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HEARING ON EXAMINING THE PRESIDENT'S FISCAL YEAR 2017 BUDGET
REQUEST FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Tuesday, April 19, 2016

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:02 a.m. in room 406, Dirksen Senate Office Building, the Honorable James Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Boxer, Vitter, Barrasso, Capito, Boozman, Wicker, Fischer, Rounds, Sullivan, Carper, Cardin, Whitehouse, Gillibrand, Booker and Markey.

STATEMENT OF THE HONORABLE JAMES M. INHOFE, A UNITED STATES
SENATOR FROM THE STATE OF OKLAHOMA

Senator Inhofe. The hearing will come to order.

First of all, welcome, Administrator McCarthy. We appreciate you being here. As I said to you before the meeting, this may be the last positive note, but I want to start off on a positive note, and that is I want you to commend your staff that has been working on TSCA with us. It has been very, very difficult, and it looks like now we are just a matter of hopefully hours away of having agreement with the House. But without your staff concentrating on that, it really couldn't have happened, so I hope you will share that with them. I am sure maybe they are watching now.

Administrator, the President has requested almost \$8.3 billion to fund EPA next fiscal year, an increase of more than \$87 million from last year's enacted. I would like to address what I believe are misplaced priorities and how the President is sacrificing EPA's core programs to advance his climate agenda.

The President is seeking - and I had two different sources here. I think the figure is accurate. The total amount he is seeking would be \$235 million to implement the Clean Power Plan, even though EPA has testified before this Committee that they have done no modeling whether the rule would have any impact on global temperature change and the Supreme Court has stayed it

from going into effect because of ongoing litigation which could well last until 2018.

The President is intent on picking winners and losers in the energy economy. The budget request makes clear the President's intention to now squeeze the oil and gas sector through costly new regulations and increased inspections and enforcement, much like it did with coal mines and power plants at the beginning of the Administration. Another example is how the budget requests \$300 million in mandatory funding, or more than \$1.6 billion over 10 years, to pay for charging stations for electric vehicles and other subsidies to remake our transportation infrastructure.

Meanwhile, the President again proposes cutting \$40 million from the very successful diesel emission retrofit program that Senator Carper and I support. The budget would also eliminate State grants to address radon, even though radon is the second leading cause of lung cancer.

In the hearing earlier this month, we heard testimony about the challenges faced by States and local governments in meeting EPA clean water mandates. But the President's budget would cut \$414 million from the Clean Water State Revolving Fund which helps these very same States and local communities pay for improvements to sewer and wastewater treatment systems.

Regardless of what one thinks about the President's policy goals, here are a few objective results: The Supreme Court has stayed the Clean Power Plan, the centerpiece of the President's climate legacy, over questions that EPA exceeded the limits of its authority under the Clean air Act.

A headline in the New York Times and report by the GAO about EPA's violating the law by using taxpayer money for covert propaganda and illegal lobbying to support the Waters of the U.S. rule. Injunctions were issued to halt the WOTUS rule itself by the Sixth Circuit and a federal district court in North Dakota. Last year's Supreme Court decision remanding a rule to limit mercury emissions from power plants because EPA ignored costs.

As we have seen from the Gold King Mine blowout and the contaminated drinking water in Flint, Michigan, EPA has at times been distracted from fulfilling its core missions due to the Obama Administration's single-minded focus on remaking EPA into an agency that regulates climate change and the energy sector.

The members of this Committee and I look forward to asking you about the EPA's priorities and regulatory agenda.

Senator Boxer.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES
SENATOR FROM THE STATE OF CALIFORNIA

Senator Boxer. Thanks, Mr. Chairman.

Welcome, and I will defend you as much as possible from what is coming at you.

EPA's work implementing our Nation's landmark laws to address clean air, children's health, safe drinking water, toxics, and water quality in America's lakes and rivers is essential for public health and safety. Despite my colleague's chagrin, the work of the EPA to keep our families healthy is widely supported in poll after poll after poll where the opinion of this Senate and this House is probably around the 17, 18 percent range at best. So let's be clear what we are talking about.

Vast majority support your work and, sadly, vast majority think that we are not doing our jobs or not doing it well. That is sad.

Now, on the budget, EPA's budget of \$8.27 billion is down from seven years ago when the budget was \$10.3 billion. It is a sad situation, and I am sorry that the President didn't make this a bigger priority. I guess it is \$127 million increase above 2016, but there are cuts in this budget where I agree with my colleague that are wrong.

So the problem is not enough money in the budget. That is what I think. And you are asked to do more with less, and you get criticized when you don't have a Johnny-on-the-spot answer when they have cut you like this over the years.

It is important that EPA continue to focus on combatting dangerous climate change, which is happening all around us. For example, 2015 was the hottest year on record; 15 of the 16 warmest years on record have occurred in the 21st century. Sea levels are rising many times faster than they have only in the last 2,800 years. That is all. We see record rainfalls, record droughts, record fires, and scientists are saying too much carbon pollution in the air caused by human activity.

Young people, when asked about this, think that those people who don't recognize this as a threat are out of touch, and that is a nice way to put it. They say worse than that.

EPA also has a critical responsibility to ensure drinking water is safe, and the American people have a right to expect that they will not be poisoned when they turn on their faucets. Small point, right? The lead poisoning of children in Flint is a tragedy, and we must commit to never let it happen again. The State of Michigan failed the people of Flint, is primarily responsible, in my view, because they changed the source of the water to save a few bucks; it ignored multiple warnings that it was poisoning its own citizens, and EPA has a responsibility to

speak out when it sees action being taken that could harm public health. EPA could have, and should have, done more, and I hope the actions taken by EPA since the Flint crisis will help prevent similar tragedies from taking place in the future.

This problem is far more widespread than is acknowledge. I know of cases in Mississippi, California, where they have turned off the drinking water for the children. Obviously, the older the pipes, the worse the problem. But the offense in Flint demonstrates we have a long way to go to provide reliable, safe drinking water to all Americans and in cleaning up the waterways that serve as sources of our drinking water.

The American Society of Civil Engineers gives our Country's drinking water and wastewater infrastructure a big fat D. It is embarrassing that this, the greatest Country in the world - a lot of people say let's make America great again. America is great. But how do we stand here with an infrastructure rated D, or sit here, as the case may be?

The American Water Works Association estimates that 7 percent of homes, 15 to 22 million Americans, have lead service lines. This is unacceptable. We have to continue to invest in improving the Nation's failing water infrastructure.

We are very happy about WIFIA. This is a program Senator Inhofe and I and all of the Committee worked on together to leverage private financing for critical drinking water. But

WIFIA shouldn't be a replacement for the State Revolving Funds. I agree with my colleague on that. Our Nation's infrastructure needs far outstrip the funding available, and the proposed \$257 million cut to the State Revolving Funds will make this funding gap worse.

Administrator McCarthy, you have a tough job, but the American people do support your mission, as I said. In poll after poll they favor the efforts to address climate change, clean up the air, protect our water, and provide safe drinking water to 117 million Americans. You are doing essential work.

For some reason this issue has become a partisan divide. It is my biggest regret, as I get ready to leave the Senate that I love so much, to see this divide. It is sad. We will see it on display today. It will speak for itself.

Thank you.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Administrator McCarthy.

STATEMENT OF GINA MCCARTHY, ADMINISTRATOR, ENVIRONMENTAL
PROTECTION AGENCY; ACCOMPANIED BY: DAVID BLOOM, CHIEF FINANCIAL
OFFICER, ENVIRONMENTAL PROTECTION AGENCY

Ms. McCarthy. Chairman Inhofe, Ranking Member Boxer, I really appreciate the opportunity to appear before you today to discuss EPA's proposed fiscal year 2017 budget, and I am joined today by the Agency's Deputy Chief Financial officer, David Bloom.

EPA's budget request of \$8.267 billion for the 2017 fiscal year lays out a strategy to ensure steady progress in addressing environmental issues that affect public health. For 45 years our investments to protect public health and the environment have consistently paid off many times over. We have cut air pollution by 70 percent and cleaned up half of the Nation's polluted waterways all the while our national economy has tripled.

Effective environmental protection is a joint effort of the EPA, States, and our Tribal partners. That is why the largest portion of our budget, \$3.28 billion, or almost 40 percent, is provided directly to our State and Tribal partners. In fiscal year 2017, we are requesting an increase of \$77 million in funding for State and Tribal Assistance categorical grants in support of critical State work and air and water programs, as well as continued support for our Tribal partners.

This budget request also reinforced EPA's focus on community support by providing targeted funding in support for regional coordinators to help communities find and determine the best programs to address local environmental priorities.

The budget includes \$90 million in Brownfield Project grants to local communities. That is an increase of \$10 million, which will help return contaminated sites to productive use.

This budget prioritizes actions to reduce the impacts of climate change and it supports the President's Climate Action Plan. It includes \$235 million for efforts to cut carbon pollution and other greenhouse gases through common sense standards, guidelines, as well as voluntary programs.

The EPA's Clean Power Plan continues to be a top priority for the EPA and for our Nation's inevitable transition to a clean energy economy. Though the Supreme Court has temporarily stayed the CPP rule, States are not precluded from voluntarily choosing to continue implementation planning. EPA will continue to assist States that voluntarily decide to do so.

As part of the President's 21st Century Clean Transportation Plan, the budget also proposes to establish a new mandatory fund at the EPA, providing \$1.65 billion over the course of 10 years that will be used to retrofit, replace or repower diesel equipment, and up to \$300 million in fiscal year

2017 to renew and increase funding for the Diesel Emissions Reduction Grant Program. The budget also includes a \$4.2 million increase to enhance vehicle engine and fuel compliance programs, including critical testing capabilities.

We also have to confront the systemic challenge that threatens our Country's drinking water and the infrastructure that delivers it.

This budget includes a \$2 million request for State Revolving Funds and \$42 million in additional funds to provide technical assistance to small communities, loan financing to promote public-private collaboration, and training to increase the capacity of communities and States to plan and finance drinking water and wastewater infrastructure improvements.

The EPA requests \$20 million to fund the Water Infrastructure Finance and Innovation Act Program, or WIFIA, which will provide direct financing for the construction of water and wastewater infrastructure by making loans for large innovative projects of regional or national significance.

This budget also provides \$22 million in funding to expand the technical, managerial, and financial capabilities of drinking water systems. Included is \$7.1 million for the Water Infrastructure and resiliency Finance Center, as well as the Center for Environmental Finance that will enable communities across the Country to focus on financial planning of upcoming

public infrastructure investments, to expand work with States to identify financing opportunities for rural communities, and to enhance partnerships and collaboration with the U.S. Department of Agriculture.

EPA is also seeking a \$20 million increase to the Superfund Remedial Program, which will accelerate the pace of cleanups, supporting States, local communities, and Tribes in their effort to assess and clean up sites and return them to productive use.

EPA's fiscal year 2017 budget request will let us continue to make a real and visible difference to communities and public health every day, and provide us with foundation to revitalize the economy and improve infrastructure across the Country.

Thank you for the opportunity to testify today, and I look forward to answering your questions.

[The prepared statement of Ms. McCarthy follows:]

Senator Inhofe. Thank you, Madam Administrator.

First of all, in light of what is going on right now, you have the Supreme Court and their stay is taking place on the Clean Power Plan. I wrote EPA a letter on March the 10th on this topic, but the response received yesterday doesn't really answer the question, I don't believe.

EPA's letter states that it will not need to submit initial plans by September 6th of 2016, as initially stated. But it doesn't say about after that, because in 2018 it would seem to me that as long as the stay is there, and, of course, it is going to be there until all the legal problems are cleared up, 27 States, including my State of Oklahoma, is suing you at this time.

So it is going to be at least probably 2018. Now, 2018 happens to be the deadline of the final. Now, is that deadline going to be delayed also, the same as the deadline for the beginning that would have taken place on September the 6th?

Ms. McCarthy. Well, Senator, what we do know is that the implementation of the rule is currently stayed. The Supreme Court didn't actually speak to any of the tolling issues regarding the compliance requirements. We certainly know that the issue will not be resolved by this coming October and September. Beyond that, the courts are going to have to speak to that issue when decisions are made.

Senator Inhofe. But as far as deadlines, you have these people out there right now looking at deadlines in different States, different counties, the private sector. Are you saying that you are not prepared now to extend those deadlines like you did the initial deadline of September 6th?

Ms. McCarthy. No, sir. We are stayed in terms of moving forward to implement the rule as it currently exists, and we need to wait for the court to make those decisions.

Senator Inhofe. And I assume the same thing is true with WOTUS?

Ms. McCarthy. That is correct.

Senator Inhofe. Okay, now, I think the majority would not agree with that.

I want to mention one other thing, and this time goes by pretty fast. On December 14th the Government Accountability Office, the GAO, found the EPA violated the Anti-Deficiency Act and appropriations law restrictions on covert propaganda and grassroots lobbying in promoting the WOTUS rule. Now, the Anti-Deficiency Act requires the EPA to report immediately to Congress and to the President about the violation. Have you done this?

Ms. McCarthy. We actually have our response at OMB now and they are looking at that. We have not, as far as I know,

identified resources that were attributable to the two issues out of many that GAO identified.

Senator Inhofe. Now, who has that now?

Ms. McCarthy. The office of Management and Budget is looking at our corrections, as well as any identified resources that went into those two issues that GAO identified.

Senator Inhofe. And you are saying that is going to happen before this Committee is going to be in a position to evaluate this? Because when they say report immediately to Congress, that is us.

Ms. McCarthy. Yes. Well, sir, these are two issues. They are both social media issues, one related to a blog, the other related to the use of a social media that we used in accordance with OMB guidance. We haven't really identified significant funding that went into either of those two actions.

Senator Inhofe. Well, okay. I would say this: That is something that this Committee is very concerned about.

I do want to get one other issue out there, the ozone. We have talked about this in the past.

Ms. McCarthy. Yes.

Senator Inhofe. We have the requirements, parts per million or the parts per ppb, and it appears that we set standards, then go down the road, and before the counties, now this is confusing because you really think in terms of the

number of people, the population. What happens, the 210 counties account for 40 percent of the American population. So we have 40 percent of the American population from those counties not in compliance with the 75 parts per million.

Now, what was the reasoning behind going over and now saying, even before you do that, we are going to set a new standard of 70 parts per million? What is the logic?

Ms. McCarthy. Well, very quickly, what happened was that the prior administration moved forward with an ozone standard that the courts deemed was not legally solid and based on sound science. They kicked it back to the Agency. The court dictated us to resolve that issue in a specific timeframe, and then we also had obligations under the Clean Air Act to continue to look every five years at whether those standards need to be adjusted. So it ended up squeezing the system a bit.

Senator Inhofe. It doesn't mean you have to set those standards, yet. You have to, you say, look at them.

Ms. McCarthy. Yes.

Senator Inhofe. Right now Senators Thune and Flake have legislation, you are familiar with that legislation, where it says that until 85 percent of the counties have, although it could be interpreted as to the population, but 85 percent of the counties have complied, we are not going to be setting new standards. Is that reasonable or is that unreasonable?

Ms. McCarthy. Well, there is no inconsistency with continuing to move in a fashion that is reasonable to continue to look at how we achieve health standards moving forward. We have always had great success over time, and there is no threat to establishing a standard on health as long as the implementation is reasonable and appropriate, which we believe it is and has been.

Senator Inhofe. Well, I was the mayor of Tulsa when we were out of compliance, and it was very, very difficult. So these people are going through the punishment phase before they have had a chance to accomplish.

Ms. McCarthy. Well, we don't think of it as a punishment phase.

But the good news is that when we are looking at the ozone standard, even the most stringent one that we just established at 70 part per billion, we are only looking at about a dozen counties that would be out of attainment by 2025, if you don't count the counties in California, which we know have unique geographic challenge.

So we actually think that they can use the systems already in place, the rules have been put in place, that reducing NOx and VOC emissions to achieve national compliance, as well as address significant problems at the county level. So we are actually moving in a way that is consistent with the direction

that the Nation is heading, and the good news is that we have had so much success in reducing NOx and VOCs that this should not be a significant burden to any county.

Senator Inhofe. Well, it is a burden because we have been there.

Senator Boxer?

Senator Boxer. Administrator McCarthy, my State just experienced a massive natural gas leak at Aliso Canyon that released 96,000 metric tons of methane into the atmosphere. Until the well was capped, the leak accounted for 20 percent of California's total methane emissions, and that is a potent greenhouse gas, as we all know. This highlights the need to improve controls for methane emissions.

I am pleased the EPA has made it a priority to cut methane emissions from existing sources of methane. When do you expect to propose standards for existing sources? Give me an idea.

Ms. McCarthy. Well, Senator, we are moving forward hopefully very soon with the release of the information collection request, which is really the fundamental information we need in order to regulate effectively under the law. So we are looking at opportunities to move quickly this year, as well as continue that.

Senator Boxer. Well, when do you expect to propose standards? I mean, I know you are going to start. Just give me

a sense of it. It may be the next administration, but when do you think you will have these?

Ms. McCarthy. Well, we certainly would have a significant information next fiscal year, but we are not ruling out an opportunity to continue this this year.

Senator Boxer. Well, just count me as one person who thinks this is essential, because what a nightmare we have had.

Administrator McCarthy, EPA's proposed revisions to its Risk Management Program regulations will add new requirements for chemical facilities to improve safety. I have had to deal with this when I was chairman of this Committee, these horrific explosions because of the failure to really have the best safety standards at these plants.

So the rule is long overdue. OMB's Website indicates EPA intends to publish a final rule by the end of 2016. Can you assure this Committee that you can complete that rule on time?

Ms. McCarthy. We are fully prepared to complete that rule on time. It is out; it is open for comment. We are looking forward in delivering that to the American people by the end of this year.

Senator Boxer. So your intent is to have the rule by the end of 2016.

Ms. McCarthy. We do intend to do that.

Senator Boxer. Okay. Administrator, the drinking water crisis in Flint highlights the need to address the Nation's failing water infrastructure. We don't have to go into the pain and suffering of that community, those little kids facing lives that are very problematic because of this failure of Government to provide them with safe drinking water.

So I don't know quite why your budget request is a net cut of \$257 million for these State Revolving Loan Programs. So in light of those cuts, can you explain how EPA will ensure adequate investments in clean water and drinking water?

Ms. McCarthy. Well, we are looking to supplement the State Revolving Fund with other specific investments, but you are right, it is -

Senator Boxer. What does that mean? What does that mean?

Ms. McCarthy. Well, we are looking at investments that will go to support WIFIA. We are looking for investments that would go to support our financing strategy, where we are working with States. There is no question that we are sympathetic to the need for more State Revolving Fund monies, and we will try to work with communities and States to make the most of this.

But the challenge we have is that our operating budget is significantly limited and we have to look at presenting a budget that is reasonable and appropriate for the full range of responsibilities that the Agency has.

Senator Boxer. Well, let me just say I am very sympathetic to your problems, but at the end of the day I would hope to see EPA fighting for a budget that meets the needs of the people. So, again, when we look back all those years ago, we are spending \$2 billion more.

Now, I know my colleagues probably on the other side of the aisle would not agree with me on this one, but I don't get how we can be spending less than we did several years ago when we have aging infrastructure. And I agree it is wonderful to have this leveraging, the WIFIA program, but it shouldn't replace the State Revolving Funds.

It is upsetting because WIFIA was not meant to be a replacement, and I think my colleague and I would agree, to the State Revolving Funds. We want to have the State Revolving Funds be healthy and then have the leveraging ability of a WIFIA to come into play.

So can you talk about the steps EPA has taken since the Flint crisis to avoid a repeat of this disaster?

Ms. McCarthy. Certainly. Well, first of all, we are working very hard in the City of Flint to restore that water system appropriately. We have also written to every governor in every primacy agency at the State level to make sure that they are looking at reviewing all of the data.

They are looking at being transparent, notifying individuals and homeowners when they see lead increasing. We are looking at opportunities to bring together both people to look at what went wrong in Flint. We are looking at our lead and copper rule to strengthen it, as well.

So we are taking a number of steps and also would like to continue the dialogue on infrastructure investments, where we recognize that we simply have aging infrastructure, well beyond the lead challenge, that needs to be addressed that is currently hard to envision how we are going to maintain safe drinking water not just for legacy problems like lead, but for some of the new contaminants we are seeing.

Senator Boxer. Well, Administrator McCarthy, my time is up, but I do want to say this to you as we wind down our current jobs. I think it is the role of EPA to get ahead of these kinds of crises; not to whisper in the ears of the State, but to yell in the ears of the State when we know facts.

Now, there is a lot we know about lead. We know what it does to children; we know what it goes to fetuses; we know what it does to sick people. We need to get out in front, not whisper in the ears of people, because the people don't want to hear the bad news.

So I am going to count on you and push you to do that. And if my colleagues yell at you, you can say it is my fault. But

we need to get ahead of this stuff because the people are counting on us. All you have to do is look at the faces of those people there who are poisoned. That is murder by any other definition. That is a felony, because we know what lead does; it is not a great mystery.

Ms. McCarthy. I would expect nothing less of you than to push us to do that.

Senator Boxer. Okay.

Senator Inhofe. Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman, for convening this important budget oversight hearing today. The oversight function of this Committee is critical to ensuring taxpayer dollars are spent in a judicious and also an accountable manner. The EPA must be accountable to the American people. There isn't a day that goes by that I don't hear concerns from my constituents about the impacts of the EPA regulations on Nebraskans.

For example, Nebraska's public power utilities are grappling with how they could ever comply with the EPA's carbon emission reduction mandates. The City of Omaha is struggling with the Agency's expensive CSO mandate and drinking water affordability. Nebraska's farmers are waiting on new crop technology products that are stuck in a broken regulatory

process. Our ethanol producers are desperate for certainty under the RFS.

Homebuilders, transportation stakeholders, and local government officials are concerned about the Federal Government expanding control over our State's water resources. Communities and small business owners fear that the EPA's ozone mandate will stunt potential economic development and growth. Families are concerned about the future of their livelihoods due to the EPA's activist role, the consequences of which could lead to the elimination of entire industries.

The EPA has an enormous impact on the American people. For this reason, it is important that this Agency be open, transparent, and take responsibility for its actions. Throughout this Administration, we have witnessed the EPA's misguided actions that have negatively impacted families all across this Nation.

For example, in 2012, the EPA conducted aerial surveillance of feed yards in Nebraska. These properties are not only places of work, but they are homes where Nebraskans live and where they raise their children. The EPA also joined the Army Corps of Engineers to propose and finalize the very intrusive Waters of the U.S. rule, which threatens the economic security of countless Nebraska families.

Moreover, a GAO report found that your agency broke the law by gathering public support for the misguided WOTUS rule through the use of social media. In another, more recent example, an EPA grant to the Northwest Indian Fisheries Commission was used to fund an anti-farmer advocacy campaign in Washington State. The billboard's website, radio ads, and other social media associated with this campaign villainized farmers and ranchers, and I found this initiative, which was funded by your Agency, extremely troubling.

As we conduct our discussion today, I would ask you to bear in mind that these Americans, both in Nebraska and across the Country, who work hard each and every day to protect our treasured environment and natural resources, are important.

As I mentioned in my opening remarks, Administrator, recent revelations have come to light regarding how the What's Upstream? campaign has been funded, and that was through an EPA grant. The financial assistance that your agency gave to fund this lobbying campaign is a blatant violation of Federal law. Even more disturbing is the revelation that a 2014 inspector general's report found this EPA region had insufficient protections in place to ensure against using these funds for lobbying purposes.

So I would ask you, at what point did your Agency become aware of the misuse of EPA funds for the What's Upstream?

Campaign and what role did EPA have in reviewing that billboard and website?

Ms. McCarthy. Well, I cannot give you the exact date, but I can assure you that EPA also was distressed about the use of the money and the tone of that campaign, and we have put a halt to reimbursements of any funds under that. It is a subcontract and we have told our contractor that we need to have a full discussion and review before additional monies are expended. And I do know that the most egregious tone was reflected on billboards. That will not be reimbursed through this fund.

Senator Fischer. Thank you.

I would ask you, are you planning on putting protections in place in the Agency so that we can be sure that grant funds aren't used in that manner in the future?

Ms. McCarthy. I think we need to re-look at the details and the scope of our contract so that subcontractors that are then used not only meet the legal merits of what we have to do, but also reflect the tone and the interest of EPA in collaborating with agriculture on these issues.

Senator Fischer. Thank you.

Could you get information to my office about what policies and procedures that you are putting place that would prevent misuse in the future?

Ms. McCarthy. Certainly.

Senator Fischer. Thank you. I know all of my colleagues join me in supporting agriculture, and especially our families who work hard every day to produce a safe, affordable, healthy product in order to feed the world.

Thank you.

Senator Inhofe. Thank you, Senator Fischer.

Senator Barrasso.

Senator Barrasso. Thank you, Mr. Chairman.

There is an April 7th Wall Street Journal story, Toxic Spill Fears Haunt Southwest. This has to do with the spill about six months ago that the EPA crew accidentally caused where you unleashed waste at a gold mine, the spring snow melt, as it says, threatens to stir up pollutants. So the people in the area are concerned that as the snow melts and comes down.

The article talks about a 46 year old oilfield worker about the contamination. It says, "The EPA hasn't returned to conduct more tests, and now Mr. Dils and others are worried that lead and other toxic materials that settled in the river will be stirred up." And just to remind folks, this is the one, you have seen the picture, the mustard orange colored river, 3 million gallons of toxic material that poured into that river.

So he said they are worried that these toxic chemicals will be stirred up, contaminate the river again as the Animas swells with spring snow melt from the Rocky Mountains. So he says,

"I'm nervous about the long-term effects." Says, "It will be a matter of testing our well continuously, and we don't have the money to do it."

So in your oral testimony before the Indian Affairs Committee specifically related to that toxic spill, you stated that the EPA water results, in your words, "indicated that water and sediment have returned to pre-event conditions." This gives, I believe, an incomplete picture of the long-term impacts of this EPA-caused environmental disaster. Ppeople in the area are referring to the EPA and they are saying EPA stands for the Environmental Polluting Agency, the Environmental Poisoning Agency.

As Senator Boxer just said, look at the faces of those who were poisoned. This is murder. This is Barbara Boxer's quote about what happens when people are poisoned. She, a little earlier, said this is murder; and that's the way people in the area feel about what has happened.

Communities want to know if their families will be safe as a result of the disaster that the EPA has caused, and you said it will take responsibility for. They need money for testing, and what EPA has offered in terms of technical support and long-term monitoring isn't nearly enough.

So when the Indian Tribes impacted wanted a follow-up hearing to examine these issues specifically in that location,

at first the EPA refused to even send a witness to testify in person. The hearing is going to be this Friday, Earth Day. Instead, the EPA offered only written testimony.

As a result, the Senate Indian Affairs Committee has had to issue a subpoena, something that the Indian Affairs Committee hasn't had to do since the Jack Abramoff scandal. That puts you and the EPA in a very exclusive club, and it shouldn't have happened. This was a bipartisan subpoena.

We are holding this field hearing to do oversight into this catastrophe that the EPA has caused. So the Indian Affairs Committee, both Democrat and Republican Senators, have now given you and EPA, or EPA Assistant Administrator Stanislaus an opportunity to testify at the field hearing Friday in person.

So my question is, this Friday, are you planning to go to New York for the signing of the Paris Climate Agreement, stay here, or will you take this opportunity to face the people, the Navajo Nation, other Tribes whose communities were poisoned, and commit to them, as well as all the affected communities of this spill, the people who were poisoned, that you will provide them with the testing and the funding they actually need to assure that their families will be safe?

Ms. McCarthy. Well, Senator, there may be some confusion, but I was actually never invited to this hearing. Mathy

Stanislaus was originally and Mathy Stanislaus will be attending.

Senator Barrasso. So you have been subpoenaed as a result of the EPA's decision to send no one, so we named you and Mathy Stanislaus, either/or. So my question is does the buck stop with you or with Mr. Stanislaus?

Ms. McCarthy. Mathy Stanislaus will be attending the meeting, and we did our best to communicate with your staff to let them know that we were happy to send somebody before the subpoena was issued. We failed to be able to have those calls and communications returned to us.

Senator Barrasso. I wanted to switch topics to the more than 2,400 jobs that have been lost in the energy sector in Wyoming since January. They are good-paying jobs, benefits that provide for Wyoming families. You stated before the Environmental Council of the States, on April 13th of this year, that "I can't find one single bit of evidence that we have destroyed an industry or significantly impacted jobs other than in a positive way." That is your quote.

I don't know what you are talking about. I hear it every day back in my State, in Wyoming, heard it this weekend, how EPA regulations are destroying the coal industry. Your regulations are costing jobs. Are you going to tell the laid-off coal miners in Wyoming and West Virginia and Kentucky that you take

no responsibility whatsoever for what is happening in coal country?

Ms. McCarthy. Sir, I think our responsibility is to make sure that when the energy system is shifting, as it is in the market today, that we do everything we can to help those communities and those folks be able to cope with a shift in the economy and the energy system that we are seeing. And I am happy to have any of those conversations if I can be helpful.

Senator Barrasso. So based on your quote of April 13th, you are saying you are not responsible for even one job loss in coal industry.

Ms. McCarthy. Sir, that is not what my quote said, but what I would indicate to you is I believe that the energy system has been shifting since the 1980s, and it is time that we work with those communities and individuals to make sure that everybody in the United States has an opportunity to live well. And there are challenges in those communities, without question, but the vast majority of that is related directly to the market shift, not to EPA regulation.

Senator Barrasso. Mr. Chairman, I will point out that 2,400 jobs have been lost in the energy sector in Wyoming since January, and I believe it is directly a result of the EPA actions. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Barrasso.

Senator Markey.

Senator Markey. Thank you, Mr. Chairman, very much.

And thank you, Administrator McCarthy, for everything that you do for our Country. Thank you for the Clean Power Plan which you have put together. It is a very important part of the solution to the intensification of the warming of the planet, and I think it really helps the United States be a credible leader in working on these issues.

Two thousand fifteen was the warmest year on record. 2016 is off to a start that could break last year's record. In fact, 15 of the 16 hottest years on record have occurred since 2001. Only 1998 rivals the temperature seen in the 21st century, so we have to act now.

A recent report by Environment America shows that each year renewable energy could power our Country 100 times over. We are making strides in smart grid and storage technologies. The question is no longer if we can provide power for the Country with renewable energy, it is when and how we make the transition to 100 percent renewable. I don't think there is any question that by 2100 we will be there. The technology will just make it possible, along with the capacity of the grid to be able to manage those technologies.

But, nonetheless, I know that there are still those that believe that you are the principal person responsible for this

shift in the energy generation in our Country and the sources that create it. We know that natural gas, because of fracking, has just become a plentiful supply of alternative means of generating electricity in our Country, and we know that it has half of the greenhouse gases that coal does, and we also know that it is very competitive, if not less expensive than coal.

So that is just the reality in the free market, Darwinian-Adam Smith free market. And the same thing is true for 30 States deciding that they want to have renewable electricity standards. That is just 30 States deciding that they want to do that. And I don't think we want to get into the way of individual States making a decision as to what their mix of generation should be across all sources.

But I would also note again, and I think it is important to have this very, very clear, in 2009 the House, in the Waxman-Markey bill, actually provided \$200 billion for carbon capture and sequestration for the coal industry, for the electrical generation industry in its use of coal; and that \$200 billion was in that legislation in order to create a bridge for the coal industry. Now, Peabody Coal, amongst other coal companies, said that they did not want the bill; they did not want that money, which is their choice.

But as a result, that \$200 billion is not available right now, which it would have otherwise been. And I think that could

have played a large role in ensuring that the coal industry had a bridge to the future, because with carbon capture and sequestration it would have dramatically reduced the amount of greenhouse gases down to levels which would have been compatible with the goals the Country has for the reduction in greenhouse gases over the next 20 or 30 years.

We also had money in to help communities respond to the changing energy landscape. We built that in as well for the communities.

So I just want to make that very, very clear. That legislation was intended to actually help the industry with the transition that was already going on, and to make sure that it would deal with that source of fuel in a way that could have made it compatible.

So can you talk a little bit, as well, about how the Clean Power Plan creates flexibilities for each one of the States to be able to deal with the reduction in greenhouse gases, which is going to be required?

Ms. McCarthy. Well, Senator, the Clean Power Plan is enormously flexible in terms of allowing States to determine their own energy mix, as well as to work with other States to identify the best path forward that will not only achieve the greenhouse gas reduction targets, but also look at how we can strengthen the economy of every State moving forward.

I agree with what you said, but one of the other pieces that I would add is that solar and wind now is so cost-competitive, and that is where job growth is being seen. So there is a need to address the challenges in these coal communities, but there is also an opportunity here for lowering energy costs while we maintain a sound and reliable energy system.

Senator Markey. Thank you so much for your great work. Thank you.

Senator Inhofe. Thank you, Senator Markey.

Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Good morning, Administrator.

Ms. McCarthy. Good morning.

Senator Rounds. Last week a subcommittee of this Committee on Superfund, Waste Management, and Regulatory Oversight, a committee that I chair and Senator Markey sits as the ranking member, hosted a hearing on small business impacts from EPA regulations, and we received testimony regarding a number of instances where the EPA has disagreed with the Office of Advocacies out of the SBA, but the Office of Advocacy's recommendations on particular rulemaking.

Our witnesses testified that there is no mechanism in the law that reconciles these differences between the EPA's

decision-making process and the Office of Advocacy's opinions. Can you please share how you view the Office of Advocacy's recommendations and how seriously you consider these recommendations throughout the rulemaking process?

Really what I am curious about is it doesn't appear that there is any way to reconcile the difference when, as in this particular case, the one that we were working on was WOTUS, where the Office of Advocacy actually came out and said they disagreed with implementing it; and yet it moved forward.

Can you share with us the role that it plays, the reactions that you have and how it is considered, how their position is considered in your decision-making process?

Ms. McCarthy. Well, we certainly work with the Small Business Administration to comply with the law, which is that we need to consult with them in a panel that is established to look at the rule to provide us advice on how we can both identify and respond to significant challenges that small businesses might face. And I think we have actually a very good record of being able to have a robust process that informs our decision-making early on in the rules so that we can propose rules that are more sensitive to the needs of small businesses and finalize those rules.

Now, there are differences between the work we do with the Small Business Administration to comply with all of the OMB

rules and requirements and what the Small Business Advocacy Office might understand and move forward in terms of their concerns, but we try to resolve them; and I can certainly show you where their input has provided us tremendous opportunity to get at the reductions we are supposed to achieve, but to do it in a way that is much more sensitive of the unique challenges that small businesses face.

Senator Rounds. Administrator, I think that would be helpful because in this particular case, with WOTUS, their recommendation was do not implement it; and yet the process moved forward with the implementation. As we all know, it has now been stayed, and yet it appears as though they were straightforward in their recommendations. If there is evidence that there was a reasoning or a discussion that continued on, that would be very helpful to this Committee to be able to see that; and if you could provide that it would be helpful. Is that available?

Ms. McCarthy. I certainly know that we had meetings to discuss the implications on small business. I was briefed on those discussions, and I would be happy to provide you a summary of those or see what else I might be able to provide you to indicate that we did listen to those inputs.

You know, the Clean Water Rule is a little bit different than an implementation rule; it is really looking at how you

structure the jurisdictional questions around what streams and rivers require protection under the Clean Water Rule and how we manage those. And, frankly, how we did the Clean Water Rule was to try to be very clear in terms of trying to reduce sort of the process of identifying those jurisdictional answers, as well as how you would mitigate the challenges moving forward.

Senator Rounds. And I think that is one of the reasons why they had recommended that it not be implemented, was the frustrations that they had looked at as an outside group. I am wondering if it isn't time to perhaps have a third party as an arbiter when it comes to these types of problems, where you have two Federal agencies, one in which you want to implement a rule and one in which you have another Federal agency which says clearly this is damaging to small business.

Is it time to start talking about a third-party arbitration process within the Federal agencies themselves?

Ms. McCarthy. I think there is a panel process that we are required to go through in many instances, but in this case, Senator, this wasn't the sort of something that EPA just decided on our own to do; the Supreme Court told us two times that the current guidance and rules were not sufficient, that we needed to do science and we needed to come back.

And when we did come back and we suggested maybe a guidance was the thing to do, we were told by many in Congress, as well

as stakeholders, no guidance; do rules, we want a public process. And that is what we did. And we will see whether this rule stands up when it is held to court scrutiny. But I am very confident that we did the work we should do and that it will prevail.

Senator Rounds. Mr. Chairman, thank you.

Administrator McCarthy, thank you.

Ms. McCarthy. Thank you, Senator.

Senator Inhofe. Thank you, Senator Rounds.

Senator Whitehouse.

Senator Whitehouse. Thank you, Chairman.

Welcome, Administrator McCarthy.

Ms. McCarthy. Senator, how are you?

Senator Whitehouse. First of all, just for the record, I do believe that it has been reported in a variety of forums that the war on coal was actually waged and won by the natural gas industry, including a recent story by that famously liberal publication, the Wall Street Journal. So I will ask unanimous consent to have that Wall Street Journal story put into the record.

This past week, in Rhode Island, in addition to the national New York Times front page story on the dying out and bleaching, which is more or less the same thing, of the Great Barrier Reef, the Providence Journal ran a front page story

headlined Drowning Marshes. Our seaside marshes are not keeping up with the pace of sea level rise. The newspaper also did a big story on the historic buildings in and around Newport and the number of them that are vulnerable to our current State projections of sea level rise, which actually numbers 550 historic or historic designation-eligible buildings worth close to half a billion dollars.

Unless somebody around here wants to repeal the law of thermal expansion, then we are going to have to really address this problem, and it is going to hit my ocean State very, very hard. These are facts that my State lives with every day, so don't let up; keep doing what you are doing. We understand. Clearly, there are several dimensions to the political fight that you are caught in the middle of.

One is, unfortunately, Republican versus Democrat. It didn't use to be that way; this used to be a Committee where Republicans and Democrats worked together on environmental issues. But at least for now those days appear to be past. It is also a little bit of the past versus the future; and the future is inevitable, but the past is often reluctant to give up its incumbency.

But it is also geographic. And as you heard from Senator Barrasso, he has some very legitimate concerns about what is happening in Wyoming. Rhode Island also has very legitimate

concerns; they just happen to be the opposite side. The more that Wyoming coal pollutes, the more that we experience these changes in Rhode Island.

The third story in the Providence Journal related to a big session that they had and they brought in people to talk about our fisheries. Rhode Island's fisheries are in a state of upheaval because of the warming temperatures of the sea. We know that 90 percent of the excess heat from climate change from the warming planet has gone into the oceans.

This is something that we measure with thermometers, so unless people want to be not against science, but against measurement, they are going to have a real problem with this data. It is not complicated to take these measures, and fishermen are telling me, Sheldon, things are getting weird out there. They are getting fish like tarpon and grouper in their nets in Rhode Island Sound.

Joe Manchin and I have exchanged visits to each other's States so I could understand the problems of coal country and he could understand the problems of ocean country, if that is a phrase. And we went out on a fishing boat and the captain said, you know, this isn't my grandfather's ocean; I grew up fishing and I don't know what is going on out there any longer. And that creates real peril for our fishing industry. So don't forget the Rhode Islands of the world when you are taking heat

from the folks who are on the side, I would say here, of the past.

And I would urge my colleagues, you know, we met at Senator Markey's request with a delegation that included a gentleman from the Mexican Parliament. They have just accepted an auction for 3.5 cent per kilowatt hour wind power or solar. I forgot which. But it was a clean power source. Three point five cents. It is really hard to compete with that.

And the day is going to come, those prices are going down, when this adjustment has to happen; and there are two ways we can make it happen. It can be a managed transition in which the harm from the transition, the upheaval from the transition is dealt with in a responsible way, or it can be an abrupt transition. And I would suggest that what we have seen with Peabody Coal and with some of these other companies show that when the industry focuses on just truculent, grit your teeth and wait until the better end, the abrupt transition is very, very unpleasant.

So my time is up. Keep doing what you are doing. And I urge my colleagues to please work with us. There is a way to make this transition much more manageable for the genuine economic concerns that they face in their States, but it is not fair to come here and talk about the economic concerns that they

face in their States and then completely ignore the changes that are happening in my State. Thank you.

Senator Inhofe. Thank you, Senator Whitehouse.

Senator Wicker.

Senator Wicker. Administrator McCarthy, thank you very much for coming to see us again.

I want to ask about radon. The State Indoor Grant is one of a number of programs the President proposes to eliminate in his budget. On the other hand, the President's budget requests \$235 million in climate-related funding, the centerpiece of which is the Clean Power Plan, of course.

The Clean Power Plan, according to your figures, will avoid 6,600 premature deaths by the year 2030. On the other hand, by your own analysis, radon causes an estimated 21,000 lung cancer deaths each year. Do I have those figures right, at least, Administrator?

Ms. McCarthy. Well, I don't have that exact figure, but the figures that we provide for 2030 are annual figures. Every year that is a reduction.

Senator Wicker. Okay. So what you are saying is that the Clean Power Plan will avoid 6,600 premature deaths per year.

Ms. McCarthy. Yes.

Senator Wicker. Okay. And by contrast, radon causes an estimated 21,000 lung cancer deaths annually in the U.S. It

just seems to me that you are not being cost-efficient there. The core mission of the EPA is to protect human health and environment. Given these numbers, it seems to me that taking the money away from known threats such as indoor radon is inefficient, in that there are some 21,000 lung cancer deaths attributed to radon each year.

Ms. McCarthy. Well, let me just respond to that. If I thought \$8.1 million in State grants would actually reduce 21,000 lives and save those, I would. Really, the question is whether or not that \$8.1 million to States is the right way to address the risk that is apparent. And we have developed a separate strategy that we think is more efficient that doesn't require State grants to be done, and we have not found that State grants are the most appropriate and efficient way to address that risk.

What you are comparing is known reductions that we believe will happen versus the entire risk to radon.

Senator Wicker. You are saying the State indoor radon grant program is an ineffective program?

Ms. McCarthy. I am saying that there are more effective ways to use our resources, and we are trying to do that. That is how we have framed this budget.

It is not that we don't like the grants, but you have to -

Senator Wicker. So what is the name of the program, then, that you are advancing and advocating today to supplant the State indoor radon grant?

Ms. McCarthy. We have our indoor air program, and part of their charge is to address radon, and we are doing that in two different ways. We have a Federal plan that is looking across the board at how we do this using Federal resources from agencies that are essentially landlords, and we are also marrying that effort with individual States and NGOs and innovators who have technology options to actually reduce radon in the home and how we spread that word more effectively.

Senator Wicker. Okay, well, we will discuss that more in depth with some questions for the record.

Ms. McCarthy, the Clean Power Plan has been stayed by the Supreme Court. You have said it doesn't prevent EPA from continuing to work on the rule. Now, last month you testified before the House Energy and Commerce Committee with regard to the stay.

Ms. McCarthy. Yes.

Senator Wicker. So we certainly won't do anything that implements or enforces the rule, consistent with the Supreme Court stay. What work is your agency continuing to do with regard to the Clean Power Plan? Have you requested any legal analysis to ensure that you have the legal authority to carry

out this work? And if you have requested such a legal analysis and received one, can you provide that analysis to this Committee?

Ms. McCarthy. Well, I can certainly tell you that I have worked with our Office of General Counsel, who is working very closely with the Department of Justice to make sure that we totally respect the decision of the Supreme Court, as we always would. We are continuing to attend meetings that the States request of us. We are continuing to work with States that, on a volunteer basis, want to actually continue to move forward in the development of their State plans; and we are continuing to look at the tools available to the agency to support that effort. For example, the States want us to develop an accounting system that would help them to account for their greenhouse gas emissions.

Senator Wicker. But in the short time we have, with regard to a legal analysis, you have been working with your inside counsel and with the Justice Department.

Ms. McCarthy. Correct. Yes.

Senator Wicker. Have they provided you with written analyses about whether you can go forward and what you can do and what you can't do?

Ms. McCarthy. I have certainly had many discussions with my Office of General Counsel, who has told me what everybody

believes is the consensus of what we should and shouldn't be doing. It is very clear to me -

Senator Wicker. Is there anything in writing? You see what I am getting at, though. I am just trying to get a specific answer so I can know if you can provide this Committee with copies of this written advice. So you have mentioned oral advice.

Ms. McCarthy. Yes. I did not see anything in writing.

Senator Wicker. But do you have anything in writing?

Ms. McCarthy. I have not seen it provided to me, but I can go back and see if there is written discussion of this. But clearly we are doing everything possible to consult with our attorneys and make sure we are being very respectful. But I am doing nothing that implements or enforces this rule, consistent the Supreme Court's decision.

Senator Wicker. If you have anything in writing, I would appreciate it if you would submit it to this Committee.

Ms. McCarthy. Thank you, sir.

Senator Inhofe. Thank you, Senator Wicker.

Senator Cardin?

Senator Cardin. Thank you, Mr. Chairman.

Administrator McCarthy, I very much respect what you are doing and thank you very much for your service. We have worked

together on many issues and I very much support your leadership at EPA.

Having said that, last year I raised an issue at the budget hearing and I thought we were going to do better this year, and it looks like we haven't done any better this year. So perhaps you can try to clarify for me the budget as it relates to water infrastructure in this Country.

Your own department has estimated a need of \$655 billion over the next 20 years in regards to clean water and safe drinking water. Since we last met, we have had the tragedy of Flint, and Flint is not an isolated circumstance. What they did I hope is isolated, that is, not actively responding to minimize the risk of lead in drinking water, but we know that there is a lot of lead in pipes that lead into people's homes; we know that there is corrosion issues; we know that there is old, inefficient water systems in regards to safe drinking water; and we know that the clean water infrastructure is in bad need of repair, to the tune of, as I said, \$655 billion, your own estimates, over the next 20 years.

So I am perplexed as to why, in regard to the State Drinking Water State Revolving Fund, the President's budget is less this year requested than what the President requested last year in his budget. And then when you go to the Clean Water State Revolving Fund, the amount the President requested is

substantially less than the amount appropriated in last year's budget, to the tune of about \$413 million. That does not seem like a commitment to modernize our water infrastructure. Do you have a better explanation this year?

Ms. McCarthy. There are obviously constraints that we have. One is we have to respect the levels that were established in the bipartisan budget agreement, and our choice was how do we use the money that is allocated to us in the best way that we can. There is no question that we have to have a larger conversation about how we fund infrastructure. I think Flint has made that very clear to everybody. But I don't think that that is something that we can identify as a way to fully resolve within the budget constraints of EPA.

Senator Cardin. I very much appreciate the struggle with the budget caps and the omnibus limits. I very much appreciate that. And I do want you to adhere to those limits because that is our agreement for this budget year, and we are all going to work to adhere to the agreement that has been reached.

But there are creative ways that you can help us find ways to improve our water infrastructure. The last one we did the WIFIA funds. There are different tax incentives that you can be talking about. There are different challenges we have in dealing with the last connection between the drinking water supplies and a person's home.

It seems to me that, recognizing the risk factor that we have today, we need your advocacy for stronger water infrastructure in America.

Ms. McCarthy. Well, I will do my best to be able to provide my voice to that. I will tell you I think there has been no worse issue that I have faced in my almost 36 years now than Flint, Michigan. It was devastating to the individuals there.

And if there is anything that we can do as a Country to recognize the challenges we face, because in Flint it is not only the lead issue; it is the fact that it has half of the population it had in the 1970s and it now has a big system that they haven't invested in in decades. So it is enormously challenging.

And from that perspective it is not different than many other urban areas that have lost significant populations and simply don't have a way of continuing to make those investments moving forward. And you are absolutely right, it becomes a responsibility of EPA to identify those challenges and to speak as loudly as we can about them, and I will do the best I can with the time I have remaining.

Senator Cardin. I appreciate that. I point out, as you just said, it is not just Flint. The systems in my State date back 100 years, and the ratepayers just cannot do everything

that is required in order to replace pipes that are in some cases 100 years old. In Baltimore City, our public schools, the drinking water supplies through the fountains have been terminated because it is not safe because of lead. So we have a national problem and we need national leadership.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Cardin.

Senator Sullivan.

Senator Sullivan. Thank you, Mr. Chairman.

As I have been saying in the Committee, it is not just aging infrastructure, it is lack of infrastructure. There are entire communities in my State that don't have clean water or flush toilets; they live in third world conditions, and we certainly would want your help there, Administrator McCarthy.

I wanted to raise a concern that I have raised on this Committee with you a lot, and it is the concern about we certainly all want clean air, clean water. My home town of Anchorage won another award for best practices recently on clean water.

But the concern about the law and your agency not abiding by the law, you know, since you last appeared here, two courts have placed injunctions on your two signature regulatory issues, the Waters of the U.S. and the Clean Power Plan. These are really important issues to us in terms of oversight.

Many of us asked for the legal justification on WOTUS. You were reluctant to provide it. Now I understand why. Have you read the 6th Circuit opinion that has put a stay on the Waters of the U.S. ruling?

Ms. McCarthy. I am certainly aware of it.

Senator Sullivan. Do you know what they said?

Ms. McCarthy. Yes.

Senator Sullivan. What did they say?

Ms. McCarthy. Well, basically they said that they wanted to make sure that they looked at the underpinnings of the rule from both a science perspective, as well as a legal perspective, and indicated that the rule shouldn't continue to move forward until they were done.

Senator Sullivan. They were also concerned and favorably disposed to the petitioner's argument that you were expanding your jurisdiction under the Clean Water Act, which is only the realm of Congress. Only we can do that; the EPA can't do this.

Ms. McCarthy. And that is why we are looking forward to -

Senator Sullivan. So that is a big deal. But let me go. There is another much bigger that I don't think is getting nearly the attention, it is the injunction by the U.S. Supreme Court for the Clean Power Plan. You glossed over it in your testimony, but this is a really big deal.

Let me ask you, Administrator McCarthy, how many times do you think the Supreme Court has done this in its history, has put an injunction on a federal regulation before a lower court weighed in on its merits? How many times in the history of the Supreme Court has that happened?

Ms. McCarthy. I am not aware of any.

Senator Sullivan. I can tell you. Never before it happened to you. So this is an unprecedented action and, again, it goes to this issue of the rule of law. So have you thought about why they did that? Have you read that ruling?

Ms. McCarthy. Well, it was fairly short.

Senator Sullivan. It was short, but has your team thought about why the Supreme Court, first time in U.S. history, took this kind of unprecedented action? It is a big, big deal. Why do you think they did it? Let me just ask you a couple reasons why they may have done it.

Your recent record in the Supreme Court, utility air regulators, where Justice Scalia said you had violated the separation of powers; the EPA v. Michigan; the WOTUS ruling. Do you think that those may have impacted the Supreme Court's ruling?

Ms. McCarthy. Sir, the Supreme Court gave no indication that they were relooking at the merits on this issue when they -

Senator Sullivan. No, but I am asking you guys to reflect on why.

Ms. McCarthy. It would be way more presumptuous of me to indicate what I think the Supreme Court was thinking.

Senator Sullivan. When Laurence Tribe was arguing against the rule, he stated, and Laurence Tribe is not some kind of Republican partisan, "Burning the Constitution should not become part of our national energy policy. The EPA, with this rule, is attempting an unconstitutional trifecta: usurping the prerogatives of the States, Congress, and the Federal courts all at once."

Do you think the Supreme Court may have been thinking about Laurence Tribe's arguments?

Ms. McCarthy. Sir, I know the Supreme Court did their job. We will do our job on the merits, and I am very confident of this rule not just being constitutional, but being legally solid all around.

Senator Sullivan. Do you think they may have been thinking about job losses that have occurred because of EPA regulatory issues?

Ms. McCarthy. Sir, I can't say what the Supreme Court was thinking. They made their decision and I respect it.

Senator Sullivan. Let me ask one other issue, Administrator McCarthy, on why the Supreme Court may have done

that, and I think it relates to your views on some of these regulatory issues. You were quoted, on the eve of the EPA v. Michigan case, when they asked if you thought they were going to rule in your favor, you said yes. They didn't. But then you said, "Even if we don't win, it was three years ago that we issued the rule. Most of them," meaning companies in America, "are already in compliance, investments," hundreds of millions, "have been made and we'll catch up. We're still going to get at these issues from these facilities."

So, in essence, you publicly were stating even if we lose on the rule, we win.

Ms. McCarthy. No, sir, that wasn't what I -

Senator Sullivan. That statement has been played around the Country. Many, many Americans are upset by it. Do you understand how that exudes arrogance and a disrespect for the rule of law when your agency is essentially saying we don't even care how the courts rule? And do you think the Supreme Court may have taken this unprecedented action because of your statement that you made on this issue?

Ms. McCarthy. Well, I would find it - well, I won't even -

Senator Sullivan. Do you regret making that statement?

Ms. McCarthy. No, not at all, because I wasn't indicating what you just said. The Supreme Court actually didn't negate the rule; they remanded it back because they thought we needed

to do a job earlier on in the process on cost, which we have just completed. I think we got nine comments on that.

And we know that we are past now the four-year window for full compliance on that rule. I am proud of it. I love the lives that we are saving as a result of that rule. And the industry has been able to manage their way through it brilliantly.

Senator Sullivan. Mr. Chairman, I have some more questions, and I would ask, once everybody is done, I would like, if it is possible, to stay. We do this in every other committee. I don't know why this would be a problem.

Senator Inhofe. Well, this is not every other committee. What I will do, we will certainly, if Senator Boxer wants to have an additional three minutes or something like that, I could yield mine to you. But that is about as far as we could go. Thank you.

Senator Sullivan. Thank you, Mr. Chairman.

Senator Inhofe. Thank you.

Senator Carper.

Senator Carper. Thanks. I want to just note with some irony that the job approval rating of the United States Senate, both sides of the aisle, pales by comparison to the voter approval of the EPA, and your stewardship with respect to clean air and clean water.

I would also say lovingly to my colleagues on the other side that we sure could use a nice Supreme Court Justice. I think the President has given us a pretty nominee, and I would urge you to spend some time with him.

When I left the hearing earlier this morning to go a roundtable with the Committee on Homeland Security, Senator Inhofe was saying that he wanted to start off the hearing on a positive note, and he conveyed his gratitude to you and to EPA with respect to an issue that has been contentious on this Committee, and I just want to second that emotion from you. I know it is not easy for you; it is not easy for us. But thank you very much for your work there.

I want to talk about another issue that we have worked on together on this Committee, Senator Inhofe and myself, Senator Boxer, and a new colleague from West Virginia now have authored legislation reauthorization for DERA, Diesel Emission Reduction Act. Diesel legislation is close to my heart. The original author of that was George Voinovich, as you will recall. I understand from the President's budget proposal that his budget shifts funding away from DERA and instead funds clean diesel programs through attacks on oil producers separate from the EPA budget. Is that correct?

Ms. McCarthy. It actually relies on a separate mandatory fund. But we have \$10 million allocated on our fiscal year 2017

budget. I think you and I share a love for the DERA program, and certainly for all of the great reductions in emissions that has resulted from it in the past.

Senator Carper. Thank you. Can you just explain the reason for this shift in funding? And if the Administration is not able to convince those of us in the Legislative Branch to implement this tax on oil, how important is the current funding mechanism for the DERA program?

Ms. McCarthy. Well, we know that diesel emissions are particularly difficult to manage and we know that we are supporting, beyond the diesel campaign and the DERA money, opportunities to look at areas like ports and others that are so important to address.

So I think the idea was that we would provide a more stable mandatory basis for supporting programs that were like the DERA program that showed consistent success. It is an opportunity to look over a 10-year horizon to implement or to effectively get \$300 million dedicated to this, and it was the choice of the President to move in this direction and to support DERA in a considerable way.

Senator Carper. All right, thank you.

Changing back to the Clean Power Plan, if I could, it is my understanding that the budget request from the Administration

includes \$25 million to the States through a grant program to implement the Clean Power Plan. Is that correct?

Ms. McCarthy. That is correct.

Senator Carper. Do you believe that the States will use this money to provide better flexibility and certainty to utilities within their States when implementing the rule?

Ms. McCarthy. I think they will fully utilize it, yes.

Senator Carper. Okay. Do you believe that cutting these funds will derail the Clean Power Plan?

Ms. McCarthy. No, sir, but I think it will slow down the ability of States to hit the ground running.

Senator Carper. And who would it hurt the most if we were to cut these funds?

Ms. McCarthy. The States.

Senator Carper. All right. Earlier, one of my colleagues was talking to you about Waters of the U.S. We spend a fair amount of time in our State, and I know my colleagues have in their States, meeting with different folks, could be developers, could be farmers, a lot of different folks who represent different environmental views.

But my understanding is that one of the reasons why you have promulgated this is because for years we heard that there is not enough certainty and predictability for folks who are farming, for folks that want to develop or build communities or

housing projects; there is not enough certainty for them to know what to do, and they have been asking for some certainty and predictability. My understanding is that you have tried to provide that. Would you just respond to that thought?

Ms. McCarthy. We did. We actually were required to do this by the Supreme Court. But we also knew that there was a level of uncertainty that was causing a lot of backup in the process for decisions to get made, for people to have certainty about what was in and what wasn't, and what the mitigation strategy would be. We spent a considerable amount of time working to make sure that we were following the science to say what is in, what is out, and where case-by-case review is necessary.

We also provided significantly more clarity for the agriculture community on the exemptions and exclusions. We didn't take any away; we actually added some into the system so that agriculture would be able to perform their vital role for all of us in a way that would allow them to be sure that they are not running afoul of any rule or regulation.

Senator Carper. All right. Thanks so much.

Senator Inhofe. Senator Vitter.

Senator Vitter. Thank you, Mr. Chair.

Thank you both for being here. Mr. Bloom, our apologies for not directing any questions to you. I know you are all upset and frustrated by that.

[Laughter.]

Senator Vitter. But like the others, I am going to direct my questions to Ms. McCarthy.

I want to build on some previous comments and questions, Madam Administrator, about the Small Business Regulatory Flexibility Act. I am Chair of Small Business. This has been a real concern of a lot of members, including Democrats, and I heard your response to Senator Rounds a few minutes ago that you take it very seriously.

In the case of WOTUS, which is a big deal by anyone's estimation, the EPA said it has no significant impact on small business. Do you really stand by that and do you really think that backs up your statement that you take this mandate to mitigate impacts on small business seriously?

Ms. McCarthy. Well, sir, when we were looking at the Clean Water Rule, we consulted with OMB. The decision was that we were not required to formally do a panel, SBREFA panel, but we did commit to having significant conversations and that is how we -

Senator Vitter. I don't mean to interrupt you, but that means that you determined the WOTUS rule had no major impact on small business.

Ms. McCarthy. Because it was a jurisdictional rule instead of an implementation rule.

Senator Vitter. You stand by that?

Ms. McCarthy. Certainly. I stand by the fact that we did the outreach to small business the way we should.

Senator Vitter. And you think reaching that conclusion is evidence of your taking the small business impact issue seriously?

Ms. McCarthy. I think the evidence of our taking it seriously was we went above and beyond the requirements under the law to reach out to small businesses and get their input.

Senator Vitter. Just for the record, I completely disagree. I don't think you met your requirements.

Ms. McCarthy. Okay, Senator.

Senator Vitter. More recently, EPA submitted its proposed rule regulating methane emissions for new oil and natural gas infrastructure to the White House. You submitted that to the White House for review before the small entity representatives on the panel submitted any comments to the EPA. Do you think that evidences your taking this small business impact issue seriously?

Ms. McCarthy. I am sorry, Senator, I don't know the exact timing on that, but often there are overlaps. But, as you know, we make adjustments through the interagency process so that those efforts are completed before any proposal is out for public comment.

Senator Vitter. Well, I do know the timing, and I am telling you you submitted it to the White House for review before getting any small business input. Now, I know you can always come back and change things, but normally, you have a draft, once you are giving it to the White House, that is basically it. Once again, to me, this is a red flag that you all aren't taking the small business impact issue the least bit seriously.

Let me move on to a second issue, which is Flint; and we have talked about that.

Ms. McCarthy. Yes.

Senator Vitter. I think it is very clear to all of us that there were multiple failures of government at multiple levels with regard to this issue, and it is now well established that that, unfortunately, includes EPA, that EPA knew of the crisis well before national media attention, but seemed to fail to act on the issue and notify Flint residents.

Because of this, Senators Inhofe, Cornyn, and I wrote to you with some specific questions on February 4th. It is now two

and a half months later; we have no response. When are we going to see a detailed written response?

Ms. McCarthy. I apologize for interrupting. You are going to get it momentarily. I am sorry, within the next day or two.

Senator Vitter. Okay, so we will look for that within the next two days. Again, we sent this February 4th.

Ms. McCarthy. Right, sir.

Senator Vitter. Detailed questions, and we look forward to a substantive, specific detailed response.

Ms. McCarthy. We will do the best we can.

Senator Vitter. Ozone regulation.

Ms. McCarthy. Yes.

Senator Vitter. You recently claimed at a conference that you "can't find one single bit of evidence that the EPA has destroyed an industry or significantly impacted jobs other than in a positive way." Do you stand by that statement?

Ms. McCarthy. Yes, sir.

Senator Vitter. Okay. Well, I just want to point out, related to ozone regulation, I can tell you from Louisiana there were four major chemical manufacturing projects under active consideration for Baton Rouge. That was public, specific projects.

After EPA first proposed lowering the ozone standard in December 2014, those were canceled. Since that has been

finalized, that cancellation is definitive. Just those projects, one metro area that happens to be in my State, totaled 2,000 direct and indirect jobs. New payroll would have been over \$86 million. Is that a negative impact?

Ms. McCarthy. Well, sir, the jobs that you are talking about are essential for everybody to continue to grow, so I am happy to look at that issue, but very often companies make decisions on the basis of their larger economic benefits and costs, and very often they will point to an EPA rule to justify that decision when there are many other issues going on that actually account for that decision more directly.

Senator Vitter. Well, I can tell you in the case of Greater Baton Rouge, ozone is a huge issue because it pushes the whole area into non-compliance. It is absolutely categorically canceling projects, including the four I mentioned, and that is over 2,000 jobs. So, you know, when you make the statement that you see no evidence anywhere that anything EPA has done has hurt jobs, I think that is a very crystal clear example to the contrary.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Vitter.

Senator Booker.

Senator Booker. Mr. Chairman, I would first like to say thank you to you publicly. Your staff and team has been working

so well with mine in regards to TSCA, and I am just grateful. These last few days you guys have been pretty extraordinary, so thank you, sir.

Senator Inhofe. Thank you.

Senator Booker. It is just so good to see you. And again I apologize for you just being completely ignored today, which is just insulting. If you would like to hang out after, I will buy you a beer.

Ms. McCarthy. He is great moral support.

Senator Booker. Okay.

But, Administrator, I just want to thank you. You have been such a great partner focusing and championing a lot of issues that are very personal to mine. You have been to my State a number of times and I am grateful for your work, especially for marginalizing and vulnerable populations. I think we have a crisis in this Country in terms of the toxicity and how it affects our children, particularly children in rural areas and urban area, and to see the health data for those children is just alarming to me.

Really quick, one of my greater frustrations about the historical change of our Country is really President Reagan, who reauthorized the last time the Superfund clean-up efforts with some current Senators even being a part of that, was helping us

to more quickly remove Superfunds, which exist in every single State of our Country.

Are you aware of the health data, now that we have a lot more longitudinal data, that is showing that birth defects for children born around Superfund sites is about 20 percent higher, showing that autism rates for children born around Superfund sites are about 20 percent, that give us more scientific urgency to removing these Superfund sites? Are you aware of that data?

Ms. McCarthy. To some extent. I am aware of a number of studies that have been done that show a couple of things. One is the hell of damage around these sites, but also the economic benefits of transforming these sites.

Senator Booker. Right. And definitely every dollar invested in cleaning up these sites creates greater economic growth, greater jobs. But for me the children, now that we are seeing much more longitudinal studies, the lost economic productivity of kids that are being affected and their health is being affected is really troublesome.

So I have reintroduced the same legislation that was reauthorized by Ronald Reagan, voted on by a number of my colleagues, Republicans and Democrats, which is a small tax on polluting industries. What I guess I want to ask you really directly is when I put a request into the EPA to give me the

count of Superfund sites, we have actually seen an increase in our Country of Superfund sites, as opposed to a decrease.

And these orphan sites, many of them are ready to go but lacking the funding to remove them. It seems pretty stunning to me that you are not able to right now actively clean up these sites which are affecting the health of children and pregnant women.

Ms. McCarthy. Well, we would certainly love an ability to be able to knock some of those sites off the list. It is a long and slow process, and additional funding certainly helps to address that issue.

Senator Booker. So Congress's inaction to find this is putting at risk the health of our children and pregnant women in every State around the Country.

Ms. McCarthy. There are many risks in every State around the Country from environmental exposures. Superfund sites are one of them.

Senator Booker. Thank you very much.

The other issue that I just want to bring up really quickly is air quality. Urban areas in New Jersey have, and you came to Newark, in fact, and helped us to start to produce the data on this, but the asthma rates are about three, four times higher. Number one reason why children are missing schools; the lack of productivity, the impact it has on that child's overall success

is pretty dramatic, and that evidence is pretty iron clad, correct?

Ms. McCarthy. Yes, it is.

Senator Booker. So I know you are doing some shifts and changes with the DERA program, but could you just outline for me, and I have one more question after this, so I am hoping you can do it quickly, some of the efforts to deal with the clean air which disproportionately impacts our poorest and most vulnerable communities in areas that are heavily dependent, really located in transportation superstructures?

Ms. McCarthy. Well, as you know, our work on the National Ambient Air Quality Standard is a significant step forward in terms of looking at ozone and particulate matter, to be specific. So we are looking at those issues.

We are also doing community level work. We are trying to get better monitoring data, look at potential localized emissions that are also crucial moving forward. We are working with innovators to develop new monitoring so we can have a better understanding of what air quality looks like. So we are working on a number of different funds from both national rules, as well as local community efforts.

Senator Booker. And really quickly, relative to other areas of the budget, there is a very small pool for

environmental justice work. Could you just detail that? And I will be respectful for the Chairman.

Ms. McCarthy. Yes. We have a whole community effort that we are looking to support in this proposal and continue, it is called Making a Visible Difference in Communities and it is called Environmental Justice. Those are incredibly important efforts moving forward, and they are efforts that are extraordinarily positive because they bring other agencies to the table so the communities that otherwise wouldn't have the wherewithal to take care of these exposures get opportunities not just to reduce those through our funding, but also opportunities for new jobs, for new housing to really become active, engaged, and affirmative communities that control their own destiny.

Senator Booker. Thank you very much.

Ms. McCarthy. It is a wonderful opportunity.

Senator Booker. Thank you. And, again, I appreciate your leadership and the passion you have for vulnerable communities.

Mr. Chairman, thank you for the time.

Senator Inhofe. Thank you, Senator Booker.

Senator Capito.

Senator Capito. Thank you, Mr. Chairman.

I want to thank the witness and thank you for your service.

Ms. McCarthy. Thank you, Senator.

Senator Capito. I wanted to ask you about the Clean Power Plan. And I have been sort of in and out of the meeting, so I apologize if you have directly answered the question that I am going to ask, but I think the initial response I heard was vague, and that is what has concerned me; and that is what would happen to the deadlines under the Clean Power Plan if the rule is ultimately upheld by the Supreme Court.

Janet McCabe, who is your Acting Assistant Administrator, she said that it is actually a little premature to be speculating specifically about the compliance dates in the Clean Power Plan, but I would beg to differ since it could have massive consequences to all of our States. I think something more crystal clear and definitive, whether these deadlines will be suspended or tolled as your brief, I think, before the Supreme Court seemed to agree to.

So I guess today have you made a statement, again, if I wasn't in the room, I apologize, to a clear signal as to what will happen to these deadlines if your rule is upheld at the Supreme Court level?

Ms. McCarthy. Well, the reason why I think Janet indicated it is premature is the first compliance deadline doesn't happen until 2022. So we are hoping that it will be expedited, as they know there is an expedited schedule already in the district

court to get through this system and get to the Supreme Court, as they have indicated.

The Supreme Court didn't speak to the tolling question; all they did was stay the rule. We do not have the authority on our own to be able to make changes to that rule, and we certainly expect that the courts, when they make their final decisions, will speak to that issue directly.

Senator Capito. So I guess what I am hearing is that since the compliance date is not until 2022, the anticipation is that the deadlines, if the Court doesn't speak to it, the deadlines would go forward as proposed?

Ms. McCarthy. Well, the deadline would if the Court doesn't speak to it. The deadline we knew we couldn't manage was the one that is coming up, because there is no way in which we will be to the Supreme Court in a timely way.

Senator Capito. And what happened to that deadline?

Ms. McCarthy. We indicated to the States not to submit plans because we are not implementing the rule.

Senator Capito. Right. By that deadline.

Ms. McCarthy. That is correct.

Senator Capito. But you are still going to have a time for them to submit plans if in fact the Supreme Court agrees with the regulation.

Ms. McCarthy. That is correct.

Senator Capito. Okay. Let me ask you this. You have stated in your budget and you stated, I think, well, I have here that 25 States are continuing to voluntarily work on implementation plans. Is that correct?

Ms. McCarthy. Yes. There are a number of States. I don't have the exact number, but there are a number of States that are working on plans and there are many States that continue to get together and talk to us and look at how they would be prepared for the rule moving forward.

Senator Capito. If we could get a more definitive number of States that are actually moving forward, because in your budget you are saying that you want to spend \$25.5 million to work with States to develop and review CPP plans. So your whole climate change budget is \$235 million.

Ms. McCarthy. That is correct.

Senator Capito. Twenty-five million of that is supposedly to help voluntarily with these States.

Ms. McCarthy. For EPA to develop tools and work with the States. But there is also \$25 million for the States themselves to continue to move forward on implementation voluntarily or on other issues related.

Senator Capito. That is an additional 25?

Ms. McCarthy. That is correct.

Senator Capito. Is that the STAG grants to States?

Ms. McCarthy. That portion is, yes.

Senator Capito. Yes.

Ms. McCarthy. That is not the total of the STAG grants.

Senator Capito. So that is \$50 million, and we are still \$185 million asking for appropriations for where you state that the centerpiece of this effort, the Clean Power Plan. I would just register some concern that in fact it appears, through your budget, that you are moving forward with this even though you have a stay on it. It is still very much a part of the appropriations process.

And when I look and see that the Clean Water State Revolving Loan Fund, which a lot of people have, and I would join in my concern about the cuts there, I could make a suggestion. I have \$185 million sitting over here I think could go right over to the Clean Water State Revolving Fund and I think impact a lot of people and their health as well.

Ms. McCarthy. Senator, if I could just point out.

Senator Capito. Yes. Of course.

Ms. McCarthy. All of that money I would be able to provide you the detail, but only those two are directly related to the Clean Power Plan, that is \$50.5 million. The rest is identified as opportunities in our vehicle emissions, our Energy Star program, our methane reduction initiatives. So there are a

number of others that we can certainly provide you with details on.

Senator Capito. So it is a little vague in here, because you say the centerpiece of these efforts is the Clean Power Plan right after you ask for \$235 million.

Ms. McCarthy. And it is not all tagged to that, just the 50.5.

Senator Capito. Okay. All right, then let's move to methane, because you are undertaking a series of mandates covering methane, but you, even in your own statements in February, said my caveat is that EPA is learning this industry right now because it is not an industry we regulate. We have just gotten into regulation of this, so there are hundreds of thousands of small sources and EPA doesn't generally have a relationship with this industry, it is regulated at the State level, as we do other sectors that we have regulated for decades, but we are learning.

So we are learning, but we are moving forward with a costly regulation, and the regulation has been at the States. We have pushed down the methane; emissions have fallen by a greater percentage than the number of wells that have been drawn. Do you feel that the States are not adequately regulating in this area? And why would you not let them continue since their record is moving in the absolutely correct direction?

Ms. McCarthy. Well, the rules that we are moving forward on we are very confident that we have the level of information we need to do that rulemaking appropriately. There are some States that are doing a great job, and we are coordinating with them to make sure we are not duplicating and to coordinate on reporting or any other requirements under a Federal law. But there are many States that continue to have challenges in this regard and what we have identified is that there are many more methane emissions from the oil and gas sector than we had previously understood.

So when I am talking about learning, we are actually putting out an information collection request to the industry that will provide us the level of data not just on emissions, but on technology choices to reduce those, as well as costs, so that we can work with States to identify where they can improve and where a Federal rulemaking may be advisable and what that might look like.

Senator Capito. Thank you.

Senator Inhofe. Okay, this does complete all of those who have been here. I am going to do something that I know I will regret, but I am going to do it anyway, because we have one member on our side who really wants to have three more minutes. So I am going to ask Senator Boxer if she would like to have

three more minutes and, if so, maybe even give that to you, Senator Whitehouse.

Senator Boxer. No, I am going to need my three minutes.

Senator Inhofe. Why don't you go ahead and take your three minutes, then?

Senator Boxer. I would prefer to wait.

Senator Inhofe. Well, I would prefer you take it now. Please do.

Senator Boxer. Well, I would prefer to wait.

Senator Inhofe. Well, I prefer you take it now. You know, we had an election, you understand.

Senator Boxer. It is ridiculous.

Senator Inhofe. Yes, I agree.

Senator Boxer. But I will take it now. I will take it now.

First of all, I want to answer some of the garbage that you have heard here today. I want to talk about job creation, because a lot of people here have taken it on and said environmental regulations stop jobs.

Let me tell you about my State. Leader in taking action on climate; leader in taking action on pollution control. We created, in our great State, since 2011 17 percent of all the new jobs. Okay? And we account for 11 percent of the

population. And I will ask unanimous consent to place those exact numbers in the record.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. Now, we also hear from Senator Vitter the ozone rule is killing jobs. Let me just say something here. If you can't breathe, you can't work. Let's be clear. And if you die prematurely, you surely can't work because you are dead. So here is the deal. With this rule we will save 320 to 660 people from premature death. Okay? Two hundred thirty thousand asthma attacks in children will be averted. One hundred sixty thousand days we will not have kids miss school; 28,000 missed work days will not happen; 630 asthma-related emergency room visits will not happen; and 340 cases of acute bronchitis in children will not happen.

So when you look at this and you see this constant refrain from my colleagues on the right here against the environment, totally against it, attacking you, and you have been fabulous standing up to these nonsensical attacks, you wonder why they are doing it given I made a mistake, I said our job approval as a Congress was 18 percent; it is 14 percent according to a CBS News poll, April 2015. People want us fighting to clean up the air and clean up the water. There is no question about it.

And I will put into the record the counter poll numbers; Senator Carper alluded to it. I want to be pretty clear. First of all, from 1970 to 2014, aggregate national emissions of the six common pollutants alone dropped an average of 69 percent,

while gross domestic product grew by 238 percent. So anyone who has been alive through these years, who has a heartbeat and a pulse knows when you clean up the environment, you boost the economy for so many reasons: people's health; the fact that, yes, we make investments in clean technology that get disbursed throughout the world.

And if you look at the voter support for Clean Power Plan, 60 percent; 73 percent of voters support the U.S. Environmental Protection Agency placing stricter limits on the amount of ozone pollution; and they do not want the Congress to deal with it.

I will close with this. The Waters of the United States, 77 percent say the EPA should protect us from the dirty water and do the clean water rule; 9 percent say the Congress should to it.

So I stand with the American people against this right-wing rhetoric, and it is just ridiculous that this is the Environment Committee and you need to be subjected to the kind of attacks that you have been submitted to.

And also on TSCA there is no agreement. I just checked with Nancy Pelosi.

Senator Inhofe. All right, I will take my 3 minutes and 52 seconds, and I am going to give my 3 minutes and 52 seconds to Senator Sullivan, after which we will be adjourned.

Senator Sullivan.

Senator Sullivan. Thank you, Mr. Chairman. I want to thank the Ranking Member, whom I have the utmost respect for. I just think sometimes we are reflecting the different frustrations of our constituents, and my constituents are enormously frustrated by many, not all, actions of the EPA, and one of them is compliance with the rule of law. And it is not just me talking, it is Laurence Tribe, it is the U.S. Supreme Court, it is the 6th Circuit. I mean, it is pretty dramatic.

Administrator, I appreciate your service. I know it is not always easy, but I am shocked at your statement about even if we lose, we win. This is the kind of statement that fuels the frustration so many Americans have regarding their Federal Government, and I just would thoroughly disagree with you. I think that is the kind of statement that senior Administration officials should not be making, because it demonstrates that you are not serious about the rule of law.

But let me go to another issue that we had a hearing on, the Animas River spill. You testified here, when I asked a question on that, should you be held to the same standard as the public or private sector of American citizens or companies, you said that, actually, it would be a higher standard that would be appropriate for your agency.

So can you give us an update on what happened there? And let me just ask a couple questions. Has anyone been held

accountable? And what do you think would happen if a private sector company did exactly what the EPA or its contractors did in this case, which is, I assuming accidentally, I am assuming you didn't intentionally pollute a water, through a mistake?

What would happen to a private sector company? I can tell you, you probably know this, EPA has actually criminally prosecuted private sector companies for doing something less serious. So this is a bit of an act as I say, not as I do issue.

Can you give us an update and is anyone being criminally prosecuted or is anyone resigning or has anyone taken responsibility as you would if it were a private sector company who did the identical thing? At the last hearing we had on this, for the record, I did give many examples of that kind of prosecution that the EPA has undertaken. What is the latest? And are you holding yourself to a higher standard, as you said you would, than you would to a private American citizen?

Ms. McCarthy. I believe we are, and I know that the Office of the Inspector General is producing a report where he is looking at the issue and will provide that when the report is complete. But I think, as you know, we were there actually to be of assistance to the State and those local communities struggling with the mine situation and the potential for a blowout.

Senator Sullivan. But, Administrator, if it is a higher standard and you made a mistake, not intentional, you polluted dramatically a river, if a private sector American did that, say with a backhoe like happened in Alaska, unintentionally, criminally prosecuted. So how can you say you are holding EPA to a higher standard when it doesn't even seem like anyone has resigned or done anything? So I don't get it.

Ms. McCarthy. I think there is a difference between going in and trying to be helpful to resolve the situation that we know is a significant problem and there is a difference between intending to create a problem, and so -

Senator Sullivan. Right, but you have prosecuted criminally people who have not intentionally polluted.

Ms. McCarthy. Yes.

Senator Sullivan. Now, look, polluters should be prosecuted to the full extent of the law, I agree with that. But if you are saying that you should be held to the same standard, let me just end with a related -

Ms. McCarthy. The issue is, were we negligent? Did we do our job? Was the accident intended or could we have done something that prevented that? Those issues the Inspector General is looking at and we will be able to speak to that. But, in the meantime, our job is to clean it up, to reimburse

those expenses, to look at the long-term monitoring, and we certainly are doing that to the best we can.

Senator Inhofe. Madam Administrator, we are adjourned.

Ms. McCarthy. Oh, thank you so much.

[Whereupon, at 11:53 a.m. the committee was adjourned.]