

**RESPONSES OF MARCUS PEACOCK
TO QUESTIONS FROM MEMBERS OF THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE**

QUESTIONS FROM SENATOR JAMES M. JEFFORDS

1. With regard to the findings in EPA's final June 2004 study, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs*, that the use of diesel was a potential threat to underground sources of drinking water, do you think should EPA plan to develop national regulation standards for the underground injection control program to address this threat? If not, why not?

Answer:

I am not familiar with this report or the details of this issue. If confirmed, I will look into the issue.

2. What action do you think EPA should take to address any endangerment to public health as a result of hydraulic fracturing practices?

Answer:

As noted in the answer to the previous question, I am not familiar with this report or the details of EPA's activities in this area. If confirmed, I will look into it.

3. Do you know what monitoring procedures are in place to ensure that the three major companies conducting hydraulic fracturing that signed the MOA with EPA in December of 2003 are no longer using diesel as a part of their hydraulic fracturing process? Given that this MOA contains no enforcement provisions, what actions should taken against these companies should they continue to use diesel? Is the voluntary commitment to ban the use of diesel working and have these companies fully implemented the ban throughout their entire operations?

Answer:

I have no knowledge of this MOA, but will look into it, if confirmed.

4. On March 10, 2005, Assistant Administrator Ben Grumbles testified before the House Government Reform Committee regarding lead levels in drinking water. Mr. Grumbles stated that EPA conducted a ten-state review of LCR implementation that involved review of over 450 utilities. What actions do you think should be taken regarding these reviews in terms of reports and enforcement? If confirmed, would you provide the results of this data review, including any reports, to this committee?

Answer:

It is my understanding that EPA is still working to analyze the data collected during its review of the ten state programs. I have been told that the Agency will release a report with a national summary of the findings and make it available to both the public and the committee.

5. At the March 2005 House hearing, Mr. Grumbles testified that data provided by the states indicates that 90th percentile levels for approximately 96% of utilities subject to the Lead and Copper Rule (LCR) are below the 15 ppb action level. Regarding the 4% of utilities out of compliance with the LCR. If confirmed, would you provide to the committee a summary of the sampling results for each utility, the details of noncompliance, and specify whether an enforcement action is pending or has been taken?

Answer:

If confirmed, I will work with the Office of Water and the States towards a goal of providing a summary of recent information to the committee.

6. While at OMB did you review the Administration's rule to exempt coal-fired power plants from the air toxic control requirements of section 112 of the Clean Air Act? If so, do you think it is in the best interest of the public's and environmental health to choose, as the Administration has, to allow hundreds of coal-fired power plants to avoid adopting maximum achievable control technology for decades?

Answer:

OMB's Office of Information and Regulatory Affairs (OIRA), not my office, reviewed the section 112 revision notice. However, I am generally familiar with it.

This rule accompanies the Clean Air Mercury Rule, which represents the first time the U.S., or any other country, has regulated mercury emissions from existing coal-fired power plants. Along with the Clean Air Interstate Rule, EPA's recent regulations will require one of the most significant investments in air pollution technology ever in the history of the Clean Air Act and represents an important part of this Administration's efforts to help protect public health and the environment without interfering with the steady flow of affordable energy for American consumers and business.

7. The Administration has routinely requested increased funds for the EPA's national diesel initiative and clean school bus campaign. Congress has not cooperated and the request and appropriations have gone down over time. What effect, if any, will the authorization bill included as part of the energy bill and the Clean Air Subcommittee hearing discussed on Tuesday have on the availability of funds?

Answer:

Diesel retrofits in general are cost-effective control strategies for important pollution reductions. Both the national diesel initiative, including finalizing new emissions standards for locomotive and marine engines, and clean school bus program are priorities. The results associated with these programs will help to reduce particulate matter being emitted into the air and provide immediate public health benefits. There is substantial interest and support from industry, state and local governments, and public health and environmental organizations nationwide for these programs.

Although the Administration supports efforts to reduce emissions from both new and existing diesel engines, we are concerned that the funding authorized for diesel retrofit programs in the energy bill goes well beyond the funding for such efforts called for in the President's 2006 budget. Like similar authorizations that go well beyond the President's budget, we cannot support the authorization levels in this bill as they could create pressure to appropriate those levels in the future. However, we look forward to working with Congress to address the public health goals of the legislation consistent with the fiscal constraints that we all must confront.

8. Which rules and regulations that have you worked on over the last 10 years will have the greatest beneficial impact on public and environmental health?

Answer:

I have worked on a limited number of rules and regulations over the last ten years and very few of these addressed public or environmental health. This is because my purview tended to address rules and regulations that had an effect on the federal budget. Nonetheless, of the limited number of rules and regulations I have worked on, one stands out as being potentially beneficial to environmental health. I worked on a US Department of Agriculture rule clarifying the federal share for the cost of eradicating or controlling invasive species. The rule helps State and local officials and other partners understand, upfront, what they are responsible for and what they can expect from the federal government. This reduces uncertainty and should speed up activities that will eradicate or control such species instead of waiting to negotiate cost-share on a case by case basis. Unfortunately, the execution of this rule has been blocked by appropriations language.

9. Have you, at any point in your work at OMB, participated in discussions or meetings regarding Clean Air Act rulemakings that were intentionally structured or designed to avoid the docketing requirements of the Clean Air Act?

Answer:

No, I have not participated in discussions or meetings regarding Clean Air Act rulemakings that were intentionally structured or designed to avoid docketing requirements of the Clean Air Act.

10. EPA stated in its May 12th Federal Register notice finalizing the Clean Air Interstate Rule (or CAIR) that the reductions in ground-level ozone achieved by CAIR could save 500 more people from premature death every year. Yet EPA did not include these benefits in its main analysis. Since then, three new studies were published in the July edition of the journal of Epidemiology which clearly provide strong scientific evidence that the link between ozone and premature mortality is real and significant and additive to the effects of fine particles.

a) Will and should EPA now immediately include premature death reduction benefits in its primary estimates for future ozone rules? If not, what process do you believe EPA should have to go through before using studies published in peer-reviewed journals for rulemaking analyses?

Answer:

I am not familiar with the current published literature on ozone mortality. If confirmed, I commit to taking a close look at this issue.

b) If EPA decides not to include ozone mortality as part of the next ozone rule analysis, would you be willing to provide this Committee with an explanation of any such decision, including a description of what steps you feel you need to take before you can begin applying this peer-reviewed literature?

Answer:

Again, I am not familiar with the details related to this issue but, if confirmed, I will look into it.

11. There have been a number of instances in recent regulatory analyses where EPA has used methods which have not been subject to outside peer review. A primary example of this was OMB's insistence that the Clear Skies benefit-cost analysis should include an estimate of benefits based on a "Senior Death Discount" which reduced the value EPA normally uses for avoided early death by more than half for senior citizens (from \$6.3 million per life to \$2.3 million for people over 70). Now, we know that this was OMB's idea and not EPA's and this "Senior Death Discount" was to be applied even though it had no scientific underpinning and peer review to support it.

It seems reasonable that such proposals by OMB or other federal agencies to use new methods or assumptions in EPA analyses should be conveyed in writing and made available to the public. Do you agree such new proposed methods should be subject to some kind of peer review so we can avoid debacles such as OMB's Senior Death Discount approach in the future?

Answer:

I agree that important methods or assumptions included in its regulatory analyses should be subject to outside peer review consistent with the Office of Management and Budget's Peer

Review Bulletin issued on December 16, 2004. Under this Bulletin, agencies are granted broad discretion to weigh the benefits and costs of using a particular peer review mechanism for a specific information product or components thereof.

12. According to an Inside EPA article of September 17, 2004, EPA and OMB have been collaborating on an approach which polls a small number of outside experts and asks them to interpret the literature on fine particle health effects and provide an estimated dose-response function. This sounds to me like an odd kind of non-scientific process where a small number of selected people are being asked to do the work traditionally done by EPA scientists. Inside EPA article reports that the result of this OMB - EPA collaboration is a lowering of the estimated benefits of pollution control. The professional experts and scientists on the EPA staff were strongly critical of this project, which I also imagine is a very time-consuming and expensive effort. Aren't there enough health effects experts already on the government payroll in EPA who have already interpreted the particulate matter health effects literature, and haven't these EPA experts' interpretations already been subject to outside peer review by the Science Advisory Board and the National Academy of Sciences?

Answer:

I am not familiar with the expert elicitation approach mentioned, nor any of the details associated with the estimating the benefits of pollution control. If confirmed, I plan to take a close look at this issue and will make any changes necessary.

13. If you answered yes to the previous question, why is EPA spending taxpayer dollars at OMB's direction on this additional outside work for a health endpoint that EPA can already quantify using peer-reviewed methods, while a wide range of other human health and ecological effects are left unquantified for lack of adequate research investment? These unquantified effects include those from dry and wet deposition of mercury and mercury contamination in fish, the effects of atmospheric nitrogen deposition in watersheds and estuaries like the Chesapeake Bay which EPA so far has failed to include in its analyses of the benefits of NOx control, and the lack of any method for calculating the benefits of improved visibility in cities and residential areas where most of us live.

Answer:

Again, I am not familiar with the expert elicitation approach mentioned or why it is being pursued, but if confirmed, I will take as close a look as necessary.

14. How much is this outside expert survey project, mentioned in question #13, costing the taxpayers compared to how much EPA has been investing in research to address human health and ecological effects currently left out of your analyses?

Answer:

Although I am not familiar with this case in particular, I understand that EPA's Office of Air and Radiation and the Office of Research and Development, as well as other EPA offices have made significant investments in characterizing, quantifying, and valuing the benefits of improving our environment, including the effects of the deposition of nitrogen from the air, runoff and other sources on our estuaries. This particular project undoubtedly constitutes only a small portion of this research effort.

15. Do you agree that using scientifically rigorous surveys can help establish data needed to analyze the effects of EPA programs? Are you willing to provide this Committee with information regarding any survey work EPA has initiated which is being held up by OMB under its Paperwork Reduction Act authority? And if you find there is a backlog of scientific survey work being held up by OMB, what steps will you take to ensure scientific work on data collection can proceed on a timely basis?

Answer:

I agree that scientifically rigorous surveys can help inform both Agency research and policymaking efforts. If confirmed, I commit to looking into the status of any Information Collection Requests, and will work to make sure such requests are reviewed as expeditiously as possible.

16. I'm sure you are familiar with OMB's annual Reports to Congress on the benefits and costs of federal regulation, originally nicknamed the Stevens Report then the Thompson Reports. To their credit, in recent years OMB has made the comments submitted on its draft reports available to the public, an admirable example of transparency and accountability. However, the OMB website where these comments are published shows that EPA last submitted comments on the 2002 report. Reading EPA's comments on the 2002 report, it is clear that the Agency had problems with many aspects of OMB's report and with OMB's preferred analytical practices pertaining to matters such as discounting future health benefits, using quality of life adjustments to reduce estimated benefits of mortality reductions, and other issues. I find it very odd that since 2002 EPA has been completely silent, submitting no comments on the record for the last three years of OMB reports. Will you provide this Committee with copies of any comments EPA has prepared on drafts of the Thompson Reports for the last three years, including this year, with an explanation for why any such comments were not made public and addressed by OMB in the final versions of their reports?

Answer:

OMB's Report to Congress on the costs and benefits of federal regulation, known as the "Thompson" report, is written and produced by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget. I was not directly involved in the report, except to review drafts. My office at OMB was not involved in the review process with other agencies. If confirmed, I will find out the details of the process that was used with respect to

EPA, review the comments that were submitted by EPA and assess how OMB responded to EPA's comments.

17. You have been called the 'father of OMB's Program Assessment Rating Tool,' designed to evaluate program performance. Please explain how this tool works with respect to preventative programs, such as most of the public health statutes that EPA administers? In other words, how do you quantify cancers avoided or hazardous waste not spilled?

Answer:

A number of EPA programs with activities focused on prevention have been evaluated successfully by the Program Assessment Rating Tool (PART). These include programs with prevention, deterrence, compliance assistance, and research components. OMB recognized that not all programs are alike, and thus there are seven different PART instruments: Direct Federal, Competitive Grant, Block/Formula Grant, Regulatory Based, Research and Development, Capital Assets, and Credit -- the first five of which have been used for EPA programs. The basic tool is the Direct Federal version. Each of the other versions adds a number of questions tailored to the specific implementation activities of that type of program. In addition, and has been the case with EPA, OMB and the agency have the flexibility to create a program-specific hybrid tool which pulls appropriate questions from more than one version of the tool.

It is often challenging to link directly preventative activities with environmental or human health impacts -- ambient conditions, exposure or body burden/uptake, or health or ecological status. In some cases, programs have employed "logic models" that link programmatic activities with the desired outcomes. Annual performance measures thus capture programmatic outputs or intermediate outcomes, such as compliance rates or the installation of pollution control equipment by the regulated community. These annual measures are then linked to long-term performance measures which measure the desired environmental or human health impacts. In some programs the preventative activities are a subset of the program's implementation activities. In these cases the program might have annual performance measures focused on programmatic activities or outputs, but all the program's activities would share the same long-term performance measures. Finally, in some cases it is possible to extrapolate from a representative sample the estimated impacts of programmatic activities on environmental or health impacts.

18. The free flow of information from EPA to the outside world is of critical importance. Recently, EPA settled a lawsuit with a group that had requested copies of employee surveys conducted by the agency in 1999, 2001, and 2003. The watchdog group had requested the information under the Freedom of Information Act and was basically stonewalled by the agency until a formal suit was filed. In addition, EPA is increasingly denying public interest groups fee waivers under FOIA. Not only were EPA's actions a waste of resources, they were against the law. What will you do to make sure that the Freedom of Information Act process is not politicized and that requests are timely and efficiently processed?

Answer:

This Administration takes its obligations under the Freedom of Information Act seriously. I am not familiar with the case that is referenced in your question, but I commit to doing a thorough review of this process, including fee waivers, if confirmed.

19. The effects of management practices on employee morale is a critical area that will be under your purview at EPA. You have described the Deputy Administrator position as a sort of "Chief Operating Officer." Should you be confirmed, are there certain steps you would take to monitor employee morale and ensure that it is going up rather than down?

Answer:

In keeping with Administrator Johnson's commitment to transparency and collaboration, I view the effective stewardship of EPA's human resources as one of the most critical responsibilities of the Deputy Administrator. Working with the Administrator and with Agency leadership at all levels, I believe there are several ways to stay in touch with the EPA staff, helping ensure that staff understand how critical they are in achieving our mission and how much we value them as professionals and individuals. These steps include the following.

Keeping in Touch with Staff Opinions - The results recently reported from the Government-wide Federal Human Capital Survey (FHCS) once again confirms what is evident in the EPA workplace everyday. That is, EPA staff are strongly committed to the Agency's mission and understand their role in achieving that mission. Continued monitoring of employee perceptions of EPA, its leadership, its management, and the support staff receive in performing their duties will be an important step in making sure we are ahead of the curve in dealing with issues of morale and employee effectiveness.

Taking an Active Role in Relationships with the Agency's Human Capital Constituencies - EPA has a strong history of active interaction between senior leadership and human resources constituency groups across the Agency. EPA's unions are one of these key constituency groups and I intend to foster a relationship characterized by continuous dialogue, union involvement, mutual respect, and honesty. I look forward to being actively involved in the work of EPA's Human Resources Council (HRC). An organization unique in Federal agencies, EPA's HRC is comprised of executive-level leaders whose role is to raise issues of significance to the effective management of the Agency's human resources and develop the analysis and advice that the Administrator needs to deal with those issues.

Leading the Human Capital Change Effort at the Agency - It is my understanding that EPA's human capital program is making progress in aligning its performance management, workforce planning, competency management, employee development, recruitment, and planning systems with the Agency's strategic plan and then measuring results.

None of a Deputy Administrator's many areas of responsibility are more important than those in the human capital area. I look forward to working along side my new colleagues, just as has our Administrator, as part of an EPA team.

20. Given the fact that EPA dropped its voluntary program for lead poison prevention a short period after Administrator Johnson wrote to Senators Clinton and Obama that lead regulation was unnecessary and extolling the virtues of the voluntary approach, do you think that the Agency has realized, that at least for lead, voluntary programs are not a panacea to regulation? Do you think it would be a good idea to conduct a rigorous analysis of all of EPA's voluntary programs to make sure that they are achieving their environmental and health protection goals?

Answer:

As I indicated at the hearing, it is my understanding that the Agency intends to propose a lead renovation and remodeling regulation by the end of the year.

As I understand it, EPA is undertaking a review of their voluntary programs to more rigorously evaluate them. I believe the Agency's goal is to ensure that voluntary programs complement regulatory programs and promote innovative approaches for environmental protection.

21. On July 6, 2005 in Denmark, President Bush told reporters, "Listen, I recognize the surface of the Earth is warmer and that an increase in greenhouse gases caused by humans is contributing to the problem." As you may know, the Administration's current voluntary approach to this problem is projected by the Energy Information Administration and every other economic forecasting entity to continue increasing U.S. greenhouse gas emissions for the foreseeable future, thereby continually contributing to and compounding the problem. You may also know that knowledgeable climatologists have projected that the U.S. and other major emitters have approximately 10-15 years to "decarbonize" our energy supply system or the next 100 years of global warming will be unstoppable. Do you think it would be prudent for the U.S. to adopt an approach that would result in and guarantee that total emissions in the U.S. and the world began to decline in the next 10-15 years?

Answer:

I agree with the President's statements on climate change and I believe that the broad portfolio of actions that this Administration is undertaking in this important area is an effective response. These activities include near-term voluntary programs to reduce current greenhouse gas emissions, many of which are implemented by EPA, coupled with substantial efforts on technology development that will make new, cleaner energy sources available, and the world's largest program in climate science to improve our understanding and enable effective responses. Through this program, we will help the world achieve the purpose of the recently concluded G8 Summit in Gleneagles, Scotland - namely, "to put ourselves on a path to slow and, as the science justifies, stop and then reverse the growth of greenhouse gases."

22. In my view, the Agency's budget and resources for hazardous air pollutants research, regulation development and prevention activities have been much lower than warranted by the statutory requirements in the Clean Air Act. As a result, the Agency has often been

significantly behind schedule. EPA has also recently issued unauthorized MACT standards incorporating risk factors inappropriately (for example in the plywood/boiler MACT development) and is also unwisely contemplating, perhaps due to resource constraints, further unauthorized residual risk regulatory actions. Will you commit to reviewing the air toxics program budget and resources and advising this Committee of gaps in funding or resources that are needed so that the Agency can promulgate and enforce rules that comport with the statutory requirements of the Clean Air Act?

Answer:

I am aware of the ongoing demands and the importance of the air toxics program. If confirmed, I will look into this issue and address any problems if warranted.

23. A new report, issued this week by the Government Accountability Office, serves as a wake up call on the need to modernize our chemical management laws. According to GAO, EPA has required testing for fewer than 200 of the 62,000 chemicals used in commerce since EPA began reviewing chemicals in 1979. Additionally, GAO found that EPA's reviews of new chemicals provide limited assurance that health and environmental risks are identified before the chemicals enter commerce. Finally, even when EPA has toxicity and exposure information on chemicals showing significant health risks, GAO found that the Agency has difficulty overcoming the legal hurdles needed to take action. The public health implications of this report were highlighted by another study issued this week, finding that babies in the US are exposed to hundreds of synthetic chemicals, even before birth. TSCA has not been updated since 1976. If you are confirmed as Deputy Administrator, will you work with Congress to enhance TSCA to give EPA better tools to protect children from chemical exposure?

Answer:

I am very committed to protecting the environment and the health of citizens -- young and old -- of this country by ensuring that needed information is available on the hazards of chemicals. If confirmed, I look forward to working with the Committee and others in Congress on this issue.

QUESTIONS OF SENATOR FRANK R. LAUTENBERG

1. I'm sure you are familiar with the case of Phil Cooney, a non-scientist lawyer at the White House who altered science reports on climate change. Do you believe these kinds of alterations of science documents by the White House are appropriate?

Answer:

The documents you reference relate to management of the Federal climate science program, and were reviewed following the same interagency review process that is used on other documents of this type. Approximately fifteen federal agencies were involved on the interagency review process which includes both scientists, policy specialists and senior managers.

Phil Cooney was both a policy specialist and a senior manager involved in the development and conduct of our climate change policies and activities. As someone with expertise on issues relating to climate change and the environment, I believe his participation in the review was appropriate.

2. I am very concerned about a new plan that EPA is developing on "risk assessment". When you visited my office a few weeks ago you promised to get back to us with information on that plan. Since you haven't done so, could you tell me here what you have learned about it?

Answer:

I have looked into the issues you raised, and my response indicates what I have learned about this issue.

There are two major purposes of the proposed changes: (1) to identify and resolve major scientific issues early in the assessment development process and thereby facilitate high quality and timely completion of assessments; and (2) to increase transparency in the assessment development process and thereby assure full and open consideration and scientific review of relevant information.

EPA is planning to hold a public workshop on the proposed new process to solicit comments, suggestions and concerns from the IRIS user community and stakeholders. The workshop will be announced in the Federal Register and on the IRIS web site.

3. From my observations this administration "collaborates" only when a state agrees with it. As just one example, during the "Clear Skies" debate many states, including New Jersey, fought for the ability to regulate facility emissions to meet Clear Air Act's health standards. The administration refused to listen. Is that the kind of collaboration we could expect if you are confirmed?

Answer:

Collaborative problem solving is an environmental protection approach that I know current EPA Administrator Steve Johnson is committed to and is encouraging. EPA has a long history of helping multiple parties to work cooperatively with the Agency to find environmental solutions - in watersheds, in communities (e.g., Brownfields) , and for some ecosystems such as the Great Lakes and Chesapeake Bay. Together with strong regulatory and enforcement programs, collaborative approaches can be an effective tool for some types of environmental problems. I believe that EPA, under the leadership of Administrator Johnson, will continue to look for areas where collaborative approaches can achieve beneficial environmental results.

QUESTIONS OF SENATOR BARBARA BOXER

1) Do you agree that the recommendations of the NAS on human pesticide testing, the Nuremberg Code and Declaration of Helsinki and the Common Rule—at a minimum—should be specifically incorporate in any EPA regulation on intentional human dosing studies with pesticides?

Answer:

Yes, I think it is important for EPA to require investigators who intend to submit human clinical trial research to EPA meet high ethical standards.

2) EPA estimates that the funding shortfall for wastewater treatment and pollution prevention projects as of January 1, 2000 was \$181 billion, and that this shortfall will grow to \$388 billion over the next 20 years. Before you are confirmed, please describe for me the steps that you will take to address harms to public health and environmental quality—including fish consumption advisories, closed beaches and degraded aquatic and wildlife habitat—that will result from a lack of sufficient funding in later fiscal years?

Answer:

In 2002, EPA issued *The Clean Water and Drinking Water Infrastructure Gap Analysis*. The analysis estimated the funding gap between projected infrastructure spending needs and current spending for the water industry. EPA undertook the analysis to develop a solid basis for understanding the magnitude of the funding gaps potentially facing wastewater systems.

As a country, we have made remarkable progress over the years in protecting and restoring our waters and wetlands. We have much left to do. EPA is committed to meeting the challenge and to accelerating the pace. To support sustainable wastewater infrastructure, EPA continues to provide annual capitalization grants to the Clean Water State Revolving Funds (CWSRF). The CWSRF has been one of the most successful and cost-effective infrastructure financing programs in the Federal government's history. The Agency has provided, through FY 2004, nearly \$23 billion to capitalize the CWSRF, nearly triple the authorization level of \$8.4 billion. This Federal investment, when combined with State contributions and other funding sources, has allowed the CWSRF to support \$48 billion in important water quality projects.

In addition, EPA is addressing the funding gap by focusing on the "four pillars" of sustainable water infrastructure. The four pillars that are essential for sustainable infrastructure are: better management, water efficiency, full-cost pricing, and watershed-based approaches. Better management means assuring that utility managers have the suite of tools they need. These tools include asset management, environmental management systems, cost-effective technologies, capacity building, and other approaches used by the most successful utilities.

Another pillar in ensuring sustainable infrastructure is to encourage efficient use of water. Although EPA's focus is water quality, not water quantity, EPA increasingly finds that water quantity and quality issues are inextricably linked. EPA will continue to promote water

efficiency through such efforts as a voluntary program to identify and promote water-efficient products.

The third pillar is full-cost pricing of water supply and wastewater treatment. Pricing that seeks to recover all of the costs of building, operating, and maintaining a system is absolutely essential to achieving sustainability. Conservation rates and seasonal rates can further help reduce peak water demand, and valid concerns about equity can be addressed through "lifeline rates" for the poor.

The final pillar in assuring sustainable water infrastructure is an important water program priority in itself. EPA is committed to working co-operatively on a watershed basis with our State, Tribal, and other partners to protect human health and restore water quality nationwide. About a decade ago, EPA embraced the watershed approach, focusing on multi-stakeholder and multi-program efforts within hydrologically-defined boundaries, as a better way to address water quality problems. Today, we are increasingly managing water quality on a watershed basis.

3) On June 7, 2005, the NAS and the heads of ten other national scientific institutions stated that “there is strong evidence that significant global warming is occurring,” that “[i]t is likely that most of the warming in recent decades can be attributed to human activities” and that “scientific understanding of climate change is now sufficiently clear to justify nations taking prompt action.” Before you are confirmed, please describe whether and how you will take specific steps to ensure we will reduce greenhouse gas emissions promptly and develop a US policy recommendation consistent with the NAS document.

Answer:

The President’s approach to climate change is informed by the best available science, including the 2001 NAS report he requested on what is known and unknown about climate science. The Bush Administration recognizes that the surface of the Earth is warmer and that an increase in greenhouse gases caused by humans is contributing to the problem. However, significant uncertainties in climate science remain and the Administration is working aggressively to address them.

The Administration’s program first sets the U.S. on a path to slow the growth of greenhouse gas emissions, and – as the science justifies – to stop and then reverse that growth. The President has launched a broad portfolio of domestic and international initiatives to develop and deploy cleaner, and more efficient energy technologies through a broad range of programs, including voluntary, market-based, and mandatory measures. The President’s climate change policies also promote technological innovation and reduce harmful air pollution in the U.S. and throughout the world while improving our energy security.

I believe that these actions – which at EPA focus on voluntary programs like Energy STAR, Smartway Transport, Climate Leaders and the international Methane to Markets Partnership – are a strong and effective response to the challenge we face.

4) On June 8, 2005, the New York Times reported that political officials in the Bush Administration edited scientific information in government reports on climate change to downplay the connection between greenhouse gas emissions, climate change and the adverse consequences of climate change. This is not the first time that those types of problems have arisen in the Bush administration. This type of political interference with science is a violation of the core principles of scientific integrity and violates the public trust in our government to base its policies on accurate and independent information.

a) Please describe for me whether you agree that politics should not be a factor in determining what scientific advice the EPA provides?

Answer:

I want to assure you that this Administration emphasizes the importance of using sound, credible, peer-reviewed science to inform its policies and decisions. EPA follows rigorous peer-review standards for all of its scientific products to ensure the soundness and credibility of their results.

The Bush Administration supports sound science and has made a strong commitment to climate change science. In 2002, the President established the U.S. Climate Change Science Program as part of a new cabinet-level management structure to oversee public investments in climate change science and technology. CCSP coordinates and integrates scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government.

In July 2003, CCSP published the *Strategic Plan for the U.S. Climate Change Science Program*. The Strategic Plan responds to the President's direction that climate change research activities be accelerated to provide the best scientific information to support public discussion and decision-making on climate-related issues. The Administration's commitment to sound science is exemplified by the rigorous public peer review to which it subjected earlier drafts of the CCSP Strategic Plan. A major public workshop was held in December 2002 to review the draft, and the National Research Council was also commissioned to review the draft and final versions of the Plan. The NRC said the Plan "articulates a guiding vision, is appropriately ambitious, and is broad in scope." Also, the Plan calls for the production of 21 Synthesis and Assessment Reports, focusing on some of the highest priority scientific questions being addressed by the CCSP. The 21 Reports will be produced through a FACA process, with rigorous peer review, to ensure their balance, credibility, and scientific soundness.

b) Please describe the steps you will take to ensure that political appointees and industry representatives do not alter scientific information in government reports, memos and other documents on climate change and other matters before EPA?

Answer:

As I noted above, EPA emphasizes the importance of sound, credible, peer-reviewed science in all of its programs. I also am committed to an open and transparent process in the development and in the review of EPA's scientific documents that are prepared to inform decision-makers.

Consistent with the Information Quality Act guidelines, comments EPA receives from stakeholders (e.g., the regulated community, environmental organizations, private citizens) are made publicly available as the scientific documents are developed for subsequent use in setting Agency policy or in developing regulations. I want to assure you that if confirmed as the Deputy Administrator of EPA, I will insist that only credible, peer-reviewed science be used in informing policy.

c) Please describe for me the steps that you will take to protect scientists from being asked to violate their scientific integrity by altering or suppressing scientific data?

Answer:

I will not ask any scientist at EPA or any other agency to violate their scientific integrity by altering or suppressing scientific data. Indeed I am eager to have the best and most credible science as we deliberate on what should be the appropriate policy. I also know that the scientific staff at EPA, as well as other agencies are incredibly committed to scientific integrity. They also know that as scientists, they have an important function to inform policy-makers but the call as to the appropriate policy is the responsibility of the Agency's leadership.

5. Please work with EPA to ensure that the agency provides me with material including any written documents related to any assessment, before you are confirmed, which EPA has or is conducting of potential concerns by employee regarding influence from political or industrial interests?

Answer:

I am not familiar with the material you mention in your question. If confirmed, I will look into the existence of this material.

6. Please work with EPA to provide me with EPA's new draft assessment for MTBE, before you are confirmed, which recent trade reports state concludes that MTBE is a "likely" carcinogen. Please include any comments supplied to the agency and a list of all individuals, government offices and other entities, including non-governmental entities, which have seen the document or have commented on the document.

Answer:

It is my understanding that the draft MTBE assessment is still early in this process and has not received internal nor external scientific peer review and thus it is not ready to be publicly released.

QUESTIONS FROM SENATOR OBAMA

1. Title 15, Section 2682(c)(3) of the U.S. Code requires EPA to promulgate regulations to reduce the risk of lead exposure during renovation and remodeling activities by October 28, 1996. By what date, will EPA issue these regulations?

Answer:

As I understand it, the Agency will announce by the end of this year a comprehensive program, which will include a proposed regulation, as well as an extensive education and outreach campaign aimed at the renovation, repair, and painting industry and the consumer.

2. Following his nomination hearing in April, I asked Stephen Johnson when EPA would issue a proposed rule. He responded: “[T]he Agency is developing an education and outreach campaign that will convey the benefits of the use of lead-safe work practices to minimize both workers’ and homeowners’ exposure to lead dust during renovation and remodeling. EPA is also targeting outreach efforts to expand consumer awareness. . . . EPA plans to launch this material by this fall and will evaluate the effectiveness of this effort and will determine what additional steps may be necessary, including regulation.” Does EPA believe that such a voluntary approach satisfies the requirement of 15 U.S.C. §2682(c)(3)? If so, what is the basis for EPA’s belief that a voluntary approach satisfies the requirement of 15 U.S.C. §2682(c)(3)?

Answer:

The Agency is not relying solely on a voluntary program based on education and outreach, rather it will be a component of a comprehensive program to ensure the use of lead-safe work practices by the renovation, repair and painting industry. This comprehensive program will include a regulation. In addition, the Agency intends to launch an extensive education and outreach campaign designed to assist the Agency in reaching this unique industry of small businesses and individuals. EPA will also target outreach efforts to expand consumer awareness, which is critical to creating demand for the use of lead-safe work practices. The Agency will work closely with all interested stakeholders in the coming months as we move toward announcement of this comprehensive lead safe work practices program.

As the number of lead-poisoned children continues to decline, it is critical that the Agency focus its programs on the housing, the activities and the exposures to reach the children of concern. EPA is in the process of assessing the costs and benefits of approaches for controlling the risks from lead contaminated dust created by renovation, repair and painting activities in the target homes. EPA currently estimates that there are 1.3 million children living in homes where these types of renovation and repair activities take place every year.

3. An EPA study has projected significant benefits from a regulation mandating lead-safe renovation and remodeling practices. Has EPA conducted a study to evaluate the effectiveness of a voluntary approach?

Answer:

The Agency is not relying solely on a voluntary program based on education and outreach, rather it will be a component of a comprehensive program to ensure the use of lead-safe work practices by the renovation, repair and painting industry. This comprehensive program will include a regulation. In addition, the Agency intends to launch an extensive education and outreach campaign designed to assist the Agency in reaching this unique industry of small businesses and individuals. EPA will also target outreach efforts to expand consumer awareness, which is critical to creating demand for the use of lead-safe work practices. The Agency will work closely with all interested stakeholders in the coming months as we move toward announcement of this comprehensive lead safe work practices program.

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4. What, if any, scientific evidence does EPA have to indicate that a voluntary approach would protect as many children from lead poisoning as would a regulatory approach?

Answer:

The Agency is not relying solely on a voluntary program based on education and outreach, rather it will be a component of a comprehensive program to ensure the use of lead-safe work practices by the renovation, repair and painting industry. This comprehensive program will include a regulation. In addition, the Agency intends to launch an extensive education and outreach campaign designed to assist the Agency in reaching this unique industry of small businesses and individuals. EPA will also target outreach efforts to expand consumer awareness, which is critical to creating demand for the use of lead-safe work practices. The Agency will work closely with all interested stakeholders in the coming months as we move toward announcement of this comprehensive lead safe work practices program.

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5. What is the projected cost of EPA's voluntary approach to encourage contractors to use lead-safe work practices?

Answer:

The Agency is not relying solely on a voluntary program based on education and outreach, rather it will be a component of a comprehensive program to ensure the use of lead-safe work practices by the renovation, repair and painting industry. This comprehensive program will include a regulation. In addition, the Agency intends to launch an extensive education and outreach campaign designed to assist the Agency in reaching this unique industry of small businesses and individuals. EPA will also target outreach efforts to expand consumer awareness, which is critical to creating demand for the use of lead-safe work practices. The Agency will work closely with all interested stakeholders in the coming months as we move toward announcement of this comprehensive lead safe work practices program.

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6. At the July 14, 2005, hearing, you indicated your belief that the reason that regulations had not yet been promulgated is because of the difficulty in creating enforceable rules against small contractors. Why would a lead regulation that applies to small contractors be any different from countless other EPA regulations that apply to small businesses, such as dry cleaners?

Answer:

The renovation, repair, and painting industry is comprised almost entirely of small businesses and individuals – roughly a quarter of a million businesses in the U.S. provide professional renovation, repair, and painting services, employing approximately 1.7 million workers. EPA initially examined several regulatory approaches to dealing with the risks of lead-based paint in renovation, repair, and painting activities. The Agency's preliminary analysis indicated that the annual costs of these regulations could exceed \$1 billion.

These significant costs would be borne by small businesses, consumers, and households. This, combined with the challenges of enforcing against small businesses and individuals, led the Agency to investigate a range of options in an effort to identify an approach under the law that would not disproportionately burden America's small businesses. However, after careful consideration of a number of approaches, including a voluntary program, the Agency determined that a combination program that includes regulation, training, educating and outreach would provide the most effective approach to ensuring the use of lead-safe work practices by this industry. When the Agency issues a regulation that impacts small businesses and individuals, the Agency significantly increases its compliance assistance efforts, which will also be the case when this rule takes effect.

QUESTIONS FROM SENATOR JOSEPH I. LIEBERMAN FOR MARUCS PEACOCK

1. PART I believe that in your years at OMB, you were a significant contributor to formulating the PART methodology for evaluating executive branch programs and offices.

EPA's Acid Rain program was rated only "moderately effective" in the last PART scoring exercise. I assume you must also know that the acid rain program has been highly effective in achieving the emissions reductions required under the Clean Air Act, while doing so at far-below-predicted costs to industry and also at low cost to the EPA itself. According to OMB's Thompson Report, the program is producing over \$70 billion in health benefits every year; these benefits are at least 40 times its costs. I assume that there are not all that many Federal programs that can claim achievements that are quite so high-leverage. Given that record, it is surprising that OMB rates the program as only "moderately successful". Since the results of the program are so well-documented, the rating itself raises questions about OMB's approach to rating programs by PART scores.

- Can you explain the discrepancy between the benefit and cost results for the acid rain program and the modest PART score the program received?**

Answer:

The PART is a questionnaire of approximately 30 questions that is used to determine if a federal program is getting results and, if not, why not. The PART produces an overall rating for each program but it is most helpful in diagnosing strengths and weaknesses in a program and helping formulate specific recommendations that are expected to improve the program. In this way, it looks at a much broader range of program characteristics than just the current costs and benefits of the program. The expectation would be that implementation of the recommendations would result in a program that is more efficient than the status quo.

In the case of the Acid Rain program the PART resulted in an overall rating of "moderately effective." This is a relatively high rating. To date, no EPA program has achieved a higher rating. Relatively few programs government-wide have achieved the highest rating of 'effective.'

Despite a relatively high rating, the Acid Rain PART indicates the program could be improved if two recommendations are implemented: (1) The program should develop and track efficiency measures (which it currently does not track) and such measures should include the full cost of implementing the program, not just the Federal share, and (2) statutory requirements that limit the scope of the program, such as maximum emissions reduction targets and the exemption of certain facilities, should be removed. The completed PART for this program and all of the other EPA programs that have been recently evaluated can be found at http://www.whitehouse.gov/omb/budget/fy2006/pdf/ap_cd_rom/part.pdf

I was the lead for the President's Budget and Performance Integration Initiative when the Program Assessment Rating Tool (PART) was created. I am very proud of my association with this effort. As a sign of its success, the PART is now being copied by State governments, such as Kentucky and California, and by other countries, such as Asia and Scandinavia. The PART is

also a finalist for Harvard University's prestigious "Innovations in American Government Award." The winners will be announced later this month.

2. Transparency in the Regulatory Review Process Executive Order 12866, which this Administration has said governs its process for reviewing proposed and final regulations, requires OMB to comply with certain requirements to improve the transparency of the regulatory development process, such as disclosing relevant information regarding any communications with outside parties while a regulation is under review by OMB. These requirements are designed in part to ensure that the public knows whether people outside the government are sharing views with OMB about regulations as they are being reviewed, and to provide the public with information about the changes made to a rule as a result of the inter-agency review process.

Increasingly, the Agency is providing OMB with “informal” copies of rulemaking packages – which, I gather, does not trigger the requirements of EO 12866, and making a “formal” submission to OMB only very late in the review process – sometimes only days before a rule is signed. I am concerned that this practice of receiving “informal” rulemaking packages is resulting in either OMB or the Agency circumventing the transparency requirements of the Executive Order with the effect of creating a back door for certain stakeholders to influence the regulatory process without any public record of their involvement.

- **Could you tell me why the Agency and OMB are relying so heavily on this “informal” process whether you will support a continuation of this practice if you are confirmed?**

Answer:

I have not participated in the “significance” determinations under EO 12866. This activity is the responsibility of Office of Information and Regulatory Affairs. If I am confirmed, I would be happy to look more closely at this process.

- **I have not reviewed the logs OMB is required to keep on review of regulatory actions. When OMB has a regulatory package that has been submitted “informally”, do you know whether it logs the dates and names of individuals outside the government who are involved in any substantive communication with OMB about the regulation as it is required to do once a regulatory package is submitted formally?**

Answer:

I am not aware of what items OMB’s Office of Information and Regulatory Affairs docket. If I am confirmed, I would be happy to look more closely at this process.

In a similar recognition of the importance of a transparent process, in Section 307(d) of the Clean Air Act, Congress required EPA to place in the docket all drafts of proposed and final rules (and accompanying documents) sent to OMB for interagency review and “all written comments” on those drafts by other agencies.

- **On a regulatory package that has been sent to OMB for review, if someone from OIRA or another agency, rather than sending comments in writing to EPA, were to dictate changes to draft preamble or regulatory text to EPA staff with the understanding that EPA staff would incorporate these changes, it seems to me that would be a circumvention of these provisions rather than compliance with them. Do you agree?**

Answer:

I have not participated in implementing Section 307(d) of the Clean Air Act related to OMB review. As a result, I am not aware of what items are docketed.

- **If so, will you direct EPA staff that, if they receive changes to text in a Clean Air Act rulemaking package orally rather than in writing, they are to write the comments down, identify who made the comments, and then ensure that they are placed in the docket at the appropriate time?**

Answer:

If confirmed, I will work with EPA staff and my colleagues at OMB to uphold the important transparency goals reflected in Section 307(d).

Questions from the Hearing for Marcus Peacock

1. Lautenberg on risk assessment guidelines being altered (IRIS). During his opening statement he alluded to asking me about this during our courtesy meeting and wanting me to get back to him.

Answer:

I have looked into the issues you raised, and my response indicates what I have learned about this issue.

There are two major purposes of the proposed changes: (1) to identify and resolve major scientific issues early in the assessment development process and thereby facilitate high quality and timely completion of assessments; and (2) to increase transparency in the assessment development process and thereby assure full and open consideration and scientific review of relevant information.

EPA is planning to hold a public workshop on the proposed new process to solicit comments, suggestions and concerns from the IRIS user community and stakeholders. The workshop will be announced in the Federal Register and on the IRIS web site.

2. Jeffords- What was holding up PM2.5 implementation and ozone implementation rules at OMB.

Answer:

I understand that EPA sent a draft of the proposed PM2.5 Implementation Rule to OMB in October of last year. Since that time, however, senior EPA managers and OMB personnel have been focused on finalizing a number of regulatory packages that were subject to judicial deadlines or were a higher priority for the Agency. This includes significant actions such as the Clean Air Interstate Rule (CAIR) and the Best Available Technology (BART) rule (a key part of the regional haze program). These rules, especially CAIR, require important changes to the PM 2.5 implementation rule, as well as to the draft final 8 hour ozone implementation rule. EPA managers have now placed the highest priority on completing the 8 Hour Ozone Implementation rule and the PM 2.5 Implementation Rule. EPA and OIRA staff are now working through changes for both of these rules.

3. Obama on lead abatement rule.

Answer:

See Obama questions #1, 2, 3, 4, 5, and 6

4. Jeffords-- What do I think the five biggest involuntary risks are in this country.

Answer:

The American public deserves to have a clean, safe, and healthy environment. Our nation faces numerous environmental challenges today. However, it is difficult to rank them by level of risk. Environmental challenges, such as particulate matter, ground-level ozone, and homeland security threats, among others, are all very important. I believe we must continue to use sound science to establish priorities and to improve the ability to measure our environmental progress.