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NOMINATIONS OF THE 107th CONGRESS, SECOND SESSION

HEARINGS

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

JANUARY 24, 2002

LINDA MORRISON COMBS, TO BE CHIEF FINANCIAL OFFICER, ENVIRONMENTAL PROTECTION AGENCY

J. PAUL GILMAN, TO BE ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT, ENVIRONMENTAL PROTECTION AGENCY

MORRIS X. WINN, TO BE ASSISTANT ADMINISTRATOR FOR ADMINISTRATION AND RESOURCE MANAGEMENT, ENVIRONMENTAL PROTECTION AGENCY

MAY 7, 2002

JOHN P. SUAREZ, TO BE ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE, ENVIRONMENTAL PROTECTION AGENCY

JULY 18, 2002

JOHN BRESLAND and CAROLYN MERRITT, TO BE MEMBERS OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

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ONE HUNDRED SEVENTH CONGRESS
SECOND SESSION: JANUARY 3–DECEMBER 16, 2002

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NOMINATION OF THREE NOMINEES TO THE ENVIRONMENTAL PROTECTION AGENCY: LINDA MORRISON COMBS; J. PAUL GILMAN; AND MORRIS X. WINN

THURSDAY, JANUARY 24, 2002

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

The committee met, pursuant to notice, at 2:30 p.m. in room SD–406, Senate Dirksen Building, Hon. James M. Jeffords, chairman of the committee, presiding.

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

Senator JEFFORDS. Good afternoon to you. We have this afternoon three nominees for positions with the Environmental Protection Agency. They are: Ms. Linda Morrison Combs, nominated to be Chief Financial Officer. Well, that is impressive.

Then Mr. J. Paul Gilman, nominated to be the Assistant Administrator for the Office of Research and Development, another very important job.

Then Mr. Morris Winn, nominated to be Assistant Administrator of the Office of the Administration and Resources Management. That is an interesting, fascinating job.

I look forward to the hearing with each of you and want to comment you on your willingness to commit to public service. Each of you brings a great deal of experience and expertise to these positions. I hope we will be working together to assure the protection of the environment.

I would like to let everyone know how we are going to proceed this afternoon. Before giving your statement, please introduce any family members you have here. As I go to each of you, I would be pleased if you would do that.

Also, you may summarize your statements as much as you desire, if that feels appropriate. Your full statement will be included in the record.

We will save questions until each of you has finished your statement. After all members have a chance to ask questions and I am the only one here, I think, and probably will be, I'll conclude the hearing by asking each of you two obligatory questions.

For those committee members who are unable to be here today or who have additional questions, we will forward those questions to them. All members have a limited length of time to submit questions to you if they are not here at the hearing.

As soon as the committee receives all the responses, then we will act on your nominations and I want to be as expeditious as possible.

So, with that, Morris, why don't you start us off and introduce any of your family that you may have with you.

STATEMENT OF MORRIS WINN, NOMINEE FOR ASSISTANT ADMINISTRATOR FOR ADMINISTRATION AND RESOURCES MANAGEMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. WINN. Thank you, Mr. Chairman. Unfortunately my family is not with me. They are back home in Austin, Texas. They are rooting for me from afar. Thank you very much.

It's with great honor and privilege, Mr. Chairman, that I am here today as the nominee of President Bush and Governor Whitman for EPA's Assistant Administrator for Administration and Resource Management, which I'll refer to as OARM. I am extremely proud to serve in the Bush Administration and with Governor Whitman, both of whom are working to enhance the level of public health and environmental protection for all Americans. I look forward to working with this committee, the Congress, and the EPA.

If I can for just a second speak briefly about my background and discuss where I hope to bring new ideas and leadership to this position if I am confirmed. I have about 30 years of public service experience in the great State of Texas. I have worked for four Governors, two attorneys-general, four commissioners of insurance, and a State Comptroller all who had very different philosophical views.

I had a leadership role in managing diversity, providing human resources programs as well as providing a full range of administrative support. I developed an effective strategy to recruit, train and retain a high caliber of State employees.

In my last job, Senator, I had the occasion to hire approximately 700 employees in less than 24 months without any grievances or lawsuits in that process. Throughout my career I have pursued public service passionately, employing a balanced management of people and tasks. I consider myself a fiscal realist. I intend to be frugal with spending the taxpayers' dollars under my management. I believe that public service requires integrity, energy and purpose. It is not simply a job, nor is it just a profession to me. I consider this a very high honor. I firmly believe that our Federal employees are indeed the Agency's most valuable asset. As we collectively raise the bar of fairness and equity in the workplace, I believe we must recognize that there are heroes on both sides of every issue.

There are employees who can tell us about all the injustices in the workplace and discrimination. There are also those employees who can tell us about all the good and wonderful things in the organization. I believe that we need both of these perspectives to improve the workplace productivity and agency performance.

My goal is to help EPA and its employees find their will to serve a growing and more demanding customer base. I aim to establish a system of total accountability where employees at all levels in the organization will own their jobs, that is, the duties assigned to them. I believe that employees should be free to succeed or fail based on their measured performance.

The tragic events of September 11th and the prospects of terrorist activity have raised anxiety levels throughout our Nation.

Federal employees have shown courage and dedication in continuing to serve the American public. I will work to ensure the safety of EPA's employees and facilities as we meet our needs.

I am also aware that both the Congress and the President have concerns about the Federal Government's human capital crisis and the resulting workforce challenges.

I will ensure that we integrate workforce planning into the Agency's strategic and budget planning process and under the umbrella of EPA's human capital strategy, I will work hard to support all of the President's management agenda initiatives.

Last, I will work to ensure a high level of integrity and accountability in our financial resources management. Each year two-thirds of EPA's budget is obligated as contracts or grants. The management of these resources is very important and it must be done well.

If confirmed, I will strengthen oversight and make sure that we have an early warning system built into our processes that the American people can receive cost-effective results from contracts and grants. I will not take this position for granted. I realize it will be a very tough challenge for me as well as for our organization in these troubling times.

However, if I am confirmed, I pledge to bring the full weight of my integrity, energy and experience to bear on meeting the challenges and raise the bar of excellence for EPA and for OARM.

I will be pleased to answer any questions you may have. Thank you very much.

Senator JEFFORDS. Thank you.

Paul, please proceed.

STATEMENT OF J. PAUL GILMAN, NOMINEE FOR ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. GILMAN. Mr. Chairman, I would like to introduce my wife, Ginny and our two sons, Samuel and Will. We are also accompanied by a long-time friend, Angela Ray.

Senator JEFFORDS. I see a wave coming at me there. Thank you very much.

Mr. GILMAN. It is a privilege to appear before you, Mr. Chairman. It is certainly a privilege and it's also an honor to appear as a nominee for the Assistant Administrator for the research and development efforts at EPA.

I am excited about the opportunity to serve with Governor Whitman. I would like to first address what I believe are my qualifications for the position. My education, research and employment experience, I think, have contributed to those qualifications.

Most recently I was at Celera Genomics, a private sector reesearch enterprise, and was able to participate in the creation of a very fast-paced and highly productive research program there. My knowledge of research management was greatly enhanced by that. I believe my immersion in new fields of genomics and bioinformatics will be useful as we begin to use these tools in the scientific and technical challenges in the environmental sciences.

I have served as an external member of the Department of Energy's Laboratory Operations Board where we studied the management of their Federal research facilities. I think that opportunity has contributed again to my general knowledge of Federal research facilities.

I also spent time before that as the person in charge of the programs for life sciences and agriculture at the National Academy of Sciences and Engineering's National Research Council. That gave me quite an education on the significant issues and the scientific context that face EPA on a daily basis.

While at OMB, I had direct responsibility for budget formulation for the EPA and other science-related agencies and also participated in the regulatory review process.

At the Department of Energy, I had principal responsibilities in advising the Secretary in scientific and technical matters, especially related to human health and environmental research and environmental remediation.

I spent 13 years in the U.S. Senate as a staff member, my first year as a congressional science fellow for the American Association for the Advancement of Science. I had a broad education in science-related issues and in environmental and human health issues as well.

I participated in this committee's investigation of the Three Mile Island Accident, the Nuclear Waste Policy Act of 1982, and broad oversight in a number of regulatory agencies.

I would like to share with you, Mr. Chairman, my thoughts about the nature of science in government and in EPA. I believe those that pursue science and engineering in government take on a special role and a particularly weighty responsibility.

I do believe that in doing so you become an advocate for the truth. There's a quote of Albert Einstein's engraved on the monument to him outside the National Academy of Sciences Building. It captures my feelings on this matter and my commitment to your committee and to my President. Professor Einstein said, "The right to search for truth implies also a duty. One must not conceal any part of what one has recognized to be true."

There has been substantial change in the Office of Research and Development at EPA under the past two Assistant Administrators. Dr. Robert Huggett set the major research programs on a new course, designed to have science serve the mission of the Agency and to move away from solely research for research's sake.

Dr. Norine Noonan further moved in that area and also instituted a very vigorous planning process aimed at making the right research available to the Agency's regulators when they need it. We are beginning to see the results of that effort. If confirmed, I will sustain the reforms that they instituted. Where appropriate I will initiate new ones with the goal of pursuing the best use of science in the EPA regulatory process.

Thank you for the opportunity to appear before you, Mr. Chairman.

Senator JEFFORDS. Ms. Combs, please proceed.

STATEMENT OF LINDA MORRISON COMBS, NOMINEE FOR CHIEF FINANCIAL OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. COMBS. Thank you, Mr. Chairman. I regret that my family is not here today. They are back in North Carolina, where I come from. But I do appreciate the opportunity and I am very pleased to appear before you today as you consider my qualifications for the position of Chief Financial Officer at the Environmental Protection Agency.

I am deeply honored that I have been nominated by President Bush for this important post and I certainly want to thank Governor Whitman as well for her confidence in me in considering me for this position.

It is indeed a privilege to be considered once again for a position of great trust within the Federal Government. Some of the most rewarding years in my career have been spent in executive positions, primarily in the management positions and in the finance positions at the Department of the Treasury, the Department of Veterans Affairs and the Department of Education.

I would welcome the opportunity to serve the public once again at the EPA. This Agency's staff is well known for their personal commitment to the organization's mission of protecting human health and the environment. This is a commitment that I share, while recognizing as well the special contributions that sound financial management can and should also make to the business of environmental protection.

In short, I believe that we must manage and account for our physical resources just as carefully as we protect and preserve our natural resources. As you very well know, the Chief Financial Officer of any organization carries a tremendous weight and tremendous responsibility. It is a pivotal position where planning, budget, accountability, and resource management all come together as they should.

I think that the CFO in a Federal Government agency bears an additional responsibility of being accountable to the public that we serve.

I believe that the experiences that I bring with me from North Carolina where I have participated in State government, local government, as well as the private sector, and the experiences that I bring with me having served the other Federal segments that I mentioned a moment ago, give me the broadest possible prospective on the kinds of challenges that I am likely to face in the CFO position at the EPA.

If I am confirmed, it will be my goal to buildupon the progress that has been made since my last position in the executive branch. The CFO position was created in 1990 when I was at the Department of the Treasury. I was pleased to be able to work with Congress and the White House and OMB to make that possible.

I can see already from the short time that I have been back that there have been tremendous improvements made. But we still have room to grow. Managing performance and results for EPA and the public that we serve will be my goal. In support of that goal I just want to pinpoint for you in the next couple of minutes just a couple of highlights of the opportunities that I see ahead.

First and foremost, I see the opportunity we have of meeting the Agency's financial obligations with precision and timeliness. I am committed to that. We have an obligation to pursue the President's management agenda which my colleague, Morris Winn, mentioned a moment ago as well. We will both, if we are confirmed, have some joint as well as independent roles in pursuing that.

The updated strategic plan for the Agency is coming about in September of 2003. I very much look forward as the Chief Financial Officer to working with your folks and making sure that this is done in a way that would be beneficial to all of our constituents needs.

Of course, budgeting and annual planning is always an integral part of the CFO's work. I look forward to working closely with Congress on that effort as well.

One of the biggest challenges and opportunities that I see the Agency confronting is the need to continue developing and maintaining financial systems that serve multiple customers and multiple needs.

I am personally committed to managing and communicating accurate and meaningful information about EPA's fiscal health and financial position. I believe that Federal agency systems need to be versatile enough to provide financial statements worthy of clean audit opinion as well as information about program costs in a form that's helpful to line managers to manage their programs better, being able to give a big picture analysis for those of us who may need to look at that as well.

Certainly congressional interest in, and support for, those kinds of informational needs is entirely appropriate. Should I be confirmed, I really look forward to working with you and your staff and responding to your specific needs and your constituents' needs. One of the other focal points that I would like to mention is, of course, our annual report. One of the principal sources of information that EPA has in citing the good things that we do should be that annual report. I look forward to pointing out the benefits that our citizens derive from the valuable work that EPA does.

In closing, I would just say that in each of the public offices in which I have served, I have always been guided by one overriding principle. That principle is that public service is indeed a public trust. I am committed to upholding the highest standards of honesty, fairness and integrity. The people of our country deserve absolutely no less from those of us who serve in such honored positions.

So, should you honor me with confirmation, I look forward to working with you and to the job ahead. I have already found, in the short time I have been at EPA, that the office of the Chief Financial Officer is staffed with some of the very finest professionals I have ever met in my life. I am eager to begin our work together.

I would be pleased to answer any questions that you have.

Senator JEFFORDS. Thank you very much.

That was an excellent statement. Now the tough questioning period comes.

Mr. Winn, you have a great deal of experience in managing everything from personnel to budgets for the State of Texas. What challenges do you see in managing the resources of this important Agency?

Mr. WINN. Senator, thank you for that very thoughtful question. First of all, I think most thinking people will understand that the crisis facing not only our Agency but all other Federal agencies and State agencies is the aging workforce and the so-called "brain drain." I say so-called brain drain because there's an assumption that us baby boomers who are retiring have something to offer the population. After further evaluation, the answer is a resounding yes.

I think a huge challenge for every manager and for the Assistant Administrators that may be confirmed is to try to harness that information and capture it in some comprehensive, consolidated fashion. Not just succession planning, but knowledge transfer. The challenge will be to transfer knowledge from those that choose to retire from the Federal Government and those that just choose to leave and do that in a very orderly fashion so the taxpayers can always understand that they are getting their money's worth from Federal employees.

The human capital crisis is our No. 1 challenge. I think that is no small order. Also, there are changes that probably have to be performed legislatively. I think there are a lot of management issues that we need, to address.

Senator JEFFORDS. Thank you.

Mr. Gilman, EPA has vast and varied research responsibility. We rely on the Agency to provide the best available scientific information for our decisionmaking process. Mr. Gilman, with the challenge of trying to meet all the research needs of the EPA, how will you set priorities with the limited dollars you will have to work with? That is going to be a tough job.

Mr. GILMAN. You bet. It is complicated by the fact that while you want to be very much oriented toward fulfilling the needs of the programmatic offices that are carrying out the mission of the Agency, the air office, the water office, you still want to maintain a core element of research around which you can really build the research programs for those programs, a very basic oriented research program that keeps the Agency on the cutting edge of the science.

So, it's complicated. I believe the regulatory review process that the EPA is revitalizing will provide a basis for us to prioritize. It will really help us at the very early stages of the regulatory process to understand what knowledge is needed to make a good rule and to understand what role scientific research plays in that, including what role in-house research at EPA will be, what role we can assign to university-based researchers and what we can expect from industry and advocacy groups in the process.

So, it really becomes a process of trying to first find out what the Agency's priorities are, and second, find out what the resources available are within the Agency. Then EPA will collaborate within the Agency with other Federal agencies, and nonprofit groups interested in funding research to make sure that the right information is available when the regulatory decisions need to be made.

Senator JEFFORDS. That is a very important job, as you well know.

Ms. Combs, one of your responsibilities in this is position will be to promote EPA's perspective when forming Federal financial policies with all the government agencies. Given the importance of the

Agency's responsibilities in protecting our environment, how will you do that when competing interests such as education and defense will have their agencies advocating their perspective, and trying to grab every nickel they can?

Ms. COMBS. You are quite familiar with that yourself, Mr. Chairman, I know. You wrestle with that all the time, each and every day. You know, there are a lot of priorities that our country faces right now.

One of the priorities that I hold very near and dear to my heart is a priority that I grew up with. I grew up in rural North Carolina. I grew up where I could put my toes in the grass and walk in the streams and do all the things that I would love to see all children be able to do.

I still, when I go back to North Carolina, have a great feeling that I like to put my toes in the grass. So, I have a great admiration and need to look at those beautiful mountains and enjoy the beautiful coastal areas.

I expect every American likes to feel that they have clean water, and clean air and they deserve nothing less. As I said in my testimony, the Chief Financial Officer is indeed a pivotal point where EPA's priorities come together. You are speaking about priorities that EPA has weighed against priorities of the Department of Defense and the Department of Education. We all have our roles to play. In this important and critical time in our Nation, I think we can't overlook the importance of clean water, clean air and clean land.

That is an important responsibility. It's an important accountability for each and every one of us. I will do my part when working on the CFO council to make sure that we speak from integrity and openness and we will have our place at the table.

Senator JEFFORDS. Thank you, Mr. Chairman. Now come the obligatory questions. I would like you all to stand and answer "yes" is that's the appropriate answer.

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

Mr. WINN. Yes.

Mr. GILMAN. Yes.

Ms. COMBS. Yes.

Senator JEFFORDS. Do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed in this position? Now, that takes a different answer, I think.

Mr. WINN. No.

Ms. COMBS. No.

Mr. GILMAN. No.

Senator JEFFORDS. You may be seated. I want to thank you for your willingness to participate. It is so important. With the capabilities and qualifications that you have, I know it's going to be a real pleasure working with all three of you.

I am attempting and hopefully will move your nominations next Tuesday so we can get our best value that way. But one never knows around here what will happen. But all expectations are that we'll be able to do that.

Thank you very much. The hearing is adjourned.

[Whereupon, at 3 o'clock p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF LINDA MORRISON COMBS, NOMINEE FOR CHIEF FINANCIAL OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and members of the committee, I am pleased to appear before you today as you consider my qualifications for the position of Chief Financial Officer of the Environmental Protection Agency (EPA). I am deeply honored to have been nominated by President Bush for this important post, and I would like to thank Governor Whitman for her confidence in selecting me for this position.

It is a privilege to be considered once again for a position of great trust within the Federal Government. Some of the most rewarding years of my career have been spent in executive positions with the Department of the Treasury, the Department of Veterans Affairs, and the Department of Education. I would welcome the opportunity to continue to serve the public at EPA, an agency whose staff are well-known for their personal commitment to the organization's mission: protecting human health and the environment. This is a commitment that I share, while recognizing the special contributions that sound fiscal management can make to the business of environmental protection. In short, we must manage and account for our fiscal resources as carefully as we protect and preserve our natural resources.

The Chief Financial Officer (CFO) of any organization carries a tremendous responsibility. It is a pivotal position, where planning, budgeting, accountability, and resource management all come together. In government organizations, the CFO bears additional responsibility as an executive accountable to the public. I believe my experiences at Federal, State, and local government levels and within the private sector have given me the broadest possible perspective on the kinds of challenges likely to face the CFO in any large organization.

Moreover, I am quite familiar with the management issues of greatest concern to CFOs in the executive branch. I was fortunate to have worked closely with Congress and the Office of Management and Budget on development and passage of the Chief Financial Officers Act of 1990. We did a great deal of work together to define financial and performance standards for Federal CFOs that would be consistent with those normally applied to private sector CFOs. I believe the success of that landmark legislation is apparent in the advances made across government since my tenure as the first CFO at Treasury. If I am confirmed, it will be my goal to buildupon the progress that has already been made and continue to improve management, performance, and results for EPA and for the public we serve.

In support of this goal, I would like to highlight a few of the opportunities I see ahead.

Should my appointment be confirmed, a major focus of my work at EPA would be to pursue the President's Management Agenda, which focuses on Human Capital, E-Government, Competitive Sourcing, Financial Performance, and Budget and Performance Integration. I would apply to this work the best practices I have identified in my private and public sector management experience.

EPA's Office of the Chief Financial Officer would have an opportunity to maintain its focus on solid, customer-oriented financial services, meeting the Agency's financial obligations with precision and timeliness. EPA has a good track record in this area, as demonstrated by the performance measures applied to CFOs across government, and I would look forward to continuing to meet or exceed all standards.

EPA will surely continue its work in compliance with the Government Performance and Results Act (GPRA). A major part of that work will be the planning and consultation that will result in an updated Strategic Plan for the Agency, to be submitted to Congress in September 2003. The Office of the Chief Financial Officer is EPA's focal point for this effort. I would expect to build on the Agency's experience of working through two strategic plans under GPRA, factoring in my own previous planning and budgeting experience as a Federal management executive.

Of course budgeting and annual planning will be a large part of the office's work, as it was in the organizations I headed at Treasury, Veterans Affairs, and Education. I look forward to leading the Agency's budget formulation and management activities and pledge to work closely with Congress in that effort. EPA has been commended by GAO and other oversight organizations for linking its strategic plan, annual plans, and budgets, using a common framework of goals and objectives. If confirmed, I would work to maintain such links and refine the Agency's efforts to connect costs and results.

The Agency will need to continue developing and maintaining financial systems that serve multiple customers. I am personally committed to managing and communicating accurate, meaningful information about EPA's fiscal health and financial position. I believe Federal agency systems need to be versatile enough to produce financial statements worthy of clean audit opinions, as well as information about program costs in a form that is useful to line managers who need to make informed decisions. No less important is the need for Federal agency systems to produce information for "big picture" analysis of how much is spent to achieve particular results for the American people. Congressional interest in this kind of information is entirely appropriate, and duly noted. Should I be confirmed in this position, I would look forward to working with you to respond to your needs.

One principal source of information citing EPA's accomplishments is its Annual Report, with which I am sure you are familiar. The Office of the Chief Financial Officer is also the Agency's focal point for preparing this report. EPA's Annual Report has been recognized as one of the best in government for bringing together its audited financial statements, a comprehensive discussion of program accomplishments, and an assessment of Agency management controls. If confirmed, I would seek opportunities to communicate to the public ever more clearly how EPA employs their tax dollars, and what benefits our citizens derive from the valuable work that EPA does.

In each of the public offices in which I have served, I have been guided by one over-riding principle: public service is a public trust. I pledge to you that I am committed to upholding the highest standards of honesty, fairness, and integrity. The people of this great country deserve no less from those of us who serve in such honored positions.

I approach the challenges that lie before me with enthusiasm, and eagerness to provide expert leadership for the EPA and for this Administration. Should you honor me with confirmation, I look forward to working with you and to the job ahead. The Office of the Chief Financial Officer is staffed with some of the finest professionals anywhere. I am eager to begin our work together.

At this time, I would be pleased to answer any questions you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Linda Morrison Combs

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

Name: Combs (Last) Linda (First) Morrison (Middle)

Position to which nominated: Chief Financial Officer, Environmental Protection Agency

Date of Nomination:

Date of birth: 29/6/46 (Day)(Month)(Year) **Place of birth:** Lenoir, NC

Marital status: Married **Full name of spouse:** David Michael Combs

Name and ages of children: none

Education:

INSTITUTION	DATES ATTENDED	DEGREES RECEIVED	DATES OF DEGREES
Hudson High School	9/60-6/64	Diploma	1964
Gardner Webb College	9/64-6/66	AA	1966
Appalachian State University	9/66-6/68	BS	1968
Appalachian State University	9/73-6/78	MA	1978
VPI & State University	9/82-12/85	Ed.D.	1985
Harvard University	7/84-7/84	Certificate	1984
American Management Association	1975	Certificate	1975
American Institute of Banking	1979	Certificate	1979

Employment record:

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

POSITION TITLE	EMPLOYER	LOCATION	DATES
Combs Publishing & Consulting	Self-sole proprietor	421 Cedar Trail Winston-Salem, NC 27104	1999-2001
Assistant Secretary for Management and Chief Financial Officer	Treasury	1500 Pennsylvania Ave NW Washington, DC	7/89-5/91
Acting Associate Deputy Administrator for Management	Veterans Administration	810 Vermont Ave NW Washington, DC	8/88-7/89

POSITION TITLE	EMPLOYER	LOCATION	DATES
Deputy Associate Deputy Administrator for Management	Veterans Administration	810 Vermont Ave NW Washington, DC	10/87-8/88
Combs Consulting Group	Self	932 Bryans Place Rd Winston-Salem, NC	5/87-10/87
International Education Systems of North Carolina	Self	931 Bryans Place Rd Winston-Salem, NC	10/86-10/87
Public Education Advisor	State of North Carolina	116 West Jones St Raleigh, NC	5/86-4/87
Deputy Undersecretary for Management	US Department of Education	400 Maryland Ave SW Washington, DC	9/84-5/86
Executive Secretary	US Department of Education	400 Maryland Ave SW Washington, DC	2/83-9/84
Deputy Executive Secretary	US Department of Education	400 Maryland Ave SW Washington, DC	5/82-2/83
Manager, National Direct Student Loan Operations	Wachovia Services, Inc.	Winston-Salem, NC	3/80-4/82
Section Manager	Wachovia Services, Inc.	Winston-Salem, NC	9/79-2/80
Elected Member, Board of Education	Winston-Salem / Forsyth County Schools	Winston-Salem. NC	12/80-5/82
Assistant Principal, Speas School	Winston-Salem / Forsyth County Schools	Winston-Salem, NC	8/77-8/79
Reading Coordinator, Ardmore School	Winston-Salem / Forsyth County Schools	Winston-Salem, NC	9/73-6/77
Director, Title I Summer Program	Winston-Salem / Forsyth County Schools	Winston-Salem, NC	6/73-8/73
Reading Teacher, Clemmons School	Winston-Salem / Forsyth County Schools	Winston-Salem, NC	9/71-6/73
6th Grade Teacher, Brown School	Winston-Salem / Forsyth County Schools	Winston-Salem, NC	1/70-6/71
6th Grade Teacher, Kernersville School	Winston-Salem / Forsyth County Schools	Winston-Salem, NC	9/68-1/70
Correspondence Clerk	Bowman Gray School of Medicine	Winston-Salem, NC	6/69-8/69

Honors and awards:

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

1997	Special Service Award, Appalachian State University
1996	Alzheimer's Association Award from Nancy Reagan
6/8/89	Pride In Public Service Achievement
1/89	Veterans Administration Appreciation Award
1988	Outstanding Volunteer Award
9/88	President's Council on Management Improvement Outstanding Leadership Award
9/30/88	Executive Performance Award, Veterans Administration
7/28/88	President Council on Management Improvement Award
1987	Alumnus of the Year, Gardner Webb College
1986	Certificate of Appreciation, U.S. Secretary of Education
1986	Distinguished Alumnus of the Year, Appalachian State University
1985	Honorary Doctorate, Gardner Webb College
12/14/84	Secretary of Education's Special Citation
12/14/84	Phi Delta Kappa Service to Education Award
1983	Combined Federal Campaign Outstanding Service Award
1983	Combined Federal Campaign Award
1979-present	Phi Delta Kappa Honorary Society
9/77-10/87	Delta Kappa Gamma Honor Society
1977 & 1978	Nominated "Teacher of the Year" by Speas School
1974	Winston-Salem/Forsyth County School Systems Scholarship
1964	Graduated with honors from high school
1963	Rural Electrification Association Scholarship for writing a prize winning essay

Memberships:

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

ORGANIZATION	OFFICE HELD (IF ANY)	DATES
Rotary International	Chair, Devotional Committee	1992-2001
Gardner Webb University	Member, Board of Trustees (unpaid)	1999-11/6/01

Appalachian State University	Member, Foundation Board of Directors Chair, 1999-2001 (unpaid)	1992-11/6/01
Wake Forest University, Babcock School of Management	Member, Board of Visitors (unpaid)	1984-11/6/01
Piedmont Triad Alzheimer's Association	Member, Board of Directors (unpaid)	1995-1997
Piedmont Women Executives		1999-11/26/01
LearningStation.com	Member, Corporate Advisory Board (unpaid)	2000-11/6/01
Kaesona, Inc.	Member, Board of Directors (unpaid)	7/2000-8/2001
Kybele, Inc. [501(c)(3) corporation, incorporated in the state of Kansas; Triplett, Woolf, & Garretson Law firm representing Kybele, 2959 North Rock Road, Suite 300, Wichita, KS 67226]	Member, Board of Directors (unpaid)	2000-11/12/01
National Speakers Association		1996-2000
North Carolina Jewish Home Clemmons, North Carolina	Member, Board of Directors (unpaid)–my parents were residents at the Home at that time, and now the home has closed.	1996-1998
George W. Bush for President Campaign–Educators for Bush		1999-2000
Elizabeth Dole for President Campaign–Finance Committee		1999
Forsyth County Republican Women's Club		1970s through present
Forsyth County Republican Party Finance Committee		1995

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

I feel that I am qualified to serve in the position of Chief Financial Officer at the Environmental Protection Agency because of my training, experience, and commitment. During my career I have held numerous management positions with increasing levels of responsibility. I have had the opportunity to serve in the equivalent Associate Administrator positions at the Department of Education, Department of Veterans Affairs, and the Department of the Treasury. At the US Department of the Treasury I also held the position of Chief Financial Officer.

In all of my positions I have been able to put into practice innovative management techniques, and institute management improvements and initiatives that have resulted in actual practical and noticeable improvements.

I am able to motivate employees to achieve their highest potential and to take pride in their work. I truly believe that employees represent the greatest resource for any organization. I believe that

all organizational accomplishments are done with and through other people, and as such, employees deserve professional treatment and respect. I believe in rewarding positive performance and encouraging innovation and creativity. I place a premium on ideas and suggestions from employees on ways to improve the efficiency and performance of an organization. I believe in listening to both the customer and to the people who serve the customer.

The Chief Financial Officer position presents a tremendous opportunity to develop a careful balance between providing service and exercising control and discipline within the Agency. The Office of the Chief Financial Officer has the responsibility of encouraging and enhancing quality of service within the organization and instituting policies and procedures that will result in increased effectiveness, efficiency, and integrity for the Agency. As the Agency's most senior financial manager, the CFO has responsibility for managing EPA's strategic planning, budgeting, financial management, performance measurement, analysis and accountability functions.

I have a very strong commitment to public service. I believe that public servants have an obligation to set a good example and should uphold the highest ethical standards. I am always mindful of that public trust and will always strive to honor the public trust.

Future employment relationships:

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

Yes.

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

No. I have no plans to resume employment with any previous employer.

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

No. I have no commitment with anyone to employ my services in any capacity after I leave government.

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

If confirmed, I plan to serve. The position has no specific term of office.

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

I do not know of any limitations that would prevent my ability to serve.

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

Assistant Secretary for Management and Chief Financial Officer, U.S. Department of the Treasury Washington, DC	Resigned to move back to North Carolina to take care of my terminally ill mother.
Acting Associate Deputy Associate Administrator for Management, Veterans Administration Washington, DC	Resigned to take Assistant Secretary position at Treasury
Deputy Associate Deputy Administrator for Management, Veterans Administration Washington, DC	Moved to Acting ADAA for Management position at Veterans Administration
Deputy Under Secretary for Management U.S. Department of Education Washington, DC	Resigned to take position with Governor of North Carolina
The Executive Secretary U.S. Department of Education Washington, DC	Resigned to take position as Deputy Under Secretary for Management at U.S. Department of Education
Deputy Executive Secretary U.S. Department of Education Washington, DC	Promoted to position of Executive Secretary

Financial Statement:

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

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

None.

2. Are any assets pledged?

No.

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

No.

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

Yes.

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

Yes, in 1989 our 1988 joint Federal return was audited. No changes resulted.

Potential conflicts of interest:

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

See ethics agreement letter (attached).

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

See ethics agreement letter (attached).

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

None.

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

While I do not foresee any potential for conflict, I shall consult with EPA's counsel and Ethics Official and either recuse myself, obtain a waiver, or take such other action as may be appropriate.

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

While I do not foresee any potential for conflict, I shall consult with EPA's counsel and Ethics Official and either recuse myself, obtain a waiver, or take such other action as may be appropriate.

Political affiliation and activities:

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

George W. Bush - 2000 Presidential Campaign	$1,000
George H. W. Bush - 1992 Presidential Campaign	$1,000
Elizabeth Dole - 2000 Presidential Campaign	$1,000
Elizabeth Dole for President - National Finance Committee (1999)	
George W. Bush - Educators for Bush (1999-2000)	
Forsyth County Republican Women's Club (1970s to present)	
Forsyth County Republican Finance Committee (1995)	

Published writings:

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

Articles, Columns, and Publications:

Winston-Salem Journal Guest Column, "Work Together to Ensure that No Child Is Left Behind," January 27, 2001.

A Long Goodbye. Reflections on Dealing with Alzheimer's, book by Linda Morrison Combs, 1994.

A Long Goodbye and Beyond. Coping with Alzheimer's, book by Linda M Combs, 1999.

Primary Psychiatry Journal, December 1996, "Fact and Commentary," Linda Combs, article on Alzheimer's Disease.

"An Analysis of Productivity Improvements and Trends in the Executive Secretariat, U.S. Department of Education," March 1984.

"Sharing Educational Responsibility," *Winston-Salem Sentinel,* March 1985.

"Developmental Education: The Federal Viewpoint," *Journal of Developmental Education,* Volume 9, Issue 1, 1985.

Testimony on the Department of Education's Salaries and Expenses Budget for Fiscal Year 1986, before the Labor-HHS-Education and Related Agencies Appropriations Subcommittee, United States Senate, April, 1985.

Testimony on the Department of Education's Salaries and Expenses Budget for Fiscal Year 1986, before the Labor-HHS-Education and Related Agencies Appropriations Subcommittee, United States House of Representatives, April, 1985.

"Education in the Year 2035–A Delphi Study to Identify Possible Futures of the Public Secondary School" (a dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Education in the College of Education, Virginia Polytechnic and State University), November 1985.

Co-Author:

"An Inventory of Shared Administrative Support," *New Perspectives on Federal Management,* The President's Council on Management Improvement Interagency Task Force Report, March 1985.

"Case Studies of Shared Administrative Support," *New Perspectives on Federal Management,* The President's Council on Management Improvement Interagency Task Force Report, April 1985.

"Measuring Administrative Services: Assessing and Improving Productivity," The President's Council on Management Improvement Interagency Task Force Report, August 1985.

"Streamlining Internal Control Processes and Strengthening Management Controls with Less Effort," The President's Council on Management Improvement Interagency Study Report, October 1985.

"Improving Federal Productivity: An Inventory of Agency Examples," The President's Council on Management Improvement Interagency Task Force Report, 1985.

Speeches:

11/23/99 *Coping with Alzheimer's Disease,* on-line chat event guest, WebMed, Inc.

11/18/99 Caregiver Renewal Day Speech, Dallas, Texas.

8/9/99 Speech for the National Speakers Association Meeting, *Facing a Long Good-Bye--Caring for Your Parents,* San Antonio, Texas.

4/19/99 *The Perfect Politician,* speech for the Forsyth County Republican Club Monday luncheon, Winston-Salem, North Carolina.

11/98 *Update on a Nation at Risk,* speech for W. Berry Fowler Company, founder of Sylvan Learning Centers, Phoenix, Arizona.

3/9/98 Speech to employees of Targacept, *Dealing with Alzheimer's through Help, Hope and Vision,* Winston-Salem, North Carolina.

10/23/97 *Ways Women Lead,* speech to Babcock School of Management evening students, Wake Forest University, Winston-Salem, North Carolina.

4/9/97 *Whose Music Are You Playing?* Speech to Stratford Rotary Club, Winston-Salem, North Carolina.

1/30/97 *Alzheimer's Disease, A Family Perspective,* speech sponsored by Parke Davis/Neurotech Systems, to neurologists, Puerto Vallarta, Mexico.

12/15/96 *Impact of Cognex on Caregiving of an Alzheimer's Loved One,* speech sponsored by Parke Davis, Singleton Senior Center, Jacksonville, Florida.

10/31/96 *A Long Good-Bye, The Journey Continues,* speech to Lowe's Corporation employees, North Wilkesboro, North Carolina.

10/24/96 *Combating Alzheimer's Disease: A Caregiver's Perspective,* speech to Parke Davis employees, sponsored by Parke Davis, Business Update Meeting, Morris Plains, New Jersey.

6/25/96 *Alzheimer's Caregiver Perspective,* speech sponsored by Parke Davis, Velvet Cloak Inn, Raleigh, North Carolina.

5/18/96 *Medical Management of Alzheimer's Disease,* speech sponsored by Parke Davis, Council on Aging, Ft. Walton Beach, Florida.

5/15/96 *A Long Goodbye,* speech sponsored by Parke Davis, Northwest Georgia Chapter of the Alzheimer's Association Conference on Alzheimer's Disease, Berry College, Rome, Georgia.

4/19/96 Speech for Appalachian State Honors Day Program, Boone, North Carolina.

3/21/96 Speech to Prime Timers Luncheon Group, *There's Help and Hope for Alzheimer's,* Winston-Salem, North Carolina.

2/24/96 *There's Help and There's Hope: The Caregiver's Perspective,* sponsored by Parke Davis, Alzheimer's Disease Education Coalition Meeting, Coconut Grove, Florida.

12/3/95 *Cognex Caregiver,* speech sponsored by Parke Davis, Alzheimer's Town Meeting, Broward County Convention Center, Ft. Lauderdale, Florida.

11/18/95 *Alzheimer's Disease Data and Family Needs,* speech sponsored by Parke Davis, Sheraton, Nashville, Tennessee.

11/15/95 *Recognizing and Treating Alzheimer's Disease Patients and Family Members,* speech sponsored by Parke Davis, Winston-Salem, North Carolina.

11/14/95 *Management of Alzheimer's Disease,* speech sponsored by Parke Davis, High Point, North Carolina.

11/10/95 *Managing Alzheimer's Expectations,* speech sponsored by Parke Davis, Anderson Medical Center, Anderson, South Carolina.

10/28/95 *Women Helping Women through the Long Goodbye,* speech sponsored by Parke Davis, La Hacienda Center, Lady Lake, Florida.

10/28/95 *Medical Management of Alzheimer's,* speech sponsored by Parke Davis, Del Mar Women's Club, Lady Lake, Florida.

10/26/95 *Treating the Alzheimer's Patient and Family,* speech sponsored by Parke Davis, Angus Barn Restaurant, Raleigh, North Carolina.

10/25/95 *Obstacles of the Caregiver in Alzheimer's Disease,* speech sponsored by Parke Davis, Wilmington, North Carolina.

10/18/95 *Medical Management of Alzheimer's Disease,* speech sponsored by Parke Davis, Harbor House, Panama City, Florida.

10/11/95 *Managing Alzheimer's Disease,* speech sponsored by Parke Davis, Morton's Restaurant, Tyson's Corner, Virginia.

10/9/95 *Caring for the Caregiver,* speech sponsored by Parke Davis, Memorial Hospital, Savannah, Georgia.

10/7/95 *Medical Management of Alzheimer's Disease,* speech sponsored by Parke Davis, Holiday Inn, Wrightsville Beach, North Carolina.

9/30/95 *Caregiver Talk,* speech sponsored by Parke Davis, Wesley Woods Geriatric Center, Atlanta, Georgia.

9/30/95 Atlanta Town Meeting, Caregiver Panel, *Hope on Dealing with Alzheimer's,* speech sponsored by Parke Davis, Atlanta, Georgia.

9/28/95 *Medical Management of Alzheimer's Disease,* speech sponsored by Parke Davis, Life Management Center, Panama City, Florida.

9/28/95 *Coping with Alzheimer's,* speech sponsored by Parke Davis, Life Management Center of North West, Panama City, Florida.

9/26/95 *Alzheimer's and the Family,* speech sponsored by Parke Davis, Jefferson Hotel, Richmond, Virginia.

9/23/95 *Coping with Alzheimer's,* speech sponsored by Parke Davis, Holiday Inn, Tampa, Florida.

8/29/95 *Managing Alzheimer's Expectations,* speech sponsored by Parke Davis, Executive Club, Pensacola, Florida.

8/29/95 *Managing Alzheimer's Expectations,* speech sponsored by Parke Davis, Baptist Hospital, Pensacola, Florida.

8/17/95 *Managing Alzheimer's Expectations,* speech sponsored by Parke Davis, Palm Beach Gardens, Florida.

8/16/95 *Alzheimer's Disease from the Caregiver Perspective,* speech sponsored by Parke Davis, Orlando, Florida.

8/15/95 *Making Sense of the US Budget*, speech for the Clemmons Civitan Club, Clemmons, North Carolina.

7/27/95 *Alzheimer's from the Caregiver Perspective*, speech sponsored by Parke Davis, Johnson City, Tennessee.

7/15/95 *Alzheimer's Disease in the Nursing Home–A Family Perspective*, sponsored by Parke Davis, Lake Lanier, Georgia.

7/14/95 *Alzheimer's from the Caregiver Perspective*, Institutional Pharmacy Consultants, Griffin, Georgia.

7/13/95 *Alzheimer's–A Caregiver Perspective*, Town Meeting, sponsored by Parke Davis, Atlanta, Georgia.

6/6/95 *Coping with Alzheimer's*, speech to Parke Davis national sales team, San Francisco, California.

4/10/95 *A Long Goodbye, My Perspective on Coping with Alzheimer's*, Northwest North Carolina Area Health Education Center, speech to 40-60 health professionals, Winston-Salem, North Carolina.

3/16/95 *Alzheimer's from the Caregiver's Perspective*, speech to the District Three North Carolina Nurses Association, Winston-Salem, North Carolina.

1/6/95 Speech to North Carolina Assisted Living Association, *Alzheimer's Caregiving*, Winston-Salem, North Carolina.

9/20/91 North Carolina Baptist Hospital Nursing School Alumni, *The Art of Caring*, Winston-Salem, North Carolina.

5/13/89 President's Council on Management Improvement Quality Conference (chaired panel).

5/3/89 Public Employees Roundtable International Conference (chaired committee).

4/13/89 House Veterans Affairs Hearing Re: GOE Budget for 1990.

4/4/89 Veterans Administration Medical Center Combined Federal Campaign Keyworker Ceremony.

11/2/88 VSO National Commander Briefing, American Legion, Veterans Administration.

10/19/88 *Managing for the 1990s–Using the Information Edge*, Mayflower Hotel (chaired panel).

10/6/88 Combined Federal Campaign Kickoff Rally in Veterans Administration Lobby (remarks).

10/3/88 VSO National Commander Briefing, VFW, Veterans Administration (presentation).

9/15/88 President's Council on Management Improvement Conference on Quality and Productivity, St. Louis, Missouri (presentation/speech/chaired panel).

6/12/87 R. J. Reynolds High School Graduation, Winston-Salem, North Carolina.

4/14/87 Pinehurst Rotary Club, Pinehurst, North Carolina. Asked to comment on illiteracy in North Carolina and the Governor's education initiatives.

4/1/87 Young Educators Club in Wilmington, North Carolina. Brought greetings from the Governor to John T. Hoggard High School.

3/11/87 Employment Security Commission in Raleigh, North Carolina. Asked to comment on Governor's education proposals. Spoke from notes.

3/5/87 Participated in video production for the Edenton-Chowan School System.

2/5/87 Brought greetings from the Governor to South Johnston High School near Benson, North Carolina.

1/30/87 North Carolina Testing Commission meeting in Educational Annex I on Jones Street in Raleigh, Nort Carolina. Asked to make welcoming comments for the Governor.

12/20/86 Pancakes and Politics Breakfast, Asheville, North Carolina. Spoke from notes on Governor's Education Program.

11/19/86 Phi Delta Kappa meeting at the NCSU Faculty Club in Raleigh, North Carolina. Asked to make comments on the Governor's educational program. Spoke from notes.

11/86 SE Guilford Senior High School, Greensboro, North Carolina. Remarks to senior class studying government. Spoke from notes.

5/86 Meeting with the Republican members of the General Assembly at the Aqueduct Conference Center in Chapel Hill, North Carolina. Spoke from notes.

11/22/85 *Great Education for a Great Nation,* Secondary School Recognition Program, Holmes High School, Edenton, North Carolina.

11/14/85 *Great Education for a Great Nation,* Secondary School Recognition Program, North Davie Junior Hig School, Mocksville, North Carolina.

11/12/85 *Great Education for a Great Nation,* Secondary School Recognition Program, Dent Middle School ar Richland Northeast High School, Columbia, South Carolina.

11/9/85 *Education to Last a Lifetime,* South Carolina State Student Legislature, Columbia, South Carolina.

10/8/85 *Management Excellence,* Senior Managers Program, U.S. Department of Education, Washington, DC

7/12/85 *The Three Cs,* Indian Controlled Schools Student Awards Ceremony, Washington, DC.

5/11/85 *Education Serves to Open Up the Future,* Commencement address, Gardner-Webb College, Boiling Springs, North Carolina.

4/25/85 Speech on contributions of professional secretaries to government and business, history of Professional Secretaries Week, to professional secretaries of the Education Department, Washington, DC.

4/15/85 Speech on college plans and the functions of the Deputy Under Secretary for Management at the Department of Education, to Rocky Bayou Christian School (Niceville, Florida) students, in Washington, DC.

3/30/85 Speech on successes of the Reagan Administration's programs, at the Lincoln Day Dinner, Roane County Republican Committee, Kingston, Tennessee.

3/16/85 Speech on successes of the Reagan Administration's programs, at the Forsyth County GOP Convention, Forsyth County, North Carolina.

11/1/84 Comments on the Secondary School Recognition Program and features of schools that were recognized, at annual meeting of the North Carolina Parent/Teacher Association, Winston-Salem, North Carolina.

10/5/84 *Teachers Change Lives,* speech before Appalachian State University College of Education faculty, Boone, North Carolina.

9/27/84 Speech on the educational reform movement, Secondary School Recognition Program, Manteo High School, Manteo, North Carolina.

9/26/84 Speech on the educational reform movement, Secondary School Recognition Program, Carmel Junior High School, Charlotte, North Carolina.

9/24/84 Speech on the educational reform movement, Secondary School Recognition Program, Needham Broughton High School, Raleigh, North Carolina.

9/17/84 Speech on the background of the U.S. Department of Education, for the Department of Education Career Intern Orientation, Washington, DC.

5/21/84 Speech on the educational reform movement, Phi Delta Kappa meeting, Appalachian State University, Boone, NC.

5/13/84 Remarks on excellence and achievements, delivered at Commencement, Appalachian State University, Boone, NC.

5/4/84 *Education Reform: The Nation Responds*, Phi Beta Sigma Educational Forum, St. Augustine's College, Raleigh, North Carolina.

4/7/84 *An Overview of the Reform Movement in Education as Seen by the U.S. Department of Education*, Suffolk County BOCES Staff Development Conference, Long Island, New York.

10/25/83 *American Can Do It*, Secondary School Recognition Program, Lakewood Junior High School, Luling, Louisiana; and Raceland Junior High School, Raceland, Louisiana.

10/18/83 Remarks about excellence in education, before the National Academy of Science Teachers Association, 1983 Presidential Awards for Excellence in Science and Mathematics Teaching, Washington, DC.

10/13/83 *America Can Do It*, Secondary School Recognition Program, Snowden Junior High School, Memphis, Tennessee.

10/6/83 *Education and the Federal Government*, Ohio State University Edliners, OSU, Columbus, Ohio.

9/26/83 *Renewed Excellence in Education*, Delta Kappa Gamma Meeting, Williamsburg, Virginia.

9/12/83 Speech on excellence in education and the NCEE report, Phi Delta Kappa Meeting, Winston-Salem, North Carolina.

9/12/83 *Business Partnership in the Race for Educational Excellence*, Civitan Club Luncheon, Winston-Salem, North Carolina.

6/11/83 *The Race for Educational Excellence*, Teachers Workshop, Western Carolina University, Cullowhee, North Carolina.

5/16/83 Speech on my experiences in Washington, DC; *A Nation at Risk*; and Education Department involvement in education, before the Women's 5th District Political Caucus, Winston-Salem, North Carolina.

1/20/82 *Success is Involvement*, Anchor Club, District 6 Convention, Winston-Salem, North Carolina.

Additional Matters:

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

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

Linda M. Comer

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

Subscribed and sworn before me this 27th day of NOVEMBER, 2001.

Notary Public
FRANCIS P. BONDS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires: 31 August 2006

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

January 2, 2002

The Honorable James M. Jeffords
Chairman
Committee on Environment and
Public Works
United States Senate
Washington, DC 20510-6175

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Linda M. Combs, who has been nominated by President Bush for the position of Chief Financial Officer of the Environmental Protection Agency.

We have reviewed the report and have also obtained advice from the Environmental Protection Agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated December 19, 2001, from Ms. Combs to the Agency's ethics official, outlining the steps which Ms. Combs will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of her confirmation date with the actions she agreed to take in her ethics agreement.

Based thereon, we believe that Ms. Combs is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Amy L. Comstock
Director

Enclosures

RESPONSES OF LINDA MORRISON COMBS TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. In light of the anticipated retirement of a large number of upper and mid-level EPA staff, what steps would you recommend taking to fill those positions in order to avoid a lull in overall productivity?

Response. I recognize that the issues of a maturing workforce are among the most serious that Federal managers need to address. It makes sense that the first governmentwide initiative in the President's Management Agenda is the strategic management of human capital. I would recommend that EPA's senior management continue to seek opportunities to apply best practices in this area, including recommendations of the General Accounting Office (GAO) and others. It is clear that the Agency cannot accomplish its mission to protect human health and the environment without a workforce that is trained and deployed strategically for that purpose.

If Morris Winn and I are confirmed, I would look forward to working closely with him and other senior EPA executives to promote and implement a Workforce Development Strategy that includes activities targeted at all employee levels within EPA. I would expect to be a strong supporter of efforts to recruit new talent into the Agency, as well as programs to develop and retain current expertise. These include EPA's SES Candidate Development Program; projects to enhance the skills of new managers and train journeyman-level employees who aspire to supervisory positions; and career development programs for administrative and support staff.

Question 2. How do you see EPA being affected financially by such a "brain drain?"

Response. If confirmed, I would make it a priority to see that EPA is not affected financially or otherwise by a loss of expert staff. If the Agency were to lose a significant part of its financial management expertise, that could have a serious financial effect, but I do not intend to let that happen. The Office of the Chief Financial Officer has a 2001 turnover rate that is slightly lower than that for EPA as a whole (4.89 percent, as compared with 5.16 percent), and the proportion of its employees eligible to retire at the end of fiscal year 2004 is also lower than for the Agency (14.6 percent, as compared with 17.7 percent). The Office of the Chief Financial Officer relies on some very specific technical skills, and I am committed to assuring continuous expertise in years to come.

Question 3. What steps do you propose taking to minimize those financial repercussions?

Response. Given the opportunity to serve, I would make a commitment to lead efforts in the Office of the Chief Financial Officer to match staff talents with the important work we will need to do. I would review the Office's skills assessments to determine current abilities and estimate future demands on our collective know-how, and work with senior managers to maintain a top financial management workforce for EPA. I would also promote career development programs for the Office's administrative and support staff, and for first-line supervisors. I have attended meetings of a front-line supervisors' group and look forward to supporting their development if I am confirmed as Chief Financial Officer. I would continue the Office's own summer intern program, which has a history of attracting students from a variety of backgrounds and academic disciplines. Given the opportunity, I would seek ways to expand involvement with the EPA Intern Program and other recruiting efforts to attract a diverse group of talented people to begin Federal careers with EPA's Office of the Chief Financial Officer.

STATEMENT OF J. PAUL GILMAN, NOMINEE FOR ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good afternoon, Mr. Chairman and members of the committee. It is a privilege to appear before you as the nominee to be the Assistant Administrator for Research and Development for the United States Environmental Protection Agency (EPA). I am honored that President Bush has nominated me and I am excited about the opportunity to serve with Governor Whitman. I am delighted to be joined today by my wife Ginny and our sons Samuel and Will.

Let me first address my qualifications for the position. I believe my education, research, and employment experiences have all contributed to my qualifications. While employed at Celera Genomics I had the opportunity to participate in the creation of a fast-paced and highly productive private sector research enterprise. My knowledge of research management was greatly enhanced by this experience. I believe my immersion in the new fields of genomics and bioinformatics will be useful as we begin to use these tools to solve scientific and technical challenges in the environmental sciences. Serving as an External Member of the Department of Energy's Laboratory Operations Board has afforded me an excellent opportunity for insight into the management of Federal research facilities. While at the National Academies of Science and Engineering's National Research Council I had responsibility for activities in the life sciences, including agriculture. The scientific and technical activities of the EPA were often the subject of our various review and reports. This provided me with an in depth view of some of the most significant issues faced by the EPA, the scientific context for these issues, and the research personnel and programs at the EPA working to inform the agency's decisionmaking. At the Office of Management and Budget (OMB) I had direct responsibility for budget formulation and oversight for the EPA among other science-related agencies. My responsibilities also included participation in OMB's process for the review of proposed regulations from the EPA. While employed at the DOE my specific responsibilities included advising the Secretary on scientific and technical matters. These included the pro-

grams studying human health and environmental effects of energy-related technologies, environmental research, and environmental remediation. During my 13 years working for the U.S. Senate, including 1 year as a congressional Science Fellow of the American Association for the Advancement of Science, I had the opportunity to work on a wide variety of science-related issues, including environment and human health issues. I participated in the Committee on Environment and Public Works' investigation of the Three Mile Island Nuclear Power Plant accident, the passage of the Nuclear Waste Policy Act of 1982, and oversight of the U.S. Department of Energy's (DOE) research and development programs including its environmental research and remediation programs. As a staff member for a Senate committee I had the opportunity to participate in and learn the congressional budget process for Federal agencies. As a staff member for Senator Pete Domenici I necessarily became a student of the Federal Government's overall budget process. Last, my undergraduate education in the liberal arts included a broad involvement in the sciences. My graduate education and research focused in the earth and life sciences with a concentration in ecology and evolutionary biology.

I would like to share with the committee my thoughts about the nature of science in government and at the EPA. I believe those who pursue science and engineering in government take on a special role and a weighty responsibility. You must be an advocate on behalf of the truth. There is a quote of Albert Einstein's engraved in the monument to him outside the National Academy of Sciences. It captures my feelings and my commitment to this committee and my President. It reads:

The right to search for truth implies also a duty; one must not conceal any part of what one has recognized to be true.

There has been substantial change in the Office of Research and Development at EPA under the past 2 Assistant Administrators. It has been aimed at improving the quality and utility of its science. Dr. Robert J. Huggett set major research programs on a new course. One that was designed to have science serve the mission of the Agency, not just research for the sake of research. He also initiated a substantial program for funding university-based research that is also focused on serving the mission of the agency. His successor, Dr. Norine E. Noonan, supported his initiatives and extended them. There is today a rigorous research planning process aimed at making the right research available to the EPA regulators when they need it. We are beginning to see the results of this effort. If confirmed, I will sustain these reforms and where appropriate, initiate new ones in the pursuit of the best use of science in the EPA regulatory process.

Thank you for this opportunity to appear before you, Mr. Chairman.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: J. Paul Gilman

Business Address: U.S. Environmental Protection Agency, Office of Research and Development
1200 Pennsylvania Ave., NW , Washington, DC20460

Business Phone: **(202) 546-6620**

Home Address: 506 North Overlook Drive

Alexandria, VA 22305

Home Phone: **(703) 683-1347**

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

Name: Gilman (Last) John (First) Paul (Middle)

Position to which nominated: Assistant Administrator for Research and Development, U.S. EPA

Date of Nomination: 11/15/01

Date of birth: 12/8/52 (Day) (Month) (Year) **Place of birth:** New York, New York

Marital status: Married **Full name of spouse:** Virginia Garland Gilman

Name and ages of children: Samuel Phillip Gilman 1yr William George Gilman 1yr

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Kenyon College	9/70-5/72		
Johns Hopkins University	9/72-5/78	A.B./M.A./Ph.D.	'74, '75, '79

Employment record:

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

9/78-9/79 Congressional Science Fellow/ American Association for the Advancement of Science/ Office of Senator Pete V. Domenici

9/79-12/80 Legislative Assistant, Office of Senator Pete V. Domenici

1/81-8/85 Staff Director, Subcommittee on Research and Development, U.S. Senate Committee on Energy and Natural Resources

Employment record—continued

9/85-9/91 Administrative Assistant, Office of Senator Pete V. Domenici

9/91-9/92 Executive Assistant for Technical Matters to the Secretary of Energy, U.S. Department of Energy

9/92-1/93 Associate Director, Office of Management and Budget, Executive Office of the President

3/93-9/98 Executive Director, Commission on Life Sciences, National Research Council of the National Academy of Sciences and Engineering

10/98-10/01 Director, Policy Planning, Celera Genomics, Rockville, Maryland

Honors and awards:

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

Baltimore Gas and Electric Scholarship

Congressional Science Fellowship, American Association for the Advancement of Science

Meritorious Service Award, U.S. Department of Energy

Memberships:

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

Organization	Office held (if any)	Dates
U.S. Department of Energy Laboratory Operations Board	Acting Chair of External Mbrs	1996-present
Board on Environmental Studies and Toxicology, National Research Council, National Academy of Sciences and Engineering		1999-present
Triton Thalassic Technologies	Board of Directors	1997-present
Annapolis Center	Board of Directors (Vice Chair)	1995-1997
American Association for the Advancement of Science	Member, Committee on Science, Engineering and Public Policy	1994-2000

Deans Advisory Council, School of Engineering, University of Virginia		1999-2000
Visiting Committee, Department of Applied Sciences, Brookhaven National Laboratory		1988-1991
Science Advisory Committee of the Gas Research Institute	Chair, Environment and Safety Subcommittee	1984-1990

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

My education, research, and employment experiences have all contributed to my qualifications for the position of Assistant Administrator for Research and Development at the U.S. Environmental Protection Agency (EPA). My undergraduate education in the liberal arts included a broad involvement in the sciences. My graduate education and research focused in the earth and life sciences with a concentration in ecology and evolutionary biology. During my 13 years working for the United States Senate (including 1 year as a Congressional Science Fellow of the American Association for the Advancement of Science) I had the opportunity to work on a wide variety of science-related issues, including environment and human health issues. I participated in the Committee on Environment and Public Works' investigation of the Three Mile Island Nuclear Power Plant accident, the passage of the Nuclear Waste Policy Act of 1982, and oversight of the U.S. Department of Energy's (DOE) research and development programs including its environmental research and remediation programs. As a staff member for a Senate Committee I had the opportunity to participate in and learn the budget process for federal agencies. As a staff member for Senator Pete Domenici I necessarily became a student of the federal government's overall budget process. While employed at the DOE my specific responsibilities included advising the Secretary on scientific and technical matters. These included the programs studying human health and environmental effects of energy-related technologies, environmental research, and environmental remediation. At the Office of Management and Budget (OMB) I had direct responsibility for budget formulation and oversight for the EPA. My responsibilities included participation in OMB's process for the review of proposed regulations from the EPA. While at the National Academies of Science and Engineering's National Research Council I had responsibility for activities in the life sciences, including agriculture. The scientific and technical activities of the EPA were often the subject of our various review and reports. This provided me with an in depth view of some of the most significant issues faced by the EPA, the scientific context for these issues, and the research personnel and programs at the EPA working to inform the agency's decision-making. While employed at Celera Genomics I had the opportunity to participate in the creation of a fast-paced and highly productive research enterprise in the private sector. My knowledge of research management was greatly enhanced by this experience. I believe my immersion in the new sciences of genomics and bioinformatics will also be useful as we begin using these tools for solving our scientific and technical challenges in the environmental sciences.

Future employment relationships:

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

Yes

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

I have no plans to resume employment with any of my previous employers after completing government service.

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

No

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

Not applicable

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

No

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

I left the position of Executive Assitant to the Secretary of Energy to take the position as Associate Director of the Office of Management and Budget (OMB). I left the position at the OMB at the end of the Bush Administration on 1993.

Financial Statement:

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

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

I expect an annuity from the Federal Government for my participation in the CSRS program.

2. Are any assets pledged?

No

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

No

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

Yes

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

No

Potential conflicts of interest:

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

None

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

I own stock in Celera Genomics and stock options in Triton Thalassic Technologies. I have recused myself from acting in an official capacity to these and any financial interests (or those of any person whose interests are imputed to me).

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

None

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

I have recused myself from acting in an official capacity to these and any financial interests (or those of any person whose interests are imputed to me).

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

See attached letter

Political affiliation and activities:

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

People for Pete Domenici - $2000 for the 1996 election and $2000 for the 2002 election

Colorado Republican Party - $2000 for the 2000 election

Published writings:

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

The PM Report: A Discussion of the Science for the U.S. EPA's Proposed Particulate Matter Rule (available from the Annapolis Center, 111 Forbes St. Suite 200, Annapolis, MD 21401)

Testimony before the Subcommittee on Oversight and Investigations, Committee on Commerce of the U.S. House of Representative on October 9, 1997. Topic - "Management of the Department of Energy's National Laboratories."

Testimony before the Energy and Environment Subcommittee, Committee on Science of the U. S. House of Representatives on April 19, 1997. Topic - The National Research Council's activities related to the U.S. Governments research into the health effects of electric and magnetic fields found in residences.

Additional Matters:

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

No

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

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

Subscribed and sworn before me this 21 day of November , 2001

Mary F. Shipe
Notary Public

My Commission
Expires on
September 30, 2002

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

November 26, 2001

The Honorable James M. Jeffords
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510-6175

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by J. Paul Gilman, who has been nominated by President Bush for the position of Assistant Administrator for the Office of Research and Development, Environmental Protection Agency.

We have reviewed the report and have also obtained advice from the Environmental Protection Agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Attached to the report is a letter dated November 19, 2001, from Mr. Gilman to the agency ethics official, outlining the steps which Mr. Gilman will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Gilman is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Amy L. Comstock
Director

Enclosure

RESPONSES OF J. PAUL GILMAN TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

Question. The EPA's Cancer Risk Guidelines are well overdue. This is having a detrimental impact on programs across the Agency, not the least of which is the Air Toxics Program. To quote John Graham in testimony before the Clean Air Subcommittee in 1999, "cancer-risk determinations will play a critical role in EPA's implementation of the residual-risk provisions of CAAA–90, yet EPA has still not modernized it's cancer risk assessment guidelines to account for advances in biological understanding of the mechanisms of cancer induction. These advances can have a critical impact on which chemicals are classified as "carcinogens" for regulatory purposes and what dose-response relationships are assumed in quantitative modeling of cancer risk. EPA has proposed reforms but is moving at a slow pace to adopt them. The agency's recent decision to ignore mechanistic science regarding chloroform has sent a signal in the scientific community of the agency's weakened commitment to modernize methods of cancer risk assessment (Chloroform is a chemical

shown to cause cancer in animals at high doses that mechanistic science suggests is unlikely to cause human cancer at low doses)."

While I realize that EPA has made some progress since 1999, they have yet to complete the cancer guidelines. Could you please explain your view of the current state of the problem at EPA and how you would propose to prioritize the scientific work of the Agency and update the scientific methodologies used not only by ORD but all of the program offices?

Question 1A. My view of the current state of the Cancer Risk Guidelines

Response. The Deputy Administrator recently (December 20, 2001) gave guidance for the completion of these guidelines. After a period of public comment set to end this week, a final draft of the revised guidelines will be prepared for internal review. This draft will respond to the comments received during the public comment period and the comments of the EPA's Scientific Advisory Board. This will be followed by an interagency review and then the formal process of Agency clearance.

These revised guidelines were first proposed in 1996. They reflect the substantial improvements in the state of scientists' knowledge about the mechanisms that cause cancer. In the earliest years of EPA's operation the Agency used assumptions about the carcinogenicity of substance in lieu of detailed knowledge about the mechanisms of action for the particular substance of concern. Today, it is possible to substitute our greater knowledge of the mechanisms of cancer development for some of these so-called default assumptions. It has taken EPA additional time to resolve concerns over moving away from the earlier default assumptions. Some commenters believe that the science has not matured to the point where it can be used directly. In an effort to finalize these guidelines, Deputy Administrator Fisher is working to resolve some of these differences in approach by calling for a new effort to promote interaction with key Agency constituencies. This tension among groups that differ in their willingness to incorporate new scientific knowledge into the regulatory process is not unique to the cancer guidelines. I believe the Deputy Administrator's effort to reach out to these different viewpoints is the correct approach to resolving this and other similar regulatory situations.

Question 1B. How do I propose to prioritize the scientific work of the agency?

Response. In my view, the scientific work of the agency falls into two major categories. There is scientific research that is performed by the EPA, and there is the use or application of scientific information, whether performed by the Agency, academia, or industry, in creating regulations or in enforcing them. Under the category of research there is fundamental research and applied research. I believe that the Agency makes the distinction by using the terms "core" research for fundamental work and "problem-driven" research for applied work. Fundamental research must be performed to understand the basic mechanisms of how substances in the environment can adversely affect our health. There is also fundamental research which is necessary to improve our understanding of how ecological systems operate and how they are affected by human activities. Prioritizing fundamental research is a matter of identifying critical gaps in our understanding. Prioritizing applied research used for a particular regulatory activity is different. To the extent regulatory needs are driven by statutory deadlines prioritization is a fairly straightforward process. It becomes more complicated, however, when statutory deadlines do not anticipate the time necessary for the research to be completed.

Question 2. In a 2000 National Research Council Report, "Strengthening Science at the Environmental Protection Agency," the Office of Research and Development at EPA was recognized as the Agency's most senior science official. In 1995, in response to the interim NRC report which recommended that the Assistant Administrator for ORD be designated as the chief scientific and technical officer at EPA, the head of ORD was asked to coordinate the agency's scientific-planning and peer-review activities.

The 2000 NRC report found that the 1995 move was inefficient and that the head of ORD was not given real authority over science activities. Could you please explain your view on the role ORD should play in developing science at the EPA?

Response. Again, there are two elements to "science" at EPA. The first is research in support of the regulatory mission and the second is the use of that research and other scientific information in the regulatory decisionmaking process. The Office of Research and Development (ORD) acts as a service to the programmatic offices of the EPA for example, the Office of Air and Radiation and the Office of Water. ORD must develop research plans in cooperation with those offices that can provide the right scientific information at the appropriate time to support the regulatory process. ORD also has a role in the programmatic offices' use of scientific information in regulatory decisions. ORD actively participates and leads a number of cross-agency activities aimed at improving the use of scientific information and analytical tools

for the regulatory process. ORD also reviews specific regulatory actions. In my view these fundamental roles are appropriate and the burden is on ORD to provide effective scientific leadership and the programmatic offices to respond.

RESPONSES OF J. PAUL GILMAN TO ADDITIONAL QUESTIONS FROM SENATOR CRAPO

Question 1. Do you believe that R&D is an integral part of the EPA's functions? Does it have an impact on future compliance costs, available technologies, proposed regulatory levels, or future decisions made by the regulated community?

Response. In my view, while the regulatory activities of the EPA are carried out within a statutory context, the regulatory decisionmaking process is largely an analytical one based on scientific and technical knowledge. As such, research and development plays into all the elements of the process you have identified.

Question 2. A September 1999 GAO report was very critical of the EPA's prioritization of drinking water R&D programs. In addition to noting that the agency regularly requested lower than authorized levels of funding for drinking water R&D, the GAO found that there was little long-term or cohesive planning within the ORD. What steps has the EPA taken to correct this problem? With your management and strategic planning background, what additional steps will you implement at the EPA to address this situation?

Response. Over the past several years ORD has designed and begun implementing a research planning process as part of the annual budget process. A key feature and the first step in the process is that the various programmatic offices of the EPA (e.g., the Office of Air and Radiation, and the Office of Water) are consulted as to their scientific and technical needs. ORD then plans out the appropriate way in which to carry out the research necessary to provide their scientific and technical needs. These plans cover multiple years. They also identify the appropriate role for different EPA laboratories, academic researchers, and collaborations between EPA, industry, and other non-governmental research organizations. I would like to extend this process to the point where laboratories of the various program offices and Regional Offices are well integrated and informed about each others activities.

RESPONSES OF J. PAUL GILMAN TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. In light of the anticipated retirement of a large number of EPA scientists and individuals with specific technical background, what steps would you recommend taking to fill those positions in order to avoid a lull in overall productivity? How do you see EPA being affected by such a "brain drain?" What steps do you propose taking to minimize those repercussions?

Response. There are some important activities recently started in ORD that are intended to ameliorate the anticipated retirement situation. One of the most important, in my opinion, is a program to attract post-doctoral researchers to EPA. These researchers, with fresh new ideas and experiences, may serve as an important resource for EPA in the future. A Work Force Plan is also being developed. It necessarily assumes some things about the future direction of EPA and the resulting research needs. I plan to seek expert advice from outside EPA in this process.

Question 2. As the EPA continues to evaluate and review current and emerging environmental sciences and technologies, how would you propose to balance scientific uncertainty with the need for timely policy decisions?

Response. The goal of anyone managing a research effort in support of a regulatory or policy decisionmaker is to minimize the leap between what we know and what we must decide. Sometimes the gap is the absence of information. Sometimes the gap is one of uncertainty about the reliability of what we do know. The challenge is to decide how important reducing that uncertainty is and at what cost. For some critical decisions it is appropriate to conduct further research and repeat prior research. For some less important decisions we may be able to accept higher levels of uncertainty. This decisionmaking process should be carried out on a case-by-case basis and in consultation with stakeholders affected by the decisions in question.

Question 3. Senators Jeffords, Graham, Crapo and I will soon introduce legislation to reauthorize the State revolving loan funds of both the Clean Water Act and the Safe Drinking Water Act. One of the challenges we have faced is a large gap between infrastructure needs and the money available to help communities meet those needs. As such, we have been exploring various cost-saving measures, one of which includes additional research into new technologies for water and wastewater facili-

ties. I am particularly interested in new approaches to the problem of combined-sewer overflows.

Can you describe for me the status of research into new technologies, including how much is currently on-going? How can you help make this a greater priority for the Agency?

Response. It has been said that even small improvements in cost reduction for the replacement of water infrastructure could have great effects given that the costs of infrastructure replacement in the not too distant future are estimated to be as high as $1 trillion. An analogous situation can be found in the Superfund Program where a statutorily mandated research program, the SITE Program, was created to develop cost-saving technologies for the program. Since the initiation of the SITE Program in 1986, cleanup of contaminated sites through the use of innovative technologies has resulted in a total cost savings (adjusted for inflation) of over $2.3 billion dollars.

Current ORD activities that relate to water infrastructure needs is limited. ORD serves the Office of Water as a performer of research. Priorities are set in consultation with that Office. To the extent the Office of Water has legislative mandates that must be given higher priority it will likely be difficult to greatly expand infrastructure research. If confirmed, I will work closely with that office to identify opportunities for future research initiatives in this area.

Question 4. As you may know, I have served on this authorizing committee for many years and in that capacity I have supported giving priority to non-animal, alternative test methods for inclusion in EPA's programs. I also strongly supported the fiscal year 2002 $4 million earmark for the Office of Research and Development (ORD) to research, develop and validate non-animal, alternative test methods.

In your capacity as Assistant Administrator for Research and Development, will you commit to meeting with all stakeholders, including representatives from a coalition of animal protection organizations to discuss the opportunities for assessing which test methods to prioritize to ensure the most rapid and substantial reduction possible in animal use at the EPA and to replace animal tests with faster, less expensive, and more reliable non-animal methods?

Response. Yes.

STATEMENT OF MORRIS X. WINN, NOMINEE FOR ASSISTANT ADMINISTRATOR FOR ADMINISTRATION AND RESOURCES MANAGEMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and members of the committee, it is with great honor and privilege that I am here today as the nominee of President Bush and Governor Whitman for the Environmental Protection Agency's Assistant Administrator for Administration and Resources Management, also known as OARM.

First of all, I am very proud of being asked to serve in the Bush Administration and with Governor Whitman, both of whom are aggressively working to enhance the level of public health and environmental protection for all Americans. I look forward to working closely with the Congress, to improve management and performance at EPA.

Let me speak briefly about my background and discuss where I hope to bring new ideas and leadership to the position, if confirmed.

I have almost 30 years of experience in public service for the great State of Texas, working for four Texas Governors and two Attorney Generals, who held different philosophical views. I had a leadership role in managing diversity, administrative support activities, and human resource programs in the offices of the Texas State Attorney General and Commissioner of Insurance. Most recently, as the Director of Human Resources in the Comptroller's Office, I developed and implemented an effective strategy to recruit, hire, train, and retain many high performing employees. We hired approximately 700 employees over 24 months without any grievances or lawsuits.

Throughout my career, I have pursued public service with a passion, and have dedicated myself to "good" government and governance, taking a balanced and common sense approach to managing both people and processes. I am a fiscal realist. I intend to practice frugal spending of tax payers'dollars in all the offices under my management authority. I believe that public service, at all organizational levels, must be delivered with integrity, energy, and purpose. I bring to this position a keen and sincere understanding that public service is not simply a job, nor a profession! It is a public trust and high honor.

On this note, I firmly believe that our Federal employees and the EPA family of approximately 18,000 people are indeed the Agency's most valuable asset. As we

raise the bar of fairness and equity in the workplace, we must recognize that there are heroes on both sides of every issue. There are those who speak up about injustice on racial or gender issues; or government waste. On the other hand, there are those who tell you about all the right and good things happening at an Agency. I recognize that we need both of these perspectives in order to continually look for ways to improve the talent and productivity of our workforce and performance of our Agency.

If given the opportunity, I look forward to bringing these experiences and perspectives to the leadership team at EPA and to continuing to sharpen EPA's focus on efficient management services.

I would like to summarize the values and principles that will guide me if confirmed as EPA's Assistant Administrator for OARM. They include: integrity and fiscal responsibility; openness and willingness to listen; fairness and accountability; proactivity; and a spirit of partnership.

EPA's OARM provides leadership to ensure sound management of administrative services throughout the Agency. The Office has a broad range of functions, including: management of human resources; contracts and grants management; employee health, safety and security; and facilities construction and maintenance.

My goal in providing leadership to these functions, is to help EPA, and its employees find the will to serve a growing and more demanding customer base. To lead this organization into a model or "best practice" organization, I would like to establish a system of total accountability where employees at all levels will "own" their jobs, that is, the duties assigned them. Employees should be free to succeed or fail based on their measured ability.

The tragic events of September 11th and the ongoing concerns over increased terrorist activity, have raised the level of anxiety throughout our Nation. Federal employees have shown an exemplary degree of courage and dedication to serving the American public, rising to the President's challenge and returning to their jobs. I see one of my primary responsibilities as ensuring the safety and security of EPA's workforce and facilities. I will work to ensure that current efforts are consistent with the security demands of our times and work to test the responsiveness of those systems.

I am also aware that both the Congress and the President have concerns about the Federal Government's Human Capital Crisis, and the resulting workforce challenges. In line with GAO's recommendations, I will ensure that we integrate workforce planning into the Agency's Strategic and Budget Planning processes, and under the umbrella of EPA's Human Capital Strategy, I will work hard to support the President's Initiatives.

Lastly, I will work to ensure a high level of integrity and accountability in the management of our financial resources. Each year, approximately two-thirds of EPA's budget is obligated as contracts or grants. The management of these resources is a very important function and must be done well. In this regard, I have been informed that the Agency has made substantial progress over the past 2 years, so much so that the grants close-out backlog has been virtually eliminated, reduced by 97 percent. If confirmed, I will focus my efforts, and the efforts of my management team, on strengthening oversight and making sure that we have early warning systems built into our processes and that the American people get cost-effective results from these contracts and grants.

In summary, effectively discharging the responsibilities of the Office of Administration and Resources Management is critical to meeting EPA's mission. I believe that it is in the best interest of EPA and the public to integrate mission goals and effective management with the principles of "good" government. I believe that bureaucracy, that part of government that is brushed with a paint brush of regulations and process, is important so long as the process never gets in the way of good government and public policy. Bureaucracy is bad when it rewards poor performance in the same manner that excellent performance is rewarded. Bureaucracy is also bad when we govern by excruciating detail, dictating every result in advance. This kills management creativity and common sense.

This position will be a tough job as there are many challenges ahead for this organization. If confirmed, I pledge to bring the full weight of my integrity, energy, and experience to bear on meeting those challenges and raise the bar of excellence for this organization.

Let me close by expressing my appreciation to the committee for its recognition of and support for the Agency's vital mission and the opportunity to appear here today. I'm pleased that my wife and children are here and would like to thank you for the courtesies extended to them. At this time, I would be pleased to take any questions that you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Morris X. Winn

Business Address: 1200 Pennsylvania Avenue, NW

Washington, DC 20460

Business Phone: (202) 564-4600

Home Address: 6101 16th Street, NW, Apt. 820

Washington, DC 20011

Home Phone: (202) 723-0655

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

Name: Winn (Last) Morris (First) X (Middle)

Position to which nominated: Assistant Administrator for Administration and Resources Mgmt. (EPA)

Date of Nomination:

Date of birth: 07 03 48 (Day) (Month) (Year) **Place of birth:** Chicago, Illinois

Marital status: Married **Full name of spouse:** Rosa Frazier Winn

Name and ages of children: Rosalind Fleurette Winn (25)

Morris Frazier Winn (19)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Prairie View A&M University	1/66 to 1/70	BA	1/70
Univ. of Houston (Austin)	1972 to 1973	6 hrs.	-
Univ. of Texas (Austin)	1973 to 1974	9 hrs.	-

Employment record:

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

(1) Veterans Adm. Data Processing Center; Austin, Texas; Computer Programmer: from February, 1970 to January, 1973

(2) Governor's Office, Budget and Planning Division; Austin, Texas; Planner and Budget Analyst; from January, 1973 to February, 1980

Employment record—continued

(3) State Farm Insurance Co.; Austin, Texas; Management Intern - Policy Services Supervisor; from February, 1980 to June, 1982

(4) Governor's Office; Blue Ribbon Commission in Criminal Justice Corrections; Austin, TX, 1982; Program Coordinator

(5) Governor's Office, Budget and Planning Division; Austin, TX; Coordinator, Governor's Employment and Training Division; from 1982 to 1984

(6) Office of the Attorney General; Austin, TX; Asst. Director of Personnel; Director of Support Services and Director, Employee Relations and EEO; from 1984 to 1992

(7) Texas Department of Insurance; Austin, TX; Deputy Commissioner, Human Resources; from 1994 to 1999

(8) Comptroller's Office of Public Accounts; Austin, TX; Director, Human Resources; from 1999 to 2001

Honors and awards:

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

- Admiral; Texas Navy (Honorary Position)
- National Fellowship with National Commission for Manpower Policy, Washington, DC (1975 - 1976)
- Certified Mediator - State of Texas, Austin, TX (1993)
- Certification - University of Texas - Human Resource Management Program for SHRM Certificate
- Outstanding Young Man of America (1981)
- Vice Chairman, Texas Merit System Council (Governor's Appointment)

Memberships:

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

Organization	Office held (if any)	Dates
Austin, TX Chapter, NAACP	Vice President and/or Board Member	1975 - 2001
TCLOSE Advisory Committee, Austin Police Department	Board Member	2001
Central East Austin Community Organization (CEACO)	Board Member	1994 - 1996
Austin Housing Authority	Vice Chairman	1985 - 1990
Texas Merit System Council	Vice Chairman	1981 - 1985
Forest North Neighborhood Association	Board Member	1998 - 1999
Mt. Olive Baptist Church	Trustee, Board Member	1999 - 2001

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

I have thirty years of progressively responsible experience in a cross section of public and private sector positions. Over one-half of this experience has been dedicated to management responsibilities and managing a myriad of issues for a diverse group of elected and appointed officials.

The management positions entrusted to me over the years required a keen sense and knowledge of human resource management, human relations, customs service, HR laws and regulations as well as procedures. These positions also required skill in negotiating and mediating conflict; maintaining an ethical and moral center which is required in positions of responsibility; and bringing to the table a love for good government and quality governance.

During the past years, I have continued my training in human resources management. I have been active in community organizations which rounds out my experience and I wholeheartedly believe, that employees (human capital) is the most important of all the resources in the American workplace.

The recency and relevance of my experience in areas of budget preparation, general management oversight, facilities and support services management, human resources, employee development and conflict management as evidenced by my performance evaluations and personal and professional references will indicate my suitability for the position of Assistant Administrator for Administration and Resources Management.

Future employment relationships:

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

I have resigned from organizations that I held positions (NAACP, TCLOSE Austin Police Department Advisory Board). I have also retired from the State of Texas.

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

At present, I have absolutely no plans to resume employment with Texas State Government.

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

No, not at all.

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

I expect to complete the full term of the appointment.

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

Not Applicable.

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

Not Applicable.

Financial Statement:

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

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

457 Retirement on April, 2004 for $21,000

Financial Statement–continued

State of Texas Retirement on monthly basis for $3,900 per month

2. Are any assets pledged?

No.

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

No.

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

Yes.

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

1976 Audit - Paid back approximately $300.00 for moving expenses in association with move from Austin, TX to Washington, DC.

2000 Review - Paid back $3,713.00 on October 1, 2000 from capital gains sell of stock.

Potential conflicts of interest:

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

None.

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

None.

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

Potential conflicts of interest-continued

None.

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

Not Applicable.

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

See my public financial disclosure form and ethics agreement, and have worked closely with the EPA Ethics officer. I will continue to do so if any conflict or an appearance of a conflict arises during this appointment.

Political affiliation and activities:

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

Published writings:

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

Not Applicable.

Additional Matters:

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

None.

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

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

Subscribed and sworn before me this 27th day of November, 2001.

Judith O. Patton
Notary Public

JUDITH O. PATTON
MY COMMISSION EXPIRES
JANUARY 26, 2004

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

November 29, 2001

The Honorable James M. Jeffords
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510-6175

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Morris X. Winn, who has been nominated by President Bush for the position of Assistant Administrator for the Office of Administration and Resources Management, Environmental Protection Agency.

We have reviewed the report and have also obtained advice from the Environmental Protection Agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated September 6, 2001, from Mr. Winn to the agency's ethics official, outlining the steps which he will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Winn is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Amy L. Comstock
Director

Enclosures

RESPONSES OF MORRIS X. WINN TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. In light of the anticipated retirement of a large number of upper and mid-level EPA staff, what steps would you recommend taking to fill those positions in order to avoid a lull in overall productivity?

Response. One of the most serious human capital issues in the Federal Government is the retirement of tenured managers. While this fact is recognized by the President, Congress, the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM), it will be the Federal agencies that have primary responsibility for ensuring that the departure of upper and mid-level staff will not result in a crisis in the tax-payer or customer confidence.

In this regard, I am committed to working with senior EPA executives to fully implement several strategies including, but not limited to the following:

- Engaging in the Senior Executive Service (SES) Candidate Development Program.
- Rotating current SES members and creating senior advisors or mentor partners. This process will relieve certain SES members of day-to-day management re-

sponsibilities and allow them to transfer valuable knowledge to less tenured managers in an orderly manner.

- Fully implementing a recruiting strategy that attracts and retains workers who have skills needed for the future.
- Working closely with all senior EPA executives to identify best practices that will allow the Agency to use information technology to capture the knowledge of retiring employees.

Question 2. How do you see EPA being affected by such a "brain drain?"

Response. If confirmed, I hope to assist the Administrator and senior EPA executives to minimize the effect of potential retirements by supporting a workforce planning system. This system will provide standardized workforce planning requirements and methodologies to be used Agency-wide. It will include:

- identification of knowledge, skills and competencies needed in the future;
- types and numbers of positions needed by series and grade;
- an inventory of skills and competencies in the current EPA workforce;
- an examination of statistical data on expected attrition by occupational categories and grade levels; and
- a comparison of future skill needs (both skills/competencies and numbers by occupations and grades) to existing workforce and identification of the gaps.

Also, this system will help EPA forecast new hires by program office and Region, taking into account budget projections and funds needed for training and development; prepare multi-year workforce plans to guide decisions on workforce composition and hiring; and guide employee development efforts at the local and national level. Based on the workforce plans, EPA will develop and implement national and local recruitment strategies; develop strategic approaches to retaining employees with critical expertise and competencies; and maximize flexibility in using workforce programs that contribute to EPA's attractiveness as an employer. It is my sincere belief that these efforts coupled with the will of EPA senior staff will result in a neutral affect of the "brain drain."

Question 3. What steps do you propose taking to minimize those repercussions?

Response. If confirmed, I intend to utilize my energy to tailor a holistic approach to manage the repercussions of a "brain drain." The first step is to target recruitment that attracts a diverse and well qualified pool of applicants. I am advised that this is presently being accomplished through EPA's web-based systems, such as "EZ-Hire", a new automated recruiting system; and "HR Pro", the new human resources information system.

In addition, I will seek creative ways to look at phased retirement approaches, that is, any plan where potential retirees could work longer or part-time without an adverse affect on the retirement annuity.

One of the paramount challenges for EPA will be to offset any potential research gaps caused by retiring scientists. I understand that the Agency is considering options for special hiring legislative authority which would enhance EPA's ability to compete for high quality research scientists. If J. Paul Gilman, Linda Morrison Combs and I are confirmed, I intend to work closely with them on this issue.

In essence, I am committed to exploring a full range of options that will minimize any repercussions from retirement or other separations. EPA has a fairly low annual turnover rate of approximately 5 percent, lower than the Federal Government. This allows EPA senior executives to be thoughtful in planning strategies for the continued development and retention of its workforce.

NOMINATION OF JOHN PAUL SUAREZ

TUESDAY, MAY 7, 2002

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

The committee met, pursuant to notice, at 11 o'clock a.m. in room 406, Senate Dirksen Building, Hon. James M. Jeffords [chairman of the committee] presiding.

Present: Senators Jeffords, Boxer, and Corzine.

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

Senator JEFFORDS. Good morning. I would like to welcome Mr. John Peter Suarez, President Bush's nominee to be the Assistant Administrator of Enforcement and Compliance Assurance for the Environmental Protection Agency.

I would like to let everyone know how we will proceed this morning, and I will recognize—I believe Senator Smith will be here, and if he comes, he will have an opening statement; and Senator Corzine who will, of course, introduce Mr. Suarez.

Before you begin your statement, if you would please introduce any of your family members that you may have with you.

Mr. SUAREZ. Thank you, Senator Jeffords.

With me, right behind me, is my wife, Natalie, and she has our 2-year-old, Lena, in her lap; and this is my daughter Chloe, who is just a little bit over 4 years old. This is my sister-in-law, Ann Suarez. This is my brother, Paul Suarez. And hiding in the back in the stroller, right now sleeping—but I can't guarantee that—is my son Maxwell, who is about 8 weeks old.

Senator JEFFORDS. All right. Well, you're doing very well.

Now I would ask Senator Corzine if he has a statement he would like to make.

OPENING STATEMENT OF HON. JON S. CORZINE, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator CORZINE. Thank you, Mr. Chairman. It is my pleasure to introduce my fellow New Jerseyan, John Peter Suarez, to the committee; he is more informally known as "J.P.". Mr. Suarez has been nominated by President Bush, as you noted to be the Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance, and I also would like to welcome his family; they are terrific folks.

I want to note very clearly that J.P. Suarez has served with distinction as an outstanding public servant in several capacities in

New Jersey. He has worked as an Assistant U.S. Attorney in Newark. He later served Governor Whitman as an Assistant Counsel and as Special Assistant to the Director of New Jersey's Division of Criminal Justice. Most recently, Mr. Suarez served as Director of New Jersey's Division of Gaming Enforcement.

He has an outstanding reputation among my fellow New Jerseyans for integrity, professionalism, and hard work. I know he has been working very hard to prepare for this new role. He has received awards throughout his career, and I think he will bring a strong enforcement ethic to the EPA, which I think all of us would like to see.

Mr. Chairman, the laws that EPA implements are designed to protect public health and the environment. Strong enforcement of these laws is critical to my home State and to all of the people of the Nation. As I have noted, to where you are probably bored hearing it, New Jersey is unfortunately the home of more Superfund sites than any other State in the Nation. We are concerned about enforcement in New Jersey. We have continuing problems with air and water pollution, and the impact on health across my State is serious, as it is, again, across the Nation. So this is one of the most important jobs that I think we have.

I think we can depend on Mr. Suarez to fulfill those responsibilities and enforce those laws vigorously. We've had private discussions about this, and I take him at his word, Mr. Chairman, and I look forward to working closely with him and I know that he will be cooperative with the committee and with you as the Chairman.

So it is my pleasure and heartfelt, positive endorsement of Mr. Suarez' nomination.

Senator JEFFORDS. Well, thank you. That's a good start.

Mr. SUAREZ. It's a wonderful start.

Senator JEFFORDS. Please proceed.

STATEMENT OF JOHN P. SUAREZ, NOMINATED TO BE ASSISTANT ADMINISTRATOR OF THE OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, ENVIRONMENTAL PROTECTION AGENCY

Mr. SUAREZ. Thank you, Mr. Chairman and Senator Corzine. Thank you very much for that wonderful and gracious introduction.

To the members of the committee, I would like to thank you for the opportunity to appear before you today to introduce myself and to talk about my nomination for the position of Assistant Administrator of the Office of Enforcement and Compliance Assurance in the Environmental Protection Agency.

First, I must thank the President for his trust and confidence in nominating me to head the Office of Enforcement and Compliance Assurance. I must also thank Governor Whitman, whom I have had the pleasure of working for previously, and I look forward to doing so again.

I believe that our Nation's environmental laws are critically important to every American, and I hope to have the opportunity to enforce those laws to help ensure that all of us, especially our children, can enjoy cleaner air, purer water, and better-protected land.

I believe that my background and experience have prepared me well for this challenging position, and I would like to take a few moments to describe that for you.

My interest in working in the public sector and serving the public interest is deep-rooted and comes, in large part, from the values that were instilled in me by my parents. My father, whose family hails from Spain, and my mother, who was born and raised in Nicaragua, believed that public service was a noble calling and encouraged all of their children to consider careers in government or in service to others. My brother, who I introduced earlier, went to the Air Force Academy and now serves as a Lieutenant Colonel, currently assigned to the Pentagon, while my oldest sister has nearly completed her doctoral thesis and hopes to provide counseling and therapy to minority adolescents. My other sister is a lawyer who works for her husband. All of my siblings are successes, in my eyes, and I admire each of them.

When I went to law school at the University of Pennsylvania, I knew from the moment I entered that I wanted to make a career as a prosecutor. After I graduated from law school I clerked for a Federal judge and then applied to the U.S. Attorney's Office, knowing that this was where I wanted to start my career. I was, quite fortunately, accepted by the District of New Jersey and began to develop as a lawyer in a terrific prosecutor's office. While at the U.S. Attorney's Office I learned many skills that I believe are essential for a chief law enforcement officer. I learned how to try cases, how to manage investigations, and how to be a tough but fair prosecutor.

I also saw first-hand the tremendous impact that enforcement can have on the lives and communities of those affected. I was fortunate to be able to try some difficult and exciting cases while an Assistant U.S. Attorney, and as a result of one of those cases—the successful prosecution of an Atlantic City street gang—I was awarded the U.S. Attorney General Director's Award.

I was fortunate that I did not lose any of the cases that I tried while an Assistant U.S. Attorney, and to me, that is a testament to the quality of the investigators, agents, and supervisors that I had while in New Jersey.

If I am confirmed for this position, I believe that the lessons learned while in the U.S. Attorney's Office will have equipped me well to understand the challenges facing agents, inspectors, and legal staff who work the front lines of environmental enforcement actions.

After I left the U.S. Attorney's Office I want to the State of New Jersey's Division of Criminal Justice, where I was a Special Assistant to the Director of a 600-person statewide law enforcement agency. It was there that I began to learn how to manage attorneys and investigators and how to maintain constructive relationships with colleagues and other State agencies, Federal agencies, and the local law enforcement community. I worked with the Director to shape policy for the Division of Criminal Justice, and helped launch a number of statewide initiatives addressing longstanding, entrenched problems plaguing New Jersey's communities. Through this experience I learned the valuable lesson of working coopera-

tively across organizational lines, with different agencies, to achieve the best results possible for a law enforcement program.

Governor Whitman then asked me to join the staff of her Counsel's Office, where I provided advice to the Chief Counsel and the Governor on criminal justice matters. It was while working in that capacity that she nominated me to be the Director of the Division of Gaming Enforcement, the State law enforcement agency charged with enforcing the laws and regulations related to the casino industry. As the head of the Division of Gaming Enforcement, I oversaw a staff of 400 employees, charged with ensuring the good character and integrity of the people and businesses who work in that industry. The Division was comprised of several units, including a Criminal Enforcement Section, a Civil Regulatory Prosecutions Unit, an audit function, and a Technical Services Bureau that dealt with the highly technical hardware and software associated with the casino industry.

As the Director, I was able to lead the professionals from the Division in shaping policy and enforcing statutes and regulations in either the criminal or civil context, and also to set the agency's enforcement priorities.

I led the Division in the context of its licensing work and crafted appropriate enforcement responses for various degrees of statutory violations in both civil and criminal matters.

My experience as the Director of the Division of Gaming Enforcement provided me the opportunity to use the skills I had developed as a lawyer with an enforcement background in evaluating and analyzing the appropriate action to take against a regulated entity in order to achieve the best results. In leading a large law enforcement agency with both civil and criminal responsibilities over a highly regulated industry, I developed management skills that will serve me well if I am confirmed to this position.

Mr. Chairman, as is reflected in the summary of my professional career, I have been involved in criminal or regulatory enforcement at both the Federal and State level for over 10 years. My experience in working in very active enforcement offices has instilled in me a set of what I call "core beliefs" that come with being in charge of a government office. These core beliefs include, first and foremost, fairness, for I believe that it is incumbent upon a law enforcement official to use the tremendous resources available in a fundamentally fair way, lest the entire process lose sight of the impact that it can have on individuals and communities.

I also believe that as a law enforcement official you can oftentimes achieve better results by trying to work cooperatively with those who many would call your adversaries. Indeed, in my experience in the Division of Gaming Enforcement, I found that on many issues, even though the industry may have disagreed with the ultimate decision that was reached, the process of soliciting industry input and enlisting their counsel works to ensure a strong cooperative relationship between the regulated and the regulator.

I also believe that flexibility is a critical component to a cooperative approach because with flexibility you can oftentimes achieve the desired result quickly and with lest cost.

A necessary corollary, however, to a cooperative and flexible approach, is the willingness to pursue enforcement actions against

those entities who are either unwilling or unable to conform their conduct to what is required by the law. In the proverbial carrot-and-stick model, I believe a good enforcement official has the stick and is not afraid to use it.

Finally, a good enforcement official must have faith in the system—faith in the legislative process which produces the laws which we must enforce, and faith in the legal system which is the forum to which we must turn when controversies and cases need to be settled. My experience has taught me that the system works, and it is a system that I have enjoyed being a part of throughout my career.

My experience, my commitment to public service, and my fundamental belief that our environmental laws provide the best guarantee that our Nation's natural resources will be protected, will allow me to lead the Office of Enforcement and Compliance Assurance. I can provide strong leadership and can bring to the office those core beliefs that I think are the mark of a good enforcement official. I expect to rely fully upon the experience and expertise of the very accomplished and impressive dedicated career staff employees in the Office of Enforcement and Compliance Assurance. I have met many of those dedicated staff and I am confident in their ability to assist me in the day-to-day management and policy issues that may arise.

Mr. Chairman, I would like to assure all the members of this committee, the President, and Governor Whitman that, if confirmed, I will apply myself with the same vigor and energy that have marked my career to date, and that I will work as long and as hard as necessary to ensure that our Nation's environmental laws are being enforced as intended by Congress—firmly and fairly. At the end of the day I will do everything in my power to live up to the promise that I have made to my three children, that this planet of ours will be a good and safe place to live. I will dedicate myself to a comprehensive enforcement program that will safeguard our water, our air, and all of our Nation's precious natural resources, because I believe that enforcement must be a vigorous and active component of the EPA's efforts to protect our Nation's resources. I would very much appreciate the opportunity to apply my experience and my desire to enforce these important environmental laws that Congress has put in place.

I thank you for your patience this morning and I look forward to answering any questions that you may have.

Senator JEFFORDS. Well, I thank you for a very excellent statement.

We will now proceed to questions. After any members have had a chance to ask questions, I will conclude the hearing with two obligatory questions which I will ask you.

Of course, members have the right to submit questions to you, but I wouldn't lay awake nights worrying about that. So I think we will just proceed.

For those committee members who are unable to be here today, they will have some time to ask you questions.

Mr. Suarez, I am concerned that your legal experience has not dealt with our environmental laws. The responsibility of the position you have been nominated to fill is a very important one. Our

environmental laws can be rendered meaningless without adequate enforcement. While there is some transferability between your criminal enforcement experience and environmental enforcement, the statutes governing environmental protection are complex and often require extensive knowledge as to the underlying case law.

With this reservation, I look forward to your response, but I would like you to make just a comment or two on that question.

Mr. SUAREZ. Yes. Thank you, Mr. Chairman.

One of the things that I can tell you and assure you that has impressed me already in the Office of Enforcement and Compliance Assurance is the expertise and experience of the career staff that will be in the office. There are a little over 3,300 employees in the Office of Enforcement and Compliance Assurance, and I fully intend to call upon their advice and counsel and expertise to help guide me when I start dealing with some of these complicated environmental regulations and statutes to which you made reference.

I can also assure you, Mr. Chairman, that I will continue to learn the law, to learn its application, and to immerse myself in the detail that is necessary so that I can make informed policy decisions on the appropriate enforcement action. And with my enforcement background and experience and my management skills, I believe, Senator, that I can bring good leadership to the Office of Enforcement and can enforce our environmental laws soundly and fairly.

Senator JEFFORDS. During that experience, did you have any opportunity to be in Superfund situations in your experience?

Mr. SUAREZ. I did not have any direct experience with Superfund. When I was the Special Assistant to the Director in the Division of Criminal Justice, there was an Environmental Crimes Section that we did, obviously, supervise, and on a number of occasions I had interaction with them on some environmental crimes cases. But Superfund itself was not implicated in those.

I can tell you, Mr. Chairman, that I believe in the polluter pays principle. I think that it is an important principle of our law. And again, I would continue to work very closely with our Office of Site Remediation and Enforcement if I am confirmed to this position.

Senator JEFFORDS. This Administration, through its budget proposal, has focused on giving more enforcement responsibility to the States. Would you enlighten me as to what that means and what your view is?

Mr. SUAREZ. Mr. Chairman, I do believe that the EPA must work closely with the Regional Offices, as well as with the States, who are oftentimes the front lines in inspections and in enforcement cases, gathering the evidence that is necessary. But that does not mean that there is an abdication of the role of EPA's Office of Enforcement. If I am confirmed, I would work very closely with the Regions and the States to identify those national cases that have the most significant impact on public health and the environment, and I would want to make sure that the resources available to the Office of Enforcement are directed toward those types of cases, while working cooperatively with the States and the Regions to make sure that as many companies are being inspected as possible to make sure that we have as much compliance as we can get to ensure that our water stays clean and our air stays pure.

Senator JEFFORDS. Have you had an opportunity to review States to see what kind of enforcement they have been doing, and any feeling as to the effectiveness of State enforcement?

Mr. SUAREZ. I have not substantively been involved in the review of State programs, but it is an important part of what the Office of Enforcement can and should do. I believe that if a State has a delegated program in any one of the disciplines that it can accept delegation for, I believe that it is important for the Office of Enforcement to make sure that the States are meeting their minimum threshold requirements under the law, because if a State is going to assume responsibility, it must ensure that it is in compliance with that Federal minimum.

I would work with my office to make sure that we have a level of satisfaction that States are in compliance. If not, I would work with those States to bring them up to compliance, or we would evaluate what our options would be.

Senator JEFFORDS. What is your opinion of State audit privilege laws, which give a person who voluntarily discloses environmental violations a shelter from enforcement?

Mr. SUAREZ. I believe, as I have come to understand the audit program, that it is a very important component of enforcement and compliance assurance. I believe that the self-disclosure or audit program in the EPA is a good program to encourage companies to engage in voluntary audits so they can examine their own operations and determine whether or not they are in compliance with the law, and then take remedial action quickly, effectively, and efficiently.

I have some concerns about State audit privilege laws that are not consistent with Federal law. It is my understanding that there are a number of States that have audit privilege laws that would bar the use of audit information from enforcement work. I would want to work with those States and those Regions to address those concerns, to make sure that there was no information shielded from enforcement, so that if there were circumstances where that information was necessary, it would be accessible to us.

Senator JEFFORDS. This committee has paid close attention to the record of enforcement of EPA. Of particular concern is the ongoing enforcement of new source review. If confirmed, what will you do to ensure that the new source review cases continue to be addressed?

Mr. SUAREZ. Mr. Chairman, I recall some time ago that our Attorney General indicated that the legal premise upon which the new source review cases is founded is a sound one, and that my counterpart in the Environmental and Natural Resources Section of the Department of Justice has indicated that they will continue to prosecute those cases.

I can assure this committee that if I am confirmed, we will continue to investigate new source review cases, and we will work with the Department of Justice to see that they are prosecuted.

Senator JEFFORDS. Thank you.

Senator Corzine?

Senator CORZINE. Thank you, Mr. Chairman. I am glad you asked the new source review question because I think it is very important that we take a proactive role with regard to air quality

standards that are impacting across State lines. It's one of those issues that I think we will be watching very closely in our oversight function as we go forward.

Last year in Governor Whitman's appearance before the committee in her confirmation hearing, I asked her about the backlog of Title 6 environmental justice cases, and some of the concerns within EPA. Have you been briefed on this and on what progress has been made in eliminating that backlog? And what are your general views about environmental justice issues?

Mr. SUAREZ. As to Title 6, Senator, yes, there is a task force that is working on the backlog. I have been briefed about its progress and, in fact, had a meeting with the attorney who is heading that effort. She informs me that they are making good progress on the backlog and that they have reduced—and I can get you the exact numbers, Senator, but I think it's about by one-third. I will bring that information to you.

Insofar as environmental justice is concerned, if confirmed, I am actually looking forward to working with the Environmental Justice Office to make sure that the concerns that are aired through the Environmental Justice Office are incorporated well into all the Office of Enforcement and Compliance work and, indeed, throughout the EPA. I don't believe that any single community, minority or underrepresented, should bear more of the burden, more of their fair share, of environmental consequences, and therefore I would work with our environmental justice program to make sure that their concerns are heard.

Senator CORZINE. Going back to the Superfund considerations, I am pleased to hear you embrace the concept of polluter pays. As you know, there has been a major shift in how the funding of the cleanup of our Superfund sites has taken place, moving away from that. I think some of that relates to how aggressive we have been in Superfund enforcement.

Have you had a chance to review those policies, procedures, and actions within EPA? Are you satisfied that we are doing everything that we need to do to pursue polluter pay principles, and what steps do you plan on taking to make sure that there is a follow-through on that, that we adhere to the principle?

Mr. SUAREZ. I have certainly had the benefit of numerous briefings with our Office of Site Remediation and Enforcement, which does our Superfund legal work, cost recovery work. I can assure you, Senator, that if I am confirmed I will work very closely with the Superfund office to make sure that we continue to be as aggressive as we can in identifying potentially responsible parties and get cost recovery from them for our cleanup efforts. We will continue to try to identify all those PRPs that can contribute to clean up, and we will work with the Office of Solid Waste and Emergency Response to clean up—to identify those sites that are ready for cleanup and to clean up as many as possible.

I believe that the funding level has remained fairly static, and I can tell you that we are using the funding that is available to us to pursue as many actions as we can.

As you mentioned, Senator, Superfund is an incredibly important program. It is one that I look forward to spending some time with. I can also tell you from my personal experience that I have seen

both sides of Superfund, because we actually live about two miles from a successfully cleaned-up site in New Jersey. It is an area where I've seen both the positives and the negatives, and it is an area that I would want to make sure gets the attention it needs in OECA.

Senator CORZINE. One of the original premises in the Superfund legislation was that many oil companies and refineries, and especially chemical companies, were granted several liability exemptions as part of the tradeoffs of responsibilities with regard to polluter pay issues. And as a consequence, there was a tax imposed as a part of that negotiating process.

If we are not able to reinstitute the polluter tax, I wonder if you have a view about whether we should go back and review this civil liability waiver?

Mr. SUAREZ. Senator, candidly, I have not looked at the issue of the civil liability waiver and its interplay with the Superfund tax. I can tell you that I believe that Superfund needs funding. Where that comes from is a matter, as I understand it, for appropriations and for discussions between appropriations and the Administration. But there is no doubt in my mind that Superfund needs to be funded.

Senator JEFFORDS. Senator Boxer?

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

Senator BOXER. Thank you, Mr. Chairman. I would like to summarize my statement and ask Mr. Suarez a couple questions in my time.

Mr. Chairman, the Office of Enforcement and Compliance Assurance, OECA, is very important to me because that office will enforce the laws that are very dear to my heart and that I think are essential for the people of this country.

Last August I put a hold on the Administration's first OECA nominee, Don Chagradas. I did it for a number of reasons, stemming from a concern that he would do more harm than good to environmental enforcement, and that concern was based on his record as head of the Ohio EPA. He had a lot of experience, but unfortunately he took the side of polluters, not the side of protecting the environment.

So I was looking forward to the Administration's second nominee to see who we would come up with, and I am very pleased to meet Mr. Suarez.

Mr. Suarez, my comments have nothing to do with the quality of your experience, your intelligence, or anything, but I am concerned that the Administration, instead of going back and getting us someone who has stood for cleaning the environment, essentially gives us a nominee—a good person, a good person—with no environmental enforcement record.

Again, I would support Mr. Suarez very enthusiastically for a number of other posts because I know he did a good job as the Director of the New Jersey Division of Gaming Enforcement. If he had been appointed to the Department of Justice, that would have been appropriate. I understand that he was being considered for a U.S. Attorney position a few months ago. If I was on the Judiciary

Committee, I would support his nomination for that type of position—even, perhaps, as Deputy Assistant Attorney General overseeing the Department of Justice's Organized Crime and Racketeering Section. But for the environmental enforcement position at EPA, I am looking for someone who has experience working with environmental laws and regulations.

I think we need someone who has a working knowledge of the intricacies of the Clean Air Act, the Clean Water Act, RCRA, CERCLA. These are not just acronyms; these are complicated laws, and I think we need someone with an environmental enforcement background. Well, let's look at who held the position before.

Steven Hermann, a career environmental litigation attorney at the DOJ for 15 years before he was nominated; for the last nine of those he was Assistant Chief of the General Litigation Section, Environmental and Natural Resources Division. During this time he received seven outstanding service awards from the Justice Department, and President Clinton chose him for this position. There was no question as to why because his environmental record was comprehensive and compelling.

Now, the Administration sent us a fine person with no experience on the environment. In many ways, Mr. Suarez is in an untenable position. He has responded to the call to serve his country, and I thank him for that. But he has been asked to enforce environmental laws in an Administration that does not appear to want them enforced; and furthermore, has ignored Congress' mandate to provide the personnel necessary to enforce the laws.

So let me just ask my one question, and then I will save the others for the second round.

When you were the Director of New Jersey's Division of Gaming and Enforcement for 3 years, you were responsible for ensuring the enforcement of one statute, as I understand, the State Casino Control Act.

Mr. SUAREZ. Correct.

Senator BOXER. You had a primary charge of regulating one industry, the casino industry, in one location, Atlantic City, a very clear and focused position, in which I know you did well.

Now, as Assistant Administrator of OECA, your responsibilities would be much broader. There are a number of environmental laws that you would have to oversee. Out of all those laws, which do you think are the most pressing for you to oversee at this time?

Mr. SUAREZ. Senator, from my first blush in looking at the law, it seems to me that one of the areas of concern is the quality of our water and our safe drinking water and going into the Safe Drinking Water Act, as well. It was identified previously as a national priority, and one of the things that struck me was that the overwhelming amount of impaired waterways, that are impaired due to total coliform levels being unacceptably high—and as we all know, total coliform will result in sickness to people with impaired immune systems, children, the elderly. I don't think, Senator, that anybody should have to worry about the quality of the water when they turn on the faucet, and it's those kinds of enforcement actions and work that I would like to do, to target those areas that can result in the best result for human health and the environment, and that's the kind of work that I would do, working with the very

experienced staff in the Office of Enforcement and Compliance Assurance.

Senator BOXER. Can I follow up with one more?

Senator JEFFORDS. Certainly.

Senator BOXER. Do you feel the same way about the Clean Air Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act, the Resource Conservation Recovery Act, the Oil Pollution Act, the Comprehensive Environmental Response, Compensation, and Liability Act, Superfund, Marine Protection, Research, and Sanctuaries Act, NEPA—do you feel that these are all important, as well?

Mr. SUAREZ. Indeed, I do. I can't say that I have a "favorite child" with any of them yet. I believe they are all important and they all come together in a very meaningful way to ensure our Nation's resources.

Senator BOXER. You're going to have to learn all about those and you're going to have to move, because, let me tell you, we're not happy with the enforcement that we see. Congress keeps telling the Administration, "Here's the money, hire more people." So I hope you will be a voice at the table that is going to be strong.

I keep saying it's my last, but this is absolutely my last question.

You talked about children, and I believe you, and I could see in your eyes that you mean it. Do you agree with this Administration's decision to take another look at testing poor children for lead poisoning and moving away from that regulation?

Mr. SUAREZ. I think that is important to make sure, Senator, that none of our children are subjected to unacceptably high levels of lead in their homes and their schools and their water.

Senator BOXER. Thank you, Mr. Chairman.

Senator JEFFORDS. Thank you, Senator.

We have some more that we would like to submit to you in writing, and I would like at this time to say that I feel satisfied, and I would like to ask you the obligatory questions.

The first one is, are you willing, at the request of any duly constituted committee of the Congress, to appear in front of it as a witness?

Mr. SUAREZ. Yes, absolutely.

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

Mr. SUAREZ. I am aware of no such matter.

Senator JEFFORDS. Well, I want to thank you. This will conclude the hearing, and I——

Senator BOXER. Mr. Chairman, before you do, I have one question.

Senator JEFFORDS. Certainly. You go right ahead.

Senator BOXER. It's about Superfund. Since I'm the Chair of the subcommittee that oversees Superfund and my Chairman has given me a lot of room to study this. Senator Corzine sits on the subcommittee.

One of the things we're upset about is that we can't find out what this Administration is doing in terms of what sites they're not going to clean up at Superfund, and it's horrible. And in your State

of New Jersey, people are just beside themselves. And we're having a hard time, as the committee, in finding out what sites will not be cleaned up.

Will you help us get that information?

Mr. SUAREZ. You have my word.

Senator BOXER. Thank you.

Senator JEFFORDS. Well, thank you very much, Mr. Suarez.

Mr. SUAREZ. Thank you, Mr. Chairman

Senator JEFFORDS. This concludes the hearing. We will have a vote at some time in the near future and hopefully we will be working with you.

Mr. SUAREZ. Thank you. I would look forward to that, Mr. Chairman.

Again, thank you, Senators.

[Whereupon, at 11:35 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record:]

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

Mr. Chairman, thank you for convening today's nomination hearing. As you know, finding an experienced and credible individual to fill this particular position—the Assistant Administrator of the Office of Enforcement and Compliance Assurance (OECA)—is extremely important to me.

Last August I put a hold on the Administration's first OECA nominee, Donald Schregardus. I did so for a number of reasons, all stemming from a great concern that Mr. Schregardus would do more harm than good to environmental enforcement. This concern was based on his record as head of the Ohio Environmental Protection Agency. He had considerable experience, but he—too often—took the side of the polluters, not the people or the environment.

Today, as I look at the Administration's second nominee to head environmental enforcement and compliance, I am again concerned. The Administration has changed its strategy entirely, going from a nominee with a bad environmental enforcement record to a nominee with no environmental enforcement record.

I don't say that to disparage Mr. Suarez, or to imply that his professional experience—most recently as the Director of the New Jersey Division of Gaming Enforcement—is not interesting or impressive in its own right.

I personally think an appointment to the Department of Justice would be appropriate. I understand he was being considered for a U.S. Attorney position a few months ago. If I was on the Judiciary Committee, I would support his nomination for that type of position—or even perhaps as a Deputy Assistant Attorney General, overseeing the Department of Justice's Organized Crime and Racketeering Section.

But, for the environmental enforcement position at EPA, I am looking for someone who has experience working with environmental laws and regulations. We need someone who has a working knowledge of the intricacies of the Clean Air Act, the Clean Water Act, RCRA and CERCLA—not just a familiarity with their acronyms. We need someone who has not just an enforcement background, but an environmental enforcement background.

The last person to hold this position—Steven Herman—was a career environmental litigation attorney at the Department of Justice for 15 years before he was nominated. For the last nine of those he was Assistant Chief of the General Litigation Section, Environmental and Natural Resources Division. During this time he received seven outstanding service awards from the Justice Department. When President Clinton chose him for this position, there was no question as to why. His environmental record was comprehensive and compelling.

I was hoping the Administration would send us someone with these kinds of qualifications. From all I can tell, the Administration has sent us a fine person—and one who is eminently qualified for any number of positions. But he has no experience on the environment.

In a way, Mr. Suarez is in an untenable position. He has responded to the call to serve his country, but has been asked to enforce environmental laws in an Administration that does not appear to want them enforced and, furthermore, has ignored Congress's mandate to provide the personnel necessary to enforce the laws.

Mr. Suarez, I look forward to exploring your environmental record and environmental commitment today.

Thank you again Mr. Chairman for convening this hearing.

STATEMENT OF HON. JON S. CORZINE, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Thank you, Mr. Chairman. I am pleased to introduce New Jerseyan John Peter Suarez to the committee. Mr. Suarez has been nominated by President Bush to be the Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance. I also want to welcome his wife Natalie and their three young children, daughters Chloe and Laina, and their 7-week old son Maxwell.

Mr. Chairman, J.P. Suarez has served with distinction as a public servant in several capacities in New Jersey. He worked as an Assistant U.S. Attorney in Newark. He later served Governor Whitman as an Assistant Counsel and as a Special Assistant to the Director of the New Jersey Division of Criminal Justice. And most recently, Mr. Suarez served as the Director of New Jersey's Division of Gaming Enforcement. He has received awards throughout his career, and I believe would bring a strong enforcement ethic to the EPA.

Mr. Chairman, the laws that EPA implements are designed to protect public health and the environment. Strong enforcement of these laws is critical to the people of New Jersey. My State has more Superfund sites than any other State. And we have continuing problems with air and water pollution that impact the health of New Jerseyans. So the top enforcement position at EPA is a critical one for my constituents.

I have met with Mr. Suarez, and he has assured me that he will work to vigorously enforce these laws. I take him at his word, Mr. Chairman, and am supporting his nomination. I look forward to working closely with him to ensure that EPA enforcement is carried out in a way that protects the health of New Jerseyans and all Americans.

I want to close by congratulating Mr. Suarez on his nomination, and I look forward to the balance of today's hearing.

STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Mr. Chairman, thank you for holding this very important nomination hearing on Mr. John Peter Suarez, whom the President has nominated to the position of Assistant Administrator for the Office of Enforcement and Compliance Assurance at EPA.

Mr. Suarez is a highly qualified attorney as his extensive resume shows. Mr. Suarez has held a number of outstanding State positions. He has systematically been promoted to positions that require a greater level of skill—I believe that this speaks to his ability to grow into new and more demanding positions.

While his resume documents his consistent success in the jobs that he has held, I believe that it is also important to make note of his numerous awards:

- N.J. Hispanic Bar Association Honoree
- U.S. Attorney's Office Public Service Award Recipient
- N.J. State Bar Association Professional Lawyer of the Year Award
- U.S. Attorney's Office Special Achievement Award
- U.S. Attorney General Director's Award

Mr. Suarez is also involved in a number of legal societies where he has shown great leadership—including being selected to the position of Supreme Court Committee Member for the Hispanic National Bar Association.

As we are all aware, the Office of Enforcement and Compliance Assurance works very closely with EPA Regional Offices, State Governments, and other Federal agencies, to ensure compliance with the nation's environmental laws.

The Bush Administration is justifiably proud of their environmental enforcement record, as documented by the following accomplishments in fiscal year 2001:

- On the theory that compliance results in environmental protection, OECA provided compliance assistance for more than one million individuals and businesses.
- The Administration required violators to reduce an estimated 660 million pounds of pollutants and treat and safely manage an estimated 1.84 billion pounds.
- As a result of enforcement actions, violators will invest $4.3 billion in pollution control and cleanup measures—the highest-ever such investment.

• While environmental quality is the most important yardstick to use in measuring success, the Administration completed 222 civil judicial cases and issued 3,228 administrative orders and field citations.

• Criminal prosecutions resulted in prison sentences totaling 256 years—an increase of more than 100 years over FY2000—along with nearly $95 million in fines and restitution.

• Finally, supplemental environmental projects—actions a violator agrees to undertake to protect the environment and human health—totaled at $89 million—up 60 percent from FY2000.

At this time I would like to submit for inclusion in the record a fact sheet prepared by the EPA office of Enforcement and Compliance Assurance.

I look forward to Mr. Suarez building on this record of success.

The Office of Enforcement and Compliance is charged with developing an approach that integrates compliance assistance, compliance incentives and innovative civil and criminal enforcement, in order to maximize compliance and reduce threats to public health and the environment. From my meeting with Mr. Suarez, I am confident that his past legal and management experience, energy, and intelligence will be an invaluable asset to Gov. Whitman and President Bush in that effort.

Mr. Suarez's experience as a State official is also beneficial. The individual States have shown how effective our environmental laws can be when compliance and enforcement occurs at the State level in cooperation with EPA. This cooperation is key to maintaining the strength of our environmental laws.

I firmly believe that EPA is best suited to a standard-setting and compliance assistance role, with the States handling the bulk of enforcement actions. At the same time, EPA should maintain the ability to aggressively enforce the law itself when necessary.

A report compiled by the Environmental Council of States (ECOS) documenting State enforcement and compliance success makes an interesting point. ECOS states that:

" . . . State enforcement actions are very effective in returning violating facilities to compliance, and . . . their effectiveness increases as the severity increases."

The effective delegation of primary compliance and enforcement duties by the EPA to State agencies has given our environmental laws the strong foundation that they need. In fact, States conduct about 90 percent of all enforcement actions.

To assist the States in carrying out these duties, EPA must create and maintain a more effective means of compiling a nationwide enforcement and compliance data base. We must not lose sight of the "big picture" when it comes to the enforcement of our environmental laws. EPA oversight of these compliance and enforcement programs is essential.

Mr. Suarez, I appreciate the sacrifice you are making by continuing your career as a public servant. I have no doubt that you are up to the challenge and look forward to moving your nomination through the Senate.

Thank you, Mr. Chairman.

ENFORCEMENT ACCOMPLISHMENTS FISCAL YEAR 2001

Issue: Is EPA achieving its goals of requiring a high level of compliance by the regulated community and of reducing the release of pollutants into the environment?

Status/Next Steps: EPA's enforcement program achieved tremendous success in fiscal year 2001, protecting human health and the environment through record setting amounts in injunctive relief, significant reductions in pollutant loadings and an estimated reduction of more than 660 million pounds of harmful pollutants and the treatment and safe management of an estimated record 1.84 billion pounds of pollutants, in addition to a significant increase in the commitment on the part of violators to spend on supplemental environmental projects:

• Amount spent by violators and liable parties on pollution controls and cleanups nearly doubled—from $2.6 billion in FY2000 to $4.4 billion in FY2001

• Civil judicial penalties assessed against environmental violators nearly doubled—from $55 million in FY2000 to $102 million in FY2001; civil administrative penalties levied by EPA were down a modest $1.5 million—from about $25.5 million in FY2000 $24 million in FY2001. Overall, penalties were way up as our strategy focused on large judicial cases.

• Number of facilities voluntarily auditing and disclosing violations under EPA's audit policy more than tripled—from 437 in FY2000 to 1,754 in FY2001

• Spending by violators on Supplemental Environmental Projects was up 60 percent—from $56 million in FY2000 to $89 million in FY2001

• Total years for criminal sentences for environmental violations rose from 146 years in FY2001 to 256 years in FY2001 as a result of EPA's strategy to, as a priority, seek jail time for significant criminal cases.

• Criminal fines fell from $122 million in FY2000 to $95 million in FY2001—again, our strategy was to go for jail time

Rationale: By focusing on environmental results or outcomes, such as the reductions in pollution, and by using all of the tools available, such as compliance assistance, incentives, and enforcement, EPA can address the most serious environmental problems and achieve unprecedented results.

It is significant, for example, that the regulated community achieved an estimated 660 million pound reduction of harmful pollutants that otherwise would have been released to the environment and safely managed an estimated 1.84 billion pounds of pollutants. These results reflects EPA's shift from routine cases to the reduction, through a variety of incentives, of the most significant environmental risks and significant patterns of noncompliance.

Snapshot: End of Year Results FY1999 to 2001 (as of 2–12–02)

Activity	FY 1999	FY 2000	FY 2001
Audit Policy Settlements.	106 companies 624 facilities	217 companies 437 facilities	304 companies 1754 facilities
Value of Injunctive Relief.	$3.4 billion	$2.6 billion	$4.3 billion
Civil Judicial Penalties.	$141 million	$55 million	$102 million
Civil Administrative Penalties.	$25.5 million	$25.5 million	$24 million
SEPs	$237 million	$56 million	$89 million
Inspections	22,000	20,000	18,000 (est.)
Administrative Actions.	3500	5300	3200
Civil Referrals	403	368	327
Criminal Referrals	241	236	256
Criminal Sentences	208 years	146 years	256 years
Criminal Fines	$62 million	$122 million	$95 million

ENFORCEMENT PROGRAM—CURRENT ACTIVITIES

EPA's enforcement program remains as strong as ever. Since January 2001, we have filed and concluded major enforcement and compliance actions to reduce and eliminate harmful pollution:

• EPA showed record results in fiscal year 2001 from our enforcement activities—nearly doubling the amount spent by violators and liable parties on pollution controls and cleanups; more than tripling the number of facilities voluntarily auditing and disclosing violations under EPA's audit policy; almost doubling the civil judicial penalties assessed against environmental violators; and increasing the spending by violators on Supplemental Environmental Projects by 60 percent

• EPA's enforcement activities under the Clean Air Act to address New Source Review (NSR) violations continue to be vigorous. Beginning with investigations, of which we have over 100 under way, and concluding with a filed case or settlement, EPA aims to reduce harmful air pollution caused by refineries, power plants and other industrial processes, such as paper mills.1 Our current data shows that—between January 2001 and March 2002—EPA made 115 information requests; issued 23 Notices of Violation; filed and settled 15 cases, concluding 7 of them (i.e., they were entered by the appropriate court); and engaged in numerous other enforcement activities such as depositions, motion practice and on-going settlement discussions—all to enforce the Clean Air Act's NSR requirements.

• Our NSR enforcement included a major case against a power plant, PSEG, which alone will reduce the company's emissions of sulfur dioxide (SO2) by 90 percent and its emissions of nitrogen oxides (NOx) by more than 80 percent. These decreases represent 32 percent of all the SO2 and 20 percent of all the NOx emitted from stationary sources in New Jersey, and 19 percent of all the SO2 and 5 percent of all the NOx from all sources in the State, including cars and trucks

• We issued many imminent hazard orders to address immediate threats to human health an the environment. For example, EPA issued two imminent hazard orders under RCRA to Magnesium Corporation to address dangerous dioxin levels at the facility and the threat to workers' health from extremely high levels of

hexachlorobenzene in anode dust. EPA also issued two imminent hazard orders against Seaboard Farms under the Clean Water Act and RCRA to address contaminated drinking water resulting from hog farm waste.

- We also issued an Administrative order (made final on appeal in April 2001) under RCRA to address imminent threats from the improper storage and disposal of large volumes of munitions and unexploded ordnance that had been buried at the Massachusetts Military Reservation (MMR) on Cape Cod. The emergency order required the National Guard Bureau to detonate the munitions in a special "controlled demolition chamber" that was present at MMR, except for those munitions and ordnance that were unsafe to move (and which could be blown in place).

In other words, EPA has, under Administrator Whitman's watch, successfully addressed environmental violations using the various tools available, ranging from voluntary incentives to imminent hazard orders. Concluding cases is no small feat, and we are proud of the accomplishments achieved since January 2001 and will continue to pursue enforcement in order to achieve similar results in the future.

These activities reflect EPA's approach to enforcement generally, which includes the following steps:

- Investigate possible violations by gathering information, e.g., through information requests, citizen complaints, inspections or other reports;
- Review collected information to determine compliance
- Issue "Notices of Violation" or other formal notification to the violator to alert them to the violations detected and give them an opportunity to correct those violations
- Enter into negotiations with the violator in an attempt to reach an agreed upon settlement to resolve the violations
- Proceed with formal enforcement by filing a case for litigation if no resolution of the violations could be achieved.

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

Mr. Chairman, thank you for holding this hearing to consider the nomination of John Peter Suarez to head EPA's Office of Enforcement and Compliance Assurance. The enforcement and compliance office, EPA, and the environment, have gone far too long without new leadership in this area.

EPA's enforcement and compliance program is at a cross-roads, between old ways of doing business and new ways that stress what is best for the environment as the ultimate test for what action to take.

To their credit, the last administration began the process of modernizing the enforcement program by reorganizing it. That reorganization recognized that there is more than one way to protect the environment and ensure people meet their environmental obligations.

EPA can improve the environment by assisting people to understand and meet their obligations. This is especially true for small businesses that want to do the right thing but can't wade through EPA's immense and complicated rules and regulations.

EPA can improve the environment by providing people with incentives to meet and go beyond their environmental obligations. These incentives are worth their weight in gold when they fix environmental problems that would otherwise go unknown or unprotected by traditional enforcement techniques.

EPA can also protect the environment with traditional enforcement techniques for the most harmful malefactors. Polluters who intentionally pollute, or polluters who refuse to fix their problems deserve strong and stiff punishment.

We understand that the cleaner, cheaper, smarter way to improve the environment, as Administrator Browner used to say, may not be the traditional approach. So, she combined all of these elements—enforcement, assistance, and incentives—into a single enforcement and compliance assurance office.

However, the transformation is not yet complete. There are still some that measure commitment to the environment in terms of beans—the number of cases settled, the number of penalty dollars collected. Unfortunately, these beans often times have little to do with protecting or improving the environment.

One example came 2 years ago when EPA sent out nearly 600 letters to facilities that omitted entries for nitrate compounds on their Toxic Release Inventory reporting forms. EPA threatened to assess fines totaling $20,000 per facility for these paperwork violations.

The problem was, other than these violations having no environmental impact, EPA found them by targeting firms trying to do the right thing—those actually submitting their forms.

This wasn't a case of a few bad actors. Eighty percent of filers failed to understand the requirement. Not surprising given that reporting instructions run several hundred pages. Professional consulting firms paid to know this requirement missed it. No wonder that half of those on EPA's hit list were small businesses.

Unfortunately, in the face of no damage to the environment, instead of helping these people understand their obligations and come into compliance, EPA's enforcement program went for maximum cases and maximum penalty dollars.

We need to prosecute forcefully those who intentionally harm the environment. We should deal harshly with those who refuse meet their environmental obligation. However, EPA needs to target its limited Federal enforcement resources in areas and ways that do the most good for the environment.

The test should not be how to maximize traditional beans, or cases, or penalty dollars. EPA is not the IRS. They do not exist to collect money. They are here to protect the environment. I hope the first question you ask in every case will be: What is the most efficient, effective way to protect the environment? If you do that, the environment will benefit from your tenure. Thank you.

STATEMENT OF JOHN PETER SUAREZ, NOMINATED BY THE PRESIDENT TO BE THE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, members of the committee, I would like to thank you for the opportunity to appear before you today to introduce myself and talk about my nomination for the position of Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) at the Environmental Protection Agency (EPA). With me today are my wife, Natalie, and our three children, Chloe, who is 4 years old, Laina, who is almost 2, and Maxwell, who is all of 7 weeks old. Also, please accept my apologies if any or all of them have to leave during this hearing.

First, I must thank President Bush for his trust and confidence in nominating me to head the Office of Enforcement and Compliance Assurance. I must also thank Governor Whitman, for whom I have had the pleasure of working previously and look forward to doing so again. I believe that the Nation's environmental laws are critically important to every American, and I hope to have the opportunity to enforce those laws to help ensure that all of us, especially our children, can enjoy cleaner air, purer water, and better protected land for years to come.

I believe that my background and experience have prepared me well for this challenging position, and I would like to take a few moments to describe that for you. My interest in working in the public sector and serving the public interest is deep-rooted, and comes in large part from the values instilled in me by my parents. My father, whose family hails from Spain, and my mother, who was born and raised in Nicaragua, believed that public service was a noble calling, and encouraged all of their children to consider careers in government or in service to others. My brother went to the Air Force Academy and now serves as a Lt. Colonel in the Air Force assigned to the Pentagon, while my oldest sister has nearly completed her doctoral thesis and hopes to provide counseling and therapy to minority adolescents. My other sister is a lawyer who works for her husband's company. All of my siblings are successes in my eyes, and I admire each of them.

When I went to law school at the University of Pennsylvania, I knew from the moment I entered that I was interested in pursuing a career as a prosecutor. After I graduated from law school, I clerked for a Federal judge and then applied to the U.S. Attorney's Office, knowing that this was where I wanted to start my career. I was, fortunately, accepted by the District of New Jersey, and began to develop as a lawyer in a terrific prosecutor's office.

While at the U.S. Attorney's Office I learned many skills that I believe are essential for a chief law enforcement officer. I learned how to try cases, how to manage investigations, and how to be a tough but fair prosecutor. I also saw first hand the tremendous impact that enforcement can have on the lives of those affected. I was fortunate to be able to try some difficult and exciting cases, and as a result of one of those cases, the successful prosecution of an Atlantic City street gang, I was awarded the U.S. Attorney General Director's Award. I was fortunate that I did not lose any of the cases that I tried, and to me that is a testament to the quality of the agents and supervisors with whom I had the pleasure of working.

If I am confirmed for this position, I believe that the lessons learned while in the U.S. Attorney's Office have equipped me well to understand the challenges facing

agents, inspectors, and legal staff who work the front lines in environmental enforcement actions.

After I left the U.S. Attorney's Office, I went to the State of New Jersey's Division of Criminal Justice, where I was the Special Assistant to the Director of a 600-person statewide law enforcement agency. It was there that I began to learn how to manage attorneys and investigators, and how to maintain constructive relationships with colleagues in other State agencies, Federal agencies, and the local law enforcement community. I worked with the Director to shape policy for the Division of Criminal Justice, and helped launch a number of statewide initiatives addressing long-entrenched problems plaguing New Jersey's communities. Through this experience, I learned the valuable lesson of working cooperatively across organizational lines and with different agencies to achieve the best results for law enforcement programs.

Governor Whitman then asked me to join the staff of her Counsel's Office, where I provided advice to the Chief Counsel and the Governor on criminal justice matters. It was while working in that capacity that Governor Whitman nominated me to be the Director of the Division of Gaming Enforcement, the State law enforcement agency charged with enforcing the laws and regulations related to the casino industry.

As the head of the Division of Gaming Enforcement, I oversaw a staff of 400 employees charged with ensuring the good character and integrity of the people and businesses who worked in the industry. The Division was comprised of several units, including a criminal enforcement section, a civil regulatory prosecutions unit, an audit function, and a technical services unit that dealt with the highly sophisticated computer software and hardware of the gaming industry. As the Director, I was able to lead the professionals from the Division in shaping policy and enforcing statutes and regulations, in either the criminal or civil context, and also to set the agency's enforcement priorities. I led the Division in the context of its licensing work, and crafted appropriate enforcement responses for various degrees of statutory violations in both civil and criminal matters.

My experience as the Director of the Division of Gaming Enforcement, provided me the opportunity to use the skills I had developed as a lawyer with an enforcement background in evaluating and analyzing the appropriate action to take against a regulated entity in order to achieve the best result. In leading a large law enforcement agency, with both civil and criminal responsibilities over a highly regulated industry, I developed management skills that will serve me well if I am confirmed as Assistant Administrator for the Office of Enforcement and Compliance Assurance.

As is reflected in the summary of my professional career, I have been involved in criminal or regulatory enforcement at both the Federal and State level for over 10 years. My experience working in very active enforcement offices has instilled a set of core principles that come with being in charge of a government enforcement office. These core principles include:

First is fairness, for I believe that it is incumbent upon a law enforcement official to use the tremendous resources available in a fundamentally fair way, lest the entire process lose sight of the impact that it can have on individuals and communities.

I also believe that as a law enforcement official, you can often times achieve better results by trying to work cooperatively with those who many would call your adversaries. Indeed, in my experience in the Division of Gaming Enforcement, I found that on many issues, even though the industry may have disagreed with a decision that was reached, the process of soliciting industry input and enlisting their counsel worked to ensure a strong cooperative relationship between the regulator and the regulated. I also believe that flexibility is a critical component to a cooperative approach, because with flexibility you can often times achieve the desired result quickly and with less cost.

As a necessary corollary to a cooperative and flexible approach, however, is the willingness to pursue appropriate enforcement actions against those entities who are either unwilling or unable to conform their conduct to what is required. In the proverbial "carrot and stick" model, I believe that a good enforcement official has the stick and is not afraid to use it.

Finally, a good enforcement official must have faith in the system; faith in the legislative process, which produces the laws that we must enforce; and faith in the legal system, which is the forum that we must turn to when controversies and cases need to be settled. My experience has taught me that the system works, and it is a system that I have enjoyed being a part of throughout my legal career.

My experience, my commitment to public service, and my fundamental belief that our environmental laws provide the best guarantee that our Nation's natural re-

sources will be protected, will allow me to lead the Office of Enforcement and Compliance Assurance. I can provide strong leadership, and can bring to the Office those core beliefs that I think are the mark of a good enforcement official. I expect to rely fully upon the experience and expertise of the very accomplished and dedicated staff of career employees in the Office of Enforcement and Compliance Assurance. I have met many of these dedicated staff and I am confident in their ability to assist me in the day-to-day management challenges and policy issues that may arise.

I would like to assure all of the members of this committee, the President and Governor Whitman, that if confirmed I will apply myself with the same vigor and energy that have marked my career to date, and that I will work as long and as hard as necessary to ensure that our Nation's environmental laws are being enforced as intended by Congress firmly and fairly.

At the end of the day, I will do everything in my power to live up to the promise that I have made to my three children, that this planet of ours will be a good and safe place to live. I will dedicate myself to a comprehensive enforcement program that will safeguard our water, our air and all of our Nation's precious natural resources.

I believe that enforcement must be a vigorous and active component of the EPA's efforts to protect our natural resources, and I would very much appreciate the opportunity to apply my experience and my desire to enforce the important environmental laws that this Congress has put in place.

I thank you for your patience this morning, and I am pleased to have this opportunity to answer any questions that you may have.

RESPONSES OF JOHN PETER SUAREZ TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. EPA Regional Offices are reportedly cutting enforcement office personnel in order to meet staffing reductions that the Bush Administration had originally proposed to implement by attrition in the agency's fiscal year 2002 budget request. What is the current staff of the total enforcement office?

Response. It is my understanding that EPA Regional offices continue to manage their enforcement positions in a manner consistent with the Agency's fiscal year 02. budget as passed by Congress last Fall. Indeed, a current analysis shows projected Regional FTE utilization in enforcement is on target to meet the authorized level of 2,516.6 FTE. Projected FTE utilization for Headquarters and field (non Regional) components is currently 848.2 FM for a total end of year enforcement FTE projection of 3,366.7 (2,518.5 + 848.2),

Question 2. Will you support further reductions in EPA enforcement personnel through attrition?

Response. If confirmed, I intend to examine closely the resources and staffing levels and the allocation of those resources and staff to ensure that OECA is directing its resources to those areas where the most significant public health and environmental problems exist. If there is an identified need for more staff or resources, then I would represent and advocate for the Office's interests during the budget process, to ensure that adequate resources are being devoted to the mission of enforcement and compliance.

Question 3. Do you think that the Enforcement division is currently overstaffed and whether such moves are warranted?

Response. I have not yet had the opportunity to analyze the staffing needs of OECA, but intend to do so if confirmed. I believe that a careful examination of how resources are allocated would be helpful in evaluating whether our staffing needs are being adequately met, and I will endeavor to undertake such an analysis if confirmed. I am aware that the breadth of work required of OECA staff is expansive, and necessarily requires a sizable staff to perform effectively the mission of enforcement and compliance.

Question 4. If confirmed, will you pledge to keep this committee appraised, in a timely fashion, of EPA enforcement staffing levels, enforcement staff vacancies, and the exact number of completed civil and criminal investigations and inspections?

Response. Yes. I will also work with the committee to ensure that information regarding completed investigations and inspections is accompanied by adequate explanations, so that an accurate picture of OECA's work is provided. Moreover, I will also provide the committee with information relating to other performance measures, such as environmental impacts and pollution reductions achieved, so that the committee has a broad view of the accomplishments of the Office.

Question 5. I have seen reports saying that regional enforcement staff are being asked to focus more on compliance assistance than on traditional enforcement. Please discuss your views on EPA compliance assistance activities.

Response. I believe that compliance assistance, especially in the context of small businesses, is an integral part of the mission of OECA. Compliance assistance can often times bring more entities into compliance quicker by providing the entities with the information and assistance they need to conform their operations to what is requited by law. I also believe that a good compliance assistance program should be integrated into the core of the Office's work, so that it is available to be used when appropriate. However, I also believe that there are many instances where traditional enforcement actions, in either the criminal or civil context, are the appropriate first course of action and should be pursued notwithstanding the existence of a compliance assistance program. I therefore believe that a combination of compliance and enforcement efforts, in the proper balance, can achieve the best environmental results.

RESPONSES OF JOHN PETER SUAREZ TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Does the anticipated retirement of a large number of upper and mid-level EPA staff extend to OECA? If so, what steps would you recommend taking to fill those positions in order to avoid a negative impact on compliance and enforcement?

Response. I am not aware of an anticipated ;departure of upper and mid-level staff in OECA in the immediate future. However, in order to assist with management challenges, the Agency recently began an 'Senior Executive Service mobility" program whereby senior managers were given the opportunity to move to new and challenging positions within EPA. The result of this mobility program is that several senior staff have been assigned to various offices within the Agency, providing new leadership to the. offices. Within OECA, a new Deputy Assistant Administrator was named to the staff, along with a new office director for the Office of Regulatory Enforcement and a new Associate Assistant Administrator. All of these positions were filled by people with extensive experience in environmental law, and I expect that they will provide significant stability and leadership to OECA.

Question 2. Mr. Suarez, what kind of skills could you bring to the position of Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance from your previous positions in public service?

Response. My professional background and experience is in enforcement work, in either the criminal or civil context, and I have been involved in prosecuting cases for my entire legal career. My skills include an ability to analyze the strengths and weaknesses of cases and thereby develop sound strategies on how to pursue an action, and also the ability to guide investigations so that whatever evidence is available is identified and developed properly—I also have a firm grasp on the challenges confronted when negotiating settlements or resolutions of cases, and believe that this skill will serve me well if confirmed. I also attempt to utilize a proactive approach to addressing problems or potential problems, so that the agencies I have been leading are able to take action before an issue escalates. In my previous experiences, I have also learned to work with diverse stakeholders, including industry, licensees, law enforcement, attorneys, and advocacy groups when developing or implementing programs. Finally, I believe my strong work ethic and proven ability to lead a large organization with an enforcement mission will help strengthen OECA.

Question 3. Mr. Suarez, why do you think you are qualified to head the Office of Enforcement and Compliance Assurance?

Response. My extensive background in enforcement programs with civil and criminal responsibilities, my successful management of large enforcement agencies, and my firm belief in the importance of our nation's environmental laws provide me with the experience and perspective that is necessary to head OECA.

Question 4. Please explain to this committee your experience in providing management to large organizations.

Response. My first experience in coordinating a law enforcement program came when I was in. the U.S. Attorney's Office and was named to serve *as the liaison to the Camden/Philadelphia High Intensity Drug Trafficking Area (HIDTA) Task Force. As the liaison for the U.S. Attorney's Office, I served to coordinate the program with our State and regional partners to ensure that our interests were preserved and that resources and priorities relevant to the Camden area were addressed by the Task Force, I then became the Special Assistant to the Director for

the Division of Criminal justice, the statewide law enforcement agency in New Jersey. As the Special Assistant, I served as the director's principal assistant and helped him establish and enforce policies for a 600-person agency, including the identification of statewide enforcement priorities. I also coordinated enforcement activities with the 21 county prosecutors' offices and with the Federal and local law enforcement agencies.

Thereafter, I served as the Director of the Division of Gaming Enforcement, the State law enforcement agency charged with enforcing the laws relating to the casino industry—in New Jersey. As the Director, I led a 400-person law enforcement agency that included criminal investigators, prosecutors, civil investigators, auditors, attorneys, accountants, computer specialists, and other professionals. As the Director, I established our enforcement priorities, led the Division in licensing matters, and guided numerous criminal and civil investigations. I also reviewed and approved all significant settlements with the regulated entities to ensure that the settlements were consistent with the Division's enforcement philosophy—Finally, I was responsible for proposing changes to the regulatory or legislative process that I felt were necessary to improve the Division's operations and to ensure that the integrity of the licensees and the industry was never compromised.

Question 5. What is your enforcement philosophy?

Response. I believe that first and foremost, a good enforcement official must be fair. Fairness must extend to all of the participants and stakeholders in the process, so that no side or perspective is excluded. Second, I believe that a good enforcement official must be willing to engage in a cooperative approach to achieving the results desired, and should always try to find areas where common interests merge. I also believe that flexibility is a critical component of a cooperative approach, and often times allows for solutions to problems or concerns quickly and efficiently. Third, I believe that a good enforcement official is not hesitant to take aggressive enforcement actions where appropriate. Indeed, I believe that a willingness and proven ability to pursue enforcement actions will serve as a deterrent to others and will serve to bring entities into compliance. Finally, I believe that enforcement officials must have faith in the laws and faith in the process for-enforcing them. I believe good enforcement 'officials should be willing to express their views when shaping policy decisions, but must also enforce the policy decisions that are reached, firmly and fairly.

Question 6. What do you think will be some of the challenges facing you as the Assistant Administrator for the Office of Enforcement and Compliance Assurance? How do you plan to address these challenges?

Response. One of the significant challenges facing OECA in the immediate future will be in identifying and setting national priorities. In order to utilize the resources of the Office most effectively, those national priorities that have the most significant impact on public health and the environment must be identified, and a commitment must then be made to use OECA's resources to pursue those areas. If confirmed, I expect to work very closely with the ten Regions and the States to help identify possible national priorities for OF-CA and to then put in a place a plan for addressing and targeting the national priorities. Another challenge facing the Office is in the consistency of Enforcement actions throughout the Nation. I anticipate working with the Regional Administrators and regional enforcement coordinators to ensure that there is consistency in the enforcement work throughout the Nation. I also believe that there are more opportunities to provide better compliance assistance to certain sectors, especially certain sectors with large percentages of small businesses, and I will work with the Office of Compliance to identify those sectors and to coordinate compliance assistance efforts. Finally, I believe a significant challenge will be in the area of Superfund management, and if confirmed I will work closely with the Office of Site Remediation Enforcement and the Office of Solid Waste and Emergency Response to ensure that potentially responsible parties are being identified and pursued for cost recovery actions, and that as many National Priorities List sites are cleaned as is possible.

Question 7. What kind of support will you put in place to help your transition into this new position?

Response. Within the immediate office of the Assistant Administrator, there is a Principal Deputy Assistant Administrator and a Deputy Assistant Administrator, along with an Associate Assistant Administrator, all of whom have extensive experience with environmental laws and enforcement. All of the office directors of the constituent parts of OECA are also located in Headquarters, and together this staff will provide me with an incredible amount of experience and expertise in environmental enforcement. If confirmed, I intend to work very closely with all of the senior management and staff in OECA, and to call upon them for their advise and counsel on

all important issues. I will work with my staff experts, other Assistant Administrators, and Office of General Counsel to ensure that I have the necessary information in order to make informed decisions.

Question 8. You mentioned in your statement that you prosecuted cases at the Division of Gaming Enforcement. Please explain the outcome of these prosecutions.

Response. During my tenure as the Director, the Division prosecuted hundreds, if not thousands, of enforcement cases against some of the more than 50,000 licensees in the industry. The enforcement cases ranged from minor infractions of regulations to significant violations that resulted in the revocation of an entity's or individual's license to do business. I personally prosecuted several high profile cases, including a case against Park Place Entertainment (formerly Bally's) for improperly engaging the services of a public official in Florida and then paying him to do little or no work. The results of that case were that Park Place was required to agree to extensive monitoring and reporting of its operations to the Division, and was also required to implement an extensive compliance program. Another noteworthy case that I personally prosecuted involved the President of Caesar's Atlantic City Casino. In that case, the President of Caesar s engaged in a pattern of misconduct and deceit, including misrepresenting certain facts to the Division and withholding information, that led the Division to seek revocation of his license. As a result of that prosecution, the President's license was revoked, and he was barred from working in the casino industry in any capacity for 5 years.

Question 9. How do you measure success of your organization?

Response. I believe that success should be measured by outcomes, and not purely by numbers or statistics. For OECA, I believe its success can and should be measured by the benefit of the outcomes it has achieved, and by the improvement in public health and the environment that is achieved through its enforcement work. Identifying the number of cases pursued or investigations completed can be a helpful guide in measuring success, but the measure should also include other variables such as scope of the work and impact on our environment.

RESPONSES OF JOHN PETER SUAREZ TO ADDITIONAL QUESTIONS FROM SENATOR CORZINE

TITLE VI: STATUS REPORT IN RESOLVING BACKLOG OF COMPLAINTS

Question. What is the current status of EPA's efforts to resolve the backlog of compliance that have been filed under Title VI of the Civil Rights Act and to ask you for a status. report on their resolution.

Response. Administrator Christine Todd Whitman announced the formation of the Title VI Task Force in May 2001. The Task Force was-charged with resolving the backlog of administrative complaints filed with EPA alleging violations of Title VI of the Civil Rights Act of 1964 and EPA's Title VI regulations.

When Administrator Whitman announced the creation of the Title VI Task Force in May 2001, the Title VI complaint backlog consisted of 66 open Title VI complaints. Twenty-one of those complaints had been accepted for investigation. Forty-five complaints were still "under review," meaning that EPA hid not yet made a jurisdictional determination whether to accept them for investigation, reject them, or refer them to another agency for appropriate action.

As of May 7, 2002, EPA has made jurisdictional determinations on all "under review" complaints, with the exception of five complaints which are held in suspension pending the outcome of parallel related litigation. The complaint backlog assigned to the task force has currently been reduced to 38, several of which are very close to resolution. Below is a summary status report:

Current Status of Title VI Cases (66 cases filed)

Resolved after investigation initiated	2
Rejected	20
Withdrawn	6
Referred	1
Currently under investigation	27
Suspended for pending litigation	5
Held for informal resolution or ADR	5

RESPONSES OF JOHN P. SUAREZ TO ADDITIONAL QUESTIONS FROM SENATOR WYDEN

Question 1. In your testimony you stated that you believe in the polluter pays principle. Since the current Administration has taken the position on Superfund—EPA's most costly program—that the tax on industries responsible for environmental contamination should not be re-instituted, the burden for the nation's toxic cleanup will fall, not on the polluter, but on taxpayers. How do you plan to reconcile your belief in the polluter pays principle with the Administration's view?

Response. I am firmly committed to the polluter pays principle. It is my understanding that although the tax on industries has expired, EPA has continued to pursue potentially responsible parties (PRPs) to contribute to clean up costs at sites identified on the National Priorities List. I plan to continue EPA's success in maximizing the participation of responsible parties at Superfund sites. As is reflected on the accompanying charts, OECA continues to work to identify and pursue PRPs, and its work has ensured that in over 70 percent of the long-term Superfund cleanups , PRPs have borne the cost of that cleanup. Since the inception of Superfund, responsible parties have committed more than $20 billion to clean up or to reimbursing EPA's costs. My understanding is that in only those instances where there is no identifiable PRP or where the PRP is not able to pay for site cleanup, then moneys from the Superfund Trust Fund will be used to take remedial action. If confirmed, I will ensure that OECA continues to aggressively pursue PRPs and cost recovery actions against those entities, while applying the guidelines of EPA's Administrative Reforms, to ensure that as many sites as possible are being cleaned or remediated by the polluters themselves in a fair manner. EPA's enforcement program has been successful in making the polluter pay, and I will make every effort to continue these impressive accomplishments.

Question 2. When we met in my office and again in your written testimony, you spoke of the expertise of the EPA enforcement staff and how you will rely on that expertise to help you enforce the nation's complex environmental laws. Generally, individuals come to an executive position with years of experience upon which they base high-level decisions, but given your inexperience with environmental law, when faced with a difficult choice, on what will you base your decision when the advice of your staff conflicts with that of equally forceful industry advocates?

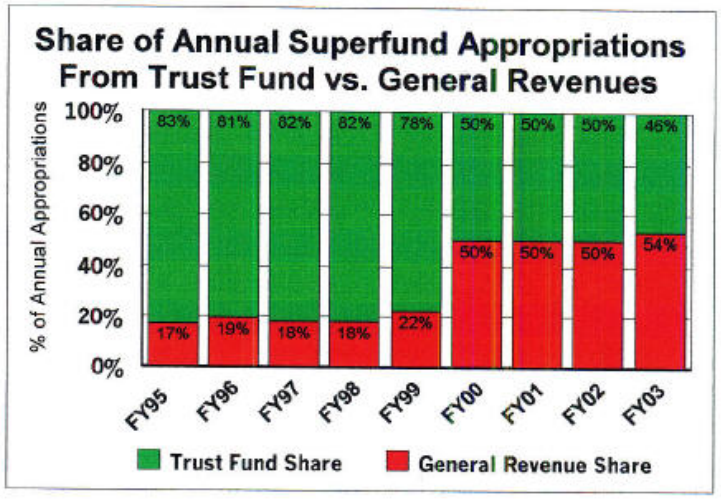
Response. As is reflected in my resume, my background includes many years of experience in executive enforcement decisionmaking roles, including as the Director of a statewide law enforcement agency in which I was responsible for making policy decisions affecting significant interests. To the extent that an issue arises in which there are competing views between EPA staff and industry advocates, I will attempt to gather and analyze as much information as possible from all of the stakeholders in an issue, and then make an informed decision that is based upon that information and analysis. The most significant factors in such an analysis will be the relevant Federal law coupled with an evaluation of the environmental and human health impact as a result of the decision to be made.

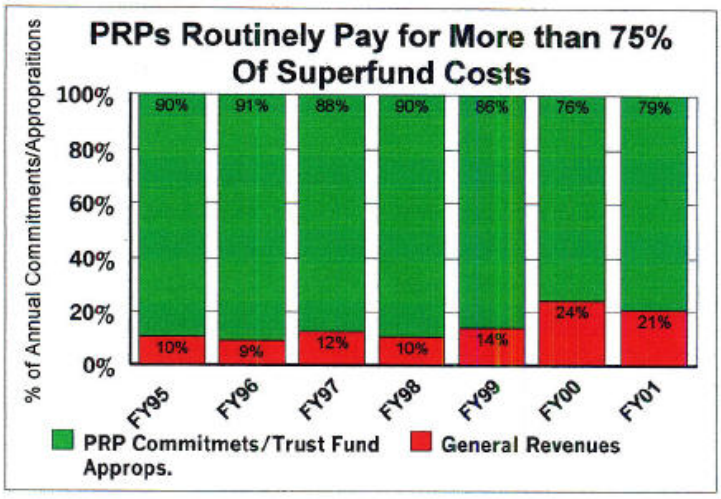
Question 3. The Public Employees for Environmental Responsibility (PEER) distributed a data package to the Senate detailing your record of prosecutions in New Jersey. This information suggests that you have been involved in only a small number of criminal prosecutions, many of which the State lost. It is my understanding that when you met with the Senate staff on May 6, 2002, you stated that you believe this information to be false and that it misrepresents your record. After investigating PEER's data my staff learned this information originated with Transactional Records Access Clearinghouse, an organization which receives data directly from the offices of the U.S. Attorney's General, and that has a proven reputation for reporting accuracy. Would you explain this discrepancy and please provide the committee with documents which verify your assertions regarding your record of prosecutions?

Response. I am not familiar with the Transactional Records Access Clearinghouse, nor am I familiar with what other sources PEER relied upon when gathering their data, so I cannot comment on those sources or their reliability. However, several major discrepancies between what is reported and what is accurate are apparent. What is clear is that my record as an Assistant U.S. Attorney, as the Special Assistant to the Director of the Division of Criminal Justice, and as the Director of the Division of Gaming Enforcement is marked by productivity and effective and aggressive enforcement. For example, as is reflected in the letter of endorsement received from Michael Guadagno, Chief of the Fraud and Public Protection Division of the U.S. Attorney's Office in New Jersey and one of my former supervisors, I was one of the most productive members of the Office and I never lost a case that I tried. I received the U.S. Attorney General's Directors Award from Attorney General Janet Reno for the successful prosecution of the Abdullah's, an Atlantic City street gang.

As is reflected in my performance evaluations, copies of which are attached, I consistently received the highest possible rating for AUSA's in the U.S. Attorneys Office, and my supervisors comments reflect that my productivity and performance was among the best in the office. I received the New Jersey State Bar Association Professional Lawyer of the Year Award for 1999, which speaks to my integrity and professionalism as recognized by the State Bar, and was honored by the New Jersey Hispanic Bar Association for my leadership and success in the legal community. I was the lead prosecutor in several other high profile cases, including the successful prosecution of the former President of the Camden City Board of Education (US v. Bey) for her theft of honest services from the city of Camden, and the successful prosecution of the clerk to the Supreme Court of New York for tax evasion (US v. Rakov). My record in New Jersey reflects in many ways my views of effective enforcement, in that a good enforcement official must be willing and able to use the tools available, such as criminal prosecution, to ensure that people and entities are complying with their legal obligations.

What Polluter's Pay Toward Superfund Cleanup





U.S. Department of Justice

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April 11, 2002

The Honorable Christine Todd Whitman
Administrator, United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC, 20460

Dear Administrator Whitman:

I write regarding President Bush's nomination of John Peter Suarez to be Assistant Administrator for Enforcement and Compliance Assurance at the Environmental Protection Agency. As the Chief of the Fraud and Public Protection Division in the U.S. Attorney's Office for the District of New Jersey, I am responsible for all major white collar and environmental prosecutions in this District. I had the pleasure of supervising Mr. Suarez from 1996 to 1998 and I enthusiastically recommend him for this very important enforcement position.

Mr. Suarez was one of the hardest-working and most productive Assistant United States Attorneys that I have known in my 22 years with the Department of Justice. Mr. Suarez was assigned many significant prosecutions involving complex white collar crime, narcotics, gang violence and public corruption and was always willing to take on the most difficult cases. He consistently was among the office leaders in number of cases prosecuted and proved himself time and again as a skilled litigator when trying cases in federal court. Of the many cases Mr. Suarez tried, he never had an acquittal. One of these trials, *United States v. Simpson*, resulted in the conviction of 22 members of a violent Atlantic City street gang, the "Abdullahs," on drug distribution and attempted murder charges. Mr. Suarez was recognized for his outstanding work on the *Simpson* case by then Attorney General Reno with the Director's Award, one the highest honors a federal prosecutor can receive.

I am confident that Mr. Suarez will bring the exceptional ability, judgment and enthusiasm he displayed in this Office to his new position and will ensure compliance with U.S. environmental laws in a manner that is firm yet fair to the regulated community. If I can provide any additional information regarding Mr. Suarez I will be pleased to do so.

Sincerely,

Michael A. Guadagno

MICHAEL A. GUADAGNO
Assistant United States Attorney
Chief, Fraud and Public Protection Division

SUMMARY OF TRIALS PROSECUTED BY JOHN PETER SUAREZ

Assistant U.S. Attorney in the District of New Jersey, September 1992-January 1998

1. United States v. Rita Fabiani and William Richman; Spring 1997; before Hon. Mary Little Cooper. A husband-and-wife bank fraud, wire fraud, and money laundering case arising out of the investigation into a multi-million dollar Ponzi scheme operated by Fabiani and Richman. Defendants would entice investors to purchase foreclosed properties to be immediately resold for a substantial profit. Defendants used all proceeds to maintain a lavish lifestyle and stole over 8 million from investors. Defendant Richman proceeded to trial (wife was found incompetent due to head injury suffered after indictment). First trial resulted in a hung jury. Second trial began about 3 weeks after the first, and resulted in a guilty verdict. Defendant Richman sentenced to approximately 70 months imprisonment.

2. United States v. Anthony Iezzi; Spring/summer 1996; before Hon. Joseph H. Rodriguez. A bank fraud case arising from the investigation I led in the Fabiani/

Richman Ponzi scheme case (see item below). Defendant found guilty and sentenced to prison.

3. United States v. Robert "Hanif Abdullah" Simpson, et al.; Winter 1996; before Judge William Bassler. A 22-defendant drug conspiracy and distribution case, along with RICO charges for attempted murder, against an Atlantic City street gang operating out of the Resort Courts housing projects. These 22 defendants, along with 2–3 others, were known as the "Abdullahs" and were selling heroin and cocaine in the projects for years. Myself and another AUSA (Jeremy Frey) conducted a 6-month wiretap of various telephones used by the defendants, then indicted them. Trial began in January 1996 with six defendants proceeding to trial, and during the course of 2 months of trial, every defendant eventually pleaded guilty. Lead defendant received a sentenced of 188 months imprisonment, with all the others sentenced to prison terms (except for the wife and girlfriend). NOTE: I received the Attorney General Director's Award from Janet Reno for this successful prosecution, received a letter of commendation from Director Louis Freeh of the FBI, and received an honorary resolution from the Atlantic City Council thanking us for the efforts in conjunction with this prosecution.

4. United States v. Harris Rakov; Winter 1995 (?); before Judge Alfred J. Lechner. A tax fraud case against the clerk of the New York court system for filing false tax returns in which he failed to declare as income interest that he received on loans that he had given to friends and colleagues. Defendant found guilty.

5. United States v. Rodolfo Bethancourt, et al.; Summer 1994; before Judge Garrett E. Brown. A multi-defendant drug importation conspiracy case, in which the defendants agreed to ship cocaine through McGuire Air Force Base. Defendant Bethancourt went to trial, and was found guilty and sentenced to at least 10 years.

6. United States v. Vincent and Susan Maglione; May 1994; before Judge Joseph H. Irenas. A husband-and-wife tax protestor tax fraud case, in which the defendants would send fictitious tax liens to people and attempt to collect through the IRS/tax returns. Both went to trial, he before the judge, she before a jury. Both found guilty. Husband sentenced to jail, wife sentenced to probation over the objection of the Government.

7. United States v. (M/V Targa case); 1993; before Judge H. Lee Sarokin. A multi-defendant drug importation conspiracy case. Defendants were crewmembers of the M/V Targa who transported large quantities of cocaine from Central America to the Port of Newark for sale. At least one defendant (a Philipino crew member) went to trial, and was found guilty. Sentenced to at least 10 years imprisonment.

8. United States v. Sassman; November 1993; before Judge Jerome B. Simandle. A theft of interstate commerce conspiracy. Multi-defendant case, with one defendant going to trial and found guilty and sentenced to prison.

9. United States v. ; summer/fall 1993; before Judge Dickinson Debevoise. A drug distribution case arising from the Trenton Weed & Seed program. Defendant found guilty and sentenced to prison.1

10. United States v. Fahim Sabir, et al.Spring of 1993 (with Patty Shwartz), before Judge Dickinson Debevoise. Multi-defendant drug distribution conspiracy case. Both defendants that went to trial were found guilty. Nadeem Sheikh sentenced to 72 months; Jang Baz Kahn sentenced to 72 months.

The above summary reflects 11 trials (one was a retrial due to a hung jury), all of which, including the case with the hung jury, resulted in the defendants who went to trial being found guilty. No defendant was ever acquitted in a trial I prosecuted.

A couple of other noteworthy prosecutions: I was the prosecutor who investigated the allegations of fraud and abuse in the Camden School Board. As a result of our investigation, the President of the School Board, Elaine Bey, pleaded guilty to theft of honest services, and was sentenced to prision. (United States v. Elaine Bey). I also began the investigation into allegations of corruption by former Mayor of Camden Arnold Webster. While I was working on the case, we put many witnesses in the grand jury and learned that Mayor Webster had embezzled funds from Camden by continuing to receive his salary as School Superintendent while serving as Mayor. We also learned that Mayor Webster had collected vacation and sick leave for which he was not entitled. The case was resolved after I left the office by way of plea to tax charges.

I also investigated and prosecuted the theft of client funds by an accountant (United States v. Dudnick), which resulted in a guilty plea and prison sentence for the defendant; the theft of funds by a bank manager from the Farmers & Merchants Bank (United States v. Lapsins); and I began the investigation into campaign finance violations by business executives during the 1996 Presidential election. While assigned to the Trenton office, I prosecuted several significant weed and seed cases, including United States v. Ernest Wilkerson, a career offender and public employee

from the city of Trenton who was selling crack cocaine, and United States v. Salim Davis, in which the defendant was convicted after he sold both a firearm and drugs to undercover agents. In addition to these cases, while in the Frauds and Public Protection Division, I prosecuted United States v. Michele Carnevale et al., a case involving the interstate shipment of child pornography. In this case, the search of the defendants house discovered a substantial amount of child pornography and other obscene material, and resulted in both defendants pleading guilty.

In addition to the Attorney General Director's Award, the U.S. Attorney for the District of New Jersey awarded me a Special Achievement Award for my efforts in the office. I was also honored by the N.J. State Bar Association as one of their Professional Lawyers of the Year for 1999, and was also a Hispanic Bar Association Honoree for my work in the legal community and my leadership in the Hispanic community.Excerpts of Performance Evaluations for

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JOB PERFORMANCE EVALUATIONS WHILE AN ASSISTANT U.S. ATTORNEY

While serving as an Assistant U.S. Attorney in the District of New Jersey, I received 4 yearly performance evaluations. The following summarized the results of those evaluations:

1. Jan. 1993-Dec. 1993—Rated Excellent (2d highest possible rating); comments from my evaluation include such observations as Mr. Suarez "is well on his way to becoming a truly outstanding Assistant U.S. Attorney . . .", and that he "is a very gifted trial lawyer . . . and is one of our best young trial lawyers."

2. Jan. 1994-Dec. 1994—Rated Outstanding (Highest possible rating); comments include "Mr. Suarez consistently enhances the mission of the Office with respect to the development and prosecution of cases . . . displaying virtually without exception, habits of productivity and dependability which ensure that all assigned cases are processed efficiently and expeditiously with a minimum of supervisory resources, [and] regularly seeks more challenging case assignments . . ."

3. Jan. 1995—Dec. 1995—Rated Outstanding (Highest possible rating); comments include "Mr. Suarez has effectively and enthusiastically handled a challenging caseload. He is an extremely efficient and hard worker . . ." and that "Mr. Suarez has demonstrated outstanding judgment in determining which cases should be prosecuted and which cases should be declined."

4. Jan. 1996—Dec. 1996—Rated Substantially Exceeds Expectations (Highest possible rating); comments include that Mr. Suarez "enthusiastically takes on additional work and continues to be a favorite of agents who want cases 'moved.' Without question, Mr. Suarez has substantially exceeded this office's expectations for overall productivity."

RESPONSES OF JOHN PETER SUAREZ TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. Last year's VA-HUD Appropriations Conference Report (FY02) directs the Administration to restore enforcement positions to their FY01 Operating Plan levels. The fiscal year 01 Operating Plan as enacted provided for 3,536.8 FTEs in Federal enforcement. Headquarters is allocated 895.5 positions and the Regions are allocated 2,641.3 positions.

You indicated in a response to a question from Senator Jeffords after your confirmation hearing on enforcement staffing that total end of year FTEs in enforcement are currently projected to be 3,366.7 This represents a staffing shortfall of 170 positions in enforcement nationwide compared to FY01 Operating Plan levels. You also state in your answer to Senator Jeffords question that the Regions "continue to manage their enforcement positions in a manner consistent with the Agency's FY02 budget as passed by Congress" and that they are on target to reach 2, 516.6 FTE's in the Region. This number is approximately 125 positions short of fiscal year 01 Operating Plan levels. The shortfall for Headquarters and Non-Regional Offices is 47 positions.

Your response fails to take into account the 170 positions nationwide that you have indicated are not targeted for restoration at any time this year as directed by Congress.

*Question 1(a).*Please explain your understanding of EPA's plans to ensure that enforcement positions are restored to fiscal year 01 Operating Plan levels as provided for in the VA-HUD Conference Report.

Response. The Agency restored 145 workyears to the enforcement program consistent with funding provided by Congress in the Agency's fiscal year 02 funding

bill. In that bill, Congress restored $15.0 million to the enforcement program, of which the Agency allocated approximately $14.2 million to payroll and the remaining $800,000 to personnel related, non-payroll costs (such as training, supplies, and so forth). When added to base salary funds, the restoration provided a total enforcement salary budget of $328.2 million, sufficient to support the proposed FTE ceiling of 3,406.8 FTE at an average cost of roughly $96,300 per FTE.

Although the Agency applied the entire $15.0 million from the fiscal year 02 appropriations bill to fund enforcement FTEs, the enacted amount was not sufficient to fund enforcement FTE at the fiscal year 01 enacted ceiling level.

Question 1(b). Please indicate what efforts have been undertaken to date to restore these positions, both at Headquarters and in the Regions.

Response. As described above, the Agency applied the entire $15.0 million from the fiscal year 02 appropriations bill to fund enforcement FTEs. My understanding is that EPA is continuing to manage to its proposed FTE ceiling consistent with funding provided by the Congress in the fiscal year 02 appropriations bill. Actual FTE utilization for the year is expected to be very close to the proposed 2002 FTE ceiling.

Question 1(c). What specific actions would you take, if confirmed, to assure that EPA enforcement positions are restored to fiscal year 01 levels?

Response. If confirmed, I will continue to ensure that the enforcement program at EPA manages its funding and personnel levels consistent with those proposed in the fiscal year 02 operating plan. I will also examine closely the resources and staffing levels at both Headquarters and in the Regions to ensure that the Office of Enforcement and Compliance Assurance (OECA) is directing its available resources to those areas where the most significant public health and environmental problems exist. To the extent that enforcement positions allocated to OECA become vacant, I will work with the administrative and personnel offices to ensure that OECA is actively recruiting and hiring qualified employees to meet EPA's staffing needs and maintaining the Agency's authorized staffing levels. If additional staffing needs are identified, I will advocate for whatever additional resources are necessary to ensure that our Headquarters and Regional offices are able to continue to pursue the Agency's mission effectively.

Question 1(d). Are you willing to vigorously enforce the laws even when you or the Administration do not agree with those laws? Have you had to do so in any prior positions? If so, please explain.

Response. Yes. If confirmed, I believe that as the Assistant Administrator for OECA, my job will be to enforce our nation's environmental laws as they are written, firmly and fairly. I also believe that one of the roles for the Assistant Administrator of OECA is to ensure that enforcement's concerns and issues are considered when decisions are made regarding proposed statutory or regulatory amendments, and to articulate what impact proposed changes might have on enforcement actions. As to my own experiences in enforcing laws that an Administration may disagree with, I have had several occasions where I have been involved in enforcement actions that were contrary to the prevailing view of an Administration.

For example, when I was the Director of the Division of Gaming Enforcement, I initiated several civil actions against online gambling enterprises seeking to enjoin their activity, which is illegal in the State of New Jersey and in violation of Federal law. At the time that we began our actions, the New Jersey legislature was considering a proposal to amend New Jersey's laws and Constitution to allow for online gambling. The casino industry was also lobbying the Administration to allow for some forms of online gambling to be permitted. Although the civil actions that we commenced were controversial, we believed that New Jersey's citizens needed to be protected from unscrupulous online gambling operators and that action needed to be taken to ensure that entities seeking to do business in New Jersey were in compliance with State law.

Question 1(e). Do you agree to fully cooperate with the Congress in a timely manner on requests for information, including requests for operating plans or other documents related to enforcement issues? Will you appear to discuss such issues when requested by a subcommittee, as well as by the full committee?

Response. Yes, I will fully cooperate with Congress and respond to requests for information or documents related to enforcement issues in a timely manner. I will also appear before any committee or subcommittee to discuss congressional requests for information or documents, and will provide the members of such committees and subcommittees with information and explanations that may assist the members in understanding the work performed by OECA.

Question 2. The recent resignation of Eric Schaeffer from his post as Director of the Office of Enforcement and Compliance Assurance's Office of Regulatory Enforce-

ment (ORE) underscored the level of frustration that is felt by many in the Office of Regulatory Enforcement.

According to Mr. Schaeffer, one of his concerns while still Director of ORE was that he was asked by his superiors to withdraw offers of employment to future enforcement personnel, despite the availability of adequate funding. He was particularly concerned that entire areas of specialization are currently without any staffing.

Question 2(a). Do you believe it is important to retain experienced staff? Do you have a plan to ensure that valuable employees are retained?

Response. Yes, I believe it is very important that experienced staff in OECA are retained so that their expertise and advice are available to assist me, if confirmed, in the management and policy challenges facing the Office. I have been very impressed with the overall competence and professionalism of the staff at OECA, and believe that human capital is one of the biggest and best assets that OECA can bring to bear on important environmental issues. I also believe that by providing senior management and staff with new challenges and experiences, either through the Senior Executive Service mobility program, rotational assignments from other EPA offices, Intergovernmental Personnel Agreements, training, or through growth and promotion within the Office, that senior staff will continue to respond to the challenges faced by the Office and will maintain their desire to stay.

Question 2(b). What is your plan for ensuring that critical areas of specialization are properly staffed?

Response. If confirmed, I intend to examine fully the resources allocated to OECA and to ensure that resources are being directed toward those areas that have the most significant impact on public health and the environment. If there is a staffing need in a critical area, then I will ensure that personnel and resources are allocated to address that need. To the extent that additional resources may be needed to staff a critical area of specialization, then I believe that the Assistant Administrator for OECA should be advocating for those additional resources and directing them to that critical area so that the mission of enforcement is not compromised.

NEW JERSEY STATE
POLICEMEN'S BENEVOLENT ASSOCIATION

GAMING ENFORCEMENT
PBA LOCAL #356

Senator Robert Smith
Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510-6175

Re: John Peter Suarez
Nomination for Environmental Protection
Agency's Assistant Administrator for
Enforcement & Compliance Assurance

Dear Senator:

I am the president of PBA Local #356, Division of Gaming Enforcement ("DGE") and served under John Peter Suarez for three years beginning in January 1999 when he was appointed Director of the Division of Gaming Enforcement. I am writing to express my support for Mr. Suarez as the EPA's next Assistant Administrator for Enforcement & Compliance Assurance.

During the three years Mr. Suarez served as Director, he demonstrated a level of leadership and professionalism not often seen in government service. He is a truly dedicated civil servant and law enforcement officer and was interested in the welfare of each employee in this agency. The impact of his appointment on this agency cannot be overstated and is one of those unique situations where one person's presence had a profound effect on an entire agency. Director Suarez is a person who demonstrated the highest level of integrity, led by example, made everyday count and , as a result, he instilled a new sense of commitment into all the 130 state investigators that work in this office.

Director Suarez brought many new and innovative ideas to the Division of Gaming Enforcement and a renewed sense of esprit de corps among the employees. When Mr. Suarez arrived at the Division of Gaming Enforcement in January 1999 he came without any experience in this highly regulated casino industry. As you may know, New Jersey has proudly earned a worldwide reputation as the jurisdiction with the strongest and most effective system of regulation and enforcement of casino operations. Mr. Suarez quickly engrossed himself into the law and the regulations used by DGE to fulfill its dual mission of enforcing and prosecuting all aspects of civil regulation and the criminal law in New Jersey casinos.

JP quickly earned the respect of many veterans in the casino industry for his ability to gain an understanding of the nuances and intricacies of this industry. More importantly, he gained the respect of many long time regulators in the pursuit of his regulatory mission and he developed initiatives that

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were followed by other regulators across the country and around the world. I am confident that he will have the same successes at the Environmental Protection Agency. I was extremely disappointed to see him leave the Division of Gaming Enforcement. It was a great loss to our agency and my membership. However, Mr. Suarez is a person deserving of and qualified for the appointment. Accordingly, I strongly urge you to support his nomination as the EPA's next Assistant Administrator for Enforcement & Compliance Assurance.

Very truly yours,

Richard J. Angioletti,
President, PBA Local 356

pba

P.O. Box 5832 * Trenton, NJ 08638

NOMINATIONS TO THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD: JOHN BRESLAND AND CAROLYN MERRITT

THURSDAY, JULY 18, 2002

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

The committee met, pursuant to notice, at 10:02 a.m. in room 406, Senate Dirksen Building, Hon. James Jeffords [chairman of the committee] presiding.

Present: Senator Jeffords.

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

Senator JEFFORDS. The hearing will come to order.

Good morning and thank you for being here. Ms. Merritt and Mr. Bresland, by accepting the nomination of this position, you are showing all of us your commitment to public service, and I want to thank you for that.

You have been nominated to be members of the U.S. Chemical Safety and Hazard Investigation Board. The mission of this Board, promoting chemical safety, has always been an important one. But in the wake of September 11, we are looking at our homeland safety and security with heightened concern and scrutiny. The responsibilities of the Chemical Safety Board Members are challenging, and I look forward to hearing from each of you as to how you are prepared to meet these challenges.

Mr. Bresland, pleased to have you here, and please proceed.

Mr. BRESLAND. If I may, Mr. Chairman, before I start I would like to introduce some of my family members.

Senator JEFFORDS. You may do that.

Mr. BRESLAND. My wife Beth is sitting behind. She is an oncology social worker.

Senator JEFFORDS. Give me a little wave back there. Yes, all right, fine.

Mr. BRESLAND. She is an oncology social workers at Morristown Memorial Hospital in Morristown, New Jersey. And also my niece and nephew, Michelle and Carrie Kimmel

Senator JEFFORDS. Welcome.

Mr. BRESLAND. And my grandniece, Shea Bugijinski, who lives in Washington, DC, and has actually just started work here after graduating from university.

STATEMENT OF JOHN S. BRESLAND, PRESIDENT, ENVIRONMENTAL AND SAFETY RISK ASSESSMENT, LLC

Mr. BRESLAND. Thank you, Mr. Chairman, and distinguished members of the committee. My name is John Bresland. I am honored to appear before you to tell you about my background and what I hope to accomplish if confirmed as a member of the Chemical Safety and Hazard Investigation Board.

Let me also say that I am very grateful for the support of Senator John Corzine and Representative Rodney Frelinghuysen from my home State of New Jersey.

My reasons for being honored by this nomination are both personal and professional. I was born in Londonderry, Northern Ireland. My education in chemistry took place in Northern Ireland and in England. I came to the United States 36 years ago, and I spent all of these years working in the chemical industry in the United States. I became a United States citizen in a ceremony at Independence Hall in Philadelphia in 1983. Both the United States and the chemical industry have been good to me and they have allowed me to live in freedom and in comfort.

After many years of experience in business, I have the desire to get involved in public service and return some of the benefits that I have received over the years. I am fully committed to the public service mission of the Chemical Safety Board, which is to prevent accidents, save lives and protect the environment by conducting investigations, and advocating safety recommendations.

In 1966, I joined the Allied Chemical Company, which is now called Honeywell International in West Virginia. I continued to work for Honeywell until the year 2000. During that time, I worked in chemical plants in West Virginia, Philadelphia, Pennsylvania, Hopewell, Virginia, and my last 5 years with Honeywell were spent at their corporate headquarters in Morristown, New Jersey.

My experience in the chemical industry has, I believe, been broad-based. It includes chemicals manufacturing. I have been an operations manager and a plant manager in complex chemical plants. My experience includes management. I was responsible for the operation of a facility with 300 employees, both union and nonunion. I am experienced in health, safety and environmental compliance. I have been responsible for chemical plants compliance with Federal, State and local laws and regulations.

I have extensive experience in community outreach. I have run community outreach panels for Honeywell, made a point of personally visiting plant neighbors and listening to their concerns when they have complaints about plant operations. I was chairman of the American Chemistry Council's National Plant Manager and Community Leaders Training Program.

And finally, with regard to chemical process safety, when I retired from Honeywell, I formed my own consulting company specializing in the areas of compliance with OSHA's Process Safety Management Program and EPA's Risk Management Program. I also worked as a staff consultant with the Center for Chemical Process Safety, which is part of the American Institute of Chemical Engineers. Currently, I am helping to develop chemical process safety books, including one on reactive chemicals management,

which as you may know is the subject of a current major ongoing investigation at the Chemical Safety Board.

Mr. Chairman, I believe that my experience will blend with the solid professional experience and dedication of the current Board members and that of the nominee for Chair, Carolyn Merritt. I would hope to contribute toward consensus on the agency's mission and activities. In my view, the priorities of the Board over the next 5 years should be as follows. First and foremost, increase the number of accident investigations. Next, step up the work that the Board is already doing to be an advocate for the implementation of CSB safety recommendations by industry and by government.

This means continuing to work in a cost-effective manner with the Board's stakeholders, including those people who live around chemical plants, the chemical process industry and its trade organizations, labor unions, Members of Congress and congressional staffs, and last but not least, EPA and OSHA.

I believe Boardmembers and the Chief Operating Officer must manage the agency in a sound and prudent manner. If confirmed, I will be committed to developing a close and effective working relationship with the new Chair, with the other Boardmembers and with the current staff of the agency.

Finally, Mr. Chairman, in today's world of concern about terrorism, I would hope that the agency could explore with your committee ways to use the expertise of the Chemical Safety Board to improve homeland security with regard to chemical facilities.

The goal of all of these priority actions, of course, will be an improvement in chemical plant process safety, saving lives and protecting the environment. If at the end of my 5-year term, I could point to success in those areas, I believe that my time in Washington will have been well spent. I am looking forward to the challenges that face me with humility and enthusiasm. If you honor me with confirmation, I look forward to working with you and with your staffs.

Thank you again for the opportunity to appear before you and I will be pleased to answer any questions that you may have.

[The prepared statement of Mr. Bresland follows:]

Senator JEFFORDS. Thank you. An excellent statement.

Mr. BRESLAND. Thank you, Mr. Chairman.

Senator JEFFORDS. Ms. Merritt?

STATEMENT OF CAROLYN W. MERRITT, FORMER SENIOR VICE PRESIDENT FOR ENVIRONMENT, HEALTH AND SAFETY, IMC GLOBAL, INC.

Ms. MERRITT. Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today. My name is Carolyn Merritt and I am currently a resident of Palatine, Illinois. I am married to Stephen and have been for 35 years. We have two grown children, one in Los Angeles and one in Austin, Texas.

I am honored and humbled by this nomination from the President to the position of chairman and CEO of the U.S. Chemical Safety and Hazard Investigation Board. In a career that spanned over 30 years, I have had the satisfaction of working as a high school teacher, as a general foreman, environmental manager and corporate officer. I have been proud of my accomplishments, but I

believe that it would be my utmost privilege to now work in government service.

I am excited by the opportunity to contribute my experiences and knowledge to the U.S. Chemical Safety and Hazard Investigation Board. I believe this agency can effectively fulfill its mandate to determine root cause of chemical accidents and to recommend and advocate safety improvements in industry. Chemical accidents cost human lives, contaminate the environment, and destroy production facilities and jobs. The Chemical Safety Board can and does help to prevent these losses.

In every position I have held, I have worked to be an effective leader, communicator and problem solver. My professional experience has included work in facilities that manufactured chemicals, fertilizers, pharmaceuticals, munitions and pulp and paper. I have worked in research, quality control, environmental compliance, worker safety, and as an executive manager.

From 1994 to 2001, I served as Senior Vice President in Environment, Health and Safety for IMC Global, a billion-dollar agricultural chemicals company with as many as 12,000 employees. From the early 1980's to 1994, I held environmental and safety management positions with Tennessee Chemical Company and Champion International Corporation.

But my most rewarding experience has been working with communities, industrial managers and workers to reduce the risk that a facility will suffer a disastrous chemical incident, and to prepare for emergency response in the event that one should occur. OSHA's 1993 process safety management standard was an important milestone in improving plant safety and protecting workers, residents and the environment. I have worked with two different industries guiding management and operating staff as they implemented these rules. I believe these regulations have saved lives and prevented substantial environmental damage.

The chemical industry in which I have spent most of my career is an important contributor to our economy and quality of life. At the same time, I have seen that government has a significant role to play in verifying the safety and compliance of chemical manufacturing facilities and facilities that use hazardous chemicals in their processes. The Chemical Safety Board will work in partnership with regulatory agencies and the regulated community and Congress to determine how best to use the lessons learned from incident investigations to prevent recurrences.

Prevention has to be the ultimate reason for regulation. The Chemical Safety Board can be an important vehicle to achieve effective prevention.

Mr. Chairman, the Board has gone for more than 2 years without a Chair and a full-time Chief Operating Officer or a full complement of Boardmembers. If John Bresland, President Bush's nominee for the other open Board position, and I are fortunate enough to be confirmed, the Board will for the first time have all five seats filled. The combination of academic, industrial, and agency experience represented on the Board will create a highly effective management group. I believe the CSB is poised to achieve the results that Congress intended when it was created by the 1990 Clean Air Act Amendments.

My executive and organizational skills can move this organization forward, improve morale and effectiveness, and achieve the support of this committee, sister governmental agencies, and industry. I hope you will grant me the opportunity to lead this organization to a more effective future.

I thank you for the opportunity to present this testimony, and if you have any questions, I would be happy to answer them.

[The prepared statement of Ms. Merritt follows:]

Senator JEFFORDS. Thank you very much, both of you, for excellent statements.

Did you have family members you would like to——

Ms. MERRITT. No, I do not have anyone here today. My husband is working.

[Laughter.]

Senator JEFFORDS. OK, fine. I will have a few questions for you.

In March, 2002, the Inspector General of the Federal Emergency Management Agency, FEMA, published a report on issues regarding management accountability and control at the Chemical Safety Board. The report had 10 recommendations for improving the management and accountability of the Board. Could you comment on the recommendations and what you, if confirmed as a Boardmember, would do to implement those recommendations?

Ms. Merritt, start with you.

Ms. MERRITT. Yes, I have seen the report and read it, and have talked to the different Boardmembers about it. Many of those provisions have already been implemented—five of them concerning more of the management areas, and the other six are in place and expect to be implemented by the end of the year. I think it was a reasonable and a good review of the issues that the Board has faced in the last several years.

It would be my expectation to be responsible for making sure that those provisions have been implemented in a timely fashion, along with the other Boardmembers, and also that they are sustained; that we move forward as Congress expects us to to achieve our mission, to know where we are going, to do it cost-effectively, and to be an agency that others will look up to as having provided a service to the country.

Senator JEFFORDS. Mr. Bresland?

Mr. BRESLAND. Mr. Chairman, I have read the report and I have read the follow-up actions that the Board submitted back to the Inspector General. The latest I hear is that five of those recommendations have been completed by the Board and the other five are scheduled to be completed by the end of September. I certainly feel that the key action for Mrs. Merritt and for myself, if we are privileged to be nominated to the Board, is to move ahead and work—all five Boardmembers work together.

Up until now, they have only had three Boardmembers, and we all want to work together as efficiently and as collegially as possible, and we also have the opportunity to work with the new Chief Operating Officer for the agency, Mr. Jeffers, who used to run OSHA. I have met with him and developed what I think is a very good starting relationship with him. So I am very optimistic that in the future we can move ahead and make significant improvements.

Senator JEFFORDS. Good.

Mr. Bresland, in your statement you say that you hope that the expertise of the Board could be used to improve homeland security with regard to chemical facilities. As you know, the committee, working with other committees in the Congress, is working on the Department of Homeland Security legislation. I would be interested in hearing how you think the Chemical Safety Board should be involved in homeland security.

Mr. BRESLAND. Well, the Chemical Safety Board has expertise in the chemical process area and they have got process engineers, chemical engineers, mechanical engineers who know a lot about the operation of chemical plants. And they have probably more concentrated expertise in Washington than most of the other agencies that deal with this, with all due respect to EPA and to OSHA.

I would think that a key action that the Board could get involved in would be evaluating chemical facilities for site security, having a look at the way chemical facilities are secured from terrorist attacks; looking at ways to improve chemical processes; if there is an incident, to mitigate the effects of such an incident.

I was coming down on the train from New Jersey on Monday night, and as you come on the train, you go by chemical plants with fences around them and you just wonder what is inside that chemical plant and what the impact would be if somebody decided to get in there. So I think we can use our expertise in cooperation with your committee members and with EPA and with OSHA to develop improved safety and security for chemical plants.

Senator JEFFORDS. Ms. Merritt?

Ms. MERRITT. Yes, I agree with Mr. Bresland. Having had responsibility for chemical facilities, its safety and security, I know that where you draw your perimeter when you begin to look at plant security is important. Under the process safety rules, they do—it does include looking at plant security, so those provisions are already there. I think industry has looked at what its most significant risk is, and like the barbed wire fence that John just mentioned, it was mostly to keep vandals out or people who might steal product.

I think working with the other agencies and with industry to understand now what the risk might be, I think everyone would work together and we would certainly enjoy working with the other agencies to look at where do you draw that perimeter and what risks do you look at, and what would their impact and effect be. I think that is how this agency could work with homeland defense and with the other agencies in order to make provisions that work for industry and also to protect the country and the residents in the nearby areas from such releases as a result of terrorists.

Senator JEFFORDS. Under the Clean Air Act, the Chemical Safety Board is required to collect information on accidents and releases. Do you know how complete that information is now?

Ms. MERRITT. No, I do not, but I would be happy to get back with you on it.

Senator JEFFORDS. OK, fine.

For both of you, what rule can safer design play in addressing potential accidents and terrorism? And what is the role of the Board in making such recommendations?

Ms. Merritt?

Ms. MERRITT. OK. Well, I think that is one of the things that the Board does, is, one, to investigate incidents. It also have provisions in its mandate to proactively do investigations and to make recommendations. I think in working with industry, associations and with regulated agencies, as well as FBI or others, finding what the vulnerabilities might be and then making recommendations that others may act on I think is the role that the Board would play. And then also working possibly with industry to help to advocate for those changes is another way that the Board might serve homeland defense.

Senator JEFFORDS. Any comment, Mr. Bresland?

Mr. BRESLAND. I think there are probably two aspects to this. One is safer design for new facilities. I think as the chemical industry, the oil refining industry is building new facilities, I would hope that they are putting in the safest design, using the least toxic chemicals to build those facilities, and also siting them in a way that if there was an incident, the offsite impact of that incident would be minimized.

It is a little more complex for existing facilities because an existing facility may have been in operation for 30 years. It may have been built, in the case of the plant that I worked in in Philadelphia, it may have been built in Philadelphia 100 years ago when nobody lived around it. Today, it is surrounded by people, so it is difficult to just pick a plant up and go somewhere else. It is very expensive also.

So I think the issue of inherently safer design is something that the chemical industry is interested in and I would certainly encourage it. It should be done for new facilities. It should be done to the best extent possible for existing facilities in doing things like reducing the amount of chemicals that you have onsite.

If I may give an analogy here that I read a few weeks ago, one of the other things I do in New Jersey is I work for an ambulance squad. A few weeks ago, we went to a call where a woman had fallen down the stairs and it turned out she had broken her neck and we had to take her to the hospital. In the follow-up to that, not necessarily the follow-up to that, but I was reading about the issue of inherent safety. The analogy was given to the stairs in your house. If you have a house with existing stairs, if you have an existing two-story house, the stairs are there and you can't do much about them, but you have to build things that would stop you falling down. If you were building the safest possible house today, you would built it in a one story that did not have stairs in it.

The same situation applies to the chemical industry to a certain extent. It is easier to put in inherently safer design for new facilities than it is for older facilities. But I would certainly, as a Boardmember, encourage the chemical industry to do it for both types of facilities.

Senator JEFFORDS. Anything else you would like to add before I ask you the obligatory question?

Ms. MERRITT. I would just thank you for the opportunity to be able to be here today and to meet with you.

Senator JEFFORDS. Thank you.

I now will ask you the obligatory questions. Are you willing at the request of any duly constituted committee of the Congress to appear in front of it as a witness?

Ms. MERRITT. I do.

Mr. BRESLAND. Yes.

Senator JEFFORDS. No. 2, do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed in this position?

Mr. Bresland?

Mr. BRESLAND. No, I do not.

Senator JEFFORDS. Ms. Merritt?

Ms. MERRITT. No, I do not.

Senator JEFFORDS. Well, now we have the rule that says that members have the right to, even though they did not come here today, to submit questions to you. So I warn you, but I would not stand by the mailbox either, so——

[Laughter.]

Senator JEFFORDS [continuing]. That is something that may occur.

I just want to thank you for very excellent statements and I look forward to working with you and we will have to have a meeting of the full committee in order to endorse your presence on this committee.

So thank you, and best of luck to you.

Ms. MERRITT. Thank you.

Mr. BRESLAND. Thank you very much, Mr. Chairman.

[Whereupon, at 10:27 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Mr. Chairman, I am pleased that we have been given this opportunity to hear testimony from both of these nominees. John Bresland and Carolyn Merritt have been nominated by the President to serve on a Board that has in the past and will continue to play a great role in the protection of our nation from major chemical accidents at fixed facilities.

The Chemical Safety and Chemical Hazard Investigation Board (CSB) was formed under provisions of the Clean Air Act and serves to investigate and determine ways to prevent accidents involving hazardous chemicals. Since January of 2000, this Board has existed without a Chairman and CEO—that is not an acceptable manner in which to run a Board that has such a weighty responsibility.

Why is it important for this particular Board to be fully staffed? As early as 1993 the EPA reported the existence of more than 278,000 chemical facilities that generate, transport, treat, store and/or dispose of hazardous waste. In the same year it was determined that nearly four billion tons of hazardous waste are shipped each year. That was in 1993—it is staggering to think about what those numbers are now. The CSB has the responsibility of determining the consequences of accidents involving hazardous chemicals at fixed facilities and are, in conjunction with the NTSB, involved in investigating accidents involving hazardous chemicals in transit. While the CSB does not have enforcement or regulatory powers, they are responsible for helping those who are in a position to make decisions understand why accidents happened and what can be done to prevent them in the future.

In order to be effective, the CSB must be composed of individuals who have an intimate understanding of a number of technical areas including, but not limited to, toxicology, accident reconstruction, general chemical safety issues and pollution regulations. Perhaps most important, they must understand the human factors and human consequences of hazardous chemical accidents. People die, are seriously injured and lose jobs when these accidents occur and I believe that it is our duty to

make certain that we do everything in our power to help prevent these accidents. With a qualified and committed Board the CSB has the potential to do exactly that.

John Bresland has an extensive background in a variety of chemical safety and conditional fields. He has studied both in the United States and abroad and has shown a consistent desire to remain up to date on all aspects of his field. During his career with Honeywell International he has gained valuable experience in environmental compliance, engineering, manufacturing and safety compliance. Most recently he has served as President of a consulting firm that specializes in chemical facility safety and environmental performance improvement. I believe that he has the kind of background and education that will make him an outstanding and highly valuable member of the CSB.

Carolyn Merritt is a skilled manager and brings with her a 25-year background with strong ties to chemical safety. In both technical and managerial positions, she has worked in a wide variety of positions aimed at creating safe, environmentally responsible and involved facilities. Most recently, Carolyn Merritt has served as Senior Vice President for Environment, Health and Safety for IMC Global, Inc. She has been responsible for establishing plans that reduce risk and ensure that there is the highest level of accountability. Her management experience will be an invaluable asset as Chairman and CEO of the CSB.

I am certain that both John Bresland and Carolyn Merritt will carry out the duties presented to them when confirmed to the best of their abilities—they are very well qualified to serve on the CSB and I am pleased to have the opportunity to have them here before the committee today.

STATEMENT OF JOHN S. BRESLAND, NOMINATED BY PRESIDENT BUSH TO BE A BOARD MEMBER OF THE U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Thank you, Mr. Chairman and distinguished members of the committee.

My name is John Bresland. I am honored to appear before you to tell you about my background and what I would hope to accomplish if confirmed as a member of the Chemical Safety and Hazard Investigation Board.

But first, if I may, I would like to introduce my wife, Beth. She is an Oncology Social Worker at Morristown Memorial Hospital in Morristown, New Jersey. We have two married daughters and four grandchildren.

Let me also say that I am very grateful for the support of Senator Jon Corzine and Representative Rodney Frelinghuysen from my home State of New Jersey.

My reasons for being honored by this nomination are both personal and professional. I was born in Londonderry, Northern Ireland. My education in chemistry took place in Northern Ireland and in England. I came to the United States 36 years ago. I have spent all of those years working in the chemical industry. I became a United States citizen in a ceremony at Independence Hall in Philadelphia in 1983. Both the United States and the chemical industry have been good to me and they have allowed me to live in freedom and comfort.

After many years of experience in business, I have the desire to get involved in public service and return some of the benefits that I have received over the years. I am fully committed to the public-service mission of the Chemical Safety Board: to prevent accidents, save lives, and protect the environment by conducting investigations and advocating safety recommendations.

In 1966 I joined the Allied Chemical Company (now Honeywell International) in West Virginia. I continued to work for Honeywell until 2000. During that time I worked in chemical plants in West Virginia; Philadelphia, Pennsylvania; and Hopewell, Virginia. My last 5 years with Honeywell were spent at their corporate headquarters in Morristown, New Jersey.

My experience in the chemical industry has been, I believe, broad-based.

- It includes chemicals manufacturing—I have been an operations manager and plant manager in complex facilities.
- It includes management—I was responsible for the operation of a facility with 300 employees, both union and non-union.
- I'm experienced in health, safety and environmental compliance. I have been responsible for chemical plants' compliance with Federal, State and local laws and regulations.
- I have extensive experience in community outreach. I've run community advisory panels for Honeywell, made a point of personally visiting plant neighbors and listening to their concerns, and I was Chairman of the American Chemistry Council's national plant manager and community leader training program.
- And finally, with regard to chemical process safety: When I retired from Honeywell I formed my own consulting company, specializing in the areas of compliance

with the OSHA Process Safety Management Program and the EPA Risk Management Program. I also work as a Staff Consultant with the Center for Chemical Process Safety of the American Institute of Chemical Engineers. Currently I am helping to develop chemical process safety books, including one on reactive chemicals management which, as you may know, is the subject of a major ongoing investigation at the CSB.

Mr. Chairman, I believe that my experience would blend with the solid professional experience and dedication of the current Board members and that of the nominee for Chair, Carolyn Merritt.

I would hope to contribute toward consensus on the agency's mission and activities. In my view, the priorities of the Board over the next 5 years should be as follows:

1. First and foremost, increase the numbers of accident investigations.

2. Next, step up the work the Board is already doing to be an advocate for the implementation of CSB safety recommendations by industry and government. This means continuing to work in a cost effective manner with the Board's stakeholders including people who live around chemical facilities, the chemical process industry and its trade organizations, labor unions, Members of Congress and congressional staffs, and last but not least EPA and OSHA.

3. I believe that Board members and the Chief Operating Officer must manage the agency in a sound and prudent manner. If confirmed, I would be committed to developing a close and effective working relationship with the new Chair, other board members and staff.

4. Mr. Chairman, in today's world of concern about terrorism, I would hope that the agency could explore, with your committee, ways to use the expertise of the Chemical Safety Board to improve homeland security with regard to chemical facilities.

The goal of these priority actions, of course, will be an improvement in chemical plant process safety saving lives and protecting the environment. If, at the end of my 5-year term, I could point to success in those areas, I believe that my time in Washington will have been well spent.

I am looking forward to the challenges that face me with humility and enthusiasm. If you honor me with confirmation, I look forward to working with you and your staffs.

Thank you again for the opportunity to appear before you. I would be pleased to answer any questions.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: John S. Bresland

Business Address: Environmental and Safety Risk Assessment LLC
5 Dellwood Avenue
Morristown
New Jersey 07960

Business Phone: 973-898-3836

Home Address: 5 Dellwood Avenue
Morristown
New Jersey 07960

Home Phone: 973-898-1448

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

Name: Bresland (Last) John (First) Smyth (Middle)

Position to which nominated: Board Member, Chemical Safety and Hazard Investigation Board

Date of Nomination: June 17, 2002

Date of birth: 22 September, 1940

Place of birth: Londonderry, Northern Ireland

Marital status: Married **Full name of spouse:** Beth Karen Batdorf

Name and ages children: Shauna Ridd 41
Julie Freed 38

Education:

Institution	Dates Attended	Degrees Received	Dates of Degrees
Coleraine Academical Institution	1952 to 1958	"A" Level Certificate	1958
Queens University, Belfast, N. Ireland	1958 to 1960	None	None
North West College of Technology, Northern Ireland	1961 to 1964	Higher National Certificate, Chemistry	1964
University of Salford, England	1965 to 1966	Graduate, Royal Institute of Chemistry	1966
University of Pennsylvania	1982 to1987	Graduate Professional Development Program	None
Chilton Memorial Hospital, New Jersey	2002	Emergency Medical Technician	2002

Employment record:

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

Employer	Location	Title	Dates	Job Description
Environmental and Safety Risk Assessment LLC	Morristown, NJ	President	September, 2000 to present	Chemical Process Safety Consulting
Honeywell International Inc.	Morristown, NJ	Director, Environmental Risk Management	1995 to 2000 See note below	Ensuring environmental and safety compliance at Honeywell facilities
Honeywell International Inc.	Philadelphia, PA	Project Leader, Re-Engineering	1994 to 1995	Led a team automating the customer order fulfillment process
Honeywell International Inc.	Philadelphia, PA	Plant Manager	1991 to 1994	Managed the day to day operations of a chemical plant
Honeywell International Inc.	Hopewell, VA	Operations Manager	1989 to 1991	Directed the operations of a 1.4 million tons per year fertilizer plant
Honeywell International Inc.	Philadelphia, PA	Operations Manager	1983 to 1989	Managed the manufacturing operations of a chemical plant
Honeywell International Inc.	Philadelphia, PA	Environmental Control Supervisor	1979 to 1983	Responsible for chemical plant's compliance with environmental regulations
Honeywell International Inc.	Morristown, NJ	Manager, Environmental Compliance	1977 to 1979	Responsible for chemical business unit's compliance with environmental regulations
Honeywell International Inc.	Moundsville, WV and Philadelphia, PA		1966 to 1977	Various engineering, manufacturing and environmental compliance positions in chemical plants

See attached resume for more details on my employment record

Note: I left Honeywell International Inc in August 2000 as part of a general cutback in the Corporate and Business Unit staffs.

Honors and awards:

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

None

Memberships:

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

Organization	Dates of Membership	Positions Held
Appalachian Mountain Club	1992 to present	Member
New York New Jersey Trails Conference	1995 to present	Volunteer
New Jersey Jazz Society	1999 to present	Member
Holy Family College	1992 to 1995	Board member
United States Golf Association	1992 to present	Volunteer
Morris County Golf Association	1995 to present	Member
Frost Valley Hiking Club	2000 to present	Member
Pennsylvania Chemical Industry Council	1991 to 1995	Chairman
Federation of State Chemical Associations	1995 to 1997	Chairman
American Chemical Society	1992 to present	Member
American Institute of Chemical Engineers	2001 to present	Member
American Chemistry Council, Community Awareness and Emergency Response Task Group	1995 to 1999	Chairman
Morris Minute Men Volunteer Ambulance Squad	2001 to present	Volunteer
Rotary Club	1991 to 1994	Member
American Association of Individual Investors	1992 to present	Member
Frankford Exchange Club	1983 to 1989	President

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

Since 2000, I have been President of Environmental and Safety Risk Assessment L.L.C., a consulting company specializing in chemical facility environmental and safety performance improvement.

From 1966 to 2000 I worked for Honeywell International Inc. in the chemical process industry. During that time I worked in a variety of chemical plants manufacturing a wide range of chemicals, using many different process technologies. My career in chemical manufacturing included assignments as a Process Engineer, Health, Safety and Environmental Manager, Production Manager and Plant Manager. As Plant Manager, I was responsible for a chemical manufacturing facility with more than 300 employees and with production worth approximately $300 million per year. Managers reporting directly to me were responsible for production, maintenance, human resources, health, safety and environment; finance and research. My responsibilities included meeting production objectives, improving operational efficiency, development of employees and compliance with health, safety and environmental regulations. While working as a manager in chemical manufacturing facilities I investigated chemical plant incidents and accidents. This developed my appreciation of the need for a well thought out management system approach to chemical process safety.

I also worked at the corporate headquarters of Honeywell International Inc, dealing with chemical facility health, safety and environmental issues. While working at Honeywell's corporate headquarters between 1995 and 2000 I was responsible for the company's compliance with the EPA Risk Management Program. This required a detailed knowledge of chemical process safety management systems and expertise in communicating chemical facility risk information to communities around chemical plants. In addition I was responsible for auditing Honeywell facilities for their compliance with the OSHA Process Safety Management program.

During my career in the chemical industry I have worked closely with federal, state and local agencies involved with chemical process safety. These include the U.S. Chemical Safety and Hazard Investigation Board, the Chemical Emergency Preparedness and Prevention Office of EPA; and OSHA. I have a thorough understanding of the missions of these agencies and how they interact with each other and the regulated community.

I have worked with chemical industry trade associations and have been Chairman of the Pennsylvania Chemical Industry Council, Chairman of the Federation of State Chemical Associations and Chairman of the American Chemistry Council Community Awareness and Emergency Response Task Group.

In my current position as President of Environmental and Safety Risk Assessment, L.L.C. and as a Staff Consultant to the Center for Chemical Process Safety (CCPS) of the American Institute of Chemical Engineers, I continue to work with industry experts on a wide range of important chemical industry process safety issues.

I stay informed about chemical safety regulations because of my consulting work and my work with the CCPS. Currently as a Staff Consultant to CCPS, I am assisting two sub-committees in the writing of textbooks on managing reactive chemicals hazards and on guidelines for the safe handling of hazardous particulate solids.

Future employment relationships:

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

Upon confirmation by the Senate, I will resign my position as Staff Consultant to the American Institute of Chemical Engineers, Center for Chemical Process Safety and as Consultant to Chemviron Midwest Inc. I will also resign my position as President of Environmental and Safety Risk Assessment L.L.C. and it will cease operations.

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

I have no current plans to resume employment, affiliation or practice with my current or any previous employer, business firm, association or organization.

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

No

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

Yes

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

Not applicable

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

Not applicable

Financial Statement:

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

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

   a) Honeywell International Inc. Stock Option Plan

   Current value $100,001 to $250,000
   These options expire in March 2003 and January 2004.

   b) Honeywell International Inc. defined benefit pension plan

   This pension plan currently pays me $5,062.06 per month.

   c) Honeywell International Inc. supplemental savings plan

   Current balance $1,000 to $15,000
   This will be paid to me in five yearly installments, starting in 2005

   d) Honeywell International Inc deferred incentive compensation plan

   Current balance $50,001 to $100,000
   This will be paid to me in four yearly installments, starting in 2003

2. Are any assets pledged?

   No

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

   No

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

   Yes

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

   No

Potential conflicts of interest:

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

See information above in the "Financial Statement" regarding Honeywell International Inc.
Apart from Honeywell International Inc, I have no other financial or deferred compensation agreements or other continuing of interest dealings with business associates, clients or customers.

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

Company Stock* Owned by John Bresland and/or Spouse	Amount
Honeywell International	$15,001 to $50,000
Intel Corporation	$15,001 to $50,000
Merck and Company	$50,001 to $100,000
Pfizer Inc.	$50,001 to $100,000
Microsoft Corporation	$50,001 to $100,000

* I have only listed stock with might involve a potential conflict of interest

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

None

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

I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of Honeywell International Inc., Intel Corporation, Microsoft Corporation, Pfizer Inc. and Merck and Company unless I first obtain a written waiver or qualify for a regulatory exemption.

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

See statement from the Designated Ethics Official for the U.S. Chemical Safety and Hazard Investigation Board, Mr. Christopher Warner.

Political affiliation and activities:

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

I have held no political party memberships or political office.

I have made no financial contributions in excess of $1,000 to any political party or election committee during the last 10 years.

I volunteered to be a driver for the Republican Party in Morris County, New Jersey on Election Day, 2000

Published writings:

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

Article about the EPA Risk Management Program in the National Safety Council Magazine, September, 2000

Article on Public Risk Information Tools in the November 2001 Risk Management Program Handbook, published by Thomson Publications.

Since 1995 I have made a number of presentations (with PowerPoint slides) on the EPA Risk Management Program and Community Outreach programs. These presentations have been made to government seminars, Honeywell International Inc. customers, chemical company trade organizations, community groups and Community Advisory Panels. Some examples are:

-- Neville Chemical Company, Pittsburgh
-- Illinois Chemical Council
-- Chemical Industry Council of New Jersey
-- OECD meeting in Budapest, Hungary (at the invitation of the USEPA)
-- EPA/American Chemistry Council Training sessions on the EPA Risk Management Program
-- Honeywell Community Advisory Panels in El Segundo, CA; Kingman, AZ and Baton Rouge, LA

Letter to the Pittsburgh Post Gazette in or about 1970 regarding the political situation in Northern Ireland

Additional Matters:

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

   No

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

John S. Bresland

County of Morris
State of New Jersey

AFFIDAVIT

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

Subscribed and sworn before me this 21 day of June , 2002

Dorothy McKeogh
Notary Public – State of New Jersey
My Commission Expires May 25, 2005

JOHN S. BRESLAND

5 Dellwood Avenue
Morristown, NJ 07960

Telephone: 973-898-3836
E-mail: JohnSBresland@msn.com

SUMMARY

Collaborative leader with extensive experience in the chemical industry, working for Honeywell International Inc. and as a Staff Consultant for the Center for Chemical Process Safety. Technical expertise in chemicals manufacturing, safety and environmental programs, re-engineering and facility design and construction. Strong managerial track record of facilitating cross-functional teamwork and fostering positive community relationships. Acknowledged reputation for opening doors of communication among diverse stakeholders.

BUSINESS EXPERIENCE

ENVIRONMENTAL AND SAFETY RISK ASSESSMENT L.L.C.

President **2000 - Present**

- Consultant on projects designed to improve process safety in the chemical and oil refining industries. Work with the Center for Chemical Process Safety of the American Institute of Chemical Engineers.

HONEYWELL INTERNATIONAL INC. **1966 - 2000**

A $25 billion company, with chemicals, polymers, aerospace, automotive and electronic materials business units.

Director, Environmental Risk Management **1995 - 2000**

- Led Honeywell's compliance with EPA's Risk Management Program regulation:
  - Organized and presented training courses for company personnel and Honeywell customers
  - Visited customers to assist them in their compliance with the regulation
  - Speaker at EPA and industry conferences on the Risk Management Program and on community outreach
  - At the invitation of EPA, represented U.S. chemical industry at U.N. conference in Hungary
  - All 18 affected Honeywell plants in compliance by the June 21, 1999 deadline
- Spearheaded water pollution control compliance at Honeywell facilities worldwide
- Audited Honeywell facilities for compliance with OSHA Process Safety Management regulation
- Collaborated with plant leadership teams, the finance organization and banks to obtain tax exempt financing for pollution control projects, resulting in savings of $500,000 per year
- Integrated the Health, Safety and Environmental programs of newly acquired businesses into the Honeywell organization
- Environmental representative on the Honeywell Year 2000 computer team

Project Leader – Re-engineering **1994 - 1995**

Led a cross functional team of 25 professionals re-engineering and automating the customer order fulfillment process for the Chemical Intermediates business, with sales of $500 million

Plant Manager, Philadelphia, PA **1991 - 1994**

Managed phenol and acetone manufacturing plant with $250 million operating budget

- Annually achieved record production rates
- Integrated plant operations into the local community by using a Community Advisory Panel and Open Houses, allowing the plant to be accepted by its neighbors
- Implemented Total Quality program; involved all employees in teams, resulting in improved safety and product quality and lower operating costs. Developed and implemented a unique plan called "Team Days" which encouraged personnel to present innovative ideas and positive results to plant management, union leaders and other employees.
- Reorganized the plant staff to operate at higher levels of effectiveness
- Negotiated a $1 million rate reduction with local electric power utility

JOHN S. BRESLAND

Page Two

Operations Manager, Hopewell, VA **1989 - 1991**

Directed the operations of a 1.4 million ton/year fertilizer manufacturing facility

- Responsible for plant operations, production scheduling, warehousing and transportation
- Led multidisciplinary engineering team which designed a $50 million product quality improvement for an ammonium sulfate fertilizer plant

Operations Manager, Philadelphia, PA **1983 - 1989**

Managed 110 employees operating state of the art computer controlled chemical manufacturing, boiler house and transportation facilities. Expanded production by 50% with minimum capital expenditures

- Directed the continual upgrading of process safety, electronic controls, personnel hiring and training and environmental compliance. The plant was recognized by Arthur D. Little as the most advanced phenol and acetone plant in the U.S. for efficiency, capacity utilization, energy consumption and maintenance turnarounds
- Through cross-functional cooperation, solved a potentially dangerous raw material contamination problem. Obtained a $500,000 settlement from supplier for lost production

Environmental Control Supervisor, Philadelphia, PA **1979 - 1983**

Responsible for plant's compliance with all environmental regulations. Developed excellent relationship with environmental agencies and local citizen groups. Testified at City Council hearings and appeared on radio and television programs as chemical industry spokesman

PROFESSIONAL AND COMMUNITY ACTIVITIES

- Chairman (1996-1999) American Chemistry Council Community Awareness and Emergency Response Task Group. The Task Group organized the "Building Communities Together" workshops to improve communications between chemical plants and communities
- Chairman (1995-1997) American Chemistry Council, Federation of State Chemical Associations - a group of 20 state chemical industry associations
- Chairman (1993-1995) Pennsylvania Chemical Industry Council, a state trade association representing 75 chemical manufacturers and distributors and 25 major environmental consulting and engineering firms
- Member, American Chemical Society
- Member, American Institute of Chemical Engineers
- Board of Trustees, Holy Family College, Philadelphia, PA (1991-1995)
- Volunteer, American Cancer Society
- Member, Appalachian Mountain Club
- Member, Morris Minute Men First Aid Squad, Morris Township, New Jersey

EDUCATION

M.S. Equiv. Chemistry, Salford University, England
B.S. Equiv. Chemistry, Londonderry Technical College, N. Ireland
University of Pennsylvania, Graduate Professional Development Program

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STATEMENT OF CAROLYN W. MERRITT, NOMINATED BY PRESIDENT BUSH TO BE CHAIRMAN AND CEO OF THE U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you.

My name is Carolyn Merritt. I am honored and humbled by this nomination from the President to the position of Chairman and CEO of the U. S. Chemical Safety and Hazard Investigation Board. In a career that has spanned 30 years, I have had the satisfaction of working as a high school teacher, as a general foreman, environmental manager and corporate officer. I have been proud of my accomplishments.

I believe, however, that it would be my utmost privilege to work in government service.

I am excited by the opportunity to contribute my experience and knowledge to the U.S. Chemical Safety and Hazard Investigation Board. I believe this agency can effectively fulfill its mandate to determine root causes of chemical accidents and to recommend and advocate safety improvements in industry. Chemical accidents cost human lives, contaminate the environment, and destroy production facilities and jobs. The Chemical Safety Board can, and does, help prevent these losses.

In every position I have held, I have worked to be an effective leader, communicator and problem solver. My professional experience has included work in facilities that manufactured chemicals, fertilizers, pharmaceuticals, munitions, minerals, and pulp and paper. I have worked in research, quality control, process engineering, plant operations, wastewater treatment, environmental compliance, worker safety and executive management. From 1994 to 2001, I served as Senior Vice President for Environment, Health, and Safety for IMC Global, a billion dollar agricultural chemicals company with as many as 12,000 employees. From the early 1980's to 1994, I held environmental and safety management positions with Champion International Corporation and the Tennessee Chemical Company.

My most rewarding experiences have been working with communities, industrial managers and workers to reduce the risk that a facility will suffer a disastrous chemical incident and prepare for emergency response in the event such an event were to occur. Continuing this work as part of the Chemical Safety Board has the potential to further improve the safety and security of people, property and vital productivity.

OSHA's 1993 Process Safety Management standard was an important milestone in improving plant safety and protecting workers, residents, and the environment. I have worked in two different industries guiding management and operating staff as they implemented these rules. I believe these regulations have saved lives and prevented substantial environmental damage.

The chemical industry, in which I have spent most of my career, is an important contributor to our economy and quality of life. At the same time, I have seen that government has a significant role to play in verifying the safety and compliance of chemical manufacturing facilities and facilities that use hazardous chemicals in their processes. The Chemical Safety Board should work in partnership with enforcement agencies, the regulated community and Congress to determine how best to use lessons learned from incident investigations to prevent their recurrence. Prevention has to be the ultimate reason for regulation. The CSB can be an important vehicle to achieve effective prevention.

The Board has gone for more than 2 years without a Chair, a full-time Chief Operating Officer, or a full complement of Board Members. If Mr. John Bresland, President Bush's nominee for the other open Board position, and I are fortunate enough to be confirmed, the Board will, for the first time, have all five seats filled. The combination of academic, industrial, and agency experience represented on the Board will create a highly effective management group. I believe the CSB is poised to produce and can achieve the results Congress intended when it was created by the 1990 Clean Air Act Amendments.

I believe my executive and organizational skills can move this agency forward; improve morale and effectiveness; and achieve the support and respect of this committee, sister government agencies, and industry. I hope you will grant me the opportunity to lead this organization to a more effective future.

Thank you for the opportunity to present this testimony. I would welcome questions from the committee.

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Carolyn W. Merritt

Business Address:

Business Phone: ( )

Home Address: 1204 N. Oak Ridge Court

Palatine, Illinois 60067

Home Phone: (847-934-4470)

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

Name: Merritt (Last) Carolyn (First) Weber (Middle)

Position to which nominated: Chairman and CEO U.S. Chemical Safety and Hazard Investigation Board

Date of Nomination: June 4, 2002

Date of birth: 22/10/1946 (Day) (Month) (Year) **Place of birth :** Torrington, Connecticut

Marital status Married **Full name of spouse:** Stephen Eric Merritt

Name and ages of children: Shannon Elaine Merritt (30) Matthew Weber Merritt (26)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Radford University	9/1964-12/1967	BA	1967
Princess Anne High School	9/1962-6/1964	Diploma	1964

Employment record:

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

Sr. Vice President Environment, Health and Safety, *IMC Global, Inc.* Lake Forest, IL 1994-2001
Corporate Officer responsible for setting corporate EHS objectives and leading achievement of objectives through corporate and business unit staff. Included budgeting, cost management, professional hiring and development, establishing plans and accountability measures to achieve objectives, comply with regulations and meet Board of Directors and shareholder expectations. Established comprehensive compliance and management systems auditing program designed to improve EHS performance, prioritize recommendation implementation and reduce risks. Instituted organizational and staff development to improve working efficiencies, cooperation and communication and focused team efforts on common objectives.

Senior Project Manager *RMT/Jones and Neuse, Inc.* Houston, TX 1994
Established business development strategy, training and customer focus for new regional market of pulp and paper mills in Gulf Coast region in coordination with other firm executives.

Employment record—continued

Director, Env., Health and Safety, *Champion International Corp.*, Sheldon, TX 1991-1994
Member of senior management team for 1400 tpd fully integrated newsprint paper mill and paper recycling plant. Managed EHS department responsible for environmental regulations and OSHA compliance implementation, emergency response, occupational health, environmental permitting and regulatory compliance matters for air, water, and solid waste. Provided organizational and technical support to Joint Operating Safety Committee. Combined two departments that formerly competed for resources into one cross-functional and cooperative group.

Manager, Solid Waste, *Champion International Corp.*, Stamford, CT, 1988-1991
Responsible for corporate solid waste management and compliance programs. Established waste management objectives, training and facility plans to improve compliance. Chaired multi-disciplinary teams responsible for locating, permitting and constructing non-hazardous waste management facilities. Participated in corporate environmental compliance auditing for all Champion facilities.

Environmental Manger, *Tennessee Chemical Company*, Copperhill, TN, 1986-1988
Managed department responsible for verifying environmental compliance, providing regulatory and technical support to mining, beneficiating, smelting, iron roasting, sulfuric acid and inorganic chemical manufacturing operations with regard to compliance. Prepared permit applications and negotiated with agencies. Provided technical environmental leadership to operating areas during plant closing and/or dismantling.

NPDES Compliance Coordinator and WWT Plant Supervisor, *Tennessee Chemical Co.*, 1981-1986
Supervised industrial wastewater operations, domestic and potable water treatment facilities. Established, implemented and monitored long-range plan to eliminate spills and discharge permit exceedences from all operations.

Technical Services Laboratory Supervisor , *Tennessee Chemical Co.* 1980-1981
Supervised quality control, process control and trace metals and NPDES Water Compliance Laboratory

Industrial Water Treatment Chemist, *Tennessee Chemical Co.* 1979-1980
Provided technical support to operations and quality assurance for process water provided to all operations of fully integrated copper, iron, and sulfur mining, beneficiation, smelting, iron roasting and inorganic chemical manufacturing facility.

Quality Assurance Specialists, *Tennessee Chemical Co.* 1977-1979
Established Statistical Process and Quality Control procedures to assure product specifications were met consistently.

Science Department Teacher *Polk County Board of Education* , Copperhill, TN 1976-1977
Taught Chemistry, Physics, Remedial Biology, and Earth Science at Copperhill High School

Preformulation Chemist, *Ortho Pharmaceuticals Company*, Raritan, NJ, 1969-1971
Developed procedures and performed tests to determine effect of time, temperature and formulation components had on efficacy of active ingredient. Terminated due to pregnancy.

Process Engineer, *Hercules Powder Company*, Radford, VA, 1967-1969
Developed and performed analytical tests on munitions, propellants and ordinance components to determine process flaws that cause quality or performance problems.

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary Society memberships, and any other special recognition's for outstanding service or achievement.

I have achieved a successful career that has spanned 30 years where I have earned the respect of citizens, regulators, hourly workers, professional subordinates, peers and superiors in several different industries and in voluntary service. I have been recognized for leadership, high ethics, good humor, maintaining respect for the individual and for achieving high standards of performance.

Memberships:

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

Organization	Office held (if any)	Dates
Chicago's Environmental Fund	Chairman and Board Member	1998-2002
The Fertilizer Institute	Chairman, Risk Assessment Comm.	1994-2001
American Paper Institute		1988-1994
Technical Association Pulp and Paper Institute		1988-1994
Chemical Manufacturers Association		1978-1988
Compressed Gas Association	Chairman, SO2 Committee	1980-1988
Presbyterian and Methodist Ch.	Elder/Church Board	1972-2002
Lakeview Academy	Board of Director	2001-2002

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

As a senior executive manager, I have worked closely with Boards of Directors in publicly traded corporations and also participated as board chairperson and member on not for profit boards. This has given me experience and insight in Board governance issues. These qualifications and my personal commitment to the objective of the CSB Board, to reduce the risk of catastrophic events and releases that damage industrial facilities, harm workers, neighbors and the environment, make me an excellent candidate for Chairman and CEO of the Chemical Safety and Hazard Investigation Board.

My experience and success in setting and achieving goals and objectives, and improving effectiveness of organizations are important qualifications for the position of Chairman and CEO of the Chemical Safety Board. I am a skilled manager of technical, legal and multi-disciplined staff who may be working on different aspects of the same project. Team building and building communication between different organizations, groups and interests have been a significant part of my experience. I have entered several different industries and succeeded in mastering the culture and technology in order to solve problems, achieve objectives and become respected by my peers and superiors. I have worked with teams of employees to provide them with the leadership and training they need to succeed and built support for achieving common goals among groups that did not cooperate in conventional practice.

The laws and regulations that establish the Chemical Safety Board and regulate industry are well known to me. I have worked in several different chemical manufacturing facilities regulated by Process Safety and Risk Management rules. I have provided technical and organizational support to management and the teams that implemented these rules. My technical background in process engineering, analytical and quality control chemistry, plant operation and management provides me with experience in industrial process and technology. Thirteen years of detailed compliance auditing of industrial facilities in environmental regulations, and safety requirements including establishing follow up procedures, accountability and verification that corrective actions have been maintained provides me with important insight into the work of the Agency.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, Association or organization if the Senate confirms you.

Yes, I will sever all connections as required by the Senate.

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

I have no plans at this time to resume employment after completing government service.

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

No.

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

Yes

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

No

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

N/A

Financial Statement:

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

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

2. Are any assets pledged?

No

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

No

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

Yes

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

No

Potential conflicts of Interest:

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

I have retirement benefits with IMC Global, Inc. and a severance contract that continues until April of 2003.

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

IMC Global Inc., former employer. Stock Options value <$1,000; Severance Contract <$500K
Johnson and Johnson, investment <$15K
Proctor and Gamble, Investment < $50K
Union Pacific, Investment < $15K
Exxon Mobile, Investment < $50K
General Electric, investment <$50K
Dominion Resources, <$50K
Verizon Communications, investment <$15K
Vulcan Construction Materials, husband's employer, investment <$50K
Chevron Texaco, <$15K
RMT, former employer and daughter's employer
Haiff and Associates, son's employer
Tennessee Chemical Company, former employer

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

None

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

I will recuse myself from any action with regard to Board dealings with any party or organization that would be viewed as a conflict of interest.

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

Form 278 and the Ethics agreement are being submitted under separate cover.

Political affiliation and activities:

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

Member of the Republican National Party
$2000 contribution to George W. Bush election committee in 2000 by Carolyn Merritt
$2000 contribution to George W. Bush election committee in 2000 by Stephen Merritt

Published writings:

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

In my position as department manager, corporate officer and facilitator in many training sessions and/or as a participant in conferences put on by the EHS department for its staff, I have written many reports, speeches and presentations. None of these were published outside of the company of employment and would be considered the property of the corporation by whom I was employed.

Additional Matters:

1. If there is any additional information that you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.
No

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

3. Having completed this form, are there any additional questions that you believe the Committee should ask of future nominees?
No

City of Washington)
District of Columbia) SS

AFFIDAVIT

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

Subscribed and sworn before me this 20th day of June, 2002.

Janice M Rosnick
Notary Public
My Commission Expires November 14, 2004

OFFICE of INSPECTOR GENERAL

U.S. Chemical Safety and Hazard Investigation Board

Issues Regarding Management Accountability, Control, and Direction Have Not Been Resolved

IC-01-02

March 2002

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Inspections Division, Suite 505
500 C Street, SW
Washington, DC 20472

ATTN: Clifford N. Melby

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PREFACE

This report presents the results of our review of the Chemical Safety and Hazard Investigation Board.

The report contains recommendations for corrective action. Accordingly, it is being sent to the Board members and Acting Chief Operating Officer of the Chemical Safety and Hazard Investigation Board.

The Inspections Division, Office of Inspector General, prepared this report. Questions may be addressed to Clifford N. Melby, Assistant Inspector General for Inspections, at (202) 646-3338. Key contributors to this report were Bill McCarron and Wynne Krause.

George J. Opfer
Inspector General

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EXECUTIVE SUMMARY

The Chemical Safety and Hazard Investigation Board (CSB) is the lead Federal agency for investigating accidental chemical releases at fixed facilities and reporting to the public on the causes of those accidents. A five-member Board appointed by the President, including a Chairperson, heads the CSB. Although the CSB was created under the Clean Air Act Amendments of 1990, the CSB did not receive funding or begin operations until January 1998. Currently, the Board has two vacancies, including a Chairperson, and is exercising shared decision-making authority. The CSB experienced significant management problems during its first three years of operation. In response to the concerns of Congress and GAO, the Board took some steps to improve operations. Nevertheless, serious problems remain.

Much work is needed to address management control issues, strengthen Board member accountability, and settle questions about the direction of the agency. First, the Board is without a Chairperson, and combined with the Acting status of the Chief Operating Officer (COO), both situations are hindering management of the agency. Board member/staff conflicts created by poorly defined roles and responsibilities are also impeding agency efficacy. Second, the Board needs to be more accountable to avoid diminishing the credibility of the agency: it must increase its efforts toward operating in the public eye per the "Government in the Sunshine Act" and cease atypical procurement practices.

Finally, the Board members need to solidify the agency's management infrastructure and resolve the internal dispute over its mission. The anticipated hiring of a new COO should provide the impetus necessary for bringing organizational stability to day-to-day operations. But the Board and staff must first agree upon the agency's basic mission and how best to carry it out before the agency can expect to operate in an effective and efficient manner.

The CSB agreed with all of the report's recommendations. Once the recommendations are implemented, the CSB should see significant improvements in its management and organizational infrastructure, and the improvements should better position the agency to pursue its mission. The agency's comments can be found in Appendix A.

BACKGROUND

The Chemical Safety and Hazard Investigation Board (CSB) is an independent agency about to enter its fifth year of operation. Headquartered in Washington, D.C., the CSB investigates accidental chemical releases at fixed facilities and reports to the public on their root causes. The CSB is also authorized to conduct general studies of chemical accident hazards. Through its reports, the CSB makes recommendations to Federal, State, and local entities as well as private industry to prevent future. The Board is authorized five members appointed by the President, including a Chairperson who heads the CSB. Although the CSB was created under the Clean Air Act Amendments of 1990, the CSB did not receive funding or begin operations until FY1998. Its first appropriation totaled $4 million. In FY01, the CSB had an operating budget of $7.5 million and 34 authorized permanent full-time employees.

The CSB experienced significant management problems during its first three years: the Chairperson and other Board members disagreed about their respective roles and responsibilities for managing the agency. In July 2000, the General Accounting Office reported that the CSB has a history of "management conflicts, failures, and inefficiencies that resulted in Board's applying its scarce staff and funding resources to programs and activities that have provided little benefit while its primary investigative mission has faltered."[1] The Chairperson resigned but remained a Board member until October 2000. Absent a Chairperson, the remaining three Board members (a fifth member was never appointed) adopted and continue to use interim governance procedures that call for shared decision-making authority.

In an effort to address its organizational problems, Board members: (1) voted to reassign the Chief Operating Officer (COO) to another position; (2) appointed the CSB's General Counsel as Acting COO; (3) combined the Safety Recommendations and Investigative functions into one organizational unit; and (4) undertook actions to reorganize staff priorities and manage several EEO actions resulting from the reorganization and past Board practices. In March 2000, the Board established eight priority actions for the agency. They included hiring investigations and safety staff, developing an internal training program, issuing three investigative reports, revising the investigation protocol, revising incident selection criteria, and initiating new investigations.

[1] *Chemical Safety Board. Improved Policies and Additional Oversight Are Needed* (GAO/RCED-00-192, July 11, 2000)

OBJECTIVES, SCOPE, AND METHODOLOGY

In FY 2001, Congress designated the Office of Inspector General, Federal Emergency Management Agency, to serve as the cognizant Inspector General for the CSB. Based on survey work to become familiar with agency operations, we focused our inspection on organizational issues and challenges including: (1) the Board's shared decision-making authority; (2) vacancies in key management positions; and (3) management accountability and integrity. In addition, we assessed how the CSB is prioritizing its resources to carry out its mission. This is our first inspection report of the CSB. We are planning to review other aspects of CSB operations in the near future.

We reviewed the following:

- The CSB's legislative history including House and Senate Reports on Appropriations and hearings before Congressional Appropriations Subcommittees;
- Laws and regulations pertinent to the CSB and other Federal Boards and Commissions, including 42 U.S.C. § 7412(r)(6);
- CSB budget submissions, the Five-Year Strategic Plan, and Annual Performance Plans and Reports;
- 5 U.S.C. § 552(b), The "Government in the Sunshine Act";
- 31 U.S.C. § 1535, The Economy Act;
- Federal Acquisition Regulations, including subparts 1, 6, and 17;
- OMB Circular A-123, "Management Accountability and Control";
- Recent reports and testimony by the General Accounting Office on the CSB and other Federal Boards and Commissions;
- Several articles on the organization and governance of independent agencies;
- Board voting records, Board Action Reports, and selected Board orders;
- CSB website, records of public meetings, and regulations publicized in the Federal Register;
- Organizational chart and position descriptions; and
- Various documentation pertinent to CSB operations and procurements.

We interviewed CSB Board members, managers, and staff including current Board members; Special Assistants to the Board; the General Counsel and Acting Chief Operating Officer; Assistant to the COO; the Deputy Counsel; the Director, Financial Operations; Director, Management Operations;

Director, Congressional and Public Affairs; Director, Office of Investigations and Safety Programs; and Investigators.

We also conducted interviews with senior managers of seven Federal Boards and Commissions including the Nuclear Regulatory Commission, the National Transportation Safety Board, the Defense Nuclear Facilities Safety Board, the Consumer Product Safety Commission, the Occupational Safety and Health Review Commission, the Federal Housing Finance Board, and the Federal Energy Regulatory Commission. In addition, we reviewed the organizational structure of 24 other Boards and Commissions.

Our fieldwork was conducted from July 2001 to December 2001. Our inspection was conducted under the authority of the Inspector General Act of 1978, as amended, and according to the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

RESULTS OF INSPECTION

We evaluated several organizational issues and challenges including (1) the Board's shared decision-making authority, (2) vacancies in key management positions, and (3) management accountability and integrity. In addition, we assessed how the Chemical Safety and Hazard Investigation Board prioritizes its resources to carry out its mission. This report discusses infrastructure, management, and other issues that imperil agency accountability, and internal disagreements about the agency's mission and how to achieve it.

I. INFRASTRUCTURE, MANAGEMENT, AND OTHER ISSUES IMPERIL AGENCY ACCOUNTABILITY

The CSB is without sufficient management accountability. Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs, and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.[2] Agency accountability is imperiled because: (1) the Board does not have a chairperson; (2) the role of "Acting" Chief Operating Officer is compounding management problems; (3) Board members and managers have yet to establish a well-defined, collegial working relationship; (4) agency practices suggest declining attention to "Government in the Sunshine Act" requirements; and (5) atypical procurement practices are problematic. Board members, managers and staff must work together to improve these conditions and ensure the proper stewardship of its resources.

A. Board Does Not Have a Chairperson

Two years after public disagreement between the prior Chairperson and other Board members over their respective division of power, the agency still remains in an untenable governance situation. The prior Chairperson resigned on January 12, 2000, and the position has been vacant ever since. The

[2] *Management Accountability and Control* (OMB Circular No. A-123 Revised, June 21, 1995).

remaining three Board members now share executive and administrative powers. We question whether the Board, despite their intentions to overcome the situation, can adequately manage in a joint capacity without a Chairperson. Specifically, the current system hinders the agency's ability to function with efficiency and integrity by diminishing the checks and balances that are vital to accountability at the Board level and by undermining the administrative chain of command. We believe that the Board needs a Chairperson, a single accountable executive, to lead the agency.

While joint governance appears to have created a balance of power among the Board members, in practice it has jeopardized the Board's ability to balance administrative and substantive responsibilities. Historically, a Chairperson/Board relationship produces conflicts as members reconcile the Board's substantive authority with the Chairperson's administrative authority. Reporting on one such dispute, the GAO noted, "There is a natural tension between the goals of achieving administrative efficiency and safeguarding the independence and objectivity of a [Board's] substantive work."[3] The tension serves as a management control, ideally causing members to balance each other as the Board reconciles what it wishes to accomplish substantively with what it is capable of accomplishing administratively. However, at the CSB, joint governance has removed healthy opposition among the Board members. For example, for the 58 Board votes occurring in the twelve months following the Chairman's departure, all votes made were undisputed.[4] But the normal substantive-administrative tension between Board members and a Chairperson has not disappeared; rather, it continues to exist between Board members and staff, who lack the authority to counterbalance the Board (see page 14).

It is not unusual in Federal agencies for the Chairperson's seat to be vacant. The majority of agencies we interviewed have statutory provisions for empowering one Board member to act in the Chairperson's capacity when the seat is vacated. Even those agencies without statutory guidance have seen fit to establish protocols to that effect. For example, the Occupational Safety and Health Review Commission has a directive that enables the Chairperson to appoint an Acting Chair to serve at his/her pleasure, and absent a Chairperson, the General Counsel administrates the agency per a formal delegation.

CSB statutes are silent on what to do in the absence of a Chairperson, but the Board has broad authority to carry out its mission. According to its statutes, "the Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties." The prior

---

[3] *International Trade Commission: Administrative Authority is Ambiguous* (GAO/NSIAD-92-45, February 25, 1992).

[4] The votes addressed subjects ranging from investigative reports to budget reallocations, and they were circulated as notation items, which do not allow for the Board to discuss and build consensus prior to voting. Discussions would have to occur at a public meeting, per the Sunshine Act (see page 19).

Chairperson's resignation presented the remaining Board members with a dilemma. The CSB stated that extensive discussions were held with representatives of White House Counsel and the Justice Department's Office of Legal Counsel (OLC), who advised the CSB's General Counsel to respect Presidential prerogative and instruct the Board not to designate one of its members as an interim Chairperson. Thus, the Board instead opted by vote on January 14, 2000, to adopt interim governance procedures with shared decision-making authority. It delegated executive and administrative functions reserved for the Chairperson among the three remaining Board members. Specifically, one Board member was delegated procurement, one was delegated personnel, and one was designated as the agency spokesperson. We believe the Board has gone to great lengths following a tumultuous start-up period to share decision-making authority so it obtains consensus on all decisions and avoids creating further controversy. But the management of the agency did not benefit by this course of action.

The division of administrative power is unprecedented among today's Federal Boards and Commissions. The Board assumed responsibility for executive and administrative duties that Congress never intended; as studies have established, practical limitations prevent such an arrangement from being genuinely workable.[5] Moreover, Board members agree they never envisioned assuming these responsibilities. Notwithstanding that the Board members were appointed for their expertise in the chemical and safety fields and not their administrative abilities, the concept of shared executive and administrative authority is naturally flawed. The outcome was predictable: they are overextended in the agency's administrative affairs.

The role of the Chairperson is a distinct one and critical to the organization's overall well-being. CSB statutes place day-to-day administration of the Board in the Chairperson's hands, while conferring on the Board as a whole responsibility for certain core functions of the agency.[6] In a legal opinion to address the dispute between the prior Chairperson and the other Board members, the Department of Justice's Office of Legal Counsel articulated that the Chairperson is subject to the oversight of the Board. But the DOJ also observed that:

> *To be sure this does not mean that the Board, exercising its oversight authority and its powers to make substantive decisions and 'such procedural and administrative rules as are necessary to the exercise of its functions and duties,' may or should attempt to address itself to the plethora of minute*

---

[5] *General Management of the Executive Branch*, The Commission on Organization of the Executive Branch of the Government (February 5, 1949). For a brief summary of major studies regarding independent agencies, see *Consumer Product Safety Commission: Administrative Structure Could Benefit from Change* (GAO/ IRD-87-47, April 9, 1987).
[6] 42 U.S.C. § 7412(r)(6) (Supp. 1990).

> *administrative problems bound up with the operation of a complex organization. Some degree of managerial discretion is inherent in the concept of an executive or administrative office, and the statutory assignment of the Board's executive and administrative functions to the chairperson necessarily vests the chairperson with a degree of managerial autonomy on which the Board, in the proper exercise of its powers, cannot trench. Likewise, some day-to-day aspects of the Board affairs may be so unrelated to the board's effective execution of its statutory responsibilities that they cannot be said to be proper objects of the full Board's authority.*[7]

In short, in writing statutes like the CSB's, Congress sought to place day-to-day direction and internal administration of multi-member boards and commissions in a chairperson's hands both to safeguard members' substantive responsibilities and to prevent what one observer described as "splintered management."[8]

Intentionally or not, the Board is not adhering to this guidance. The Board members are regularly absorbed in administrative matters, from initiating procurements to crafting position descriptions. One Board member stated that he spends 50 percent or more of his time on administration. Another indicated 30-40 percent. Board members in other agencies typically do not spend more than 10 percent of their time on administrative matters. Simply stated, Board members carry out numerous administrative tasks that never even come to the attention of their peers in other independent agencies. The Board has not sufficiently separated itself from day-to-day aspects of the agency that could have been more efficiently managed by the Chief Operating Officer and staff if authority were properly delegated, and many issues we raise in our report center around this problem.

What the Board envisioned as an interim solution has continued for more than two years. We acknowledge the position became vacant during a year in which there was a change in administration; these circumstances are beyond the Board's control and legitimate reasons for an extended vacancy. To redress the situation, the CSB should designate an Acting Chairperson or Vice Chair. The Board may find the Consumer Product Safety Commission's practice of voting to rotate the position annually to be a possible alternative.

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[7] Randolph D. Moss, "Division of Powers and Responsibilities Between the Chairperson of the Chemical Safety and Hazard Investigation Board and the Board as a Whole," memorandum from Department of Justice Office of Legal Counsel to CSB General Counsel, June 26, 2000.

[8] Marshall J. Breger and Gary J. Edles, "Established by Practice: The Theory and Operation of Independent Federal Agencies," *Administrative Law Review* 52 (fall 2000).

Recommendation

We recommend that the Board:

1. In the absence of a Chairperson, establish the necessary protocol to assign to one Board member on an interim basis executive and administrative functions including the authority to appoint and supervise the staff, distribute business among the agency's personnel and administrative units, and control the preparation of the agency's budget and the expenditure of funds. The CSB should also seek specific guidance from the OLC concerning the permissibility of designating a single member of the Board to be responsible for the executive and administrative functions during the period that the chairmanship is vacant. The CSB should also consider seeking legislation that would definitively resolve this crucial issue.

Management Comments and IG Analysis

The CSB agreed with our recommendation and plans to seek an opinion from the OLC on the legality of appointing an acting Chairperson. After receiving our draft report, the CSB provided additional documentation and clarification that it initially attempted to vest executive authority in a single Board member and that it was dissuaded by the OLC and the White House.

Until now, the CSB has relied primarily on the OLC's informal advice, which was based on analysis of another board. However, the precedent does not speak to whether it is permissible for a board to designate a single member to be responsible for executive and administrative functions on an interim basis during a vacancy in the chairmanship. The OLC stated that its guidance might not apply to a board that was clearly intended by Congress to function without interruption, notwithstanding a vacancy in the chairmanship, and that filling the vacancy was necessary to prevent the interruption. We believe that the CSB can make a substantial case that it falls within this exception, given its important public safety responsibilities and because its legislation expressly assigns the executive and administrative functions to the Chairperson.

We generally concur with the CSB's response. We support its plans to seek a legal opinion and modified our recommendation accordingly. However, until the opinion is rendered, we affirm our recommendation that the CSB implement a more efficient interim solution by delegating executive and administrative authority to one member rather than to three. Ideally, however, we believe that the CSB will benefit by statutory changes that either provide for the President to nominate a Vice Chair, as

is the case with the National Transportation Safety Board on which the CSB is modeled; clarify the Board's authority to designate an acting Chairperson; or authorize the CSB to designate a single member to carry out the executive and administrative functions of the Board when a vacancy exists in the chairmanship. This vacancy question is capable of repetition, and it needs to be addressed with both short-term and long-term solutions.

B. Acting Status of the Chief Operating Officer Compounds Management Problems

In the absence of a Chairperson, an experienced chief operating officer should be able to oversee the agency, maintain administrative efficiency, and respond to Board members' substantive and administrative concerns. However, the Chief Operating Officer (COO) has functioned in an Acting capacity for two years, unable to fully assume the role, because (1) Board members delegated limited authority to the COO and (2) the COO has had to maintain concurrent responsibilities as the agency's General Counsel. The lack of a full time COO, with clear and meaningful authority, has compounded management problems brought about by the lack of a Chairperson. Uncertainty surrounding the COO's role and authority has resulted in fractured management, a weakened chain of command, Board member intervention in routine administration, and intermittent Board member exclusion of legal and administrative input from the Acting COO/General Counsel.

Management responsibilities that typically fall under an independent agency's senior staff executive include strategic and performance planning, public/government affairs and outreach, financial and administrative operations, human resources, policy development, and some programming. All of the executives we interviewed outside the CSB had broad delegations of authority for matters like these, often through regulation, and they had extended the delegations further down the chain of command. Delegations support OMB's management control standard of organization, which "align[s] staff and authority with the program responsibilities to be carried out, improving both effectiveness and accountability."[9] Additionally, all the executives described their agency's working culture as "bottom-up" or "collegial," with staff developing issues and raising them through the senior executive to the Board's or Commission's attention when warranted. Examples of administrative issues that rise beyond the executive's attention to the Board include organizational structure, senior and political hiring, major budget allocations, and strategic planning. According to its organizational chart and position descriptions, the CSB's COO shares responsibilities similar to his peers.

[9] OMB Circular No. A-123 Revised.

However, as the CSB has not yet developed a constructive Board/Chairperson relationship, neither has it forged a lasting, appropriate Board/COO relationship. Removing the CSB's first COO and taking the staff's advice to stabilize the agency quickly by appointing from within, the Board named the General Counsel as Acting COO in February 2000. Although the Board notation vote appoints him to the position in full capacity, Board members did not delegate the full authority of the position because of its implied temporary nature and their expectations of how much one person could accomplish in both jobs. The only official delegations the COO holds allow him to execute an interagency agreement with the Bureau of Public Debt and to manage job applicant travel.

Initially, the desire to restore order overshadowed the problems inherent in an arrangement where the line between the Board's and COO's executive authority and responsibility is poorly drawn. But two years of this "interim" solution have made its inefficiency more apparent. Many of the functions and duties identified by the COO position description are instead being carried out by the Board, leading to delays in hiring, disagreements over resource allocation and staff assignments, and duplication of efforts in resource, information, and personnel management. Exemplifying the overlap, during the past year the Board has:

- Issued or prevented corrective feedback to staff.
- Delayed for weeks a previously approved internal reorganization of the Office of Investigations and Safety Programs.
- Revised press releases and low-level position descriptions.
- Written contract documents.
- Disputed the guidance of the staff writer/editor on report grammar.

These actions have occurred even though the CSB staff responsible for these tasks are officially organized under the Acting COO/General Counsel.

Moreover, as the Board has retained control over tasks that in other agencies have been delegated to the COO and beyond, the Board has also begun occasionally to exclude the Acting COO/General Counsel from its meetings and decision-making. Perceiving him to be "overburdened" and citing a conflict of interest between the COO and General Counsel roles, the Board members have acted in a manner that suggests they undervalue his input as the agency's chief administrative and legal counselor. During our interviews and internal discussions, several staff noted that the Board circumvented the Acting COO/General Counsel, ignoring or not affording him opportunity to provide guidance on issues ranging from legal compliance to resource prioritization.[10] But considering that a Board member acknowledged that the

[10] Facilitated Board/staff discussions occurred in June, November, and December 2001.

General Counsel serves "to guard the institution" in the long run, his exclusion can only decrease the integrity of agency administration.

Finally, perhaps because the Board and staff—including the COO himself—view his appointment as temporary, there has been little effort to formalize a more efficient, long-term Board/COO relationship. When the agency wrote its strategic plan in the summer of 2000, the agency set a performance goal to "Clearly Delineate Roles, Responsibilities and Accountabilities for Board Members and Staff." However, during the facilitated meetings, staff pointed out that the Board still needed to delegate authority to the COO and strengthen the chain of command, but no actions have been taken (see page 11).

Having an Acting senior executive for more than a year, let alone one who simultaneously holds full General Counsel responsibility, is a uniquely difficult situation that has become counterproductive for the CSB. We are encouraged that, after securing a second SES position, the agency announced its search for a permanent COO in December 2001. However, given the months the search will take, we urge the agency not to accept lingering inefficiencies that were identified more than a year ago. The agency must repair faulty organizational controls. As the GAO pointed out, "A good internal control environment requires that the agency's organizational structure clearly define key areas of authority and responsibility and establish appropriate lines of reporting."[11] Here the CSB needs to take strides in order to enable the current and future COOs to succeed in furthering the agency's best interests. We are also encouraged that during the agency's most recent facilitated meetings, the agency drafted operating agreements in which the Board will delegate procurement and personnel decisions to the COO and the agency will publish a regulation defining Board organization in spring 2002.[12] Clearly defining and then enforcing delegated authority is a critical task.

Recommendation

We recommend that the Board:

1. Delegate to the Chief Operating Officer the authority to effectively manage the day-to-day operations of the CSB. The delegation should be consistent with the duties set forth in the COO's position description.

[11] *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1, November 1, 1999).
[12] Cindy Zook, "CSB Operating Agreements," memorandum to the CSB Board and senior staff, December 10, 2001.

Management Comments and IG Analysis

In correspondence separate from its response to our draft report, the Board provided justification for some of the specific administrative items over which it retained control, but it also acknowledged "over investment" in administrative affairs. To correct the situation, the CSB intends to codify a broad delegation of authority to the COO via an internal Board Order, which will be drafted by April 30, 2002.

We believe the proposed delegation will substantially improve the day-to-day management of CSB operations. The delegation will include administrative and operational functions, strategic planning, oversight of all substantive investigation and safety mission-related programs, policy development and implementation, program integration and management, and advisory services. The CSB indicated it may need up to two months to take corrective action. This is an important issue that the Board should address as quickly as possible.

C. Board Member/Staff Relationship Lacks Clarity, Collegiality, and Unity

The Board and staff have yet to establish a well-defined, collegial working relationship. The challenges of building an effective team of appointees and careerists with shared authority and common purpose are not exclusive to the CSB.[13] But considering the CSB's well-documented history of internal conflict, small size, limited resources, and start-up responsibilities, the agency has a unique urgency to establish an environment in which members observe organizational roles, maintain open lines of communication, are responsive to others' feedback and initiatives, and share philosophy and priorities. Nevertheless, this cooperative work climate has not emerged, even though the agency identified relationship needs in its 2001-2005 strategic plan and conducted several facilitated meetings beginning in June 2001. As a result, the agency suffers from a fractured chain of command, blocked lines of communication, opposition between the Board and staff, and a climate of distrust—none of which enhance the effectiveness of the agency.

Rooted in statute, agency roles and responsibilities are extended to staff through regulations regarding organizational structure, written delegations of authority, protocols, and program-specific guidelines. The Nuclear Regulatory Commission found, for example, that the more "roles and

[13] See Judith E. Michaels, *Becoming an Effective Political Executive: 7 Lessons from Experienced Appointees*, The PricewaterhouseCoopers Endowment for the Business of Government (January 2001).

responsibilities are defined, the more the emphasis is on working together, collectively, in support of the agency's mission."[14] All the agencies we interviewed claimed that there should be a "bottom-up" culture that empowers employees and enforces management controls including delegation of authority, organizational alignment, and separation of duties. The CSB's strategic plan mirrors this understanding. According to the plan, "defining and formalizing the roles, responsibilities and accountabilities of staff and Board members is an essential step for ensuring the success of the CSB."[15] Thus, over the past two years, the CSB has outlined organizational roles through board orders, new position descriptions, limited delegations of authority, and policy revisions in areas including investigative procedures and incident selection.

Board members and staff both indicated to us, however, that the formal policies they have to guide their relationship are inadequate and loosely observed or unenforced. In early 2001, the staff approached the Board and requested to address the relationship, but concerns remained tabled until the Board attended a staff-sponsored, facilitated retreat in June 2001. At the retreat, participants aired issues including:[16]

- The agency lacked consensus about the appropriate level of Board oversight regarding routine administration. Staff recommended that Board limit its involvement to public meetings and monthly and quarterly briefings, with the flexibility for the COO also to raise to its attention "significant issues … things that would impact the [Board] or the agency." In contrast, the Board recommended continued use of Board briefings and other formal and informal meetings, which typically occur much more frequently. The agency agreed that the Board needed to clarify when Board members spoke individually or jointly.

- The agency lacked consensus on the appropriate amount of Board member involvement in ongoing investigations. The Board requested updates on progress bi-weekly or daily, often in detail. Also, the Board issued feedback and work requests directly to investigators without involving the COO and Director of Investigations and Safety Programs, which sometimes resulted in conflicting guidance and increased work. One side proposed that communication should be limited in order to reinforce the chain of command and ensure participants' scientific objectivity; but another side supported collegial

[14] *Special Evaluation of the Role and Structure of the NRC's Commission* (NRC OIG/99E-09, December 23, 1999). This report primarily addressed collegial interaction between the Chairperson and Commissioners.
[15] *2001-2005 Strategic Plan to Congress*, U. S. Chemical Safety and Hazard Investigation Board (September 29, 2000).
[16] Sandra Wood, *Offsite Report to the U. S. Chemical Safety Board* (June 26, 2001).

discussion and information sharing. The staff noted, "A skeleton outline of these [investigative] policies and procedures currently exists but it is too general and must be developed more fully." At what level, by what means, and how quickly documents are circulated for Board review and approval were also concerns.

- Several staff noted that they lacked "the authority to implement the policy or task in the most efficient and effective manner."

- Everyone agreed that the Board should avoid appropriating managers' roles by issuing work requests and corrective feedback directly to staff without using the chain of command.

Overall, comments from the retreat suggested that the ambiguous relationship between Board and staff led to inefficiency by creating friction, duplication of efforts, and increased workload; but the comments also suggested that the agency had identified the major shortfalls and would work toward greater clarity and collegiality.

Nevertheless, the friction and inefficiencies did not abate. Moreover, the Board and managers remarked to us that an oppositional stance was developing between them, with both often closed to the other's ideas and input. For example, the Board pushed to develop plans concerning data collection and performance reporting, changes supported by the CSB statute and the Government Performance and Results Act but resisted by staff. At the same time, rather than informing the staff and building consensus, the Board met more often independently and issued directions without or contradictory to managerial input.[17]

For example, in filling one senior position, the Board rejected the recommendation of a senior staff panel to hire a particular candidate or initiate a new search; instead the Board selected a candidate the panel found unsuitable. In another example, citing budgetary concerns, the Board jointly decided in April 2001 to freeze investigative hiring. Even though staff argued that the CSB needed more investigators, would not achieve its training goals without hiring a training coordinator, and carried a budget surplus of $700,000 or more, hiring did not resume until December 2001. The Board has similarly imposed its authority regarding several specific procurements and outreach initiatives (see page 23). This pattern contrasts with David Welborn's observation of federal agencies: "[S]taff recommendations are quite influential in decision making, and realistically, Commissioners cannot be expected to depart regularly and extensively from the recommendations provided by the

[17] Board discussions resulting in decisions have Sunshine Act implications (see page 19).

staff."[18] The Board and staff opposition highlights an increasingly apparent mission rift (see page 30).

The breakdown in constructive communication extends throughout the agency. Both the Board and staff reported that staff either felt or actually had been restricted from talking openly with the Board or particular staff members. In this vein, the Office of Personnel Management found during a recent survey at the CSB:

> *Just 6 of 20 respondents agreed that they could disclose mismanagement, waste of funds, abuse of authority, or danger to public health or safety without fear of reprisal, and just 6 of 20 agreed that they could disclose a suspected violation of law, rule or regulation without fear of reprisal.... Further, just 5 of 20 survey respondents reported that complaints, disputes or grievances are resolved fairly in their work unit.*[19]

Even if these concerns are more perception than reality, they suggest a working climate of distrust and restricted dialogue that poorly serves the interests of the agency. When agency members feel prohibited from voicing concerns, addressing problems, and contributing their best judgment to solving them, the agency's overall strength is diminished. OMB has noted, "Effective communication within and between offices should be encouraged" in support of general management control standards, which include employee integrity and compliance with law.[20]

Late in 2001 the CSB met again to improve the relationship between the Board and staff. With the help of facilitators, the agency defined roles and responsibilities and drafted operating agreements that address issues raised earlier, including division of authority. However, preliminary reports from staff suggest that these agreements are not being honored uniformly, which is unsurprising given that they have not been memorialized with formal Board approval and that the agency lacks the accountability systems to enforce them.

Subjective variables such as personality and collegiality, while critical to positive working relationships, are obviously difficult to control; and the CSB may more easily make progress by emplacing objective management controls to affect the variables it can. In a 2001 report on engaging agency employees, GAO noted six practices that increased efficiency and employee "buy-in," one of which is delegating authority down to front-line employees.[21] In addition

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[18] David M. Welborn, *Governance of Federal Regulatory Agencies* (Knoxville: The University of Tennessee Press, 1977).
[19] *Human Capital Management Oversight Review: U.S. Chemical Safety and Hazard Investigation Board*, Office of Personnel Management (December 2001).
[20] OMB Circular No. A-123 Revised.
[21] *Practices That Empowered and Involved Employees* (GAO-01-1070, September 14, 2001).

to establishing broader delegations, the CSB should follow through on its intent to refine various protocols, including (1) incident selection; (2) investigations; and (3) execution of procurement policies; but also (4) agency outreach; (5) responsibility for personnel actions; and (6) internal Board procedures. In refining these policies, particular attention should be paid to establishing accountability mechanisms, including separating duties and managing documentation. A seventh policy that also enhances accountability was recommended to the CSB in OPM's recent evaluation, that of establishing an administrative grievance system [22]

Finally, considering the range of management controls that the CSB needs to emplace or improve, we believe it will benefit by first developing an internal, written strategy to prioritize its efforts. OMB has emphasized the usefulness of this approach, going so far as to say, "The absence of such a strategy may itself be a serious management control deficiency."[23] OMB further recommends that agencies consider establishing a "senior management council" to review the agency's system of management controls, assess and report on deficiencies, and provide input on their improvement and priority. Otherwise, without the development of genuine respect and collegiality, aided by greater delegation of authority and better-defined protocols, CSB progress will continue to be encumbered by Board/staff disunity.

Recommendations

We recommend that the Acting Chief Operating Officer:

3. Develop a written strategy for identifying, prioritizing, and improving the agency's system of management controls. Particular attention should be paid to establishing accountability mechanisms, including separation of duties. This may be accomplished through a senior management council below the Board level consisting of managers and key staff, who would review controls, assess and report on deficiencies, and provide input on their improvement and priority.

Management Comments and IG Analysis

The CSB agreed to develop a strategy to improve management controls and to create a management council below the Board level to oversee operations. The CSB continues to hold monthly facilitated meetings and asserts that progress is being made to define and improve the Board/Staff relationship. For example, the CSB informed us that a team within the Office of Investigations and Safety Programs has been assigned to revise its protocols.

[22] Office of Personnel Management.
[23] OMB Circular No. A-123 Revised.

We concur with the CSB's response. We are also encouraged by the Board's decision to create a management council to oversee and audit operations. Vesting responsibility to develop improvements in a staff council and developing a plan to prioritize work should increase the efficiency of the agency's continuing efforts.

D. Board Practices Indicate Declining Attention to the "Government in the Sunshine Act"

After four years of operation, the CSB has not published a regulation governing its responsibilities under the "Government in the Sunshine Act." In addition, Board members conduct nearly all business outside the view of the public. After the current leadership took control of the Board in 2000, one Board member noted, "[W]e have failed to produce a process by which you would have access to our decision making in public."[24] Board members stated their intention to pay more attention to the Sunshine Act by holding monthly public meetings, posting votes and transcripts on the CSB website, and publishing a regulation. The improvements made, however, were temporary or incomplete. The Board did not meet its FY2001 performance goal to issue the regulation; and although Board members meet frequently to discuss CSB business, only three public meetings have occurred in the past fifteen months.

For agencies like the CSB, the 1976 "Government in the Sunshine Act" declares that "every portion of every meeting shall be open to public observation" unless its subject falls within a limited number of exemptions. Practical application of the Sunshine Act requires agencies to strike a balance between holding all quorum meetings in public and preserving board members' ability to meet together in an efficient and collegial manner. To clarify the Act's application, in 1984 the Supreme Court defined Sunshine-covered "meetings" as quorum gatherings of only a certain type: discussions of "discrete proposals or issues" causing "reasonably firm positions" that "effectively predetermine official actions."[25] Under this definition, board members may hold exploratory, informational, and casual discussions without being subject to Sunshine requirements. Essentially, what defines a discussion as Sunshine material is not the quorum but the items discussed. The Senate noted that the responsibility for cautious adherence to the Act rests

[24] U.S. Chemical Safety and Hazard Investigation Board Sunshine Act Meeting (December 9, 1999).

[25] FCC vs ITT World Communications, Inc., 466 US 463 (1984). The NRC adopted this definition as part of its Sunshine Act regulation, which withstood a DC Circuit Court challenge from Natural Resources Defense Council in 2000. Agencies do not need to label quorum gatherings as a "meeting" in order to be subject to the Act.

with the agency: "When two members constitute a quorum, the agency must be careful not to cross over the line and engage in discussions which effectively predetermine official actions."[26] Additionally, the Sunshine Act also assigns responsibilities to agencies regarding how meetings may be closed to the public, how meetings should be publicized and recorded, and how agencies should establish and document Sunshine procedures.[27]

Implementing the Sunshine Act should have been a priority issue during the CSB's organizational phase as the agency sought to comply with legal requirements and earn public trust, particularly considering the agency's previous governance struggle. Moreover, it should also have been a priority because in the absence of a Chairperson and broad delegations of authority, the current Board exercises far greater decision-making authority than its peers. At other agencies, much decision-making is carried out by the Chairperson and staff, and thus does not involve Sunshine Act requirements. Although the CSB Board has delegated some decision-making authority, for numerous matters the Board issues joint decisions; and with only three Board members, related discussions involve a quorum and potentially invoke the Sunshine Act. Weighing this unusual situation with the public's right to observe agency decision-making, one would expect the CSB to be proactive in paying scrupulous attention to the Act.

Since the Chairman's resignation, the Board met for eight public meetings and conducted the majority of its business through notation voting, in which documents are circulated for individual voting without discussion between Board members. The Board has never voted in public. In 2001, which included only one public meeting for general business, Board members completed over 40 notation votes on both administrative and substantive issues, including the agency performance plan, several rules, and investigations.[28] For example, in December 2001 the Board concluded and approved an investigative report on a fatal fire at the Bethlehem Steel Burns Harbor Mill. During the course of the investigation, the only related information made public was a press release at the investigation's start in February 2001. A month after the Board approved the report, the CSB held a press conference for its release; the public was never afforded the opportunity to observe the Board's decision-making process, although in the past the CSB has given public updates and held boards of inquiry for other investigations.

This near-exclusive reliance on notation voting is not itself a violation of the Sunshine Act. Courts have upheld notation votes as a legal way to conduct

[26] Senate Report No. 94-354 (1975).

[27] For example, agencies are required to document and submit annually to Congress a Sunshine compliance report. The CSB has never done so.

[28] The other public meeting in 2001 addressed solely the agency Recommendations Program. In late 1999, the Board announced it would hold monthly meetings; but in 2000, the Board shifted to meeting every other month; and finally in 2001, the Board held only two public meetings. The Board has never held an officially closed meeting.

business for any matter, and agencies are not obliged to meet. But neither is it a good practice according to our benchmarking. In the past, Congress criticized the Interstate Commerce Commission for excessive use of notation voting; and the GAO has also affirmed that agencies are prudent to hold meetings under the Sunshine Act.[29] For example, reporting on the FDA's over-the-counter drug review process, the GAO wrote, "We believe that, on balance, the process benefited by [the enactment of the "Government in the Sunshine Act"] and the increased public scrutiny of and participation in panels' deliberations. We believe the panels' reports have generally been better because of this input."[30] Moreover, rendering decisions by notation vote impedes full and open communication between Board members on issues of policy.

Yet the Board itself acknowledged the importance of communication during a June 2001 retreat: "Board members have grown to appreciate the need and effort to pursue consensus at the [Board] level."[31] Although the Board members issue final decisions individually through notation vote, which is not uncommon, the CSB is unique in that its Board members are frequently in communication to manage the agency via e-mail, telephone, bi-weekly staff briefings, and weekly teleconferences. Without a functional Sunshine Act compliance program, there is a probability that these discussions, which the Board sees as informational, fall under the definition of matters that must be discussed only at Sunshine Act meetings. For example, during a staff briefing in July, the Board members jointly discussed and overruled a specific staff recommendation not to deploy investigators to the Atofina chemical spill. Because the Board members chose to discuss a discrete proposal resulting in official agency action, this matter had Sunshine Act implications. Furthermore, both the Board and staff reported that the number of these Board discussions has risen during the past year, with staff increasingly excluded and unable to monitor compliance with the Act.

Contrasting the CSB's consideration of Sunshine Act issues in late 1999 and late 2001, we believe the CSB needs to reverse its current conduct. The proliferation of Board discussions, combined with the CSB's reduction in public meetings and failure to publish a Sunshine regulation, leads us to conclude that the agency needs a Sunshine Act compliance program. The CSB should consider several pertinent good practices that we noted during our benchmarking interviews:

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[29] Senate Transportation Subcommittee, Hearing No. 98-1034, Part 2, PP 429-629 (April 4, 1984).
[30] *FDA's Approach To Reviewing Over-The-Counter Drugs Is Reasonable, But Progress Is Slow* (GAO/HRD-82-41, April 26, 1982).
[31] Wood.

- Clarifying in regulation the agency's definition of "meeting," such as to include teleconferences and exclude informational briefings given by staff to the Board.
- Conducting meetings on a regular basis, such as bi-weekly or monthly.[32]
- Posting meeting transcripts, voting records including notation votes, and Sunshine Act compliance reports on the agency website.
- Employing a mechanism to verify that quorum discussions occur in Sunshine meetings when appropriate, by:
  - Including the agency's General Counsel or representative in all quorum discussions to monitor discussion content and assist in Sunshine Act compliance; and
  - Maintaining records for all quorum discussions via notes, minutes, or recordings.

This last practice, which enables the agency to establish proactively that it adheres to Sunshine requirements, has been specifically recommended by the American Bar Association.[33] In sum, the leadership needs to exercise strict attention to ensuring public access to "the fullest practicable information" regarding its decision-making processes, as the Sunshine Act requires.

Recommendation

We recommend that the Board:

4. Publish regulations that comply with the requirements of the "Government in the Sunshine Act." The regulation should: (a) specify what mechanism the CSB will use to protect public rights during quorum assemblies, such as having General Counsel present, (b) clarify whether any items of Board business, such as investigative reports, necessitate public discussion and cannot be accomplished by notation vote alone, (c) clarify whether the CSB will hold regular meetings and under what types of exceptions it would cancel or schedule additional meetings, such as Boards of Inquiry, (d) require the CSB to publish votes and public meeting transcripts on the web, (e) establish the public reading room as promised by the CSB's FOIA regulation, and (f) direct the CSB to submit an annual Sunshine report to Congress.

[32] The CSB's 1999 internal order on "Quorum, Voting, and Meeting Procedures" specifies that the General Counsel will publish each October an annual meeting schedule that includes a minimum of one meeting per month.
[33] *Annual Report of the American Bar Association*, Vol. 112, No. 1 (February 16-17, 1987).

Management Comments and IG Analysis

The CSB agreed to publish a Sunshine Act regulation by May 1, 2002. In the meantime, the agency plans to establish a FOIA reading room and to implement an interim Sunshine Act Compliance program. Also, the CSB held a Sunshine Act meeting on February 27, 2002, at which the agency briefed the public on the status of performance goals 1.1, 1.2, and 1.3 from its strategic plan and efforts towards hiring a permanent COO.

We concur with the CSB's response. We are encouraged by the Board's immediate attention to this responsibility, one that is critical toward building public trust. Further, we welcome the Board's efforts to resume using Sunshine Act meetings as a forum for Board members to communicate openly with each other regarding agency initiatives. At the same time, until the Board receives a Chairperson or delegates greater decision-making authority to the COO, the Board must be conscious that all Board discussions of specific agency actions must occur only during public meetings.

E. Atypical Procurement Practices Are Problematic

The level and manner of Board member involvement in agency procurements is atypical to Federal Boards and Commissions. It diminishes the objectivity and independence of Board decisions and interferes with the effective administration and oversight of agency operations. In the past, several poorly managed procurements drew GAO criticism, and the current Board members revised procurement policies and procedures by retaining more authority themselves. The Board's scope of authority, however, is too broad. It has allowed Board members to shepherd questionable acquisitions through the agency's procurement process and engage potential contractors in an imprudent manner. Moreover, circumstances surrounding selected procurements have resulted in a high level of internal strife and fed the lack of collegiality between Board members and career staff. These problems also reflect the ongoing mission struggle within the agency.

The CSB statute grants broad procurement authority "without regard to section 5 of title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person."[34] In other words, the CSB is not required to advertise an invitation for proposals in a public place such as Commerce Business Daily. The CSB staff use this exemption if a minimum of three responsible and qualified sources can be identified from whom to solicit proposals or quotes, or if a sole source acquisition is justified. Whenever the CSB determines advertising is

[34] 42 U.S.C. § 7412(r)(6) (Supp. 1990).

necessary or appropriate for an acquisition, the requestor contacts for further guidance the procurement officials at the Bureau of Public Debt (BPD), which provides franchise procurement services to the CSB for acquisitions exceeding $2,500.[35] The CSB usually executes one of four common types of procurements: micro-purchase, simplified acquisitions, contract acquisitions, or interagency acquisitions. Being independent of the CSB, the BPD provides additional checks and balances during the acquisition process.

Currently, the scope of procurement authority exercised by the Board is felt throughout the entire organization. Any contract over $2,500 comes before a Board member for review, and contracts over $10,000 require review by the complete Board. To illustrate, one Board member's approval is required to renew the agency's subscription to Congressional Quarterly and cable TV services, while the full Board is needed to approve items such as overtime, temporary help, legal services, and relocation expenses for new investigators. Compared to practices employed by Federal Boards and Commissions, CSB Board member involvement in procurement issues is excessive. For example, the Federal Finance Housing Board is not involved in procurement issues. The National Transportation Safety Board initiates procurements only for individual Board member staff offices. The Consumer Safety Product Commission receives briefings on contracts greater than $100,000. We were told during interviews that other Commission members rarely, if ever, initiate procurements of a substantive nature.

Also atypically, the Board has circumvented the chain of command and respective decision-making authority of its managers by directing unpopular acquisitions through the procurement process. CSB policies stipulate that all staff involved with an acquisition must ensure that purchase of the item or service is prudent and proper, in view of actual need and office priorities. Thus senior staff including the General Counsel advised against several acquisitions, citing weak justifications, questionable project cost-benefits, other mission priorities, and the appearance of ethical conflicts; however, Board members nevertheless initiated and pursued the initiatives. We found little evidence of resistance from fellow Board members.

Selected procurement actions appear to justify staff concerns:

- One Board member spearheaded an initiative to acquire the services of the Safety and Chemical Engineering Education Committee (SACHE) to help host a workshop whereby undergraduate professors would evaluate the quality of CSB reports as teaching tools. For $10,000, the CSB was given the opportunity to present the results of an investigation for an hour to the professors, who in turn completed a feedback survey that was made into a report. Career staff opposed the

[35] *CSB Directive #720: Acquisition of Supplies and Services*. U. S. Chemical Safety and Hazard Investigation Board (December 27, 1999).

workshop on the grounds that it hinted of an ethical conflict, was questionable as a sole source procurement, and was not related to the CSB's investigative mission. For example, the Board member involved has past associations with individuals in SACHE's parent organization, the Center for Chemical Process Safety (CCPS); but he did not recuse himself from the approval process. During the process, the BPD raised concerns that the CSB did not provide adequate justification and required them to modify their initial request. Finally, reviewing the deliverable purchased for $10,000, we, CSB staff, and one Board member concluded that the Committee's written report provided information of limited value to the CSB.

- Notwithstanding the lack of value produced by the first SACHE workshop, the Board planned to conduct a second workshop, using SACHE as the facilitator. In resistance, the General Counsel issued guidance concerning unauthorized commitments, preferential treatment, and avoiding actions that would create the appearance of an ethical conflict. Nevertheless, the Board appointed one of its Special Assistants as the Contracting Officer's Technical Representative in order to expedite the contract. Initially, funding was never allocated for SACHE II; instead, the Board reallocated Board 'travel' money to 'other services' without identifying the SACHE workshop as the program it is. SACHE II, which was cancelled in September 2001, was postponed until late 2002.

- In the spring of 2001, Board members clashed with career staff over defining the CSB's relationship with the American Institute for Chemical Engineers (AIChE). First, the CCPS, a subcomponent of AIChE, sought endorsements of its publications from the Board. In the interest of preserving independence, the General Counsel recommended that Board member not provide this endorsement. Subsequently, one Board member sought to strengthen its relationship with industry by securing membership in the CCPS. Citing a precedent set by the Environmental Protection Agency, the Board asked the General Counsel for a legal opinion that would enable the Board to pay CCPS $50,000 for an ex officio membership. It came to our attention that private corporations pay less for full voting membership. The General Counsel and other staff exerted much effort to ensure the agency avoided endorsing CCPS publications. However, the General Counsel was unable to prevent membership. In January 2002, Board members voted to obtain membership at a cost of $7,000.

- The Board attempted to 'backfill' with a contractor responsibilities carried out by the then-Deputy Director, Congressional and Public Affairs. In a meeting with CSB managers, a private vendor with public affairs experience advised the CSB to document its need for a

particular employee belonging to the vendor's company to ensure it would receive the contract. Incorporating this guidance, the CSB prepared a statement of work. During review, the BPD rejected the solicitation on the basis that such services should be provided by a small business, which eliminated the targeted vendor. The Board abandoned efforts to rewrite the statement of work and hire this vendor.

- In the summer of 2001, the Board tried to obtain the services of a public affairs firm to facilitate a roundtable meeting in West Virginia. The location was recognized for its abundance of chemical plants, scene of a major chemical incident, and respective congressional interest in CSB affairs. Following a meeting between a Board member, CSB staff, and former congressional staffers from West Virginia who worked for a public relations firm, the CSB sought a sole-source contract with their firm for the event. A CSB employee arranged for one of the firm's employees to write the statement of work. Other CSB staff and the BPD subsequently disqualified the vendor because of its involvement and directed the CSB instead to seek a small business. The Board dropped the initiative.

Procurement issues and other challenges confronting the CSB are best exemplified by the circumstances surrounding the Board's recent decision to enter into a governmental interagency agreement with the National Institute of Environmental Health Sciences (NIEHS). Career staff opposed the interagency agreement directed by the Board.

- Dovetailing with a planned conference next spring in Nashville, Tennessee, for NIEHS grantees, the CSB committed $50,000 to help fund a two-day extension of the conference for the broad purpose of "furthering the prevention of accidental releases through wider use of CSB accident investigation reports as tools for training employees in process safety." Specifically, the workshop extension will develop consensus guidelines on the utilization and usefulness of investigative findings of the CSB. The conference's primary audience consists of emergency responders, although the CSB plans to invite a contingency from the chemical industry. The NIEHS will assure logistical support for organizing and managing the workshop. The organizational work is being done through two subcontractors of the NIEHS.

  The Board member who was most involved in the agency's participation in this workshop once worked for NIEHS. Following infrequent meetings that began more than a year ago, the Board member verbally informed NIEHS officials to begin event preparations prior to the Board approving the agreement. The Board member involved directed staff to draft documentation to execute the

interagency agreement, even though the staff did not understand the objectives of the agreement. One staff member remarked, "The program description is not clear, to the point that I do not understand how a finding can be made that the CSB is legally authorized to acquire these services." To hasten completion of the interagency agreement, Board members voted to revise the agency's procurement protocol so that a Board member could approve the Determination and Findings (D&F).[36] The Board also voted to allocate and transfer $50,000 to the NIEHS. These two votes occurred at the same time, *before* the Board member had approved the D&F, which followed within 24 hours.

We do not believe the rationale contained in the D&F meets the federal requirement to "set forth enough facts and circumstances to clearly and convincingly justify the specific determination made."[37] For instance, the D&F states that the $50,000 is reasonable for convening a planning committee, developing a "straw man" proposal, convening a two-day conference with more than 100 participants, and preparing a final report. However, it fails to show how this figure was generated and by whom. CSB staff, and the Board member who approved it, were unable to provide these details, and the CSB would be obligated to reimburse NIEHS for actual costs.[38] In addition, we do not share the Board's view that the CSB has an urgent need to "achieve an important consensus on how to make better use of CSB reports for training important constituencies for accident prevention." Finally, it is not clear how the NIEHS's "unique expertise and specialized knowledge not available with the CSB or private sector" are essential to the purpose and outcome of this event. CSB managers do not dispute whether the NIEHS is a leader among Federal agencies for training hazardous materials workers and emergency response personnel, but are skeptical of how much it might benefit the CSB in this capacity.

Overall, we believe it is critical that Board members avoid making promises to other entities that might misrepresent or bind the CSB and avoid any activity that might jeopardize the Board's credibility, regardless of potential value to the agency. Last year the General Counsel advised a Board member and a CSB staff person about adhering to high behavioral standards "to act affirmatively in the public's trust." General Counsel went on to say:

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[36] A Determination and Findings is a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

[37] 48 C.F.R. 17.503.

[38] The ordering agency must pay the performing agency the actual costs of the goods or services provided; see 31 U.S.C. § 1535(b).

> *In addition, to avoid potential ethics violations in the future, Board members and other staff must recuse themselves from selection process when potential contractors could be considered 'a friend.' The selection of a contractor and the award of a contract or purchase request must be done at arm's length to ensure procurement integrity. While it is allowable for a Board member or other staff to identify CSB requirements and identify potential contractors to bid on contracts, an impartial individual should make the selection.*[39]

To summarize, efforts by Board members to steer CSB procurements are undermining the acquisition process and damaging collegiality within the agency. Board members have spurned counsel and created a system in which the only real management control is the approval of the Board majority, or two people. Issues surrounding procurements have sparked significant debate within the agency about its mission and how to achieve it. Board members and staff have not demonstrated that they can constructively resolve their disagreements and achieve consensus over such matters.

Recommendation

We recommend that the Board:

5. Revise policies and procedures to reduce Board member involvement in the soliciting and awarding of contracts. Such measures should include vesting administrative aspects of the procurement process in the Acting COO and raising the minimum procurement amount requiring Board approval.

Management Comments and IG Analysis

The CSB agreed to make appropriate revisions to policies and procedures by May 31, 2002, to reduce Board Member involvement in the soliciting and awarding of contracts. Key revisions will include vesting administrative aspects of the procurement process in the COO and limiting Board Member involvement in the procurement process to the final approval of goods or services valued at $50,000 or more. The CSB will also rescind the SACHE, CCPS, and NIEHS initiatives.

[39] Chris Warner, "Procurement Integrity," memorandum to Board members and Board assistants, April 17, 2001.

We concur with the CSB's response. In follow-up comments, the CSB emphasized that Board members' personal ties had not influenced procurement decisions. Nevertheless, whenever Board members have personal ties to a prospective vendor, they should recuse themselves in order to avoid the appearance of an ethical conflict. The CSB agreed to develop procedures to recuse members from meeting with prospective bidders. We believe they should expand this procedure to address procurements that are not competitively bid as well.

II. Board Members and Career Staff Disagree About the Agency's Mission and How to Achieve It

The Board and senior staff disagree about the agency's mission and how to achieve it. The ongoing struggle revolves around (1) whether the CSB should, in addition to conducting investigations, also perform outreach, promotion and prevention activities; and (2) how should the CSB prioritize its resources between them. Senior managers want the CSB to direct its resources into its investigative work. The Board, while it supports investigations, asserts that outreach activities are also needed. Their positions are especially evident in draft updates to the agency's Performance Plan.

We reviewed the agency's statutes and legislative history, and both attach greater importance to conducting investigations. Congress and GAO have both directed the CSB to emphasize investigations. Also borne from this debate is a question of whether the CSB has a role as "trainer-educator" in the chemical and safety industry; this question warrants further review. The Office of Investigations' infrastructure is still developing and the CSB is still learning how to manage its investigations. For these reasons, we concluded that the agency should focus on investigations.

We are certain that the issues discussed in Part I of our report are inextricably linked to the philosophical differences of opinion among Board members and staff.

A. Mission Struggle: Investigations Versus Preventive Outreach

The CSB's Board and senior managers have different opinions about the division of resources between investigative and non-investigative activities. Senior managers, citing the relatively few number of investigations completed to date and still-developing infrastructure, assert that the CSB should channel its program resources into producing investigative reports. But the Board, while acknowledging that investigations are necessary, maintains that it is vital that the CSB translate them into outreach programs and stakeholder partnerships to convey "lessons learned." In contrast, senior managers contend that the agency's outreach should concentrate on advocacy for CSB report recommendations, and they argue that the educational outreach activities promoted by the Board are either premature considering the CSB's infancy, or at best tangential to the mission. The continued disagreement is inhibiting the cooperation necessary to resolve organizational, management, and administrative issues.

In September 2000, the CSB submitted its first 5-year Strategic Plan to Congress. The agency's mission goal—promote the prevention of chemical accidents—is supported by three performance goals. In designated order of importance, they are:

1. Produce timely, high quality investigation reports, recommendations and other investigative reports;
2. Develop effective outreach and partnerships with stakeholders; and
3. Develop and implement a system for chemical accident data collection and analysis that can be used to measure prevention effectiveness.

Board members and career staff agree on the centrality of conducting investigations. However, they are at odds over the importance of the last two goals as well as over numerous planned action items to implement them. Last fall, the agency's Strategic Planning Team, made up of career staff, proposed performance plan action items for fiscal years 2002-3 and submitted them to the Board for comment. The Board responded that the plan lacked adequate mechanisms for directing and allocating staff resources toward outreach and data goals, and it directed that the plan be modified to:

- Designate a staff lead for an Outreach Program;
- Develop an overarching strategy for outreach activities, including outreach directives and initiatives such as training conferences, and training programs for universities and industry;
- Design and implement surveys on prevention outreach; and
- Develop and implement a system for chemical accident data collection analysis, including hiring a full-time data analyst/program manager.

This dispute over allocating resources to data and outreach missions has apparently always been a concern at the CSB. Two years ago, immediately following the prior Chairperson's resignation in January 2000, CSB staff presented a status report to a Board member that expressed their concerns about the trend toward more outreach activities, discussed numerous flaws in the organization, and recommended courses of action for the Board. The first issue they identified was the need to redefine and come to a consensus on the CSB's mission. In the memorandum, staff charged that:

> *...For the past two years the CSB has not acted as though conducting investigations...were... its primary mission. In its organizational structure, staffing choices, and public presentations, it has acted as though it was a sort of general safety advocacy/public relations and data collection/analysis agency that also occasionally conducted investigations. Budget and staffing decisions during the past two years confirm that there has been a gross misallocation of resources.*

Staff recommended a re-prioritization, including strengthening the Office of Investigations, properly allocating resources to fund the mission, and fulfilling other Congressional and budgetary promises. But during our interviews, senior managers indicated that problems in setting priorities persist. Senior managers do not share the Board's current commitment to outreach initiatives, believing instead that the CSB must first build credibility by completing a substantial number of accident investigations. They note that Congress and stakeholders have encouraged the agency to complete more reports. Moreover, staff also claim that historically, Board member outreach activities often have not been strategic but conceived in isolation without full Board support or staff knowledge. In short, staff feel frustrated with the CSB's current direction.

Also frustrated, Board members are seeking a balance between the CSB's investigative and non-investigative work because they view investigations in a broader context. Board members informed us that investigations are narrowly targeted toward accident participants, and the reports have limited value unless they are used to teach larger audiences.[40] The Board also feels that training outreach is important "because we need to have something that we can measure" regarding the agency's success, or the impact of investigations on preventing accidents. The Board's vision could be summarized by a Board member's comments during last year's appropriation hearing: "[T]he investigations are just a means to a much larger activity that engages the Board, which is to translate those investigations into prevention by outreach."[41] The Board is eager to transform CSB operations to meet these expectations; for example, another Board member remarked at the hearing, "Most of our work as Board members has been on building the investigative program, we ourselves have delayed our normal activity, which should be to go out and teach the lessons to the most appropriate audiences on preventive approaches. Our hope is...to have enough resources this year to start to expand what has been a lagging function of the Board..."

The procurement initiatives we discussed previously depict the expansion of outreach activities desired by the Board but opposed by career staff. While we recognize the career staff's desire to promote investigative work, we also acknowledge that it is not clear that Board outreach activities, which were not very costly, conflicted with or detracted from investigations. The extent of the trade-offs, or opportunity costs, cannot be quantified because the CSB lacks a well-defined system to measure, track, and prioritize the time, costs and benefits of investigations and other resource expenditures. For example, the FY03 budget request highlighted what may have been a trade-off: the CSB

[40] Although the Board perceives that recommendations are limited to impacting accident participants, the CSB's statutory authority requires the agency to issue recommendations not only to participants but also to regulatory agencies and "other interested persons."
[41] House Appropriations Subcommittee Hearing (May 1, 2001).

attributed its slow hiring of investigators to insufficient funds, yet at the same time the agency pursued new, non-investigative procurements at Board direction.

It is evident that the CSB needs to identify the trade-offs clearly and prioritize its resources. How the Board ultimately deals with the staff's reluctance to cooperate with its strategic emphasis on outreach remains to be seen. The Board is still developing its strategic outreach plan. But the lack of consensus on two of the agency's three primary mission goals does not bode well for their future implementation.

Recommendation

We recommend that the Chief Operating Officer:

6. Develop and implement a system that links strategic planning to resource allocation decisions and measures performance in a way that balances productivity and costs with desired outcomes.

Management Comments and IG Analysis

The CSB agreed with our recommendation. The COO is taking the lead to develop a system linking strategic planning to resource allocation and measuring performance. The CSB noted that it is now monitoring progress on performance goals using work plans, and the agency is developing a system to track staff hours to performance goals that will be in place by April 30, 2002.

We concur with the CSB's response. We believe these steps will be key elements in facilitating strategic decisions and improving the agency's results-based performance. We look forward to the CSB providing additional information about this new system.

B. Agency Mission Emphasizes Investigations

The CSB's statutory authority clearly sets forth that the agency is to conduct investigations and make recommendations based on those investigations. The 1990 Clean Air Act Amendments authorized the formation of the CSB with five duties:

1. To investigate serious accidents and report to the public on their circumstances and causes;

2. To make recommendations to Congress, Federal, State, and local agencies and "other interested persons" regarding steps to prevent or minimize accident consequences. This duty includes proposing rules and orders for EPA and OSHA to develop;
3. To establish requirements for reporting accidents;
4. To coordinate its activities with other health and safety agencies; and
5. To review and make recommendations on the use of hazard assessments and risk management plans in preventing chemical accidents. The CSB is also authorized to conduct research and studies regarding actual and potential hazards.

Further clarification of the CSB's mission is evident in its legislative history. According to the Senate legislative history, the CSB was created for purpose of "finding the cause or probable cause of chemical accidents and recommending requirements or orders which will prevent accidents in the future."[42] The CSB is patterned after the NTSB, which also investigates, determines, and publicizes accident causes. Like the NTSB, the CSB lacks the authority to create and enforce regulations; instead, it uses its investigative findings to recommend preventive measures for regulatory agencies and other groups to carry out. Unlike regulatory agencies that also investigate chemical accidents, including EPA and OSHA, the CSB was designed to look beyond faults in regulatory compliance and identify the root causes of accidents, "whether or not those causes were in violation of any current and enforceable requirement."[43] Its independence then enables it to apply that knowledge base to "stimulating regulatory action" and coordinating the Federal approach to chemical accident prevention.[44] The Senate noted, "The principal function of the Board is to establish a foundation for regulatory action that will trigger rule-making on an appropriate schedule."[45]

During recent hearings and testimony, Congress and GAO have also attached considerable importance to conducting investigations. Both have criticized the CSB for completing too few investigations. In FY2000, GAO noted an imbalance between investigations and external relations work: "...We determined that significant portions of the Board's actual and planned resources were dedicated to activities, such as external relations, that did not directly support the conduct of its investigations."[46] During the FY2001 Senate Appropriations hearing, committee members articulated their concerns to the Board that investigations were few and far between, and costly. One

[42] Senate Report No. 101-228 (1989). The history notes that the CSB should adopt an "all-cause," not single-cause, approach to investigations.
[43] Senate Report No. 101-228. The Senate sought to supplement "investigations conducted by agencies with dual responsibilities [that] tend to focus on violations of existing rules as the cause of the accident almost to the exclusion of other contributing factors for which no enforcement or compliance actions can be taken."
[44] Senate Report No. 101-228.
[45] Senate Report No. 101-228.
[46] Senate Appropriations Subcommittee, Hearing No. 106-888 (April 12, 2000).

Senator observed, "[W]e have to get results. And the results are not three investigations over 3 years and $18 million."[47] The Board assured committee members that the agency's "highest emphasis" would be placed on investigative and safety programs. Nevertheless, during the next year's hearing before its House Appropriations subcommittee, the CSB drew similar criticism from a Representative, "I do think it is legitimate for this committee to, particularly in the context of a very contentious personality or management conflict that has gone on for three years, be a little impatient about the product that you are producing for the amount of money that we are appropriating." He went on to say that the agency should be getting beyond administrative and management obstacles, and personality conflicts, and "getting down to business and producing a product for the $7.6 million that you are requesting."

Combining statutory guidance, legislative history, and congressional intent, overwhelming weight is given to the core function of conducting investigations. The CSB's primary performance goal adequately emulates this guidance. On the other hand, these references do not provide nearly as much support for the CSB's second and third performance goals of pursuing outreach activities and data collection and analysis. In addition to their germane responsibilities of investigating, issuing periodic reports, and establishing reporting requirements, there is a reasonable expectation that Board members should be keeping the public informed and serving as advocates for its recommendations. But as we discussed, the Board is looking forward to a broader role for the CSB in the chemical safety arena. It has advocated educational outreach targeted toward undergraduate professors, emergency responders, workers, and managers in order to leverage the CSB's "lessons learned." Consequently, the potential exists for the CSB's educational efforts to overlap with that of other public and private entities. For example, both OSHA and EPA statutes include responsibilities for developing or regulating training, and prominent professional and academic groups run training programs.[48] During the 1999 appropriations hearing, one Representative cautioned, "I do not think we need two agencies doing the same thing, and they [OSHA] certainly target those issues [of worker training]. ... And if you do have finite resources, it is extremely important to me that you ... not repeat or duplicate what is already being done."[49] It is a legitimate question whether the Board's authority includes a trainer-educator role.

More important, irrespective of that authority, other factors suggest the CSB should delay its educational efforts in general. First, the CSB is still in the process of learning how best to complete investigations. Second, although there has been some progress, the CSB has yet to implement a program to follow up on its recommendations and maximize its preventive outreach to the

[47] *Ibid.*
[48] For examples, see 42 U.S.C. § 7412(7)(A) and 29 U.S.C. § 651.
[49] House Appropriations Subcommittee Hearing (February 24, 1999).

primary audiences targeted by its investigative reports. Finally, the Board's investigative work to date does not suggest that educating individuals is the best use of the CSB's limited resources. Citing process safety management principles, both staff and Board members have informed us that 85 percent of major chemical accidents can be traced to management system failures, not worker or emergency responder error. During the Board of Inquiry regarding the Morton Specialty Chemical plant explosion, the Director, Office of Investigations and Safety Programs, explained: "[R]oot causes almost always are found or involve problems in management safety systems. In other words, an operator error is typically involved or often involved in any major chemical incident, but it's rarely a root cause. It's a symptom of an underlying problem in management systems."[50] CSB's root cause analyses in the Morton incident, the Sierra Chemical incident, and other reports support this position. If the Director's assertions are accurate, the CSB may apply its understanding of these systemic causes toward accident prevention in a technical and advisory role, as envisioned by Congress and its statutes.

In conclusion, the CSB statute does not specifically address a training role for the agency; and therefore we believe this matter deserves further review before the CSB invests its limited resources there. Taking into account that the CSB is in its fifth year of operation, we caution the CSB not to deviate from its investigative duty before its investigative infrastructure and capacity have fully developed.

Recommendation

We recommend that the Board:

7. Immediately prioritize agency resources to ensure successful execution of all action items related to its investigative performance goal.

Management Comments and IG Analysis

The CSB agreed with our recommendation. The CSB announced during its public meeting on February 27, 2002, that it had taken a hard look at its FY 2002 performance plan and decided to rescind allocations for the SACHE workshop, NIEHS conference, and CCPS membership. At the same time, Board members maintained that they view these outreach projects as a valuable use of CSB resources. Nevertheless, the agency decided not to undertake new outreach or data initiatives, including hiring, until it completes a review of its strategic plan, expected by June 30, 2002. The Board plans to

[50] U.S. Chemical Safety and Hazard Investigation Board: Public Review of Findings for the Morton Specialty Chemical Incident (July 18, 2000).

yet proposed revisions to the strategic plan through Congressional authorizing and appropriating committees.

We concur with the CSB's response and believe that this kind of directional oversight will be helpful. We suggest that the CSB explain in its action plan how it is executing its investigative performance goal.

C. Investigations Infrastructure Still in Development

Although there has been progress, the CSB's Office of Investigations and Safety Programs (ISP) is still developing the staff, training, and experience necessary to fully function and meet the needs of the agency. Therefore, the agency stands to benefit from devoting more of its resources to investigative reporting and infrastructure development. The agency is confronting its investigative workload while still building its investigations infrastructure. Second, although approved, the CSB has not implemented a formal program to follow up on the status of its investigative recommendations. In order to assess the effectiveness of its investigative work, CSB must have the capability to determine whether or not its recommendations have been implemented. This need outweighs any potential benefits of expanding outreach programs at this time.

The current ISP workload exceeds staff capabilities. According to previous budget submissions, the agency's plan is to complete a particular investigation within twelve months and three reports per year, increasing to six per year by 2005. The Bethlehem Steel Burns Harbor Mill report from December 2001 is the first that meets that goal, having been completed within ten months; and the CSB plans to issue two more reports by the end of the summer. The CSB sends a team of six or more investigators plus additional support staff to an accident site during the first weeks of a new investigation.[51] Since the CSB has only nine investigators and four investigative support staff, the current workload—in particular, beginning new investigations while continuing others—overtaxes staff capabilities. Investigators are routinely pulled back and forth between projects, leading to project delays. For example, the report on the BP Amoco Polymers explosion stalled for several weeks because the majority of its team was pulled to work on the Motiva acid tank failure or the reactive hazards study. Building the investigations infrastructure to handle these challenges continues to be a concern for the agency.

Nevertheless, the CSB hired no investigators in the past twelve months, and only recently did the CSB issue its first set of two investigative position

[51] *Initial Budget Request for Fiscal Year 2003*, U.S. Chemical Safety and Hazard Investigation Board (September 10, 2001).

announcements since the CSB's Schedule A hiring authority expired on December 31, 2000. The Board also announced one Recommendations Specialist position. Past experience has shown that hiring investigators is a lengthy process that can span six months or more. The Board decided not to fill the investigator/training coordinator position it created; however, staff maintain that this position is needed to manage the CSB's internal training program, which has yet to be formalized. Greater emphasis is needed on hiring. The agency needs a healthier balance of investigative and overhead positions; people in support positions outnumber investigators by a two to one margin. Not including Board members, the nine investigators account for 31 percent of the agency's resources while the remaining 20 career staff, or 69 percent, occupy indirect support positions.

Moreover, investigators are still learning how to do their job. Since its inception, the CSB has completed seven reports, a safety bulletin, and a case study. Staff are gradually gaining valuable experience in conducting root cause investigations, creating needed regulations, assessing protocols, and setting the precedents necessary to its future success. For example, during the Motiva investigation this past autumn the CSB dealt with the first challenge to its subpoena authority and with issues of witness sequestration. The staff needs time to develop expertise and to craft an integrated, formalized system for managing chemical investigations.

Also, the agency needs to implement its recommendations follow-up program. Partly because the lead recommendations specialist was reassigned to support the Motiva investigation, Board members did not adopt the recommendations program that the CSB presented to the public in September 2001 until December. But the follow-up program still remains idle. Besides illustrating the repercussions of understaffing, this missing element highlights a critical shortcoming in the agency's ability to translate investigative knowledge into accident prevention. Since it does not track report recommendations officially, the Board has not closed a single recommendation, which must be done by vote. Without a working recommendations program, the agency has not yet maximized its preventive outreach to the reports' primary audience, the recommendations recipients. Moreover, the CSB remains unable to attempt a formal assessment of the impact of its recommendations, which raises questions regarding how the agency will measure itself according to the Government Performance Results Act. Although the Board has suggested that educational outreach will improve the CSB's performance measurement, we believe the agency's limited resources could be better spent tracking the implementation of report recommendations.

While the CSB is still building its investigative knowledge base, the agency's work to date does not suggest that educating emergency responders, workers, and managers—a central feature of the Board's outreach activities—is the best use of the CSB's limited resources. It may be feasible for the CSB to isolate the ISP from its outreach activities so that other events do not conflict with

ongoing investigations, and the Board had voted to create a separate organizational unit for this purpose. We stated earlier that the impact of directing some resources to non-investigative work is not altogether known. However, the CSB needs to take a hard look at those outreach activities that are truly suitable to the agency and its mission. The Board should focus less on obtaining consensus guidelines to facilitate the use of incident investigative findings and reports, as noted in one initiative, and concentrate more on promulgating recommendations, regulations, or simply best practices, using its own recommendations. We caution the CSB not to deviate from its investigative obligations before its investigative capacity has fully developed. To that end, the CSB should dedicate its resources to meeting these critical challenges before extending its role in preventive outreach.

Recommendations

We recommend that the Board and Chief Operating Officer:

8. Make the agency's FY02 hiring plans a top priority, and to the extent possible, accelerate the hiring process for new investigators.

Management Comments and IG Analysis

Asserting that hiring staff within the Office of Investigations and Safety Programs is a top priority, the CSB has decided to petition OPM by March 31, 2002, for permanent Schedule A hiring authority for investigative positions. Under temporary Schedule A hiring authority, the CSB successfully hired investigators in FY 2000 and early FY2001.

We concur with the CSB's proposed actions and support the CSB's efforts to obtain permanent Schedule A hiring authority for these positions in order to reach the appropriate applicant pool in a more efficient manner. Previous investigator candidates whom the CSB hired were drawn from the private sector, and the competitive hiring process may artificially limit the applicant pool.

Recommendation

9. Curtail training-outreach initiatives until (a) the Board develops a Strategic Outreach Plan that takes into account the agency's statutory responsibilities, primary audience, and limited resources, and (b) its investigative function is fully operational. The plan should reflect the consensus of Board members, senior management, and staff.

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD,
2175 K STREET, NW SUITE 400,
Washington, DC. 20037–1809, March 8, 2002.

CLIFFORD N. MELBY,
Assistant Inspector General for Inspections,
U.S. Chemical Safety and Hazard Investigation Board,
Office of Inspector General,
Washington, DC 20472.

DEAR MR. MELBY: Thank you for reviewing the U.S. Chemical Safety and Hazard Investigation Board's (CSB) operations and making recommendations to improve the efficiency and effectiveness with which we carry out our important mission.

As you reported, the CSB experienced significant management problems during its first 2 years and has been operating for the past 2 years without a Chairperson or a permanent Chief Operating Officer (COO). You also reported that the CSB needs to address management control and Board member accountability issues, and to work on clearly defining the direction of the agency and focusing resources accordingly. We concur with all of your recommendations for improvement and have already initiated corrective actions in many areas.

We acknowledge that we have had problems, but we have been taking steps to address and resolve these problems. We are pleased to note that meetirngs held in the summer of 2001 aimed at addressing the issue of Board-Senior staff friction are achieving results. In November 2001, as you were completing this review, we held and continue to hold a number of working sessions to resolve many of the issues identified in your report. Action plans, agreements, and other documents developed during these working sessions are available for your review and show our commitment and progress.

We would also like to point out that your report might not adequately allow readers to recognize that in spite of unusual and difficult circumstances in the past 2 years the CSB has made progress and achieved several important accomplishments. For example, in fiscal year (FY) 2001 the CSB was able to launch investigation assessment teams to five incidents, three of which resulted in conducting full investigations. Further, we met our goal of completing the first of these investigations in less 1:han 12 months, and the others are nearing completion. In the past year we have also worked on an important hazard investigation related to reactive chemicals and completed work on all of the backlogged cases that were left over from the CSB's former management. In addition to progress on investigation work, the CSB has made significant progress in establishing its infrastructure, for example our first full financial audit received an unqualified opinion. We also received positive reports from the Office of Personnel Management regarding our human capital management and from the Office of Government Ethics regarding our ethics program.

The CSB will take positive action to address the concerns raised in your report. The following discussion addresses each of your recommendations and the actions we have taken and/or plan to take to operate in a more effective and efficient manner.

OIG Recommendation 1. Recommend the Board establish the necessary protocol, and then designate, an acting Chairperson or Vice-Chair. In the absence of a Chairperson, the Vice-Chair should be the chief executive and administrative officer with authority to appoint and supervise the staff, distribute business among the agency's personnel and administrative units, and control the preparation of the agency's budget and expenditure of funds.

We agree with your recommendation. When the former Chairperson resigned in January 2000, the remaining Board members and General Counsel explored the possibility of delegating the Chairperson's executive and administrative functions to one Board Member until the President appointed and the Senate confirmed a new Chairperson. The White House Counsel advised against this course of action. After an unanticipated 2-year vacancy in the position of Chairperson, the CSB will again pursue appointing an acting Chairperson. As a first step, the Board will request a binding legal opinion on the legality of the appointment of an acting Chairperson from the Office of Legal Counsel of the U.S. Department of Justice. This request will be submitted by March 31, 2002.

OIG Recommendation 2. Recommend the Board delegate to the COO the authority to effectively manage the day-to-day operations of the CSB. The delegation should be consistent with the duties set forth in the COO's position description.

We agree with the recommendation and will codify our delegation of authority to the COO to effectively manage the day-to-day operations of the CSB. Consistent

with the duties set forth in the COO's position description, the delegation will include authority to:

- Oversee and carry out administrative and operational functions of the CSB, such as financial management operations, human resource management, public/government affairs and outreach, and administrative support operations;
- Direct and oversee strategic planning to meet the Board's objectives;
- Deploy investigation teams and oversee all substantive investigation and safety mission-related programs; and
- Manage policy development and implementation, program integration and management, and advisory services in concert with the Board's general guidance and direction.

The delegation will be accomplished by a Board Order, and we plan to have a draft available for the OIG to comment on by April 30, 2002.

OIG Recommendation 3. Recommend the Acting COO develop a written strategy for identifying, prioritizing, and improving the agency's system of management controls. Particular attention should be paid to establishing accountability mechanisms, including separation of duties. This may be accomplished through a senior management council below the Board level consisting of managers and key staff, who would review controls, assess and report on deficiencies, and provide input on their improvement and priority.

We agree with the recommendation and the COO will develop a written strategy for identifying, prioritizing, and improving the CSB's system of management controls. This strategy will include your suggestion of a management council below the Board level to oversee and audit operations. We plan to have a draft of the strategy available for the OIG to comment on by June 1, 2002.

OIG Recommendation 4. Publish regulations that comply with the requirements of the "Government in the Sunshine Act. " The regulation should: (a) sped what mechanism the CSB will use to protect public rights during quorum assemblies, such as having General Counsel present, (b) clarify whether any item:, of Board business, such as investigative reports, necessitate public discussion and cannot be accomplished by notation vote alone, (c) clam whether the CSB will hold regular meetings and under what types of exceptions it would cancel or schedule additional meetings, such as Boards of Inquiry, (d) require the CSB to publish votes and public meeting transcripts on the web, (e) establish the public reading room as promised by the CSB 's FOIA regulation, and (fl direct the CSB to submit an annual Sunshine report to Congress.

We agree with the recommendation and will publish a regulation that complies with the requirements of the "Government in the Sunshine Act" and otherwise addresses the issues raised by the OIG. We plan to have the regulation published by May 1, 2002. In the meantime, we will implement an interim Sunshine Act Compliance program by March 31, 2002. Also, we held a public meeting on February 27, 2002 to discuss the status of the CSB's performance goals 1.1, 1.2, and 1.3 of our strategic plan and efforts toward hiring a permanent COO. In addition, we will establish a FOIA reading room.

OIG Recommendation 5. Revise policies and procedures io reduce Board member involvement in the soliciting and awarding of contracts. Such measures should include vesting administrative aspects of the procurement process in the Acting COO and raising the minimum procurement amount requiring Board approval.

We agree with the recommendation and will make appropriate revisions to our policies and procedures to reduce Board Member involvement in the soliciting and awarding of contracts. Key revisions will include vesting administrative aspects of the procurement process in the COO and limiting Board Member involvement in the procurement process to the final approval of goods or services valued at $50,000 or more. We plan to have the revisions completed by May 31, 2002.

OIG Recommendation 6. Recommend the COO develop and implement a system that links strategic planning to resource allocation decisions, and measures performance in a way that balances productivity and costs with desired outcomes.

We agree with the recommendation. The COO is developing a system to link strategic planning to resource allocation decisions, and measures performance to balance productivity and costs with desired outcomes. The CSB is now monitoring progress on performance goals using work plans. We are also developing a system to track staff hours to performance goals. We plan to have this system in place by April 30, 2002.

OIG Recommendation 7. Recommend the Board immediately prioritize agency resources to ensure successful execution of all action items related to its investigative performance goal.

We agree with the recommendation and have taken a hard look at our performance plan for fiscal year 2002. To ensure we prioritize resources on oar investigative goal we will rescind the following initiatives related to outreach:

- Conducting a workshop with the Safety and Chemical Engineering Education Committee;
- Co-sponsoring a conference with the National Institute of Environmental Health Sciences; and
- Obtaining membership in the Center for Chemical Process Safety.

Further, we will not undertake new initiatives or hiring for outreach or data until we review our strategic plan to ensure the CSB is focused on the successful execution of our investigative performance goal. We plan to have this review completed by June 30, 2002, and proposed revisions will be vetted with our congressional authorizing and appropriating committees.

OIG Recommendation 8. Recommend the Board and COO make the agency's fiscal year 2002 hiring plans a top priority and to the extent possible, accelerate the hiring process for new investigators.

We agree with the recommendation and hiring staff within the Office of Investigations and Safety Programs is a top priority. To accelerate filling these critical positions, the CSB will petition OPM for permanent Schedule A hiring authority for investigative positions. Under temporary Schedule A hiring authority the CSB had a very successful hiring program in FY's 2000 and 2001. We plan to submit a request for Schedule A hiring authority to the Of Fice of Personnel Management by March 31, 2002. In addition, we ask for your support in getting Schedule A hiring authority, which is the key to getting new investigators on board as quickly as possible.

OIG Recommendation 9. Recommend the Board and COO curtail training-outreach initiatives until (a) the Board develops a Strategic Outreach Plan that takes into account the agency's statutory authority responsibilities, primary audience, and limited resources; and (b) its investigative function is fully operational. The plan should reflect the consensus of the Board members, senior management and staff.

We agree with the recommendation and have curtailed the, training-outreach initiatives identified under recommendation 7. We are developing a strategic outreach plan that we expect to finalize by April 30, 2002. As previously stated, we will also review our strategic plan to ensure that the CSB is focused on the successful execution of our investigative performance goal.

OIG Recommendation 10. Recommend the Board and COO implement a follow-up program for recommendations made in investigative reports, including monitoring recommendations, closing recommendations when corrective actions are taken, and periodically publishing the status of them. In order to better measure the impact of report recommendations, the program should be tied to the performance measures identified in the agency's performance plan.

We agree with the recommendation and plan to undertake the following:

- Vote to close out 20 of our past recommendations by March 15, 2002.
- Implement an internal tracking system for recommendations status including a data base and electronic file system for correspondence and documentation by March 30, 2002.
- Hold a public meeting to formally close a number of other recommendations by May 31, 2002.
- Implement a publicly accessible data base on the Work. Wide Web for CSB's recommendations status by October 2002.
- Include the percentage of recommendations adopted as a significant factor in measuring the effectiveness of CSB's mission accomplishment.

Again, we thank you and your staff for your efforts and recommendations to improve the efficiency and effectiveness with which we carry out our important mission.

Sincerely,

GERALD V. POJE, *Board Member*
ISADORE ROSENTHAL, *Board Member*
ANDREA KIDD TAYLOR, *Board Member*

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