

HEARING ON THE NOMINATION OF GARY GUZY
TO BE DEPUTY DIRECTOR OF THE OFFICE
OF ENVIRONMENTAL QUALITY

HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

AUGUST 4, 2009

Printed for the use of the Committee on Environment and Public Works



Available via the World Wide Web: <http://www.gpo.gov/fdsys>

U.S. GOVERNMENT PUBLISHING OFFICE

99-884 PDF

WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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ONE HUNDRED ELEVENTH CONGRESS
FIRST SESSION

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HEARING ON THE NOMINATION OF GARY GUZY TO BE DEPUTY DIRECTOR OF THE OFFICE OF ENVIRONMENTAL QUALITY

TUESDAY, AUGUST 4, 2009

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

The committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (chairman of the full committee) presiding.

Present: Senators Boxer, Inhofe, Lautenberg, and Barrasso.

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

Senator BOXER. The committee will come to order.

Because we have two votes at 10:30, it is our wish to move through this pretty quickly. I know we are having Senator Lautenberg and Senator Menendez here. Of course, Senator Lautenberg will speak from up here on the podium. Senator Menendez is on his way.

So why do we not start with opening statements? I am asking Mr. Guzy if he could take his chair, and when Senator Lautenberg speaks we are going to give him a little extra time. He will do his opening statement and his introduction.

I am so pleased to convene this hearing on the nomination of Mr. Gary Guzy to be Deputy Director of the White House Office of Environmental Quality. Mr. Guzy brings with him 25 years of legal experience to this important White House Office.

He has worked in the private sector, academia and government on a wide variety of environmental issues. His distinguished public service career has included positions in the Environmental Division in the U.S. Department of Justice as Deputy General Counsel, General Counsel of the U.S. Environmental Protection Agency, and as Counselor to the EPA Administrator during the Clinton administration.

Since 2001, he has worked with a wide variety of governmental and non-governmental actors, including Georgetown University Law Center, the Environmental Law Institute and in private legal practice.

If Mr. Guzy is confirmed in this position, he will serve as Chief Deputy to the Chair of CEQ, Nancy Sutley, in support of the Council's mission to "promote the improvement of environmental quality."

CEQ brings together different arms of the Administration and agencies across the Federal Government to build strong coordinated environmental policies that protect America's communities from environmental threats.

Clean energy policies that create jobs, reduce our dependence on foreign oil, and address the carbon pollution that causes global warming are front and center today. In addition, CEQ must continue to help facilitate efforts to improve drinking water, strengthen clean air safeguards, improve policies to protect our children and our families from toxic chemicals, and ensure scientific integrity and transparency.

I am confident that President Obama, Nancy Sutley and the Nation will be well served by your experience and your demonstrated commitment to these goals.

I look forward to your testimony today.

Senator Inhofe.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Madam Chairman.

I will shorten mine also and put the entire opening statement in the record.

I agree with comments made by the Chairman here, Mr. Guzy. I enjoyed our visit. You have an excellent background for such a function.

I must say you have a difficult job ahead of you, not the least because Carol Browner, the White House energy and climate czar, appears to be coordinating environmental policy. Of course, we in the Senate have little idea of how her office functions because that is the whole idea of czars. I do not always agree with Senator Byrd, but I do agree with his statement when he talked about the czars are not accountable for their actions to the Congress, to the Cabinet officials, and to virtually anyone but the President.

These czars are inherently opposed to the President's commitment for openness, transparency; and we are hoping that you will be able to work, somehow, in that area to help us with the transparency concern that we have.

NEPA, of course, is the bedrock environmental statute which requires Federal agencies to consider how their actions could significantly impact the environment. Mr. Guzy, the previous Administration attempted to improve NEPA implementation, but the improvements were largely cosmetic due in no small part to the inertia of CEQ.

I hope that you will commit to putting NEPA back into balance. In other words, NEPA should achieve environmental goals without unnecessarily obstructing economic and energy development.

Projects across the Nation are already in limbo due to red tape and litigation based on environmental regulations, from delays in building coal power plants in Jamestown, New York, that would use the cutting edge carbon capture system of cancellation to construction on a coal-fired plant in Morgan County, Colorado. These are some of the things that we are hoping you would be able to help us to expedite.

You know, both the Chairman and I have an interest in developing our effort on infrastructure, and we want to have you—I would like to have you do your job as one who is trying to help us to do that very thing, to reduce the obstacles.

My whole initial reason when I first ran for office many years ago, I was a veteran developer, and I told you this story in my office about the time that I had to go to 26 governmental agencies to get a dock permit for a condo development I was making. So I think what we need to be doing is going in the other direction, getting these things done. And we will be looking for you to help us do that.

The last thing, as I always mention to the appointees, and I am sure that this will be the case, as I mentioned to you in my office, we want to make sure that any inquiries that we have from this side, the minority side of the aisle, you will treat the same as though they were coming from the majority.

Thank you.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA

We are here today to consider the nomination of Gary Guzy to be Deputy Director of the White House Office of Environmental Quality.

The Office, also known as the Council on Environmental Quality, leads the Administration's effort to formulate and execute environmental policy across the Federal Government. CEQ serves a critical role in shaping environmental policy within the executive branch. Mr. Guzy, I enjoyed speaking with you at our recent meeting. I congratulate you on your nomination and look forward to working with you.

I must say that you have a difficult job ahead of you, not least because Carol Browner, the White House Energy and Climate Change Czar, appears to be coordinating environmental policy out of her office. Of course, we in the Senate have little idea as to how her office functions or what contributions it makes to the interagency policy process. As Senator Byrd stated in a letter to President Obama in February, these White House czars "are not accountable for their actions to the Congress, to Cabinet officials, and to virtually anyone but the President."

These czars are inherently opposed to the President's commitment to openness and transparency in the executive branch. This no doubt makes our oversight role more complicated. Nonetheless, Mr. Guzy, this means you will be on the front line as one of the top officials accountable to this committee.

And for better or for worse, you will be accountable for a number of significant issues affecting every corner of the economy. One of them, unique to CEQ, is the National Environmental Policy Act (NEPA).

NEPA, of course, is a bedrock environmental statute which requires Federal agencies to consider how their actions could significantly impact the environment. Mr. Guzy, the previous Administration attempted to improve NEPA implementation—but the improvements were largely cosmetic due in no small measure to inertia at CEQ. I hope you will commit to putting NEPA back into balance. In other words, NEPA should achieve environmental goals without unnecessarily obstructing economic development.

Projects across the Nation are already in limbo due to delays and litigation from existing environmental regulations—including setbacks in building a coal power plant in Jamestown, New York, that would use a cutting edge carbon capture system; and the cancellation of construction on a coal-fired power plant in Morgan County, Colorado, due to "steep regulatory obstacles."

It also seems clear that the tangled web of climate change has enveloped NEPA. Activists are forcing Federal agencies to address the global warming implications of their actions. Among other things, this could seriously curtail the Nation's domestic energy development. Ironically, NEPA is even being used to block renewable energy projects.

I understand CEQ is drafting guidance on NEPA and climate change. CEQ must make clear that climate change is not required for NEPA purposes. As with the Endangered Species Act, NEPA should not be used as a back door tactic to regulate greenhouse gases.

Mr. Guzy, as I noted, you will face a number of challenges in this position. And although we will not agree on how to address all of those challenges, I hope we can work together with mutual understanding of our respective positions.

Finally, when this committee, including the minority, seeks information and makes inquiries, I hope you will respond to them in a timely fashion and with the openness and transparency you have pledged to uphold.

I look forward to your confirmation and to working with you on issues of great importance to the American people.

Senator BOXER. Thank you, Senator Inhofe.
Senator Lautenberg.

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you, Madam Chairman, for introducing Gary Guzy formally to the process.

We think he is an outstanding candidate with a distinguished career in environmental leadership, whether government, academia or business, on all fronts. He has done wonders at each of his jobs by making sure that they are accurately and deftly performed.

He did something else here today. It is almost unfair, because this is from my home town of Patterson, New Jersey, and in it there is a theater mention that we knew about, an act where these people would get up on a 300-foot pole above the sidewalk to attract people to the theater.

Now, off the record, was it your grandfather who owned this?

Mr. GUZY. Yes.

Senator LAUTENBERG. Oh, OK.

Senator INHOFE. Now how do you get that off the record?

[Laughter.]

Senator LAUTENBERG. How do I get it off the record? Very easily, because I want the public to know that this was a gushy statement of sentiment that crept into this hard-nosed political life that we endure.

So, it is a real pleasure for me, Gary Guzy, to meet you here and to support your nomination from the President to be the Deputy Director of the Office of Environmental Quality. I know that you are a highly committed and talented public servant, and if confirmed I believe that he is certainly ready to tackle the challenges that lie ahead.

Those of us who were born in New Jersey can leave the State, but the State can never leave us. He was born in Newark, which was part of the—kind of orbit, of Patterson, Newark and others. I do not want this to devolve into a study of New Jersey and its past, but after a bright high school career, he went to Cornell and then returned to our State and to a field that we hold in high regard in the State of New Jersey, and that is environmental protection.

Mr. Guzy came to Government in a position at the Department of Justice where specialization in wetlands, water quality and hazardous waste issues was his particulate interest. He then, as Chairman Boxer mentioned, moved to the EPA to serve as Deputy General Counsel and help managed the agency's legal staff.

During the Clinton administration, the promotion to General Counsel at EPA took place, and in that position he made it a priority to focus on children's health and control air pollution, as well

as to help restore the Florida Everglades, which is a project that almost everyone supports.

I am confident that you are going to be successful in this new position, assuming that our friends here and on the floor of the Senate will support you.

At this critical time in the climate debate, we need someone with the strength Mr. Guzy brings to help run the Office of Environmental Quality. We need Government to be active and innovative in finding solutions to the challenges that we face.

In June, the House of Representatives passed a landmark bill that would fundamentally change how America uses energy and fights global warming. The world is now expecting the U.S. Senate to pass a bill that moves our country away from dirty, unstable sources of energy and toward clean, sustainable and efficient ones.

As Congress works toward a legislative solution, we need the Administration to work with us. We need a strong, aggressive Office of Environmental Equality to build support for a clean energy bill.

Clean energy can create jobs, as it has in New Jersey. There are now more than 2,000 clean energy companies that call New Jersey home, and they employ more than 25,000 people. And clean energy can reduce air pollution that causes asthma and is thought to cause cancer as well. And clean energy can slow the effects of global warming so that we leave the next generation a healthier planet than the one that this generation inherited.

We also need Mr. Guzy and the Administration to take strong action on hazardous chemicals which are cancer causing, cause birth defects and raise health care costs across the country.

And we need to clean up Superfund sites more quickly so that communities can rebuild and recover their health. New Jersey has more Superfund sites than any State in the Nation. So, this is an important priority for our State's residents.

Overcoming this list of challenges will not be an easy task. But our children and our grandchildren are depending on us to accomplish them. I have no doubt that, if confirmed, Mr. Guzy will be a strong partner in this effort.

Thank you again, Madam Chairman, for holding this hearing.

Senator BOXER. Thank you, Senator Lautenberg.

We have been joined by Senator Menendez. Senator, after we hear from Senator Barrasso, we will turn to you for your comments.

Senator Barrasso.

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator BARRASSO. Thank you very much, Madam Chairman.

Thank you, Mr. Guzy, for taking the time this morning to come and visit with me and have a chance to visit about issues. I want to also congratulate you, congratulate your family and thank you all for the willingness to serve.

Madam Chairman, Wyoming is very interested in a number of environmental issues in which the nominee today will have a significant impact. We had the chance to discuss some of those. In Wyoming, the frontier spirit of smaller government and individual liberty are still sacred traditions. And the reason, of course, is, as

we have discussed, half of the land in Wyoming is run by the Federal Government.

The Federal Government reintroduced major predators into our landscape. The Federal Government manages our dams, our lakes, our reservoirs, they control irrigation and grazing for agriculture production, and we depend on Federal managers to access lands for hunting and fishing.

Living with this heavy Federal involvement in Wyoming, we fight every day, as we discussed, to fight red tape and get work done. Bureaucratic delays impact everyday life in Wyoming. All actions of the Federal Government are subject to environmental law. And these laws are entitled to provide for measured, thoughtful decisionmaking. They allow public involvement in our Government, but they are not built for speed.

Let me tell you from Wyoming experience, NEPA reviews take years. Not weeks, not months, but years. And you and I had a chance to visit about the original NEPA laws as written, when Senator Scoop Jackson was chairing the committee, and where we were then and where we are now.

Even after NEPA documentation is finalized by the Feds, activist groups can file appeals and litigation and hold up projects for many more years. The NEPA process is broken, and it needs to be fixed.

I tried to work with my colleagues, including the distinguished Chairman of this committee, to address these concerns. I worked with the Chairman to attach language to the President's stimulus package to do just that. In addition, however, I maintain that we need to streamline NEPA to protect our communities, to create jobs and to make America energy independent.

We cannot tie America's hands behind its back with onerous red tape if we are going to achieve energy independence and compete with China and India. Smart energy development of all of our domestic energy resources must occur if we are going to compete to be energy secure.

It is my hope that the nominee before us today will work with us to achieve these reforms of NEPA that really do need to occur.

Thank you, Madam Chairman. I look forward to the testimony.

Senator BOXER. Thank you.

Senator Menendez.

**OPENING STATEMENT OF HON. ROBERT MENENDEZ,
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator MENENDEZ. Thank you, Madam Chairman, and Ranking Member and the distinguished members of the committee.

I am pleased to join my colleague from New Jersey in introducing Gary Guzy to the committee for his position that he is nominated for as the Deputy Director of the White House Council on Environmental Quality.

I am proud to say he is the latest in a line of environmental leaders hailing from the Garden State, punctuated quite nicely by Administrator Lisa Jackson whose leadership of the EPA, I think, is showing us that we can protect our precious land, water and air resources.

Mr. Guzy brings with him true expertise on many different levels that are important to the Nation and the committee on climate

change, among others, issues gained from having acquired a wealth of experience that spans the public, the private, the non-profit and the academic sectors. That is a very unique confluence of experiences.

His most recent experience in Government was at the EPA as General Counsel during which time he worked with the Administrator to accomplish important air pollution and tailpipe emissions protections, fostered Everglades' protection, and designed regulatory approaches to protect children.

He has been deeply involved in energy and environmental issues in the private sector. He currently serves as Vice President and General Counsel of APX, the leading infrastructure provider for environmental and energy markets providing registry tracking systems for each of the world's credible voluntary carbon standards.

Prior to that, he was the Global Practice Leader for Climate Risk and Sustainability at Marsh, where he positioned the world's leading insurance broker and strategic risk advisor at the forefront of the industry in dealing with the climate risks.

So in all of those ways, as well as a member on advisory boards to the Environmental Law Institute, the Urban Land Institute, the Greater Washington Board of Trades, Green Committee, and teaching the first-ever course on climate law change at GW's Law Center as Adjunct Professor of Environmental Law, we have someone who has an extraordinary breadth and scope of experiences in the private sector, in the Government sector, in the non-profit sector.

I think those all speak volumes of a tremendous nominee, and I urge the committee's adoption of his nomination.

Thank you for the opportunity.

Senator BOXER. Senator Menendez, thank you. I know you have a hectic schedule.

Before you leave, I just want to say, Mr. Guzy, you should be, and I am sure you are, very pleased that you have both of your great Senators here today. It is a hectic time for us all because it is the last week, and I know everybody has obligations. But you should feel very good.

And thank you, Senator Menendez, so much, for taking time to be here.

Now, Mr. Guzy, it is your opportunity to speak to us, and we hope that you will introduce your family as well. We welcome you again.

STATEMENT OF GARY GUZY, NOMINATED TO BE DEPUTY DIRECTOR, OFFICE OF ENVIRONMENTAL QUALITY

Mr. GUZY. Good morning. Thank you, Madam Chairman, Ranking Member Inhofe and members of the committee.

I am deeply appreciative to you for holding this hearing, for the members of the committee for their thoughtful consideration, to Senator Lautenberg and Senator Menendez for those gracious introductions, to Senators Inhofe and Barrasso for the opportunity to take time out of their busy schedules to meet.

I am delighted to be joined today by members of my family who provide constant support for my work. I am joined by my wife, Sharon Sprague, who you should know for 20 years has been a dedicated public servant in her own right as an Assistant U.S. At-

torney in the District of Columbia; by my two wonderful and inspiring children, Zoe and Zander; and by my mother, Rita Guzy, who traveled from Boca Raton, Florida, to be with us today.

Senator BOXER. Welcome, everybody.

Mr. GUZY. Madam Chairman and members of the committee, I am deeply honored, grateful and humbled by President Obama's nomination to serve as the Deputy Director of the Office of Environmental Quality. As you well know, Congress established the Office in 1970 to provide essential support to the Chair of the Council on Environment Quality.

CEQ has a distinguished 40-year history of service to our Nation, advising the President in the development of environmental policies and legislation, identifying, assessing and reporting on trends in environmental quality and recommending appropriate responses, overseeing Federal implementation of the environmental impact assessment process under NEPA, and coordinating and, at times, even refereeing, Federal environmental efforts.

These tasks are ever more important given the urgency and cost cutting nature of climate change and other environmental challenges our Nation faces. That is why as our President seeks to reinvigorate our Nation's commitment to environmental, public health and natural resources protection, it makes sense to fill the position of Deputy Director and why five former Chairs of CEQ, from both parties, have called upon him to do so.

I have devoted my career to understanding and resolving such concerns and have had the benefit of broad experience in business, government and academia. I currently serve as the General Counsel of APX, a relatively small entrepreneurial green venture hailing from Hoboken, New Jersey, that provides global registry oversight systems for voluntary carbon standards and renewable energy credits.

I previously served as the Global Practice Leader for Climate Risk and Sustainability at Marsh, a Fortune 200 company that is the world's leading insurance broker and strategic risk advisor. There, I helped businesses around the world understand the climate risks they face across their operations and the tools they have for addressing them.

I also am an Adjunct Professor of Environmental Law at Georgetown University Law Center, where I devised and taught the school's first courses on climate change law.

In Government, I was privileged to be appointed by President Clinton and confirmed by the Senate as General Counsel of the U.S. Environmental Protection Agency where I served from 1998 until 2001, as well as to have served before then as Counsel to the Administrator and as Deputy General Counsel at EPA.

In those several roles, I assisted in resolving issues as diverse as enhanced air quality, enhanced tailpipe emission standards, the protection of children's health, and addressing threats to key ecosystems.

Before that, I was a Senior Attorney at the U.S. Department of Justice's Environment Division, handling major environmental litigation that spanned from the Everglades to Alaska.

As I go about my work, I think back to my early childhood living in Newark, New Jersey, with my mother, a single parent then and

a dedicated public school teacher. And from that vantage, I recognize that a caring and open Government can make a difference in the lives of ordinary citizens. From the child with asthma to the coastal communities facing enhanced risks, Government can provide essential hope and essential protection.

I think about the many days that I have been privileged to spend on a bicycle traveling across America's back roads and blue highways, and I realize that the legendary natural bounty that has defined our Nation merits careful stewardship.

I think back to my days on the job as a young law clerk for Judge Elbert Tuttle, former Chief of the U.S. Court of Appeals in Atlanta. Despite his then 30 years on the bench, I was struck that he was vitally interested in my relatively inexperienced views.

From him I learned that keeping an open mind and being attentive to absolute fairness of process are essential to the ultimate success of our work and to improving the quality of the Government's analysis and decisions. Also critical is maintaining the highest of ethical standards. And these are values that, if confirmed, I will strive to take to my job every day and to continue to instill in CEQ staff.

My substantive focus if confirmed as Deputy Director will be to work alongside Chair Sutley to ensure that there is a strong science and legal basis for our environmental policy, move the Nation to greater reliance on clean energy and increase energy security, combat global warming while growing the green economy, provide increased protection for public health and the environment, especially in vulnerable communities, and protect and restore our great ecosystems.

Much has changed in the 40 years since CEQ's founding. Gone should be the myth that protecting our environment, public health and natural resources comes at the expense of a prosperous economy. Rather, these are critical to our continuing prosperity, and they provide enormous opportunities to revitalize our economy.

Gone should be the notion that Government and the private sector must be at loggerheads on the environment. Rather, enhanced cooperation between Government, affected communities and the private sector, tempered by appropriate levels of rigorous oversight, is critical to spurring the innovation that will allow our Nation to thrive.

And gone should be the notion that the environmental pendulum must keep swinging from lack of protection to seemingly onerous prescriptive regulation, with no common ground for action in between.

With this perspective, I am hopeful that we can find enduring, productive and sustainable solutions to the great challenges that we face. If confirmed, I look forward to a close and cooperative relationship with the committee and its staff in carrying out this vital work.

I thank you for your consideration, and I would be very pleased to answer any questions.

[The prepared statement of Mr. Guzy follows:]

**Statement of Gary S. Guzy
Committee on Environment and Public Works
United States Senate
August 4, 2009**

Good morning and thank you, Madame Chairman and Ranking Member Inhofe. I would like to extend my thanks to you and the Ranking Member for holding this hearing. I also would like to thank all the members of the Committee for their thoughtful consideration and for the opportunity to meet with several of you last week.

I am so pleased to be joined by members of my family, who provide constant support for my doing the work that I do. I am joined by my wife, Sharon Sprague, who for the past twenty years has been a dedicated public servant in her own right, serving as an Assistant United States Attorney in the District of Columbia, and my two wonderful children, Zoe and Zander, who inspire my work.

Madame Chairman and members of the Committee, I am deeply honored, grateful, and humbled by President Obama's decision to nominate me to serve as the Deputy Director of the Office of Environmental Quality.

Congress established the Office of Environmental Quality in 1970 to provide essential professional and staff support to the Chair of the Council on Environmental Quality, who also serves as the Director of that Office.

CEQ has a distinguished forty-year history of service to our nation. CEQ:

- advises the President in the development of environmental policies and proposed legislation;
- identifies, assesses, and reports on trends in environmental quality and recommends appropriate strategies in response;
- oversees federal agency implementation of the environmental impact assessment process under the National Environmental Policy Act - NEPA; and
- coordinates and at times even referees federal environmental efforts.

CEQ's role is highlighted by the urgency and cross-cutting nature of climate change and other environmental challenges our nation faces. That is why – as President Obama seeks to reinvigorate our nation's commitment to environmental, public health, and natural resources protection – it makes sense to fill the position of Deputy Director and why five former Chairs of CEQ – from both parties – have called upon him to do so.

I believe that I have the breadth of skills, experience, and perspectives that, if confirmed, provide a strong foundation for assisting in meeting these challenges. I

have devoted my professional career to understanding and resolving environmental and climate concerns and have had the benefit of experience in business, government, and academia. I currently serve as Vice President, General Counsel, and Corporate Secretary of APX, Inc, a relatively small entrepreneurial venture that is the leading provider of registry tracking systems designed to instill oversight integrity for each of the world's credible voluntary carbon standards and for virtually every renewable energy credit tracking system in the United States. I previously served as the Global Practice Leader for Climate Risk and Sustainability at Marsh, a Fortune 200 company that is the world's leading insurance broker and strategic risk advisor, where I developed and executed a comprehensive climate and sustainability program for Marsh and its parent, the Marsh and McLennan Companies. There I worked to help leading businesses understand the risks they face across their operations from climate change and the tools that they have with which to address this challenge. I also serve as an Adjunct Professor of Environmental Law at the Georgetown University Law Center, where I devised and teach the law school's first courses on climate change law and where I have contributed to the growing literature on climate risk management.

In government, I was privileged to have been appointed by President Clinton and confirmed by the Senate to serve as the General Counsel of the U.S. Environmental Protection Agency from 1998 to 2001, as well as to have served before then as Counselor to the Administrator at EPA and as EPA's Deputy General Counsel. In those several roles, I assisted in resolving issues from enhanced air quality and tail pipe emissions standards, to the protection of children's health, to addressing threats to key ecosystems. Before that, I was a Trial and Senior Attorney at the U.S. Department of Justice's Environment & Natural Resources Division, handling major environmental litigation from the Everglades to Alaska.

As I go about my work, I think back to my early childhood - living in Newark, New Jersey, with my mother, a single parent and a dedicated public school teacher. From those experiences I recognize that a government that is caring and honest and open can make a difference in the lives of ordinary citizens. From the child with asthma to coastal communities facing enhanced risks, government can provide essential hope and protection. I think back to my many days I have been privileged enough to spend on a bicycle traveling across America's back roads, and realize that the legendary natural bounty that has defined our nation merits stewardship.

I also think back to my first day on the job as a young law clerk for Judge Elbert Tuttle, former Chief Judge of the U.S. Court of Appeals in Atlanta. Despite his then 30 years on the bench, after an already long and distinguished career in private practice and the military, I was so struck that he was vitally interested in my relatively inexperienced views. From him I learned that keeping an open mind and being attentive to absolute fairness of process for all affected parties is also essential to the ultimate success of our work. This openness of thinking -- this reaching out to hear all perspectives, no matter how long or hard we have been immersed in an issue -- is critical to improving the quality of the government's analysis and decisions. Also critical is maintaining the highest of

ethical standards. All tempered by balance, common sense, and judgment. These are values that, if confirmed, I will strive to take to my job every day and to continue to instill in CEQ's staff.

If confirmed as Deputy Director, my substantive focus will be to work alongside Chair Sutley to ensure that there is a strong scientific and legal basis for our environmental policy; move the nation to greater reliance on clean energy and to increased energy security; combat global warming while growing the green economy; provide increased protection for public health and the environment, especially in vulnerable communities; and protect and restore our great ecosystems. If confirmed, I look forward to a close and cooperative relationship with the Committee and its staff in carrying out this vital work.

Much has changed in the forty years since CEQ's founding. Gone should be the myth that protecting our environment, public health, and natural resources comes at the expense of a prosperous economy. Rather, a healthy environment is critical to our continuing prosperity and our environmental challenges provide enormous opportunities to revitalize our economy. Gone should be the notion that government and the private sector must be at loggerheads on the environment. Rather, enhanced cooperation between government and the private sector, tempered by appropriate levels of rigorous oversight, is critical to spurring innovation and promoting the successes that will allow the nation to thrive. And gone should be the notion that the environmental pendulum should keep swinging from lack of protection to seemingly onerous regulation, with no common ground for action in between. With this perspective, I am hopeful that we can find enduring, productive and sustainable solutions to the great challenges we face.

Thank you. I would be pleased to answer any questions you may have.

**Environment and Public Works Committee Nomination Hearing of Gary Guzy to
be Deputy Director of the Office of Environmental Quality
August 4, 2009
Responses to Questions for the Record**

Senator Barbara Boxer

1. Please describe your history of working on global warming issues and how this will aid the Administration as it develops new policies that create clean energy jobs and addresses carbon pollution.

Answer:

I have an extensive history of working on global warming issues that, if confirmed, I will expect to bring to bear on my work in the Administration.

As General Counsel of the U.S. Environmental Protection Agency during the Clinton Administration from 1998 until 2001, I testified before and engaged in extensive correspondence with Congress regarding EPA's existing authority, under the Clean Air Act, to regulate greenhouse gases as pollutants. This included an in-depth consideration of the statutory language, Congressional purpose, legislative history, subsequent enactments, and relevant case law. My views ultimately were affirmed by the U.S. Supreme Court's 2007 decision in *Massachusetts v. EPA*. I also counseled the agency on how to comply with the requirements of the Knollenberg Amendment, which prohibited any activities implementing the Kyoto Protocol in advance of Senate ratification.

In business, I served as the Global Practice Leader for Climate Risk and Sustainability at Marsh, Inc. This work involved: spearheading partnerships between Marsh and the Pew Center on Global Climate Change's Business Environmental Leadership Council; participating in the U.S. Climate Action Partnership's and the Global Roundtable on Climate Change's work; and leading efforts with the Yale University School of Forestry and CERES to train independent corporate directors on climate risk and disclosure obligations through creation of the Sustainable Governance Forum on Climate Risk. It also involved assessing the Marsh and McLennan Companies own carbon footprint and developing a climate and sustainability policy and report for the company as well as work with the Carbon Disclosure Project on reporting this information. It involved leading the insurance industry in its development of products and risk assessment approaches, including through: work with the National Association of Insurance Commissioners; participation in the Catastrophe Modeling Forum to harmonize climate and risk modeling approaches; and efforts with the World Economic Forum's Global Risk Network to assess climate risks. My work involved assisting clients in understanding the full range of risk exposures they face today and in the future from climate change -- from regulatory and reputational risks, to operational risks from things such as storms, water shortages, or political risks. This work served to give me deep insight into the broad impacts climate change can have on business and the tools available with which to address those risks.

My work took me to Europe, China, Southeast Asia, Canada, and Australia, providing me with a broad exposure to international approaches and challenges concerning climate change. I attended United Nations climate meetings in Montreal and Bali.

I currently serve as Vice President, General Counsel, and Corporate Secretary of APX, Inc., where I assist the company in its work with developing oversight tracking and registry systems for the world's leading voluntary carbon standards and virtually every renewable energy credit generated in the United States. APX works closely with leading regional climate initiatives. APX also is developing a variety of carbon account management infrastructure tools. This work has provided tremendous insight into the structure and operation of emerging carbon markets and insight into approaches employed by the financial sector in this arena.

I also teach climate change law at the Georgetown University Law Center. This work has provided grounding into the relationship between litigation, legislation, and regulation of climate change.

I believe that I can deploy my experience and breadth of perspective to assist the Administration in developing climate policies, as well as bring to bear important partnerships with affected communities, including those in the business world. If confirmed, I look forward to working with the Committee on these issues.

2. Please describe your views on how the federal government can better protect children from environmental health threats.

Answer:

From my work in helping to shape President Clinton's Executive Order on Protection of Children from Environmental Health Risks and Safety Risks and my work in launching EPA's Office of Children's Health Protection, I have a good foundation concerning the challenges this area poses. I remain concerned that health threats, such as mercury air contaminants and ozone and particulate matter, have not received adequate attention in the recent past. If confirmed, I look forward to working with the Executive Branch agencies to ensure a firm adherence to the law and a reliance on sound science and competent expert advisors. Protection of children from environmental health threats requires constant vigilance, and this will continue to be one of my priorities.

Senator Benjamin L. Cardin

1. (Clean Water) - Progress has been slow to address the recent Supreme Court's decisions on Clean Water Act jurisdiction. We are making progress, in that this committee reported a bill to the senate floor this summer but as to when it actually receives floor time is yet to be determined.

In the mean time however the EPA and the Army Corps are still operating under a policy guidance that is causing major regulatory problems and is leading to problematic jurisdictional determinations. Seeing as how you have testified before Congress on this issue I know you understand the gravity of the problem.

In the interim, will you move EPA and the Army Corps of Engineers to revisit this guidance and correct some of the issues that have arisen regarding Clean Water Act jurisdiction?

Answer:

In a letter to Chairman Boxer dated May 20, 2009 (please see attached), CEQ Chair Sutley and other Administration officials indicated that existing guidance documents and supporting regulations can be revised to clarify Clean Water Act jurisdiction to only a limited degree. Additionally, the letter suggested that a clear statement of Congressional intent would provide a foundation for steady and predictable implementation of the Act by the EPA and the Army Corps of Engineers in the years to come. If confirmed, I would work closely with Chair Sutley, other Administration officials, and members of Congress, to assess how best to resolve Clean Water Act issues.

2. (Clean Energy) - This committee has heard from a number of witnesses from the business community about how clean energy legislation would change the way they do business. Many affected companies seem to be embracing the notion of change. Your private sector experience working in the carbon registry and renewable energy credit market I imagine gives you a unique perspective on how companies are adjusting their business practices and profiting from greening their business.

Please explain how you see clean energy legislation improving American business and how your experience can help ensure bring together the interests of environmental protection business prosperity in a clean energy economy?

Answer:

As a key part of our strategy to create the jobs of tomorrow, America must create the products of tomorrow. Comprehensive energy legislation will send a clear signal to the business community that they should make investments in energy efficiency and clean energy technologies. Additionally, it will provide incentives for these technologies to be adopted, which will in turn allow businesses in the clean energy sector to expand and operate more profitably.

More specifically, clean energy legislation can help invigorate our economy by creating jobs such as manufacturing wind turbines, developing advanced vehicles, and engineering next-generation energy technologies and smart building materials that will help our homes, factories and offices use less energy. None of these technologies will deploy themselves. To get these technologies deployed efficiently and at scale, entrepreneurs and workers will be needed, coast to coast, in every region of our country.

Finally, it is important to note that by establishing the United States as a leader in the next generation of energy technologies, American businesses will be well positioned to reap the benefits of leading in the development of the global clean energy efforts.

Senator James M. Inhofe

Protocol

1. If confirmed, will you commit on the record to respond in a timely and complete fashion when I or a fellow member of this committee request information that is necessary to complete our oversight responsibilities?

Answer:

Yes.

National Environmental Policy Act –

2. Streamlining NEPA reviews as a general matter is important and necessary. I'm afraid, however, that recent actions by federal agencies to consider climate change impacts under NEPA could bring months, if not years, of additional delays to federal projects. In my view, CO2 impacts are entirely inappropriate for consideration under NEPA.

As I understand it, CEQ is working on guidelines to help federal agencies incorporate serious implications for projects of all kinds and could seriously constrain economic development.

- a. Let's say that to address safety concerns, Tulsa, Oklahoma, needs to reconstruct a bridge that is structurally deficient. What type of process and what level of detail for analyzing the CO2 impacts of such a project do you think would be appropriate? Will it require modeling and if so, are the necessary models currently available? How much additional time and cost would you estimate that would add to the current NEPA review process?

Answer:

There are a number of factors considered with respect to the construction of bridge projects across the country, not the least of which is structural integrity. Bridge rehabilitation, reconstruction or replacement is classified as a categorical exclusion under the Federal Highway Administration's NEPA regulations.

CEQ has been petitioned by the International Center for Technology Assessment, Natural Resources Defense Council, and Sierra Club to amend the CEQ NEPA regulations or to issue guidance to address to climate change and greenhouse gas emissions. CEQ is required to respond to this petition and has not yet responded. With respect to any potential future NEPA guidance, if confirmed, I would work to ensure such guidance is rooted in a reasonable interpretation of the statute.

- b. How can federal agencies conduct such NEPA reviews without placing an additional layer of bureaucracy and red tape on federal projects?

Answer:

Consideration of greenhouse gas emissions within NEPA is an area of interest, but not one that is new for a number of NEPA practitioners. If confirmed, I would work to ensure that NEPA is applied in a reasonable way that meets the purposes of the statute without imposing an additional layer of bureaucracy and red tape.

c. Will such analysis be required within NEPA reviews for projects funded by the requirements of Section 1609 of the American Recovery and Reinvestment Act (ARRA) of 2009?

Answer:

Many agencies have “shovel ready” projects which are being funded under ARRA, have completed environmental analyses and are fully permitted, approved, and ready for implementation. They require no additional NEPA work. If confirmed, I would review any potential NEPA guidance to ensure that it allows the expeditious review of ARRA projects to continue.

3. A current senior political appointee at the Department of Transportation once testified at a Congressional Committee hearing on environmental streamlining provisions that, “In the struggle between the proponents and opponents of a controversial project, the best an opponent can hope for is to delay things until the proponents change their minds or tire of the fight.”

a. Do you agree with that statement?

Answer:

I believe that when NEPA is done right, interested stakeholders have a fair opportunity to provide valuable insight without delaying the decision making process.

b. Do you believe that NEPA was originally intended to be used in such a way?

Answer:

The original purpose of NEPA, and a purpose that remains important today, is to inform the decision making process.

c. If not, what will you do as Deputy Director of the Office with general NEPA implementation responsibility to ensure that it is not used in that manner?

Answer:

If confirmed as Deputy Director, I will work to ensure that the NEPA process works as intended, and that is to help public officials make decisions that are based on an informed understanding of the environmental consequences.

4. Section 1609 of the ARRA required that “Adequate resources within this bill be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis...” CEQ submitted its second required status report on August 3, 2009.

a. That report stated that, “...the agencies expending ARRA funds are continuing to meet their NEPA obligations in a timely manner.” The spreadsheet CEQ is requiring agencies to fill out, though, only asks for the NEPA review *completion* date, not the NEPA review *commencement* date. Without knowing both when a review began as well as when it was finished, how can CEQ, or Congress, know whether the reviews are being completed on an expeditious basis and whether adequate resources are being devoted to doing so?

Answer:

The cumulative nature of the report allows us to identify when the NEPA review is not complete and therefore warrants follow-up to ensure the reviews proceed expeditiously.

Work gathering information and input often begins before agencies have sufficiently developed a proposed action or determined the appropriate level of NEPA review. Consequently, the reporting requirements are focused on identifying the projects as early as possible.

b. As Deputy Director, will you amend the agency reporting requirements to include the NEPA review commencement dates as well as completion dates?

Answer:

If confirmed, I would welcome the opportunity to work with you on the NEPA reporting process.

c. The reporting guidance issued by CEQ directs agencies to report to CEQ any substantial delays in completing NEPA reviews and documentation. Has CEQ explained to the agencies what specifically is meant by “substantial delays”?

Answer:

I am told that CEQ convened all agencies required to report under section 1609 of ARRA on three separate occasions to ensure they were familiar with the procedures; additionally, I am told that during all of these meetings, CEQ emphasized to the federal departments and agencies that any concerns raised

regarding delays should be brought to CEQ's attention. In addition to these meetings, I am advised that CEQ has had multiple discussions with individual agencies. As a result, five agencies have recently updated their NEPA implementing procedures to make full use of the efficiencies available under NEPA. CEQ continues to work with agencies to review and update NEPA implementing procedures to ensure they provide the necessary framework and direction to expeditiously complete NEPA reviews.

- d. The CEQ report seems to tally together those projects for which NEPA reviews were completed prior to enactment of ARRA, those projects for which NEPA reviews were completed after enactment of ARRA, and possibly those projects for which NEPA reviews were initiated after enactment of ARRA. That grouping makes it difficult to understand the true impact and effectiveness of section 1609 of ARRA. As Deputy Director, will you update future CEQ reports to reflect these distinct categories of project reviews so that Congress may better evaluate the results of section 1609?

Answer:

It is my understanding that CEQ has interpreted the 1609 reporting requirement to focus on the effectiveness of NEPA in implementing ARRA. The fact that in some cases agencies can rely upon reviews completed prior to ARRA demonstrates one of the flexibilities inherent in the NEPA process. If confirmed as Deputy Director, I would welcome the opportunity to work with you on the NEPA reporting process under section 1609 of ARRA.

Principles and Guidelines

5. On July 1, 2009, the Federal Register included a notice from the CEQ titled, "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies; Initiation of Revision and Request for Suggested Changes." The notice referenced the statutory requirement for the Secretary of the Army to update the Principles and Guidelines for use by the Corps of Engineers, but indicated that CEQ was assuming the lead in order to update the document for government-wide use.

- a. The notice stated, "The Administration is considering developing uniform planning standards for the development of water resources that would apply government-wide, including agencies other than the traditional water resources development agencies covered under the current Principles and Guidelines: the Army Corps of Engineers, Bureau of Reclamation (Interior), Natural Resources Conservation Service (USDA), and Tennessee Valley Authority." What is your understanding of what is meant by that statement? What agencies, programs and actions are anticipated to be affected? In your opinion, what agencies, programs and actions should be covered by a revised, government-wide Principles and Guidelines?

Answer:

I am told that the intent of the recent Federal Register notice was to ensure that the same principles and guidelines are applied to water resource development projects, regardless of the federal agency doing the work. Additionally, I have been advised that this proposal is not intended to expand the *types* of projects covered, but rather to ensure that the guidelines are consistently followed regardless of which federal agency is pursuing the water resource development project.

When the 1983 Principles and Guidelines (P&G) were developed, only four federal agencies were engaged in water resources development. Today, more agencies are involved in implementing such projects. The Water Resources Development Act of 2007 would have only applied to the Army Corps of Engineers, leaving out the three other agencies covered by the 1983 P&G.

b. What kind of outreach activities were conducted to ensure that other federal agencies as well as private individuals or organizations that may newly be affected by expanding application of the Principles and Guidelines government-wide were aware of the opportunity to comment? What kind of outreach activities should have been conducted for that purpose?

Answer:

On July 1, 2009, the Federal Register included notice of CEQ's efforts at revising the Principles and Guidelines. This Federal Register notice was followed by a Webinar for interested stakeholders. The initial draft of the revisions will be prepared and released for public comments and review by the National Academy of Sciences. If confirmed, I will work diligently to ensure that interested stakeholders are engaged in the work that CEQ undertakes on this and other issues.

c. Were any actions taken to explain to federal agencies not currently subject to the Principles and Guidelines what the ramifications would be of government-wide application? In your view, what actions should have been taken?

Answer:

I am informed that, over the course of the last year, a significant number of meetings with federal agencies were convened to explore the possibility of expanding the P&G coverage beyond the Army Corps of Engineers. As these efforts continue, all federal agencies will be involved in considering the draft P&G.

d. In May 2008, when the Army Corps of Engineers requested comments on the Principles and Guidelines for use by the Corps only, the comment period was

approximately one month long. The CEQ notice on applying the Principles and Guidelines government-wide provided for a 17 day comment period with one webinar conducted. Do you believe that is a sufficient time period for public comment? Do you believe it would have been prudent to have a longer comment period to account for the fact that a large portion of the potentially affected population may not have an existing understanding of the current Principles and Guidelines in order to comment meaningfully or may not even have become aware of the opportunity to comment within such a short time period?

Answer:

I am told that the Administration provided a variety of options for public comments on the revision of the P&G. Additionally, I am informed that, as concerns were expressed that perhaps a longer timeline for review was needed, CEQ has granted extensions to all that have requested them. When the proposed revisions are submitted to the National Academy of Sciences for review, there will be a subsequent opportunity for public comment.

c. I have been told that CEQ submitted a draft revision of the Principles and Guidelines for interagency review sometime in late July, less than two weeks after the end of the public comment period. Is that correct?

Answer:

Yes.

f. Based on your previous federal agency experience, do you believe a time of less than two weeks is truly enough time to review comments and develop a draft revision for interagency review?

Answer:

In implementing this effort, the Administration has provided, and will continue to provide, numerous opportunities for public comment. Additional opportunities for robust public comment will be made available once the proposal is reviewed by the National Academy of Sciences and I look forward to working with you to ensure the adequacy of such a process.

g. Such a timeline suggests to me that the draft revision was complete or practically complete prior to the public comment period. Do you believe that sequence fulfills the purpose and intent of public comment opportunities?

Answer:

I am told that in drafting revisions to the document, the Administration took into consideration comments first received from the June 2008 Listening Session held by the Assistant Secretary of the Army for Civil Works, the draft Principles

document that was put out for public review by the Corps last fall, and section 2031 of WRDA 2007. Therefore, the public has had multiple opportunities to provide input during the course of the last year.

h. Congress provided the Secretary of the Army two years in which to update the Principles and Guidelines for use by the Corps of Engineers, an agency that has been using the existing Principles and Guidelines since completion in 1983. CEQ seems to be on a pace to update and significantly expand application of the Principles and Guidelines much more quickly than that, perhaps in even less than one year. How can that be? How can agencies government-wide, as well as an unknown number of private interests that may be newly affected, be expected to understand and evaluate the ramifications of a CEQ proposal in significantly less time than Congress determined it would take a single agency already familiar with the document?

Answer:

I understand that the overall duration of the drafting process will be dictated by the comments received from the internal interagency review, the public review, and the review by the National Academy of Sciences. I have been advised by CEQ that it is expected that this effort will take at least two years to complete, as directed in WRDA 2007, and, if confirmed, I look forward to working with you to ensure that there is ample opportunity for agency and public comment.

Floodplain Management

6. Reports are that CEQ currently is working on drafting a new Executive Order on floodplain management.

- a. Do you believe the federal government should have a role in floodplain management? If so, what is an appropriate federal role and what should be under the authority and responsibility of State and local governments?

Answer:

A draft Executive Order (E.O.) on floodplain management has been under consideration by the agencies for more than a decade and various drafts have been widely circulated. To date, the Administration has not moved forward on proposing revisions to those drafts, though I have been advised that CEQ is beginning internal reviews of E.O. 11988 to explore the most appropriate Federal role in floodplain management. I believe that floodplain management can only be accomplished in a collaborative way with local, State, Tribal and Federal governments all working together.

- b. Should the federal government provide or be allowed to provide (non-disaster-related) assistance to communities and entities located in floodplains?

Answer:

This is a fairly broad question and one that would involve a number of government agencies. I am not aware that CEQ has, to date, been involved in discussions on this topic and I look forward, if confirmed, to understanding your views on this matter.

- c. Is the intent of the new Executive Order to expand the existing physical reach of the floodplain area (i.e., from a 100-year level to a 500-year level) subject to special scrutiny under current Federal programs, or to propose a more direct role for the Federal government in management of our nation's floodplains? What are your views on both possible approaches to a new federal policy on floodplain management?

Answer:

I have been advised by CEQ that efforts regarding a draft E.O. have, to date, been primarily focused on ensuring more informed and effective federal agency planning.

I believe that there is an important role for the federal government to play in floodplain management, as there are many federal interests and federal investments in floodplains throughout the country. I believe this role should take into account the perspectives and approaches employed by regional, state and local governments.

Clean Water Act Jurisdiction

- 7. The Administration will have to deal with the controversial legislative debate regarding Clean Water Act jurisdiction, specifically the Clean Water Restoration Act. Please give me your thoughts on what the Administration plans to do regarding Clean Water Act Jurisdiction, keeping in mind the federal interests and state prerogatives envisioned in the original Act?

Answer:

CEQ Chair Sutley and other Administration officials wrote to Chairman Boxer on May 20, 2009 regarding the Clean Water Act. In that letter, Administration officials indicated that existing guidance documents and supporting regulations can be revised to clarify Clean Water Act jurisdiction to only a limited degree. The letter went on to describe principles that should guide legislative efforts to clarify issues associated with the jurisdiction of the Clean Water Act (please see attached letter). If confirmed, I will support achieving those principles through legislative action.

Mining

- 8. I'm concerned that the MOU, and specifically EPA's involvement, is inconsistent with the statutory and regulatory requirements governing the CWA permitting program. According to that a letter from the National Mining Association to Mr.

Robert Sussman, Senior Policy Advisory, EPA, dated July 30, which was included in the record and attached to these questions, EPA's newly devised review process conflicts with current law and regulations by making EPA, and not the Army Corps of Engineers, the primary decision-maker for issuing coal mining permits under CWA Section 404. In essence, the NMA letter alleges that the EPA process circumvents the governing regulations that were promulgated under the Administrative Procedures Act and that establish clear and predictable criteria and timelines.

The reason I am concerned is primarily because of the significant backlog of coal mining permits—and the administration's involvement only seems to be making that situation worse. When EPA first inserted itself into the Army Corps' of Engineers regulatory process earlier this year there were already approximately 150 permits pending and today I am told that backlog has increased by over a hundred permits. What is the respective legal authority of the Army Corps of Engineers and EPA relative to the processing of CWA Section 404 coal mine permits and do you agree that revisions to the requirements contained in the CWA regulations can only be implemented through notice-and-comment rulemaking under the Administrative Procedures Act?

Answer:

The legal basis for the agencies' review of surface coal mining permit applications is provided by Section 404 of the Clean Water Act and its implementing regulations. It is my understanding that the "Enhanced Coordination Process," developed and announced by the agencies on June 11, 2009, is fully consistent with the roles of both agencies as defined by Section 404 and its associated regulations. If the agencies were to seek to change these regulations, or other regulations under the Clean Water Act, I agree that such revisions would require notice-and-comment rulemaking consistent with the Administrative Procedure Act.

Flue-gas desulfurization (FGD)

9. The building material industry has spent hundreds of millions of dollars building new, or retrofitting existing plants to produce Flue-gas desulfurization (FGD) gypsum, primarily based on the regulatory determination you helped author nine years ago. Can you assure the committee that the impact of Subtitle C application to their product line, the potential for thousands of jobs lost, and the economic ripple effect it could have on the housing industry will be taken under the utmost consideration?"

Answer:

If confirmed, I will work with EPA to help provide answers on your question regarding this important EPA-administered program. I have not had any involvement in this matter since the issuance of the Beville waste exemption to

which you refer but I can assure the Committee that the concerns you note will be taken under consideration.

Senator BOXER. Thank you so much, Mr. Guzy.

I would just like to ask you some required questions. Then I will turn to my colleagues.

Do you agree, if confirmed by the Senate, to appear before this committee or designated members of this committee, and other appropriate committees of the Congress, and provide information subject to appropriate and necessary security protection, with respect to your responsibilities as Deputy Director of the Office of Environmental Quality?

Mr. GUZY. I do, Madam Chairman.

Senator BOXER. Second, do you agree to ensure that testimony, briefings, documents and electronic and other forms of communication are provided to this committee and its staff and other appropriate committees, in a timely manner?

Mr. GUZY. Yes, I do, Madam Chairman.

Senator BOXER. And last, do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed?

Mr. GUZY. I do not.

Senator BOXER. Excellent.

Senator Inhofe, go right ahead.

Senator INHOFE. Thank you, Madam Chairman.

I was going to start off with my streamlining of the NEPA process questions, but I have a feeling that Senator Barrasso is going to be asking about that, so I will get into two other things within this 5 minute period of time.

One is on energy permitting, the regional multi-agency permit offices. A company now is seeking to develop an offshore lease. It has got to have an array of State and Federal permits. Remember I told you the example that, one of the reasons I ran in the first place was the permit problem I had out in the real world. And these have shown that off shore energy development can occur in an environmentally responsible manner as we have found out from our experience.

Now, my concern is this. In some instances, over 30 permits from 30 different agencies are required to drill one exploratory well. Just one. That is just one pre-production well. The same is likely true of any energy project, I suspect. This is not a sustainable model. We have got to find a way to rationalize the process without short circuiting any of the safeguards.

Now, in recent years, the Bureau of Land Management ran a successful pilot program to speed the permit delivery process by bringing all of the permitting agencies together in one single office, one stop shopping if you will.

Would you support a regional permitting support office in Alaska? Alaska is an area where we have most of the problems, and if we could have a single permitting office there that would no more than anything else we could think of to expedite this process. What do you think about that?

Mr. GUZY. Well, a few thoughts, Senator. First, the President and the Administration have committed to both transforming our economy to a new energy economy and to economic revitalization as among their highest priorities.

The Council on Environmental Quality's very role is that of coordination among Federal agencies that have a hand or a stake in those efforts. While I am not familiar with that particular proposal or set of problems, I would be very pleased to work with you to look at it. And certainly the Council on Environmental Quality's efforts at coordination in spurring an economic recovery and our economic transformation will be absolutely critical.

Senator INHOFE. Yes, but do you not think, this is the information age and we have got all of the electronics and the capabilities. The idea of having to go to 30 different governmental agencies, do you not find that to be more than just a little ridiculous?

Mr. GUZY. Senator, again, I am not familiar with this particular circumstance. But I will say that, for example, with respect to various controversial permitting activities, one of the things that the Council on Environmental Quality has done in this Administration is to pull together all of the agencies that have a role so that there can be as much coordination and as much efficiency as possible.

Senator INHOFE. The New York Times had the article that we have quoted from several times, and I am sure that you are familiar with it. They wrote that Mary Nichols, the head of the California Air Resources Board, and Carol Browner "quietly orchestrated private discussions from the White House with auto industry officials in an effort to conceal information used to develop the fuel economy proposals. Nichols said that she and Browner put nothing in writing ever."

Is this consistent with the openness policy that our President has campaigned on? Is there anything that you would like to do to bring these things out into the daylight?

Mr. GUZY. Senator, a few thoughts about that, if I may. One is that the President certainly is entitled to have advisors on high priority issues, and he has chosen to structure his White House in that fashion. I am not familiar with the operation of the White House and with that particular effort around cars to know precisely how that transpired or the accuracy of the reporting there.

But I will say that, if confirmed, I will be accountable to this committee, and you can be assured that we will look to work in partnership with you and this committee as we put high priority on economic revitalization.

Senator INHOFE. And that is what we really want, daylight and accountability.

Thank you, Madam Chairman.

Senator BOXER. Thank you.

Senator Lautenberg.

Senator LAUTENBERG. Mr. Guzy, first of all I do want to say that I was pleased to see your family here, and your mother. My mother was widowed when she was 37 years old. I had already enlisted in the Army, and life was tough. But a strong mother always carries on, and the consequence of her dutiful management of your life apparently was the right thing to do, and we are pleased to see you here. Welcome.

Global warming is one of the greatest environmental challenges that our planet has ever faced. Do you think that, why should Government approve projects that have to undergo review for their potential contribution to global warming before they are approved?

Mr. GUZY. Senator, as part of the Council on Environmental Quality's responsibilities in implementing and interpreting the National Environmental Policy Act, I fully expect that we will look at and give careful consideration to the benefits of greater guidance to Federal agencies around both the effects on the Federal Government of climate change as that may unfold both now and in the future and the contribution that Government activities may make to global warming. Those are areas that certainly merit more consideration.

Senator LAUTENBERG. One of the things that happen in this house of legislation is that sometimes we have to go to 100 Senators to get improvement. And that is even more than 30 agencies by a significant factor. We do it. It is arduous, but worth it.

The one thing that I have done since I have been in the Senate is to use as a matrix for my thinking and my legislative pursuits—I look at pictures that I have of 10 grandchildren. The eldest is 15. He has asthma, and on bad days he has bad effects.

And my friends here have heard me say this before. My daughter, when she takes him out for a sporting event, baseball or basketball or whatever else, the first thing she does, if it is away from home, is check and see where the nearest emergency facility is.

This is more an encouragement than a question. And that is, always keep in mind your daughter and the other children for whom we have an enormous responsibility, and let that be the guide to your action. Do not let politics overcome science in selection of those who might be staffing your office.

So, when I look at this job, it is so important. And I feel very comfortable that you are going to be there with your knowledge and your experience and your commitment to what is right, as I know about you.

The Government Accountability Office recently placed our Nation's system for regulating potentially hazardous chemicals on its list of high risk areas. What priority will your office place on fixing our Nation's system for regulating chemicals?

Mr. GUZY. Senator, I am generally familiar with reports and testimony of the Government Accountability Office on the Toxic Substances Control Act and the hearing that I think occurred in February in the House of Representative on those issues. And I am also familiar that Administrator Jackson has identified this as one of her priorities, and in particular concerns about the burdens and difficulties of obtaining and proving data and burdens of proof.

I look forward to the opportunity, if confirmed, to work with her on these issues, to continue to give priority to children's environmental health, as you mentioned, and to carry on that work.

Senator LAUTENBERG. Well, I close by saying that we are fortunate to have a candidate like you coming to this job. It is going to be more difficult than perhaps some of the tasks that you have had, but you are up to it, and we are pleased to have you here.

Thank you very much, Madam Chairman.

Senator BOXER. Thank you very much, Senator Lautenberg.

Senator BARRASSO, you will close this because we have a vote pending. So go right ahead and then we will vote. How many minutes left to vote? Seven minutes left to vote, so do your 5.

Senator BARRASSO. Thank you very much, Madam Chairman.

In Southern Wyoming, in Colorado, having experienced bark beetle in our forests, I was there this past weekend; we have mountain ranges of standing dead trees that is literally a tinder box. The Forest Service is working on hazardous fuels reduction as best they can. But in order to complete the NEPA requirements of these projects, they can only process one watershed at a time, and these NEPA evaluations take about a year and a half each.

So it seems to be a management gamble. We have no way to know where the fire is going to start, and it seems to us in Wyoming that NEPA is preventing large scale action to prevent the damage. Is this how the law ought to be serving our communities in the State of Wyoming and in the country?

Mr. GUZY. Senator, I am not familiar with that particular circumstance, but would be happy to, if confirmed, look at that.

But generally—the Council on Environmental Quality provided Congress yesterday with data on economic recovery environmental reviews. Generally, that showed an extraordinary amount of activity in a very short time, the successful resolution of approximately 80,000 environmental reviews, the completion of 90 percent of those reviews over a 3-month period.

I think that represents the commitment that this Administration has to expeditious processing at the same time as it respects the environmental and public input concerns of those circumstances.

I would also add that we look forward to working, if confirmed, at the Council on Environmental Quality on appropriate means for adaptation for planning for climate change so as to avoid those circumstances that would be unmanageable and manage those things that prove actually to be unavoidable. And certainly increasing wildfires across the West are an area of significant concern.

Senator BARRASSO. As you talk about the stimulus package, you know, unemployment has now reached 9.5 percent, and it is climbing. With that in mind, do you believe job creation, such as the clean energy sector which you talked about in your comments, should be weighed more heavily in making decisions under NEPA?

Mr. GUZY. Senator, I do not have a particular view on that technical issue, but certainly the Administration is absolutely committed to job creation in this area. They have as an initial step brought forward \$80 billion in investment in the clean energy area. There is a commitment to continue that and hopefully work with the Senate on passage of broader climate legislation that also will help to spur this industry.

You know, you look at things like the testimony, I believe last week or the week before, your neighboring Governor, Governor Ritter, about the transformation that is occurring in the economy in Colorado that really promotes green jobs, wind power, basic manufacturing that helps promote renewable and clean energy.

Senator BARRASSO. How can NEPA be improved to address the concerns of people in the Rocky Mountain West who view the law as a tool by outside group to block economic development, the kind of development that is going to create well paying jobs and allow communities to survive and to thrive?

Mr. GUZY. Senator, it is important that in CEQ's advice in working with Federal agencies, and if confirmed, that we strike an appropriate balance and a common sense approach.

Oftentimes NEPA becomes the vehicle for raising the whole set of concerns that may be extraneous to the NEPA process. And I am certain that the more engagement there is between Government, business and effective groups on the front end of the process, the more I believe that benefits a speedy resolution on the back end of the process, and so that the NEPA process itself does not bear the burden of all of those other concerns. And that is something that I look forward to working with you on.

Senator BARRASSO. Well, that would be great. Do you believe NEPA has been abused in the past by outside groups?

Mr. GUZY. Senator, I believe that it has had a heavy burden to bear, and that as a result, in certain circumstances, it has been slower than one might like, and litigation has played—and while playing an important role, it has played a role in slowing down some environmental reviews.

Senator BARRASSO. Thank you very much.

Thank you, Madam Chairman.

Senator BOXER. Let me just say on NEPA, we worked together to make sure, when the stimulus funding came, we were able to make sure that NEPA did not slow up the process.

And so far, we have had some good, we have a report, actually, I would put it in the record, Senator, since this is something that we worked on together. Since June 30th, more than 70,000 NEPA reviews were completed, an increase of over 30,000 since the last report. We will put this in, because we did want to make sure that NEPA was not used in a way that was not appropriate.

I share that concern. I also believe it is hard to say you are for individual rights and community rights versus big government or big business if you do not understand that. That is why NEPA was written in the first place, to give individuals and communities the say-so so that Federal Government could not come in, or some special interest, and ride roughshod over your towns or mine.

However, there is no question, I think, that we can do better with NEPA. And we could work together on that. I think where we could part at some future point is whether we believe those community groups and individuals should have rights at all. But so far, I think we have been able to work together on this.

So, we look forward to working with you, Mr. Guzy. I am so grateful to you for taking on this challenge. And to your family. I am glad your kids are here, your mom, your wife. It is a great moment for you. I will be very proud to support you.

We stand adjourned.

[Whereupon, at 10:40 a.m. the full committee was adjourned.]

[The referenced report was not received at time of print.]

[An additional statement submitted for the record follows:]

STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM THE STATE OF MARYLAND

Chairman Boxer, thank you for holding this hearing, and Mr. Guzy, welcome to our committee; it is a pleasure to have you here before us today, and I look forward to hearing your testimony and answers to our questions.

Gary Guzy's nomination to the President's Council on Environmental Quality demonstrates President Obama's commitment to developing environmental policies using careful science and receiving the best advice from leading experts in the field. The breadth of experience and expertise that Mr. Guzy will bring to CEQ will serve

the Council well as it helps guide the Administration's decisionmaking on environmental policies.

CHESAPEAKE BAY AND CLEAN WATER

The health and productivity of the Chesapeake Bay are a top priority of mine. It is a major economic driver for Maryland and the surrounding States within the watershed. But the Bay's value is dependent on the water quality of the watershed. Mr. Guzy's expert legal analysis and testimony before Congress on the implications of the Supreme Court's decision in *SWANCC v. United States Army Corps of Engineers* in 2002 outlined the enforcement and regulatory mess that the SWANCC decision created for regulators trying to apply the Clean Water Act throughout the country. Fortunately Congress and this committee are working to apply Mr. Guzy's recommendations 7 years after he delivered testimony on the SWANCC decision.

MOUNTAINTOP MINING

Protecting clean water and public health is at the heart of making sure that the Clean Water Act is dutifully applied to Appalachia's dangerous and destructive mountaintop removal coal mining operations. The valley fills associated with these operations have destroyed more than a thousand stream miles with mining waste. Numerous studies have shown that when impacts to the natural landscape of a watershed exceed 10 percent, water quality and the biodiversity of aquatic life in all waters of the watershed decline.¹ In Southern West Virginia there are watersheds with more than 25 percent of the land impacted by surface mines' operations.

What's more, the permitting process for these operations does not account for the cumulative effect of multiple mine operations on downstream water quality.

Regulatory responsibility for mountaintop mining regulation rests with the Office of Surface Mining (Department of the Interior), the EPA and the Army Corps of Engineers. I urge you to ensure that CEQ facilitates the development of congruent environmental policy when agencies' jurisdictions overlap.

CLIMATE CHANGE

No policy will require greater administrative interagency coordination and executive leadership than the clean energy legislation that Congress will send to the President's desk for execution. Department leaders from EPA, Department of Energy, Department of Transportation, Department of Agriculture and Department of the Interior, and former military leaders have all testified before this committee on climate change and the policy solutions that we are considering.

In many ways, the actions President Obama takes on climate change and clean energy will greatly shape his legacy and the future of the American economy. CEQ will play a critical role in coordinating the Administration's multiple layers of regulatory guidelines to make sure that the country's transition to a clean energy economy is a smooth one.

CONCLUSION

Mr. Guzy has excellent experience as a legal scholar, environmental regulator and in the private sector in emerging clean energy markets that has prepared him well for the position that he has been nominated to. I hope he gets the strong support of this committee and the full Senate.

[Additional material submitted for the record follows:]

¹Yuan L.L. & Nortno S.S. Comparing responses of macroinvertebrate metrics to increasing stress (2003).

Allan J.D. Landscapes and riverscapes: the influence of land use on stream ecosystems (2004).

Morgan R.P. & Cushman S.F. Urbanization effects on stream fish assemblages in Maryland (2005).



May 20, 2009

Senator Barbara Boxer
Chair
Committee on Environment and Public Works
United States Senate
Room 410
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Boxer:

In response to your request for the Administration's views, this letter briefly outlines issues related to problems and needed clarification on waters protected by the Clean Water Act and identifies certain principles that may help guide legislative and other actions to address these issues.

Problem Statement

The Clean Water Act is one of the Nation's most effective environmental laws. Since its enactment in 1972, the condition of rivers, lakes, streams, wetlands, and coastal waters across the country has dramatically improved. Today, millions of Americans are able to enjoy swimming, fishing, boating, and other recreational activities because of the cooperative efforts by Federal, State, Tribal, and local governments to implement the Clean Water Act. In addition, by protecting the health of the Nation's aquatic ecosystems, the Clean Water Act has helped assure that water is safe to drink and that fish and shellfish are safe to eat. Along with these vital environmental and public health benefits, clean and safe water is critical to the economic well-being of the Nation, providing significant economic benefits associated with activities ranging from recreation to urban revitalization.

Supreme Court decisions in 2001 and 2006 narrowed the prior interpretation of the scope of waters protected by the Clean Water Act. (*Rapanos v. United States*, 547 U.S. 715 (2006); *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001)). Federal agencies have faced significant challenges implementing these recent decisions. In addition, U.S. Circuit Courts of Appeal have taken different positions in interpreting the Supreme Court decisions, further complicating implementation. Current agency guidance implementing the decisions contemplates complex findings that sometimes result in jurisdictional determinations that lack consistency across the country and can be time-consuming and expensive. Delayed and unpredictable decisions are frustrating and costly to persons seeking approval of projects related to these waters.

It is important to note that although the Supreme Court decisions arose in the context of the Clean Water Act dredged or fill program, they affect all Clean Water Act protections because the Act has a single definition for "waters of the United States". As a result, these decisions affect the National Pollutant Discharge Elimination System (NPDES) program, water quality standards program, oil spill prevention and clean-up program, as well as the permit program for discharges of dredged or fill material. Taken together, these programs are the heart of the Clean Water Act

We are committed to resolving key issues with respect to the scope of the Clean Water Act in order to provide a solid foundation for addressing continuing challenges to the health of aquatic ecosystems. We are focused on the importance of coordination among Federal, State, and local programs related to wetlands, floodplain management, water quality protection, and habitat restoration. We also recognize that the impacts of a changing climate, including changes in precipitation patterns and rising sea levels, will pose difficult challenges for protection of aquatic ecosystems. Finally, as we work to meet goals for wetlands protection nationwide, we need to identify opportunities to expand protection of wetlands and other aquatic resources that are especially vulnerable or critical to sustaining the health of these systems.

Principles

As we work to address the issues associated with the scope of the Clean Water Act, we urge you to consider the general principles described below.

- 1) **Broadly Protect the Nation's Waters:** It is essential that the Clean Water Act provide broad protection of the Nation's waters, consistent with full Congressional authority under the Constitution. All of the environmental and economic benefits that these aquatic ecosystems provide are at risk if some elements are protected and others are not.
- 2) **Make Definition of Covered Waters Predictable and Manageable:** The definition of waters protected by the Clean Water Act should be clear, understandable, well-supported, and transparent to the public. Legislation

and supporting guidance concerning waters covered by the Act should promote prompt actions and avoid time-consuming and costly technical analyses.

- 3) **Promote Consistency Between Clean Water Act and Agricultural Wetlands Programs:** Farmers often face complex issues with respect to whether wetlands located on their farm are within the scope of the Clean Water Act, the wetland conservation provisions of the Food Security Act, or both. Identification of waters covered by the Clean Water Act and the Food Security Act, and operational elements of implementing programs, should reflect consistent, predictable, and straight-forward decision guidelines.
- 4) **Recognize Long-standing Practices:** In over thirty years of implementing wetlands protection programs, Federal agencies worked with States and stakeholders to make common-sense interpretations of the Clean Water Act in various agency regulations. Congress should consider including in the Clean Water Act certain exemptions that are now in effect only through regulations or guidance. For example, a carefully crafted statutory exemption for "prior converted cropland" would be useful to both farmers and Federal agencies.

Enactment of legislation amending the Clean Water Act – based on these principles – would go a long way toward addressing the substantial confusion and uncertainty arising from the recent Supreme Court decisions. Since existing guidance documents and supporting regulations can be revised to implement these principles to only a limited degree, a clear statement of Congressional intent is needed to provide a foundation for steady and predictable implementation of the Clean Water Act in the years to come.

Thank you for your interest in this important problem. We look forward to working with you to address these issues in the future.

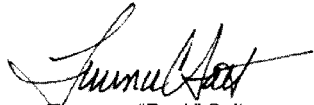
Sincerely,



Nancy Sutley
Chair
Council on Environmental Quality



Lisa Jackson
Administrator
Environmental Protection Agency



Terrence "Rock" Salt
Acting Assistant Secretary
of the Army (Civil Works)



Tom Vilsack
Secretary
Department of Agriculture



Ken Salazar
Secretary
Department of the Interior

cc: Senator James Inhofe, Ranking Member



BRUCE WATZMAN
Senior Vice President, Regulatory Affairs

July 30, 2009

Mr. Robert Sussman
 Senior Policy Advisor
 U.S. Environmental Protection Agency
 Ariel Rios Building
 1200 Pennsylvania Avenue, NW
 Washington, D.C. 20004

Dear Mr. Sussman:

Thank you for the opportunity for the National Mining Association (NMA) to meet with you and other representatives of the Environmental Protection Agency (EPA) to learn about the new process and standards the agency is developing for review of coal mining Clean Water Act (CWA) § 404 applications. We must express our grave concerns with the agency's plans to proceed with a new process and requirements that so significantly depart from those established under the duly promulgated regulations. Moreover, we fail to see how the proposed process will provide the clarity and certainty necessary for preparing future applications designed to meet the currently applicable regulatory requirements.

When we met previously with EPA on April 22, 2008, approximately 150 coal mine permit applications were pending before the Corps. Most recently, members of the congressional delegations in various coal mining states were advised by the Corps that 235 permit applications are now pending. The process EPA presented at our recent meeting will only further exacerbate a rapidly growing backlog of permit applications pending before the Army Corps of Engineers.

As we understand from the meeting, EPA is unilaterally establishing a new standard using the Multi-Criteria Integrated Resource Assessment (MIRA). The new standard will be in the form of a threshold for mining impacts. The threshold will become the benchmark for a bi-furcated process that: (1) allows permits below the threshold to proceed through the current Corps permit procedures set forth in 33 CFR Part 325; and (2) diverts permits above the threshold into a new process where EPA meets separately with the applicants to reach "agreements" that will allow the application to proceed through the existing Corps Part 325 procedures with the understanding the "agreements" with EPA will be incorporated in the final Corp permit.

Our concerns arise from how the new EPA process changes the procedures established under applicable regulations and effectively commandeers the Corps' statutory role for permitting discharges governed by CWA § 404. The Clean Water Act delegates to the Corps the authority for permitting the discharge of dredged or fill material. The regulations promulgated to implement the Corps' § 404 permitting program provide specific procedures and criteria for guiding the Corps' decisions. 30 CFR Part 325.

Mr. Robert Sussman
Senior Policy Advisor
July 23, 2009
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Those regulations are specific about the timing and sequence of each step in the evaluation process, including participation through comments and coordination with other agencies. Moreover, throughout the process, the "Corps alone is responsible for reaching a decision on the merits of any application." *Id.* at § 325.2(a) (3).

This new process circumvents all of these regulations that establish a clear and transparent process with timelines. Now, EPA will be the first point of decision making, determining whether, when and how permit applications can be evaluated by the Corps—and, in many instances, what the final permit decision must look like before the Corps commences its evaluation. This is not the process established under the statute and implementing regulations.

As for the centerpiece of this new process, MIRA is not a tool designed for discrete permitting decisions. Rather, MIRA is an analytical approach for developing policy options through an "ongoing process rather than a discrete event." The output is not a "decision but information that spurs discussion, debate, learning, and consensus building." Stahl et al., "A New Approach to Environmental Decision Analysis: Multi-Criteria Integrated Resource Assessment (MIRA)," *Bulletin of Science, Technology & Society*, Vol. 22, No. 6, Dec. 2002, 443 at 457.

The Corps' § 404 permitting process calls for a discrete event—a permit decision that applies the criteria and follows the sequence and timing set forth in the agency's regulations. As such, NMA objects to using the 235 pending coal mine permit applications as the agency's laboratory for contorting a consensus-building tool into the discrete process and decision making required for CWA § 404 permit applications.

Too much is at stake—thousands of high-wage jobs, the well-being of families and communities that depend on those jobs and the coal supply chain that provides the reliable and affordable energy necessary to grow our economy. We urge EPA and the Corps to follow the regulations and move expeditiously to eliminate the permit backlog as quickly as possible.

Sincerely,



Bruce Watzman, Senior Vice President, Regulatory Affairs

cc: The Honorable Terrence Salt, Acting Assistant Secretary (Civil Works)
The Honorable Nancy Sutley, Director, Council on Environmental Quality