468	1	— ¥180,000
3	USED DAIHATSU Hijet	S83P-071383	1991	EF	2839685	1	— ¥180,000
4	USED MITSUBISHI Minicab	U15T-0140323	1989	3G81	750772	1	— ¥180,000
5	USED DAIHATSU Hijet	S83P-078408	1992	EF	2890559	1	— ¥190,000
6	USED DAIHATSU Hijet	S83P-098988	1993	EF	3152684	1	6 ¥200,000
1	USED MITSUBISHI Minicab V	U42V-0102506	1992	3G83	811096	1	— ¥220,000
2	USED HONDA Acty	HA4-1001954	1990	E07A	1008833	1	— ¥200,000
3	USED HONDA Acty	HA4-2241548	1995	E07A	2813320	1	7 ¥270,000
4	USED HONDA Acty	HA4-2088667	1993	E07A	2261612	1	— ¥200,000
5	USED HONDA Acty	HA4-2017645	1992	E07A	2053048	1	— ¥200,000
6	USED MAZDA Scrum	DK51T-300096	1994	F6A	5957407	1	— ¥180,000
1	USED MITSUBISHI Minicab	U42T-0159448	1993	3G83	810971	1	8 ¥260,000
2	USED MITSUBISHI Minicab	U42T-0407662	1996	3G83	863203	1	— ¥260,000
3	USED MITSUBISHI Minicab	U42T-0159777	1993	3G83	791034	1	— ¥190,000
4	USED MITSUBISHI Minicab	U42T-0030633	1991	3G83	320357	1	¥190,000
5	USED MITSUBISHI Minicab	U19T-0020316	1990	3G83	916054	1	— ¥180,000
6	USED MITSUBISHI Minicab	U42T-0025151	1991	3G83	281563	1	... ¥200,000
7	USED MITSUBISHI Minicab	U42T 0225797	1994	3G83	107310	1	— ¥180,000
	TOTAL FOB NAGOYA, JAPAN					25	¥5,210,000

e.00855=$44,779.95 JU&EV

MITSUIKE CORPORATION

President TAKIIYA ASAI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 1 4 2006

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510-1904

Dear Senator Collins:

Thank you for the letter of May 4, 2005, on behalf of your constituents, Bob Cyr, Mark Cyr and Greg McEuen, the owners of B&M Mini Trucks in Madawaska, Maine, regarding problems with the importation of mini-trucks. We have responded directly to your constituents by letter dated May 19, 2006, a copy of which is enclosed. I appreciate your interest in this matter.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Diann Frantz, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3668.

Sincerely,

for Elizabeth Craig

William L. Wehrum
Acting Assistant Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C 20460

MAY 19 2006

Mr. Bob Cyr
Mr. Mark Cyr
Mr. Greg McEuen
B&M Hydraulic Jack Repair
580 Main Street
Madawaska, ME 04576

OFFICE OF
AIR AND RADIATION

Dear Sirs:

We recently received from Senator Susan Collins your letter to her regarding the importation of Japanese mini-trucks. This office was informed by officials of Customs and Border Protection (CBP), Port of Los Angeles/Long Beach, that several companies have imported mini-trucks which were originally manufactured in Japan, and contain non EPA-certified engines. Based on the information presented to us, EPA believes that these mini-trucks, in their configurations at the time of importation, are "motor vehicles" as that term is defined by the Clean Air Act (Act) and our implementing regulations under the Act. Accordingly, based on our current information, we believe these mini-trucks, in their current configurations, could not be introduced into U.S. commerce, which includes importation, unless they have engines that are covered by Certificates of Conformity issued by EPA.

Alternatively, vehicles with certain characteristics may fall outside the definition of "motor vehicle" and be excluded from EPA motor vehicle requirements, but may be subject to other EPA requirements for nonroad vehicles. The exclusion of vehicles from coverage by the Act's motor vehicle provisions is based on section 216(2) of the Act which defines a motor vehicle as "any self-propelled vehicle designed for transporting persons or property on a street or highway." For the purpose of determining the applicability of section 216(2), EPA promulgated regulations at 40 CFR 85.1703(a) to provide criteria by which, when one or more are met, a vehicle can be deemed "not a motor vehicle" and excluded from the motor vehicle requirements of the CAA. If a vehicle is found to meet one of the criteria, that vehicle does not require EPA certification to the motor vehicle emission requirements or the use of EPA certified motor vehicle engines. Please note, however, that many of these vehicles which are not motor vehicles will be considered nonroad vehicles which are subject to new EPA emission requirements in recent years. Nonroad vehicles with spark-ignition engines over 25 hp (which is the engine size of the Japanese mini-trucks) must be built with EPA-certified engines beginning with the 2004 model year. Before model year 2004, nonroad spark-ignition engines over 25 hp were not subject to any EPA requirements.

EPA generally will make exclusion determinations on an individual basis after considering the configuration of each vehicle. The following vehicle characteristics are grounds for exclusion under 40 CFR 85.1703(a):

Internet Address (URL) • http://www.epa.gov
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1. The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or

2. The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear (except in the case of motorcycles), a differential, or safety features required by state and/or Federal law; or

3. The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, such features including, but not being limited to, tracked road contact means, an inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry.

Most importantly, EPA will make exclusion determinations by considering the **capability of the subject vehicles,** not their intended or principle use. The preamble to the final rule relating to the exclusion of motor vehicles and motor vehicle engines addresses the issue of intended use:

"The Agency views a policy of exclusion based upon owner intent to be virtually unmanageable and inconsistent with the CAA because vehicles with on-road, off-road capabilities are typically operated in both situations. .....[T]he Agency believes that it is not feasible to regulate a vehicle based on the use it is primarily designed for. In lieu of the "designed primarily for" test, we have adopted the "capable of" test which is consonant with the literal language and the apparent intent of the CAA. A vehicle's capability is a more workable, objective standard than its intended or designed-for use, which is dependent upon the manufacturer's subjective determination of the ultimate use to which the vehicle will be put." (39 FR 32609, September 10, 1974).

With regard to the criterion at 40 CFR 85.1703, the speed referred to is interpreted to be the ungoverned speed. Vehicles that are governed to a speed of 25 mph or less, however, may be excluded if the governor is sufficiently tamper-proof.

EPA has made several exclusion determinations in the past for vehicles which are very similar to the mini-trucks imported through Long Beach. In all cases, our determination of exclusion was based on 40 CFR 85.1703(a)(1) because the trucks involved had undergone modifications which resulted in a governed maximum speed of 25 mph or less. We have reviewed carefully these determinations in order to provide you with directions on what type of modifications we would consider acceptable to ensure that the mini-trucks would have a governed maximum speed of 25mph. These are our findings:

1) EPA believes that the permanent (i.e., tamper-proof) installation of a throttle governor, electronic governor or RPM limiter which will result in the vehicle governed speed of 25 mph or

less will fulfill the requirements of 40 CFR 1703(a)(1). Companies who manufacture governors which other importers have used in the past include the Sturdy Corporation and the HOOF Corporation.

2) EPA believes that the permanent welding of a metal transmission cover plate 1/8" inch thick or thicker to the chassis which prevents transmission access to any gear beyond 1st gear may be an acceptable method of limiting the vehicle speed to a maximum speed of 25 mph. Any importer using this method of speed control must present EPA with technical substantiation (e.g., test results, or engineering information from the truck manufacturer) showing that the truck cannot exceed 25 mph in 1st gear.

3) EPA believes that the installation of cover plates which are not welded, pins or other mechanical means to lock out transmission gears from the transmission of the mini-trucks is not an acceptable means of complying with our 25 mph maximum speed requirement, because it is not considered tamper-proof, and is capable of removal. The installation of a transmission lock out system **in addition to** a permanently installed governor is acceptable.

EPA will continue to make written determinations of exclusion for individual models of the mini-trucks upon receipt from the importer of a written description of the modification(s) performed on the vehicle. If you present us with information showing that you have installed permanent governors on the mini-trucks limiting the speed to 25 mph, EPA will be able to make a motor vehicle exclusion determination that the modified mini-truck will be excluded from the motor vehicle requirements. If you do not choose to install a governor but rather intend to use some other type of modification to limit the speed to 25 mph, you will have to present EPA with detailed technical and engineering information to prove that your choice of modification is effective and permanent. If you believe that your mini-truck is eligible for exclusion without modification, then you will need to send detailed technical and engineering information, and any other necessary information, to prove that your mini-truck qualifies for such an exclusion.

EPA will continue to work with your company and other companies who have imported or attempted to import the mini-trucks to help you comply with Federal emission requirements. If you have questions, please contact Robert Doyle directly at (202) 343-9258.

Sincerely,

For Gregory Dunkowitz

Khesha Jennings, Manager
Heavy-Duty and Nonroad Engines Group

04-000-3277

SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2523
(202) 224-2693 (FAX)

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING
JOINT ECONOMIC

December 3, 2004

Mr. Edward Krenik
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Room 3442 North
Washington, DC 20460

Dear Mr. Krenik:

I was recently contacted by my constituent, Exp. 6 who has a concern about the Children's Environmental Exposure Research Study.

Ms. believes that poor families are being paid to expose their children to harmful household products in exchange for $970, a video camera, t-shirt, and a certificate of thanks.

I thank you in advance for your consideration with this matter. Enclosed is a copy of her letter for your review. Please send your response to Chris Philbrook in my Washington, D.C. office.

I appreciate your attention to this matter

Sincerely,

Susan

Susan M. Collins
United States Senator

SMC:clp

PRINTED ON RECYCLED PAPER

November 19, 2004

Log In 12/2/04
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EPA/Children

11/22/04

Dear Senator Collins,

I am enclosing a copy of a letter to the ~~editor which appeared~~ in our local paper in the hopes that you could make the EPA aware that there is strong opposition to such an appalling plan. How could one sanction such a plan? Action must be taken to stop this project.

Dow, Exxon and Monsanto.

The EPA's Linda Sheldon says the study is vital, because so little is known about how small children's bodies absorb harmful chemicals. None of the EPA's employees are offering to [illegible] take part in this research project.

The Organic Consumers Association is calling on citizens to demand the EPA abandon this project before its scheduled launch in early 2005 (http://www.organic-consumers.org/bytes/111204.cfm).

Don't you think we *must* do something to stop this from happening?

Judy Ferguson
Brunswick

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 13 2005

OFFICE OF
RESEARCH AND DEVELOPMENT

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of December 3, 2004, to the U.S. Environmental Protection Agency (EPA) regarding the concerns of your constituen: , for the Children's Environmental Exposure Research Study (CHEERS). I appreciate your interest, and assure you that CHEERS is intended to meet rigorous ethical and scientific standards. We are not and would never ask anyone to apply pesticides in their home to be in an EPA study.

EPA is particularly concerned about childhood exposure to pesticides because children, due to their smaller body sizes and rapid physical development, may be more vulnerable than adults to the effects of environmental contaminants. Despite all we know, there is still not enough information on how contaminants enter a child's body to develop actions lowering children's exposures to pesticides and other chemicals. CHEERS is designed to fill critical data gaps in the understanding of children's exposure to pesticides and other chemicals commonly found in typical household environments. Additional information is available at www.epa.gov/cheers.

Because protecting the health and well-being of children is of paramount importance, EPA has decided to send the CHEERS protocol for another external, independent review by an expert panel made up of members of the Science Advisory Board, the Science Advisory Panel, and the Children's Health Protection Advisory Committee. It is anticipated that this review will be completed and that a report will be forwarded to the EPA Administrator in the spring of 2005. Based on this review, the Agency will reassess the study protocol. As a federal agency, EPA wants all research to be transparent to the public and responsive to public feedback. Citizens are key stakeholders in our work. EPA makes information on current and completed research activities available to the public through various means, including the on-line Science Inventory at: http://www.epa.gov/si .

Again, thank you for your letter. If you have further questions or concerns, please contact me or your staff may call Pamela Janifer in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-6969.

Sincerely,

William H. Farland, Ph.D.
Acting Deputy Assistant Administrator
for Science

SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2523
(202) 224-2693 (FAX)

04-000-3274

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING
JOINT ECONOMIC

November 29, 2004

Mr. Edward Krenik
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Room 3442 North
Washington, DC 20460

Dear Mr. Krenik:

I recently received a letter from my constituent, Ms. Exp. 6 of Bangor, Maine, regarding the Environmental Protection Agency's High Production Volume (HPV) Chemical Testing Program. Enclosed is a copy of the letter for your review.

Ms. concerned that the HPV program may be largely unnecessary and causing undue suffering for some animals. I would appreciate it if you would respond to Ms. McKinnon's concerns. Please send your response to the attention of Avery Day in my Washington office.

Thank you for your attention to this matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:atd
Enclosure

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Code Pregnes
Log Out

Bangor ME 04401

11/1/04

Dear Senator Susan Collins,

Please use your voice to delay the HPV program which is the result of closed-door negotiations between the EPA and Chemical Manufacturers Assoc. There needs to be Congressional review of [illegible], and time allowed for modern cellular tests to be validated.

The HPV program is mired in politics. Causing millions of animals to die excruciating deaths for political gain, when alternative testing can be used is a toxic political blunder.

Sincerely,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 29 2004

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

The Honorable Susan M. Collins
United States Senate
Washington, DC 20510-1904

Dear Senator Collins:

Thank you for your letter of November 29, 2004, to the U.S. Environmental Protection Agency (EPA), on behalf of your constituent, Ms.
regarding her concerns about tests on animals being conducted under EPA's High Production Volume (HPV) Chemical Challenge Program. The Office of Prevention, Pesticides and Toxic Substances (OPPTS) has been asked to respond to your letter.

The Agency shares the concerns of Ms regarding the use of animal testing in the HPV program. As you may be aware, this program calls on chemical manufacturers to ensure that screening level health and environmental effects data are publicly available on more than 2200 chemicals produced in quantities over a million pounds a year in the U.S. HPV chemicals are also those which the public are most likely to encounter in their daily lives. EPA has incorporated a number of animal welfare principles into this program and is making every effort to ensure that efforts are taken to reduce the number of animals needed for testing, reduce the pain and suffering of test animals and, whenever possible, replace animal testing with non-animal test systems. As a result of these efforts, a significant amount of the needed information is being filled with either existing or previously unpublished data. Companies have also made maximum use of EPA's guidance concerning the use of Structure Activity Relationships (SAR) and category proposals which has further reduced the need for new testing. Overall, less than ten percent of the remaining data gaps are being filled with new testing.

EPA works domestically within the framework of the Interagency Coordinating Committee for the Validation of Alternative Methods (ICCVAM) and internationally with the Organization for Economic Cooperation and Development (OECD) to ensure the scientific acceptability of new alternative test methods that do not require the use of animals. EPA's primary responsibility continues to be to ensure the protection of human health and the environment. Until there are reliable, scientifically sound non-animal alternatives, the Agency must continue to meet its obligations using the best available information, including animal testing data, when necessary, to better understand the effects that potentially hazardous substances can have on living organisms.

Additional information about both the HPV Challenge Program and our animal welfare efforts can be found at www.epa.gov/chemrtk. Again, thank you for your letter and I hope the information provided is helpful. If you have additional questions, please contact me or your staff may contact Betsy Henry in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-7222.

Sincerely,

Susan B. Hazen
Acting Assistant Administrator

SUSAN M. COLLINS
MAINE

461 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2523
(202) 224-2693 (FAX)

05-100-4269

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

March 8, 2005

Mr. Charles Engebretsen
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Engebretsen:

I recently received a letter from my constituent, Mr. Tim Gooch of Cumberland, Maine, regarding the Environmental Protection Agency's (EPA) clean drinking water regulations. Enclosed is a copy of this message for your review.

Your office has been helpful in addressing Mr. Gooch's questions about EPA regulations and the EPA's regional office has also provided useful assistance. Mr. Gooch has raised specific questions that he would like addressed by the EPA. Please send your response to the attention of Avery Day in my Washington office.

Thank you for your continued attention to this matter.

Sincerely,

Susan

Susan M. Collins
United States Senator

SMC:atd
Enclosure

PRINTED ON RECYCLED PAPER

Best Apartments, Inc.
P.O. Box 79
Cumberland, ME 04021
(207) 415-7264

Home Sweet Home

Augusta
Belgrade
Poland
Cumberland

February 15, 2005

Senator Susan Collins
172 Russell Senate Office Building
Washington, D. C. 20510

RE: SDWA Question #2 and #4

Dear Senator Collins:

I received the EPA response yesterday regarding the SDWA. My following questions were not answered.

#2 - How did the EPA come up with the number "25"? Why wouldn't another number work?

The EPA response was "The number "25" has been a part of the SDWA since its origination in 1974". Senator, the EPA still has not answered this important question. I understand that "25" was the original number (the number was picked over 30 years ago!) but **why was it "25"? Why wouldn't another number work? Why wouldn't "100" work in 2005?**

#4 - How does the EPA expect for us to pay a licensed operator and who pays this expense?

The EPA response was "It is the responsibility of the owner of a public water system to place the direct supervision of the water system in the control of a licensed operator. Cost associated with a licensed operator can then be passed on to the users at the owner's discretion". Senator, the estimate to provide this additional new rule at Range Pond Apartments (12 units) is $3,600.00. The operating expense for multifamily business (heating oil, property taxes, electricity, health insurance and property insurance, etc.) is at an all time high. Senator, we cannot afford to absorb this enormous cost so that means that the poor working residents are forced to pay for this additional expense.

Senator Collins, I ask you and the EPA, do you feel that charging a resident $300.00 per year (for most residents this is a weeks pay) is a fair price to pay for this rule? Did Congress and the Senate, 30 years ago know that this SDWA was going to cost the poor working families of Maine this much money?

Currently any small system that services "25" people or more are under the SDWA. Based on the December 13, 2004 letter we received from the EPA, the EPA agrees that the cost for small business like ours are great because " **they often lack the economics of scale that come with large systems which can spread costs over a larger population**". Senator Collins we feel that the number "25" has no scientific meaning and should be increased to "100" so the financial hardship can be spread over a larger population. The sad thing is that many of Maine housing complexes are small (look at your housing complexes in your home town) This Amendment has a large negative financial impact on housing in Maine.

Very truly yours,

Tim Gooch, President

Tim Gooch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

January 31, 2005

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senator
1 City Center, Suite 100
Portland, ME 04101

Dear Senator Collins:

The letter dated January 6, 2005, from your constituent, Mr. Tim Gooch, has been forwarded to EPA's New England office (EPA-NE) for response. Mr. Gooch expresses concerns with certain portions of the 1996 Amendments to the Safe Drinking Water Act (SDWA), specifically Section 1419 pertaining to operator certification.

In Section 1419 of the SDWA, Congress required that EPA, in cooperation with the states, publish guidelines specifying minimum standards for the certification and re-certification of operators of community and non-transient non-community (NTNC) public water systems. A state's failure to develop an operator certification program within two years after the final guidelines were published would result in a 20% withholding of the State's Drinking Water SRF allotment. EPA-NE gave the Maine Department of Human Services (DHS) the flexibility in setting the requirements for the operator certification program. EPA-NE approved its program in February 2001.

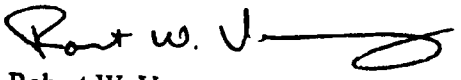
On September 25, 2002, the Maine DHS was awarded a grant of $1,176,300 by EPA-NE to implement a training program to train and certify drinking water operators of community and NTNC water systems serving populations under 3,300. These funds were granted to reimburse training and certification costs. In 2003, the final amount of the grant was increased to $1,505,900.

Mr. Gooch raised several specific questions in his January 6, 2005 letter. Enclosed is the list of questions and the EPA-NE responses.

EPA-NE strongly encourages that Mr. Gooch work cooperatively with Maine DHS so that he may successfully resolve his concerns. EPA, on both the regional and national levels, appreciates the efforts that small water systems have taken to ensure safe drinking water for the residents of the state of Maine. Such efforts shall continue to become more challenging as science evolves and new requirements become effective. Accordingly, EPA-NE believes that Congress acted prudently in establishing clear guidelines specified in the operator certification program.

If you or your staff should require additional assistance, please contact Michael Ochs in the Office of Government Relations at (617) 918-1066.

Sincerely,



Robert W. Varney
Regional Administrator

Enclosure

cc: Nancy Beardsley, Maine DHS

Questions 1: How does the new Amendment make the water safer for residents when the same identical test will be performed?

EPA-NE Response: The training and certification of operators is imperative in ensuring that drinking water provided to customers is safe. According to the Maine DHS, a licensed operator is trained in source water protection, maintenance of equipment and distribution systems, reporting requirements, and sampling and laboratory procedures. This knowledge provides the operator with the foundation for providing clean, potable water to consumers with the goal of safeguarding public health.

Question 2: How did the EPA come up with the number "25" (people)? Why wouldn't another number work?

EPA-NE Response: The number "25" has been a part of the SDWA since its origination in 1974. Section 1401 of the SDWA defines a public water system as a system that provides drinking water through at least 15 service connections or regularly serves 25 individuals. Furthermore, Section 1401 defines a community water system as a public water system that regularly (at least 60 days a year) serves at least 25 residents. Therefore, *Best Apartments, Inc.* does fall into the category of a community water system and is subject to the regulatory requirements of public water systems.

Question 3: Currently Maine Drinking Water Program and the EPA are asking small businesses like ours to send an employee to training for five weeks. How does the EPA expect small businesses to go without an employee for five weeks and absorb the lost time of the employee?

EPA-NE Response: It is our understanding that the Maine DHS suggests, but does not require, a five-week course that is **one day per week** for approximately six hours a day. The State also offers a self-study course and gives the Operator Basics Training CD to interested parties to prepare for the certification exam.

Question 4: How does the EPA expect for us to pay a licensed operator and who pays this expense (the user or the owner)?

EPA-NE Response: It is the responsibility of the owner of a public water system to place the direct supervision of the water system in the control of a licensed operator. Costs associated with a licensed operator can then be passed on to the users at the owner's discretion.

Question 5: We feel this Amendment is rule-making and does require economic analysis. Does the Attorney General agree with the EPA that this amendment is not rule-making?

EPA-NE Response: As was stated in the recent letter from Benjamin Grumbles, Assistant Administrator of the Office of Water, the development of the guidelines was not considered rule-making and, therefore, did not require an economic analysis.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

April 13, 2005

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senate
461 Dirksen Senate Office Building
Washington, D.C. 20510

Attention: Avery Day

Dear Senator Collins:

The letter dated February 15, 2005, from your constituent, Mr. Tim Gooch, has been forwarded to EPA's New England office (EPA-NE) for response. Mr. Gooch has repeatedly expressed specific concerns with certain portions of the 1996 Amendments to the Safe Drinking Water Act (SDWA), specifically Section 1419 pertaining to Operator Certification.

Question: How did the EPA come up with the number "25"? Why wouldn't another number work?

Section 1401 of the SDWA enacted in 1974 defines a **public water system** as a system which regularly serves 25 or more persons, regardless of whether this system was publicly or privately owned. The definition of a **public water system** was intended to encompass nearly all public accommodations, including restaurants, motels, apartment complexes, and trailer parks which serve the public. The number "25" within the definition was determined by Congress and can be viewed through the legislative history of the SDWA. EPA is required to carry out the Congressional mandates of the SDWA including those regarding public water systems. Regulations to control public water systems are promulgated to establish criteria to safeguard public health through safe drinking water.

Question: How does the EPA expect for us to pay a licensed operator and who pays the expense?

As was stated in the response letter from EPA-NE dated January 31, 2005, it is the responsibility of the owner of a public water system to place the direct supervision of the water system in control of a licensed operator. Therefore, costs associated with a licensed operator are normally passed on to the users of the system.

According to the State of Maine 2003 Public Utilities Commission, water rates vary anywhere between around $100 annually in municipalities such as Highland, Monson,

and Allen to around $400 annually in municipalities such as Small Point, West Paris, and Bridgton and all the way up to $575 annually in Sandy Point. The cost for drinking water for the tenants of *Best Apartments, Inc.* according to Mr. Gooch is $300 annually which is within this range. It is a necessary expense to ensure the protection of public health.

The quality of drinking water is regulated at the federal and state levels. The purpose of the SDWA is to protect the public from drinking unsafe water which can cause serious illness and even death. EPA did an investigation of drinking water supplies and included the findings in the legislative history of the SDWA in 1974. From 1961 to 1970, there were 130 outbreaks of disease or poisoning attributed to drinking water. These outbreaks resulted in 46,374 illnesses and 20 deaths. On the average, this represents one reported waterborne outbreak per month with over 250 persons becoming ill.

The required water tests, maintenance of equipment and distribution systems, reporting, and knowledge offered by a certified operator provide the foundation for providing clean, potable water to consumers with the goal of safeguarding public health.

If you or your staff should require additional assistance, please contact Michael Ochs in the Office of Governmental Relations at (617) 918-1066.

Sincerely,

Robert W. Varney
Regional Administrator

SUSAN M. COLLINS
MAINE

172 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-2523
(202) 224-2693 (FAX)

United States Senate

WASHINGTON, DC 20510–1904

COMMITTEES
ARMED SERVICES
GOVERNMENTAL AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
SPECIAL COMMITTEE ON AGING

04-000-2412

November 9, 2004

Michael Leavitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Brownfields Assessment Grant

Dear Administrator Leavitt:

I am writing to express my support for the Brownfields Assessment Grant proposal submitted by the Kennebec Valley Council of Governments (KVCOG) for funding under the U.S. Environmental Protection Agency's Brownfields Assessment Grant program.

Central Maine has a longstanding tradition of being a highly productive manufacturing region in our state. Unfortunately, this region has been hit very hard economically because of plant closings over the past three years, and has suffered the loss of nearly 3,000 manufacturing jobs. While there has been substantial interest in reusing these facilities, many potentially viable plants are not being utilized because of a lack of environmental information available to prospective employers.

KVCOG is a recognized economic development leader, and is highly respected for its collaborative approach and hard work. An assessment grant would provide KVCOG with the necessary resources to create a comprehensive listing of brownfields in the Kennebec Valley Region. This assessment would determine the presence of hazardous substances, pollutants, or contaminants and create a plan to facilitate the environmental clean-up of these sites. Funding this proposal will provide much needed assistance that could reinvigorate the economy of this region. It is with this in mind that I lend my support to this proposal.

I urge your most careful consideration of this application, and I ask that you please keep me informed of the review process. Please have your staff notify my Augusta State Office Representative, Bill Card, at (207) 622-8414, when a final determination has been made. Thank you for your prompt attention to this matter.

Sincerely,

Susan

Susan M. Collins
United States Senator

SMC:kmh

PRINTED ON RECYCLED PAPER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 16 2004

THE ADMINISTRATOR

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of November 9, 2004, supporting the brownfields assessment grant proposal from the Kennebec Valley Council of Governments, Maine. I appreciate your interest in the brownfields program, and your support of the Kennebec Valley Council of Governments' application.

As you know, on January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act to assist States and communities throughout the country in their efforts to revitalize and reclaim brownfields sites. This program is an excellent example of the success that is possible when people of all points of view work together to improve environmental programs.

Last year's application process was highly competitive, with EPA evaluating over 700 grant applications. We anticipate comparable interest in the brownfields grant program this year and anticipate supporting approximately 200 communities through the grant program in fiscal year 2005. We expect to announce this year's brownfields grants by Spring 2005.

EPA's selection criteria for grant proposals are available in "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants" (September 2004), posted on our brownfields website (www.epa.gov/brownfields). Each proposal will be carefully reviewed and evaluated by a selection panel which applies these objective criteria in this highly competitive program. Be assured that the grant proposal submitted by the Kennebec Valley Council of Governments will be given every consideration.

Again, thank you for your interest in the brownfields program. If you have any further questions or concerns, please contact me or your staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

Michael O. Leavitt

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

04-000-2517

OCT 21 2004

OFFICE OF
ENVIRONMENTAL INFORMATION

The Honorable Susan M. Collins
Chairwoman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madame Chairwoman:

In response to the reporting requirements of Federal Information Security Management Act (FISMA), section 3544(c)(1), I am pleased to transmit the U.S. Environmental Protection Agency's *FY 2004 FISMA Report*. This report was provided to the Office of Management and Budget (OMB) on October 6, 2004 as required by OMB M-04-25, *FY 2004 Reporting Instructions for the Federal Information Security Management Act*.

The Agency's FISMA report includes the results of our annual security program reviews and was completed by EPA's Chief Information Officer, senior agency program officials, and Inspector General. The report reflects EPA's continued efforts to ensure that information assets are protected and secured in a manner consistent with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information.

Please contact me if you have questions, or your staff may contact Jim Blizzard in the Office of Congressional and Intergovernmental Relations at (202) 564-1695.

Sincerely,

Kimberly T. Nelson
Assistant Administrator and
Chief Information Officer

Enclosure

2004 FISMA Report

Agency:	Environmental Protection Agency
Date Submitted:	10/6/2004
Submitted By:	CIO
Contact Information:	
Name:	Gerge Bonina
E-mail:	Bonina.George@epa.gov
Phone:	(202) 566-0304

To enter data in allowed fields, use password: fisma

Section A: System Inventory and IT Security Performance
NOTE: ALL of Section A should be completed by BOTH the Agency CIO and the OIG.
To enter data in allowed fields, use password: fisma

A.1. By bureau (or major agency operating component), identify the total number of programs and systems in the agency and the total number of contractor operations or facilities. The agency CIOs and IG's shall each identify the total number that they reviewed as part of this evaluation in FY04. NIST 800-26, is to be used as guidance for these reviews.

A.2. For each part of this question, identify actual performance in FY04 for the total number of systems by bureau (or major agency operating component) in the format provided below.

	A.1						A.2									
	A.1.a. FY04 Programs		A.1.b. FY04 Systems		A.1.c. FY04 Contractor Operations or Facilities		A.2.a. Number of systems certified and accredited		A.2.b. Number of systems with security control costs integrated into the life cycle of the system		A.2.c. Number of systems for which security controls have been tested and evaluated in the last year		A.2.d. Number of systems with a contingency plan		A.2.e. Number of systems for which contingency plans have been tested	
Bureau Name	Total Number	Number Reviewed	Total Number	Number Reviewed	Total Number	Number Reviewed	Total Number	Percent of Total	Total Number	Percent of Total	Total Number	Percent of Total	Total Number	Percent of Total	Total Number	Percent of Total
OA	1	1	2	2	0	0	2	100.0%	2	100.0%	2	100.0%	1	50.0%	1	50.0%
OAR	1	1	19	19	2	2	19	100.0%	19	100.0%	18	94.7%	15	78.9%	15	78.9%
OARM	1	1	12	12	2	2	10	83.3%	11	91.7%	9	75.0%	8	66.7%	8	66.7%
OCFO	1	1	18	18	0	0	15	83.3%	16	88.9%	16	88.9%	14	77.8%	14	77.8%
OECA	1	1	11	11	0	0	9	81.8%	10	90.9%	10	90.9%	9	81.8%	8	72.7%
OEI - Central	1	1	14	14	1	1	14	100.0%	14	100.0%	14	100.0%	13	92.9%	13	92.9%
OEI - Non Central	1	1	24	24	7	7	22	91.7%	19	79.2%	19	79.2%	16	66.7%	14	58.3%
OGC	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
OIA	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
OIG	1	1	9	9	0	0	9	100.0%	9	100.0%	8	88.9%	9	100.0%	9	100.0%
OPPTS	1	1	9	9	0	0	9	100.0%	9	100.0%	7	77.8%	9	100.0%	9	100.0%
ORD	1	1	16	16	0	0	16	100.0%	16	100.0%	16	100.0%	16	100.0%	16	100.0%
OSWER	1	1	13	13	7	7	9	69.2%	10	76.9%	10	76.9%	9	69.2%	9	69.2%
OW	1	1	10	10	0	0	10	100.0%	10	100.0%	10	100.0%	9	90.0%	9	90.0%
R01	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
R02	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
R03	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
R04	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
R05	1	1	3	3	0	0	2	66.7%	3	100.0%	3	100.0%	2	66.7%	2	66.7%
R06	1	1	2	2	0	0	2	100.0%	1	50.0%	2	100.0%	0	0.0%	0	0.0%
R07	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
R08	1	1	2	2	0	0	2	100.0%	2	100.0%	2	100.0%	2	100.0%	2	100.0%
R09	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
R10	1	1	1	1	0	0	1	100.0%	1	100.0%	1	100.0%	1	100.0%	1	100.0%
Agency Total	24	24	173	173	19	19	159	91.9%	160	92.5%	155	89.6%	141	81.5%	138	79.8%

Comments:
The agency numbers differ from the OIG report because, in accordance with OMB Guidance, the OIG is reporting only on the systems they audited.

A.3

A.3. Evaluate the degree to which the following statements reflect the status in your agency, by choosing from the responses provided in the drop down menu. If appropriate or necessary, include comments in the Comment area provided below.

Statement	Evaluation
a. Agency program officials and the agency CIO have used appropriate methods to ensure that contractor provided services or services provided by another agency for their program and systems are adequately secure and meet the requirements of FISMA, OMB policy and NIST guidelines, national security policy, and agency policy.	Almost Always, or 96-100% of the time
b. The reviews of programs, systems, and contractor operations or facilities, identified above, were conducted using the NIST self-assessment guide, 800-26.	Almost Always, or 96-100% of the time
c. In instances where the NIST self-assessment guide was not used to conduct reviews, the alternative methodology used addressed all elements of the NIST guide.	
d. The agency maintains an inventory of major IT systems and this inventory is updated at least annually.	Almost Always, or 96-100% of the time
e. The OIG was included in the development and verification of the agency's IT system inventory.	Almost Always, or 96-100% of the time
f. The OIG and the CIO agree on the total number of programs, systems, and contractor operations or facilities.	Almost Always, or 96-100% of the time
g. The agency CIO reviews and concurs with the major IT investment decisions of bureaus (or major operating components) within the agency.	Almost Always, or 96-100% of the time
Statement	**Yes or No**
h. The agency has begun to assess systems for e-authentication risk.	Yes
i. The agency has appointed a senior agency information security officer that reports directly to the CIO.	Yes

Comments: Item A.3.c is actually "Not Applicable" since the NIST self-assessment guide was used to conduct all system reviews.

Section B: Identification of Significant Deficiencies
NOTE: ALL of Section B should be completed by BOTH the Agency CIO and the OIG.
To enter data in allowed fields, use password: fisma

B.1. By bureau, identify all FY 04 significant deficiencies in policies, procedures, or practices required to be reported under existing law. Describe each on a separate row, and identify which are repeated from FY03. In addition, for each significant deficiency, indicate whether a POA&M has been developed. Insert rows as needed.

B.1.

Bureau Name	FY04 Significant Deficiencies			
	Total Number	Number Repeated from FY03	Identify and Describe Each Significant Deficiency	POA&M developed? Yes or No
			The Agency doesn't have any Significant Deficiencies.	
Agency Total	0	0		

Comments: Not Applicable -- Agency has no Significant Deficiencies

Section C: OIG Assessment of the POA&M Process
NOTE: Section C should *ONLY* be completed by the OIG. The CIO should leave this section blank.
To enter data in allowed fields, use password: fisma

C.1. Through this question, and in the format provided below, assess whether the agency has developed, implemented, and is managing an agency-wide plan of action and milestone (POA&M) process. This question is for IGs only. Evaluate the degree to which the following statements reflect the status in your agency by choosing from the responses provided in the drop down menu. If appropriate or necessary, include comments in the Comment area provided below.

C.1	
Statement	**Evaluation**
a. Known IT security weaknesses, from all components, are incorporated into the POA&M.	
b. **Program officials** develop, implement, and manage POA&Ms for systems they own and operate (systems that support their program or programs) that have an IT security weakness.	
c. Program officials report to the CIO on a regular basis (at least quarterly) on their remediation progress.	
d. **CIO** develops, implements, and manages POA&Ms for every system they own and operate (a system that supports their program or programs) that has an IT security weakness.	
e. CIO centrally tracks, maintains, and reviews POA&M activities on at least a quarterly basis.	
f. The POA&M is the authoritative agency **and** IG management tool to identify and monitor agency actions for correcting information and IT security weaknesses.	
g. System-level POA&Ms are tied directly to the system budget request through the IT business case as required in OMB budget guidance (Circular A-11).	
h. OIG has access to POA&Ms as requested.	
i. OIG findings are incorporated into the POA&M process.	
j. POA&M process prioritizes IT security weaknesses to help ensure that significant IT security weaknesses are addressed in a timely manner and receive appropriate resources.	

Comments:

C.1 OIG Assessment of the Certification and Accreditation Process

Section C should only be completed by the OIG. OMB is requesting IGs to assess the agency's certification and accreditation process in order to provide a qualitative assessment of this critical activity. This assessment should consider the quality of the Agency's certification and accreditation process. Any new certification and accreditation work initiated after completion of NIST Special Publication 800-37 should be consistent with NIST Special Publication 800-37. This includes use of the FIPS 199, "Standards for Security Categorization of Federal Information and Information Systems," to determine an impact level, as well as associated NIST documents used as guidance for completing risk assessments and security plans. Earlier NIST guidance is applicable to any certification and accreditation work completed or initiated before finalization of NIST Special Publication 800-37. Agencies were not expected to use NIST Special Publication 800-37 as guidance before it became final.

Statement	Evaluation
Assess the overall quality of the Agency's certification and accreditation process. Comments:	

Section D
NOTE: ALL of Section D should be completed by BOTH the Agency CIO and the OIG.
To enter data in allowed fields, use password: fisma

D.1. First, answer D.1. If the answer is yes, then proceed. If no, then skip to Section E. For D.1.a-f, identify whether agencywide security configuration requirements address each listed application or operating system (Yes, No, or Not Applicable), and then evaluate the degree to which these configurations are implemented on applicable systems. For example: If your agency has a total of 200 systems, and 100 of those systems are running Windows 2000, the universe for evaluation of degree would be 100 systems. If 61 of those 100 systems follow configuration requirement policies, and the configuration controls are implemented, the answer would reflect "yes" and "51-70%". If appropriate or necessary, include comments in the Comment area provided below.

D.2. Answer Yes or No, and then evaluate the degree to which the configuration requirements address the patching of security vulnerabilities. If appropriate or necessary, include comments in the Comment area provided below.

D.1. & D.2

	Yes, No, or N/A	Evaluation
D.1. Has the CIO implemented agencywide policies that require detailed specific security configurations and what is the degree by which the configurations are implemented?		
a. Windows XP Professional	Yes	Almost Always, or 96-100% of the time
b. Windows NT	Yes	Almost Always, or 96-100% of the time
c. Windows 2000 Professional	Yes	Almost Always, or 96-100% of the time
d. Windows 2000	Yes	Rarely, or 0-50% of the time
e. Windows 2000 Server	Yes	Almost Always, or 96-100% of the time
f. Windows 2003 Server	Yes	Almost Always, or 96-100% of the time
g. Solaris	Yes	Almost Always, or 96-100% of the time
h. HP-UX	N/A	
i. Linux	Yes	Almost Always, or 96-100% of the time
j. Cisco Router IOS	Yes	Sometimes, or 51-70% of the time
k. Oracle	Yes	Rarely, or 0-50% of the time
l. Other. Specify: Netware; OSF/1; IRIX; AIX; SuSE Linux; MVS;	Yes	Almost Always, or 96-100% of the time
	Yes or No	Evaluation
D.2. Do the configuration requirements implemented above in D.1.a-f address patching of security vulnerabilities?	Yes	Almost Always, or 96-100% of the time

Comments: The Agency no longer has HP-UX installed. The configuration standards for the Cisco Router IOS are maintained in the functional equivalent of a Standard Configuration Document.

Section E: Incident Detection and Handling Procedures
NOTE: ALL of Section E should be completed by BOTH the Agency CIO and the OIG.
To enter data in allowed fields, use password: fisma

E.1. Evaluate the degree to which the following statements reflect the status at your agency. If appropriate or necessary, include comments in the Comment area provided below.

E.1

Statement	Evaluation
a. The agency follows documented policies and procedures for reporting incidents internally.	Almost Always, or 96-100% of the time
b. The agency follows documented policies and procedures for external reporting to law enforcement authorities.	Almost Always, or 96-100% of the time
c. The agency follows defined procedures for reporting to the United States Computer Emergency Readiness Team (US-CERT). http://www.us-cert.gov	Almost Always, or 96-100% of the time

E.2.

E.2. Incident Detection Capabilities.

	Number of Systems	Percentage of Total Systems
a. How many systems underwent vulnerability scans and penetration tests in FY04?	95	55%

b. Specifically, what tools, techniques, technologies, etc., does the agency use to mitigate IT security risk?

Answer:

Tools include ISS, NESSUS, NetRecon, NMap, TNT, EtherPeek, and PatchLink. Techniques and technologies begin with EPA's defense-in-depth approach to security management. Technical controls are firewalls, IDSs, perimeter controls, configuration management, and CSIRC and vulnerability management solutions. Management/operational controls include adherance to NIST, procedures, rules of behavior, etc.

Comments:

Section F: Incident Reporting and Analysis
NOTE: ALL of Section F should be completed by BOTH the Agency CIO and the OIG.
To enter data in allowed fields, use password: fisma

F.1. For each category of incident listed: identify the total number of successful incidents in FY04, the number of incidents reported to US-CERT, and the number reported to law enforcement. If your agency considers another category of incident type to be high priority, include this information in category VII, "Other". If appropriate or necessary, include comments in the Comment area provided below.
F.2. Identify the **number of systems** affected by each category of incident in FY04. If appropriate or necessary, include comments in the Comment area provided below.

F.1., F.2. & F.3.

	F.1. Number of Incidents, by category:			F.2. Number of systems affected, by category, on:		
	F.1.a Reported internally	F.1.b. Reported to US-CERT	F.1.c. Reported to law enforcement	F.2.a. Systems with complete and up to-date C&A	F.2.b. Systems without complete and up to-date C&A	F.2.c. How many successful incidents occurred for known vulnerabilities for which a patch was available?
	Number of Incidents	Number of Incidents	Number of Incidents	Number of Systems Affected	Number of Systems Affected	Number of Systems Affected
I. Root Compromise	0	0	0	0	0	0
II. User Compromise	0	0	0	0	0	0
III. Denial of Service Attack	1	1	0	1	0	0
IV. Website Defacement	0	0	0	0	0	0
V. Detection of Malicious Logic	1	1	0	1	0	0
VI. Sucessful Virus/worm Introduction	224	224	1	63	2	12
VII. Other	29	29	3	3	0	0
Totals:	255	255	4	68	2	12

Comments: The number in the "Other" category was taken from the Agency categories for "Shared UserId and Password", and "Policy and Procedure". Incidents reported here follow OMB direction to report only successful incidents. Number of incidents (and associated workload) detected and investigated would be different.

Section G: Training
NOTE: ALL of Section G should be completed by BOTH the Agency CIO and the OIG.
To enter data in allowed fields, use password: fisma

G.1. Has the agency CIO ensured security training and awareness of all employees, including contractors and those employees with significant IT security responsibilities? If appropriate or necessary, include comments in the Comment area provided below.

G.1.							
G.1.a. Total number of employees in FY04	G.1.b. Employees that received IT security awareness training in FY04, as described in NIST Special Publication 800-50		G.1.c. Total number of employees with significant IT security responsibilities	G.1.d. Employees with significant security responsibilities that received specialized training, as described in NIST Special Publications 800-50 and 800-16		G.1.e. Briefly describe training provided	G.1.f. Total costs for providing IT security training in FY04 (in $'s)
	Number	Percentage		Number	Percentage		
23,404	21,024	90%	821	406	49%	GoLearn and Other Training (See Comments for brief description)	$476,802

G.2.		
	Yes or No	
a. Does the agency explain policies regarding peer-to-peer file sharing in IT security awareness training, ethics training, or any other agency wide training?	No	

Comments:
G.1:
a) The Government Online Learning Center's (GoLearn) IT Security Training Library (Karta) is self paced and is comprised of more than 75 IT Security related courses, with four learning tracks: data security, network security, security planning and security policy/guidelines. There are three skill levels: beginner, intermediate and advanced and the courses are divided into 13 role-based training plans. The courses are based on NIST Special Publication 800-16 and is industry recognized, receiving National Security Agency and Committee on National Security Systems certification by meeting national standards for NSTISSI No. 4013 through 2006.

b) The Information Resources Management College at the National Defense University provides training that is essential to maintaining the

b) The Information Resources Management College at the National Defense University provides training that is essential to maintaining the skills and competencies of EPA's IRM workforce as required by the Clinger-Cohen Act of 1996. Students can receive certifications in the CIO competencies, E-Gov or Information Assurance.

c) EPA's 2004 IT Security and Operations Conference in Research Triangle Park (RTP) which provided EPA employees with significant security responsibilities and other interested parties, an opportunity to develop professionally through information exchange with peers. Training modules

d) Other various applicable IT Security training courses and developmental sources, provided by employees' immediate organization.

G.2: Peer-to-Peer is not permitted.

SUSAN M. COLLINS
MAINE

461 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510–1904
(202) 224–2523
(202) 224–2693 (FAX)

05-001-3589

United States Senate

WASHINGTON, DC 20510–1904

COMMITTEES
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

August 30, 2005

Mr. Charles Engebretsen
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 3426 ARN
Washington, DC 20460

Dear Mr. Engebretsen:

I was recently contacted by my constituent, Mr. Dale Canning of Eddington, Maine, regarding the importation of the Smart Car from Europe.

Mr. Canning is concerned that he cannot import a Smart Car, and believes that the Environmental Protection Agency regulations are impeding the import of this vehicle. I would appreciate it if you would respond to Mr. Canning's concerns. Please send your response to the attention of Avery Day in my Washington office.

Thank you for your attention to this matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:atd

PRINTED ON RECYCLED PAPER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV - 2 2005

OFFICE OF
AIR AND RADIATION

The Honorable Susan Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of August 30, 2005, regarding the importation of the Smart Car from Europe. Your constituent, Mr. Dale Canning, expressed concern that he cannot yet obtain a Smart Car and believes that the Environmental Protection Agency (EPA) regulations are impeding the importation of the vehicle.

The Clean Air Act prohibits the importation of motor vehicles that are not covered under a certificate of conformity. Regulations have been established to allow Independent Commercial Importers (ICI's) to import nonconforming vehicles and to convert them to be covered by a certificate of conformity obtained by the ICI. The ICI is responsible for Clean Air Act requirements much the same as a vehicle manufacturer. The ICI must show that the vehicles conform to emissions standards and other requirements will be covered under emission control system warranties, and that service facilities are available to perform repairs. After the certificate is obtained, the ICI may import nonconforming vehicles within the term of certificate (model year), and convert them to comply as specified in the certification. The ICI must convert the vehicles within 160 days of the vehicle's importation, or be subject to exportation.

On November 15, 2004, EPA issued a certificate of conformity for Smart Cars to G&K Automotive Conversion, Inc. This was a 2004 model year certificate covering vehicles manufactured in Europe in 2003. This 2004 model year certificate expired on December 31, 2004, and G&K had not yet completed the conversion of any Smart Cars by that time. Subsequently, EPA's Office of Enforcement and Compliance Assurance opened an investigation as to potential importation irregularities of the Smart Cars by G&K. These two issues have resulted in any Smart Cars converted under the 2004 model year certificate to be put on hold pending the outcome of the investigation.

G&K has also applied for certification of Smart Cars build in Europe in 2004 under a 2005 model year certificate. This process is currently on hold pending discussions with G&K as to whether problems found in the previous year would still exist for the 2005 model year vehicles. If G&K substantiates that vehicles imported and converted under the 2005 certificate will meet all requirements, EPA will issue the certificate of conformity and vehicles can be imported, converted, and sold in the United States. We are working closely with G&K to resolve these issues as quickly as possible.

I hope this information answers your questions and those of your constituent. Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Diann Frantz, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3668.

Sincerely,

William L. Wehrum
Acting Assistant Administrator

SUSAN M. COLLINS
MAINE

461 DIRKSEN SENATE OFFICE BUILDING
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(202) 224-2523
(202) 224-2693 (FAX)

05-001-3548

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

September 6, 2005

The Honorable Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

I recently received a letter from the Town of Orono, Maine, regarding the impact of guidelines on vernal pools on the town's land use policies and planning. Attached is a copy of this letter for your review.

The Chair of the Town Council, Geoffrey Gordon, and the Town Manager, Catherine Conlow, raise serious questions about the possible application of guidelines regarding vernal pools on development projects within the town limits. I am writing to ask that you look into this matter and provide me with answers to the specific questions that these Orono officials have raised.

I appreciate your attention to this request and look forward to hearing from you.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:atd
Enclosure

RECEIVED
SEP 12 2005
OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

PRINTED ON RECYCLED PAPER

Town of Orono

August 8, 2005

The Honorable Susan M. Collins
461 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Via Bangor Office:
PO Box 655
Bangor, ME 04402

Dear Senator Collins:

We are writing to bring your attention to a serious concern that has emerged over the last several months and threatens to undermine long term planning by the Town of Orono. This concern has been prompted by the application of vernal pool guidelines by various federal agencies, which have not been formally promulgated, lack definition, and are jeopardizing well-considered land use policies adopted by the Orono Town Council.

As you may know, Orono is segmented into two distinct areas. East of I-95 is the urbanized area, where there exists significant public investment in infrastructure by both the Town and the University, and where the core of Orono's population resides. West of I-95 is not served by infrastructure and is largely forestlands, low-density housing, and agriculture land. Over the past few years, the Town of Orono has worked towards the development of land use policies that encourage implementation of best management practices in land use planning, including a directed focus on infill development within the urbanized areas and encouraging preservation of valuable farm, forest, and natural resource areas outside the more urban area of the community. In 2004, more than nine hundred acres of valuable resource lands west of I-95 were placed into perpetual conservation; these lands include the Penjajawok Wildlife Habitat Corridor.

For development lands within the urbanized areas, the Town has adopted land use policies designed to encourage affordable and attractive housing opportunities, develop a diversified and stable tax base, and support land uses that provide opportunity for new residents and families to live and work within the community. Providing opportunity for sustainable growth in the core-urbanized areas of the community is essential. Housing stock in Orono has not increased significantly in recent years, preventing young families from locating here. That, in turn, has had a pronounced impact on our school system with enrollments declining dramatically over the past decade and on our ability to provide essential Town services at a reasonable value for our residents.

Municipal Building • 59 Main Street • P.O. Box 130 • Orono, Maine 04473 • (207) 866-2556 • FAX (207) 866-5053
• Home of the University of Maine •

AUG 9 2005

Senator Susan M. Collins
August 8, 2005

It is through the planning process that Orono has promoted these land use policies by encouraging land use applicants, many with close ties to the area, to develop projects consistent with the community's policies and objectives. Of late, however, we have found many of these projects have been placed at risk or frustrated altogether by what appears to be the application of nongovernmental guidelines governing vernal pools.

Vernal pools are small, seasonal wetland habitat areas that support various wildlife such as salamanders and wood frogs. In looking at vernal pools in Orono and possibly other communities in Maine, representatives of federal regulatory agencies, including the United States Fish & Wildlife Service and now EPA Region One, appear to be applying guidelines for vernal pools that were developed by a nongovernmental source. These nongovernmental guidelines seek to apply a 750' setback from a vernal pool, to limit development to 25% of the area within the setback area, and to count prior development against the 25% limit. It is our understanding that these guidelines were developed as recommended voluntary guidelines for those municipalities in Maine that need a starting point for local land use planning for vernal pools; To our knowledge they have not been subject to Federal rulemaking and are significantly more restrictive than rules being developed by the State of Maine which call for a 250' setback from vernal pools.

As you know, the process of ensuring that land use policies reflect community values is complicated and continual. There are many factors to consider ranging from the capacity of our community infrastructure including utilities, roads, and drainage systems, to the preservation of land, development of trails, and the impact that developments will have on our community capacity such as schools, police, fire and ambulance. As representatives of the Town we are committed to bring more certainty to the development process for the Town, landowners, residents, and developers which will clearly articulate our vision of compact and appropriate development within the urbanized area and preservation of resource lands West of I-95. In order to implement these policies, we need greater understanding of federal rules.

As we mentioned above, our primary concern with the application of these non-governmental standards is that they are not grounded in law and appear to be applied in an arbitrary manner throughout Maine. It makes it extremely difficult for small and medium sized municipalities such as Orono to take a holistic approach to creating balanced land use policies and practices.

To that end we are seeking your assistance in obtaining answers to the below questions. Would you please inquire of U.S. Fish & Wildlife and the Environmental Protection Agency for answers to the following:

1. What are the appropriate standards for vernal pools to be applied by the federal permitting agencies in Maine? How were they adopted and implemented?

Senator Susan M. Collins
August 8, 2005

2. Would it not be advantageous for federal regulatory agencies to work with States and municipalities to ensure that rule changes are complementary to and not conflicting with State laws?

3. For those communities that seek to encourage and direct growth in urbanized areas, how do appropriate standards for vernal pools account for the need to allow appropriate growth in such areas?

4. We have reason to believe that these specific nongovernmental guidelines are being applied in some other communities, but not in all communities in Maine. Are these nongovernmental guidelines being applied uniformly by the federal agencies across all communities in Maine?

5. Has any other state in the United States been subjected to these specific and expansive nongovernmental vernal pool guidelines, which federal agency representatives have sought to impose in Orono, Maine?

We want to thank you in advance for your assistance in this matter and assure you that the answers provided will go a long way towards developing sound land use policies in Orono and perhaps many other communities in Maine.

Sincerely,

Catherine M. Conlow

Catherine M. Conlow
Town Manager

Geoffrey A. Gordon
Chairman, Orono Town Council

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

October 6, 2005

The Honorable Susan M. Collins
United States Senator
P.O. Box 655
202 Harlow St., Rm. 204
Bangor, ME 04402

OFFICE OF THE
REGIONAL ADMINISTRATOR

Dear Senator Collins:

Thank you for your September 6, 2005, letter to Administrator Johnson forwarding a letter from the town of Orono, Maine ("the Town"), regarding guidance on vernal pools and the potential effect upon the town's land use policies. The Administrator asked me to respond.

In its letter to you, the Town posed several questions seeking clarification about certain guidelines that concern development around vernal pools. Please let me provide some background, and then answer each question in turn.

Most vernal and other seasonal pools are waters of the United States and subject to the full protections of the federal Clean Water Act (CWA). The relevant portion of the CWA is section 404, which regulates the discharge of dredged or fill material into all waters of the United States. Prior to conducting activities that involve such a discharge to wetlands or other waters, the project proponent must first obtain authorization from the U.S. Army Corps of Engineers. In order to obtain a permit under section 404, an applicant must first avoid adverse impacts to wetlands and other waters, minimize remaining adverse impacts, and provide compensatory mitigation for all unavoidable adverse impacts to the extent appropriate and practicable. These steps are required to ensure that the ecological functions of wetlands and other waters are adequately protected.

Among other ecological functions, vernal pools can provide extremely valuable breeding and rearing habitat for a variety of amphibians, including several uncommon or rare species. Like other types of wetlands, not all vernal pools provide valuable ecological functions; some are affected by surrounding land uses that diminish ecological function and value. When considering whether a proposed project that could affect vernal pools should be permitted and, if so, under what conditions, EPA New England wetlands program staff always evaluate both the range of ecological functions provided by the pools, and the level or degree to which those functions are provided.

Let me now address the Town's questions.

1. *What are the appropriate standards for vernal pools to be applied by the federal permitting agencies in Maine? How were they adopted and implemented?*

The section 404(b)(1) guidelines, which are federal regulations, contain the environmental standards that must be met in order to obtain a permit for the discharge of dredged or fill material into waters of the U.S. The sequence - avoid, minimize, compensate - (explained above) is contained in these regulations and pertains to vernal pools as well as all other waters of the U.S. These regulations were promulgated in accordance with federal procedures and implemented in December of 1980.

The vernal pool "standards" referenced by the Town is a document entitled, *Best Development Practices: Conserving pool-breeding amphibians in residential and commercial developments in the northeastern United States*[1], authored by two widely recognized experts on vernal pools and amphibians - Drs. Aram Calhoun of the University of Maine, and Michael Klemens of the Metropolitan Conservation Society/Wildlife Conservation Society. *Best Development Practices* (BDPs) is science-based literature that offers an approach to reviewing development projects that could have an adverse impact upon vernal pools. The document provides a range of recommended measures ("best development practices") to those proposing projects that could affect vernal pools as well as to those charged with regulating and protecting vernal pool resources. Among others, the recommended measures include suggested set-back distances to provide zones around vernal pools to protect the critical terrestrial habitat upon which many vernal pool breeding amphibians depend.

The BDPs document is not a regulation. It is not mandatory, and the recommendations it offers are not required standards. The BDPs document is simply one of many pieces of relevant scientific literature that EPA New England wetlands program staff (and those of other involved federal agencies, such as the U.S. Fish and Wildlife Service) use for guidance when reviewing section 404 permit applications to determine compliance with the regulatory standards contained in the section 404(b)(1) guidelines mentioned above.

> 2. *Would it not be advantageous for federal regulatory agencies to work with States and municipalities to ensure that rule changes are complementary to and not conflicting with State laws?*

Yes, it always is advantageous to work in a cooperative fashion. In the matter at hand, there have been no rule changes at the federal level that affect how EPA wetlands program staff review these projects.

> 3. *For those communities that seek to encourage and direct growth in urbanized areas, how do appropriate standards for vernal pools account for the need to allow appropriate growth in such areas?*

Just to be clear, the environmental standards - the 404(b)(1) guidelines - governing issuance of CWA section 404 permits have existed for nearly 25 years. The BDPs document provides only recommended guidance and is not regulatory in nature; it helps inform our review of proposed projects for determining compliance with the 404(b)(1) guidelines.

The growth planning described by the Town in its letter is commendable. We applaud their efforts to direct growth in those areas east of I-95 and nearest to the University and town center, and to protect large habitat blocks in areas west of I-95. Notwithstanding sound planning, there always will be sensitive and valuable resource areas, such as vernal pools, that must be avoided and protected to the greatest extent practicable. The BDPs document provides proven practices that help ensure such protection. EPA New England wetlands program staff use the recommended practices as a guide but do so in the context of a particular project. We nearly always adapt the practices, such as set-back distances, to meet the circumstances of a given project. Our intent is to work with project applicants to meet their needs while being appropriately protective of valuable vernal pools resources.

---

[1]Calhoun, A.J.K. and M.W. Klemens. 2002. Best Development Practices: Conserving pool-breeding amphibians in residential and commercial developments in the northeastern United States. MCA Technical Paper No. 5, Metropolitan Conservation Alliance, Wildlife Conservation Society, Bronx, New York.

4. *We have reason to believe that these specific nongovernmental guidelines are being applied in some other communities, but not in all communities in Maine. Are these nongovernmental guidelines being applied uniformly by the federal agencies across all communities in Maine?*

Yes, EPA New England wetlands program staff rely upon the BDPs guidance document uniformly throughout the state when reviewing proposed projects that could affect vernal pools. Moreover, we use the document throughout all six New England states.

5. *Has any other state in the United States been subjected to these specific and expansive nongovernmental vernal pool guidelines, which federal agency representatives have sought to impose in Orono, Maine?*

As mentioned above, EPA New England wetlands program staff rely upon the BDPs document for guidance when reviewing proposed projects that could affect vernal pools throughout the six states that comprise the New England Region.

Again, thank you for your letter and interest. If you or your staff should require additional assistance, please contact Michael Ochs in the Office of Government Relations at (617) 918-1066, or Matt Schweisberg, Manager of our Wetlands Protection Unit, at (617) 918-1628.

Sincerely,

Robert W. Varney
Regional Administrator

cc: Michael Bartlett, Supervisor, USFWS, Concord, NH
Colonel Curtis Thalkin, District Engineer, USACE, Concord, MA

SUSAN M. COLLINS, MAINE, CHAIRMAN

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06-001-0090

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

June 5, 2006

The Honorable Steve Johnson
Administrator of the U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Administrator Johnson:

With the 2006 hurricane season, and predictions of yet another series of severe storms, upon us, we wanted to make sure that you have received a formal copy of the Senate Committee on Homeland Security and Governmental Affairs Report, "Hurricane Katrina: A Nation Still Unprepared." Therefore, we are sending you this copy in PDF form now rather than waiting for the final printed report. When we receive the final report from GPO, we will forward that version to you as well.

This report is the product of an enormous effort and intense bipartisan collaboration on the part of our Committee. Over the course of seven months, the Committee formally interviewed more than 320 witnesses, conducted 22 public hearings, and reviewed some 828,000 pages of testimony. The resulting report provides a thoroughly documented 750-page analysis of the events leading up to, and occurring during the week following, the storm, and contains 88 recommended actions for reform. The text can also be accessed at http://hsgac.senate.gov/files/Katrina/FullReport.pdf.

Many of our recommendations require legislation. We have begun the drafting process and we welcome any comments or recommendations you may have on our analysis, findings, or proposed legislation. Finally, we respectfully urge that you give this report, and its recommendations, appropriate attention so that together we can help improve our ability to respond to whatever challenges our nation may face in the future.

Sincerely,

Susan Collins

Susan M. Collins
Chairman

Joseph I. Lieberman
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 18 2006

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Susan M. Collins
Chairman, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Collins:

Thank you for your letter to Administrator Johnson of June 5, 2006 with which you provide a copy of the Senate Committee on Homeland Security and Governmental Affairs Report, "Hurricane Katrina: A Nation Unprepared." We have reviewed the report, which details the response activities leading up to and following the landfall of Hurricane Katrina.

Even though EPA is not mentioned in the report, I would note that we played a major role in response and cleanup activities related to Hurricane Katrina. EPA is the Coordinator for Emergency Support Function (ESF) #10 (Oil and Hazardous Materials Response) under the National Response Plan (NRP). EPA worked closely with the United States Coast Guard and other appropriate departments and agencies to implement ESF #10. In addition, EPA is a support agency for several other ESFs that were activated after Katrina. Even though EPA is not listed in the NRP as a support agency for ESF #9 (Urban Search and Rescue), we immediately took action when FEMA requested assistance. EPA staff rescued approximately 800 evacuees from the flood waters resulting from Katrina.

The Committee report makes no recommendations that specifically involve EPA. I am happy to report, however, that we continue to take steps to improve our preparedness and ability to respond to future disasters.

If you have any questions, please do not hesitate to contact me or your staff may contact Carolyn Levine at (202) 564-1859 in the Office of Congressional and Intergovernmental Relations.

Sincerely,

Susan Parker Bodine
Assistant Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C 20460

06-001-3150

AUG 15 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office (GAO) report recommendation on leaking underground storage tanks (LUST). The report is entitled Environmental Protection: More Complete Data and Continued Emphasis on Leak Prevention Could Improve EPA's Underground Storage Tank Program (GAO-06-45). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

To improve EPA's oversight of the leaking underground storage tank program and its ability to determine how to most efficiently and effectively allocate LUST Trust Fund dollars to the states, GAO recommends that the Administrator of EPA require that states separately identify, in their reports to the Agency, information on the number and cleanup status of all known abandoned underground storage tanks within their boundaries.

EPA Response

EPA will assess the feasibility of implementing the recommendation by exploring the extent to which states may already have information on abandoned tanks and whether EPA can access it without placing an undue burden on states. Please note, however, collecting specific information on abandoned tank sites may be difficult. It would require states to conduct an upfront assessment at every known, potentially abandoned site to determine if the owner is unaware, unwilling, or unable to conduct a cleanup. EPA will consider any changes to the LUST Trust Fund allocation to the states based on this potential additional data as part of EPA's implementation of the recent Energy Policy Act of 2005.

Thank you for the opportunity to respond to the recommendation. If you have any questions, please contact me or have your staff contact Lauren M. Mical in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2963.

Best wishes,

Lyons Gray
Chief Financial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

06-001-5048

SEP 2 0 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office's (GAO) report recommendations on employee succession training and development programs. The report is entitled Human Capital: Selected Agencies Have Opportunities to Enhance Existing Succession Planning and Management Efforts (GAO-05-585). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

GAO recommends the Administrator of EPA seek appropriate opportunities to coordinate and share core succession training and development programs with other outside agencies to achieve economies of scale, limit duplication of efforts, benchmark with high-performing agencies, keep abreast of current practices, enhance efficiency, and increase the effectiveness of its programs.

EPA Response

EPA agrees with the recommendation. As the report emphasizes, planning for succession of employees is an important and timely issue and one that EPA takes seriously. We have many programs underway under the leadership of the National Training Manager, who coordinates with other federal training directors to identify and collaborate on appropriate training and development opportunities. We seek opportunities to create cost-effective programs to improve the future capacity of our staff.

Currently EPA is sharing the "Stepping Up to Supervision" program with the Department of Veterans Affairs (VA) and the Government Printing Office (GPO). The "Stepping Up to Supervision" program is designed to inform employees about the roles and responsibilities of senior managers in order to broaden their horizons on whether to consider pursuing a supervisory

position in the future. To date, trainers from both agencies have participated in the train-the-trainer process and will be certified to teach the "Stepping Up" workshop in their respective organizations. The expansion of this successful program is an effective way to achieve economies of scale and reduce potential duplication. We plan to develop the program further and share it with other federal agencies.

Another example is the current partnership between EPA and the VA focusing on their Presidential Management Fellows (PMF) program. The VA has a more extensive PMF program than EPA, and we are learning about its successful activities, such as "learning events", to determine how we can improve and expand our program. A reinvigorated PMF program at EPA will ensure that employees obtain the necessary skills for filling future leadership positions in technical and administrative areas.

GAO Recommendation

GAO recommends the Administrator of EPA evaluate core succession training and development programs to assess the extent to which programs contribute to enhancing organizational capacity. When deciding the appropriate analytical approach and level of evaluation, EPA should consider factors such as estimated costs of training efforts, size of training audience, and program visibility, among other things.

EPA Response

EPA agrees with the recommendation. Evaluation of training and development programs has been an essential component in measuring and improving effective opportunities to improve EPA's organizational capacity. EPA evaluated two core succession programs and concluded they are achieving results.

We assessed the EPA Intern Program and determined that it successfully achieves the intended goals. As a result of the evaluation, we identified opportunities to reduce administrative costs in two ways. First, we reduced travel expenditures by streamlining the interview process and second, we have decreased costs and time related to hiring procedures by using electronic transfer of most prospective employee data.

EPA completed a formal evaluation of the Senior Executive Service Candidate Development Program (SES CDP) in March 2004. The study focused on recruitment and selection of candidates with emphasis on the diversity and caliber of the candidates and human capital and training opportunities to prepare potential leaders for the SES program. The evaluation made two significant conclusions: (1) the selection process was generally fair and attracted diverse and highly-qualified candidates and (2) leadership development workshops were effective. In addition, the evaluation recommended improving communications with applicants and expanding leadership opportunities for potential candidates.

In October 2006, EPA will launch a mandatory management development program entitled "EPA Successful Leaders Process." During this year-long program, newly appointed supervisors and managers will conduct a self-assessment, attend classroom-style training, engage in one-to-one coaching sessions, and experience other appropriate developmental activities. Changes in behavior and skill levels of each new manager will be assessed to determine areas of improvement and remaining skills that require additional attention. In addition, EPA officials will evaluate these assessments to determine the overall effectiveness and impact of each activity and implement changes to improve the program's contribution to enhancing the organizational capacity.

Thank you for the opportunity to respond to the recommendations. If you have any questions, please contact me or have your staff contact Lauren Mical in EPA's Office of Congressional and Intergovernmental Relations at 202/564-2963.

Best wishes,

Lyons Gray
Chief Financial Officer

United States Senate

WASHINGTON, DC 20510

06-002-0108

November 28, 2006

The Honorable Stephen Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: EPA Targeted Watershed Grants – Penobscot Indian Nation

Dear Administrator Johnson:

We are writing to express our support for the Penobscot Indian Nation's Penobscot River funding proposal for the EPA's Targeted Watersheds Grant Program.

The grant request for the Penobscot River Restoration Project is derived from a 2004 landmark agreement that developed an innovative and community-based solution to a longstanding dispute and environmental crisis within the Penobscot River watershed. The proposed solution, the purchase of three dams, the removal of two, and a by-pass channel around the third, would help achieve the goals that are at the heart of the Targeted Watershed Grants -- community-based approaches and market-based techniques to protect and restore our nation's waters.

Successfully implemented, the project will improve water quality and restore self sustaining populations of native sea-run fish, such as the endangered Atlantic salmon, through improved access to approximately 1,000 miles of historic habitat; renew the ability for the Penobscot Indian Nation to exercise sustenance fishing rights; and create new opportunities for local communities through tourism and business development associated with the restoration of the watershed. In addition, virtually all of the power generation being lost at the three dams is being replaced by enhancements at generating facilities elsewhere in the Penobscot drainage.

The Penobscot River Restoration Project is a unique partnership among the dams' owner, the state, federal agencies, the Penobscot Indian Nation, and conservation organizations. We have been working over the last several years to secure critical federal funding for the project. The Targeted Watershed Grant could make an important contribution to the success of this critically important conservation project.

We would appreciate being updated as to the status of the Penobscot Indian Nation's application.

Sincerely,

OLYMPIA J. SNOWE
United States Senator

SUSAN M. COLLINS
United States Senator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 1 9 2007

OFFICE OF
WATER

The Honorable Susan Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of November 28, 2006 to the Environmental Protection Agency (EPA) regarding the application submitted by Penobscot Indian Nation under the Agency's Targeted Watersheds Grant program. We assure you that this proposal will receive every consideration within the Agency's assistance agreement guidelines and regulations. In order to ensure a fair and open competition process, we are not allowed to discuss the status of any proposal while the review process is underway. Please be assured that applicants will be informed of their proposal's status as the review process is concluded. We will be sure to notify you, as well, of the outcome of this process.

I appreciate your strong support for the Penobscot Indian Nation proposal. We recognize that there are many challenges the nation faces to protect human health and the environment. To succeed, we must enlist numerous partners and work together employing a cooperative conservation approach.

Again, thank you for your letter and interest in the Targeted Watersheds Grant program. If you have further questions, please contact me or your staff may call Tom Dickerson in EPA's Office of Congressional and Intergovernmental Relations at 202-564-3638.

Thank you

Sincerely,

Benjamin H. Grumbles
Assistant Administrator

cc: Jerry Potamis, EPA Region 1

SUSAN M. COLLINS
MAINE

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COMMITTEES
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510–1904

January 19, 2007

Ms. Stephanie Daigle
Associate Administrator for Congressional
and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Daigle:

I recently received a letter from a constituent, Jeff Welt, in which he expressed his concern about emissions from Outdoor Wood Boilers (OWB). Mr. Welt would like to see the Environmental Protection Agency establish emission standards for OWB's that comport with current standards for wood stoves. I would appreciate if you would respond to his concerns. Please send your response to the attention of Shaw Sprague in my Washington, D.C. office.

Thank you in advance for your attention to this matter.

Sincerely,

Susan

Susan M. Collins
United States Senator

SMC:ss

PRINTED ON RECYCLED PAP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 13 2007

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Attention: Shaw Sprague

Dear Senator Collins:

Thank you for your letter dated January 19, 2007, to Ms. Stephanie Daigle, Associate Administrator for the Office of Congressional and Intergovernmental Relations. You wrote the letter on behalf of your constituent, Mr. Jeff Welt, regarding standards for outdoor wood boilers. I appreciate your interest in this issue.

Currently, the Environmental Protection Agency (EPA) is working with several states, wood boiler manufacturers, and others to reduce emissions from outdoor wood boilers. In January 2007, EPA launched its "Outdoor Wood-fired Hydronic Heaters Voluntary Program." This program encourages manufacturers to improve air quality through developing and distributing cleaner, more efficient outdoor wood boilers. Over ten manufacturers—which make 80 percent of the units sold in the United States—have agreed to bring at least one cleaner model to market beginning in spring 2007. The new heaters will be about 70 percent cleaner than models currently on the market. We believe that EPA's voluntary program will help bring cleaner models to market faster than we could accomplish under a federal regulation.

In addition to the voluntary program, EPA has worked with Northeast States for Coordinated Air Use Management (NESCAUM) to develop a model rule that state, local and tribal governments may elect to use, in whole or in part, if they choose to regulate outdoor wood boilers. This model rule includes options such as: emissions limits, setback requirements, stack heights, and instructions for proper installation and usage. To learn more about EPA's voluntary program and NESCAUM's model rule, please visit www.epa.gov/woodheaters.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

William L .Wehrum
Acting Assistant Administrator

11-000-4789

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 28 2011

OFFICE OF
CIVIL RIGHTS

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

I am pleased to send you the enclosed copy of the U.S. Environmental Protection Agency's (EPA) Fiscal Year 2010 annual report prepared in accordance with Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

This report provides information regarding the number of cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged; the amount of money required to be reimbursed by EPA to the Judgment Fund in connection with such cases; the number of employees disciplined for discrimination, retaliation, harassment or any other infractions of any provision of law referred to under the Act; an analysis of trends and knowledge gained; and accomplishments.

An identical letter has been sent to each entity designated to receive this report as listed in Section 203 of the No FEAR Act. The U.S. Attorney General, the Chair of the U.S. Equal Employment Opportunity Commission, and the Director of the U.S. Office of Personnel Management will also be sent a copy of the report.

If you have any questions, please contact me; or, your staff may call Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely yours,

Rafael DeLeon

Rafael DeLeon
Director

Enclosure

OFFICE OF CIVIL RIGHTS

U.S. ENVIRONMENTAL PROTECTION AGENCY

Fiscal Year 2010

Annual Report to Congress Pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

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I. EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2010 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2010, there were a total of 11 cases pending before Federal courts. Among these cases, there were 10 claims of violations of Title VII; 4 claims of violations of the Rehabilitation Act; and 3 claims of violations of the Age Discrimination in Employment Act. Of the 11 cases noted above, 1 resulted in judgment being granted in favor of EPA at the U.S. District Court level. In another case, the U.S. Court of Appeals affirmed a lower court's dismissal of the case. The remaining 9 cases are proceeding at different stages of the pre-trial and trial processes. During FY 2010, the Agency was not required to reimburse the Judgment Fund for any of the cases reported above.

There were no disciplinary actions taken in connection with any federal case pending or resolved in FY 2010 brought under applicable provisions of federal anti-discrimination laws and/or Whistleblower Protection laws; or for any conduct that was inconsistent with these laws or for conduct that constituted any prohibited personnel practice.

II. BACKGROUND

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report the status or disposition of the cases; the amount of money required to be reimbursed to the judgment fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws; and an analysis of the data collected with respect to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into five categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly an agency must post on its public website summary statistical data pertaining to EEO complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006; final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006; and the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The Equal Employment Opportunity Commission (EEOC) published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared this report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

III. DATA

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2010, there were a total of 11 cases pending before Federal courts. Among these cases, there were 10 claims of violations of Title VII; 4 claims of violations of the Rehabilitation Act; and 3 claims of violations of the Age Discrimination in Employment Act.

Of the 11 cases noted above, 1 resulted in judgment being granted in favor of EPA at the U.S. District Court level. In another case, the U.S. Court of Appeals affirmed a lower court's dismissal of the case. The remaining 9 cases are proceeding at different stages of the pre-trial and trial processes.

b. Reimbursement to the Judgment Fund

During FY 2010, the Agency was not required to reimburse the Judgment Fund for any of the cases reported above.

c. **Disciplinary Actions** (5 C.F.R. § 724.302 (a)(3) & (5))

There were no employees disciplined in FY 2010 in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act is included in Appendix 1.

The final year-end data indicates that during FY 2010, there were 71 new administrative complaints of discrimination filed by 64 employees or applicants for employment.
Within the total inventory of 187 complaints, EPA's Office of Civil Rights (OCR) conducted 110 pre-complaint counselings; 70 investigations; and closed 76 cases including 13 dismissals and 19 final agency decisions. There were no findings of discrimination in FY 2010.

FY 2010 complaint totals can be found in their entirety at Appendix 1 of this report.

e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))

In FY 2009, EPA Administrator Lisa P. Jackson signed a new Agency EEO policy that set forth her vision for an effective EEO program and a workplace free of discrimination, harassment, and reprisal. This Policy can be found in Appendix 3. During FY 2010, she reaffirmed her commitment to an effective EEO program in a 2010 EEO Policy. The 2010 EPA EEO Policy can be found at Appendix 4. Also during FY 2010, OCR drafted an official Agency policy on harassment. This policy is pending final review and concurrence, and will be issued in 2011. Until the new policy is finalized, we continue to operate under the existing harassment policy, which can be found in Appendix 2.

All EPA supervisors and management officials are responsible for taking appropriate corrective actions for which they have been delegated authority and for recommending to higher level officials disciplinary action considered appropriate in other cases. EPA's policies and procedures for taking disciplinary action are contained in EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline Senior Executive Service* and in the applicable collective bargaining agreements. Actions in response to findings of discrimination may range from informal corrective actions such as a written warning to more formal disciplinary actions such as a suspension without pay or removal.

Additionally, OCR's standard operating plan for the redress of allegations of discrimination provides for a prompt, fair, and impartial review and adjudication of any allegation of discrimination, further demonstrating the Agency's commitment to equal employment opportunity principles and practices in all of our management decisions and personnel practices.

f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))

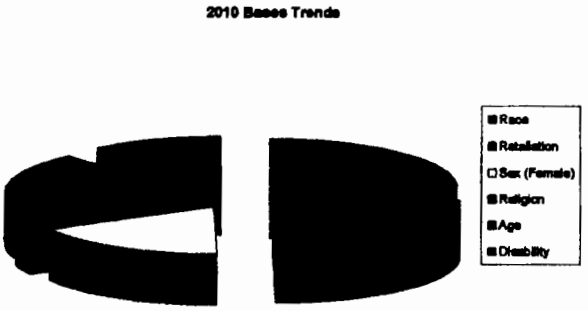
In FY 2010 OCR updated and revised the Agency No FEAR on-line training to include a more in depth training module of the rights and responsibilities of employees and managers under the Act and to increase the difficulty of the test questions. OCR effected these changes to ensure that employees gained tangible and significant information from the training course. As of December 31, 2010, 97% of Agency employees completed the updated training.

IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))

At the conclusion of FY 2010, the Agency saw an 11% decrease in number of new complaints filed and a 9% decrease in the number of complainants compared to FY 2009. The bases of alleged discrimination most often raised were: (1) retaliation; (2) race; and (3) age. Additionally, EPA saw an overall 22% decrease in the number of complaints filed on the basis of age between FY 2009 and FY 2010.

Taken as a whole, the percentage of complainants in the Agency, .34% for FY 2010, is lower than the government-wide percentage of .54%. Over the past five years, EPA's number of complainants by percentage of workforce has ranged from 0.30% to 0.44%.

The 71 EEO complaints filed at EPA in FY 2010 contained 47 allegations of retaliation, 40 allegations of race discrimination, and 30 allegations of age discrimination. The FY 2010 EEO complaint activity at EPA remained relatively consistent with respect to the bases alleged as compared to FY 2009. The data does not show any significant increase in complaints filed on certain bases of discrimination, when considering the aggregate size of the workforce.



EPA completed investigations for complaints pending during FY 2010 with an average processing time of 223 days, up from 218 days in FY 2009, and slightly above the Government-wide average of 215 days. EPA's average processing time for all complaint closures increased from 236 days in FY 2009, to 518 days, above the Government-wide average of 404 days, in FY 2010. The Agency found that, on average, complaints where a hearing was requested took 737 days to reach closure. Complaints where settlement was deemed appropriate took an average of 448 days to reach closure and complaints where a Final Agency Decision (FAD) was issued took, on average, 418 days to reach closure. We partially attribute this increase in processing time to the marked loss in staff within OCR, including 40% of staff assigned to writing FADs, as well as 33% of the legal staff assigned to assist with Title VII cases within the EPA Office of General Counsel Civil Rights and Finance Law Office. As a whole, it has taken the Agency longer to issue Final Agency Actions and come to settlement agreements. We are currently working with the Office of Human Resources to back fill these positions, and anticipate increasing OCR staff during FY 2011.

Through experience gained over the last ten years, EPA will continue to apply a wealth of practical knowledge towards ensuring accountability, compliance with merit systems principles, and an impartial complaint-processing system.

V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))

During FY 2010, the Agency was not required to reimburse the Judgment Fund for any of the cases reported above.

VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))

In an effort to improve our civil rights programs, EPA hired an independent consulting firm to conduct a comprehensive review and program evaluation to determine how effectively OCR is meeting its mission and regulatory mandates. The study will provide a broad review of OCR's structure, staff and functions, and analyze strengths and weaknesses. It will also provide benchmarking data gathered from the civil rights offices of other Federal agencies. This study was completed in March 2011 and we will implement all appropriate recommendations throughout the remainder of FY 2011.

As planned during FY 2009, OCR's Employment Complaints Resolution Staff (ECRS) attended quarterly technical training related to writing acceptance and dismissal letters and conducting thorough investigations. Staff also received training on conducting legal research using Westlaw and CyberFeds.

We continue to modify our Statements of Work for procurement of EEO contractors, to include more stringent requirements as well as penalties for failure to adhere to investigative quality and timeliness expectations. We anticipate widening our pool of qualified contractors as we terminate relationships with those firms that have historically not produced timely, high-quality investigations.

We also continue to post all No FEAR statistics on the OCR website on a quarterly basis, and have members of staff attend monthly new hire orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.

ACCOMPLISHMENTS UPDATE

The EPA has worked towards meeting the goals of this important legislation as indicated in the actions highlighted below.

Policy Development

(1) **Policy on the Reassignment of an Employee with a Qualified Disability-** During FY 2010, the Agency implemented a new policy to ensure that reassignment is considered as a reasonable accommodation whenever appropriate.

(2) **Evaluating Supervisory Performance-** Elements of the Senior Executive Service (SES) performance standard 'flow down' to subordinate managers and supervisors. Further, this standard contemplates that each manager monitors the work environment to prevent discrimination and harassment, and takes timely action if harassment or other discriminatory treatment is observed, reported, or suspected. During FY 2011, we anticipate drafting performance standards for all EPA managers and supervisors to address expectations of compliance with the Agency's EEO objectives.

Employee Awareness and Training

During FY 2010 EPA provided extensive training to its EEO staff on a variety of topics including, but not limited to, the following:

- EEO law;
- EEO complaint process;
- Conflict resolution communication skills;
- Reasonable accommodations for employees with disabilities; and
- Topic specific training for the EEO intake staff/counselors and officers.

Initiatives

During 2010, the EPA participated in the Workforce Recruitment Program (WRP) for College Students with Disabilities. This is an on-line database recruitment and referral program that connects Federal sector hiring managers and employers nationwide with highly motivated post-secondary students and recent graduates with disabilities. These students are seeking summer internships or permanent positions in the Federal sector. The database contains resumes for over 1,800 of the nation's top college students with disabilities. These students were screened and interviewed by professional recruitment specialists and have been evaluated based on their experience and interviews. The program is co-sponsored by the U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) and the

Department of Defense (DOD). EPA participated actively in the program, including sending recruiters to colleges and universities across the country and hiring WRP students as EPA employees over the summer and in the permanent workforce.

Diversity, Special Emphasis, and Special Observance Programs

EPA has continued to maintain strong programs in FY 2010 for the employment, advancement, and retention of a diverse Federal workforce. These programs included initiatives to: strengthen partnerships with academic institutions and special emphasis community groups; outreach and recruitment events to provide potential civil service recruits with information on locating and applying for EPA jobs; and encouraging the use of various recruitment flexibilities to tap into diverse talent pools. EPA also regularly conducted special observance programs at headquarters and regional offices designed to provide information and foster appreciation for individuals of different cultures and experiences.

EPA completed and submitted its FY 2010 Management Directive 715 report to the EEOC in a timely manner, and the agency is working aggressively to continue to build and sustain a Model EEO Program.

08-006 1890

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

February 8, 2008

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Administrator Johnson:

As part of our ongoing oversight into the threat of nuclear terrorism, the Homeland Security and Governmental Affairs Committee is reviewing the readiness of the nation's military and civilian agencies to protect the population of the United States from nuclear terrorism.

The effects of a nuclear attack on the United States are almost beyond comprehension. Even if we only consider the impact that a relatively small 10-kiloton nuclear device would have on a city center, the devastation would be catastrophic. From the epicenter of the blast to a distance of approximately one-third of a mile, every structure would be destroyed and virtually no one would be left alive. In the second circle of destruction, extending three-quarters of a mile from ground zero, buildings would experience devastating structural damage and most people in this ring would be killed or seriously injured. A third circle reaching out one mile would be ravaged by fires and radiation. Downwind of the blast, radioactive debris would begin to spread across the region, potentially exposing tens of thousands of people to lethal doses of radiation. Immediately after such an attack, our country would face challenges that we have never faced before.

Although improved security for nuclear stockpiles and fissile materials in Russia and elsewhere have helped to reduce the risk of nuclear terrorism, the threat of terrorists building or acquiring a nuclear weapon remains. While building an improvised nuclear device remains a difficult undertaking, the frightening truth is that simple nuclear weapons are based on 60-year old technology and such weapons are relatively easy to design and make. The primary obstacle to terrorists building a nuclear weapon is not the know-how required, but rather the difficulty of obtaining fissile material. However, there are many hundreds of tons of fissile materials, including highly enriched uranium, being stored in hundreds of sites worldwide, often under inadequate security arrangements. Potential sources of fissile materials and the knowledge necessary to build nuclear weapons continue to proliferate in countries with ties to radical and terrorist organizations. In addition to the threat of a terrorist organization building an improvised nuclear device, there remains the constant threat of a bomb being stolen or otherwise acquired from existing nuclear stockpiles that are not always adequately secured.

While our primary goal must be the prevention of such an attack, we must also prepare for the eventuality that a determined terrorist may succeed despite our best efforts. The threat of nuclear theft by terrorist groups and the catastrophic consequences of such an attack dictate that our country be prepared. An effective response requires well-exercised plans that clearly enumerate roles and responsibilities at all levels of government. While the responsibility for responding to most small and medium-sized disasters naturally begins at the local level, planning and responding to a large-scale disaster, such as the detonation of a nuclear device in the United States, clearly require a robust Federal role. The destruction and devastation of such an attack would present humanitarian and logistical challenges that would overwhelm the capabilities of cities and states and require the Federal government to quickly marshal all of its assets and capabilities, as well as those of other States, localities, the private sector, and non-profits. However, the Government Accountability Office recently described the Federal government's ability to prepare for, respond to, recover, and rebuild from catastrophic events as needing "fundamental reform" and included catastrophic planning as a key area for Congressional oversight.

The Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 741, *et. seq.*) requires the development of a national preparedness system and a target level of preparedness that can ensure the nation's ability to prevent, respond to, and recover from natural disasters, acts of terrorism, and other man-made disasters. The Act requires, among other things, that the President ensure that each Federal agency with responsibilities under the National Response Plan ("NRP") and its successors, including the National Response Framework ("NRF"):

1) has the operational capability to meet the national preparedness goal;
2) complies with the National Incident Management System;
3) develops, trains, and exercises rosters of response personnel to be deployed when the agency is called upon to support a Federal response; and
4) develops operational plans and the corresponding capabilities, including crisis planning, to respond effectively to natural disasters, acts of terrorism, and other man-made disasters to ensure a coordinated Federal response.

Pursuant to the Act, the Administrator of FEMA, acting in coordination with the heads of appropriate Federal agencies, is required to submit to Congress a report on the Nation's level of preparedness for all hazards. To date, we have not yet received this report.

Protecting our nation against nuclear terrorism involves many critically important tasks, including: non-proliferation activities, collecting and analyzing intelligence about the evolving threat of nuclear terrorism, devising a global and domestic nuclear detection system, and planning and preparing to respond to the detonation of a nuclear device in the United States. However, at this time, non-proliferation activities are not included in this particular inquiry. Rather, the Committee's current review of the nation's readiness to protect the population of the United States from nuclear terrorism builds upon work already conducted with respect to the programs of the Domestic Nuclear Detection Office at the Department of Homeland Security, the role of FEMA in preparing the country to respond to a catastrophic event, and other Federal programs.

To assist the Committee in determining the current state of the nation's operational readiness to protect the people of the United States from nuclear terrorism and to carry out critical response missions in the event of the detonation of a nuclear device in the United States, we ask that you provide written answers to the following questions on behalf of your department or agency:

I. Describe the roles, responsibilities, and authorities (under Federal law, Presidential directive, or any other relevant strategic or operational plan) of each component in your department or agency that relates to:

A. collecting and analyzing intelligence on the current threat of the detonation of a nuclear device in the United States;

B. developing, testing, evaluating, acquiring, and/or deploying radiation detection technologies either overseas or in the United States; and

C. responding to the discovery of nuclear weapons and/or fissile materials within the United States (including your department or agency's role, responsibilities and authorities in identifying, destroying, securing, disabling, or disposing of such weapons or materials).

II. With respect to each specific role, responsibility, or authority identified in response to Question I:

A. provide a detailed inventory (including the specific resources, funding, personnel, and operational assets) of your department or agency's current capabilities to carry out each specific role, responsibility or authority; and

B. list the names and positions of the key personnel involved in acting pursuant to that authority or discharging that role and responsibility.

III. Describe the roles, responsibilities, and authorities of each component in your department or agency in responding to the detonation of a nuclear device in the United States. Include your department or agency's roles, responsibilities, and authorities under Federal law, the National Response Framework (NRF), any annexes to the NRF or its predecessor, the NRP, any other government-wide, departmental, or agency disaster preparedness plan, or any relevant strategic or operational plan. With respect to each specific role, responsibility or authority:

A. list the names and positions of the key personnel involved in acting pursuant to that authority or discharging that role and responsibility; and

B. provide a detailed inventory (including the specific resources, funding, personnel, and operational assets) of your department or agency's current capabilities to

carry out its responsibilities in the event of the detonation of a nuclear device in the United States, including:

1. a detailed description of how your department or agency's capabilities would be utilized in response to the detonation of a nuclear device in the United States;

2. the time-frame within which the capabilities can be deployed in response to such an event;

3. the current state of readiness of these capabilities to respond to such an event;

4. the emergency communications assets maintained by your department or agency; and

5. the names and positions of the individuals that are most knowledgeable about the inventory of your department or agency's response capabilities.

IV. Describe how, after the detonation of a nuclear device in the United States, your department or agency would support the NRF, any annexes to the NRF or its predecessor, the NRP, any other government-wide, departmental, or agency disaster preparedness plan, or any relevant strategic or operational plan. In addition:

A. specify all operational plans that have been developed by your department or agency to respond to such an event; and

B. list the names and positions of the individuals who are most knowledgeable about your department or agency's planning activities to respond to such an event.

V. Describe how your department or agency is coordinating with other Federal agencies in preparing, planning, and training for responding to the detonation of a nuclear device in the United States. Please:

A. specify the dates and locations of interagency meetings that officials from your department or agency have participated during the last 24 months regarding the development of interagency response plans to respond to such an event;

B. describe your department or agency's participation in any interagency training activities during the last five years that simulated such an event; and

C. provide the names and positions of the individuals who are most knowledgeable about your department or agency's participation in such interagency activities and who have direct responsibility for ensuring the readiness of your department or agency to carry out it missions.

VI. Identify all operational plans, inventories of your department or agency's response capabilities, or any other documents or information that your department has provided or will be providing to the Administrator of FEMA or the White House that will enable the President to fulfill his annual certification obligations under 6 U.S.C. 753(d).

We request you provide the requested information as it becomes available, but not later than February 29, 2008. Should you believe that your response to this letter will require the disclosure of classified information, please let us know in advance of this date so that we may determine whether alternate arrangements for production are appropriate. We thank you and your staff in advance for your cooperation. If you or your staff has any questions concerning this request, please contact Jonathan Kraden of the Committee's majority staff at 202-224-2627 or Rob Strayer or Keyur Parikh of the Committee's minority staff at 202-224-4751.

Sincerely,

Joseph I. Lieberman
Chairman

Susan M. Collins
Ranking Member

Committee on Homeland Security and Governmental Affairs
Joseph I. Lieberman, Chairman

Fax: (202) 228-3792 **Office: (202) 224-2627**

TO: Administrator Johnson, EPA **FAX:** (202) 501-1450

FROM: HSGAC **DATE:** 2-8-08

NUMBER OF PAGES 5 **+COVER**

MESSAGE/COMMENTS:

Mailing Address: Room SD-340, Washington, D.C. 20510-6250

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 6, 2008

OFFICE OF THE
ADMINISTRATOR

The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

Thank you for your February 8, 2008, letter regarding the United States Environmental Protection Agency's (EPA) role in the state of readiness of the nation's military and civilian agencies to protect the population of the United States from nuclear terrorism. EPA's responsibility of protecting human health and the environment includes responding to an event such as a nuclear terrorist attack. EPA stands ready to work with our federal, state, local and tribal partners to help protect the citizens of the United States should this type of incident ever occur.

Please find enclosed responses to the questions posed by the Committee. I hope this information will be useful to you and Members of the Committee. If you have further questions, please contact me or your staff may contact Raquel Snyder in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-9586.

Sincerely,

Thomas P. Dunne
Associate Administrator for Homeland Security

Enclosure

Question 1, Part A

Describe the roles, responsibilities and authorities (under Federal law, Presidential directive, or any other relevant strategic or operational plan) of each component in your department or agency that relates to:

A. collecting and analyzing intelligence on the current threat of the detonation of a nuclear device in the United States

Question 2

With respect to each specific role, responsibility, or authority identified in response to Question 1:

A. provide a detailed inventory (including specific resources, funding, personnel, and operational assets) of your department of agency's current capabilities to carry out each specific role, responsibility or authority; and

B. list the names and positions of the key personnel involved in acting pursuant to that authority or discharging that role and responsibility.

Answer:

EPA has significant human health expertise and environmental technical expertise which is available to assist the Intelligence Community (IC) with the evaluation of threat information, should they request our assistance.

We have built relationships with various IC partners and these serve as our main conduit into the IC. One of the benefits of these relationships is EPA's inclusion on the Federal Bureau of Investigation's National Joint Terrorism Task Force (NJTTF) and at the Department of Homeland Security's National Operations Center. While EPA has a limited role in the collection and analysis of intelligence related to the threat of the detonation of a nuclear device in the United States, we would be alerted to these types of threats in a timely manner working with the agencies described above.

The Office of Homeland Security (OHS), located in the EPA Administrator's Immediate Office, leads all activities related to intelligence and national security at EPA. OHS is responsible for advising the Administrator and other senior EPA officials on matters related to national security and intelligence. OHS has also been designated by the Administrator to serve as the principal Agency liaison to the IC. Additionally, OHS is responsible for the coordination of all EPA Programs and Regions on matters related to national security and intelligence that are deemed classified or sensitive.

The individual who acts pursuant to this authority and discharges this role and responsibility is Thomas P. Dunne, Associate Administrator for Homeland Security.

Question 1, Part B

Describe the roles, responsibilities and authorities (under Federal law, Presidential directive, or any other relevant strategic or operational plan) of each component in your department or agency that relates to:

B. developing, testing, evaluating, acquiring, and/or deploying radiation detection technologies either overseas or in the United States;

Question 2

With respect to each specific role, responsibility, or authority identified in response to Question 1:

A. provide a detailed inventory (including specific resources, funding, personnel, and operational assets) of your department of agency's current capabilities to carry out each specific role, responsibility or authority; and

B. list the names and positions of the key personnel involved in acting pursuant to that authority or discharging that role and responsibility.

Answer:

EPA has a modest role in testing and evaluating nuclear/radiation detection technology as part of its larger homeland security research and development program. The Agency has the capacity to test and evaluate nuclear/radiation detection technologies, but it is currently not doing so. There are no EPA funds currently devoted to nuclear/radiation detection technology testing and evaluation. We have deferred to the work that the Department of Energy has done to support clean up at the various weapons complex sites and in support of nuclear power plant operators.

While EPA does not have an active role in detecting nuclear materials entering the United States, we do provide nationwide environmental ambient radiation monitoring through the RadNet system which can detect plume migration across the U.S. from a nuclear weapon detonation. As discussed in our response to Question 3, EPA has detection equipment designed to support our role in responding to a radiological incidents.

The individuals who act pursuant to this authority and discharge this role and responsibility are George Gray, Assistant Administrator for the Office of Research and Development, (ORD); Jonathan G. Herrmann, P.E., BCEE, Director, National Homeland Security Research Center, ORD; Robert J. Meyers, Principal Deputy Assistant Administrator for the Office of Air and Radiation (OAR); and Elizabeth Cotsworth, Director, Office of Radiation and Indoor Air, OAR.

Question 1, Part C

Describe the roles, responsibilities and authorities (under Federal law, Presidential directive, or any other relevant strategic or operational plan) of each component in your department or agency that relates to:

C. responding to the discovery of nuclear weapons and/or fissile materials within the Unites States (including your department or agency's role, responsibilities and authorities in identifying, destroying, securing, disabling, or disposing of such weapons or materials).

Question 2

With respect to each specific role, responsibility, or authority identified in response to Question 1:

A. provide a detailed inventory (including specific resources, funding, personnel, and operational assets) of your department of agency's current capabilities to carry out each specific role, responsibility or authority; and

B. list the names and positions of the key personnel involved in acting pursuant to that authority or discharging that role and responsibility.

Answer:

EPA has no specific role or responsibility in adjudication, interdiction, or disposal of nuclear weapons or related materials under the current plans and authorities. The Agency would be available to assist, within our area of expertise, any other department or agency if requested.

Question 3

Describe the roles, responsibilities, and authorities of each component in your department or agency in responding to the detonation of a nuclear device in the United States. Include your department of agency's roles, responsibilities, and authorities under Federal law, the National Response Framework (NRF), any annexes to the NRF or its predecessor, the NRP, any other government-wide, departmental, or agency disaster preparedness plan, or any relevant strategic or operational plan. With respect to each specific role, responsibility or authority:

A. list the names and positions of key personnel involved in acting pursuant to that authority or discharging that role and responsibility; and

B. provide a detailed inventory (including the specific resources, funding, personnel, and operational assets) of your department or agency's current capabilities to carry out its responsibilities in the event of the detonation of a nuclear device in the United States, including:

1. a detailed description of how your department or agency's capabilities would be utilized in response to the detonation of a nuclear device in the United States;

2. the time-frame within which the capabilities can be deployed in response to such an event;

3. the current state of readiness of these capabilities to respond to such an event;
4. the emergency communications assets maintained by your department or agency; and

5. the names and positions of the individuals that are most knowledgeable about the inventory of your department or agency's response capabilities.

Answer:

As with other Federal agencies, EPA's response pursuant to a disaster declared by the President is facilitated through the National Response Framework (NRF). EPA's responsibilities begin even before a terrorist attack, as we work with our Federal, state, and local responders to ensure readiness. If a nuclear device were to be detonated within the United States, EPA's responders would respond immediately, working in support of the State and local responders to assess the impacts and take action to protect the public. These efforts are coordinated under the NRF, through EPA's role as the Coordinator and Primary Agency for Oil and Hazardous Materials Response, under Emergency Support Function (ESF) #10. Our primary activities under ESF #10 include: efforts to detect, identify, contain, clean-up or dispose of oil or hazardous materials (including radiological materials); monitoring of debris disposal; air and water quality monitoring and sampling; and protection of natural resources. EPA is also a support agency for a number of other Emergency Support Functions and we work with other Federal agencies under the Nuclear/Radiological Incident Annex to the NRF.

EPA's response under the NRF begins from the moment a terrorist attack occurs. Under Sections 503 and 504 of the Homeland Security Act of 2002, the Secretary of the Department of Homeland Security (DHS) may choose to undertake operational control of DOE and EPA assets that respond to incidents such as detonation of a nuclear device. DHS would coordinate the overall Federal response. EPA, as well as other agencies, such as the Department of Defense's Army Corps of Engineers, the Department of Health and Human Services, and the U.S. Department of Agriculture, would bring their technical expertise and assets to bear in support of the response.

During the early phases of the response, EPA's primary roles under the NRF's Nuclear/Radiological Incident Annex would include assisting DHS and DOE in characterizing the environmental impacts of the attack and providing recommendations to state and local decision-makers about the actions that may be needed to protect the

public. EPA's role is focused on protecting health and the environment; as such, most of our assets are designed to detect and characterize radiation towards the perimeter of a contaminated area, where the public will need health and safety guidance. Other Federal departments and agencies have responsibilities for attributing the incident to the attackers and assessing the strength of the initial device as well as conducting population monitoring. EPA has two roles during the long-term recovery phase of incidents involving dirty bombs (Radiological Dispersal Devices or RDDs) or Improvised Nuclear Devices (INDs): the Agency will take over leadership of the radiological environmental characterization and it will assist in managing the Federal technical radiological clean-up activities.

EPA provides resources for defining and delineating the environmental impact of the radiological incident throughout the entire response effort, whether under DOE or EPA leadership. With our Federal, state and local partners, EPA would apply policies, procedures, human resources, equipment, intelligence and a readiness status to carry out our mission and NRF responsibilities.

EPA maintains personnel and other assets ready to respond to radiological emergency response situations and provides technical expertise and support when needed. We have approximately 350 emergency response personnel including 250 On-Scene Coordinators and four Special Teams: National Decontamination Team (NDT), the Radiological Emergency Response Team (RERT), the Environmental Response Team (ERT), and the National Counterterrorism Evidence Response Team (NCERT). We are also building a Response Support Corps to expand our response capacity. Personnel are generally expected to respond to chemical, biological, and radiological incidents and training is provided across this spectrum. EPA currently has 3,500 field ready contractors ready to respond to an emergency event. According to an EPA survey recently conducted with the contracting community, EPA contractors could provide an additional 4,600 field ready emergency response contractors if needed, bringing that total up to approximately 8,300.

EPA's OSCs, Special Teams, and contractors are ready to respond to emergencies and we could have personnel on the scene of a nuclear terrorist attack within hours if it occurred in any of the fifty states or Puerto Rico. The precise response time of EPA's personnel and assets is variable, depending on the location of the emergency and the response assets' duty station. In addition to EPA's 10 regional office locations, EPA has out-posted OSCs across the country to minimize their response time. EPA's response contracts each include a time-to-arrival-onscene requirement; however, because the 10 regions vary widely in size and geography, these time requirements vary as well. EPA's Special Teams are also located across the country: the Environmental Response Team has locations in Edison, New Jersey, Cincinnati, Ohio, and Las Vegas, Nevada; the National Decontamination Team is located in Erlanger, Kentucky; the Radiological Emergency Response Team is located in Las Vegas, Nevada, Montgomery, Alabama, and Washington, D.C., and the National Counterterrorism Evidence Response Team includes Special Agents from across the country, has a base of operations in Denver, Colorado, and an additional platform in Washington, D.C..

Each of EPA's resources brings specialized personnel, equipment, and expertise in protecting human health and the environment, including everyday emergency response experience. For example, the RERT can deploy scientists and engineers, health physicists, laboratory staff, and other emergency response specialists to the field or to support roles during a radiological emergency. The NDT can provide technical expertise to Federal, state and local authorities in order to identify technologies and methods for decontamination of outside areas, buildings, building contents, public infrastructure (including waste/drinking water plants, chemical plants, power plants, food processing facilities and subways), agriculture, and associated environmental media (e.g., air, soil and water). Throughout the year as part of its emergency planning and preparation activities, the NDT provides decontamination training to EPA responders. The ERT provides multi-disciplined technical expertise and logistical support in responding to hazardous substance emergencies, oil spills, potential and actual releases of biological and chemical agents as well as long-term remedial activities. The ERT characterizes and assesses the site, verifies the nature and severity of the event, and participates in development of a strategy for the cleanup, disposal, and remedy selection. Its response capabilities include, but are not limited to, air surveillance, radiation health and safety, modeling, risk assessment, and rapid turnaround analytical support. The NCERT can provide forensic evidence collection support to the Federal Bureau of Investigation, if requested.

Equipment also includes mobile laboratories, a scanner van, and field based equipment that can identify specific gamma sources. In addition to personnel and equipment, EPA's NRF responsibilities include maintaining and enhancing RadNet, the nation's most comprehensive ambient radiation monitoring network. RadNet currently consists of over 50 stationary and 40 portable near-real time air monitors, as well as other resources. The stationary near real-time monitors collect a beta and gamma spectrum of the particulates on an air filter hourly, and transmit data to the National Air and Radiation Environmental Laboratory (NAREL), where a determination of contaminants can be quickly made. The portable monitors electronically transmit near-real time gamma radiation readings to NAREL for initial analysis. In addition, air sampling filters are collected and sent to the laboratory for specific analyses for alpha, beta and gamma radiation.

EPA has also strengthened its communications capabilities over the last several years. EPA's strategy for field communications includes national consistency, redundancy and interoperability for both voice and data communications. EPA's national communications assets are located in each Region, the National Decontamination Team (Cincinnati, OH) and Environmental Response Team (Edison, NJ; Cincinnati, OH; Las Vegas, NV). Voice communication technology includes VHF/UHF radios, satellite phones, and HF radios. Data communication technology includes mobile (sled mounted) satellite dishes and satellite dishes on command posts, personal data connection technology for response staff (air cards, wireless communication on laptops, cell phones, blackberries) and data transfer ability on satellite phones. EPA purchased all of this technology to use daily and also to serve as a national communications asset during large incidents. Any of the equipment (except personal tools) can be shipped quickly to an

incident and OSCs can use it in the affected Region. OSCs receiving this equipment and/or OSCs transferred to assist with an incident need no additional training since they are familiar with the functionality of this equipment through daily use on removal sites.

The FY2009 homeland security budget request for the Office of Emergency Management and the Office of Radiation and Indoor Air totals $55M (OEM's budget request is $48.6M and ORIA is requesting $6.4M). These resources support preparedness and planning for response to chemical, biological and radiological/nuclear (CBRN) incidents. A portion of these resources support nuclear response planning, however, the Agency does not budget by specific CBRN categories.

The individuals who act pursuant to these authorities and discharge these roles and responsibilities are: Thomas P. Dunne, Associate Administrator of Homeland Security; Susan Parker Bodine, Assistant Administrator, OSWER; Deborah Y. Dietrich, Director, Office of Emergency Management, OSWER; Robert J. Meyers, Principal Deputy Assistant Administrator, OAR; Elizabeth Cotsworth, Director, Office of Radiation and Indoor Air, OAR.

Question 4

Describe how, after the detonation of a nuclear device in the United States, your department or agency would support the NRF, any annexes to the NRF or its predecessor, the NRP, any other government-wide, departmental, or agency disaster preparedness plan, or any relevant strategic or operational plan. In addition:

A. specify all operational plans that have been developed by your department or agency to respond to such an event; and
B. list the names and positions of the individuals who are most knowledgeable about your department or agency's planning activities to respond to such an event.

Answer:

EPA's response pursuant to a disaster declared by the President is facilitated through the National Response Framework (NRF). EPA's responsibilities begin even before a terrorist attack, as we work with our Federal, state, and local responders to ensure readiness. If a nuclear device were to be detonated within the United States, EPA's responders would respond immediately, working in support of the State and local responders to assess the impacts and take action to protect the public. These efforts are coordinated under the NRF, through EPA's role as the Coordinator and Primary Agency for Oil and Hazardous Materials Response, under Emergency Support Function (ESF) #10. Our primary activities under ESF #10 include: efforts to detect, identify, contain, clean-up or dispose of oil or hazardous materials (including radiological materials); monitoring of debris disposal; air and water quality monitoring and sampling; and protection of natural resources. EPA is also a support agency for a number of other

Emergency Support Functions and we work with other Federal agencies under the Nuclear/Radiological Incident Annex to the NRF.

Under NRF's Nuclear/Radiological Incident Annex, DOE coordinates Federal radiological monitoring and assessment activities for the initial phases of a response to a radiological incident. Coordination occurs through a DOE-led interagency organization known as the Federal Radiological Monitoring and Assessment Center or the "FRMAC." The FRMAC has representatives from various Federal, state, and local radiological response organizations, including EPA. The FRMAC provides an operational framework for coordinating all Federal radiological monitoring and assessment activities during a response to support the Federal Coordinating Agency, state(s), local, and/or tribal governments. The FRMAC works with the Interagency Modeling and Atmospheric Assessment Center, or IMAAC, to produce predictive plots of plume dispersion and dose rates and collects radiological monitoring data. It develops radiation contours showing where contamination is located and the associated radiation levels, which are used to recommend appropriate protective actions. In the event of a Presidentially declared major disaster or emergency, the FRMAC also provides its information to the Federal Emergency Management Agency's (FEMA's) Federal Coordinating Officer to assure appropriate and adequate additional resources are available for the state and local authorities to draw upon.

FRMAC leadership responsibility is transferred to EPA, per the Nuclear/Radiological Incident Annex to the NRF, at a mutually agreeable time, and after consultation with DHS and its coordination entities, as well as state, local, and tribal governments. When the FRMAC is transferred to EPA, EPA assumes responsibility for coordination of ambient radiological monitoring and assessment activities. The FRMAC will provide long-term environmental monitoring as verification of site clean-up procedures and may continue perimeter monitoring of the affected site. The FRMAC may also provide personnel and work site monitoring to assure that health and safety standards are not exceeded during clean-up activities. Since the FRMAC conducts only radiation monitoring, it will be just one part of the concerted effort lead by EPA during the recovery phase.

Under the NRF's Radiological/Nuclear Incident Annex, EPA

- Provides resources, including personnel, equipment, and laboratory support (including mobile laboratories) to assist DOE in monitoring radioactivity levels in the environment.
- Assumes coordination of Federal radiological monitoring and assessment responsibilities after the transition from DOE.
- Assists in the development and implementation of a long-term monitoring plan and long-term recovery plan.
- Provides nationwide environmental monitoring data from the RadNet ambient radiation monitoring system for assessing the national impact of the incident.
- Develops Protective Action Guides in coordination with the Federal Radiological Preparedness Coordinating Committee (FRPCC).
- Recommends protective actions and other radiation protection measures.

- Recommends acceptable emergency levels of radioactivity and radiation in the environment.
- Prepares health and safety advice and information for the public.
- Estimates effects of radioactive releases on human health and the environment.
- Provides response and recovery actions to prevent, minimize, or mitigate a threat to public health, safety, or the environment caused by actual or potential releases of radioactive substances, including actions to detect, identify, contain, clean up, and dispose of such substances.
- Assists and supports the Nuclear Incident Response Team, when activated.
- Provides, in cooperation with other Federal agencies, the law enforcement personnel and equipment to conduct law enforcement operations and investigations for nuclear/radiological incidents involving criminal activity that are not terrorism related.

EPA developed its 1992 Manual of Protective Action Guides and Protective Actions for Nuclear Incidents (44 CFR § 351.22(b)), also referred to as the PAG Manual, to provide guidance on actions to protect public health and the environment. The PAG Manual helps federal, state, and local authorities make radiation protection decisions during radiological emergencies, such as nuclear power plan incidents. However, because this guidance primarily addressed nuclear power plant accidents, DHS, EPA, and the interagency community developed the interim "Application of Protective Action Guides for Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents" (71:174-196, Federal Register, January 3, 2006 to ensure all phases of the response and long-term recovery from RDDs and INDs are addressed. This new guidance incorporates EPA's 1992 guidance for the early or emergency phase e.g., first four days, and intermediate phase, i.e., source is controlled and field data become available. In addition, EPA worked with the DHS and other Federal partners to develop a process that will be used to develop a framework for helping decision makers and stakeholders jointly determine site-specific clean up goals for the long-term recovery phase.

EPA, in its role as lead for site cleanup and restoration, will work with state, local and federal agencies to begin planning for these activities as soon as possible after an incident. We will support the state/local decision makers in developing long-term cleanup plans for a radiological event through a process consistent with the organizational structure and procedures described in the Nuclear/Radiological Incident Annex to the National Response Framework and the PAGs.

Internally, EPA has finalized its Crisis Communications Plan and is implementing an Incident Management System training program specifically addressing the Public Information component of an emergency response. The goal of EPA's Crisis Communication Plan is to facilitate timely, accurate, and consistent communication of information to the public about EPA's activities and findings in response to an incident of national significance. The Plan is designed to facilitate better coordination among the field, regional, and HQ communications components of an INS response. To compliment the plan, EPA is developing a Crisis Communication Resource guide to include tools

such as fact sheets, sampling results templates and other public information products that can be used during a response.

The individuals who act pursuant to these authorities and discharge these roles and responsibilities are: Thomas P. Dunne, Associate Administrator of Homeland Security; Susan Parker Bodine, Assistant Administrator, OSWER; Deborah Y. Dietrich, Director, Office of Emergency Management, OSWER; Robert J. Meyers, Principal Deputy Assistant Administrator, OAR; Elizabeth Cotsworth, Director, Office of Radiation and Indoor Air, OAR.

Question 5

Describe how your department or agency is coordinating with other Federal officials in preparing, planning, and training for responding to the detonation of a nuclear device in the United States. Please:

A. specify the dates and locations of interagency meetings that officials from your department or agency have participated in during the last 24 months regarding the development of interagency response plans to respond to such an event

B. describe your department or agency's participation in any interagency training activities during the last five years that simulated such an event; and

C. provide the names and positions of the individuals who are most knowledgeable about your department or agency's participation in such interagency activities and who have direct responsibility for ensuring the readiness of your department or agency to carry out its missions.

Answer:

Over the past two years, EPA's senior managers have coordinated interagency response plans through the White House-led Domestic Nuclear Defense Policy Coordination Committee (DND PCC), the Domestic Readiness Group Policy Coordination Committee (DRG PCC) and their workgroups. The DND PCC meetings occur on approximately a quarterly basis, or more regularly as needed, to address specific issues through workgroups. The DRG PCC meets much more frequently, but addresses issues of interagency nuclear response planning on a much less regular basis. Both sets of meetings typically occur in the Washington, D.C. area.

In addition to participating in the TOPOFF series of exercises, which test interagency capabilities to respond to a complex series of simultaneous events, EPA has participated in a number of interagency training exercises that were based on various nuclear scenarios. Such exercises have included the following:

- *Ardent Sentry* was an exercise sponsored by the Department of Defense (DoD) and Department of Homeland Security (DHS) in May 2007. The venue in Indianapolis, Indiana involved the detonation of a 10 kiloton Improvised Nuclear Device, designed to enhance coordination and response capability to a detonation in a large city. EPA participated in both the Command Post Exercise aspect of the scenario, primarily at the Joint Field Office and the Regional Response Coordination Center, and the Full Scale Exercise, primarily in a training role at the Muscatatuck, Indiana Urban Training Center. EPA's response involved EPA Region 5, its response contractor, ERT, NDT, and RERT.
- *Vigilant Shield '07* was a full-scale exercise sponsored by DoD and took place from December 4-7, 2006 and concluded with a Facilitated After Action Review at Davis-Monthan Air Force Base (DMAFB) on December 8, 2006. EPA participated in the field, in response to a simulated incident involving a simulated C-17 aircraft accident at DMAFB, near Tucson, Arizona that "resulted" in low-order (non-nuclear) detonations of two United States Air Force nuclear weapons, and in a simulation cell in the Washington, D.C. area.
- *Pinnacle '05* was sponsored by DHS to allow DHS and other Federal departments and agencies to test their continuity of operations (COOP) plans. This event was a four-day exercise conducted from June 20-24, 2005, as part of the ongoing efforts to test and improve the Federal government's ability to perform essential government functions during threats and emergencies. The scenario involved detonation of an IND impacting the Washington, D.C. area, and EPA Headquarters' essential personnel located in the DC area transferred to their COOP location in suburban Maryland. Similarly, the May 14-18, 2007, *Pinnacle '07* COOP exercise was based around a continuation of the scenario used in Pinnacle '05, but EPA COOP personnel deployed to the alternate COOP location in Research Triangle Park, North Carolina.
- Exercise *Tholian Web* was a Command Post Exercise sponsored by DoD in April 2006. The exercise, in which EPA's Special Teams participated, was intended to assist DoD in assessing the support that would be requested by other Federal, state, and local agencies for consequence management of an improvised nuclear device within the United States.
- *Unified Defense 04* was a DoD-sponsored full field exercise (combined with Vigilant Overview 04-2 held during the period of February 19-25, 2004, principally at NORAD and USNORTHCOM Headquarters in Colorado Springs, CO, Washington, DC, and the States of Texas and Alaska. EPA's participation was largely in the Texas venue, where the scenario involved a nuclear detonation. The exercise goals were for DoD to conduct a joint and interagency exercise to provide ongoing assessment of the interoperability and coordination between the commands and their subordinate command structure; DoD, DHS, other Federal, State, local and non-governmental organizations in the areas of Homeland Defense and Civil Support.

EPA has also participated in issue-specific senior officials exercises such as *Senior Officials Exercise #4*, which took place on August 19, 2004, in which Federal departments and agencies reviewed their likely actions in response to a series of

scenarios, including the detonation of a 10 kiloton nuclear weapon within the U.S. The main intent of this exercise, in particular, was to examine the Homeland Security Advisory System's use in response to a variety of scenarios.

The individuals who act pursuant to these authorities and discharge these roles and responsibilities are: Thomas P. Dunne, Associate Administrator of Homeland Security; Susan Parker Bodine, Assistant Administrator, OSWER; Deborah Y. Dietrich, Director, Office of Emergency Management, OSWER; Robert J. Meyers, Principal Deputy Assistant Administrator, OAR; Elizabeth Cotsworth, Director, Office of Radiation and Indoor Air, OAR.

Question 6

Identify all operational plans, inventories of your department or agency's response capabilities, or any other documents or information that your department has provided or will be providing to the Administrator of FEMA or the White House that will enable the President to fulfill his annual certification obligations under 6 U.S.C. 753 (d).

Answer:

EPA is working in close coordination with the Incident Management Systems Division of the National Integration Center (NIC) to support the requirements of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 741, *et. seq.*). EPA has provided our National Incident Management System (NIMS) implementation plan to the NIC and responded to the FY 2007 NIMS Compliance Assistance Support Tool (NIMSCAST) survey of Federal Departments and Agencies used to determine the status of Federal NIMS implementation and to identify the challenges faced in program development and execution.

The individuals who act pursuant to these authorities and discharge these roles and responsibilities are: Thomas P. Dunne, Associate Administrator of Homeland Security; Susan Parker Bodine, Assistant Administrator, OSWER and Deborah Y. Dietrich, Director, Office of Emergency Management, OSWER.

SUSAN M. COLLINS
MAINE

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HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, RANKING MEMBER
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-1904

January 30, 2009

Mr. Christopher Bliley
Associate Administrator for Congressional Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 3426 ARN
Washington, DC 20460

Dear Mr. Bliley,

I was recently contacted by my constituent, Greg Smith, regarding his concerns about emissions from mills in the Machias, Maine area. Mr. Smith is concerned about the chemicals being used by the mills and whether the Environmental Protection Agency conducts air quality checks while the mills are processing. Enclosed is a copy of Mr. Smith's email for your review. Please send your response to the attention of Linda M. Jalbert in my Washington, D.C. office. Ms. Jalbert may be reached at Linda_Jalbert@collins.senate.gov or 202-224-2523.

Thank you for your attention to this matter.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC: lmj
Enclosure

PRINTED ON RECYCLED PAPER

For Greg Smith(448761)
Staff: lindaj Linda Jalbert

Salutation: Dear Mr. Smith:
Address: PO BOX 767
Machias, ME 04654
Phone:
Email: retiredop@hotmail.com
Organization:
Title:
Personal Codes:

Correspondence 734706:

Category: Corr	**Received Date:** 01/15/2009	**Due Date:** 01/15/2009	**File Loc.:** 706120
Interest Cd: ENVGENEX		**Staff:** lindaj	**Letter Code:** Q205668
Group: W090115	**In:** EML	**Print Date:**	**Closed Date:**

Description:

Comments:

RSP: Yes.

Date Received: 1/12/2009 10:34:08 AM
Does the EPA check air quality during the times the mills are processing. What are the new chemicals, if any, that the mills are using.
Why are there a rash, almost epidemic of breathing problems in the Machias area this winter.
the smell from mill emissions is reaching the Machias area, many miles from the mills.

The Woodland and/or St. Stephens mills must have new chemicals that they are using in their processing plants. They are smelled all the way into the Machias and surrounding area and appear to be causing breathing problems. I wonder if the epidemic of breathing problems are related to reactions to the chemicals. I know they trouble me each time the wind currents bring the acidic smell of the mill chemicals to this area. I wonder if they are buying those chemicals from China and if they are dangerous.

There has been a large number of people developing breathing challenges in the area this winter and the cold air causes the emissions from the mills to stay closer to the ground and affect a wider area.

I wonder if EPA even bothers to test the air quality and safety of the emissions from the plant? I know the smell in the air is from the mills, as it is the same smell that is down near the plants as well.

The people that have been hospitalized with pneumonias including the one(s) that have died have gotten the pneumonias from something, and not sure if it is chemical or some other form of pneumonias for certain, but breathing the chemicals can cause problems.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

March 10, 2009

The Honorable Susan M. Collins
413 Dirksen Senate Office Building
Washington, DC 20510

OFFICE OF THE
REGIONAL ADMINISTRATOR

Dear Senator Collins:

Thank you for your January 30, 2009 letter to the United States Environmental Protection Agency (EPA) regarding the complaint you received from one of your constituents, Mr. Greg Smith. Mr. Smith expressed concerns about air emissions coming from mills in the Machias, Maine area. In his letter to you, Mr. Smith asked if EPA checks the air quality from mills while they are processing material and whether new chemicals are being used by the mills. Mr. Smith references mills located in Woodland, Maine and St. Stephens, New Brunswick.

EPA contacted the Maine Department of Environmental Protection (ME DEP) on March 3, 2009 to discuss Mr. Smith's concerns. The ME DEP informed EPA that in the past three months two air compliance inspections had been conducted at the Domtar Corporation (Domtar) pulp and paper mill located in the Woodland, Maine area. The most recent inspection was conducted within the past month. During this recent inspection, the ME DEP inspectors found one problem concerning Domtar's wet scrubber that controls particulate emissions from Domtar's wood-fired, power boiler. This problem caused excess particulate matter (or opacity) to be emitted from the boiler stack. The ME DEP reviewed modeling and meteorological data to determine whether this excess opacity could have had an environmental impact on the Machias area. The ME DEP analysis concluded that due to the prevailing winds and the 30-mile distance between the Domtar facility and the Machais area, the area was not adversely affected by the excess emissions.

The ME DEP informed EPA that there are no other mills or large manufacturing facilities located in the Machias area that are within the borders of the United States. As to mills located in St. Stephens, New Brunswick, the ME DEP modeling and meteorological data would again suggest that the prevailing winds and distance factor would result in no detrimental environmental impacts to the Machias area.

Again, thank you for your letter. If you or your staff should require additional assistance, please contact Michael Ochs in the Office of Government Relations at (617) 918-1066.

Sincerely,

Ira W. Leighton
Acting Regional Administrator

cc: Louis Fontaine, ME DEP

Help us serve you better. If you need to call us regarding this correspondence in the future, please reference AL-09-000-2248.

bcc: Tom McCusker
Michael Ochs

SUSAN M. COLLINS
MAINE

413 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2523
(202) 224-2693 (FAX)

09-001-7551

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, RANKING MEMBER
APPROPRIATIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

November 6, 2009

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 3000
Washington, DC 20460

Dear Administrator Jackson:

One of my constituents, Lori Howell, contacted me with her concerns regarding the proposed move of the Portsmouth, New Hampshire waste water treatment facility to the Portsmouth— Newington border. Ms. Howell is concerned that a facility relocation could be detrimental to the citizens of Eliot and Kittery (both in Maine), as well as force the closure of her business, Spinney Creek Shellfish, due to degraded water quality. This change in water quality could restrict the essential depuration process of shellfish, therefore requiring her business to close or relocate. I have enclosed a copy of Ms. Howell's correspondence for your review.

I would appreciate a response addressing the water quality threat and assurance that Ms. Howell's company will have an appropriate opportunity to have its concerns considered by EPA prior to approval of any permits for the water treatment facility to relocate. Please send your response to Melissa Simones in my Washington, D.C. office.

I appreciate your attention to this matter.

Sincerely,

Susan M. Collins
United States Senator

SMC: mas
Enclosure

PRINTED ON RECYCLED PAPER

Lori A. Howell, M.S., J.D.
P.O. Box 310
Eliot, Maine 03903
Plant and Sales: 207-439-2719
Fax: 207-439-7643
Email: lahowell@spinneycreek.com

October 30, 2009

The Honorable Susan Collins
160 Main Street
Biddeford, Maine 04005

Dear Senator Collins,

I am writing in follow up to my conversation with your staff yesterday. As I indicated at that time, we are looking for your assistance with an interstate issue involving a permit that will be issued by the Environmental Protection Agency. Specifically, have great concerns about the proposed move of the Portsmouth, New Hampshire waste water treatment outfall from Pierce Island upstream to the Portsmouth- Newington border. Portsmouth is under court order to improve the waste water treatment at Pierce Island. The City's preferred option is moving the facility upstream. We believe that this will have detrimental impacts to the citizens of Eliot and Kittery, and that likely force closure of our business, Spinney Creek Shellfish, due to degraded water quality.

Our firm is one of the largest dealers of clams in Maine. We process all shellfish in our depuration plant. Depuration is a process whereby molluscan shellfish are held in flowing sterilized seawater allowing the shellfish to purge their systems of contaminants. Our firm has been in business at our location on the shore of Spinney Creek since 1983. We require clean source water which is drawn from Spinney Creek. Under the National Shellfish Sanitation Program (NSSP) only waters classified as approved or restricted may be used as source water for depuration. Spinney Creek is classified as restricted and has held this classification for many years. The proposed changes will likely mean that our business is within the 1000:1 dilution zone, and the 100,000:1 zone for bypasses, requiring closure.

We employ approximately 15 individuals on a year round basis and increase the number of employees to approximately 22 during the period May to October. In addition to the staff here in Eliot, by processing their clams, Spinney Creek Shellfish provides a market for shellfish that would otherwise be unsaleable for 40 to 60 harvesters throughout the state. The NSSP has established standards for fecal coliform as well as the dilution of waste water effluent that must be achieved before shellfish may be harvested or the water used as source water for shellfish processing. The proximity of the proposed plant will likely not allow for adequate dilution before reaching Spinney Creek.

We believe that Portsmouth should consider other options, and they do have other options, just none that are as attractive to them from their perspective. If this option is implemented Maine will likely loose a premier business on the cutting edge of its industry. I urge you to communicate

with EPA urging them to deny any permit that moves the outfall for the treatment plant upstream or increases the amount of effluent introduced to the Piscataqua River. Please keep me apprised of your actions as well as any new information.

Sincerely,

Lori A. Howell
Vice President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

December 15, 2009

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senate
413 Dirksen Senate Office Building
Washington, DC 20510-1904

Dear Senator Collins:

Thank you for your letter of November 6, 2009, to Administrator Jackson on behalf of your constituent, Lori Howell, concerning the possible relocation of the outfall from the Portsmouth, New Hampshire wastewater treatment plant and its potential impacts on water quality in Maine.

The City of Portsmouth is currently conducting planning for a major upgrade to its primary treatment facility. This planning was necessitated by EPA's decision to deny the City's waiver of secondary treatment. One of the possible sites for the new treatment plant is in the vicinity of Portsmouth's Pease International Tradeport wastewater treatment facility. The relocation of the outfall to a location in the vicinity of the Pease facility's outfall (about 7000 feet upstream of the Route 95 bridge) may be the lowest cost option for discharging from the Pease treatment plant site, and is one of several options being evaluated by the City. The City has not made a final proposal for siting the treatment plant or outfall, and EPA Region 1, as the NPDES permitting authority in New Hampshire, has not proposed a draft permit authorizing such a discharge.

Region 1 and the New Hampshire Department of Environmental Services have recently completed a dye study in the Piscataqua River which will be a valuable tool in evaluating the extent of any impacts that would result from the relocation of the outfall, and will be sharing the report, when completed, with environmental and fishery officials in the State of Maine. The New Hampshire Department of Environmental Services is also working with the City of Portsmouth regarding the collection of additional water quality data that will be necessary to do a thorough water quality analysis.

The Region would only propose a permit authorizing the relocation of the outfall if it is clearly shown that such a discharge would attain water quality standards in both New Hampshire and Maine waters, including the protection of existing uses such as shell fishing. In this case, Maine has a formal role under Section 401(a)(2) of the Clean Water Act to ensure that its water quality standards are protected, and we expect to work closely with the Maine Department of Environmental Protection. Consistent with federal regulations, any draft permit would be released for a public comment period of a minimum of 30 days, during which any interested party may submit comments. EPA will be sure that Ms. Howell receives notice of any draft permit for a City of Portsmouth wastewater treatment works that EPA releases for public comment.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Ms. Michael Ochs in the Office of Government Relations at (617) 918-1066.

Sincerely,

H. Curtis Spalding
Regional Administrator

10-600-0390

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 3 1 2009

THE ADMINISTRATOR

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

I am pleased to support the charter renewal of the Local Government Advisory Committee (LGAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The LGAC is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After the two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App.2 § 14).

If you have any questions or comments, please contact me or your staff may contact Lynda Beck in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3637.

Sincerely,

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

LOCAL GOVERNMENT ADVISORY COMMITTEE

1. Committee's Official Designation (Title):

Local Government Advisory Committee.

2. Authority:

This charter renews the Local Government Advisory Committee (LGAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 . The LGAC is in the public interest and supports EPA in performing its duties and responsibilities under miscellaneous statutes.

3. Objectives and Scope of Activities:

Federal environmental statutes provide for the delegation of programs to State and local governments. The States and local governments are ultimately responsible for the implementation of many public health and environmental programs that ensure that citizens have clean air and water, safe drinking water, and environmentally sound waste disposal. The LGAC is a policy-oriented committee. To ensure that the Agency's regulations, policies, guidance, and technical assistance actually improve the capacity of local governments to carry-out these programs, the LGAC provides policy advice and recommendations to EPA on:

a. Changes needed to allow flexibility and innovation and to accommodate local needs without compromising environmental performance, accountability, or fairness;

b. Exploring ways to improve performance measurement and speed dissemination of new environmental protection techniques and technologies among local governments;

c. Improvements to program management, and the regulatory planning and development processes to involve local governments more effectively as partners in environmental management;

d. Ways in which EPA and states can help local governments strengthen their capacity to promote environmental quality, including public access, community right-to-know, and performance measurement;

e. Projects to help local governments deal with the challenge of financing environmental protection infrastructure; and,

f. EPA's policies, procedures, and practices regarding local government (development, implementation, and evaluation) including how those policies, procedures and practices further the Administrator's priorities regarding environmental justice, climate change and energy, and sustainability.

4. **Description of Committees Duties:**

The duties of LGAC are solely to provide policy advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

The LGAC will submit advice and recommendations, and report to the EPA Administrator, through the Office of Congressional and Intergovernmental Relations.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Congressional and Intergovernmental Relations, Office of the Administrator.

7. **Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the LGAC is $600,000 which includes 3.0 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings and each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so.

9. **Estimated Number and Frequency of Meetings:**

LGAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the LGAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552b of Title 5. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the LGAC.

10. **Duration and Termination:**

The LGAC will be examined annually and will exist until the EPA Administrator determines the committee is no longer needed. This Charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the Charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The LGAC will be composed of approximately thirty (30) members. Members will serve as Representative members of non-Federal interests or as Regular Government Employees (RGE). Members are selected to represent broad points of view and constituencies, sectors, interests, and groups, associations, or classes of individuals. In selecting members, EPA will consider candidates from local elected and appointed officials representing: State, counties, cities, and other local governments; small communities; tribal governments. EPA will consider candidates such as mayors, city council members, county commissioners and executives, city managers, small town officials, public works and environmental directors, tribal governments, and State officials including legislators and environmental directors, and public interest groups.

12. Subgroups:

EPA, or the LGAC with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the LGAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act and subject to the Freedom of Information Act, 5 U.S.C. 552.

_____
Agency Approval Date

_____
GSA Consultation Date

_____
Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

10-000-4758

MAR 31 2010

THE ADMINISTRATOR

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

I am pleased to support the charter renewal of the Human Studies Review Board (HSRB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The HSRB is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After the two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App.2 § 14).

If you have any questions or comments, please contact me or your staff may contact Lynda Beck in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3637.

Sincerely,

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

HUMAN STUDIES REVIEW BOARD

1. **Committee's Official Designation (Title):**

Human Studies Review Board

2. **Authority:**

This charter renews the Human Studies Review Board (HSRB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. HSRB is in the public interest and supports EPA in performing its duties and responsibilities.

3. **Objectives and Scope of Activities:**

HSRB will provide advice, information, and recommendations on issues related to scientific and ethical aspects of human subjects research.

The major objectives are to provide advice and recommendations on:

a. Research Proposals and Protocols;

b. Reports of completed research with human subjects; and

c. How to strengthen EPA's programs for protection of human subjects of research.

4. **Description of Committees Duties:**

The duties of the HSRB are solely to provide scientific or policy advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

HSRB will report to the EPA Administrator through EPA's Science Advisor.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of the Science Advisor (OSA).

7. Estimated Annual Operating Costs and Person Years:

The estimated annual operating cost of HSRB is $850,000 which includes 3.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The Committee expects to meet approximately four (4) times a year. Meetings may occur approximately once every three (3) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, HSRB will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of section 552b of title 5, United States Code. Interested persons may attend meetings, appear before the Board as time permits, and file comments with the HSRB.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The HSRB will be composed of approximately twelve (12) members. Members will serve either as Special Government Employees (SGE) or Regular Government Employees (RGE). In selecting members, EPA will consider candidates from the environmental scientific/technical fields, human health care professionals, academia, industry, public and private research institutes or organizations, other governmental agencies, and other relevant interest areas. The HSRB membership will include experts in relevant scientific or technical disciplines such as bioethics, biostatistics, human health risk assessment and human toxicology.

12. Subgroups:

EPA, or HSRB with EPA's approval, may form HSRB subcommittees or workgroups for any purpose consistent with this charter. Members of HSRB subcommittees or workgroups will serve either as Special Government Employees or regular government employees. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the HSRB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act and subject to the Freedom of Information Act, 5 U.S.C. 552.

March 4, 2010
Agency Approval Date

MAR 31 2010
Date Filed with Congress

10-061-2034

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

July 19, 2010

Administrator Lisa P. Jackson
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We wanted to bring your attention to an important issue that we have been focusing on for some time that could save your agency and Americans significant tax dollars. As you know, information technology (IT) has changed the way agencies operate. Over the past decade or so IT has transformed the way agencies accomplish their missions, allowing them to be more efficient and effective. Federal agencies' track records, however, of keeping costs down and delivery dates firm when it comes to IT investments is lacking. In fact, many of these challenges are long-standing and deep-rooted issues that require your attention.

In fiscal year 2009, the federal government spent nearly $79 billion on IT projects to accomplish their missions, including keeping our troops safe overseas, our borders secure at home, and our government transparent and accountable to taxpayers. In fact, the Government Accountability Office (GAO) estimates that federal agencies will likely invest about the same amount, if not more, on new and ongoing IT investments in the next few years in order to continually improve the way agencies operate.

Unfortunately, not all of that $79 billion is spent as wisely as we would hope or expect. Poor agency oversight has led to hundreds of millions of dollars being wasted on IT programs that were planned poorly from the start and managed even worse. For example, the Census Bureau's mismanagement led to a costly malfunction of handheld data collection devices used by Census workers to conduct the recent 2010 Census. The data collection devices did not perform as promised, causing the Census Bureau to spend an additional $1 billion to revert the 2010 Census non-response follow-up operations to a paper-based system.

Furthermore, the Internal Revenue Service struggled for more than 20 years and spent over $4 billion to modernize its IT systems to more efficiently process annual tax returns before they finally decided in June 2009 to abandon the program entirely. Even worse, over the past few years the Department of Homeland Security invested $52 million toward a financial system that failed and they are now starting from scratch with

a new project that is estimated to potentially cost between $450 million and $1 billion. These are only a few examples of IT investments that experienced poor planning and faulty project oversight.

To address these challenges, we authored the Information Technology Investment Oversight Enhancement and Waste Prevention Act of 2009, which was approved by the U.S. Senate on May 20, 2010. Our bill would address many of the problems highlighted above by requiring agencies to properly plan projects from the outset and to conduct an independent cost estimate for projects prone to mismanagement. Further, our bill gives the Office of Management and Budget (OMB) a unique weapon that would help root out problems and put IT projects back on the right track before they spiral out of control. The bill also would require agencies to alert Congress when an IT investment significantly exceeds the expected cost estimate and mandates that the agency conduct a rigorous analysis to get it back on track. Lastly, the bill calls for OMB to create a website that provides an accurate analysis of all major IT investments.

We were pleased, then, when OMB took our advice to create a website and launched the "IT Dashboard" on June 30, 2009. The IT Dashboard is a one-stop clearinghouse of information about IT investments, which enables Congress and the taxpayers to hold agencies accountable for results. The IT Dashboard has been critical in stressing the importance of properly planning and managing the significant investments the federal government makes in technology projects. In fact, just last week OMB updated and improved its IT Dashboard to help better track complex investments and make it easier to highlight those that may need high-level attention.

Today, the Government Accountability Office (GAO) released its first report on the effectiveness of the IT Dashboard and found that the website has increased the level of transparency and oversight of IT investments. GAO also concluded that not all agencies were providing accurate and timely information on the status of their IT projects. Specifically, the GAO reported that some agencies fail to regularly provide updated data, provide conflicting or inaccurate cost and schedule information, and make it difficult to understand whether an investment was on target or needed some serious help. This needs to change because it deprives OMB, Congress and taxpayers the opportunity to hold agencies accountable for spending their money wisely. Accurate and timely data on IT projects are key to effective oversight and prevention of cost and schedule overruns.

To this end, we urge you to ensure your agency provides the necessary focus and attention on this important issue. We ask that you work with your staff to prioritize the planning and management of major IT investments and ensure your agency's data on IT investments is accurately portrayed on the IT Dashboard. We have asked GAO to continue to closely monitor the IT Dashboard to determine whether agencies are improving the accuracy and reliability of this cost and schedule information.

We appreciate your attention to this important matter and look forward to continuing to work with you on this and many other issues. We would like you to provide, by August 9 in writing, information about what your agency is doing to more regularly update accurate data on the IT Dashboard. If you have any questions on this request, feel free to reach out to us directly or our staff contacts, Teresa Neven at (202) 224-4751 or Erik Hopkins at (202) 224-7195.

Sincerely,

Susan M Collins

Susan M. Collins
Ranking Member

Tom Carper

Tom Carper
Chairman
Federal Financial Management,
Government Information, Federal
Services, and International Security

United States Senate
Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510
Phone: 202-224-4751
Fax: 202-224-9603

TO: Secretary or Agency Head

OFFICE:

FAX: ( )

FROM: Sens. Carper and Collins

PHONE:

DATE: July 19, 2010

PAGES (*including this cover sheet*): 4 pages

Please confirm receipt.

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the Committee immediately (202/224-4751) and return the original message to the Committee at 340 Dirksen Senate Office Building, Washington, D.C. 20510 via United States Post Office.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 11 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

The Honorable Susan M. Collins
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of July 19, 2010, to Administrator Lisa Jackson regarding the U.S. Environmental Protection Agency's IT investments. I am pleased to report that EPA has developed several targeted efforts for regularly updating accurate data on the IT Dashboard.

Since the inception of the IT Dashboard, EPA has made consistent strides to increase the timeliness of our data reported on the Dashboard. We have re-examined our current practices, created new processes and procedures, conducted training, and developed new templates to support these efforts. As a result, we have already been able to reduce our reporting lag by 30 days. We regularly monitor the implemented changes and analyze the effectiveness of our internal processes to make continual improvements in accuracy and reliability.

In the past, we have taken measures to address the accuracy and consistency of our data. However, going forward, we are interpreting accuracy in a more comprehensive manner to include completeness, clarity, and consistency across the portfolio. We are looking at all investments regardless of whether issues or anomalies have been identified in the Government Accountability Office reports or in the Office of Management and Budget IT Dashboard. To address completeness of data, we are currently going line-by-line through each investment to ensure there is data for all reportable fields on the IT Dashboard. To ensure the information displayed on the IT Dashboard is clear and to minimize the chance of misinterpretation, we have begun to conduct quality assessments that take into account the various audiences that will view and utilize the IT Dashboard.

We are also working with multiple partners, including OMB, the Interagency IT Dashboard Transparency Workgroup, and other agencies throughout the federal government, to research best practices in order to develop a consistent Agency approach for developing and reporting accurate dashboard data.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact David Piantanida, EPA Office of Congressional and Intergovernmental Relations, at (202) 564-8318.

Sincerely,

Malcolm D. Jackson
Assistant Administrator
and Chief Information Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

10-001-0098

SEP 3 0 2010

OFFICE OF
CHIEF FINANCIAL OFFICER

The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

On behalf of the Environmental Protection Agency (EPA), I am pleased to provide you with the *FY 2011-2015 EPA Strategic Plan*, a periodic update as required by the Government Performance and Results Act of 1993 (GPRA).

The *FY 2011-2015 EPA Strategic Plan (Plan)* identifies the measurable environmental and human health outcomes the public can expect over the next five years and describes how we intend to achieve those results. In providing a blueprint for accomplishing our priorities, the *Plan* presents five strategic goals, accompanied by five cross-cutting fundamental strategies, designed to adapt our work to meet today's growing environmental protection needs. The *Plan* also reflects the contributions of our federal, tribal, state, and local partners as well as the importance of our ongoing collaboration with our partners and stakeholders in achieving the progress we expect. It also represents a commitment to our core values of science, transparency, and the rule of law in managing our programs.

For your convenience, the full text of the Plan is accessible electronically through http://www.epa.gov/ocfo/plan/plan.htm. For additional copies of the *Plan*, please contact me or have your staff contact Clara Jones in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701 or Jones.Clara@epa.gov.

In this our 40th anniversary year, EPA celebrates its founding, but faces some of the most far-reaching and complex environmental challenges in its history. We expect that the principles and strategic outlook of this *Plan* will guide us wisely in our work now and in the years to come.

Sincerely,

Barbara J. Bennett
Chief Financial Officer

Enclosure

United States
Environmental Protection
Agency

Draft Fiscal Year 2011-2015 EPA Strategic Plan

September 16, 2010

For Administrator's Review

U.S. Environmental Protection Agency

Washington, DC 20460

EPA's Mission:

To Protect Human Health and the Environment

Strategic Goals

Taking Action on Climate Change and Improving Air Quality

Protecting America's Waters

Cleaning Up Communities and Advancing Sustainable Development

Ensuring the Safety of Chemicals and Preventing Pollution

Enforcing Environmental Laws

Cross-Cutting Fundamental Strategies

Expanding the Conversation on Environmentalism

Working for Environmental Justice and Children's Health

Advancing Science, Research, and Technological Innovation

Strengthening State, Tribal, and International Partnerships

Strengthening EPA's Workforce and Capabilities

Core Values: Science, Transparency, Rule of Law

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Message from Administrator Lisa P. Jackson

In the time since I began my tenure as Administrator of the U.S. Environmental Protection Agency I have been both challenged and inspired by the difficult issues we face and the talent and dedication of our extraordinary work force. There is no doubt the EPA is on the job. We have made exceptional progress in protecting the environment of American communities and restoring the trust of the American people. And we have made a number of historic environmental advances along the way. The year 2010 marks the EPA's 40th anniversary. It is a moment of celebration, but also a moment when we face some of the most complex and far-reaching environmental challenges in the history of our Agency, our nation, and our planet. It is critical that we work harder and smarter and look further ahead.

The U.S. Environmental Protection Agency's *FY 2011-2015 Strategic Plan* provides a blueprint for accomplishing our priorities for the next five years. This plan presents five strategic goals for advancing our environmental and human-health mission outcomes, accompanied by five cross-cutting fundamental strategies that seek to adapt the EPA's work inside and outside of the Agency and meet the growing environmental protection needs of the day. To follow the Administration's focus on strengthening programs and achieving results, EPA is implementing Priority Goals to advance progress towards our five strategic goals. We will continue to affirm the core values of science, transparency, and the rule of law in addressing these priorities, many of which we have served in the last two years and will continue to work toward in the future. These are the most urgent issues we must confront now through 2015.

As we prepare this *Plan*, we are also responding to one of the worst environmental disasters this country has experienced, the Deepwater Horizon BP oil spill. This spill has devastated the ecological and economic health of the Gulf Coast communities. Following the emergency response with a sustained, effective recovery and rebuilding effort will require significant commitments of resources, scientific and technical expertise, and coordination with a range of partners in the months and years ahead. This *Strategic Plan* offers a solid foundation for EPA's long-term response to the impacts of the Deepwater Horizon BP oil spill. As President Obama has said, the government is "going to do everything in our power to protect our natural resources, compensate those who have been harmed, rebuild what has been damaged, and help this region persevere like it has done so many times before." The EPA will work tirelessly to address the environmental and human-health effects and set the Gulf Coast back on the path to recovery.

The EPA's Strategic Goals

Taking Action on Climate Change and Improving Air Quality: American communities face serious health and environmental challenges from air pollution and the growing effects of climate change. During my first year as Administrator, the EPA finalized an endangerment finding on greenhouse gases, proposed the first national rules to reduce greenhouse gas emissions under the Clean Air Act, and initiated a national reporting system for greenhouse gas emissions. All of these advances signaled historic progress in the fight against climate change. Climate change must be considered and integrated into all aspects of our work. While the EPA stands ready to help Congress craft strong, science-based climate legislation that addresses the

spectrum of issues, we will assess and potentially develop regulatory tools as warranted under law using the authority of the Clean Air Act.

We have strengthened the ambient air-quality standards for nitrogen dioxide and sulfur dioxide and proposed stronger standards for ozone, which will help millions of Americans breathe easier and live healthier. We also are developing a comprehensive strategy for a cleaner and more efficient power sector, with strong and achievable emission-reduction goals for sulfur dioxide, nitrogen oxide, mercury, and other air toxics. Strengthening the ambient air-quality standards consistent with the latest scientific information and gaining additional reductions in air toxics from a range of industrial facilities will significantly improve air quality and reduce risks to communities across the country. Improved monitoring, timely and thorough permitting, and vigorous enforcement are our key tools for air-quality improvement.

Protecting America's Waters: While much progress has been made, America's waters remain imperiled. From nutrient loadings and stormwater runoff to invasive species and drinking water contaminants, water quality and enforcement programs face complex challenges that demand both traditional and innovative strategies. We will work hand-in-hand with states and tribes to develop nutrient limits and intensify our work to restore and protect the quality of the nation's streams, rivers, lakes, bays, oceans, and aquifers. The EPA also will use our authority to protect and restore threatened natural treasures such as the Great Lakes, the Chesapeake Bay, and the Gulf of Mexico; to address our neglected urban rivers; to ensure safe drinking water; and, to reduce pollution from nonpoint and industrial dischargers. We will initiate measures to address post-construction runoff, water-quality impairments from surface mining, and drinking-water contamination.

Cleaning Up Communities and Advancing Sustainable Development: Using all the tools at our disposal, including targeted enforcement and compliance efforts, the EPA will continue to make our communities safer and healthier. We are accelerating our actions through our Superfund program to confront significant local environmental challenges. The collapse of a coal ash impoundment in Kingston, Tennessee focused EPA's attention on how these disposal facilities are managed nationwide. In response, EPA proposed options for the nation's first rules to address the risks from the disposal of coal ash generated by coal-fired power plants. By maximizing the potential of our brownfields program to spur environmental cleanups and by fostering stronger partnerships with stakeholders affected by our cleanups, we are moving toward our goal of building sustainable, healthy, economically vibrant communities. And by strengthening our work with tribal communities, we are advancing our efforts to build environmental-management capacity and program implementation in Indian country.

Ensuring the Safety of Chemicals and Preventing Pollution: One of our highest priorities is to make long-overdue progress in ensuring the safety of the chemicals that make up the building blocks of our modern society. Increasingly the chemicals used to make our products, build our homes, and support our way of life end up in the environment and in our bodies. Last year, the Administration announced principles for modernizing the law under which we assess and regulate chemicals, the Toxic Substances Control Act (TSCA), enacted more than 30 years ago by Congress. To move forward, we are shifting our focus to filling in critical missing information on the chemicals most widely produced and used in commerce, and addressing

chemicals that pose unreasonable risk to the environment or human health. Pending legislative action by Congress, EPA is strengthening its chemical safety program by acting in coordination with the relevant federal agencies to maximize use of current TSCA authorities supported by the best available science in aggressively assessing and managing the risks of chemicals used in consumer products, the workplace, and the environment. Additionally, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA and the states register or license pesticides for use in the U.S. The EPA also is taking steps to increase transparency and public access to TSCA-related chemical information, committing to review and, where appropriate, challenge and declassify Confidential Business Information (CBI) claims for hundreds of annual new submissions, as well as the more than 20,000 previous submissions through FY 2015. By encouraging pollution prevention, we will promote the use of safer chemical alternatives, implement conservation techniques, promote efficient reuse of materials, and better align the chemical-production processes with the principles of green chemistry.

Enforcing Environmental Laws: Effective, consistent enforcement is critical to achieving the human-health and environmental benefits expected from our environmental laws. The EPA, through the rule of law, will ensure compliance with environmental requirements and, as warranted, will employ vigorous and targeted civil and criminal enforcement. We will achieve significant environmental results by focusing our efforts on the most serious water, air and chemical hazards and by working closely with states and tribes. We will protect the public by criminally prosecuting willful, intentional, and serious violations of federal environmental laws.

The EPA's Cross-Cutting Fundamental Strategies

As a companion to our strategic goals, which chart the Agency's direction for achieving mission results over the next five years, the EPA's five cross-cutting fundamental strategies set explicit expectations for changing the way we approach our work. These five strategies will inform the work of every program and regional office and help us meet the challenges we face today.

Expanding the Conversation on Environmentalism: Every American has a stake in clean air and water, chemical safety, restoring contaminated industrial and mining sites, and strong enforcement of environmental statutes. Every community, whether wealthy or working class, urban or rural, high tech or industrial, needs to be part of the conversation. We will take broad steps to expand the conversation on environmentalism to communities across America, building capacity, increasing transparency and listening to the public. We will engage citizens to hear all the voices that must be part of our nation's dialogue on environmental issues.

Working for Environmental Justice and Children's Health: We will work alongside entities that bear important responsibilities for the day-to-day mission of environmental protection and strengthen oversight to ensure programs are consistently delivered nationwide. We will use a variety of approaches, including regulations, enforcement, research, community-based programs, and outreach to protect children, low-income, minority, and tribal populations disproportionately impacted by environmental and human health hazards.

Advancing Science, Research, and Technological Innovation: EPA will advance the scientific research and technological innovation that are essential to enhancing our ability to protect human health and the environment.

Strengthening State, Tribal, and International Partnerships: We will strengthen partnerships with states, tribes, and the international community. Hand-in-hand with these partnership efforts and through real and inclusive environmentalism, we will address pollution problems and protect human health.

Strengthening the EPA's Workforce and Capabilities: We will adopt improved, innovative, and creative management approaches and exemplify stewardship, transparency, and accountability in addressing increasingly complex environmental and human-health challenges. We will foster a culture of excellence and provide the infrastructure, technology, training, and tools to support a talented, diverse, and highly motivated workforce that support the Administration's human capital and acquisition priorities.

Forty years after the beginning of this Agency, we at the EPA have a rare opportunity to spark a new era of environmental and health protection. The American people and countries around the world look to us for leadership. It is up to us to embrace this moment, so our children and grandchildren can have a cleaner, healthier future, and we can look back with pride on our accomplishments. We will face new challenges, new opportunities, and new possibilities for achieving our vision of a cleaner, greener, and more sustainable environment. I have unlimited confidence in the talent and spirit of our workforce, and I know we will meet our challenges head-on, as One EPA. Fueled by our energy, our ideas, and our passion, this *Strategic Plan* will help guide our path toward success.

[Administrator's Signature]

Introduction

Recent events in the Gulf Coast region and elsewhere have brought to the forefront how much we value our environment. Our homes, our livelihoods, our health and that of our children depend on clean water to drink, clean air to breathe, and healthy ecosystems that produce our food and the raw materials that support modern life. The U.S. Environmental Protection Agency (EPA) and its mission to protect human health and the environment have never been more vital than they are today.

The *Fiscal Year (FY) 2011-2015 EPA Strategic Plan* responds to this increasing degree of environmental awareness and the challenges that lie ahead.[1] We have created a streamlined, executive-level *Plan* that sets the Agency's direction, advances the Administrator's priorities, and will be used routinely by the Agency's senior leadership as a management tool. We have sharpened our strategic goals and objectives and offer a more focused set of strategic measures to better inform our understanding of progress and challenges alike in managing our programs. Our new cross-cutting fundamental strategies are directed at refocusing and tangibly changing the way we carry out our work. We anticipate that this new approach will foster a renewed commitment to accountability, transparency, and inclusion.

Our five strategic goals represent a simplified and meaningful approach to our work and reflect the results we hope to achieve on behalf of the American people:

Goal 1: Taking Action on Climate Change and Improving Air Quality
Goal 2: Protecting America's Waters
Goal 3: Cleaning Up Communities and Advancing Sustainable Development
Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution
Goal 5: Enforcing Environmental Laws

To achieve the long-term goals and associated objectives and strategic measures set out in this *Plan,* we will track progress through annual performance measures, which are presented in EPA's *Annual Performance Plans and Budgets*. We will report on our performance against these annual measures in our *Annual Performance Reports*, and use this performance information as we establish priorities, develop future budget submissions, and manage programs. Additionally, EPA reports on High Priority Performance Goals (Priority Goals), a new component of this Administration's performance management framework. Priority Goals are specific, measurable, ambitious, near-term targets that align with our long-term strategic measures and annual measures. The Priority Goals communicate the performance improvements we will accomplish relative to our priorities using existing legislative authority and resources. The Priority Goals constitute 18- to 24-month operational targets the Agency will work to accomplish, distinguishing the Priority Goals from the longer-term measures. This process will come full circle as we evaluate these performance data to develop future *Strategic Plans.*

Our measures for the *FY 2011-2015 EPA Strategic Plan* draw upon some of the indicators contained in *EPA's 2008 Report on the Environment* (ROE).[2] The indicators help us to monitor trends in environmental conditions and environmental influences on human health. Our efforts to develop the report and regularly update the indicators have advanced our performance

measurement work by bringing together existing and new analytical information on the environment and human health.

During the five-year horizon of this *Plan*, we know that we will face unanticipated challenges and opportunities that will affect our ability to achieve our objectives and the specific measurable results that we have described. In particular, we recognize that numerous entities vital to our success—federal [3], state, tribal, and local governments, and cooperating partners and stakeholders—are operating under resource constraints that could impede our joint progress. This *Plan* provides the framework to address these challenges and make necessary adjustments.

This *FY 2011-2015 EPA Strategic Plan* sets forth our vision and commitment to preserve the environment for future generations and to protect human health in the places where people live, work, learn, and play. It is our hope that you will join us as we undertake the important work that lies ahead.

Consultation Efforts

The Government Performance and Results Act of 1993 directs all federal departments and agencies to consult with parties interested in or likely to be affected by a strategic plan. Consultation with EPA's federal, state, local, and tribal government partners and our many stakeholders is an integral part of the Agency's strategic planning process. To that end, EPA:

- Engaged with key partners and co-regulators throughout the effort to develop the *Draft Plan*.
- Significantly expanded our outreach efforts for public review of the *Draft FY 2011-2015 EPA Strategic Plan* to enhance transparency and inclusion. We issued, for the first time, a news release in both English and Spanish and a *Federal Register Notice* and used www.regulations.gov to encourage feedback on the *Draft Plan*.
- Sent notification letters to over 800 organizations and individuals to request input. These entities included leaders of the Agency's Congressional authorizing and appropriations committees; states and state associations; all federally-recognized tribes; tribal organizations; local government representatives; other federal agencies; public health organizations; environmental, public interest, and public policy groups; and representatives of the regulated community.
- Established an on-line discussion forum to engage with the public on implementing the cross-cutting fundamental strategies to tangibly change the way we work. Comments received through the discussion forum can be viewed at https://blog.epa.gov/strategicplan.

Our efforts to significantly expand our outreach for public review of the *Draft Plan* resulted in over 500 public comments, compared to approximately 50 public comments for prior *Draft Strategic Plans*.

End Notes:

[1] The *Fiscal Year 2011-2015 EPA Strategic Plan* covers the timeframe from October 1, 2010 through September 30, 2015 unless otherwise noted.

[2] EPA electronic Report on the Environment is available at http://www.epa.gov/roe.

[3] Federal entities with whom we expect continued cooperation or coordination for EPA's five strategic goals include: Agriculture, Army Corps of Engineers, Commerce, Consumer Product Safety Commission, Defense, Education, Energy, Federal Emergency Management Agency, General Services Administration, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, National Aeronautics and Space Administration, National Science Foundation, Nuclear Regulatory Commission, Small Business Administration, State, Transportation, Treasury, Tennessee Valley Authority, U.S. Agency for International Development, and U.S. Trade Representative.

Goal 1:
Taking Action on Climate Change and Improving Air Quality

Reduce greenhouse gas emissions and develop adaptation strategies to address climate change and protect and improve air quality.

Objectives:

Address Climate Change. Reduce the threats posed by climate change by reducing greenhouse gas emissions and taking actions that help communities and ecosystems become more resilient to the effects of climate change.

Improve Air Quality. Achieve and maintain health-based air pollution standards and reduce risk from toxic air pollutants and indoor air contaminants.

Restore the Ozone Layer. Restore the earth's stratospheric ozone layer and protect the public from the harmful effects of ultraviolet (UV) radiation.

Reduce Unnecessary Exposure to Radiation. Minimize unnecessary releases of radiation and be prepared to minimize impacts should unwanted releases occur.

Strategic Measures associated with this Goal are on pages 51 through 54.

Climate change poses risks to human health, the environment, cultural resources, the economy, and quality of life.[1] These changes are expected to create further challenges to protecting human health and welfare. Many effects of climate change are already evident and will persist into the future regardless of future levels of greenhouse gas (GHG) emissions. Potential climate change impacts may include, for example, increased smog levels in many regions of the country, making it more difficult to attain or maintain clean air. A rise in sea level or increased precipitation intensity may increase flooding, which would affect water quality, as large volumes of water can transport contaminants and overload storm and wastewater systems. In order to protect human health and the environment, EPA must recognize and consider the challenge a changing climate poses to the environment.

Since passage of the Clean Air Act Amendments in 1990, nationwide air quality has improved significantly.[2] Despite this progress, about 127 million Americans lived in counties that did not meet air quality standards for at least one pollutant in 2008. Long-term exposure to air pollution can cause cancer and damage to the immune, neurological, reproductive, cardiovascular, and respiratory systems.[3] Because people spend much of their lives indoors, the quality of indoor air is also a major concern. Twenty percent of the population spends the day indoors in elementary and secondary schools, where problems with leaky roofs and with heating, ventilation, and air conditioning systems can trigger a host of health problems, including asthma and allergies. Exposure to indoor radon is responsible for an estimated 20,000 premature lung cancer deaths each year.[4]

Reduce GHG Emissions and Develop Adaptation Strategies to Address Climate Change

EPA's strategies to address climate change support the President's GHG emissions reduction goals. EPA and its partners will reduce GHG emissions domestically and internationally through cost-effective, voluntary programs while pursuing additional regulatory actions as needed. Our efforts include:

- Developing and implementing a national system for reporting GHG emissions. (Implementing the mandatory GHG reporting rule is one of the Agency's Priority Goals.)[5]
- Issuing new standards to reduce emissions from cars and light-duty trucks for model years 2012 through 2016, extending that program to model year 2017 and beyond, and creating a similar program to reduce GHGs from medium- and heavy-duty trucks for model years 2014-2018. (Implementing the light-duty GHG rule is one of the Agency's Priority Goals.)[6]
- Developing standards to reduce GHG emissions from nonroad sources such as marine and aircraft and land-based nonroad equipment and locomotives.
- Implementing permitting requirements for facilities that emit large amounts of GHGs to encourage design and construction of more efficient and advanced processes that will contribute to a clean energy economy.
- Implementing refocused voluntary programs that maximize GHG reductions through the greater use of energy-efficient technologies, products, and practices, and promoting energy and transportation policies that benefit the environment and human health.
- Collaborating with state, local, and tribal governments on regulatory and policy initiatives, technical assistance, and voluntary programs related to climate change mitigation and adaption.
- Collaborating with countries and other international partners to reduce methane emissions and deliver clean energy to markets around the world through the Global Methane Initiative.
- Developing a comprehensive report to Congress on black carbon that will provide a foundation for evaluating future approaches to black carbon mitigation.
- Pursuing a sustainable, life-cycle approach to managing materials.
- Identifying and assessing substitute chemical and ozone-depleting substances and processes for their global-warming potential.
- Educating the public about climate change and actions people can take to reduce GHG emissions.

Adaptation initiatives aim to increase the resilience of communities and ecosystems to climate change by increasing their ability to anticipate, prepare for, respond to, and recover from the impacts of climate change. Many of the outcomes EPA is working to attain are sensitive to weather and climate. Consequently, every action EPA takes, including promulgating regulations and implementing programs, should take these fluctuations into consideration. For example, EPA models the ways in which weather affects air quality when it develops air quality standards, and cannot assume that climate is constant, an assumption typically made in the rulemaking process.

EPA must adapt and plan for future changes in climate, work with state, tribal, and local partners, and continue to collaborate with the US Global Change Research Program and the Interagency Task Force on Climate Change Adaptation.[7] The Agency must incorporate the anticipated, unprecedented changes in climate into its programs and rules, drawing on the critical information and tools provided by EPA researchers, to continue to fulfill statutory, regulatory, and programmatic requirements.

Improve Air Quality

Taking into account the most current health effects research findings,[8] EPA recently completed new, more health-protective standards for lead, sulfur dioxide, and nitrogen dioxide. We are in the process of reviewing the ozone, particulate matter, and carbon monoxide standards. Over the next five years, we will work with states and tribes to develop and implement plans to achieve and maintain these standards. Our research provides the tools and information necessary for EPA, states, and tribes to implement air quality standards and controls.

In 2011, we expect to complete and begin implementing a rule to replace the Clean Air Interstate Rule that was remanded to us by the courts in 2008. Strengthening the standards and decreasing the emissions that contribute to interstate transport of air pollution will help many areas of the country attain the standards and achieve significant improvements in human health. As we implement the standards, we will do so in a way that protects disproportionately-impacted low-income and minority communities. We are also working with partners and stakeholders to improve the overall air quality management system and to address air quality challenges expected over the next 10 to 20 years. These efforts include improving the state implementation plan approval process, implementing a national training strategy, and developing effective air quality strategies that address multiple pollutants and consider the interplay between air quality and factors such as land use, energy, transportation, and climate.

We will address emissions from vehicles, engines, and fuels through an integrated strategy that combines regulatory approaches that take advantage of technological advances and cleaner fuels with voluntary programs that reduce vehicle, engine, and equipment activity and emissions. We are working with refiners, renewable fuel producers, and others to implement regulations to increase the amount of renewable fuel blended into gasoline. Through the National Clean Diesel Campaign, we support diesel emission reductions that can be achieved through such actions as switching to cleaner fuels; engine retrofit, repair, and replacement; and idle reduction.

Air toxics are both widespread and community-specific. They are emitted by large industry, small businesses, motor vehicles, and many other common activities. While certain chemicals are ubiquitous throughout the country, in some areas of concentrated industrial and/or mobile source activity, concentrations may be significantly greater. EPA will continue to set and enforce control technology-based air toxics emissions standards and, where needed, amend those standards to address residual risk and technology advancements.

EPA is developing a strategy aimed at reducing toxic air pollution from stationary sources in a way that targets priority categories of sources, reduces pollution in communities, utilizes a more cost-effective 'sector-based' approach, and provides tools to help communities and other

stakeholders participate in rulemaking. These priority categories include petroleum refining, iron and steel, chemical manufacturing, utilities, non-utility boilers, oil and gas, and Portland cement. As part of this strategy, EPA will take advantage of the natural overlap of certain air toxics and criteria pollutant rules and coordinate the development and implementation of Maximum Achievable Control Technology (MACT) and New Source Performance Standards (NSPS) where it makes sense. Often, there are opportunities to control air toxic and criteria pollutants together. By coordinating MACT standard development for specific source categories with other rulemaking efforts, EPA can substantially reduce the resources needed to develop standards; provide more certainty and lower cost for industry; simplify implementation for states, local and tribal agencies; and, enhance cost-effective regulatory approaches.

Along with these regulatory efforts, EPA has a wide range of voluntary efforts to reduce emissions, including programs to reduce multi-media and cumulative risks. Through data from our national toxics monitoring network and from national and local assessments, we are able to better characterize risks and assess priorities. We work with state and local agencies, tribes, schools, and community groups to identify communities where air toxics pollution is occurring at unsafe levels and aggressively take action to reduce air toxics pollution within those areas.

Often the people most exposed to air pollutants are those most susceptible to the effects – the young, the elderly, and the chronically ill. To improve indoor air quality, EPA deploys programs that educate the public about indoor air quality concerns, including radon, and promotes public action to reduce potential risks in homes, schools, and workplaces. EPA also collaborates with state and tribal organizations, environmental and public health officials, housing and building organizations, school personnel who manage school environments, and health care providers, who treat children prone to or suffering disproportionately from asthma. The focus of these efforts is to support communities' efforts to address indoor air quality health risks. We also provide policy and technical support and financially assist states and tribes in developing and implementing effective radon programs.

Restore the Ozone Layer

EPA will implement programs that reduce and control ozone-depleting substances (ODS), enforce rules on their production, import, and emission, and facilitate the transition to substitutes that reduce GHG emissions and save energy. We will continue partnership programs that minimize the release of ODS and programs that educate the public about the importance of protection from ultra-violet radiation.

Reduce Unnecessary Exposure to Radiation

Recognizing the potential hazards of radiation, Congress charged EPA with the primary responsibility for protecting people and the environment from harmful and avoidable exposures. In fulfilling this responsibility, we will review and update our radiation protection regulations and guidance, operate the national radiation monitoring system, maintain radiological emergency response capabilities, oversee the disposal of radioactive waste at the Waste Isolation Pilot Plant, inspect waste generator facilities, and evaluate compliance with applicable environmental laws and regulations.

Applied Research

EPA's research efforts will focus on a number of air quality and climate areas over the next several years. In particular, EPA will:

- Conduct integrated science assessments of criteria air pollutants and provide new data and approaches for improving these assessments;
- Improve inventory and risk information to better inform Agency actions relative to air toxics;
- Promote resilience and adaptation by connecting air quality, water quality, and land use managers with climate change information and decision support tools;
- Promote systems research and life-cycle analysis in analyzing the health and environmental impacts of energy production and operation, including biofuels; and
- Investigate the influence of climate change on clean air, as well as the impacts of emissions from low-carbon fuels in transportation.

End Notes:

[1] Thomas R. Karl, Jerry M. Melillo, and Thomas C. Peterson (eds.). 2009. Global Climate Change Impacts in the United States (New York, New York: Cambridge University Press). Available at http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf.

[2] U.S. EPA, 2010. *Our Nation's Air-Status and Trends through 2008.* EPA-454/R-09-002. Available at http://epa.gov/airtrends/2010/index.html.

[3] U.S. EPA, 2007. *The Plain English Guide to the Clean Air Act.* EPA-456/K-07-001. Available at http://www.epa.gov/air/peg/peg.pdf.

[4] U.S. EPA, 2003. *EPA's Assessment of Risks from Radon in Homes.* EPA 402-R-03-003. Available at http://www.epa.gov/radon/pdfs/402-r-03-003.pdf

[5] Implementing the mandatory GHG reporting rule is one of the Agency's Priority Goals: By June 15, 2011, EPA will make publically available 100 percent of facility-level GHG emissions data submitted to EPA in accordance with the GHG Reporting Rule, compliant with policies protecting Confidential Business Information (CBI).

[6] Implementing the light-duty GHG rule is one of the Agency's Priority Goals: In 2011, EPA, working with DOT, will begin implementation of regulations designed to reduce the GHG emissions from light duty vehicles sold in the U.S. starting with model year 2012.

[7] The U.S. Global Change Research Program coordinates and integrates federal research on changes in the global environment and their implications for society. It was mandated by Congress in the Global Change Research Act of 1990 (P.L. 101-606). In 2009, the White House Council on Environmental Quality, the Office of Science and Technology Policy, and the National Oceanic and Atmospheric Administration initiated the Interagency Climate Change Adaptation Task Force. When the President signed the Executive Order on Federal Leadership in Environmental, Energy, and Economic Performance in October 2009, he called on the Task Force to develop federal recommendations for adapting to climate change impacts both domestically and internationally.

[8] U.S. EPA, 2006. *Air Quality Criteria for Lead (2006) Final Report*. EPA/600/R-05/144aF-bF. Available at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=158823.

U.S. EPA, 2008. *Integrated Science Assessment (ISA) for Sulfur Oxides–Health Criteria (Final Report)*. EPA/600/R-08/047F. Available at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=198843.

U.S. EPA, 2008. *Integrated Science Assessment for Oxides of Nitrogen–Health Criteria (Final Report)*. EPA/600/R-08/071. Available at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=194645.

Goal 2:
Protecting America's Waters

Protect and restore our waters to ensure that drinking water is safe, and that aquatic ecosystems sustain fish, plants, and wildlife, and economic, recreational, and subsistence activities.

Objectives:

Protect Human Health. Reduce human exposure to contaminants in drinking water, fish and shellfish, and recreational waters, including protecting source waters.

Protect and Restore Watersheds and Aquatic Ecosystems. Protect the quality of rivers, lakes, streams, and wetlands on a watershed basis, and protect urban, coastal, and ocean waters.

Strategic Measures associated with this Goal are on pages 55 through 59.

The nation's water resources are the lifeblood of our communities, supporting our economy and way of life. Across most of our country, we enjoy and depend upon reliable sources of clean and safe water. Several decades ago, however, many of our drinking water systems provided water to the tap with very limited treatment. Drinking water was often the cause of illnesses linked to microbiological and other contaminants. Many of our surface waters would not have met today's water quality standards. Some of the nation's rivers were open sewers, posing health risks, and many waterbodies were so polluted that safe swimming, fishing, and recreation were not possible.

We have made significant progress since enactment of the landmark Clean Water Act and Safe Drinking Water Act almost 40 years ago. Today, the enhanced quality of our surface waters and the greater safety of our drinking water are testaments to decades of environmental protection and investment, but serious challenges remain. Small drinking water systems are particularly challenged by the need to improve infrastructure and develop the capacity to meet new and existing standards. Tens of thousands of homes, primarily in tribal and disadvantaged communities and the territories, still lack access to basic sanitation and drinking water. The rate at which new waters are listed for water quality impairments exceeds the pace at which restored waters are removed from the list.

Pollution discharged from industrial, municipal, agricultural, and stormwater sources continue to be causes of water quality problems, but other significant contributors include loss of habitat and habitat fragmentation, hydrologic alteration, the spread of invasive species, and climate change. For many years, nonpoint source pollution, principally nitrogen, phosphorus, and sediments, has been recognized as the largest remaining impediment to improving water quality. Recent national surveys have found that our waters are stressed by nutrient pollution, excess sedimentation, and degradation of shoreline vegetation, which affect upwards of 50 percent of our lakes and streams.[1] Climate change will compound these problems, highlighting the urgency to evaluate with our partners options for protecting infrastructure, conserving water,

reducing energy use, adopting "green" infrastructure and watershed-based practices, and improving the resilience of infrastructural and natural systems, including utilities, watersheds, and estuaries.[2]

Over the next five years, EPA will work with states, territories, and tribes to safeguard human health, make America's water systems sustainable and secure, strengthen the protection of our aquatic ecosystems, improve watershed-based approaches, focus efforts in key geographic areas [3], and take action on climate change. EPA has established two Priority Goals for the revision of drinking water standards to strengthen public health protection [4] and the development of state watershed implementation plans in support of the Chesapeake Bay total maximum daily load called for in the Chesapeake Bay Protection and Restoration Executive Order.[5] Working with our partners, the Agency's effort to protect our waters is aimed at two objectives—protecting human health and protecting and restoring watersheds and aquatic ecosystems.

Protect Human Health

Sustaining the quality and supply of our water resources is essential to safeguarding human health. More than 290 million people living in the United States rely on the safety of tap water provided by public water systems that are subject to national drinking water standards. Over the next five years, EPA will help protect human health and make America's water systems sustainable and secure by:

- Financing public water systems infrastructure to protect and maintain drinking water quality;
- Strengthening compliance with drinking water standards;
- Continuing to protect sources of drinking water from contamination;
- Developing new and revising existing drinking water standards; and,
- Supporting states, tribes, territories, and local water systems in implementing these standards.

While promoting sustainable management of drinking water infrastructure, we will provide needed oversight and technical assistance to states, territories, and tribes so that their water systems comply with or exceed existing standards and are able to comply with new standards. We will also promote the construction of infrastructure that brings safe drinking water into the homes of small, rural, and disadvantaged communities and increase efforts to guard the nation's critical drinking water infrastructure.

In addition, EPA is actively working Agency-wide and with external partners and stakeholders to implement a new, multi-faceted drinking water strategy. It is designed to streamline decision making and expand protection to meet the needs of rural, urban, and other communities. This shift in approach seeks to address chemicals and contaminants by group, as opposed to working on a chemical-by-chemical basis; fostering the development of new drinking water treatment technologies; using the authority of multiple statutes; and, encouraging collaboration with states and tribes to share more complete data from monitoring at public water systems.

Science-based standards are essential to protect our public water systems, groundwater and surface waterbodies, and recreational waters. These standards are the foundation for tools to safeguard human health such as advisories for beaches, fish consumption, and drinking water. Over the next five years, we will expand that science to improve our understanding of emerging potential waterborne threats to human health. We will also increase efforts to protect and improve beach water quality for our communities, including the development of new criteria and testing methods that provide quicker results and enable faster action on beach safety.

Protect and Restore Watersheds and Aquatic Ecosystems

People and the ecological integrity of aquatic systems rely on healthy watersheds. EPA employs a suite of programs to protect and improve water quality in the nation's watersheds – rivers, lakes, wetlands, and streams – as well as in our estuarine, coastal, and ocean waters. In partnership with states, territories, local governments, and tribes, EPA's core water programs help:

- Protect, restore, maintain, and improve water quality by financing wastewater treatment infrastructure;
- Conduct monitoring and assessment;
- Establish pollution reduction targets;
- Update water quality standards;
- Issue and enforce discharge permits; and,
- Implement programs to prevent or reduce nonpoint source pollution.

Over the next five years, EPA will continue efforts to restore waterbodies that do not meet water quality standards, preserve and protect high quality aquatic resources, and protect, restore, and improve wetland acreage and quality. The Agency will improve the way existing tools are used, explore how innovative tools can be applied, and enhance efforts and cross-media collaboration to protect and prevent water quality impairment in healthy watersheds.

In partnership with states, tribes, and local communities, EPA is developing a clean water strategy that will outline objectives for advancing the vision of the Clean Water Act and actions EPA will take to achieve those objectives. The Agency will explore ways to improve the condition of the urban waterways that may have been overlooked or under-represented in local environmental problem solving. We will also work more aggressively to reduce and control pollutants that are discharged from industrial, municipal, agricultural, and stormwater sources, and vessels, as well as to implement programs to prevent and reduce pollution that washes off the land during rain events. By promoting "green" infrastructure and sustainable landscape management, EPA will help restore natural hydrologic systems and reduce pollution from stormwater events.[6]

EPA will also lead efforts to restore and protect aquatic ecosystems and wetlands, particularly in key geographic areas [3], to address complex and cross-boundary challenges. EPA is heading up a multi-agency effort to restore and protect the Great Lakes, one of America's great waters, through the Great Lakes Restoration Initiative.[7] In other parts of the nation, we will focus on nutrient pollution, which threatens the long-term health of important ecosystems such as the

Chesapeake Bay. Further, given the environmental catastrophe resulting from the Deepwater Horizon BP oil spill, EPA will take necessary actions to support efforts to remove oil from and restore the Gulf of Mexico ecosystem. EPA will provide assistance to other federal, state, tribal, and local partners as they work to restore the water, wetlands, beaches, and surrounding communities of this vital area. We will also begin to identify actions to respond and adapt to the current and potential impacts of climate change on aquatic resources, including the current and potential impacts associated with warming temperatures, changes in rainfall amount and intensity, and sea level rise.[8]

Applied Research

EPA's research will help ensure that natural and engineered water systems have the capacity and resiliency to meet current and future water needs for the range of water-use and ecological requirements. These efforts will help position the Agency to meet the future needs in water resources management by:

- Evaluating individual and groups of contaminants for the protection of human health and the environment;
- Developing innovative tools, technologies, and strategies for managing water resources (including stormwater); and,
- Supporting a systems approach for protecting and restoring aquatic systems. The development of watershed-level data, tools, and approaches is crucial to our ability to provide adequate and safe water resources.

End Notes:

[1] U.S. EPA, 2006. *Wadeable Streams Assessment: A Collaborative Survey of the Nation's Streams.* EPA 841-B-06-002. Available at http://www.epa.gov/owow/streamsurvey. See also EPA, 2010. *National Lakes Assessment: A Collaborative Survey of the Nation's Lakes.* EPA 841-R-09-001. Available at http://www.epa.gov/lakessurvey/pdf/nla_chapter0.pdf.

[2] Resilience is the ability of a system to absorb change and disturbance and still retain its fundamental function and/or structure.

[3] Key geographic areas in the national water program include the Chesapeake Bay, the Great Lakes, the Gulf of Mexico, the U.S.-Mexico Border region, the Pacific Islands, the Long Island Sound, the South Florida Ecosystem, the Puget Sound Basin, the Columbia River Basin, and the San Francisco Bay Delta Estuary. For more information on these programs and their performance measures, see the annual National Water Program Guidance, available at http://www.epa.gov/water/waterplan/index.html.

[4] EPA has developed a Priority Goal as part of the drinking water strategy efforts: Over the next two years, EPA will initiate review/revision of at least four drinking water standards to strengthen public health protection.

[5] EPA has developed a Priority Goal to support the Chesapeake Bay Executive Order: Chesapeake Bay watershed states (including the District of Columbia) will develop and submit Phase I watershed implementation plans by the end of CY 2010 and Phase II plans by the end of CY 2011 in support of EPA's final Chesapeake Bay Total Maximum Daily Load (TMDL) and

consistent with the expectations and schedule described in EPA's letters of November 4 and December 29, 2009, and June 11, 2010. For more information, see http://executiveorder.chesapeakebay.net.

[6] For information on managing wet weather with green infrastructure, see http://cfpub.epa.gov/npdes/home.cfm?program_id=298.

[7] Great Lakes Restoration Initiative, information available at http://greatlakesrestoration.us/.

[8] United States Global Change Research Program, information available at http://www.globalchange.gov/publications/reports/scientific-assessments/us-impacts.

Goal 3:
Cleaning Up Communities and Advancing Sustainable Development

Clean up communities, advance sustainable development, and protect disproportionately impacted low-income, minority, and tribal communities. Prevent releases of harmful substances and clean up and restore contaminated areas.

Objectives:

Promote Sustainable and Livable Communities. Support sustainable, resilient, and livable communities by working with local, state, tribal, and federal partners to promote smart growth, emergency preparedness and recovery planning, brownfield redevelopment, and the equitable distribution of environmental benefits.

Preserve Land. Conserve resources and prevent land contamination by reducing waste generation, increasing recycling, and ensuring proper management of waste and petroleum products.

Restore Land. Prepare for and respond to accidental or intentional releases of contaminants and clean up and restore polluted sites.

Strengthen Human Health and Environmental Protection in Indian Country. Support federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

Strategic Measures associated with this Goal are on pages 60 through 64.

Uncontrolled releases of waste and hazardous substances can contaminate our drinking water and threaten healthy ecosystems. EPA leads efforts to preserve, restore, and protect these precious resources so they are available for both current and future generations. Over the next several years, our highest priorities under this goal are to prevent and reduce exposure to contaminants and accelerate the pace of cleanups across the country. EPA works collaboratively with international, state, and tribal partners to achieve these aims and with communities to ensure that they have a say in environmental decisions that affect them. Our efforts are guided by scientific data, research, and tools that alert us to emerging issues and inform decisions on managing materials and addressing contaminated properties.

Promote Sustainable and Livable Communities

EPA supports urban, suburban, and rural community goals of improving environmental, human health, and quality-of-life outcomes through partnerships that also promote economic opportunities, energy efficiency, and revitalized neighborhoods. Sustainable communities balance their economic and natural assets so that the diverse needs of local residents can be met now and in the future with limited environmental impacts. EPA accomplishes these outcomes by working with communities, other federal agencies, states, and national experts to develop and

encourage development strategies that have better outcomes for air quality, water quality, and land preservation and revitalization.

Development and building construction practices may result in a broad range of impacts on human health and the environment. EPA is working with other federal, state, and local partners to develop best practices and guidance on aspects of sustainability related to how and where development occurs, including promoting smarter growth patterns and encouraging widespread adoption of green building technologies to support our strategic goals.

For example, EPA has joined with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Transportation (DOT) to minimize the environmental impacts of development, which may include improved access to affordable housing, more transportation options, and lower transportation costs.[1] Through a set of guiding "livability" principles and a partnership agreement that will guide the agencies' efforts, this partnership is coordinating federal housing, transportation, water, and other infrastructure investments to protect the environment, promote equitable development, and help to address the challenges of climate change.

EPA is committed to ensuring environmental justice regardless of race, color, national origin, or income. Recognizing that minority and/or low-income communities may face disproportionate environmental risks, we work to protect these communities from adverse health and environmental effects and to ensure they are given the opportunity to participate meaningfully in environmental cleanup decisions.

EPA's brownfields program emphasizes environmental and human health protection in a manner that stimulates economic development and job creation by awarding competitive grants to assess and clean up brownfield properties and providing job training opportunities, particularly in underserved communities.[2] We also provide outreach and technical assistance to communities, including area-wide planning approaches, to identify: viable end uses of a single, large property or groups of brownfield properties; associated air and water infrastructure investments; and, environmental improvements in the surrounding area to revitalize the community. Under EPA's brownfields Priority Goal, area-wide planning will be conducted with the participation of other federal agencies, states, tribes, and local governments and communities to identify resources and approvals necessary to carry out actions identified in area-wide plans.[3] This new approach differs from the way EPA brownfields resources have traditionally been used, recognizing that approaching the assessment and cleanup needs of a brownfields-impacted area can be more effective than focusing on individual sites in isolation of the adjacent or surrounding area.

Preserve Land

EPA and authorized states issue and enforce permits for the treatment, storage, or disposal of hazardous wastes to ensure that facilities subject to Resource Conservation and Recovery Act (RCRA) regulations operate safely. To prevent future environmental contamination and to protect the health of the estimated three million people living within a mile of hazardous waste management facilities,[4] EPA and its state partners continue their efforts to issue, update, or

maintain RCRA permits for approximately 10,000 hazardous waste units (such as incinerators and landfills) at these facilities.

EPA is increasing emphasis on life-cycle based materials management. In order to respond to RCRA's mandate to conserve resources and energy, EPA will focus on strategies that emphasize sustainable materials management by identifying and reducing or minimizing waste at all life-cycle stages, from extraction of raw materials through end of life.[5] Through this approach, EPA will focus on improving resource use through evaluating the environmental impacts of life-cycle stages of a material, product or service, including identifying GHG benefits. EPA will develop national strategies that consider using less environmentally intensive and toxic materials and continue to promote downstream solutions, like reuse and recycling, to conserve our resources for future generations.

To reduce the risk posed by underground storage tanks (USTs) located at nearly a quarter of a million facilities throughout the country, EPA and states are working to ensure that every UST system is inspected at least once every three years. As fuel types change, UST systems must be equipped to safely store the new fuels. EPA is working to ensure biofuels are stored in compatible UST systems.

Restore Land

Challenging and complex environmental problems, such as contaminated soil, sediment, and groundwater that can cause human health concerns, persist at many contaminated properties. EPA's Superfund, RCRA corrective action, leaking underground storage tank, and brownfields cleanup programs, and Toxic Substances Control Act (TSCA) cleanups of polychlorinated biphenyls (PCBs), reduce risks to human health and the environment by assessing and cleaning up these sites to maintain or put them back into productive use.

In an effort to improve the accountability, transparency, and effectiveness of EPA's cleanup programs, EPA has initiated the Integrated Cleanup Initiative (ICI), a multi-year effort to better use the most appropriate assessment and cleanup authorities to address a greater number of sites, accelerate cleanups, and put sites back into productive use while protecting human health and the environment. By utilizing the relevant tools available in each of the cleanup programs, including enforcement, EPA will better leverage the resources available to address needs at individual sites. EPA will examine all aspects of the cleanup programs, identifying key process improvements and enhanced efficiencies. As part of the ICI, EPA will develop a new suite of performance measures that will support comprehensive management of the cleanup life cycle by addressing three critical points in the cleanup process—starting, advancing, and completing site cleanup.

EPA is continuing to improve its readiness to respond to releases of harmful substances, including oil spills, by clarifying authorities, training personnel, and providing proper equipment. Given the Deepwater Horizon BP oil spill and the efforts to clean up and restore the Gulf of Mexico, EPA will review its current rules, guidelines and procedures on oil spills. EPA will ensure that it has the appropriate tools to prevent, prepare for, respond to and recover from such incidents within its jurisdiction.[6]

National preparedness is essential to ensure that emergency responders are able to address multiple, large-scale emergencies, including those that may involve chemicals, oil, biological agents, radiation, or weapons of mass destruction. Consistent with the government-wide National Response Framework, EPA prepares for the possibility of multiple, simultaneous, nationally significant incidents across several regions and provides guidance and technical assistance to state and local planning and response organizations.

EPA's hazardous waste programs are working to reduce the energy use and environmental footprint during the investigation and remediation of sites. As part of this effort, EPA's Superfund program will implement its green remediation strategy to reduce the energy, water, and materials used during site cleanups while ensuring that protective remedies are implemented.[7]

EPA is also implementing its Community Engagement Initiative designed to enhance our involvement with local communities and stakeholders so that they may meaningfully participate in decisions on land cleanup, emergency response, and management of hazardous substances and waste. The goals of this initiative are to ensure transparent and accessible decision-making processes, to deliver information that communities can use to participate meaningfully, to improve EPA responsiveness to community perspectives, and to ensure timely cleanup decisions.

Strengthen Human Health and Environmental Protection in Indian Country

Under federal environmental statutes, EPA is responsible for protecting human health and the environment in Indian country. EPA's commitment to tribal environmental and human health protection, through the recognition of tribal sovereignty and self-determination, has been steadfast for over 25 years, as formally established in the Agency's 1984 Indian Policy.[8] EPA works with over 500 federally-recognized tribes located across the United States to improve environmental and human health outcomes. Indian country totals more than 70 million acres with reservations ranging from less than 10 acres to more than 14 million acres. Difficult environmental and health challenges remain in many of these areas, including lack of access to safe drinking water, sanitation, adequate waste facilities, and other environmental safeguards taken for granted elsewhere.

In collaboration with our tribal partners and fulfilling our government-to-government responsibilities, EPA will engage in a two-part strategy for strengthening human health and environmental protection in Indian country. First, EPA will provide the opportunity for federally-recognized tribes to create an effective and results-oriented environmental capacity-building presence. Second, EPA will ensure that its programs are implemented in Indian country either by EPA or through opportunities for implementation of environmental programs by tribes themselves.

Applied Research

In the area of cleaning up communities, research will allow EPA to identify and apply approaches that better inform and guide environmentally sustainable behavior, protect human health and ecosystems, and provide the products and services needed for mitigation,

management, remediation, and long-term stewardship of contaminated sites. It will also provide state, tribal, and local decision makers with the knowledge needed to make smart, systems-based decisions that will inform a balanced approach to their cleanup and development needs.

End Notes:

[1] Our Built and Natural Environments: A Technical Review of the Interactions between Land Use, Transportation, and Environmental Quality. Information available at http://www.epa.gov/dced/built.htm.

[2] For more information about EPA's brownfields program, see http://www.epa.gov/brownfields.

[3] EPA has developed a Priority Goal for brownfields: By 2012, EPA will have initiated 20 enhanced brownfields community level projects that will include a new area-wide planning effort to benefit under-served and economically disadvantaged communities. This will allow those communities to assess and address a single large or multiple brownfields sites within their boundaries, thereby advancing area-wide planning to enable redevelopment of brownfields properties on a broader scale. EPA will provide technical assistance, coordinate its enforcement, water, and air quality programs, and work with other federal agencies, states, tribes, and local governments to implement associated targeted environmental improvements identified in each community's area-wide plan.

[4] This refers to the total estimated number of people that live within a mile of each of the RCRA hazardous waste facilities that have approved controls in place. Site-specific data can be queried from the Enforcement and Compliance History On-line database, which provides fast, integrated searches of EPA and state data for regulated facilities (see http://www.epa-otis.gov/echo/compliance_report_rcra.html). Population data included in the database is from the 2000 U.S. Census.

[5] For more information on sustainable materials management, see *Sustainable Materials Management: The Road Ahead.* EPA 530R-09-009. Available at http://www.epa.gov/osw/inforesources/pubs/vision2.pdf

[6] Several federal agencies have jurisdiction and authority for oil spill preparedness, response, and recovery in the U.S. in addition to EPA, including the Department of Transportation and the Coast Guard. EPA's efforts will focus on those aspects of the national oil spill program for which they have authority and responsibility, primarily the inland area and fixed facilities, as well as sharing best practices, pertinent research, and lessons learned with its federal partners.

[7] More information about Superfund and green remediation at EPA is available at http://www.epa.gov/superfund/greenremediation.

[8] The 1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations is available at http://www.epa.gov/tribal/pdf/indian-policy-84.pdf.

Goal 4:
Ensuring the Safety of Chemicals and Preventing Pollution

Reduce the risk and increase the safety of chemicals and prevent pollution at the source.

Objectives:

Ensure Chemical Safety. Reduce the risk of chemicals that enter our products, our environment, and our bodies.

Promote Pollution Prevention. Conserve and protect natural resources by promoting pollution prevention and the adoption of other stewardship practices by companies, communities, governmental organizations, and individuals.

Strategic Measures associated with this Goal are on pages 65 through 67.

Chemicals are involved in the production of everything from our homes and cars to the cell phones we carry and the food we eat. Thousands of chemicals have become ubiquitous in our everyday lives and everyday products, as well as in our environment and our bodies. Chemicals are often released into the environment as a result of their manufacture, processing, use, and disposal. Research shows that children receive greater exposures to chemicals because they inhale or ingest more air, food, or water on a body-weight basis than adults do.[1] Other vulnerable groups, including low-income, minority, and indigenous populations, are also disproportionately impacted by, and thus particularly at risk from, chemicals.

In 2009, the Administration announced principles for modernizing the Toxic Substances Control Act (TSCA) to help inform efforts underway in Congress to reauthorize and significantly strengthen EPA's ability to assess the safety of industrial chemicals and adequately protect against unreasonable environmental or public health risks.[2] TSCA is outdated and should be revised to provide stronger and clearer authority for EPA to collect and act upon critical data regarding chemical risks. While TSCA does provide some authority to EPA to collect chemical information and mandate industry to conduct testing, there remain large, troubling gaps in the available data and state of knowledge on many widely used chemicals in commerce. EPA's authority to require development and submission of information and testing data is limited by legal hurdles and procedural requirements. As we look to the future, it is important to work together with Congress and stakeholders to modernize and strengthen the tools available under TSCA to prevent harmful chemicals from entering the marketplace and to increase confidence that those chemicals that remain are safe and do not endanger the environment or human health, especially for consumers, workers, and sensitive subpopulations like children.

The 1990 Pollution Prevention Act established preventing pollution before it is generated as national environmental policy. EPA is enhancing cross-cutting efforts to advance sustainable practices, safer chemicals, greener processes and practices, and safer products.

Ensure Chemical Safety

Chemical safety is one of EPA's highest priorities. EPA's approach to chemical risk management leverages expertise, information, and resources by collaborating with other countries, federal agencies, states, tribes, and the public to improve chemical safety.[3] Children and other disproportionately exposed and affected groups, including low-income, minority, and indigenous populations, require more explicit consideration in EPA's chemical risk assessments and management actions, in accordance with the Executive Orders and guidance on children's health and environmental justice.[4]

EPA employs a variety of strategies under several statutes to ensure the safety of chemicals. These include:

- Controlling the risks of new chemicals before they are introduced or reintroduced into commerce;
- Evaluating chemicals already in use;
- Developing and implementing regulatory and other actions to eliminate or reduce identified chemical risks; and,
- Making public the data necessary to assess chemical safety to the extent allowed by law.[5][6]

EPA has enhanced its work to ensure the safety of existing chemicals by taking action to restrict the production and use of chemicals posing unreasonable risks and better assess chemicals that may pose environmental or public health concerns. This will quicken the Agency's pace in characterizing the hazards posed by the highest volume chemicals, maximize use of existing TSCA authorities to increase the availability of chemical information, and accelerate work to identify safer alternatives.

Over the next five years, the Agency will implement risk management actions for chemicals that pose unreasonable risk to the environment or public health, carefully considering how the most vulnerable populations are potentially affected. EPA is strengthening rules to keep track of chemicals in commerce and adding chemicals and data requirements to better inform both EPA and the public about releases of toxic chemicals into the environment. EPA is increasing its evaluation of claims of confidentiality in order to make all health and safety data for chemicals in commerce more publicly available to the extent allowed by law. EPA is also applying increasingly sophisticated scientific tools in reviewing hundreds of new chemical submissions each year under TSCA and increasing the efficiency and effectiveness of these reviews through the implementation of electronic submission and management systems.[7]

EPA will make major strides in guarding against exposure to chemicals that continue to pose potential risks to human health and the environment even after their hazards have been identified and certain uses have been phased out. For example, to continue to reduce childhood blood lead levels, EPA is working in partnership with states and tribes to certify hundreds of thousands of lead-paint professionals and expand public awareness of lead risks by implementing requirements for the use of lead-safe practices in renovation, remodeling, and painting activities in millions of older homes.[8][9]

Over the next five years, EPA will manage a comprehensive pesticide risk reduction program through science-based registration and reevaluation processes, a worker safety program, certification and training activities, and support for integrated pest management. EPA's current pesticide review processes focus on ensuring that pesticide registrations comply with the Endangered Species Act and achieve broader Agency objectives for water quality protection. The review processes will continue to place emphasis on the protection of potentially sensitive populations, such as children, by reducing exposures from pesticides used in and around homes, schools, and other public areas. EPA is reviewing its worker safety certification and training regulations to ensure that they are adequately protective. EPA's review processes ensure that pesticides can be used safely and are available for use to maintain a safe and affordable food supply, to address public health outbreaks, and to minimize property damage that can occur from insects and pests.[10]

EPA is also working to identify and address any potential risks of nanoscale materials during new and existing chemical review and on improving data collection efforts.[11] In addition, EPA is implementing a comprehensive testing program to screen for chemicals' potential to interact with the endocrine system.[12] More broadly, EPA is looking comprehensively across statutes to determine the best tools to apply to specific problems. For example, under a new drinking water strategy, the Agency is exploring how to use the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and TSCA to ensure that drinking water is protected from pesticides and industrial chemicals and that chemicals found in drinking water are being screened for endocrine disrupting properties using the authorities of the Safe Drinking Water Act (SDWA), the Federal Food, Drug, and Cosmetic Act (FFDCA), and FIFRA.

Prevent Pollution at the Source

The Pollution Prevention Act of 1990 established national pollution prevention policy. Time and experience have added to our understanding and appreciation of the value of preventing pollution before it occurs. Pollution prevention is central to all of EPA's sustainability strategies, and EPA will continue to incorporate pollution prevention principles into our policies, regulations, and actions. Pollution prevention, a long-standing priority for EPA, encourages companies, communities, governmental organizations, and individuals to prevent pollution and waste before generation by implementing conservation techniques, promoting efficient re-use of materials, making production processes more sustainable, and promoting the use of safer substances. Together with new technology development, these pollution prevention practices result in significant co-benefits, such as the conservation of raw materials, water, and energy; reduction in the use of hazardous and high global-warming-potential materials; promotion of safer chemical substitutes; reduction of greenhouse gas emissions; and, the elimination of pollutant transfers across air, water, and land. EPA will collaborate with states and other partners to review pollution prevention results and identify enhanced pollution prevention strategies. This will also include continuing grants to states to support vital state pollution prevention infrastructures and fund technical assistance for local businesses.

EPA promotes "green" chemistry through the development and use of innovative chemical technologies. The Agency advances environmentally-conscious design, commercialization, and use of "green" engineering processes and sets standards for labeling programs that meet stringent

criteria giving consumers assurance about the environmental integrity of the products they use. In addition, EPA helps agencies across the federal government comply with green purchasing requirements, thereby stimulating demand for "greener" products and services.[13]

Research

EPA chemicals research will continue to provide the scientific foundation for addressing the risks of chemical exposure in humans and wildlife. It will include enhanced chemical screening and testing approaches for priority-setting and context-relevant chemical assessment and management. Research will inform Agency actions and help local decision makers address contaminants of greatest concern to them, particularly with respect to air toxics and drinking water issues. EPA will continue assessments of high priority chemicals. EPA's research program also will promote discoveries and innovations in green chemistry and green engineering to help encourage use of safer chemicals in commerce.

End Notes:

[1] Environmental Working Group, 2005. *Body Burden–The Pollution in Newborns*. Available at http://www.ewg.org/reports/bodyburden2/execsumm.php.

[2] Essential Principles for Reform of Chemicals Management Legislation. Available at http://www.epa.gov/oppt/existingchemicals/pubs/principles.html.

[3] "EPA Increases Transparency of Chemical Risk Information: Action part of continued comprehensive reform of toxic substances laws." EPA News Release, January 21, 2010. Available at http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceeac8525735900400c27/631cf22eb540c4db852576b2004eca47!OpenDocument.

[4] Executive Orders include: E.O. 13045 (Protection of Children from Environmental Health Risks and Safety Risks) and E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations). Relevant guidance documents can be found on EPA's environmental justice and children's health websites, http://www.epa.gov/compliance/environmentaljustice/index.html and http://yosemite.epa.gov/ochp/ochpweb.nsf/content/homepage.htm.

[5] Collecting and Assessing Information on Chemicals. Available at http://www.epa.gov/oppt/existingchemicals/pubs/collectinfo.html.

[6] Managing Chemical Risk. Available at http://www.epa.gov/oppt/existingchemicals/pubs/managechemrisk.html.

[7] Overview of EPA New Chemicals Program. Available at http://www.epa.gov/oppt/newchems.

[8] Information about childhood lead poisoning is available at http://www.leadfreekids.org

[9] EPA Lead-Safe Certification Program. Available at http://www.epa.gov/lead/pubs/toolkits.htm

[10] EPA pesticides program information is available at http://www.epa.gov/pesticides.

[11] Information about nanotechnology is available at http://www.epa.gov/ncer/nano/factsheet/.

[12] Information about the EPA Endocrine Disruptor Screening Program is available at http://www.epa.gov/scipoly/oscpendo/index.htm.

[13] Information about the EPA Environmentally Preferable Purchasing Program is available at http://www.epa.gov/epp/pubs/about/about.htm.

Goal 5:
Enforcing Environmental Laws

Protect human health and the environment through vigorous and targeted civil and criminal enforcement. Assure compliance with environmental laws.

Objective:

Enforce Environmental Laws. Pursue vigorous civil and criminal enforcement that targets the most serious water, air, and chemical hazards in communities. Assure strong, consistent, and effective enforcement of federal environmental laws nationwide.

Strategic Measures associated with this Goal are on pages 68 through 70.

Vigorous enforcement supports EPA's ambitious goals to protect human health and the environment. Achieving these goals for safe drinking water, lakes and streams that are fishable and swimmable, clean air to breathe, and communities and neighborhoods that are free from chemical contamination requires both new strategies and compliance with the rules we already have. By addressing noncompliance swiftly and effectively, EPA's civil and criminal enforcement cases directly reduce pollution and risk, and deter others from violating the law.

EPA enforcement takes aggressive action against pollution problems that make a difference in communities. Through vigorous civil and criminal enforcement and other compliance tools, EPA targets the most serious water, air, and chemical hazards, and advances environmental justice by protecting low-income, minority, and tribal communities that are disproportionately impacted by such hazards.

Vigorous civil and criminal enforcement plays a central role in achieving the bold goals below that the Administrator has set for EPA:

Taking Action on Climate Change and Improving Air Quality: EPA will take effective actions to reduce air pollution from the largest sources, including coal-fired power plants and the cement, acid, and glass sectors, to improve air quality. Enforcement to cut toxic air pollution in communities improves the health of communities, particularly low-income, minority, and tribal communities that are disproportionately impacted by pollution. Enforcement supports reductions in greenhouse gases (GHG) through enforcement settlements that encourage GHG emission reductions. EPA will also work to ensure compliance with new standards and reporting requirements for GHG emissions as they are developed.

Protecting America's Waters: EPA is revamping enforcement and working with state permitting authorities under the Clean Water Act Action Plan [1] to make progress on the most important water pollution problems. This work includes, as a Priority Goal, increasing enforcement actions in waters that do not meet water quality standards. In addition the Agency will continue to focus on getting raw sewage out of water, cutting pollution from animal waste, and reducing pollution from stormwater runoff.[2] Enforcement will help to

clean up great waters like the Chesapeake Bay and will assist in revitalizing urban communities by protecting urban waters. Enforcement will also support the goal of assuring safe drinking water for all communities, including in Indian country.

Cleaning Up Communities and Advancing Sustainable Development: EPA protects communities by requiring responsible parties to conduct cleanups, saving federal dollars for sites where there are no other alternatives. Aggressively pursuing these parties to clean up sites ultimately reduces direct human exposures to hazardous pollutants and contaminants, provides for long-term human health protection, and makes contaminated properties available for reuse.

Ensuring the Safety of Chemicals and Preventing Pollution: Reforming chemical management enforcement and reducing exposure to pesticides will help protect human health. Enforcement reduces direct human exposures to toxic chemicals and pesticides and supports long-term human health protection.

Criminal enforcement underlines our commitment to pursuing the most serious pollution violations. EPA's criminal enforcement program will focus on cases across all media that involve serious harm or injury; hazardous or toxic releases; ongoing, repetitive, or multiple releases; serious documented exposure to pollutants; and, violators with significant repeat or chronic noncompliance or prior criminal conviction.

EPA shares accountability for environmental and human health protection with states and tribes. We work together to target the most important pollution violations and ensure that companies that do the right thing and are responsible neighbors are not put at a competitive disadvantage. EPA also has a responsibility to oversee state and tribal implementation of federal laws to ensure that the same level of protection for the environment and the public applies across the country.

Enforcement can help to promote environmental justice by targeting pollution problems that disproportionately impact low-income, minority, and tribal communities. Ensuring compliance with environmental laws is particularly important in communities that are exposed to greater environmental health risks. EPA fosters community involvement by making information about compliance and government action available to the public.[3]

Increased transparency is an effective tool for improving compliance. By making information on violations both available and understandable, EPA empowers citizens to demand better compliance.

End Notes:

[1] An overview of the Clean Water Action Plan is available at http://www.epa.gov/oecaerth/civil/cwa/cwaenfplan.html.

[2] EPA has developed a Priority Goal for water enforcement: EPA will increase pollutant reducing enforcement actions in waters that do not meet water quality standards, and post results and analysis on the web.

[3] Information about compliance and government action is available at

http://www.epa.gov/compliance/index.html.

External Factors and Emerging Issues

EPA sets goals and objectives in carrying out its mission to protect human health and the environment, but there are always factors outside of EPA's control that affect our ability to do our work. For example, the changing economic, legal, and regulatory landscape often affects the Agency's resources, anticipated activities, and direction. As part of a dynamic global community addressing technological changes, EPA is confronted with challenges, emerging issues, and opportunities every day. An oil spill, flood, hurricane, tragedy, or other disasters can swiftly divert the Agency's anticipated focus. Other issues, such as climate change and population growth, can create long-term challenges that run deep and across many EPA programs. Additionally, EPA accomplishes much of its work through partnerships, particularly with states and tribes, and any budget shortfalls they experience can affect our ability to achieve our goals.

External factors and emerging issues present both opportunities and challenges to EPA. Specifically, over the next five years, EPA will be actively engaged in a variety of areas:

Climate Change: Energy and transportation policies continue to evolve and influence the Agency's ability to improve air quality and address climate change issues. Impacts of climate change, such as changes in rainfall amount and intensity, shifting weather and seasonal patterns, and increases in flood plain elevations and sea levels, will also affect progress towards many of the goals. Yet other developments may have positive environmental impacts. The growth of alternative energy sources and increased investments in energy efficiency can reduce greenhouse gas emissions and improve local air quality.

American Reinvestment and Recovery Act (ARRA): We expect the long-term impact of ARRA[1] funding will advance assessment and cleanup activities at former industrial sites, help address local water infrastructure needs, and spur technological innovation, promoting energy efficiency, alternative energy supplies, and new technologies and innovation in water infrastructure.

Water Quality: Water quality programs face challenges such as increases in nutrient loadings and stormwater runoff, aging infrastructure, and population growth (which can increase water consumption and place additional stress on aging water infrastructures). The Agency needs to examine carefully the potential impacts of and solutions to these issues, including effects on water quality and quantity that could result in the long term from climate change.

Waste Management: Our necessary reliance on private parties, state and tribal partners, the use of new and innovative control technologies, and the involvement of other federal agencies in remediation efforts can all affect our efforts to remediate contaminated sites and prevent waste. New waste streams are continually emerging, such as those from mining of rare earth elements which are used in clean-energy technologies, potentially presenting increased opportunities for recycling of valuable materials and challenges for safe disposal of new waste streams

Protective Site Cleanup: Hazardous waste programs are intended to provide permanent solutions to contaminated media at sites or facilities to the extent practicable. Complications can arise when new scientific information concerning contaminants at a site suggests that a risk assessment that was protective when a remedy was selected is no longer protective given the contaminant levels remaining at a site and their potential exposure pathways and uses. As appropriate, EPA must incorporate emerging science into decision making to maintain its commitment to provide permanent solutions.

Chemical Safety: Legislative reforms to the Toxic Substances Control Act in line with the Administration principles would provide EPA with the ability to obtain and publicly disclose critical information on the risks posed by chemicals. This will strengthen our chemical risk assessment and management programs, and significantly improve federal and state ability to manage and mitigate risk from industrial chemicals.

Communities: Citizen science—individual citizens and community groups that monitor and document environmental trends—can expand the reach of EPA's own field presence. Communities have access to more environmental, economic, and social data than ever before that can be synthesized and analyzed through varying tools and technologies. With this information, communities can make smarter management decisions which may lead to increasingly effective stewardship. While citizen science requires expert support to ensure the quality of environmental data and to facilitate knowledge-building, with the right tools, communities can spur local industry and others to do a better job of complying with environmental laws and regulations.

The world in which EPA works continues to change rapidly. The recent oil spill in the Gulf of Mexico is a catastrophic environmental problem that will have significant consequences and require innovative technological and other solutions. A wide range of new technologies are on the horizon in areas as diverse as nanotechnology catalysts and nanosolar cells, nanomaterials for rehabilitation of water pipes, advanced battery technologies, accurate and inexpensive portable and real-time sensors, and the application of synthetic biology to algal biofuel production. Emerging technologies may present new environmental problems that need to be understood and addressed, and at the same time will create opportunities for building an advanced technological infrastructure. EPA will continue to do its best to anticipate change and be prepared to address the inevitable challenges and opportunities that we will face in the future.

End Note:

[1] Information about the American Reinvestment and Recovery Act is available at http://www.recovery.gov.

Summary of Program Evaluation

The Administration has emphasized the importance of using program evaluation to provide the evidence needed to demonstrate that our programs are meeting their intended outcomes. By assessing how well a program is working and *why*, program evaluation can help EPA identify where our activities have the greatest impact on protecting human health and the environment, provide the road map needed to replicate successes, and conversely, identify areas needing improvement. This is particularly important as EPA meets its obligations for transparency and accountability.

For the *Strategic Plan*, we look to the results of past evaluations to inform our program strategies for the next five years. Evaluation results may affirm existing strategies or identify opportunities for improvement and may lead to changes in policy, resource decisions, and program implementation. For example, the Government Accountability Office's 2007 evaluation of the Toxic Substances Control Act helped frame Administrator Jackson's September 2009 announcement of an integrated approach to chemical management and a set of principles for reform. Additionally, EPA commissioned the National Academy of Public Administration (NAPA) to conduct an independent evaluation of the Community Action for a Renewed Environment (CARE) Demonstration Program, a competitive grant program that offers an innovative way for a community to organize and take action to reduce toxic pollution in its local environment.[1] Recommendations and feedback from this evaluation have informed EPA's strategic changes and investment decisions in the program.

Our plans for future program evaluations include cyclical reviews of our research and development programs. These are geared to ensure that our research priorities meet our future challenges. Examples of other future evaluations include assessing the impact of our "green" chemical labeling program on consumer purchasing habits and measuring the success of less resource-intensive remediation strategies to clean up hazardous waste sites across the country.

While EPA conducts a variety of design, process, and outcome evaluations, under the Administration's government-wide evaluation initiative, EPA is working to evolve and expand our portfolio to conduct more rigorous impact evaluations that will enhance program effectiveness. Recently completed process and program evaluations from EPA and external organizations that informed the strategies in the *Strategic Plan* and preliminary program evaluations EPA plans to conduct in the future are described in more detail at the *EPA Strategic Plan* website.[2]

End Notes:

[1] National Academy of Public Administration, 2009. *Putting Community First: A Promising Approach to Federal Collaboration for Environmental Improvement*. Available at http://www.napawash.org/pc_management_studies/CARE/5-21-09_Final_Evaluation_Report.pdf.

[2] EPA Strategic Plan website: http://www.epa.gov/ocfo/plan/plan.htm.

Cross-Cutting Fundamental Strategies

Introduction

Since EPA's inception over 40 years ago, we have focused not only on our mission to achieve environmental and human health results but also on how we work to accomplish those results. Through this *Plan*, EPA is placing an increased focus on how we work to achieve those results. We have developed a set of cross-cutting strategies that stem from the Administrator's priorities and are designed to fundamentally change how we work, both internally and externally, to achieve the mission outcomes articulated under our five strategic goals. These cross-cutting fundamental strategies are:

- Expanding the conversation on environmentalism;
- Working for environmental justice and children's health;
- Advancing science, research, and technological innovation;
- Strengthening state, tribal, and international partnerships; and,
- Strengthening EPA's workforce and capabilities.

With this *Plan*, we are embarking on a deliberate, focused effort to take tangible actions and hold ourselves accountable for changing the way we deliver environmental and human health protection. This *Plan* describes the vision and operating principles for each of the cross-cutting strategies. The Agency will develop annual action plans with annual commitments that we will use to hold ourselves accountable in carrying out these strategies.

Expanding the Conversation on Environmentalism

Engage and empower communities and partners, including those who have been historically under-represented, in order to support and advance environmental protection and human health nationwide.

We have begun a new era of outreach at EPA and seek to include a broader range of people and communities in our work and expand our engagement with communities historically under-represented in our decision-making processes. We will build stronger working relationships throughout the country, particularly with tribes, communities of color, economically-distressed cities and towns, young people, and others.

To accomplish these goals, we will:

- Call for innovation and bold thinking and ask all employees to bring their creativity and talents to their everyday work to enhance outreach and transparency in all our programs.

- Ensure that our science is explained clearly and accessible to all communities, communicating and educating in plain language the complexities of environmental, health, policy, and regulatory issues.

- Educate and empower individuals, communities, and Agency partners in decision making through public access to environmental information and data.

- Ensure that the Agency's regulations, policies, budget, and decision-making processes are transparent and accessible through increased access to environmental data sources, community right-to-know tools, and direct stakeholder engagement.

- Address barriers to improve engagement with historically under-represented sectors of the nation.

- Use traditional and new media to inform and educate the public about Agency activities and provide opportunities for community feedback.

- Encourage citizens to understand the complexities and impacts of environmental issues and environmental stewardship, and provide avenues and tools that enhance their ability to participate in processes that could affect them.

Working for Environmental Justice and Children's Health

Work to reduce and prevent harmful exposures and health risks to children and underserved, disproportionately impacted low-income, minority, and tribal communities, and support community efforts to build healthy, sustainable green neighborhoods.

Advancing environmental justice and protecting children's health must be driving forces in our decisions across all EPA programs. The underlying principles for this commitment are reducing exposures for those at greatest risk and ensuring that environmental justice and children's health protection are integral to all Agency activities. All populations – including minority, low-income, and indigenous populations – that are vulnerable to environmental pollution are at risk of having poor health outcomes. These vulnerabilities may arise because of higher exposures to pollution in places where they work, live, and play, and/or diminished abilities to withstand, cope with, or recover from exposure to environmental pollution.[1] Children are often most acutely affected by environmental stressors. Research has demonstrated that prenatal and early life exposures to environmental hazards can cause lifelong diseases, medical conditions, and disabilities.[2]

Environmental justice and children's health protection will be achieved when all Americans, regardless of age, race, economic status, or ethnicity, have access to clean water, clean air, and healthy communities. To accomplish this, EPA will use a variety of approaches, including regulation, enforcement, research, outreach, community-based programs, and partnerships to protect children and disproportionately impacted, overburdened populations from environmental and human health hazards. Our success in advancing environmental justice and children's health protection will result from fully incorporating these priorities into all of our activities across each of the strategic goals of the Agency. We anticipate that our leadership in advancing environmental justice and children's health protection will inspire and engage a broad spectrum of partners in the public and private sector to do the same.

Specifically, EPA will:

- In our regulatory capacity, implement the nation's environmental laws using the best science and environmental monitoring data to address the potential for adverse health effects from environmental factors in disproportionately impacted, overburdened populations and vulnerable age groups. EPA programs will incorporate environmental justice and children's health considerations at each stage of the Agency's regulation development process and in implementation of environmental regulations.

- Develop and use environmental and human health indicators to measure improvements in environmental conditions and health in disproportionately impacted communities and among vulnerable age groups.

- In our work on safe management of pesticides and industrial chemicals, take into account disproportionately impacted, overburdened populations, and women of child-bearing age, infants, children, and adolescents, and encourage the use of "green chemistry" to spur the development of safer chemicals and production processes.

- Apply the best available scientific methods to assess the potential for disproportionate exposures and health impacts resulting from environmental hazards on minority, low-income, and indigenous populations, women of child-bearing age, infants, children, and adolescents, to support EPA decision making, and to develop the tools to assess risk from multiple stressors.

- Engage communities in our work to protect human health and the environment. EPA will align multiple community-based programs to provide funding and technical assistance to communities to build capacity to address critical issues affecting children's health and disproportionately impacted populations.

- Work with other federal agencies [3] to engage communities and coordinate funding and technical support for efforts to build healthy, sustainable, and green neighborhoods, and work with residents to promote equitable development.

End Notes:

[1] See the following sources:

World Health Organization, 2006. *Principles for Evaluating Health Risks in Children.* Environmental Health Criteria, 237. Available at http://whqlibdoc.who.int/publications/2006/924157237X_eng.pdf;

EPA, 2003. Framework for Cumulative Risk Assessment. Risk Assessment Forum. EPA/630/P-02/001F. Available at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=54944; and,

EPA, 2004. *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts.* Available at http://www.epa.gov/environmentaljustice/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf.

[2] National Institutes of Health, National Institute of Environmental Health Sciences, 2008. *Linking Early Environmental Exposures to Adult Diseases.* Available at http://www.niehs.nih.gov/health/docs/linking-exposures.pdf.

[3] Including the Departments of Housing Urban and Development, Health and Human Services, Energy, Agriculture, Transportation, Interior, Labor, and Education.

Advancing Science, Research, and Technological Innovation

Advance a rigorous basic and applied science research and development agenda that informs, enables, and empowers and delivers innovative and sustainable solutions to environmental problems. Provide relevant and robust scientific data and findings to support the Agency's policy and decision-making needs.

The major challenges we face to human health and the environment are not incremental problems, and they do not lend themselves to incremental solutions. EPA will promote innovative solutions to environmental problems that reduce or eliminate pollution while avoiding unintended and/or unwanted consequences, addressing pollutants, chemicals, and materials throughout their life cycle from raw material to final disposition.

The Office of Management and Budget (OMB) has reiterated the critical and timely need for innovation in science and technology, building on the President's *Strategy for American Innovation*.[1] [2] OMB identifies priorities that include new approaches to multi-disciplinary research, new approaches for accelerating technology commercialization and innovation, interagency and international collaborations, and better communication with the public on science, technology, and innovation.

Environmental sustainability is a guidepost for science, research, and technological innovation at EPA.[3] Sustainability is a broader approach to environmental protection that considers trade-offs in production processes and materials use. Sustainable solutions prevent chemicals from entering the environment or eliminate the production of waste through better materials management, rather than simply reduce the waste being produced.

EPA must help drive high quality research, sound science, and technology innovation to sustainably address air quality, climate change, water quality and quantity, unreasonable risks from toxic chemicals, ecosystem degradation, and other environmental issues. EPA will inform, enable, and stimulate the development of sustainable solutions to current and future challenges because sustainable and innovative environmental solutions can also be more economically efficient.

EPA science and research must always inform the decisions that are essential to the protection of human health and the environment and empower the broader community that supports our mission. To address challenging environmental problems in this manner, EPA research will:

- **Provide timely, responsive, and relevant solutions:** EPA's science, research, and technological innovation depend on partnerships and a continuing dialogue with internal and external partners and stakeholders to ensure that EPA efforts focus on the highest priority problems faced by the Agency and the nation. Building on traditional collaboration efforts, EPA will also leverage the scientific discoveries of others to achieve even more responsive solutions to the environmental problems that our communities face.

- **Transcend traditional scientific disciplines:** A broad perspective—one that integrates knowledge from a wide variety of sources—is key to developing sustainable solutions. In all aspects of our work, from problem identification, to research design and conduct, to implementation and adoption of solutions, EPA must rely on diverse disciplines. Environmental problems often raise complex scientific and technological issues that require non-traditional approaches. If EPA is to advance progress on these challenging problems, we must rely on integrated, trans-disciplinary research that complements traditional, single-discipline approaches.

- **Communicate widely and openly:** Great work, done invisibly, cannot have an impact. To maximize the impact and utility of our research, EPA will communicate the design, definition, conduct, transfer, and implementation of the work we do. We will translate our science so that it is accessible, understandable, relevant to, and used by stakeholders and the general public. EPA must document our successes to maximize the value of our scientific work.

- **Catalyze sustainable innovation:** EPA's efforts alone will not be enough to address the environmental challenges our nation faces. As we develop and promote these technology innovations, EPA must account for life-cycle perspectives and support technologies that fully consider environmental and social impacts, and collaborate with partners in academia, government, and industry to assess impacts and promote effective product stewardship. EPA must also guide sustainable solutions on the path from conceptual and proof-of-concept stages, through research and development, to commercialization and deployment.

- **Engage external stakeholders:** EPA must work with both public and private partners to assure that environmental solutions can move smoothly along this path. EPA must understand and engage the marketplace to maximize the effectiveness of these solutions and assure they lead to sustainable outcomes. Additionally, EPA must be receptive to external innovations in science, research, and technology that can enhance EPA's effectiveness in fulfilling our mission.

End Notes:

[1] OMB Memorandum M-10-30, July 21, 2010. "Science and Technology Priorities for the FY2012 Budget." Available at http://www.whitehouse.gov/sites/default/files/omb/memoranda/2010/m10-30.pdf.

[2] Press Release from the White House Office of the Press Secretary, September 21, 2009. "President Obama Lays Out Strategy for American Innovation." Available at http://www.whitehouse.gov/the_press_office/President-Obama-Lays-Out-Strategy-for-American-Innovation/.

[3] Information on the EPA Sustainability Program is available at http://www.epa.gov/sustainability/.

Strengthening State, Tribal, and International Partnerships

Deliver on our commitment to a clean and healthy environment through consultation and shared accountability with states, tribes, and the global community for addressing the highest priority problems.

EPA will strengthen its state, tribal, and international partnerships to achieve our mutual environmental and human health goals. As we work together, our relationships must continue to be based on integrity, trust, and shared accountability to make the most effective use of our respective bodies of knowledge, our existing authorities, our resources, and our talents.

Successful partnerships will be based on four working principles: consultation, collaboration, cooperation, and accountability. By *consulting*, we will engage our partners in a timely fashion as we consider approaches to our environmental work so that each partner can make an early and meaningful contribution toward the final result. By *collaborating*, we will not only share information, but we will actively work together with our partners to use all available resources to reach our environmental and human health goals. As our work progresses, we will *cooperate*, viewing each other with respect as allies who must work successfully together if our goals are to be achieved. Through shared *accountability,* we will ensure that environmental benefits are consistently delivered nationwide. In carrying out these responsibilities, EPA will ensure through oversight that state and tribal implementation of federal laws achieves a consistent level of protection for the environment and human health.

With States

Under our federal environmental laws, EPA and the states share responsibility for protecting human health and the environment. With this relationship as the cornerstone of the nation's environmental protection system, EPA will:

- Improve implementation and consistent delivery of national environmental programs through closer consultation and transparency.
- Work with states to seek efficient use of resources through work-sharing, joint planning using data analysis and targeting to address priorities, and other approaches.
- Consult with state and local governments on a routine basis to ensure that the development and implementation of rules is consistent with *EPA's Action Development Process: Guidance on Executive Order 13132* (Federalism), which recognizes the division of governmental responsibilities between the federal government and the states.
- Strengthen state-EPA shared accountability by focusing oversight on the most significant and pressing state program performance challenges.
- Ensure a level playing field across states to improve compliance and address the most serious violations.

With Tribes

The relationship between the United States Government and federally-recognized tribes is unique and has developed throughout the course of the nation's history. In strengthening this relationship, EPA will:

- Focus on increasing tribal capacity to establish and implement environmental programs while ensuring that our national programs are as effective in Indian country as they are throughout the rest of the nation.
- Enhance our effort as we work with tribes on a government-to-government basis, based upon the Constitution, treaties, laws, executive orders, and a long history of Supreme Court rulings.
- Strengthen our cross-cultural sensitivity with tribes, recognizing that tribes have cultural, jurisdictional, and legal features that must be considered when coordinating and implementing environmental programs in Indian country.

With Other Countries

To achieve our domestic environmental and human health goals, international partnerships are essential. Pollution is often carried by winds and water across national boundaries, posing risks many hundreds and thousands of miles away. Many concerns, like climate change, are universal. In the international arena, EPA will:

- Expand our partnership efforts in multilateral forums and in key bilateral relationships.
- Enhance existing and nurture new international partnerships to promote a new era of global environmental stewardship based on common interests, shared values, and mutual respect.

Strengthening EPA's Workforce and Capabilities

Continuously improve EPA's internal management, encourage innovation and creativity in all aspects of our work, and ensure that EPA is an excellent workplace that attracts and retains a topnotch, diverse workforce, positioned to meet and address the environmental challenges of the 21st century.

Achieving positive environmental and human health outcomes through cleaner and safer air, water, and land, and through protection of our natural resources is the focal point of all our work at EPA. This compelling mission attracts workers eager to make a difference and drives employees across the Agency to work together. EPA fully supports the Administration's efforts to reform the federal government's hiring system to ensure highly qualified individuals are available to strengthen EPA's workforce. EPA believes these reforms will improve the Agency's ability to protect human health and the environment more effectively and efficiently.

EPA is a complex organization. This is both an asset and a challenge. To achieve its mission, EPA is continuously building and nurturing a skilled workforce, finding new ways to use the power of information, working together through enhanced communication, and demanding transparency and accountability at all levels. With innovative and creative management and a talented, diverse, and highly motivated workforce, EPA will be positioned to meet head-on the complex environmental challenges of the present and future.

To achieve this goal, EPA will:

- Recruit, develop, and retain a diverse and creative workforce, equipped with the technical skill and knowledge needed to accomplish the Agency's mission and to meet evolving environmental challenges.

- Cultivate a workplace that values a high quality work life, provides employee-friendly policies and facilities, and invests in the information infrastructure, technology, and security essential to support a mobile workforce.

- Practice outstanding resource stewardship to ensure that all Agency programs operate with fiscal responsibility and management integrity, are efficiently and consistently delivered nationwide, and demonstrate results.

- Take advantage of existing and emerging tools to improve and enhance communication, transparency, and accountability.

- Integrate energy efficiency and environmental considerations into our work practices as core components of Agency business models and operations.

- Improve the effectiveness and efficiency of the Agency's acquisition function by strengthening requirements development, contract management, and internal review practices; maximizing the use of competition in contracting, reducing high-risk contracts;

improving how contracts are structured; building the skills of the acquisition workforce; and improving management of the EPA acquisition workforce.

Strategic Measurement Framework

Introduction

The *Strategic Plan* provides the foundation for EPA's performance management system—planning, budgeting, performance measurement, and accountability. The *Plan* contains EPA's strategic measurement framework of long-term goals, objectives, and strategic measures, which describe the measurable human health and environmental results the Agency is working to achieve over the next five years.

To achieve the long-term goals, objectives, and strategic measures set out in this *Plan,* EPA designs annual performance measures which are presented in EPA's *Annual Performance Plans and Budgets*. The Agency reports on our performance against these annual measures in the *Annual Performance Reports*, and uses this performance information to establish priorities and develop future budget submissions. The Agency also uses this performance data to evaluate our progress and develop future *Strategic Plans*.

EPA's strategic planning and decision-making benefits from other sources of information as well, including program evaluations and environmental indicators. A number of the strategic measures in this *Strategic Plan* are based on indicators contained in EPA's *2008 Report on the Environment* (ROE). The ROE identifies a set of peer-reviewed human health and environmental indicators that allows EPA to track trends in environmental conditions and environmental influences on human health. This information also helps us better articulate and improve the strategic measurement framework in EPA's *Strategic Plan*.

The Agency continues to look for new data and information sources to better characterize the environmental conditions targeted by our programs and improve our understanding of the integrated and complex relationships involved in maintaining human health and environmental well-being.

Significant Changes in the Strategic Measurement Framework

We have made significant changes to our measurement framework in this *Plan*. We revised our five strategic goals to sharpen and align them with the Administrator's priorities, including a heightened focus on cross-program activities addressing climate change adaptation and mitigation, sustainable communities, and chemical safety. We revised our suite of strategic measures—the measurable environmental and human health outcomes we are working to achieve—in several significant ways. First, we significantly reduced the number of strategic measures by focusing on the key outcomes most important to advance the Administrator's priorities and the Agency's mission. The goal was to create a *smaller, more strategic, and more meaningful set that Agency leadership uses to manage.* Second, for consistency purposes, we placed all the quantified measurable results at the lowest level in the framework—the strategic measures. Third, we updated the strategic measures to reflect targets and baselines appropriate for the FY 2011-2015 time horizon. Lastly, we removed the separate objectives and strategic measures for the Agency's research and development program from the *Plan* and integrated this

work into the programmatic objectives; this critical work supports many of our strategic measures and will continue to be tracked through annual performance measures.

Some of the new strategic directions in our measures are reflected in this *Plan*, but efforts will continue over the next several years to make further revisions in key areas. Highlights of the new measures and continuing efforts are described below.

- **Deepwater Horizon BP Oil Spill in the Gulf of Mexico:** While we are still assessing the unprecedented environmental damage from the Deepwater Horizon BP oil spill and the Agency actions necessary to address the damage and prevent similar disasters in the future, we have added a new strategic measure as a preliminary step to reflect the challenge ahead. This measure addresses efforts to conduct a thorough review of our oil spill program regulations to ensure that these regulations are up to date and effective. The magnitude of the impacts has yet to be fully understood and assessed, so further adjustments may be needed in the future. In addition, EPA is working to develop a water-oriented measure in response to the Deepwater Horizon BP oil spill in the Gulf of Mexico. The measure will reflect efforts to assist in the restoration of the Gulf of Mexico ecosystem, including water, wetlands, beaches, and surrounding communities. Currently, EPA has two program-specific water measures, one that relates to Gulf of Mexico hypoxia and the other to regional coastal aquatic ecosystem health that will be reassessed for impact from the oil spill.

- **Climate Change Adaptation and Mitigation:** The ability of communities to respond to changes in climate over the next decade is critical to achieving many of the environmental outcomes in this *Strategic Plan*. We have incorporated consideration of climate change across all five goals of the *Strategic Plan* and will continue to collaborate with stakeholders, the US Global Change Research Program, the Interagency Taskforce on Climate Change Adaptation, and others. We have added three strategic measures for climate change adaptation under Goal 1. In addition, we have expanded our measures for mitigation of greenhouse gases to capture reductions Agency-wide.

- **Land Cleanup:** EPA has begun an Integrated Cleanup Initiative, a multi-year effort to better use assessment and cleanup authorities to address a greater number of sites, accelerate cleanups, and put those sites back into productive use while protecting human health and the environment. The Agency is working to develop a suite of measures that will allow for comprehensive management across cleanup programs and across the cleanup life cycle, with a focus on three critical points in the cleanup process—starting, advancing, and completing site cleanups. As a first step in this process, we are shifting our definition of success at a Superfund site from where the construction of a remedy is complete, to when the site is actually "ready for anticipated use" in a community. In addition, a new site assessment measure has been developed that fully captures the entire assessment workload at the beginning of the Superfund process, a measure which also may be expanded to include progress of other cleanup programs in the future.[1]

- **Chemical Safety:** One of EPA's highest priorities over the next five years is to ensure the safety of chemicals and pesticides used in this country. As part of this effort, EPA is

taking a more integrated approach to managing chemical and pesticide risk reduction and, in coordination with other relevant federal agencies, is focusing on consumers, workers, and sensitive subpopulations like children. EPA is enhancing its ability to measure the effects of chemicals and pesticides on human health and the environment by introducing new measures to reduce the concentration of targeted chemicals and pesticides in the general population and children.

- **Enforcement and Compliance Assurance:** The Agency's enforcement and compliance assurance program is moving from a tool-based (e.g., assistance, incentives, monitoring, and enforcement) to an environmental problem-based (e.g., air, water) approach to addressing noncompliance and environmental harms. Our current approach, rooted largely in the traditional inspection and enforcement model, has shown substantial environmental and human health benefits, but will not be able to keep up with expanding universes of regulated sources. For example, the universe of National Pollutant Discharge Elimination System (NPDES) sources has expanded from about one hundred thousand when the Clean Water Act (CWA) was passed to almost one million today. This is especially true in light of the current economic challenges faced by states, which perform the majority of inspections and enforcement actions. For those programs and sectors that have been the focus of EPA and state attention, the level of noncompliance shows us that serious violations are likely widespread, all but ensuring that there are areas across the country where basic health protections for Americans are in jeopardy.

  EPA is adopting new strategic approaches to deal with these challenges that do not solely depend on inspections and enforcement to address serious violations, including:

  - Building self-monitoring and reporting requirements into rules, which will allow government to better understand the compliance status at regulated facilities.
  - Using 21st century technologies to facilitate the electronic transmission of data directly from regulated sources and states that generate the data, to government agencies that receive the data, which will improve the quality and timeliness of data available to make decisions.
  - Making more information available to the public in an easy-to-use, understandable format so the public can demand better facility and government performance.

  As part of this new approach, the Agency's enforcement program is developing a suite of measures that expand its ability to communicate to the public. As part of this suite, the Agency is including measures for its criminal enforcement program for the first time in the *Strategic Plan.* The suite of measures addresses:

  - Enforcement Presence/Level-of-Effort Measures: the extent of the general enforcement and compliance assurance presence in communities;
  - Outcome Indicator Measures: the annual and long-term trends in environmental benefits resulting from EPA enforcement actions; and,
  - Strategic Enforcement Measures: the results of EPA's focused efforts to address specific, high-priority problems that make a difference to communities.

When viewed together, this suite of measures provides a more comprehensive understanding of the program than has been available previously. This suite of measures is captured in the figure below.

Suite of Strategic Enforcement and Compliance Assurance Measures

Measures in the FY 2011-2015 Strategic Plan

Enforcement Presence/Level of Effort Measures

- Inspections & evaluations
- Initiated & concluded civil judicial & administrative enforcement cases
- Compliance status of open, non-Superfund consent decrees
- Address cost recovery statute of limitations cases with total past costs above $200,000
- Criminal cases with charges filed
- Criminal cases with defendants convicted

Outcome Indicator Measures

AIR

- Investment in air pollution control equipment and practices
- Air pollutants reduced

WATER

- Investment in water pollution control equipment and practices
- Water pollutants reduced

WASTE

- Investment in waste pollution control equipment and practices, cleanups, and recoveries
- Hazardous waste reduced
- Contaminated media reduced
- Reaching settlement with potentially responsible parties (PRPs)

CHEMICALS

- Investment in toxics and pesticide control
- Toxic and pesticide pollutants

CRIMINAL

- Criminal cases with most significant impacts
- Criminal cases with individual defendants

Measures under Development

Strategic Enforcement Measures (under development)

AIR

- Air toxics
- Criteria air pollutants

WATER

- Raw sewage
- Animal waste
- Water compliance

WASTE

- Wastes from mineral processing
- Clean up hazardous waste sites in communities

CHEMICALS

- Reduce exposure to pesticides
- Enforce chemical management rules

NOTE: These measures will set enforcement targets that connect with Goals 1-4 of the Strategic Plan

The *Strategic Plan* includes five-year measures for EPA's enforcement presence and outcome indicators for which EPA will develop annual performance measures for inclusion in the *Annual Plan and Budget*, similar to all strategic measures included in this *Plan.*

The Agency has historically relied on enforcement presence or level-of-effort measures to communicate its enforcement and compliance presence to the public and regulated industry. These measures illustrate that the Agency is actively and consistently performing the activities necessary to find polluters, take appropriate action, and monitor defendants' compliance with settled enforcement cases. The Agency targets these activities toward the most serious human health and environmental problems across a variety of regulatory programs.

The Agency uses outcome indicators to communicate the environmental benefits gained from completed enforcement and compliance activities such as compliance assistance, compliance incentives, and enforcement cases. While linked, there is not a linear or proportional relationship between the activities and the outcomes. Unlike level-of-effort results, which tend to be relatively consistent on a yearly basis, these outcome measures are dominated by very large cases and will typically vary widely over time depending on

the pollution problems being addressed. For example, the measure of pounds of pollution reduced by enforcement actions varies widely from year to year and is not expected to trend upwards from one year to the next. In fact, as the most significant pollution sources are addressed, the amount of pollution reduced by enforcement in a particular industrial sector should go down over time.

Over the next five years, the Agency will develop a new category of measurement – Strategic Enforcement Measures – designed to demonstrate progress toward achieving its national enforcement goal of aggressively going after specific pollution problems that matter to communities. In addition, the strategic enforcement measures will illustrate the work done in Goal 5 to support Goals 1-4 of this *Strategic Plan.*

To launch this effort, the Agency's enforcement program will focus initially on developing measures that demonstrate progress toward the goals of its six national enforcement initiatives.[2] These initiatives target nationally important pollution problems where enforcement can play an important role to address serious noncompliance. We will develop strategic measures that chart our progress in addressing these significant compliance problems, recognizing that the measures, like the solutions, will vary with the problem. Two examples include: (1) targeting the sectors that contribute the largest amount of serious air pollution that causes significant harm to human health, which include coal-fired utilities and acid, glass, and cement plants; and, (2) working to improve compliance by the tens of thousands of animal feeding operations that contribute to water pollution in many communities. We need both aggressive enforcement actions and new creative strategies to tackle sector compliance issues for these important, but very different, problems. Our measures will reflect those strategies, and attempt to do a more complete job of providing meaningful information to the public about our progress than the traditional measures alone can do. What we learn from measures developed for the national enforcement initiatives will be applied in setting measures for our other national enforcement goals.

One of the challenges in improving compliance and reducing pollution is the lack of solid information about facility releases and compliance. These information gaps make it harder to target facilities for enforcement, to understand and develop measures for compliance performance, and for communities to know what pollution is occurring in their own neighborhoods. EPA recognizes that we need to improve facility monitoring of pollution and make that information available to the public using 21st century technologies. These efforts will increase transparency and create incentives to reduce pollution and to comply with the law, while also giving state and federal governments the information they need to target enforcement and track progress. These efforts will help us to strengthen both performance and measures in the years ahead.

Where data, baselines, and targets are available to support the measures, EPA will include new measures for the national initiatives in the *FY 2012 Annual Plan and Budget* in February 2011 and will amend the *Strategic Plan* to include those that are suitable strategic measures. For those measures where EPA does not have existing data, EPA will identify necessary data sources and begin to collect the information with the intention of

developing baselines and targets for additional strategic enforcement measures to be included in future *Annual Plans*. The Agency will also work closely with its state partners to explore how to be more transparent regarding our joint accountability to protect the environment and public health by showing to the public both federal and state accomplishments and results in the enforcement and compliance program.

EPA's High Priority Performance Goals (Priority Goals)

In addition to the long-term strategic measures, EPA established six near-term Priority Goals in FY 2010 with 18- to 24-month operational targets that advance our strategic goals.

EPA's Priority Goals

EPA will improve the country's ability to measure and control greenhouse gas (GHG) emissions. Building a foundation for action is essential.

- By June 15, 2011, EPA will make publically available 100 percent of facility-level GHG emissions data submitted to EPA in accordance with the GHG Reporting Rule, compliant with policies protecting Confidential Business Information (CBI).
- In 2011, EPA, working with DOT, will begin implementation of regulations designed to reduce the GHG emissions from light duty vehicles sold in the U.S. starting with model year 2012.

Clean water is essential for our quality of life and the health of our communities. EPA will take actions over the next two years to improve water quality.

- Chesapeake Bay watershed states (including the District of Columbia) will develop and submit Phase I watershed implementation plans by the end of CY 2010 and Phase II plans by the end of CY 2011 in support of EPA's final Chesapeake Bay Total Maximum Daily Load (TMDL) and consistent with the expectations and schedule described in EPA's letters of November 4 and December 29, 2009, and June 11, 2010.[3]
- Increase pollutant reducing enforcement actions in waters that do not meet water quality standards, and post results and analysis on the web.
- Over the next two years, EPA will initiate review/revision of at least four drinking water standards to strengthen public health protection.

EPA will ensure that environmental health and protection is delivered to our communities.

- By 2012, EPA will have initiated 20 enhanced Brownfields community level projects that will include a new area-wide planning effort to benefit under-served and economically disadvantaged communities. This will allow those communities to assess and address a single large or multiple Brownfields sites within their boundaries, thereby advancing area-wide planning to enable redevelopment of Brownfields properties on a broader scale. EPA will provide technical assistance, coordinate its enforcement, water, and air quality programs, and work with other federal agencies, states, tribes, and local governments to implement associated targeted environmental improvements identified in each community's area-wide plan.

EPA will report progress on these Priority Goals in the *Annual Plan and Budget* and through the Office of Management and Budget, with results regularly available to the public at www.performance.gov.

End Notes:

[1] EPA will continue to report site construction completions as an annual performance measure in its *Annual Plan and Budget*.

[2] Information about EPA's National Enforcement Initiatives for Fiscal Years 2011-2013 is available at http://www.epa.gov/compliance/data/planning/initiatives/initiatives.html. EPA solicited feedback on its FY 2011-2013 national enforcement initiatives in a *Federal Register Notice* in January 2010 and in an on-line discussion forum (see http://blog.epa.gov/enforcementnationalpriority).

[3] EPA letters available at http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/tmdl_implementation_letter_110409.pdf, http://www.epa.gov/region03/chesapeake/bay_letter_1209.pdf, and http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/TMDLScheduleLetter.pdf.

Goal 1: Taking Action on Climate Change and Improving Air Quality: Reduce greenhouse gas emissions and develop adaptation strategies to address climate change, and protect and improve air quality.

Objective 1.1: Address Climate Change. Reduce the threats posed by climate change by reducing greenhouse gas emissions and taking actions that help communities and ecosystems become more resilient to the effects of climate change.

Strategic Measures:

Address Climate Change

- By 2015, the light-duty vehicle greenhouse gas rule will achieve reductions of 99 $MMTCO_2Eq$. (Baseline FY 2010: 0 $MMTCO_2Eq$.)

- By 2015, additional programs from across EPA will promote practices to help Americans save energy and conserve resources, leading to expected greenhouse gas emissions reductions of 740.1 $MMTCO_2Eq$. from a baseline without adoption of efficient practices. This reduction compares to 500.4 $MMTCO_2Eq$. reduced in 2008. (Baseline FY 2008: ENERGY STAR 140.8 $MMTCO_2Eq$., Industrial Programs [1] 314.2 $MMTCO_2Eq$., Smartway Transportation Partnership 4.2 $MMTCO_2Eq$., Pollution Prevention Programs 6.5 $MMTCO_2Eq$., Sustainable Materials Management Programs [2] 34.3 $MMTCO_2Eq$., WaterSense Program 0.4 $MMTCO_2Eq$., Executive Order 13514 [3] GHG Reduction Program 0.0 $MMTCO_2Eq$.)

- By 2015, EPA will integrate climate change science trend and scenario information into five major scientific models and/or decision support tools used in implementing Agency environmental management programs to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and chemical safety).[4] (Baseline FY 2010: 4 scientific models)

- By 2015, EPA will account for climate change by integrating climate change science trend and scenario information into five rule-making processes to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and chemical safety). [4] (Baseline FY 2010: 0)

- By 2015, EPA will build resilience to climate change by integrating considerations of climate change impacts and adaptive measures into five major grant, loan, contract, or technical assistance programs to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and scientific research).[4] (Baseline FY 2010: 0)

Objective 1.2: Improve Air Quality. Achieve and maintain health-based air pollution standards and reduce risk from toxic air pollutants and indoor air contaminants.

Strategic Measures:

Reduce Criteria Pollutants and Regional Haze

- By 2015, the population-weighted average concentrations of ozone (smog) in all monitored counties will decrease to 0.073 ppm compared to the average of 0.078 ppm in 2009.

- By 2015, the population-weighted average concentrations of inhalable fine particles in all monitored counties will decrease to 10.5 $\mu g/m^3$ compared to the average of 11.7 $\mu g/m^3$ in 2009.

- By 2015, reduce emissions of nitrogen oxides (NO_x) to 14.7 million tons per year compared to the 2009 level of 19.4 million tons emitted.

- By 2015, reduce emissions of sulfur dioxide (SO_2) to 7.4 million tons per year compared to the 2009 level of 13.8 million tons emitted.

- By 2015, reduce emissions of direct particulate matter (PM) to 3.9 million tons per year compared to the 2009 level of 4.2 million tons emitted.

- By 2018, visibility in scenic parks and wilderness areas will improve by 15 percent in the East and 5 percent in the West, on the 20 percent worst visibility days, as compared to visibility on the 20 percent worst days during the 2000-2004 baseline.

- By 2015, with EPA support for developing capability including training, policy, and administrative and technical support, 15 additional tribes will possess the expertise and capability to implement the Clean Air Act in Indian country (as demonstrated by successful completion of an eligibility determination under the Tribal Authority Rule), for a cumulative total of 62 from the 2009 baseline of 47 tribes.

Reduce Air Toxics

- By 2015, reduce emissions of air toxics (toxicity-weighted for cancer) to 4.21 million tons from the 1993 toxicity-weighted baseline of 7.24 million tons.[5]

Reduce the Adverse Ecological Effects of Acid Deposition

- By 2015, air pollution emissions reductions will reduce the number of chronically acidic water bodies and improve associated ecosystem health in acid-sensitive regions of the northern and eastern United States by approximately 10 percent below the 2001 baseline of approximately 500 lakes and 5,000 kilometers of stream length.

Reduce Exposure to Indoor Air Pollutants

- By 2015, the number of future premature lung cancer deaths prevented annually through lowered radon exposure will increase to 1,460 from the 2008 baseline of 756 future premature lung cancer deaths prevented.

- By 2015, the number of people taking all essential actions to reduce exposure to indoor environmental asthma triggers will increase to 7.6 million from the 2003 baseline of 3.0 million. EPA will place special emphasis on children at home and in schools, and on other disproportionately impacted populations.

Objective 1.3: Restore the Ozone Layer. Restore the earth's stratospheric ozone layer and protect the public from the harmful effects of ultraviolet (UV) radiation.

Strategic Measure:

Reduce Consumption of Ozone-Depleting Substances

- By 2015, U.S. consumption of hydrochlorofluorocarbons (HCFCs), chemicals that deplete the Earth's protective ozone layer, will be less than 1,520 tons per year of ozone depletion potential from the 2009 baseline of 9,900 tons per year. By this time, as a result of worldwide reduction in ozone-depleting substances, the level of "equivalent effective stratospheric chlorine" (EESC) in the atmosphere will have peaked at 3.185 parts per billion (ppb) of air by volume and begun its gradual decline to less than 1.800 ppb (1980 level).

Objective 1.4: Reduce Unnecessary Exposure to Radiation. Minimize unnecessary releases of radiation and be prepared to minimize impacts should unwanted releases occur.

Strategic Measure:

Prepare for Radiological Emergencies

- Through 2015, EPA will maintain a 90 percent level of readiness of radiation program personnel and assets to support federal radiological emergency response and recovery operations, maintaining the 2010 baseline of 90 percent.

End Notes:

[1] Industrial Programs include ENERGY STAR for Industry, Natural Gas STAR, Coalbed Methane Outreach Program (CMOP), Landfill Methane Outreach Program (LMOP), Green Power Partnership, Combined Heat and Power Partnership (CHP), Voluntary Aluminum Industry Partnership (VAIP), HFC-23 Emission Reduction Partnerships, Mobile Air Conditioning Climate Protection Partnership (MAC), Environmental Stewardship Initiative, Significant New Alternatives Policy Program (SNAP), Responsible Appliance Disposal Program (RAD), GreenChill Advanced Refrigeration Partnership, and Landfill Rule.

[2] Sustainable Materials Management Programs include WasteWise, National Waste Recycling, and Coal Combustion Products Recycling (C2P2).

[3] The Federal Leadership in Environmental, Energy, and Economic Performance Executive Order was signed on October 5, 2009. The Executive Order sets sustainability goals for federal agencies and focuses on making improvements in their environmental, energy, and economic performance.

[4] The climate is changing and this can impact EPA's ability to achieve its mission and strategic goals. EPA is currently participating in an Interagency Climate Change Adaptation Task Force which will develop recommendations towards a national climate change adaptation strategy in the fall of 2010. EPA's adaptation measures provide a snapshot of EPA's overall effort to integrate climate change adaptation into mainstream decision making within EPA. As the work of the Task Force continues, future measures may be developed that assess the effectiveness of adaptation actions or that reflect a more refined set of climate change adaptation priorities.

[5] The 2015 target is an estimate based on the 2005 National Emissions Inventory (NEI) released in 2008, which does not include the impacts of post-2007 rulemakings. Updated estimates that do include the impacts of more recent rulemakings will be available after the release of the 2008 NEI in 2011.

Goal 2: Protecting America's Waters: Protect and restore our waters to ensure that drinking water is safe, and that aquatic ecosystems sustain fish, plants and wildlife, and economic, recreational, and subsistence activities.

Objective 2.1: Protect Human Health. Reduce human exposure to contaminants in drinking water, fish and shellfish, and recreational waters, including protecting source waters.

Strategic Measures:

Water Safe to Drink

- By 2015, 90 percent of community water systems will provide drinking water that meets all applicable health-based drinking water standards through approaches including effective treatment and source water protection. (2005 baseline: 89 percent. Status as of FY 2009: 89 percent.)

- By 2015, 88 percent of the population in Indian country served by community water systems will receive drinking water that meets all applicable health-based drinking water standards. (2005 baseline: 86 percent. Status as of FY 2009: 81 percent.)

- By 2015, in coordination with other federal agencies, provide access to safe drinking water for 136,100 American Indian and Alaska Native homes. (FY 2009 baseline: 80,900 homes. Universe: 360,000 homes.)

Fish and Shellfish Safe to Eat

- By 2015, reduce the percentage of women of childbearing age having mercury levels in blood above the level of concern to 4.6 percent. (2002 baseline: 5.7 percent of women of childbearing age have mercury blood levels above levels of concern identified by the National Health and Nutrition Examination Survey (NHANES).)[1]

Water Safe for Swimming

- By 2015, maintain the percentage of days of the beach season that coastal and Great Lakes beaches monitored by state beach safety programs are open and safe for swimming at 95 percent. (2007 baseline: Beaches open 95 percent of the 679,589 days of the beach season (beach season days are equal to 3,647 beaches multiplied by variable number of days of beach season at each beach). Status as of FY 2009: 95 percent.)[2]

Objective 2.2: Protect and Restore Watersheds and Aquatic Ecosystems. Protect the quality of rivers, lakes, streams, and wetlands on a watershed basis, and protect urban, coastal, and ocean waters.

Strategic Measures:

Improve Water Quality on a Watershed Basis

- By 2015, attain water quality standards for all pollutants and impairments in more than 3,360 water bodies identified in 2002 as not attaining standards (cumulative). (2002 universe: 39,798 water bodies identified by states and tribes as not meeting water quality standards. Water bodies where mercury is among multiple pollutants causing impairment may be counted toward this target when all pollutants but mercury attain standards, but must be identified as still needing restoration for mercury; 1,703 impaired water bodies are impaired by multiple pollutants including mercury, and 6,501 are impaired by mercury alone. Status as of FY 2009: 2,505 water bodies attained standards.)

- By 2015, improve water quality conditions in 330 impaired watersheds nationwide using the watershed approach (cumulative). (2002 baseline: Zero watersheds improved of an estimated 4,800 impaired watersheds of focus having one or more water bodies impaired. The watershed boundaries for this measure are those established at the "12-digit" scale by the U.S. Geological Survey (USGS). Watersheds at this scale average 22 square miles in size. "Improved" means that one or more of the impairment causes identified in 2002 are removed for at least 40 percent of the impaired water bodies or impaired miles/acres, or there is significant watershed-wide improvement, as demonstrated by valid scientific information, in one or more water quality parameters associated with the impairments. Status as of FY 2009: 104 improved watersheds.)

- Through 2015, ensure that the condition of the Nation's streams and lakes does not degrade (i.e., there is no statistically significant increase in the percent rated "poor" and no statistically significant decrease rated "good"). (2006 baseline for streams: 28 percent in good condition; 25 percent in fair condition; 42 percent in poor condition. 2010 baseline for lakes: 56 percent in good condition; 21 percent in fair condition; 22 percent in poor condition.)

- By 2015, improve water quality in Indian country at 50 or more baseline monitoring stations in tribal waters (cumulative) (i.e., show improvement in one or more of seven key parameters: dissolved oxygen, pH, water temperature, total nitrogen, total phosphorus, pathogen indicators, and turbidity) and identify monitoring stations on tribal lands that are showing no degradation in water quality (meaning the waters are meeting uses). (2006 baseline: 185 monitoring stations on tribal waters located where water quality has been depressed and activities are underway or planned to improve water quality, out of an estimated 2,037 stations operated by tribes.)

- By 2015, in coordination with other federal agencies, provide access to basic sanitation for 67,900 American Indian and Alaska Native homes. (FY 2009 baseline: 43,600 homes. Universe: 360,000 homes.)

Improve Coastal and Ocean Waters

- By 2015, improve regional coastal aquatic ecosystem health, as measured on the "good/fair/poor" scale of the National Coastal Condition Report. (FY 2009 baseline: National rating of "fair" or 2.8 where the rating is based on a 4-point system ranging from 1.0 to 5.0 in which 1 is poor and 5 is good using the National Coastal Condition Report indicators for water and sediment, coastal habitat, benthic index, and fish contamination.)

- By 2015, 95 percent of active dredged material ocean dumping sites, as determined by 3-year average, will have achieved environmentally acceptable conditions (as reflected in each site's management plan and measured through onsite monitoring programs). (2009 baseline: 99 percent. FY 2009 universe is 65.) (Due to variability in the universe of sites, results vary from year to year (e.g., between 85 percent and 99 percent). While this much variability is not expected every year, the results are expected to have some change each year.)

- By 2015, working with partners, protect or restore an additional (i.e., measuring from 2009 forward) 600,000 acres of habitat within the study areas for the 28 estuaries that are part of the National Estuary Program. (2009 baseline: 900,956 acres of habitat protected or restored, cumulative from 2002-2009. In FY 2009, 125,437 acres were protected or restored.)

Increase Wetlands

- By 2015, working with partners, achieve a net annual increase of wetlands nationwide, including a reversal of coastal wetland losses, with additional focus on biological and functional measures and assessment of wetland condition. (2004 baseline: 32,000 acres annual net national wetland gain; 59,000 acres of annual coastal wetland losses.)

Improve the Health of the Great Lakes

- By 2015, prevent water pollution and protect aquatic systems so that the overall ecosystem health of the Great Lakes is at least 24.7 points on a 40-point scale. (2009 baseline: Great Lakes rating of 22.5 (expected) on the 40-point scale where the rating uses select Great Lakes State of the Lakes Ecosystem indicators based on a 1 to 5 rating system for each indicator, where 1 is poor and 5 is good.)

- By 2015, remediate a cumulative total of 10.2 million cubic yards of contaminated sediment in the Great Lakes. (2009 baseline: Of the 46.5 million cubic yards once estimated to need remediation in the Great Lakes, 6.0 million cubic yards of contaminated sediments have been remediated from 1997 through 2008.)

Improve the Health of the Chesapeake Bay Ecosystem

- By 2015, achieve 50 percent (92,500 acres) of the 185,000 acres of submerged aquatic vegetation necessary to achieve Chesapeake Bay water quality standards. (2008 baseline: 35 percent, 64,912 acres.)

Restore and Protect the Gulf of Mexico

- By 2015, reduce releases of nutrients throughout the Mississippi River Basin to reduce the size of the hypoxic zone in the Gulf of Mexico to less than 5,000 km^2, as measured by the 5-year running average of the size of the zone. (Baseline: 2005-2009 running average size is 15,670 km^2.)

Restore and Protect the Long Island Sound

- By 2015, reduce the maximum area of hypoxia in Long Island Sound by 15 percent from the pre-TMDL average of 208 square miles as measured by the 5-year running average size of the zone. (Baseline: Pre-total maximum daily load (TMDL) average conditions based on 1987-1999 data is 208 square miles. Post-TMDL includes years 2000-2014. Universe: The total surface area of Long Island Sound is approximately 1,268 square miles; the potential for the maximum area of hypoxia would be 1,268 square miles.)

Restore and Protect the Puget Sound Basin

- By 2015, improve water quality and enable the lifting of harvest restrictions in 4,300 acres of shellfish bed growing areas impacted by degraded or declining water quality in the Puget Sound. (2009 baseline: 1,730 acres of shellfish beds with harvest restrictions in 2006 had their restrictions lifted. Universe: 30,000 acres of commercial shellfish beds with harvest restrictions in 2006.)

Sustain and Restore the U.S.-Mexico Border Environmental Health

- By 2015, provide safe drinking water or adequate wastewater sanitation to 75 percent of the homes in the U.S.-Mexico Border area that lacked access to either service in 2003. (2003 Universe: 98,515 homes lacked drinking water and 690,723 homes lacked adequate wastewater sanitation based on a 2003 assessment of homes in the U.S.-Mexico Border area. 2015 target: 73,886 homes provided with safe drinking water and 518,042 homes with adequate wastewater sanitation.)

End Notes:

[1] EPA is in the process of developing a consistent methodology for analyzing the data from Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) reports. The baseline and target may be reset when the analysis is complete at the end of CY 2010.

[2] In 2007, EPA added Guam, American Samoa, and the Northern Marianas, which resulted in a lower baseline and target.

Goal 3: Cleaning Up Communities and Advancing Sustainable Development: Clean up communities, advance sustainable development, and protect disproportionately impacted low-income, minority, and tribal communities. Prevent releases of harmful substances and clean up and restore contaminated areas.

Objective 3.1: Promote Sustainable and Livable Communities. Support sustainable, resilient, and livable communities by working with local, state, tribal, and federal partners to promote smart growth, emergency preparedness and recovery planning, brownfield redevelopment, and the equitable distribution of environmental benefits.

Strategic Measures:

Promote Sustainable Communities

- By 2015, reduce the air, water, land, and human health impacts of new growth and development through the use of smart growth and sustainable development strategies in 600 (cumulative) communities, which includes local municipalities, regional entities, and state governments, through activities resulting from EPA and federal partner actions. (Baseline: In FY 2010, an estimated 34 communities will be assisted.)[1]

Assess and Cleanup Brownfields

- By 2015, conduct environmental assessments at 20,600 (cumulative) brownfield properties. (Baseline: As of the end of FY 2009, EPA assessed 14,600 properties.)

- By 2015, make an additional 17,800 acres of brownfield properties ready for reuse from the 2009 baseline. (Baseline: As of the end of FY 2009, EPA made 11,800 acres ready for reuse.)

Reduce Chemical Risks at Facilities and in Communities

- By 2015, continue to maintain the Risk Management Plan (RMP) prevention program and further reduce by 10 percent the number of accidents at RMP facilities. (Baseline: There was an annual average of 190 accidents based on RMP program data between 2005-2009.)

Objective 3.2: Preserve Land. Conserve resources and prevent land contamination by reducing waste generation, increasing recycling, and ensuring proper management of waste and petroleum products.

Strategic Measures:

Waste Generation and Recycling

- By 2015, increase the amount of municipal solid waste reduced, reused, or recycled by 2.5 billion pounds. (At the end of FY 2008, 22.5 billion pounds of municipal solid waste had been reduced, reused, or recycled.)

- By 2015, increase beneficial use of coal combustion ash to 50 percent from 40 percent in 2008.

- By 2015, increase by 78 the number of tribes covered by an integrated waste management plan compared to FY 2009. (At the end of FY 2009, 94 of 572 federally recognized tribes were covered by an integrated waste management plan.)

- By 2015, close, clean up, or upgrade 281 open dumps in Indian country and on other tribal lands compared to FY 2009. (At the end of FY 2009, 412 open dumps were closed, cleaned up, or upgraded. As of April 2010, 3,464 open dumps were listed in the Indian Health Service Operation and Maintenance System Database, which is dynamic because of the ongoing assessment of open dumps.)

Minimize Releases of Hazardous Waste and Petroleum Products

- By 2015, prevent releases at 500 hazardous waste management facilities with initial approved controls or updated controls resulting in the protection of an estimated 3 million people living within a mile of all facilities with controls. (Baseline: At the end of FY 2009, it was estimated that 789 facilities will require these controls out of the universe of 2,468 facilities with about 10,000 process units. The goal of 500 represents 63 percent of the facilities needing controls.)

- Each year through 2015, increase the percentage of underground storage tank (UST) facilities that are in significant operational compliance (SOC) with both release detection and release prevention requirements by 0.5 percent over the previous year's target. (Baseline: This means an increase of facilities in SOC from 65.5 percent in 2010 to 68 percent in 2015.)

- Each year through 2015, reduce the number of confirmed releases at UST facilities to 5 percent fewer than the prior year's target. (Baseline: Between FY 1999 and FY 2009, confirmed UST releases averaged 8,113.)

Objective 3.3: Restore Land. Prepare for and respond to accidental or intentional releases of contaminants and clean up and restore polluted sites.

Strategic Measures:

Deepwater Horizon BP Oil Spill: Oil Spill Program Review

- By 2015, in response to the Deepwater Horizon BP oil spill in the Gulf of Mexico, EPA will conduct a thorough assessment of its rules, guidelines, and procedures relating to all relevant aspects of EPA's oil spill program, including prevention of, preparedness for, response to, and recovery efforts, and update them as needed, and ensure that the Agency has the appropriate tools to respond to environmental disasters of this scale.

Emergency Preparedness and Response

- By 2015, achieve and maintain at least 80 percent of the maximum score on the Core National Approach to Response (NAR) evaluation criteria. (Baseline: In FY 2009, the average Core NAR Score was 84 percent for EPA headquarters, regions, and special teams prepared for responding to emergencies.)[2]

- By 2015, complete an additional 1,700 Superfund removals through Agency-financed actions and through oversight of removals conducted by potentially responsible parties (PRPs). (Baseline: In FY 2009, there were 434 Superfund removal actions completed including 214 funded by the Agency and 220 overseen by the Agency that were conducted by PRPs under a voluntary agreement, an administrative order on consent, or a unilateral administrative order.)

- By 2015, no more than 1.5 million gallons will be spilled annually at Facility Response Plan (FRP) facilities, a 15 percent reduction from the annual average of 1.7 million gallons spilled from 2005-2009.

Cleanup Contaminated Land

- By 2015, complete 93,400 assessments at potential hazardous waste sites to determine if they warrant Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) remedial response or other cleanup activities. (Baseline: As of 2010, the cumulative total number of assessments completed was 88,000.)[3]

- By 2015, increase to 84 percent the number of Superfund final and deleted NPL sites and RCRA facilities where human exposures to toxins from contaminated sites are under control. (Baseline: As of October 2009, 70 percent Superfund final and deleted NPL sites and RCRA facilities have human exposures under control out of a universe of 5,330.)[4]

- By 2015, increase to 78 percent the number of Resource Conservation and Recovery Act (RCRA) facilities with migration of contaminated groundwater under control. (Baseline:

At the end of FY 2009, the migration of contaminated groundwater was controlled at 58 percent of all 3,746 facilities needing corrective action.)

- By 2015, increase to 56 percent the number of RCRA facilities with final remedies constructed. (Baseline: At the end of FY 2009, all cleanup remedies had been constructed at 32 percent of all 3,746 facilities needing corrective action.)

- Each year through 2015, reduce the backlog of LUST cleanups (confirmed releases that have yet to be cleaned up) that do not meet risk-based standards for human exposure and groundwater migration by 1 percent. This means a decrease from 21 percent in 2009 to 14 percent in 2015. (At the end of FY 2009, there were 100,165 releases not yet cleaned up.)

- Each year through 2015, reduce the backlog of LUST cleanups (confirmed releases that have yet to be cleaned up) in Indian country that do not meet applicable risk-based standards for human exposure and groundwater migration by 1 percent. This means a decrease from 28 percent in 2009 to 22 percent in 2015.

- By 2015, ensure that 799 Superfund NPL sites are "sitewide ready for anticipated use." (Baseline: As of October 2009, 409 final and deleted NPL sites had achieved "sitewide ready for anticipated use.")[5]

Objective 3.4: Strengthen Human Health and Environmental Protection in Indian Country. Support federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

Strategic Measures:

Improve Human Health and the Environment in Indian Country

- By 2015, increase the percent of tribes implementing federal regulatory environmental programs in Indian country to 18 percent. (FY 2009 baseline: 13 percent of 572 tribes)

- By 2015, increase the percent of tribes conducting EPA-approved environmental monitoring and assessment activities in Indian country to 50 percent. (FY 2009 baseline: 40 percent of 572 tribes)

End Notes:

[1] Included in the cumulative number are communities receiving assistance from: (1) direct EPA technical assistance programs; (2) EPA-funded grants and cooperative agreements to non-governmental organizations; and (3) in a limited number of communities (i.e., 6 of the total 34 communities in the FY 2010 baseline), technical assistance done in collaboration with other EPA programs (such as EPA's brownfields program) and other federal agencies (such as the Federal

Emergency Management Agency and the U.S. Departments of Transportation and Housing and Urban Development).

[2] Consistent with the government-wide National Response Framework (NRF), EPA will work to fully implement the priorities under its internal NAR so that the Agency is prepared to respond to multiple nationally significant incidents. Core NAR builds upon the Core Emergency Response concept while integrating the priority elements of EPA's NAR Preparedness Plan, and the Homeland Security Priority Workplan, to reflect an Agency-wide assessment of progress.

[3] This new strategic measure accounts for all remedial assessments performed at sites addressed under the Superfund program, whereas the measure in the previous (2006-2011) *Strategic Plan* captured only a subset of these assessments (i.e., the final assessments completed at sites). By capturing the assessment work leading to final assessment decisions, including the initial screening assessments to determine Superfund eligibility, the new measure more fully accounts for the work performed during the Superfund site assessment process.

[4] EPA is currently revising its dioxin risk assessment which may affect the targets and baselines for the human exposures under control and sitewide ready for anticipated use measures.

[5] As part of the Integrated Cleanup Initiative, EPA is evaluating "sitewide ready for anticipated use" across all cleanup programs and may modify the above Superfund measure in the future to include corresponding brownfields, RCRA corrective action, and leaking underground storage tank program goals.

Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution: Reduce the risk and increase the safety of chemicals and prevent pollution at the source.

Objective 4.1: Ensure Chemical Safety. Reduce the risk of chemicals that enter our products, our environment, and our bodies.

Strategic Measures:

Protect Human Health from Chemical Risks

- By 2015, reduce by 40 percent the number of moderate to severe exposure incidents associated with organophosphates and carbamate insecticides in the general population. (Baseline is 316 moderate and severe incidents reported to the Poison Control Center (PCC) National Poison Data System (NPDS) in 2008 for organophosphate and carbamate pesticides.)

- By 2014, reduce the percentage of children with blood lead levels above 5 μg/dl to 1.0 percent or less. (Baseline is 3.0 percent in the 2005-2008 sampling period.)[1]

- By 2014, reduce the percent difference in the geometric mean blood lead level in low-income children 1-5 years old as compared to the geometric mean for non-low income children 1-5 years old to 10.0 percent. (Baseline is 23.4 percent difference in the geometric mean blood lead level in low-income children 1-5 years old as compared to the geometric mean for non-low income children 1-5 years old in 2005-2008.) [1]

- By 2014, reduce the concentration in the general population for the following chemicals: non-specific organophosphate metabolites by 75 percent; chlorpyrifos metabolite (TCPy) by 75 percent; and, perfluoro-octanoic acid (PFOA) in serum by 2 percent. (Baselines are derived from the Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) concentration data in the general population and results are reported biennially. Pesticide baselines are based on 2001-2002 95th percentile data for non-specific organophosphate metabolites (0.45 μmol/L) and chlorpyrifos metabolite (TCPy) (12.4 μg/L). PFOA baseline is based on 2005/2006 geometric mean data in serum (3.92 μg/L).)

- By 2014, reduce concentration for the following chemicals in children: non-specific organophosphate metabolites by 75 percent and chlorpyrifos metabolite (TCPy) by 75 percent. (Baselines are derived from the Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) metabolite concentration data in children and results are reported biennially. Pesticide baselines are based on 2001-2002 data for non-specific organophosphate metabolites (0.55 μmol/L) and chlorpyrifos metabolite (TCPy) (16.0 μg/L).)

- By 2015, complete endocrine disruptor screening program (EDSP) decisions for 100 percent of chemicals for which complete EDSP information is expected to be available by the end of 2014. (Baseline is no decisions have been completed through 2009 for any

of the chemicals for which complete EDSP information is anticipated to be available by the end of 2014. EDSP decisions for a chemical can range from determining potential to interact with the estrogen, androgen, or thyroid hormone systems to otherwise determining whether further endocrine related testing is necessary.)

Protect Ecosystems from Chemical Risks

- By 2015, no watersheds will exceed aquatic life benchmarks for targeted pesticides. (Based on FY 1992-2001 data from the watersheds sampled by the USGS National Water Quality Assessment (NAWQA) program, urban watersheds that exceed the National Pesticide Program aquatic life benchmarks are 73 percent for diazinon, 37 percent for chlorpyrifos, and 13 percent for carbaryl. Agricultural watersheds that exceed the National Pesticide Program aquatic life benchmarks are 18 percent for azinphos-methyl and 18 percent for chlorpyrifos.)

Ensure Transparency of Chemical Health and Safety Information

- Through 2015, make all health and safety studies available to the public for chemicals in commerce, to the extent allowed by law. (Baseline is 21,994 Confidential Business Information (CBI) cases of Toxic Substances Control Act (TSCA) health and safety studies as defined in TSCA Section 3(6) that were submitted for chemicals potentially in commerce between the enactment of TSCA and January 21, 2010.)

Objective 4.2: Promote Pollution Prevention. Conserve and protect natural resources by promoting pollution prevention and the adoption of other stewardship practices by companies, communities, governmental organizations, and individuals.

Strategic Measures:

Prevent Pollution and Promote Environmental Stewardship

- By 2015, reduce 15 billion pounds of hazardous materials cumulatively through pollution prevention. (Baseline is 4.8 billion pounds reduced through 2008.)

- By 2015, reduce 9 million metric tons of carbon dioxide equivalent ($MMTCO_2Eq.$) cumulatively through pollution prevention. (Baseline is 6.5 $MMTCO_2Eq.$ reduced through 2008. The data from this measure are also calculated into the Agency's overall GHG measure under Goal 1.)

- By 2015, reduce water use by an additional 24 billion gallons cumulatively through pollution prevention. (Baseline is 51 billion gallons reduced through 2008.)

- By 2015, save $1.15 billion through pollution prevention improvements in business, institutional, and government costs cumulatively. (Baseline is $3.10 billion saved through 2008.)

- Through 2015, increase the use of safer chemicals cumulatively by 40 percent. (Baseline: 476 million pounds of safer chemicals used in 2009 as reported to be in commerce by Design for the Environment program.)

End Note:

[1] Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) data are collected in 2-year samples and released incrementally with the data typically becoming available 2 to 3 years after the sampling period ends.

Goal 5: Enforcing Environmental Laws: Protect human health and the environment through vigorous and targeted civil and criminal enforcement. Assure compliance with environmental laws.

Objective 5.1: Enforce Environmental Laws. Pursue vigorous civil and criminal enforcement that targets the most serious water, air, and chemical hazards in communities. Assure strong, consistent, and effective enforcement of federal environmental laws nationwide.

Strategic Measures:

Note: The enforcement measures in this *Plan* reflect: (1) the enforcement presence and level-of-effort measures that reflect the Agency's continued and strong investment in enforcement work; and, (2) the reductions in pollution achieved through enforcement cases (i.e., outcome indicator measures) which are dominated by the very largest cases and will typically vary widely over time depending on the pollution problems being addressed. EPA is also developing enforcement measures for work done to support the strategic outcomes under each of the media-specific goals in this *Plan*; these measures will be described in future *Annual Plans and Budgets* and *Annual Performance Reports*.

Maintain Enforcement Presence

- By 2015, conduct 105,000 federal inspections and evaluations (5-year cumulative). (FY 2005-2009 baseline: 21,000 annually)

- By 2015, initiate 19,500 civil judicial and administrative enforcement cases (5-year cumulative). (FY 2005-2009 baseline: 3,900 annually)

- By 2015, conclude 19,000 civil judicial and administrative enforcement cases (5-year cumulative). (FY 2005-2009 baseline: 3,800 annually)

- By 2015, review the overall compliance status of 100 percent of the open consent decrees. (Baseline 2009: 100 percent)

- Each year through 2015, support clean ups and save federal dollars for sites where there are no alternatives by: (1) reaching a settlement or taking an enforcement action before the start of a remedial action at 99 percent of Superfund sites having viable responsible parties other than the federal government; and, (2) addressing all cost recovery statute of limitation cases with total past costs greater than or equal to $200,000. (Baseline: 99 percent of sites reaching a settlement or EPA taking an enforcement action (FY 20017-2009 annual average); 100 percent cost recovery statute of limitation cases addressed (FY 2009))

- By 2015, increase the percentage of criminal cases with charges filed to 45 percent. (FY 2006-2010 baseline: 36 percent)

- By 2015, maintain an 85 percent conviction rate for criminal defendants. (FY 2006-2010 baseline: 85 percent)

Support Taking Action on Climate Change and Improving Air Quality

- By 2015, reduce, treat, or eliminate 2,400 million estimated pounds of air pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005-2008 baseline: 480 million pounds, annual average over the period)

- By 2015, achieve an investment of $11.0 billion in air pollution control equipment or practices as a result of concluded enforcement actions (5-year cumulative). (FY 2006-2008 baseline: $2.2 billion, annual average over the period)

Support Protecting America's Waters

- By 2015, reduce, treat, or eliminate 1,600 million estimated pounds of water pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005-2008 baseline: 320 million pounds, annual average over the period)

- By 2015, achieve an investment of $16.5 billion in water pollution control equipment or practices as a result of concluded enforcement actions (5-year cumulative). (FY 2006-2008 baseline: $3.3 billion, annual average over the period)

Support Cleaning Up Communities and Advancing Sustainable Development

- By 2015, reduce, treat, or eliminate 32,000 million estimated pounds of hazardous waste as a result of concluded enforcement actions (5-year cumulative). (FY 2008 baseline: 6,500 million pounds)

- By 2015, achieve an investment of $6.5 billion in hazardous chemical pollution control equipment or practices, cleanups, cost recovery, and oversight as a result of concluded enforcement actions (5-year cumulative). (FY 2006-2008 baseline: $1.3 billion, annual average over the period)

- By 2015, obtain commitments to clean up 1,500 million cubic yards of contaminated soil and groundwater media [1] as a result of concluded CERCLA and RCRA corrective action enforcement actions (5-year cumulative). (FY 2007-2009 baseline: 300 million cubic yards of contaminated soil and groundwater media, annual average over the period)

Support Ensuring the Safety of Chemicals and Preventing Pollution

- By 2015, reduce, treat, or eliminate 19.0 million estimated pounds of toxic and pesticide pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005-2008 baseline: 3.8 million pounds, annual average over the period)

- By 2015, achieve an investment of $40.0 million in control of pesticides and toxics as a result of concluded enforcement actions (5-year cumulative). (FY 2006-2008 baseline: $8.0 million, annual average over the period)

Enhance Strategic Deterrence through Criminal Enforcement

- By 2015, increase the percentage of criminal cases having the most significant health, environmental, and deterrence impacts to 50 percent. (FY 2010 baseline: 36 percent)[2]

- By 2015, maintain a 75 percent rate for criminal cases with individual defendants. (FY 2006-2008 baseline: 75 percent)

End Notes:

[1] Contaminated groundwater media, as defined for the Superfund and RCRA corrective action programs, is the volume of physical aquifer (both soil and water) that will be addressed by the response action.

[2] EPA collects data on a variety of case attributes to describe the range, complexity, and quality of our criminal enforcement national docket. Cases are tiered depending on factors such as the human health (death, injury) and environmental impacts, the nature of the pollutant and the its release into the environment, and the characteristics of the subject(s). This measure reflects the percentage of cases in the upper tiers.

-11-000-6101

United States Senate

WASHINGTON, DC 20510

April 18, 2011

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

Thank you for appearing before the Senate Interior Appropriations Subcommittee on March 16th. We are writing to follow up with you about the final Boiler MACT rules and to ascertain your agency's intention to accept further public comment through the reconsideration process.

We are particularly concerned about the negative potential impact EPA's final Boiler MACT rules will have on U.S. manufacturers. Businesses affected by the Boiler MACT regulations are diligently working to understand the multifaceted impact of the rules. Due to the complex nature of the rule, however, it is taking longer than anticipated to fully determine the impact.

Although EPA has made progress since the draft rule was issued last year, we are troubled that initial industry estimates indicate that EPA's final Boiler MACT rules could still lead to thousands of additional job losses. We find very little reassurance in EPA's claim that the cost of the final rule has been lowered by 50 percent, because lowering the costs of a regulation does not automatically equate to making it affordable for businesses. The estimates included in testimony by the American Forest & Paper Association last month show that the rule could result in more than $3 billion in capital costs for the forest products industry alone, and well over $11 billion for all manufacturing.

To ensure that the public, industry, and stakeholders have an opportunity to participate in providing the EPA with constructive comments on the cost of compliance and the real-world achievability of the standard, we ask that you take into consideration the complexity of the rule and at a minimum provide ample opportunity for review and feedback through the administrative process. We look forward to learning how the rule can be changed under the administrative reconsideration process, and are also eager to learn the dates and duration of the reconsideration period so we may inform our constituents of the timeline.

Recognizing that EPA previously sought a 15-month extension to review the public comments and industry feedback and was only granted a one-month extension by the court, we look forward to working together to ensure that EPA has sufficient time to review the comments and reexamine the rule. As EPA begins the reconsideration process, we urge the agency to carefully consider the public comments and advance a regulation that protects the environment and public health while fostering economic recovery and preserving jobs.

Sincerely,

Lisa Murkowski
U.S. Senator

Susan M. Collins
U.S. Senator

Mary L. Landrieu
U.S. Senator

Lamar Alexander
U.S. Senator

Jon Tester
U.S. Senator

Roy Blunt
U.S. Senator

Thad Cochran
U.S. Senator

Ben Nelson
U.S. Senator

Ron Johnson
U.S. Senator

Barbara A. Mikulski
U.S. Senator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP - 2 2011

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

I am writing in response to your letter of April 18, 2011, co-signed by 9 of your colleagues, regarding the emissions standards the U.S. Environmental Protection Agency (EPA) issued in February to limit hazardous air pollution from industrial, commercial, and institutional boilers and process heaters ("boiler air toxics standards"). I am writing to update you on the agency's work to carry out that Congressional mandate.

The boiler air toxics standards are required by the 1990 Amendments to the Clean Air Act. The EPA proposed boiler air toxics standards for public comment in June 2010, after previously-issued standards were vacated by a federal court. A large number of businesses and other institutions submitted comments on the proposed standards. As a result of the comments and new data that were submitted, the EPA determined that extensive revisions to the proposed standards were appropriate. In December 2010, the EPA requested that the federal District Court for the District of Columbia grant the Agency additional time for review to ensure that the public's input was fully addressed. However, the court granted the EPA only 30 days.

The EPA met this deadline in February 2011 by issuing final standards that maintained maximum public health benefits while cutting the projected cost of implementation dramatically. I am proud of the work that the EPA did to craft protective, sensible standards for controlling hazardous air pollution from boilers and process heaters. The standards reflect what industry had told the agency about the practical reality of operating these units.

When the Agency finalized these standards in February, we announced that we would reconsider certain aspects of the standards. Since then, the agency has provided additional detail about the reconsideration process. First, the EPA announced that we were postponing the effective date of the standards for major source boilers during the pendency of litigation and to allow the Agency to continue to consider additional data and to seek additional public comment as we reconsider these standards. Second, we announced in May that we would accept additional data and information regarding potential reconsideration of these standards until July 15, 2011. Third, we announced that we intend to issue a proposed reconsideration decision by the end of October 2011 and to finalize a decision by the end of April 2012. This schedule will allow the agency to base the final standards on the best available data and provides the public with ample opportunity to provide additional information and input.

I hope that this update has been helpful. If you have any questions, please do not hesitate to contact me or to have your staff contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

Gina McCarthy
Assistant Administrator

United States Senate

11-000-0301

WASHINGTON, DC 20510

January 6, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We are writing to express our opposition to the Environmental Protection Agency's recent waiver decision to allow the use of a 15 percent ethanol motor fuel blend (E15) for the 2007 model year and newer light-duty motor vehicles, and to convey our concern that the proposed mitigation measures fall far short in adequately protecting consumers. Now that EPA has determined E15 will be introduced into the marketplace, EPA has the responsibility to protect consumers from unintended consequences.

Despite EPA's own awareness of the shortcomings of ethanol, including its corrosive properties and tendency to clog motors not designed to accommodate biofuels, we were disappointed to learn that EPA has moved forward with a partial waiver for E15, allowing for an even higher level of ethanol in gasoline. Many consumers have already experienced difficulties using gasoline with 10 percent ethanol (E10), finding that it causes problems in older cars, snowmobiles, boats, and lawnmowers. Given these experiences, it is incumbent upon EPA to evaluate the impact E15 can have on the engines of many vehicles and equipment prior to giving a waiver to E15. The introduction of new fuel blends containing higher amounts of ethanol increases the chances of misfueling and damaging the more than 200 million engines in use in the United States today that are not approved for the use of E15.

EPA's decision to allow E15 into the marketplace for the 2007 model year and newer light-duty motor vehicles, while prohibiting its use for older vehicles, will cause confusion at the gas pump for consumers. Allowing E15 into the market without substantial precautionary measures will also likely cause significant rates of misfueling, especially given that E15 may cost less than other available fuels and may at times be more readily available. The dangers of misfueling go much further than creating undesirable emissions. Failing or malfunctioning engines in planes, boats, and power tools place consumers in considerable danger. Furthermore, the damage caused by misfueling engines not designed to accommodate ethanol can be very expensive to replace or repair for farmers, fishermen, foresters, construction workers, and many small business operators, whose livelihoods depend on the safe and reliable operation of their vehicles and equipment.

To address the dangers of potential misfuelings, EPA proposes that ethanol suppliers and retailers provide labels warning consumers of the higher ethanol content, and that the ethanol industry be required to conduct a survey of the labeling to measure its effectiveness. We are concerned that labeling may prove to be insufficient to prevent dangerous levels of misfueling.

For example, when the United States made the transition from leaded to unleaded gasoline, the size of the gasoline nozzle was changed to prevent misfueling among consumers, and still many incidences of misfueling occurred. No such mechanical or equipment safeguards are being required or proposed by EPA when introducing E15.

Furthermore, to mitigate E15 misfueling rates, EPA also proposes to simply rely on the ethanol production and manufacturing industry to wage a public information campaign and coordinated outreach program to warn consumers of the risks of misfueling, and places the onus on retailers to make consumers aware of the risks of utilizing E15. When considering the likelihood of significant misfueling and the serious hazards that may result, we believe EPA must take a more active role in ensuring consumers are well-informed.

Specifically, we ask EPA to: 1) reassess how the introduction and impact of E15 stands in contrast to other fuel introduction programs; 2) examine what level of E15 misfueling may occur, considering factors such as availability and cost; 3) explain how the public information and outreach campaign will prevent the problems we have described; and 4) determine steps to be taken if the initial labeling and public outreach efforts are ineffective.

In addition, we are also interested in learning what EPA is doing to guarantee that low-level ethanol and zero-ethanol (E0) fuels remain available in the marketplace for vehicles and equipment for which E15 is not approved. Furthermore, we are also concerned with who will be held liable for damages caused by the misfueling of unapproved vehicles, and what means of recourse may be available to consumers who suffer damages and losses caused by misfueling.

It is our hope that EPA will take the risks of misfueling extremely seriously, and consider all reasonable approaches to educating the public before moving forward with the introduction of E15 into the marketplace.

Sincerely,

Susan M. Collins
United States Senator

Benjamin L. Cardin
United States Senator

James M. Inhofe
United States Senator

Jim Webb
United States Senator

Richard Burr
United States Senator

Jack Reed
United States Senator

Olympia J. Snowe
United States Senator

Lamar Alexander
United States Senator

Kay Bailey Hutchison
United States Senator

cc: Cass Sunstein, Administrator, Office of Information and Regulatory Affairs

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 19 2011

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your January 6, 2011, letter co-signed by 8 of your colleagues, concerning the U.S. Environmental Protection Agency's (EPA) October 13, 2010, decision to grant a partial waiver allowing gasoline containing up to 15 percent ethanol (E15) to be sold for use in model year (MY) 2007 and newer light-duty motor vehicles (cars, light-duty trucks and medium-duty passenger vehicles) and the related rulemaking. In your letter, you express several concerns about the potential misfueling of the other vehicles, engines and equipment for which E15 use was not approved and ask several questions about how that potential can be minimized. I welcome the opportunity to address the important issues you raise.

EPA's partial waiver decision for E15 was made in accordance with section 211(f) of the Clean Air Act. Under section 211(f)(1), no fuel or fuel additive may be sold for use in motor vehicles unless it is "substantially similar" to the fuels used to test new motor vehicles for compliance with emission standards. However, section 211(f)(4) authorizes EPA to waive the section 211(f)(1) prohibition in the case of a fuel or fuel additive for which a demonstration is made that the fuel or fuel additive will not result in failure of applicable emission standards. Section 211(f)(4) was amended by the Energy Independence and Security Act of 2007 (EISA) to require EPA to consider the effects of a fuel or fuel additive on emissions of non-road, as well as on-road, vehicles and engines. EPA's partial waiver decision for E15 reflects the Agency's careful consideration of that issue.

The Agency granted the partial waiver allowing E15 use in MY2007 and newer cars and light trucks based on extensive DOE testing and other information showing that E15 will not jeopardize the compliance of those vehicles with applicable emission standards. EPA denied the waiver for MY 2000 and older cars and light trucks, other on-road vehicles and all non-road vehicles, engines and equipment in the absence of data showing that such vehicles, engines and equipment could meet emission standards if operated on E15. EPA's decision to grant a partial waiver was thus fully consistent with the Clean Air Act as amended by EISA. It was also in keeping with the purpose of EISA's renewable fuel provisions, which call for significantly increasing the amount of biofuels in the nation's transportation fuel supply to reduce petroleum imports and greenhouse gas emissions. The use of E15 is one option for meeting these mandated volumes. The issue of whether to allow sale of E15 for use in MY2001-2006 cars and light trucks is now before the Agency, and we expect to issue a decision soon.

In considering the future availability of pure gasoline (E0) and E10, it is important to remember that EPA's partial waiver decision allows, but does not require, E15 to be sold. Now that EPA has granted E15 a partial waiver, it is up to businesses to decide whether, when and where to sell E15. There are also a number of other steps that need to be taken before E15 can be sold. For example, the Clean Air Act requires that E15 be registered before it is sold and that fuel registration applications contain information about potential health and other impacts, among other things. EPA has yet to receive such an application for E15. In addition, issues concerning the compatibility of E15 with storage tanks and fuel dispensing equipment must be addressed. Various federal, state and local agencies have a role to play in determining the compatibility of various aspects of the fuel distribution system with E15. Also, some state laws do not allow E15 to be sold and would have to be changed before E15 could be sold in those states. In light of the many decisions and adjustments that fuel producers, distributors and marketers would need to make to sell E15, EPA expects that any significant market shift to E15 will take time, and that E10 will remain broadly available in the interim. As the transition to E15 occurs, we will also work with fuel producers, distributers and marketers to monitor the availability of different fuels so that any problems can be addressed on a timely basis. Fuel availability has been raised in the E15 rulemaking, and EPA is considering suggestions made by a number of public commenters about whether and how the Agency might address the continued availability of appropriate fuels. Regarding the availability of E0 specifically, it should be noted that this issue is separate from any actions resulting from the E15 waiver decision. E10 is now being used extensively across the country as a result of the market's reaction to the EISA renewable fuel volume requirements. However, the Agency will continue to work with stakeholders and state and local governments to address fuel availability issues.

Looking ahead, EPA is taking several steps to minimize the potential for misfueling of the vehicles, engines and equipment for which E15 is not approved. EPA conditioned the partial waiver on E15 fuel providers undertaking specified measures to mitigate potential misfueling, including labeling E15 fuel pumps and conducting a survey to ensure compliance with labeling requirements. EPA also proposed a rule (E15 rulemaking) to provide more practical ways of meeting the conditions and to establish other measures for minimizing the potential for misfueling. In developing the partial waiver conditions and proposed rule, we considered the lessons learned from the introduction of unleaded gasoline and ultra low sulfur diesel fuel. Many comments on the proposed rule raise the same questions you pose in your letter about the potential need for mitigation measures in addition to labeling and about potential liability for damages caused by any misfueling. We will fully address those issues as we develop the final rule, which we expect to complete in the next several months.

Whatever decisions businesses make concerning E15, we believe that a consumer education and outreach effort will be helpful. Our past experience has shown that the introduction of new fuels raises issues with consumers, including issues not technically attributable to the fuel. We believe a common message based on accepted technical facts can eliminate any potential confusion on the part of consumers. A public-private partnership has been in place to inform consumers about the introduction of ultra-low sulfur fuel, and we believe it has been extremely successful. A similar partnership can provide similar benefits for the introduction of E15, and we have begun discussions with various stakeholders about developing and implementing a consumer education and outreach effort for E15.

Again, thank you again for your letter. If I can be of further assistance, please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,

Gina McCarthy
Assistant Administrator

United States Senate

WASHINGTON, DC 20510

11-000-2882

February 18, 2011

Administrator Lisa Jackson
USEPA Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Dear Administrator Jackson:

We are writing with regard to the January 20, 2011, decision by the U.S. District Court for the District of Columbia that denied the Environmental Protection Agency's (EPA) request for a 15-month extension to promulgate Maximum Achievable Control Technology standards to control the emissions from commercial and industrial boilers (Boiler MACT). We remain concerned about the vulnerability of small and large businesses—as well as municipalities, universities and federal facilities—to excessive and expensive regulatory burdens. It is critical that the final rule include standards achievable by boilers in real-world operating conditions. The rule should protect public health while fostering economic recovery and sustaining jobs.

While we were encouraged by EPA's recent statement that the "standards will be significantly different than what we [EPA] proposed in April 2010," given that the court granted the agency a mere 30 days to finalize the rule, we are seriously concerned about whether EPA has sufficient time to complete the necessary improvements to the rule.

We stand ready to assist you in finding a reasonable solution, one that allows EPA to craft new rules that are achievable and protective of public health without sacrificing economic recovery and manufacturing jobs. In order to help us find the appropriate solution in a timely manner, we would appreciate your prompt response.

Sincerely,

Lamar Alexander

Susan Collins

Jim McCrery

Mark R Warner

Ke Benjamin Gilman

Rob Portman

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 23 2011

THE ADMINISTRATOR

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

The 1990 amendments to the Clean Air Act directed the Environmental Protection Agency to issue emissions standards for hazardous air pollution from large stationary sources, including industrial, commercial, and institutional boilers and process heaters ("boiler air toxics standards"). I am writing to update you on the Agency's long-overdue work to carry out that Congressional mandate.

The EPA finally proposed boiler air toxics standards for public comment last June. After another eight months of work, and in order to comply with an order issued by the U.S. District Court for the District of Columbia, the Agency issued the boiler air toxics standards two days ago. As explained below, however, existing sources will not need to make any changes immediately.

A large number of businesses and other institutions submitted comments on the proposed standards that the EPA published last June. Those comments contained voluminous data that the Agency did not have at the time it crafted the proposal. The new data has proved highly relevant to the EPA's essential tasks of (1) organizing the multitude of boilers and process heaters into appropriate subcategories and (2) calibrating the standard for each subcategory to the emissions control that well-performing existing facilities within it are achieving already.

Consequently, the standards that the EPA just issued reflect significant changes that the Agency made to the original proposal. For example, the EPA –

- has established a solid-fuel boiler subcategory in recognition of the lack of clear technical distinction between boilers that burn coal and boilers that burn biomass;

- has provided additional flexibility for existing biomass boilers by increasing the carbon monoxide limit and establishing work practice standards for startups and shutdowns;

- has ensured that the standards for all of the various air toxics can, in practice, be met by an individual unit, even though the Agency followed its historical approach of calculating minimum standards on a pollutant-by-pollutant basis; and

- has reduced compliance costs by requiring tune-ups, in lieu of setting numeric emission limits, for boilers and process heaters that use natural gas (or other gaseous fuels – from refineries, landfills, or other sources – that meet mercury and hydrogen sulfide specifications similar to those of natural gas).

Changes such as those listed above render the issued standards about half as costly to meet as the proposed ones would have been. The issued standards nonetheless will protect enormous numbers of American adults and children from harm by reducing their exposure to air toxics such as mercury and lead, which have adverse effects on IQ, learning, and memory.

The health benefits are particularly important for people living in communities close to the affected facilities. The analyses accompanying the standards find that for every dollar spent to comply with the standards, the public will receive at least fifteen to thirty-six dollars in health protection and other benefits. The standards will also reduce concentrations of ozone and fine particles, thereby avoiding, in the year 2014 alone –

- 2,500 to 6,500 premature deaths;
- 1,600 cases of chronic bronchitis;
- 4,000 nonfatal heart attacks;
- 4,300 hospital and emergency room visits;
- 3,700 cases of acute bronchitis;
- 78,000 cases of respiratory symptoms;
- 310,000 days when people miss work or school;
- 41,000 cases of aggravated asthma; and
- 1,900,000 days when people must restrict their activities.

Finally, it is important to note that, even when the EPA does not count the jobs created in manufacturing and installing pollution control equipment, the Agency estimates that the new standards will, on balance, create 2,200 new jobs.

I am proud of the work that the EPA has done to craft protective, sensible standards for controlling hazardous air pollution from boilers and process heaters. The standards reflect what industry has told the Agency about the practical reality of operating these units. I am also, however, sensitive to the fact that the standards issued earlier this week are substantially different from the ones on which the public had an opportunity to comment last year. To the extent that the standards contain provisions that stakeholders could not have anticipated based on the proposal, the public deserves an opportunity to comment on those changed provisions. The additional comments will give the EPA a means of ensuring that it has not, in changing the proposed standards substantially, effectuated any results that the Agency did not anticipate or intend.

Therefore, the EPA will solicit and accept comments from members of the public who would like the Agency to reconsider aspects of the standards that have changed significantly and unexpectedly from the proposal. Existing sources are not required to comply with the standards until three years after they become effective, and parties may request that the EPA delay the effective date as part of the reconsideration process.

I hope that this update has been helpful. If you have any questions, please do not hesitate to contact me or to have your staff contact David McIntosh, the Associate Administrator for Congressional and Intergovernmental Relations, at (202) 564-0539.

Sincerely,

Lisa P. Jackson

12-001-8237

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 26 2012

THE ADMINISTRATOR

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security
and Government Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

I am pleased to support the charter renewal of the Clean Air Act Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Clean Air Act Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

CLEAN AIR ACT ADVISORY COMMITTEE

1. Committee's Official Designation (Title):

Clean Air Act Advisory Committee

2. Authority:

This charter renews the Clean Air Act Advisory Committee (CAAAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The CAAAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities under the Clean Air Act Amendments of 1990.

3. Objectives and Scope of Activities:

The CAAAC will provide advice, information and recommendations on policy and technical issues associated with implementation of the Clean Air Act Amendments of 1990 (the Act). These issues include the development, implementation, and enforcement of the new and expanded regulatory and market-based programs required by the Act, with the exception of the provisions of the Act that address acid rain. The programs falling under the purview of the committee include those for meeting National Ambient Air Quality Standards, reducing emissions from vehicles and vehicle fuels, reducing greenhouse gas emissions, reducing air toxic emissions, issuing operating permits and collecting fees, and carrying out new and expanded compliance authorities. The CAAAC may advise on issues that cut across several program areas.

The major objectives are to provide advice and recommendations on:

a. Approaches for new and expanded programs, including those using innovative technologies and policy mechanisms to achieve environmental improvements.

b. The potential health, environmental, and economic effects of Clean Air Act programs on the public, the regulated community, State and local governments, and other Federal agencies.

c. The policy and technical contents of proposed major EPA rulemaking and guidance required by the Act in order to help effectively incorporate appropriate outside advice and information.

d. The integration of existing policies, regulations, standards, guidelines, and procedures into programs for implementing requirements of the Act.

4. **Description of Committees Duties:**

The duties of the CAAAC are solely to provide advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

The CAAAC will submit advice and recommendations and report to the EPA Administrator, through the Office of Air and Radiation.

6. **Agency Responsible for Providing the Necessary Support:**

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Air and Radiation.

7. **Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the CAAAC is $650,000 which includes 1.5 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

The CAAAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the CAAAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the CAAAC.

10. **Duration and Termination:**

The CAAAC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The CAAAC will be composed of approximately forty-five (45) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from business and industry, academic institutions, State, local and tribal governments, EPA officials, unions, public interest groups, environmental organizations and service groups.

12. Subgroups:

EPA, or the CAAAC with EPA's approval, may form CAAAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the CAAAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

October 5, 2012
Agency Approval Date

October 16, 2012
GSA Consultation Date

OCT 2 6 2012
Date Filed with Congress