

**BILL TO ESTABLISH REGION 11 OF THE
ENVIRONMENTAL PROTECTION AGENCY**

HEARING
BEFORE THE
**COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS**
UNITED STATES SENATE
ONE HUNDRED SIXTH CONGRESS
SECOND SESSION

—————
JUNE 6, 2000
—————

ON

S. 1311

A BILL TO DIRECT THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY TO ESTABLISH AN ELEVENTH REGION OF THE ENVIRONMENTAL PROTECTION AGENCY, COMPRISED SOLELY OF THE STATE OF ALASKA

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



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ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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BILL TO ESTABLISH REGION 11 OF THE ENVIRONMENTAL PROTECTION AGENCY

TUESDAY, JUNE 6, 2000

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

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

Present: Senators Smith and Baucus.

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

Senator SMITH. The committee will come to order.

Good morning, Senator Murkowski. I'll have a very brief opening remark, then Senator Baucus may have a comment, then, we'll turn to you, Senator Murkowski.

Today, we will address the topic as to whether the EPA should establish a separate region known as Region 11 for the State of Alaska. That question is before us in the form of a bill, S. 1311, which was introduced by our colleague, Senator Frank Murkowski of Alaska. The bill, S. 1311, would direct the EPA to create a separate region for Alaska and to place a regional office in Alaska, and would authorize such funding as necessary to achieve that goal.

The bill stems from and reflects a longstanding interest on the part of both Senators Murkowski and Stevens to see the adoption of a separate region, EPA region, for their home State. Several years ago, this subject was addressed in a different context. Section 522 of the Department of VA and Housing and Urban Development Independent Agencies Appropriations Act of 1992, fiscal year 1992, authorized the creation of a separate EPA region for Alaska.

And on the last day of the Bush administration, EPA Administrator William Reilly signed an administrative order exercising that authority and creating a separate Alaska district. However, the Clinton administration never implemented that order, and Alaska today is still part of EPA Region 10. So in my discussions and questions with the administration, we'd like to focus a little bit on that as to what the rationale for that is.

With that in mind, let me turn for a moment to Senator Baucus, if you have any opening remarks.

[Prepared statement of Senator Smith follows:]

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

Good morning. Today, we will address the following topic: Should the EPA establish a separate region—a Region 11—for the State of Alaska? That question is before us in the form of a bill—S. 1311—that was introduced by our colleague Senator Murkowski from Alaska. Senate bill 1311 would direct the Environmental Protection Agency to create a separate region for Alaska and would authorize such funding as is necessary to achieve that goal.

This bill stems from and reflects a longstanding interest on the part of Senators Murkowski and Stevens to see to the adoption of a separate EPA region for their home State. Several years ago, for example, this subject was addressed in a different context. Section 522 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for Fiscal Year 1992, authorized the creation of a separate EPA region for Alaska. On the last day of the Bush administration, EPA Administrator William Reilly signed an administrative order exercising that authority and creating a separate Alaska district. The Clinton administration did not implement that order, however, and Alaska today, is still part of EPA Region 10.

There are several arguments on each side of this issue. We have before us the written statements of today's witnesses, and we will hear from those witnesses, their testimony pro and con, on this bill. Rather than now summarize their positions, I will let the witnesses themselves make their own statements.

But out of respect for our colleague from Alaska, I will note that perhaps the most often-advanced argument in favor of this proposal is that the uniqueness of Alaska militates in favor of treating that State as a separate EPA region. In that regard, American author Jack London once made two points that undergird the argument advanced by our colleague—first, that Alaska is a unique land and, second, that, only by being willing to adapt to those features of Alaska that render it unique, can a person truly come to understand what it means to be an Alaskan. Let me read a quote from Jack London that makes those points [*"In a Far Country"* (1899), reprinted in *The Portable Jack London* 11–12 (Earle Labor ed. 1994)]:

When a man journeys into a far country, he must be prepared to forget many of the things that he has learned, and to acquire such customs as are inherent with existence in the new land; he must abandon the old ideals and the old gods, and oftentimes he must reverse the very codes by which his conduct has hitherto been shaped. To those who have the protean facility of adaptability, the novelty of such change may even be a source of pleasure; but to those who happen to be hardened to the ruts in which they were created, the pressure of the altered environment is unbearable, and they chafe in body and spirit under the new restrictions which they do not understand. This chafing is bound to act and react, producing divers evils and leading to various misfortunes. It were better for the man who cannot fit himself to the new grove to return to his own country; if he delay too long, he will surely die.

The man who turns his back upon the comforts of an elder civilization, to face the savage youth, the primordial simplicity of the North, may estimate success at an inverse ratio to the quantity and quality of his hopelessly fixed habits. He will soon discover, if he be a fit candidate, that the material habits are the less important. * * * For the courtesies of ordinary life, he must substitute unselfishness, forbearance, and tolerance. Thus, and only thus, can he gain that pearl of great price—true comradeship. * * *

With all that in mind, let me thank our colleague Senator Murkowski for being here today to speak on behalf of his bill. Senator Murkowski, you have the floor.

**OPENING STATEMENT OF HON. MAX BAUCUS,
U.S. SENATOR FROM THE STATE OF MONTANA**

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

Mr. Chairman, I join you, I'm sure, in sympathizing with the Senator from Alaska over his concerns, that is, a State that's so far away from any of the regional offices of EPA, let alone Washington, DC. I must say, we share some of the same concerns in our State. We may not be as large as Alaska or as sparsely populated or as far away.

But the fact is, we are a large State and we are sparsely populated, and in our case, the Federal Government owns about a third, close to a third of our total land area. So to put it lightly, the Federal Government has a very strong influence on our State. And that's particularly true in western Montana, where there are a lot of conflicts, natural resource conflicts.

I must say, too, just to give an example, that decisions that affect Montana are made as far away as either Washington, DC. or a distant regional office. EPA, for example, which very much affects Montana, is in Denver. The Bonneville Power Administration is in Portland. The National Marine Fisheries Service, which determines what must be done to recover salmon, is in Seattle. The Corps of Engineers, which affects our State dramatically, is in Omaha.

So we often feel that these offices make decisions that don't take adequate account of Montana's interest, whether it's BPA considering the great effects of a small aluminum plant in Columbia Falls, MT, or the Army Corps of Engineers favoring downstream over upstream interest on the Missouri River. So I share Senator Murkowski's frustration with the way this system works, or the way it sometimes doesn't work.

However, I must say I'm a little bit concerned about a proposal to create a separate region for one State. First of all, in this case, it would be costly. It would also give special treatment to a single State over all the other States. And it may raise concerns from the other States in Region 10 where they might get short shrift. And by creating a full blown 11th EPA region for a single State, we also have to face the question of balance, that is, balance between the goals on the one hand of maintaining a national system of environmental laws and on the other hand, being sensitive to local concerns.

Now that we have regional offices that affect several States at a time, I think we do strike that balance. Certainly the question is raised when the single EPA office, a single regional office, is responsible for only one State.

So, I, at this point, Mr. Chairman, am somewhat skeptical about S. 1311. It may be a more radical approach than is necessary to strike the balance. But that said, I deeply appreciate the presence and the testimony of Senator Murkowski, and will listen very closely to what he has to say.

Senator SMITH. Senator Murkowski, the floor is yours. Welcome.

**STATEMENT OF HON. FRANK MURKOWSKI, U.S. SENATOR
FROM THE STATE OF ALASKA**

Senator MURKOWSKI. Thank you very much, Mr. Chairman, Senator Baucus. It's a pleasure to be here. I spent a good deal of time in this committee back in 1981 and 1982, wrestling with problems that you're still wrestling with today.

Thanks for scheduling this hearing. As you know, this has been on our list for some time. Senator Stevens and I introduced the language to establish an EPA region in Alaska. Now, a legitimate question has been asked, "Why does Alaska need a separate region?" Our State is 65 percent owned by the Federal Government. We have less than 1 percent of our land mass that's privately owned. The native regional corporations were given a settlement in

our State, and that settlement resulted in 40 million acres of land being transferred to them.

But part of the answer really lies in the uniqueness of our ecosystem and the extent of the piece of real estate known as Alaska. We have about 365 million acres, about 586,000 square miles. I don't see anybody from Texas here, so I won't offend anybody if I remind you that it's 2½ times the size of Texas, a little more than 63 times the size of New Hampshire, Mr. Chairman. We have about 2,400 miles from east to west, and about 1,400 miles north to south.

I used to run a financial institution in our State. And we ran it through four time zones. Trying to balance in one area and communicate to another was a problem. So we'd usually balance the next day. We have 170 million acres of wetlands, that's 65 million acres more than the combined total of wetlands in all of the other 49 States. We have a coastline larger than the rest of the Nation combined, approximately 47,300 miles of coastline. We have 3 million lakes larger than 20 acres. We have ecosystems ranging from an arctic desert to temperate rainforest, including ecosystems that are found nowhere else in the United States.

In addition, Alaska is more ecologically diverse than any other State. And for the last 40 years, the energy wealth of North America has been coming from Alaska, and primarily that area that's unique, because it's north of the Arctic Circle. It's been supplying nearly 25 percent of the total oil produced in this country, and the gas reserves are estimated to be somewhere in the area of 40 to 70 trillion cubic feet of gas. And the question of the marketing of the gas is a challenge that's before the State and before the Nation and will be before the EPA.

Now, that's why virtually every other Federal agency, and I would encourage Senator Baucus to reflect on this, every other Federal agency with environmental or conservation responsibilities has a region distinct in Alaska. That includes the National Park Service, that includes the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, the Geological Survey, the Bureau of Indian Affairs, the Mineral Management Services and the Bureau of Mines. Those have been located in Alaska because of the uniqueness of the stewardship associated with the Federal agencies and their oversight responsibilities.

Even the Federal Aviation Administration has a region comprised only of Alaska. Moreover, the Coast Guard and the Army Corps of Engineers have distinct district offices that are in Alaska, and specifically devoted to Alaskan issues.

Congress has already recognized the merits of an Alaska region for the Environmental Protection Agency. In the fiscal year 1992, the VA-HUD appropriations bill, at that time Congress authorized the President to establish an eleventh region of EPA consisting solely of the State of Alaska. An administrative order to that effect was signed by EPA Administrator William K. Reilly, as the chairman mentioned, in January 1993. Unfortunately, the order was not carried through.

I would ask that a copy of the signed order be included in the hearing record today.

Senator SMITH. Without objection, it will be included.

[The information referred to follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC.

ADMINISTRATIVE ORDER

By the authority vested in me as Administrator of the United States Environmental Protection Agency in section 3, Reorganization Plan 3 of 1970, 5 U.S.C.A. App. 1 (Supp. 1992), and as authorized in Section 522 of the HUD-VA-Independent Agencies Appropriations Act for fiscal year 1992, Pub. L. No. 102-139, 105 Stat. 736, 781; it is hereby ordered:

Section 1. Establishment of Region XI. There is hereby established Region XI of the United States Environmental Agency, which shall consist solely of the State of Alaska.

Section 2. Transfer of reassignment of resources and designation of Regional Office and Regional Administrator. The determination of records, property, personnel, and positions, and unexpended balances of appropriations that relate to the functions transferred, reassigned, or redelegated by this order, and the designation of a Regional Office and Acting Regional Administrator will be made by subsequent order.

Section 3. Effective date. The provisions of this administrative order are effective immediately.

Dated this 20th day of January, 1993.

WILLIAM K. REILLY,
Administrator, U.S. Environmental Protection Agency.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Chairman, I know from my service on this committee when I first came to the Senate, and as you know from your leadership on environmental issues, environmental protection is a complex undertaking. One-size-fits-all approaches cannot be written in Washington or Seattle and necessarily applied in our State of Alaska. Bringing the regulator closer to the problem yields better discussions, more effective and thoughtful regulation.

One of the uniquenesses of our State is we have seasonal activities, just as you have in Montana, Senator Baucus. It is as a consequence very easy for the EPA administrators to reflect on their deliberations and simply put something off for a month or two which costs us a whole year, because if we lose a construction season, we've lost a year.

Furthermore, the distance from Seattle to Anchorage is about 1,200 miles. So by the EPA traversing back and forth, they buildup substantial air miles and they're good for the hotels and restaurants in Anchorage, AK, but it's not like they live there, send their children to school, relate and get an understanding of the uniqueness of our State.

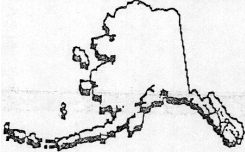
As I have indicated, over 65 percent of Alaska is controlled and owned by the Federal Government. Most EPA activities directed at Alaska require coordination with Federal land managers who are headquartered in Alaska. That's the other land areas, the Forest Service, the Park Service, BLM and so forth.

Other benefits that we expect from this legislation include reduced number of appeals and adjudications, reduced travel between Seattle and Alaska. And I might add, a 1,200 mile trip takes all day. Better service to the public, lower cost. Now, while EPA may disagree, the last time we asked the Alaska Department of Environmental Conservation to perform an analysis of the budgetary impacts of an Alaska region EPA office, they projected a modest

savings to the taxpayer. I ask that the materials related to the cost be included in the record at this time.

Senator SMITH. Without objection.

EPA REGION XI



...a commitment to protecting and improving America's most diverse environment, Region XI will be headquartered in and be responsible for environmental protection in the state of Alaska.

Will a New Region be MORE EFFICIENT?

Region XI will be more efficient and thus result in a savings to EPA of approximately \$100,000. Decisions will be made by staff located in Alaska, who are familiar with Alaska's unique environment.

- Reduced number of appeals and adjudications
- Reduced travel between Seattle and Alaska
- Better service to the public
- Cadre of environmental professionals to interact with Alaskan decision-makers
- Laboratory analysis done in-state, rather than shipped to Seattle
- Transfer existing Region X funding and personnel working on Alaska's issues to the new Region XI
- Sharing of administrative and most legal needs between Region X and Region XI

Why a Region XI?

- Alaska is the only state with an arctic and subarctic environment.
- Alaska is currently a part of Region X headquartered in Seattle, so decisions affecting Alaska are being made thousands of miles away from the point of impact.
- Region X is the EPA's largest region geographically, but with the fewest employees to cover some of the most sensitive environment in the nation.
- The state of Alaska has over 586,000 square miles with more than 10,000 miles of coastline, yet only 24 EPA employees are located in Alaska.
- Most of the federal government's environmental protection for Alaska is done from Seattle, setting the stage for long delays, poor or inappropriate decisions, and limited field knowledge.
- Alaska has more Wetlands than any other state in the Union.

Isn't a Single-State Office Unusual?

Not for other federal agencies. These agencies all have fully staffed offices located in the state of Alaska specifically devoted to Alaskan issues.

- U.S. Forest Service
- Bureau of Land Management
- Minerals Management Survey
- Bureau of Mines
- U.S. Geological Survey
- U.S. Fish and Wildlife
- U.S. Coast Guard
- National Park Service
- Bureau of Indian Affairs
- Federal Aviation Administration

What is the Benefit to Creating a Region XI?

Environmental protection is becoming more and more complex. Based on scientific principals, it becomes more site-specific as well. Presupposed in the environmental legislation passed by Congress is the cooperation between the Environmental Protection Agency and the individual states. In these times of declining revenues, this cooperation is the key to environmental success. Thus, we all benefit by ensuring that the state of Alaska, a mineral rich state, has all the tools it needs to protect its unique environment.

EPA REGION XI

WHAT WILL IT COST?

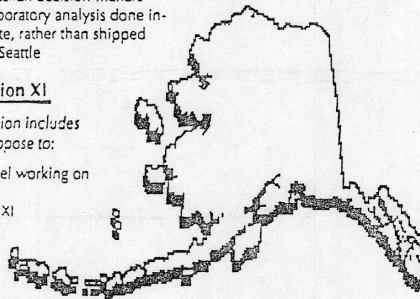
There will be a savings to EPA through the establishment of a Region XI of approximately \$100,000. Because decisions will be made by staff located in Alaska and thus familiar with Alaska's unique environment, there will be:

- Reduced numbers of appeals and adjudications
- Reduced travel between Seattle and Alaska
- Better service to the public
- Cadre of environmental professionals to interact with Alaskan decision-makers
- Laboratory analysis done in-state, rather than shipped to Seattle

New resources will not be required to establish Region XI

Region X's current funding level of approximately \$32 million includes support costs now provided for the State of Alaska. We propose to:

- Transfer existing Region X funding and personnel working on Alaska's issues to the new Region XI
- Designate some Region X new hires for Region XI
- Share administrative and most legal needs between Region X and Region XI



BEFORE REGION XI

	AK Operations, In-state	AK Operations, Seattle	Region X*
Personnel	\$1,224,747	1,058,083	\$26,000,000
FTE's	24	22	540.6
Travel	\$152,000	139,333	\$1,600,000
Support	(Included in Region X)		\$4,500,000
		Present Total Cost:	32,100,000

*These figures include the current Alaska Operations budget

AFTER REGION XI

	Region XI	Region X	Amt. Transferred**	Total Both Regions
Personnel	\$2,450,000	\$23,550,000	\$1,224,747	\$26,000,000
FTE's	48	492.6	24	540.6
Travel	\$250,000	\$1,350,000	\$98,000	\$1,600,000
Support	\$400,000	\$4,100,000	\$300,000	\$4,400,000
			Projected Total Cost:	32,000,000

**These figures show the amounts over and above the current Alaska Operations budget which would come out of current Region X.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I want to leave you with just a few examples of what happens when good intentions in the EPA Seattle office go awry in Alaska. In the regulation of mining operations, EPA sought to require operators to reduce arsenic discharges to a level below, below the naturally occurring ambient levels. They were apparently unaware that the high level of mineralization in many areas of Alaska caused some streams to have naturally high levels occurring of contaminants associated with arsenic.

If you fill your canteen from a stream and later dump the portion you did not drink back into the stream, you're violating an EPA standard.

Here's another example. When EPA insisted that Fairbanks, which happens to be my hometown, uses MBTE as an oxygenate for motor fuels, nobody really understood what happened when MBTE volatized in extremely cold air inversions, such as our 40 below zero temperatures, exposing humans directly to the chemical. Well, let me tell you what happened. People started to get sick, complaining of headaches, nausea and dizziness. I've had pictures of some of these people, and you can readily see the reaction.

For far too long, EPA's distant Seattle office regarded the health complaints of Fairbanks residents as little more than grumbling of a few crackpots and refused to grant a waiver. Many months later, after being confronted with hard evidence of sickness, EPA did grant a waiver. How much more quickly that waiver might have been done and how many fewer Alaskans might have not gotten sick if EPA had a regional office in Alaska.

Well, today, Fairbanks is a non-attainment area for carbon monoxide by virtue of the arctic air inversion that occurs several times a year. Seattle has never experienced a true arctic air inversion and never will. So it doesn't surprise me that the EPA regional office hasn't come to terms with the best way to help Fairbanks solve its problems. Instead of considering the unique situation that Fairbanks is in, the EPA started the sanction clock.

Well, in Nome where I visited this last weekend, in the village of Elg, the EPA wants the smokestacks in Nome on the power plant to be raised to better dissipate emissions. Now, according to the Federal Aviation Administration, doing so would interfere with the landing patterns and require costly realignment of the runways at Nome's airport, which would largely be undertaken at Federal expense.

Is this a cost-effective solution? Well, of course not. But it's easy to see how this can happen if EPA is sitting in Seattle, calling shots without coordinating with the FAA which has its regional headquarters in Anchorage.

Another example, and this is relatively humorous, is the Anchorage waste water treatment plant. EPA requires both primary and secondary treatment waste water to address elevated levels of biological oxygen demand, that's BOD, a measure of microable activity in waste water. When Anchorage only had primary treatment, the tidal action of the inlet, that's 30 feet of tidal action twice a day, some of the most extreme in the world, I might add, next to the Bay of Fundy, coupled with the low BOD levels in Anchorage waste water, argued against the need for expensive secondary treatment to lower the BOD readings.

But the EPA determined that Anchorage still needed secondary treatment, notwithstanding the low BOD reading and the tidal action of the inlet. In order for Anchorage to have a sufficient amount of BOD to address, it contacted a fish processor to dump some fish waste into the discharge to raise the BOD of the effluent, in order that the secondary treatment could lower it.

In Fairbanks, we had an occasion where the bus barn, where they park the buses, they were removing the snow, putting them

in the back area and the back area was determined to be a wetland. The placement of the snow in the wetland was a violation of EPA regulations. Those came out of Seattle as well.

So in conclusions, Mr. Chairman, I would ask this committee to move our legislation that directs the establishment of an Alaska region. Because again, many of the activities are unique to Alaska. For example, we're the only State in the Union with permafrost. We have about 70 percent of our State covered with permafrost. The uniqueness of that with any activity associated with oil, gas and mineral exploration is indeed unique. We have the dynamics of scouring ice on our coastlines, and the realization that we're attempting to build pipelines to develop oil and gas.

These are all unique to no other region but Alaska. And as a consequence, to the concern from my friend from Montana, who is concerned legitimately about why Alaska, I would simply refer to the other agencies that have seen fit, because of their stewardship responsibility and uniqueness of our State, that it's much more effective and more practical to have an agency in our State. It reduces the transportation costs of people traveling 1,200 miles almost on a continuous basis and provides the expertise where it belongs in the area where the development is concentrated.

I'd be happy to respond to any of your questions, and again, I would encourage your favorable consideration.

Senator SMITH. Thank you very much, Senator Murkowski.

I just have one question. It may be better put to Commissioner Brown or Director Freeman, and I can ask that when they come up. But as I read the Reilly order in January 1993, just prior to President Bush leaving office, it says,

Reilly responding to President's Bush's order, it's hereby ordered,

and then the second paragraph of that,

that the transfer, reassignment of resources and designation of regional office and regional administrator, the determination of records, property, personnel, positions and unexpended balances of appropriations that relate to the functions transferred, reassigned, etc., to the regional office in Alaska.

I guess I would be interested in what transpired in Alaska once that happened. I'm assuming that after that order was signed, the anticipation was that you were going to have a regional office. Yet, when President Clinton came in, that was not executed.

Did something happen in Alaska? Were decisions made? Were preparations made to open offices or to do things in anticipation based on that order?

Senator MURKOWSKI. Well, there was nothing extraordinary that happened associated with the order. Senator Stevens and I lobbied the effort through the previous administration and very frankly, it just got lost in the dying days of that administration and was never effected. I'm not aware of any particular incident. I think there were a lot of priorities, as there usually is when an administration is about to go out. And this one fell in the crack.

I guess I have no explanation for why.

Senator SMITH. I don't have any further questions. Do you, Senator Baucus?

Senator BAUCUS. Just a couple, Frank, and I understand the concern, believe me. Some of the agencies you mentioned have field of-

ices, not regional offices, in Alaska. In addition, they're basically land resource agencies which have a little bit different mission than the EPA.

But I guess the main point, the main question here obviously is, is responsiveness and balance. Those are the two most salient questions here. To me, it's not easy. For example, in Montana, we have the largest Superfund site in the Nation.

Senator MURKOWSKI. The largest what?

Senator BAUCUS. The largest Superfund site in the Nation, by far. We don't have a regional office in Montana. There's a State office which deals with it. There is a little bit of tension, as one would expect. My guess is there would be tension even if there were a regional office in Montana. Because obviously the issues are Federal and State, regardless of where the regional office is.

We also in Montana have a huge asbestos problem. A couple hundred people have died. Several hundred are infected by asbestosis, or mesophilioma, or some form of asbestos-related disease. It's huge. This is a massive problem that's affecting not only Libby, MT, but many parts of this country.

EPA has sent to Montana, to Libby, several personnel. They have done a terrific job, EPA personnel. The people in Montana, Libby, MT, particularly, have nothing but praise for EPA, the way EPA has handled this. EPA has sent a very good person, onsite person, his name is Paul Paranard.

I've got to tell you, I wish that everybody in the country, who sometimes criticizes the Federal Government, would meet Paul Paranard. This guy is one of the most special persons I've ever met in any capacity anywhere. He's a basic, down to Earth kind of a guy. We had a hearing there just last week. This is typical of Paul. He comes in his jeans and kind of a black tee-shirt. He's got a ring in his ear. He's just a basic guy, but he is so smart. He is so responsive, he listens so much to people and he's moving things so quickly.

We've got a couple sites that are already on the schedule to be cleaned up in a very short period of time since he's been there. One's a nursery, a tree nursery, another is a lumber yard. The main point being that there's no magic formula here. Sometimes EPA is handling things quite well and sometimes it's not.

But the only point I want to make is, in this case, EPA is handling a very, very, very difficult State and national problem without a regional office in Montana. People are OK, they're happy. It's just a slight concern that my folks in Montana are going to think, "Well, gee, Alaska gets one, why don't we in Montana." I'm going to run into that in spades. As I mentioned, there are just lots of EPA issues in Montana. I mentioned just two. There are many, many others. EPA is very prevalent in Montana.

There's also a slight question, that has to be raised, by looking at the various regions. You know, Florida is not very much like Kentucky, yet EPA handles both. One could argue Florida should have its own regional office. Maybe Kentucky should have its own regional office. Same thing with the region that includes Texas, Louisiana, and I think New Mexico are in the same region. Some people in Louisiana may think, gee, our State's a lot different than

New Mexico, and vice versa. Why shouldn't we have our own regional offices?

I guess the only point I'm making is I very much sympathize with what your concern is, because Alaska is considerably farther away. But I don't know that necessarily, a regional office is going to solve the problem here. It's really kind of a guess as to what the problem is. If the problem is the way EPA is administering the statutes in Alaska, there are ways to skin that cat, have hearings in Alaska, as I've had in Montana. Lots of EPA hearings in Montana. And I call EPA personnel, they come to Montana. It's very good for them, it's very good for us. And it works.

So all I'm saying, Senator, is I deeply, deeply appreciate your concern. But I don't know that it's necessarily the right public policy for the country. But I certainly will listen to the testimony very carefully.

Senator MURKOWSKI. Well, thank you. Obviously, I don't have much time left to convince you. But I would like to remind you that all the Interior offices, the BLM, the Park Service, are full regional offices, with a full regional administrator, I might add. Forest Service, full regional offices. They are not sub-regional offices.

I've been criticized in my State for, as you know, the EPA is not necessarily the most popular agency in many regards. They have a job to do, and I've been criticized for suggesting that there should be a regional office in my State. I understand and appreciate that criticism, but the reality is that we live under the law of the land. But if the law of the land is interpreted in an environment that is substantially removed from the circumstances associated with the uniqueness of our area, you spoke of your concern over your Superfund site. You spoke of your concern over asbestos problems.

It's my hope, as you know, we became a State in 1959, we're relatively new. It's my hope that by having the EPA establish a regional office, we will not be confronted with the problems associated in your State or other States that have Superfund sites.

Now, the uniqueness is the technological application associated with a 65 percent of the area's permafrost. You say you can do the same thing in Kentucky that you can do in Florida relative to an EPA region. But our State's the only one with permafrost. Our State's the only one producing volumes of oil. And like any other area, only the uniqueness is it's not like Texas, it's in the Arctic. The engineering technology is entirely different. The movement of ice on our coastlines, we have scouring. How do you put—these are all unique to Alaska and as a consequence, I think, deserve consideration.

We talk about the role of EPA in Alaska. It's a developing role. We spent \$9 billion, the largest construction project in the history of North America, was that oil pipeline. Senator Baucus, you were here, you were aware of what was going on.

Senator BAUCUS. I was up there twice.

Senator MURKOWSKI. Yes. It was one of the more significant engineering events ever to occur. We're talking about putting a gas line in. We're talking about \$10 billion to \$14 billion. These are things that are not happening anywhere else in Region 10. They're going to happen in Alaska. Justification for EPA is to ensure that we don't have happen in Alaska what happened in Montana.

Senator BAUCUS. What—wait a minute. Whoa, Senator—
 Senator MURKOWSKI. I'm talking about your Superfund site, I'm talking about your asbestos.

Senator BAUCUS. No, no.

Senator MURKOWSKI. If we have EPA in our State managing, we won't have these problems.

Senator BAUCUS. Frank, in all respect, that's irrelevant. Because, because—

Senator MURKOWSKI. Well, history has a way of repeating itself. What comes around goes around.

Senator BAUCUS. I'm just saying, the asbestos problem, the problem there is, we found the problem, and EPA is doing a great job at managing the cleanup.

Senator MURKOWSKI. I'm sure they are. We want EPA to do a great job in our State as well.

Senator SMITH. I think one other point that needs to be made, too, this is not simply the case of a Senator making a request for something in his State. This has gone through the legislative process, has gone to the President's desk for signature, although it was not a mandatory action. Then it was supposedly implemented and has not been. We will hear from the next panel as to perhaps why that would be the case.

In any case, we can all agree that William Seward made a good investment, otherwise we'd be dealing with the Russians now.

Senator MURKOWSKI. Well, we're ready to buy it back any time. Thank you, gentlemen.

Senator SMITH. Thank you.

If the next panel would please come up. The Honorable Romulo Diaz, Assistant Administrator of Administration and Resources Management, EPA; The Honorable Michele Brown, Commissioner, Alaska Department of Environmental Conservation; and Mr. Ken Freeman, the Executive Director of the Alaska Resource Development Council. Welcome. We're glad to have you here.

Let's start with Mr. Diaz. Your comments will be made part of the record, and if you can summarize in a few minutes, we'd appreciate that.

STATEMENT OF ROMULO L. DIAZ, JR., ASSISTANT ADMINISTRATOR FOR ADMINISTRATION AND RESOURCES MANAGEMENT, ENVIRONMENTAL PROTECTION AGENCY

Mr. DIAZ. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am Romulo L. Diaz, Jr., EPA's Assistant Administrator for Administration and Resources Management. I am pleased to appear before you to present the Agency's views on S. 1311, a bill to create a separate EPA region for Alaska.

I would like to begin by providing a brief history of the efforts to establish an eleventh EPA region in Alaska. In 1990, then-Governor Walter Hickel called upon the EPA Administrator, William Reilly, to create a separate regional office for Alaska. In response to the request by the Governor and Senators Stevens and Murkowski, as well as the concerns expressed by the delegations of potentially affected States, EPA undertook a study of the "Implications of Establishing a Regional Office in and for Alaska."

This study, which was completed in 1992, concluded that the proposed new region would not be cost effective and outlined alternative approaches to meeting the concerns of Alaska's elected officials. In January 1993, then-President Bush signed a memorandum ordering Administrator Reilly to establish Region 11. On January 20, 1993, Administrator Reilly signed an administrative order establishing the new region, subject to implementation steps necessary for such a reorganization.

Following careful consideration by the incoming administration, EPA believed that the concerns expressed by Alaska officials, industry and environmental groups, particularly in light of the 1992 Alaska study, could be more effectively and efficiently satisfied through a variety of other means. These included better collaboration with the State in developing program priorities, improving program delivery strategies, and better deployment of EPA resources in the State.

Let me review just a few of the ways that EPA today demonstrates its commitment to one of this Nation's most geographically diverse areas. EPA's Alaska operations office is unique among EPA's State organizations. With 39 employees, it is the largest of any EPA State-based operation and is responsible for on-the-ground implementation of EPA programs in the State. In addition to administering some programs directly, the Operations Office provides technical assistance to help State, local and Tribal governments in administering delegated programs.

An essential element to EPA and Alaskan cooperation is the 2-year partnership agreement that integrates federally-funded programs administered by EPA with related programs funded by the State and by other Federal agencies. The recently revised agreement contains mutually determined priorities to achieve environmental goals and gives the State maximum flexibility to address its specific needs while maintaining a core level of environmental protection.

Let me just give a few examples to illustrate this flexibility. In light of the State's unique geographical, meteorological, air quality and economic factors, EPA has granted Alaska an exemption from meeting the current sulfur standard for highway diesel fuel. To help Alaskan rural communities, EPA has provided in excess of \$100 million since 1995 for construction of drinking water and wastewater facilities. In addition, a Rural Sanitation Coordinator and staff in the Alaska Operations Office works directly with Native Villages and with State agencies to provide rural sanitation services.

EPA and the Corps of Engineers have worked to develop a wetlands permitting process that takes into account the State's highly diverse environmental, economic, and geographical conditions. The Operations Office director is authorized to approve wetlands permits for Alaska, which is itself unique within EPA.

A number of measures point to the success of EPA's efforts. For example, major NPDES permit backlogs for municipal discharges, mining, pulp and seafood operations have been reduced from 69 percent in 1996 to 21 percent in March 2000, and are expected to be further reduced by the end of this calendar year. Over the past 7 years, EPA has listened to the concerns expressed by Alaskan of-

ficials. Although there is always room for improvement, much progress, we believe, has been made, and we remain committed to addressing Alaska's unique needs in cost-effective ways that recognize environmental and public health needs.

On behalf of the Environmental Protection Agency, I pledge that we will continue to work with this committee as well as the State of Alaska and others to consider additional cost-effective ways to better serve the environment and the people of Alaska. Thank you for the opportunity to appear before you today, and I'd be pleased to answer any questions you might have.

Senator SMITH. Thank you, Mr. DIAZ.

Commissioner Brown, welcome.

**STATEMENT OF MICHELE D. BROWN, COMMISSIONER, ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Ms. BROWN. Thank you, Mr. Chairman, Senator. I am Michele Brown, Commissioner of the Alaska Department of Environmental Conservation. On behalf of Governor Tony Knowles, I thank you for allowing me to come here and state the State of Alaska's support for the bill before you.

Alaska is not just our treasure, it's a national treasure. You have participated in the debates over opening the Arctic National Wildlife Refuge and the timber harvest levels in the Tongass National Forest. There is great passion in those debates, as you certainly experienced. That's because Alaska is a proud symbol of environmental purity for America. It should also be America's model for environmental management. Yet the Federal agency charged with environmental management has only a meager presence in Alaska.

A lot has changed since 1970, when the EPA regional structure was set up. We were only 10 years into statehood then. A lot has changed since then. Today, our issues range from addressing Third World sanitation conditions in hundreds of inaccessible villages to regulating the country's most complex oil development, transportation and production system, one which yields 20 percent of the domestic oil production.

The issues range from protecting the water quality of our massive coastline that produces and processes over 50 percent of the U.S.'s seafood while regulating the discharges from the U.S.'s largest zinc and silver mines and the highest production placer gold and tin mines. Issues range from generating electricity from diesel engines, because there is no other available power source for all of our villages and most of our industrial activity, while assuring air quality for two-thirds of the U.S. national parklands, the largest State park system in the United States and the largest U.S. national forest.

We also have to do this while we preserve the vistas and the fresh air quality for the millions of tourists who visit Alaska every year. All this needs to be done over a land base that's 20 percent of the United States.

There's a map in your packet that shows the State of Alaska superimposed on the rest of the country and the blue is Region 10. As you can see from this map, we extend from the Canadian border down to southern California and from Tennessee to Texas, even not including the chain.

Senator Murkowski has given you a lot of the overwhelming statistics about our size and complexity. I would just like to mention in addition that we share no border with another State, and at our closest point, we're 2½ miles from Russia.

As Senator Murkowski pointed out, virtually all the pertinent Federal agencies do have regional offices in Alaska, and those are not just land management agencies. They're also those that have regulatory protection programs, such as NOAA, the Corps of Engineers and MMS. It's EPA alone that tries to provide this management from Seattle with a core and small staff in Alaska.

I'm not here to criticize EPA. We have worked on a number of issues productively. But I'd like to highlight a serious problem in allocation of resources and attention. I'd like to give you four brief reasons why I think the current regional structure isn't working, and some examples. First, is Alaska's environment needs more effective management. Despite efforts by Region 10 to be responsive, we've seen that managing for results isn't working from the Seattle office. EPA's Alaska office is a minimal presence and does not really have a key voice on issues. My staff and I spend 90 percent of our time dealing with either Seattle or Washington, DC, on our key Alaska issues.

The performance partnership agreement has unfortunately not been a big success in Alaska, and we've had a very hard time reaching a meeting of minds on priority of issues. Seattle staff, despite their best efforts, often do not understand the conditions in Alaska. Lacking any sense of the big picture of all the issues there, they merely tackle what shows up on their desk. Lacking an understanding of the on-the-ground conditions, they adhere to one-size-fits-all solutions. This can often lead to a lot of time and energy without producing environmental results.

I would like to give you one example. Thousands of migratory birds are dying year after year in a wetlands estuary just outside of Anchorage. It was contaminated by the Army's use of phosphorus in its weapons. Two-thirds of Alaska, by the way, is owned and managed by the Federal Government. Much of it does have residual contamination.

But EPA, the fellow Federal agency with the clout to address this, isn't working on this issue. Instead, less than 15 miles away, the Anchorage sewer treatment plant that Senator Murkowski mentioned, we've been going through 3 years of paperwork to try to renew its permit, because there is some so-called pollution in the discharge.

Well, that pollution is due to trace metals and high sediments from naturally occurring conditions from glacier runoff. So although we've spent countless hours on this permit, we're not going to see any improvement in water quality when it's said and done. But the wetlands issue just up the road is being ignored.

Senator Murkowski mentioned to you the situation we had with the arsenic standard. Although we were able to address that, I'd like to point out it took 4 years to address that. Many large and small mines were delayed while that was being addressed. The ones that were able to proceed had to spend an inordinate amount of money with paperwork to be able to proceed in light of this unreasonable standard.

The point in this particular issue is that we want and we need effective management. We don't want relaxed standards. We don't want to escape from requirements. But we also don't want to go through a lot of pointless exercises that aren't bringing about environmental improvements.

The second reason is that we believe EPA's investment in Alaska's public health infrastructure needs to fit arctic conditions, not the conditions in the rest of the country. EPA has a large role in our rural public health infrastructure. This infrastructure is very difficult, because there are no roads between the villages, transportation corridors are only available when the rivers aren't frozen, and the system's design and operation must meet extreme arctic engineering requirements.

EPA has been very supportive in terms of funding, but its numerous management requirements and funding requirements need more attention to Alaska's specific conditions. They also need to integrate this effort with the other Federal agencies that are working in this field. We need a master plan where housing development, energy improvements, sewage lagoons and water and sewer systems are all coordinated, so that you don't have different pieces of a system being built in different villages at the same time.

All of those other agencies working in this field have positions in Alaska, have regional offices in Alaska, EPA does not.

The third reason is that tribal relations in Alaska are very complex. We have a cultural diversity unlike any other area, 17 percent native population with 5 distinct groups. We have unique government to government relationships. Because one half of the tribes in this country, 228, are located in Alaska. Yet only one has a reservation land base.

EPA is developing government to government tribal policy out of Seattle in a way that may make sense for tribes with reservations, but is very difficult in Alaska. For instance, EPA has provided construction funding to help fill, this will illustrate both the last two points, they provided construction funding to help fulfill the desperate need for safe drinking water systems for thousands of public water systems that serve very small communities. The average income in these communities is \$13,000. There's no real good economic base.

Once a system is built, it has to be owned and operated and managed by a local government, a tribal entity or a non-profit. That's hard enough to do in this economic structure under the best of circumstances. But it's made much more difficult when EPA requires that there be constant testing for contaminants that have never been found in Alaska, or where we have to repeatedly fly samples to a lab because arbitrary sample holding times cannot be met due to weather or distance in flying the samples.

The situation is even further complicated when EPA's tribal office passes funds to tribal entities to begin development of new water systems. These are in communities where often there is a local government already struggling to operate a water system, and the result is you have two water systems competing for ratepayers in a town of a couple hundred people.

The fourth and final reason I'd like to raise to you is that arctic contamination is becoming a serious threat to Alaska's ecosystem

and the people who rely on those resources. The Arctic is a sink, and it's capturing chemicals coming from Russia and Asia. Heavy metals and persistent organic pollutants are concentrating into the Arctic, and they persist longer in the Arctic. These chemicals accumulate in the ecosystem and in particular in the fatty tissue in animals. They are threatening subsistence food, the seafood trade and traditional ways of life.

EPA is participating in this arctic research and contamination management, but in a very fractured and uncoordinated fashion. Having a regional focus on this issue would greatly assist the State Department as it develops treaties on these contaminants.

I know that although we can give you good reasons for why there should be a region, it has to be cost effective, and it cannot reduce the resources available to other States. Given the analysis that EPA prepared the last time around, we believe that a thoughtful and gradual transition, especially one that focuses on a core task analysis, could basically use Alaska's proportionate share of Region 10 resources and not hurt the other Region 10 States.

Senator BAUCUS. Mr. Chairman, I've noticed the red light's been on about 5 minutes, and I have to leave this somewhat soon, and I'd like to listen to the other witnesses, just so we have an expeditious hearing.

Senator SMITH. Go ahead and finish.

Ms. BROWN. I'm sorry.

I just want to say, we want and need a true partner to help us manage Alaska's resources and America's national treasure.

Thank you.

**STATEMENT OF KEN FREEMAN, EXECUTIVE DIRECTOR,
RESOURCE DEVELOPMENT COUNCIL**

Mr. FREEMAN. Mr. Chairman, Senator Baucus, thank you. Good morning. For the record, my name is Ken Freeman. I serve as executive director of the Resource Development Council for Alaska, commonly known as RDC.

I'm here today to express RDC support for S. 1311. RDC is an Alaska statewide organization consisting of all resource sectors including oil and gas, mining, fisheries, tourism and forestry. Our membership also includes business associations, labor unions, native corporations, local governments and hundreds of individuals. Our purpose is to encourage a strong, diversified private sector in the State and expand our economic base through the responsible development of our natural resources.

Historically, RDC has supported the creation of an EPA regional office focusing exclusively on Alaska, and there is consensus among our members on the merits of establishing an EPA region specific to our State. Alaska has always provided unique challenges for both industry and regulators, because of our vast physical dimensions and our uniqueness. I won't go into detail, Senator Murkowski and Commissioner Brown, I think, gave you an idea of how large the State is and how different we are. But special circumstances truly do present special problems that demonstrate the need for an EPA region for Alaska.

Oil production from Alaska accounts for nearly 20 percent of all the oil produced in the United States, as Commissioner Brown

mentioned. Yet Alaska is the only State within the EPA region that has oil and gas exploration and production. Given the importance of Alaska oil to the Nation's energy security, it's imperative that agencies have an in-depth understanding of oil and gas exploration and production operations. Specifically, operations conducted in extreme arctic conditions.

Although Alaska is large in size, its small population and industries, and as such, the focus of Region 10 employees' expertise oftentimes is on industries and conditions in the Pacific Northwest, not on upstream oil and gas operations and certainly not on operations conducted in extreme arctic conditions. While EPA does have much appreciated staff based in Anchorage, decisions vital to Alaska's environment and economy are largely driven by Region 10's Seattle headquarters.

A good example of why a new Alaska EPA region is needed comes from the timber industry. At issue is recent permitting for a general permit on log transfer facilities known as LTFs. There was a huge and unnecessary amount of time that was required to work through this process. Region 10 regulators from Seattle do not fully understand the unique challenges proposed by the remoteness of Alaska, or the isolation of the LTFs. Regulators requested street addresses and towns of the LTFs, they asked for road directions to the sites. They didn't understand that these facilities were located far from local communities, that there were no roads, no services, no infrastructure, just remote isolated wilderness accessible only by aircraft or boat.

It took permittees months to get all the logistical issues resolved, and the permittees noted that Region 10 regulators shows little trust for those in Alaska they were regulating, and did not have a reasonable understanding of sense of magnitude of Alaska, its remoteness or unique circumstances.

A current issue making headlines in Alaska is the State's rights in respect to its air permitting program. Alaska cannot administer a viable air permitting program if EPA Region 10's office in Seattle continues to summarily overrule carefully made decisions that take into account Alaska's unique circumstances. The Alaska Department of Environmental Conservation has appealed a recent order by EPA prohibiting the issuance of prevention of significant deterioration permits, known as PSDs, for a diesel generator at the Red Dog Mine in northwest Alaska. This permit is vital and necessary to Komiko, Alaska's operations at this, the largest deposit of zinc in the world. The generator will have a negligible environmental impact.

DEC has an EPA-approved State program for issuing these types of permits. This approved program gives DEC full permitting and discretionary authority over the PSD permits for the State of Alaska.

Our members across Alaska from resource developers to local communities need to be able to rely on DEC's decisions on air permits and be able to proceed based upon those decisions. The EPA Region 10 action at Red Dog is alarming because of the harm it may cause our members in planning for new or modified air permitting to meet their needs. Permittees unsure of the reliability of the State's process will wonder if EPA's Seattle office can nullify

a permit at any time, thus delaying projects until appropriate authority has been defined.

If EPA has the authority to summarily overrule DEC's permit decisions and demand additional measures beyond what has been determined sufficient, then our members in effect would be forced to permit their project a second time through EPA. I don't believe this is the goal.

This issue is not only a battle between agencies on Clean Air Act jurisdiction, but it shows once again how a distant EPA office does not fully understand Alaska's circumstances. The Red Dog Mine sits in complete isolation, far removed from any community. It is not connected to Alaska's road system, and there are no air quality concerns, especially given its location.

A new Region 11 office could go further than a local branch office with limited latitude, staffing and capabilities in overcoming these challenges and developing a much needed northern arctic expertise and wetlands management, permafrost, ice fog, NPDES permitting, background levels of metals and other issues. A Region 11 office could better respond to Alaska's special problems with Alaska's solutions, and the establishment of an EPA region specific to our State would be a major step toward achieving the goal of ensuring that Federal regulations applied in Alaska reflect Alaska realities.

Concluding, I would just like to commend Commissioner Brown and the Alaska Department of Environmental Conservation. I think what we have in Alaska is an agency that aggressively works to protect the environment, but at the same time, does allow flexibility in the regulatory regime through zones of deposits, mixing zones and site specific criteria. This is, I think, a great example of a State agency that works well with industry, and again also stringently protects the environment. I think at the end of the day, it would be great to have an EPA regional office that could respond in the same way.

Thank you, Mr. Chairman, Senator. I would be pleased to respond to questions.

Senator SMITH. Thank you very much, Mr. Freeman. I know both you and Ms. Brown traveled a long way to be here, and we appreciate your testimony.

Let me start with you, Mr. Diaz. On the issue that we've all discussed already about the Presidential order to Administrator Reilly in mid-January, just prior to President Bush leaving office, it's my understanding that OGC, the Office of the General Counsel, has told the Administrator that reversing that order would require the written approval of the President. Is that EPA's position?

Mr. DIAZ. I don't know what the Office of General Counsel might have stated to the Administrator on that particular point. But I think the situation as I have been advised by the Office of General Counsel at EPA is that the order by both the President and former Administrator Reilly were not self-executing, that there was not a legal obligation for the implementation of those decisions.

Senator SMITH. Right. But is it the EPA's position that the President, that it would take the written approval of the President not to execute it? Is that the EPA's position, yes or no?

Mr. DIAZ. The position of the agency is that they were not self-executing, that we were not under an obligation to implement

them. Technically, I understand that those actions remain on the books and have not been rescinded.

Senator SMITH. President Clinton has never revoked the order, has he? He's never revoked the Reilly order?

Mr. DIAZ. To the best of my understanding, the Reilly order has not been rescinded. But I think it's important, Mr. Chairman, that we focus on the fact that the priorities that were raised at the time to Administrator Reilly and to President Bush by the Alaskan officials and by others including environmentalists, and the Pacific Northwest delegation members, have been addressed in terms of the priorities established to meet the needs of Alaska.

Senator SMITH. OK, but I'm just trying to clarify where we are here. It's my understanding that the Office of General Counsel has told the Administrator of EPA that in order for that order not to be implemented that the President would have to so indicate, in other words, he would have to have his written approval, the President would have to issue his written approval of that order. That is, as I've understood, is the position of the Administrator.

Now, as I understand it, President Clinton has not revoked that order. He's not taken any formal action to revoke what happened, yet he's not implemented it either. So he's not done either.

Mr. DIAZ. Let me, if I may, Mr. Chairman, try to be a little bit more direct.

Senator SMITH. Who made the determination not to implement the order? Who indicated? We had an order, President Clinton takes office in January 1993, he's got an order before him to create Region 11. All I'm asking you is, who made the determination not to implement it? President Clinton never made a written approval or disapproval. So who issued the order not to implement the action of the President and the former Administrator?

Mr. DIAZ. To the best of my knowledge, no order was issued indicating that the Reilly administrative order not be implemented. The information, the counsel that I have received from EPA's Office of General Counsel, is that we were not under an obligation to implement the decision by President Bush or Administrator Reilly. Technically, those decisions remain on the books. They have not been rescinded.

But we have not, I'm not aware of any counsel by the EPA Office of General Counsel which suggests that we have an obligation to implement in the absence of a decision to rescind.

Senator SMITH. Well, OK, I don't want to argue it. But I want to get clarification on that. Because it's my information that OGC has told the Administrator that reversing the order would require the written approval of the President, written approval of the President. The President has in effect reversed the order, because he hasn't implemented it. That's been 7 years ago.

So I just want to get for the record somewhere some clarification on what OGC said or didn't say. But it's my understanding that they've told the Administrator, I don't know if there's a document so indicating or not, and if they have, then the President needs to either implement this or rescind it by some written document. To the best of my knowledge, that has not been done. Neither has been done.

So basically he's ignored the act of Congress and the law.

Mr. DIAZ. I think, Mr. Chairman, we have met the priorities that have been raised to the agency's attention with regard to the concerns of Alaska. But I would be pleased to provide for the record information with regard to the question that you raised.

[Additional information follows:]

A June 23, 1993 document supplied to the committee entitled, "Region XI Approaches to Closure," states in the Background section, "The 12th floor has been told by OGC that reversing the order establishing Region XI will require the written approval of the President." The Office of General Counsel (OGC) did not prepare the June 23, 1993 document. OGC has been unable to locate any memoranda which would verify the advice represented in this June 23, 1993 document. After informally consulting with the Office of Legal Counsel (OLC), Department of Justice, it is OGC's understanding that only the President can rescind a Presidential memorandum but that it does not have to be rescinded in writing.

Senator SMITH. Yes, I would like that clarified. Thank you.

Mr. Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

First, I might say with respect to the orders, there are other documents and there are other statements of documents that frankly cloud the whole issue here, and that could be probably be brought out at a later time. But it's not as clear as has been somewhat indicated here.

Ms. Brown, you've heard Mr. Diaz say all the things EPA is now doing to help. He listed some things, better collaboration, exemption of the sulfur diesel fuel, he mentioned the \$100 million water facilities, wetlands permits for Alaska only, and I forgot something that was delayed, the 69 percent down to 29 percent lower rate, I mean, is that accurate? Is it better? Your reaction and Mr. Freeman's, just general reaction to the progress and the cooperative efforts that EPA has made.

Ms. BROWN. Thank you, Senator.

We have had good cooperation with EPA. But it requires a lot of work. We have to elevate issues to the senior management to get the attention, because staff—

Senator BAUCUS. Now, when you say senior management, what level?

Ms. BROWN. Of Region 10. What Alaska would like is not to be in the position of having to seek exemptions and waivers for things that don't make sense, but to be part of the initial reg making process, so that alternative compliance, if it's necessary, so that we achieve the same goal but through a different way, can be worked out in the course of the regs, rather than seeking exemptions later or coming even before you to look for exemptions. We think it would be a lot less time consuming and a lot more productive if we could get those issues resolved sooner rather than later.

Senator BAUCUS. Mr. Freeman, do you have a reaction to what Mr. Diaz said?

Mr. FREEMAN. Thank you. I think most of our members have a very good working relationship with the EPA officials in the State of Alaska. But unfortunately, most of the time, the decisions are made in Seattle. I think Commissioner Brown brought up an interesting point when she mentioned that nearly all of her time and staff's time deals with the Seattle office. I think that this is clearly an indication that the majority of decisions are made in Region 10.

I think EPA has done a lot. But I don't think anything could be done other than having a Region 11 that would really get to the heart of the issue here.

Senator BAUCUS. Well, I must say that we have the same problem in Montana, that, often, when you want something done, you've got to go to Denver, you've got to go to the regional office. I do it myself, I just call up Denver. I appreciate that and I understand that.

I don't know if that necessarily solves the issue before us here, because one could say, "Gee, there should be a regional office in Anchorage or Fairbanks or wherever so you don't have to go so far." On the other hand, every State could make that argument, too, as we in Montana face the same situation that Alaska does.

Mr. DIAZ, I suppose one possible solution here is more delegation of authority to the various States divisions, rather than, from the regional office. You have heard their testimonies. What about it? It sounds like sometimes EPA is not as responsive as it should be.

Mr. DIAZ. As I said, I think, in my opening statement, there are certainly areas where I think we can always make cost-effective improvements. But the reality is that the delegations and the authorities of the Alaska Operations Office are real, and as I mentioned, a particular example, we're unique in the EPA system, the Alaska Operations Office director is authorized to sign wetlands permits and to initiate any raising of concerns about those permits on his own volition. That is unique within EPA.

Senator BAUCUS. I suppose that helps? It doesn't solve the problem, but I suppose it helps?

What about the migratory birds dying, this 3-year delay? I'm not very familiar with that issue, are you? Can you shed some light on that?

Mr. DIAZ. I am not personally aware of that issue. I understand that there are concerns with regard to the waste treatment facility. I'd be more than happy to take a look into it and provide that information for the record.

[Additional information follows:]

MIGRATORY BIRDS

Concern: Dead migratory birds were discovered at Eagle River Flats and EPA has not acted to discover the cause.

Region X response: Eagle River Flats, north of the City of Anchorage, is located on Fort Richardson Army Base Artillery Range, an active artillery range. In the 1980s, dead migratory waterfowl were discovered in the Knik Arm of Cook Inlet. There was no apparent cause of death. EPA worked with other State and Federal agencies to determine that the cause of death was white phosphorus from artillery rounds and bombs that had been dropped since WWII. Once the agent was identified, development of methods for clean-up and remediation began.

The fact that the range is active and contains many rounds of unexploded ordnance presents the greatest obstacle to site clean-up. Work has progressed with the development of remediation methods such as a specially built armored dredge that can withstand a direct explosion while dredging material contaminated by white phosphorus. The "hottest" spots containing white phosphorus have been or are now being remediated, and the number of waterfowl deaths has dropped drastically.

Senator BAUCUS. You mentioned, Ms. Brown, EPA requiring testing for contaminants that don't exist in Alaska. Is that pre- or post-1996? Because we changed, as you know, the Safe Drinking Water in 1996 to hopefully deal with that problem, which is a national

problem, and that was a statutory problem, more than it was a delegation problem. Are you talking about problems that even exist with the reform of the Safe Drinking Water Act and if so, could you give an example, please?

Ms. BROWN. Yes, it does still exist. It's a number of pesticides, in particular, that have never been used in Alaska that we still have to test—

Senator BAUCUS. Oh, pesticides.

Ms. BROWN. Yes. We were able to work out a waiver system so that we could apply for waivers on behalf of the small communities. But again, it was a labor intensive process to deal—

Senator BAUCUS. What would happen if EPA would make a—really go full bore, and say, “Boy, we’re going to show you Alaskans that we really care, we’re there?” Now, there’s a Federal statute, and there’s State concerns, local concerns. If they were to do that, why wouldn’t that solve the problem? Because your argument is that you need a regional office for that to happen.

Ms. BROWN. Do you mean if they were to use the operations office?

Senator BAUCUS. Yes, the operations in the current structure.

Ms. BROWN. Because where the management decisions are happening are still in Seattle. That’s where you have to go through weighing all the other Pacific Northwest priorities. The Alaska operations office can raise a point, but it tends to get lost.

Senator BAUCUS. Yes, I guess there’s no easy answer here. This guy I mentioned, Paul Paranard, he is delegated immense authority with this asbestos problem in Libby, MT. He’s from Denver. They sent him out. Probably because he’s such a good guy, they dispatch him other parts, you know, where he’s needed.

All I’m suggesting is that, I don’t know, maybe you do need a regional office, maybe you don’t. But it just—so many of these issues can be resolved just with a lot of cooperation and good faith efforts on both sides. I do think, Mr. Diaz, sometimes it is true that EPA, my experience in Montana, seems a little distant, not really that cooperative, that seems not to really care, show that extra effort in really trying to do what’s right, not to do just what immediately the local folks want, but to work out the solution in a fair, practical, common sense way that affects that part of the country.

My advice, for whatever it’s worth, is to get more of your people out, just to travel a lot more and meet a lot more of these folks. You probably have a travel budget problem and so forth. But it’s, just having a regional office there might not necessarily solve this problem.

I am not saying it’s a huge problem. I’m always saying, it’s still there, to a degree. As I said, one major exception is this guy, Paul Paranard. You’ve got to give him a huge raise. This guy’s ace.

Mr. DIAZ. Might I respond, Senator Baucus? Clearly there is a need to make sure that our folks are on the ground in Alaska, which we have provided for. We also clearly need to let folks in Alaska know that we are there from Region 10 as well. We have a significant travel budget which is allocated to provide for travel to Alaska. Yes, it has been pointed out that there is a distance of 1,200 miles to the Seattle regional office. But Senator Murkowski himself pointed out that when one takes that in the context of the

size of Alaska, that's only half of the distance north to south in the State of Alaska.

I have also been advised that by veteran career folks in the regional office in Seattle that the regional administrator from Region 10, Chuck Clarke, has probably spent more time in Alaska than any other regional administrator in recent history. We have significant senior management attention to Alaska and on the ground in Alaska.

Senator BAUCUS. Is it better? EPA sensitivity to Alaska?

Ms. BROWN. I think it is better when we can get the attention of the regional administrator. But I would have to say on the travel issue, most of the time you see troops of State regulators and facility operators going to Seattle to meet with a regulator there, because they don't have the travel budget to come up. So you'll have five, six Alaskans working on an Alaska permit traveling to Seattle to visit with one regulator who's never seen the facility.

Senator BAUCUS. With all that oil, you can't buy a few more airline tickets?

Thank you very much, Mr. Chairman. Thank you all.

Senator SMITH. Thank you.

I just want to follow up one more thing, Mr. Diaz. Then I have a couple of questions for the other two witnesses.

Senator BAUCUS. Mr. Chairman, I've got to leave. I just want to say that several environmental groups have an interest in this bill. But because of the scheduling problems, they were not able to testify. I just ask that the record be held open a week for others to submit their testimony.

Senator SMITH. We can hold it open until the end of the week.

Senator BAUCUS. Thank you.

Senator SMITH. Until Friday.

Senator BAUCUS. OK.

Senator SMITH. Just one final point. I don't mean to put you on the spot here, Mr. Diaz. I just want to get this clarified. A document was provided to us, it's marked privileged, but it's EPA work product, dating back to June 23, 1993, in which there is a discussion about this issue. I realize it's work product and I'm not trying to say this is policy. But one of the options was "do nothing," referring to acting on this issue. Do nothing, hope no one makes an issue of it, if they do, deal with it then.

Also, going back to my original point to you, one of the bullets here on these, in the background is, the 12th floor of the EPA has been told by OGC that reversing the order establishing Region 11 will require the written approval of the President. So in your own documents, you're indicating that OGC has told you that. So I would like that clarified for the record, as to what OGC told you. Because that's what is in the documents from June 23, 1993, which was at the time that this matter was there.

So I mean, it's clear, based on if you read, and I'll make the whole document part of the record, but it's clear that in that document, that the discussion is obvious that EPA, the new EPA, does not support the action, which is fine, they have that right. But I think it is also important in my view that they did not, to note that they did not pay attention to OGC's recommendation, which is if that the President doesn't want to do this, he should so indicate in

writing, and then that would at least, the folks in Alaska would at least, wouldn't be held in limbo for 7 years wondering what was happening, and we wouldn't need another piece of legislation.

Mr. DIAZ. Might I respond, Mr. Chairman, very briefly?

Senator SMITH. Yes.

Mr. DIAZ. First of all, I believe I have seen that particular document. Its origin is not clear. I don't know to whom it was sent. I do take the point that the formal rescission of the President's order, as well as the Administrator's internal directive, need also to be formal. Having said that, I would certainly be pleased to provide for the record the information that you requested.

Senator SMITH. Thank you very much.

Ms. Brown, just in response to what Mr. Diaz said, how often are EPA officials from Seattle in your State?

Ms. BROWN. We see the regional administrator probably around three times a year, I would say. The operations people are there presently all the time. But they work on primarily programs that the State doesn't have delegated direct program implementation. The things that we both have jurisdiction over, we tend to work with Seattle on. The Region 10 staff does not spend that much time traveling out of Region 10 to the State. We have to go there.

Senator SMITH. Your testimony was very good in defense of having Region 11. But try to focus, if you can, and you can answer as well, Mr. Freeman, if you like, what is your specific complaint? That they're not knowledgeable, they're not there? I mean, is it that they have to be on the ground right there all the time to get a handle on this? I'm just trying to get an idea from your perspective in Alaska just what the problem is.

I mean, you make the same argument I guess, that all of us here in Washington, DC, don't know what's going on around the country. We hear that all the time. But I'm trying to get a handle on, I understand the size, when you put Alaska, superimposed it over the map of the United States, we can see the size, you can certainly make the case for sizes. I'm frankly undecided on the legislation, I'm trying to make up my mind. You did make a very forceful argument.

But again, what specifically is the concern? That they'll have more knowledge if they're on the ground there, or you can work with them better? I hear so many times in the other 10 regions, we're in complaints a lot, that the EPA's there too much, that it's causing more grief and more aggravation than it's worth, and a lot of people, I've been waiting for some of them to come forth and say, "Why don't you get them out of here?" Now you folks are asking for Region 11. So I'm just trying to make sure I don't go down the wrong path here. So help me out.

Ms. BROWN. Thank you, sir. That's a risk we're willing to take.

I think in a nutshell, there's too much for the State to do alone. Two-thirds of the State is federally owned and operated. We need somebody with clout to help us, but to help us in a way that really makes sense. What we have now is help that's not making sense too frequently. It's one-size-fits-all, it doesn't take into consideration permafrost, arctic conditions, arctic engineering.

So what we would like is a regional office that has the clout within EPA to say, "Here's the outcome that you want, head-

quarters. We want to give you that outcome, but we want to do it by method B as opposed to method A.” That is what I think the difference would be, that you would have somebody on the ground who knows the difference, who knows that frequently our mine discharges in heavily mineralized areas make water quality actually better instead of worse. So we need to have someone who can actually look for results and compliance in a way that makes sense.

Senator SMITH. Without embarrassing anybody personally, that’s not my intention here, do you have indications that some of the EPA folks in the Seattle office are not knowledgeable of your concerns in Alaska, or not dealing with those concerns appropriately?

Ms. BROWN. A number of the staff just do not have the time or the travel funds to study and learn enough about the conditions. You will have situations like Mr. Freeman mentioned, where a log transfer facility that’s located in a bay that doesn’t even have a name, they want to know what the street address is. So those are the kinds of issues that we have to deal with that waste a lot of both our time and EPA’s time, and that’s why I think ultimately you might see a savings in Region 11, because you’d be spending time on things that matter.

Senator SMITH. Did you want to respond, Mr. Freeman?

Mr. FREEMAN. Sure, Mr. Chairman, thank you. I guess the first point is that the State of Alaska truly is just remarkably different than any of the other States. I appreciate Senator Baucus’ comments about his State is different than others on the east coast, for instance. But Alaska has the only arctic and sub-arctic conditions, almost half of our State is made up of wetlands. Just the vast area, it is remarkably a different State. You can’t beat having the people that regulate the activities with regard to resource development and community in the State itself, that have an understanding of our uniqueness.

I also would quickly point out the LTF example. I spoke in detail with one of my members who went through the process of trying to establish a general permit for the log transfer facility. He was really blown away at how adamant EPA staff in Seattle were that he come up with an address and a road, for when EPA staff did come, if they came to Alaska, to actually find the log transfer facility, even though it was well over dozens of miles away from any infrastructure.

Senator SMITH. If you could both just try to characterize for me the relationship in Alaska among those who would be determined as regulators, those who would be determined as environmental groups, those who might be businesses, or the public generally. What is the relationship between all of those groups in Alaska? Why don’t you start, Mr. Freeman?

Mr. FREEMAN. Thank you, Mr. Chairman.

I think the relationship between, for instance, the business community and our State regulators is very positive. I think the relationship between the business community and the EPA officials that are in Alaska is very positive. Any time that you can meet on a basis, you can meet with someone more than three times a year, you can meet with someone on a regular basis, I think it helps establish personal relationships that build trust and then can lead to flexibility.

With regard to the environmental community, I think that really varies. You have some in the environmental community from my perspective that truly are looking to protect Alaska, while at the same time understanding the role of resource and community development. I think you have other environmental interests that I think would like ultimately for the State of Alaska to be protected from Alaskans and maybe become a park indefinitely.

Senator SMITH. I find myself sitting here thinking that the two of you should be on different sides, that the EPA should be pushing for Region 11 and you guys should be opposing it.

Do the environmental, so-called environmental groups in Alaska support the Region 11 designation?

Mr. FREEMAN. I haven't spoken with any in the environmental community recently as to their position. Generally, I believe historically they've been opposed because of concerns, drawing resources away from the other States in Region 10. I have to be honest, many of our members share a point that you brought up, there are some concerns about having additional EPA regulators in Alaska, a lot more EPA regulators. But as Commissioner Brown noted, I think it's well worth the risk. Any time you can have more people, more information, more data, I think it leads to better decisionmaking. So we welcome the addition of a Region 11.

Senator SMITH. Mr. Diaz, if you took the cost out of whatever the proportionate cost of Region 10 staff, if you took that cost out, what would be the additional cost, in your rough estimate, to have a Region 11 office?

Mr. DIAZ. I don't have that figure before me. I'd be happy to provide it for the record.

[Additional information submitted by Mr. Diaz follows:]

The information that follows is derived from EPA's 1992 study of the cost of establishing a separate Regional Office for Alaska. As indicated, additional resources would be necessary for administration and managerial functions, for relocation costs for new or current employees (other than those already in Alaska), and for facilities and equipment. These costs are not adjusted for inflation.

RESOURCES IN REGION X AND ESTIMATED COSTS FOR REGION XI

I. Current situation in Region X

A. Total resources

1. 623.6 FTEs
2. \$2.0 million travel
3. \$151.7 million State grants (FY00)
4. \$22.6 million Tribal grants (FY00)
5. \$44.2 million Congressional Adds

B. Resources devoted to Alaska activities

1. There are 100 Full Time Equivalents (FTE) in Region X working on Alaska issues. Of the 100 FTE, 30 FTE are located in the Alaska Operations Office in Juneau and Anchorage, and 70 FTE are located in Seattle, Washington.
2. 376.3K travel
3. \$25.3 million State grants (FY00)
4. \$17.5 million Tribal grants (FY00)
5. \$37.6 million Congressional Adds (includes, \$30M AK Native)

C. Status of authorized programs

1. Air, drinking water, and pesticides programs are authorized to be administered by Alaska. RCRA, NPDES, and 404 programs are not.
2. Alaska Department of Environmental Conservation is not prepared to administer the NPDES program at this time. Funding for RCRA's hazardous waste program has been virtually eliminated by the State.

3. Except for one State, wetlands permitting is Federal.

II. Resources required for Region XI

A. To have needed core of technical expertise, administrative and management support, Region XI would need about 180 FTEs; see Table 1. That would include 30 FTEs (and 4 SEES) currently working in Alaska; the remainder would have to be new resources or come from elsewhere in EPA.

B. The net costs (shown in Table 2) to start up the Alaska Regional Office assume that, of the 180 FTEs required, 60 FTE would come from reallocations within EPA and 120 FTE would be for new employees.

C. Start up costs (e.g. furniture and equipment, building modifications, employee relocation) would be at least \$12 million. This cost could also spread over more than 1 year.

D. To make cost estimates, assumptions were made that Region XI would be operating at full strength by June 2002.

1. In reality, it would take 2 or 3 years (perhaps even longer) for Region XI to hire and relocate staff, locate office space and make necessary modifications, purchase and install equipment, etc.

2. Functions would have to be transferred gradually from Region X as Region XI staffs up; to assure a smooth transition period, the two might have to operate in tandem in many program areas for a period of time.

3. Region XI's annual operating costs would be lower during this time, but savings would be offset to some extent by the cost of having Region X run some programs in tandem with Region XI, a cost that is impossible to estimate without detailed planning for a transition.

E. EPA's Regional lab is not included because the workload would be too small to justify the cost of establishing a new lab. EPA Region XI could contract with private labs.

III. Foundation for estimating staffing requirements: key characteristics of an EPA Regional Office

A. An EPA Regional Office (RO) has an established role, which is firmly embedded in the Agency's culture, systems, and practices.

B. Headquarters is the source of policy and procedural guidance. Regional Offices are the focal points of program execution and integration. Regional Offices maintain strong working relationships with States and Tribes, as well as local governments.

C. A Regional Office is headed by a Regional Administrator (RA) appointed by the EPA Administrator. RAs are directly responsible to the Administrator and have direct line authority over Regional Office activities.

D. Deputy Regional Administrators and most office directors are career-Senior Executive Service (SES) managers.

E. ROs are self-sufficient with respect to most functions, although they may rely on other EPA offices for certain services.

F. ROs are full participants in Agency-wide planning, budgeting and management activities. They work extensively with national program managers on budgeting and policy issues.

G. RO policy decisions are subject to statutory and national policy constraints.

IV. Assumptions and methods used to estimate resource needs: Operating expenses include costs of equipment purchases and rental, printing, supplies and materials, and services obtained through contracts (excluding Superfund program contracts). Support includes the cost of office space rental, postage, security, fitness center and operation of wellness/daycare facilities.

A. Staffing

1. Assumed Region XI would be largely self-sufficient.
2. Need for core of technical expertise was the primary consideration.
3. Assumed existing delegations to Alaska.
4. Estimate does not include special staffing for start-up (e.g., to lay out work-space, design telecommunications systems, design information systems).

B. Costs

1. Salary and expense cost per FTE was based on Region X data; 25 percent Cost of Living Allocations were added to all salaries.

2. Cost of relocating new or current employees (except those already assigned in Alaska) was included.

3. Estimate includes building modifications, furniture, equipment, telecommunication, information technology, and other start up items.

4. June 2002 was assumed as the start-up date for the purpose of making estimates. In reality, operations would be phased in over a few years. Thus actual outlays in early years would be lower, but costs would be affected by inflation.

Table 1.—Estimating Staffing Requirements for Region XI

Office	Office/ unit total	Office total
Regional Administrator's Office:		4
Regional Administrator	1	
Deputy Regional Administrator	1	
Administrative Support	2	
Office of Management Programs:		22
Assistant Regional Administrator	2	
Human Resources Unit	2	
Finance Unit	3	
Infrastructure Unit	3	
Information Resources Unit	4	
Grants Administration Unit	6	
Acquisitions	2	
Office of Water:		45
Office Director	3	
Drinking Water Unit	10	
NPDES Permits Unit	5	
NPDES Compliance Unit	6	
Groundwater/UIC/UST Unit	10	
Watershed Restoration Unit	6	
Standards and Planning Unit	5	
Office of Air Quality:		10
Office Director	2	
State and Tribal Programs	4	
Air Enforcement	2	
Federal and Delegated Program	2	
Office of Environmental Assessment:		9
Office Director	2	
Quality Assurance and Data	2	
Investigations and Engineering	3	
Risk Evaluation	2	
Office of Environmental Clean-up:		13
Office Director	2	
Program Management	3	
Emergency Response	2	
Site Cleanup Unit	6	
Office of Waste and Chemicals:		16
Office Director	2	
Solid Waste and Toxics Unit	5	
Resource Management	2	
RCRA Compliance Unit	4	
Permits	3	
Office of Ecosystems and Communities:		21
Office Director	3	
Community Relations/Outreach Unit	1	
Aquatic Resources	6	
Pesticides Unit	3	
Geographic Implementation & Natural Resources Management Unit	8	
Office of Regional Counsel:		14
Office Director (Lead Attorney)	2	
Attorneys	12	
Office of External Affairs:		3
Office Director	2	
Public Affairs Officers	1	
Office of Enforcement and Compliance		5
Office of Tribal Operations		14
Office of Civil Rights and Environmental Justice		2
Office of Innovation		2

Table 1.—Estimating Staffing Requirements for Region XI—Continued

Office	Office/ unit total	Office total
Total		180

Note: Region XI staffing would include 30.3 FTEs allocated to the Alaska Operations Office currently. The remainder would have to come from an increase in EPA resources or reallocation from other EPA offices. Administrative support positions are included in the table.

Table 2.—Estimated Cost¹ of Start-up and Hypothetical First Full Year of Operation

	Total	Net cost ²
Personnel Compensation and Benefits (PC&B)	\$16,880,220	\$11,309,747
Travel	652,000	436,840
Operating expenses, contracts, & support ³	5,132,800	3,438,976
Start-up costs	\$12 million minimum.	\$12 million minimum
Total		

¹Estimates are based on an assumption that Region XI would begin full operation June 2002; in reality, it will take two or three years (perhaps even longer) for Region XI to reach that point. During that time, annual operating costs would be lower than the figures shown here. Even start-up costs would be spread over a period of more than one year. While such a phase-in would reduce EPA's outlays during this period, inflation would increase the ultimate cost.

²Net cost was calculated by assuming 60 FTEs of the estimated 180 FTEs required for Region XI would come from reallocations within EPA.

³Operating expenses include costs of equipment purchases and rental, printing, supplies and materials, and services obtained through contracts (excluding Superfund program contracts). Support includes the cost of office space rental, postage, security, fitness center and operation of wellness/daycare facilities.

Mr. DIAZ. But I think it's important to point out, if I may very quickly, that the net costs of the 1992 study done on a regional office suggested that the incremental net cost would be \$25 million. Now, one can argue about the numbers. I wasn't there, I don't claim to say that those are the accurate estimates. I don't say that the number of people that were estimated to staff a regional office were exactly accurate. They assumed 180 full time equivalents.

I would note, however, that with regard to the other agencies that Senator Murkowski referred to earlier, their staffing level is in the range of about 200 full time equivalents to as high as about 1,700. We're dealing with a regional office that has about 600-plus full time equivalents. We're in a zero sum game, essentially. Sometimes even worse in dealing with resource allocation within the agency at a time that we're under a congressional mandate to reduce our FTE utilization by 400 FTE.

These are very, very difficult resource decisions for us. We are attempting to meet the needs that have been indicated as representing the concerns of the Alaskan officials and others today and into the future. But it is clear to my way of thinking, regardless of the exact numbers and dollars that may be associated here, we're talking about significant impact on the resources available to other States within Region 10 at a time when the agency is under congressional mandate to reduce our resources, particularly with regard to people.

Having said that, I once again reiterate the point I made earlier, that is that while we have done, I think, some things well, we are committed to continuing to work with Commissioner Brown and others in Alaska to try to address their concerns with regard to on the ground folks, with regard to delegations of authorities which

are already unique, and with regard to Region 10 attention to the needs of Alaska.

Senator SMITH. I would make a request of you, Mr. Diaz, if you could have your Region 10 administrator provide some testimony for the record as to the rationale directly from that region as to how things are working or not working or in response to the comments that were made here specifically by Mr. Freeman and Ms. Brown. It would help the committee, I think. You've made the comments in general for the agency, but a little more specificity on the relationship between Seattle and Alaska would be helpful as we try to make a determination on what direction to go with the legislation.

Mr. DIAZ. We'd be happy to do that, and also respond directly to some of the examples that are raised in the testimony today.

[Additional information submitted by Mr. Diaz follows:]

Chairman Smith asked for an EPA response to the specific concerns voiced by the other two witnesses on the panel. The following information is submitted in connection with this request.

COMINCO

Concern: The Resources Development Council alleges that EPA did not defer to the State's authority with respect to its air permitting program, specifically with regard to the permit application for the Red Dog Mine.

Response: Cominco, the operator of the Red Dog Mine in Northwest Alaska applied for a "Prevention of Significant Deterioration" permit for a significant expansion of the mine, which included an additional diesel generator. The State approved the issuance of a permit. The National Park Service (NPS), under its authority to review such permits, expressed concern about the potential for environmental degradation of a nearby National Monument and National Preserve if the diesel generator were to be installed as permitted and asked EPA to intercede. EPA also was aware of concerns expressed by eleven Alaska Native Villages representing about 6,000 Natives who depend on the local environment for subsistence.

Five substantive technical issues were identified by NPS and all but one were resolved. The remaining issue related to the adequacy of the record to make a "best available control technology" (BACT) determination for the diesel engine under the Clean Air Act. When Alaska awarded the permit with the unsupported BACT determination, Region X, in consultation with EPA Headquarters, issued an Administrative Order to Cominco instructing it not to build the engine pursuant to the invalid permit. The rest of the expansion, however, was unaffected. While Alaska has authority to issue permits, it must do so in accordance with the Clean Air Act. EPA's actions were taken in its oversight role to ensure that the Clean Air Act was followed, pursuant to Sections 167 and 113 of that Act.

The State and the company have filed petitions for review in the Ninth Circuit Court of Appeals, who will determine whether EPA's actions were appropriate. On June 1, 2000, the Court denied Cominco's request for a stay of EPA's order prohibiting construction of the diesel engine in question. The final decision of the Court is pending.

We appreciate the National Park Service alerting us to this matter. Rather than a lack of understanding of the specific circumstances in Alaska, we believe this example of the Red Dog Mine reflects an alleged failure to meet Clean Air Act requirements.

ARSENIC

Concern: A claim was made that the point discharge level for arsenic established by EPA for placer mining permits is 300 percent lower than the drinking water standard for arsenic.

REGION X RESPONSE

In 1996, Alaska Department of Environmental Conservation reported to EPA that the human health standard for arsenic established by EPA under the National Toxics Rule was a problem for the State due to the naturally high levels of arsenic in some Alaskan waters. The rule that gave rise to Alaska's particular concern was

developed under the normal notice and comment provisions and was broadly applicable to all States not then in compliance with the Clean Water Act. Once Alaska's concern was brought to EPA's attention, the Agency (Region X and Headquarters) worked collaboratively with the State to explore ways of addressing the situation. Alaska proposed that the Safe Drinking Water Act maximum contaminant level should be used to meet the requirements of the Clean Water Act. EPA agreed that the arsenic levels in freshwater, in conjunction with Alaska's aquatic life criteria for arsenic, met the requirements of the Clean Water Act.

The Administrative Procedure Act requires EPA to promulgate a new rule in order to remove a State from the National Toxics Rule. EPA published a proposed rule and request for comments in the *Federal Register* on May 21, 1997. The final rule was published on March 2, 1998, with an effective date of April 1, 1998.

When Alaska was removed from the National Toxics Rule, Region X was asked by the State to modify the placer mining general permit. EPA proposed the general permit using the practical and flexible standard for allowable discharges of arsenic under the Safe Drinking Water Act maximum contaminant level. This became effective on November 27, 1998.

We believe that EPA worked effectively with the State to address the effects of this rule to take into account the special circumstances of Alaska.

STATE REVOLVING FUNDS PROGRAMS

Concern: The State Revolving Funds (SRF) programs set project construction time requirements and costs that Alaska cannot meet due to seasonal and geographical construction constraints unique to Alaska.

Region X Response: National rules for SRF Loan Programs are flexible and do not define time frames in which construction must be complete. The rules allow States to establish construction schedules that take into account a variety of factors, including seasonal and geographical considerations. Construction projects funded by the SRF may be phased and funded over a multi-year period, since SRF loans carry over from year to year. The SRF programs do require that States commit project loan funds (i.e. enter into loan agreements) at levels specified in grant payment schedules prepared by the State and approved by EPA. However, specific project costs and project schedules are not subject to SRF rules once a project has met eligibility requirements.

SAFE DRINKING WATER TESTING REQUIREMENTS FOR RURAL COMMUNITIES

Concern: EPA requires testing for contaminants that have never been found in Alaska and requires the State to re-draw samples due to arbitrary sample holding times.

Region X Response: The Safe Drinking Water Act requires EPA to monitor drinking water for the protection of public health. EPA recognizes that some contaminants may not be found in Alaska or may be found very infrequently. In these cases, EPA grants a waiver to Alaska allowing samples to be taken infrequently (periodically over a 3- to 9-year period, usually every 6 years), once the water is initially certified to be contaminant free.

With regard to the sample holding times, EPA requires that bacterial samples be analyzed within 30 hours to preserve sample integrity. Although a shorter holding time is recommended, the 30-hour limit is based on the die-off rate of bacteria after which the likelihood of detection is greatly reduced. In the case of Alaska, EPA has granted a variance from this requirement under certain circumstances, such as remote locations and weather delays when these factors impede the collection and transportation of samples.

SAFE DRINKING WATER OPERATOR CERTIFICATION

Concern: Alaska's request for alternative drinking water operator certification requirements was ignored by EPA.

Region X Response: The 1996 amendments to the Safe Drinking Water Act authorize the Safe Drinking Water Operator Certification Program. The purpose of the Program is to improve public health protections through training and certification of small water systems operators. National guidelines, published in February 1999, provide States with flexibility to design programs that fit their specific needs and circumstances. Various options have been discussed with Alaska, including the concept of traveling trainers and certification by oral method, correspondence course, or Web-based methods.

At a Citizen's Advisory Board meeting in Anchorage last February, there was a general consensus that an expanded Operator Certification Program was needed and a new framework program was presented. Although the Alaska Department of

Environmental Conservation has delayed development of an alternative certification program, EPA continues to work with the State on the revised rules in anticipation of the upcoming deadline of February 5, 2001.

NPDES PERMITS

Concern: EPA's NPDES permit system does not work well for Alaska.

Region X Response: EPA's Alaska-based staff involved in permitting includes two professionals who play major roles in permits for mineral and storm water management programs. Normally, at least one EPA professional makes an on-site inspection of any project requiring an NPDES permit.

EPA understands that oil companies face special challenges on Alaska's North Slope with respect to EPA's multi-sector storm water permit requirements. Industry has requested that EPA modify the North Slope general permit to include storm water discharges. EPA has been willing to accommodate the industry's concern but has awaited ADEC's proposed modification. We understand that at least one oil company has been willing to provide financial support to the State for such work, but our most recent information is that ADEC currently has no staff member assigned to the effort.

The State of Alaska has a critical role in this process by certifying EPA's proposed final permits. We continue to work with ADEC staff to prioritize the permit workload and take into account State concerns in developing NPDES permits.

RELATIONSHIPS WITH TRIBES

Concern: EPA does not have a good relationship with Alaska Tribes, primarily due to its lack of understanding, which results in EPA's placement of treatment systems in Native Villages where they are not necessary.

Region X Response: EPA Region X has committed extensive resources and effort to work with and fully understand the environmental concerns of Alaska Tribes and Alaska Natives. Region X has a Tribal Office with a staff of 18. In addition there is a Tribal relations unit in the Alaska Operations Office with six full-time staff, three of whom are Alaska Natives. In addition, EPA has transferred one employee to support the work of the Alaska Intertribal Council, which consists of 178 Alaska Tribal Governments.

The Tribal Office Director and Tribal relations unit make regular site visits to Alaska Tribes and have completed 31 site visits over the last nine months. In addition, EPA has taken the following actions to improve its relationship with the Tribes and Native Villages:

- EPA provides regular training on managing Federal grants and working with the Agency.
- EPA has developed a Tribal sensitivity training course (one conducted in Seattle and two in the Alaska Operations Office) for EPA employees, taught by Tribal representatives and leaders from throughout Alaska.
- Region X has established a Tribal advisory committee consisting of four Tribally-elected representatives from each region of Alaska. This committee meets monthly to advise the Agency's Regional leadership of Tribal concerns, priorities and issues, and to assist the Agency in developing policy for working with Tribes and Native Villages of Alaska.
- EPA has engaged in extensive outreach efforts to consult with Tribes on specific Agency actions, such as Cook Inlet NPDES permit for oil platforms discharging into sensitive Tribal subsistence areas; promulgation of the Tribal Authority Rule (TAR) under the Clean Air Act; development of Tribal unified Watershed Assessments and Clean Water Action Plans.

EPA staffwork closely with the State Village Safe Water program and with other Federal agencies in determining priority placements of treatment systems in Tribal villages. In addition, EPA is an active participant in the Governor's rural sanitation task force and chaired the Operation and Maintenance Subcommittee of that task force.

WETLANDS ENFORCEMENT

Concern: Regulators based in Alaska are more likely to respond to local realities and the need for flexibility in permitting.

Region X Response: There is substantial local input in EPA's Alaska wetlands program. There are four EPA wetlands program staff in the State, three of whom operate from EPA's Operations Office in Anchorage and one based in the Kenai Peninsula. These staff members are trained wetlands ecologists who provide technical assistance and other support to address aquatic resources issues in the State. All work closely with the Army Corps of Engineers (the Corps) and other Federal and State

agencies. This primary focus is on population centers and areas of development that are likely to have significant wetland impacts. These include:

- Anchorage Bowl: special emphasis on coordinating with the Municipality of Anchorage and the Corps on re-issuance of the Anchorage General Permit.
- Kenai Peninsula: special emphasis on developing local plans to address wetlands and other natural resource concerns (e.g. Community Rivers Planning Coalition in Anchor Point).
- North Slope Oil and Gas: coordinate with the Corps, Federal and State agencies, Tribes, and oil companies on wetlands issues pertaining to development on the North Slope.
- Matanuska-Susitna Borough: coordinate with the Corps and local watershed councils.

EPA believes that these efforts reflect substantial collaboration with affected entities by experts located in Alaska.

COAL MINE PROJECT

Concern: The distance between the Region X Office and Alaska may have posed problems for the Chuitna Coal Mine “greenfield” project.

Region X Response: EPA Region X, in cooperation with the Army Corps of Engineers and the Alaska Department of Natural Resources, led the preparation of the environmental impact statement (EIS) for the Diamond Chuitna Coal Project. In accordance with provisions of the National Environmental Policy Act (NEPA), EPA Region X also coordinated with the project developer (located in Dallas), other Federal and State agencies, local organizations, and the public throughout the development, comment period, and finalization of the EIS.

Environmental impact statements for large energy projects such as this one are inevitably time-consuming because of the participation of substantial numbers of affected public and private organizations and other requirements of NEPA and the Clean Water Act (CWA). To streamline the review processes, EPA combined the preparation of the EIS with the development of the National Pollution Discharge Elimination Permits (NPDES). The draft NPDES permits were included in the draft EIS and the proposed final permits were in the final EIS. The public hearings for the draft EIS and draft NPDES permits, held by EPA in Alaska, also were combined.

Additional time was needed for this project due to delays by the developer in providing needed information for the preparation of the EIS and changes made to the proposed project during the course of the NEPA review. Coordinating the project review in Alaska would not have reduced the time needed for NEPA- and CWA-mandated procedural and public review requirements. In our view, distance has not been a factor in the evolution of this project.

ANCHORAGE SEWAGE TREATMENT PLANT

Concern: The permit for the Anchorage Sewage Treatment Plant has not been issued yet, and the Alaska Department of Environmental Conservation has stated that the permit is unnecessary and the delay is unreasonable.

Region X Response: EPA must issue a permit under the Clean Water Act (CWA) that conforms to the requirements of the Endangered Species Act (ESA), regardless of whether decisions are made in Seattle or in Anchorage.

Review of the application for permit renewal has been prolonged because new prospective environmental impacts have been identified since the first permit was issued which are considered more significant and require further study and project redesign. These new impacts include the location of a new seafood processor in Anchorage and new concerns about the Beluga whale population.

During the permit process, it was discovered that Upper Cook Inlet exceeded Alaska Water Quality Criteria for a number of metals and turbidity. In order to re-issue the permit, the State agreed to complete a site-specific criteria revision for the affected area of Cook Inlet.

Alaska submitted the criteria revision to EPA for approval in May 1999. EPA issued a draft permit in November 1999. Before final EPA approval is given, action on the site-specific criteria and permit, EPA must complete endangered species consultation with the National Marine Fisheries Services (NMFS). Since this project was initiated, concerns over the Beluga whale population have increased. EPA Region X decided to prepare a biological evaluation for these two Federal actions and submitted the evaluation to NMFS for review in April 1999. EPA also must address new Essential Fish Habitat (EFH) requirements. EPA is currently waiting for a response from NMFS on both the endangered species and EFH evaluations. Once Re-

gion X adequately addresses concerns raised by NMFS, EPA will take final action on the criteria revision and NPDES permit.

OIL AND GAS EXPERTISE

Concern: In the testimony of the Resource Development Council, the point was made that EPA Region X does not have staff with in-depth understanding of oil and gas exploration activities.

Region X Response: Region X staff, both in Seattle and the Alaska Operations Office, has had extensive education, training, and experience with respect to arctic oil and gas facilities and practices. Employees working in this field have undergraduate degrees in mining engineering, geology, and petroleum engineering, some with advanced degrees in geology, marine geology, geophysics, and chemical engineering. Prior to joining EPA, many have had Alaska-based oil and gas experience either with the State of Alaska or with private industry. More detailed information on the education, training, and expertise of individual employees in the oil and gas exploration field is available on request.

FAIRBANKS AIR QUALITY

Concern: Fairbanks is at risk of losing Federal funding and of facing sanctions if it does not come into compliance with the Clean Air Act.

Region X Response: We recognize that Alaska faces air quality challenges that are different from other areas, and we are committed to working with the State to address those challenges. In the case of Fairbanks, Alaska has not submitted a plan to demonstrate how Fairbanks will meet the health-based air quality standard for carbon monoxide. Nor has Alaska submitted information showing that Fairbanks cannot attain the carbon monoxide standard by adopting reasonable control measures. Because the plan has not been submitted, Fairbanks could be subject to offset sanctions (requirements that new CO sources offset their emissions by a 2:1 ratio) in October 2001 and to limitations on Federal highway funds in April 2002.

These sanctions would be avoided if Alaska submitted and EPA approved a plan for Fairbanks to meet the CO standard. EPA has pledged to continue to work with the State and North Star Borough to identify a range of measures to address the specific circumstances applicable to Fairbanks and to provide healthy air to the citizens of Fairbanks.

EPA Headquarters and Region X have provided technical and financial support for a number of special projects aimed at gathering scientific data on air quality for temporal and spatial patterns in Fairbanks compared to other major cities, on the sources of air pollution and their relative contributions, and on the impacts of various control strategies to abate pollution levels. EPA also has begun discussions with the Department of Energy and a manufacturer of heat storage catalytic converters to examine the technology's potential for use in cold weather climates, such as Anchorage and Fairbanks.

Senator SMITH. Does anyone else have any further comment? I know especially you two, came all the way from Alaska.

Ms. BROWN. If I could, Senator, I just want to, in the study that was done in 1992, it said that there were 84 FTEs that were working on Alaska issues. I don't know how it went from 84 to 180 is necessary for a new region. But if you use the 84 number that was provided, if there are 39 already in Alaska, and then that report said 40 others could come out of Region 10 without causing harm, you're pretty close to 84 right there. If you do the core task analysis, it's not just how much time you spend, but what you're producing with that time and are you spending the time in really core tasks versus busy tasks. A lean but focused Region 11 I think would still make an improvement.

Senator SMITH. Just a reminder, I also would like to have for the record your estimate of the costs, factoring out whatever portion of the Seattle office would be attributed to Alaska. Let me just remind the clerk, we'll keep the record open until 5 o'clock on Friday for any additional questions from the members or additional information.

Thank you all very much for coming. The hearing is now closed. [Whereupon, at 11:27 a.m., the committee was adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF SENATOR FRANK H. MURKOWSKI, U.S. SENATOR FROM THE STATE OF ALASKA

Mr. Chairman, thank you for scheduling this hearing on a bill that I have introduced with Senator Stevens to establish an EPA Region in Alaska.

Why does Alaska need a separate region? Part of the answer lies in the uniqueness of our ecosystems and the extent of our real estate.

Alaska is comprised of 365 million acres or 586,000 square miles. That's two and a half times larger than Texas—or a little more than 63 New Hampshires, Mr. Chairman. Alaska stretches 2,400 miles from east to west, and 1,420 miles from north to south.

Alaska has 170 million acres of wetlands—that's 65 million acres more than the combined total of wetlands in the other 49 States.

We have more coastline than the rest of the Nation combined—some 47,300 miles of shoreline.

We have 3 million lakes larger than 20 acres.

We have ecosystems ranging from arctic desert to temperate rain forests, including ecosystems that are found nowhere else in the United States. In addition, Alaska is more ecologically diverse than any other State.

That's why virtually every other Federal Agency with environmental or conservation responsibilities has a regional office in Alaska. These include:

- The National Park Service
- The U.S. Fish and Wildlife Service
- The Bureau of Land Management
- The U.S. Forest Service
- The U.S. Geological Survey
- The Bureau of Indian Affairs
- The Mineral Management Service
- The Bureau of Mines

Even the Federal Aviation Administration has a region comprised only of Alaska. Moreover, the Coast Guard and the U.S. Army Corps of Engineers have District Offices that are in Alaska and specifically devoted to Alaskan issues.

Congress has already recognized the merits of an Alaska region for the EPA. In the fiscal year 1992 VA-HUD appropriations bill, Congress authorized the President to establish an eleventh region of the EPA consisting solely of the State of Alaska. An Administrative Order to that effect was signed by EPA Administrator William K. Reilly on January 20, 1993. Unfortunately, the order was not carried through. I ask that a copy of the signed order be included in the hearing record.

Mr. Chairman, as I know from my service on this committee when I first came to the Senate, and as you know from your leadership in environmental issues, environmental protection is a complex undertaking. "One-size-fits-all" approaches cannot be written in Washington or Seattle and applied in Alaska. Bringing the regulator closer to the problem yields better decisions and more effective, thoughtful regulation.

Moreover, because 65 percent of Alaska is owned and controlled by the Federal Government, most EPA activities directed at Alaska require coordination with the Federal land managers who are headquartered in Alaska.

Other benefits we expect from this legislation include:

- Reduced number of appeals and adjudications;
- Reduced travel between Seattle and Alaska;
- Better service to the public;
- Lower costs.

While EPA may disagree, the last time we asked the Alaska Department of Environmental Conservation to perform an analysis of the budgetary impacts of an Alaska Regional EPA office, they projected a modest savings to the taxpayer. I ask that materials related to cost be included in the record.

Mr. Chairman, I wanted to leave you with just a few examples of what happens when good intentions in the EPA Seattle office go awry in Alaska.

In the regulation of mining operations, EPA sought to require operators to reduce arsenic discharges to a level below the naturally occurring ambient levels. They were apparently unaware that the high level of mineralization in areas of Alaska cause some streams to have high levels of naturally occurring contaminants.

Here is another example: When EPA insisted that Fairbanks, my home town, use MBTE as an oxygenate for motor fuels, nobody understood what happened when MBTE volatilized in an extreme cold air inversion, exposing humans directly to the chemical. Let me tell you what happened—people started getting sick—complaining of headaches, nausea, and dizziness. For far too long, EPA's distant Seattle office regarded the health complaints of Fairbanks residents as little more than the grumbings of crackpots, and refused to grant a waiver. Many months later, after being confronted with hard evidence of sickness, EPA granted a waiver.

How much quickly might that waiver had come, and how many fewer Alaskans would have gotten sick, if EPA had a regional office in Alaska?

Today, Fairbanks is a non-attainment area for Carbon Monoxide by virtue of the Arctic air inversions that occur several times a year. Seattle has never experienced a true Arctic air inversion, so it doesn't surprise me that the EPA regional office hasn't come to terms with the best way to help Fairbanks solve its problem. Instead of considering the unique situation that Fairbanks is in, the EPA started the sanctions clock.

In Nome, where I visited this past weekend, the EPA wants the smokestack on the powerplant raised to better dissipate emissions. According to the Federal Aviation Administration, doing so would interfere with the landing pattern and require a costly realignment of the runway at Nome's airport, which would largely be undertaken at Federal expense. Is this a sensible, cost-effective solution? Of course not. But it's easy to see how this can happen if EPA is sitting in Seattle calling the shots without coordinating with the FAA, which has its regional headquarters in Anchorage.

These are just some examples. Commissioner Brown will talk about the Anchorage Wastewater Treatment Plant permit where a great deal of time, effort and money has been expended for no improvement in water quality.

Let me stress that it is not my intent to question the dedication and good intentions of the EPA people in Seattle—but if they are closer to the action, they will do a better job.

In conclusion, I ask that this committee move our legislation that directs the establishment of an Alaska region.

In the interim, you might ask the EPA why they haven't done so already.

Thank you, Mr. Chairman.

STATEMENT OF ROMULO L. DIAZ, JR., ASSISTANT ADMINISTRATOR FOR
ADMINISTRATION AND RESOURCES MANAGEMENT

Mr. Chairman and members of the committee, I am Romulo L. Diaz, Jr., Assistant Administrator for Administration and Resources Management at the Environmental Protection Agency (EPA). I am pleased to have the opportunity to appear before this committee to present the Agency's views on S. 1311, a bill to create a separate EPA Region for Alaska.

Prior to discussing S. 1311, I'd like to provide a brief history of EPA's current ten-region structure. EPA was established by Reorganization Plan No. 3, signed by President Nixon in 1970. Under the terms of the Plan, components of several departments and agencies were consolidated in the new EPA, including components of the Departments of Interior, Agriculture, and Health, Education and Welfare (HEW).

EPA inherited two distinct regional structures from its predecessor agencies. Those components from HEW followed the ten standard Federal regions suggested by a Presidential directive issued in March of 1969. Components inherited from the Department of the Interior used a nine-region system divided along river basins. In order to facilitate easier operations with local and State governments as well as other with Federal agencies using the ten standard regions model, EPA chose to adopt this model.

In 1974, the Office of Management and Budget issued OMB Circular No. A-105, which formalized the 1969 Presidential directive and required agencies to adopt the standard ten-region structure unless specifically exempted. OMB Circular A-105 remained in force until it was rescinded in 1995. In its recommendation to rescind the circular, OMB cited the Federal Government's expanded use of technologies to interact with the public and other factors that made a strict regional structure no longer necessary. The rescission, however, did not require agencies to re-examine existing regional structures. While EPA has in recent years completed several reorganizations within individual regions, it has not found any basis for changing the existing ten-region structure.

In 1990, Walter Hickel, then Governor of Alaska, called upon EPA Administrator William Reilly to create a separate Regional office for the State. Reasons given by the Governor and others in support of this request included among others, the State's unique environment and size, the predominance of oil exploration and development in the State's economy, and security issues related to Alaska's proximity to the Soviet Far East.

In response to the request to create a new region and the concerns expressed by the delegations of the potentially affected States, EPA undertook a study of the *Implications of Establishing a Regional Office in and for Alaska*. This study, which was completed in 1992, concluded that the proposed new region would not be cost effective and that there were better approaches to meeting the concerns of Alaska's elected officials.

On January 19, 1993, President Bush signed a memorandum ordering Administrator Reilly to establish Region XI. Administrator Reilly responded to the President's memorandum on January 20, 1993, by signing an "administrative order" establishing the new region.

Under the new Administration, the Agency reviewed the report and the history of the proposal. After careful consideration was given to the concerns expressed by Alaska's elected officials, its citizens, and State, industry, and environmental groups, and the findings of the Alaska study, EPA believed that the concerns of Alaska could be more effectively and efficiently satisfied through a variety of other means. These included better collaboration with the State in developing program priorities, in improving delivery strategies, and in modifying administrative structures. In light of the 1992 study and EPA's experience in the intervening years, we remain convinced that the creation of a separate Regional Office for Alaska would not be the most effective structure for addressing the unique circumstances faced by Alaska. We also remain committed to working with the State to most effectively and efficiently serve our mutual goals of protecting public health and the environment.

Let me review a few of the most important ways in which EPA today is working to fulfill its commitment to one of this nation's most geographically diverse areas.

RECOGNIZING ALASKA'S UNIQUENESS

The administrative structure that EPA's Region 10 created for its Alaska operations is unique among EPA's State organizations. With 39 employees, it is the largest of any EPA State-based operation, and EPA intends to maintain the necessary emphasis to keep pace with the State's needs.

The Alaska Operations Office makes recommendations on a wide range of environmental and human health issues affecting the people of Alaska. These recommendations form the basis of final Agency decisions on matters relating to the State.

The Alaska Operations Office is responsible for on-the-ground implementation of EPA programs in the State. In addition to administering some programs directly, the Operations Office provides technical assistance to help the State and local and Tribal governments in administering EPA programs that have been delegated to them at their request.

EPA offices in the cities of Juneau and Anchorage provide the public in those population centers with access to EPA staff. The Agency's office in Juneau facilitates close coordination of EPA programs with related departments of the State government. The Anchorage office is readily accessible to the businesses and industries regulated by EPA.

In addition to these offices, EPA employees work with the Department of Interior in a Joint Pipeline Office, assist the Department of Defense in waste clean up, and work in the office of the Alaska Inter-Tribal Council. To support preservation and restoration of the watersheds in the Kenai Peninsula, EPA has one staff member in that location.

These employees are highly trained professionals, many with advanced degrees in scientific and technical fields, specifically selected because of their familiarity with the arctic and subarctic climate and with the challenges of dealing with environmental issues in remote areas. To broaden the expertise of EPA staff and to maintain their in-depth knowledge of local issues, the Alaska Operations Office has used agreements for the exchange of personnel with State and local government organizations such as the city of Anchorage, the Alaska Department of Environmental Conservation, the Alaska Inter-Tribal Council, the Joint Pipeline Office, the Alaska Native Health Board, and the Denali Commission. In addition, interagency exchanges are in effect between EPA and the U.S. Department of Defense and the U.S. Forest Service. These exchanges help the Agency develop programs that are tailor-made for

local conditions and that build coalitions with various organizations with similar Alaska-related concerns and goals.

FLEXIBLE PROGRAM IMPLEMENTATION FOR ALASKA

In 1995, EPA initiated a National Environmental Performance Partnership System. Under this system, the Agency's partnership agreement with the State of Alaska, initially drafted in May 4, 1977 and updated every 2 years, is an integrated and flexible strategic plan for addressing the State's environmental problems. The recently revised agreement contains mutually determined priorities and a plan of action that involves both the EPA and the State in working together to achieve environmental goals. The plan encompasses all EPA-financed assistance that goes to the State, including that designated for air quality, water quality, drinking water, facility construction, underground storage tanks, wellhead protection, toxic waste cleanup, hazardous waste, and pollution prevention programs.

A central element of the partnership between EPA and Alaska is that the agreement integrates federally-funded programs administered by EPA with related programs funded by the State and by other Federal agencies. It is intended to give the State maximum flexibility to address its specific needs while maintaining a core level of environmental protection.

A few examples will serve to illustrate the flexibility that EPA gives to Alaska:

- *Fuel standards.* In light of the State's unique geographical, meteorological, air quality, and economic factors, EPA has granted Alaska an exemption from meeting the current sulfur standard for highway diesel fuel. The Agency is now proposing to lower the national standard to 15 ppm (parts per million) for sulfur, but also proposed permitting Alaska to develop its own alternative low-sulfur transition plan. In addition to flexibility on the sulfur standard, the State also has authority to develop its own method for reducing carbon monoxide, and has been working with Region 10 to identify alternative approaches to achieve carbon monoxide reductions.

- *Rural sanitation.* Region 10 created a Rural Sanitation Coordinator position in the Alaska Operations Office to work directly with villages and with other agencies and organizations that provide rural sanitation services. The Operations Office played a substantial role in the development of the State Rural Sanitation Action Plan, which recognizes the challenging sanitation issues faced by communities in rural Alaska and the difficulties these communities have in managing, operating, and maintaining sanitation facilities. EPA's Office of Wastewater Management provides funds to the Alaska Native Health Board to assist rural Alaskan communities in meeting their sewer and water system management, operation, and maintenance needs.

- *Drinking water.* The Agency recognizes the particular challenge Alaska faces in ensuring that communities have water that is safe for drinking, swimming, and fishing. There are more than 3,500 public water systems in Alaska, 95 percent of which serve fewer than 500 people in rural and remote locations. To help communities in Alaska meet this challenge, EPA has provided in excess of \$100 million since 1995 for construction of drinking water facilities in Alaskan communities.

- *Wetlands protection.* EPA and the Corps of Engineers have worked to develop a wetlands permitting process that takes into account the State's highly diverse environmental, economic, and geographical conditions. In 1994, as part of the Alaska Wetlands Initiative, EPA and the Corps convened a panel of stakeholders and solicited broad public input to identify and address concerns with the implementation of the Section 404 program in Alaska. Some 2000 comments were received over the course of the initiative. In response to concern's raised by these stakeholders, guidance was issued that emphasizes the discretion and flexibility afforded to the Corps to craft decisions that take into account environmental conditions unique to Alaska. As part of EPA's ongoing Section 404 efforts in Alaska, the Agency is working closely with local interests in the Kenai to determine how recreational and economic activities can proceed while protecting important aquatic resources.

MAKING PROGRESS, ACHIEVING RESULTS

A number of measures point to the success of EPA efforts to tailor programs to the specific needs of the State and to give the State the greatest possible flexibility to establish priorities and allocate funds. Here again are some examples:

- Permit backlogs for municipal discharges, mining, pulp, and seafood operations have been reduced from 69 percent in 1996, to 21 percent in March 2000, and are expected to be further reduced by the end of this calendar year.

- The Alaska Operations Office has worked successfully with the State, the city of Juneau, and the cruise industry to help ships comply with State and Federal air and water standards in a cost-effective and environmentally protective manner. This

project, and others such as Superfund site cleanups and the restoration of abandoned industrial sites to productive use, demonstrates that environmental protection and economic development in Alaska, as elsewhere, are complementary.

- EPA has been the primary sponsor, both financially and technically, of the Yukon River Inter-Tribal Council, which is conducting research on ways of protecting the Yukon River Watershed.

- EPA, the State of Alaska, the Canadian Government, and related other Federal and State agencies are currently in negotiations on ways to protect the Taku Watershed and Alaska fisheries from the harmful effects of mining wastes.

- EPA created an arctic monitoring program to assess the impact of circumpolar and transpacific pollutants such as persistent organic pollutants and radioactive contaminants on the State's sensitive arctic region and its indigenous peoples.

Summary

During the past 7 years, EPA has worked to address all the issues that prompted the proposal to create a separate Regional office for the State. Although there is always room for improvement, much progress has been made. As I have already indicated, we are addressing Alaska's unique and varied geography directly in a number of cost-effective ways. We will continue to assess our program needs for the State.

On behalf of the Environmental Protection Agency, I pledge that we will continue to work with Members of Congress as well as the State of Alaska and others to consider additional ways to better serve the environment and people of Alaska.

Thank you for the opportunity to appear before you today. I would be pleased to answer any questions you may have.

RESPONSES BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA) TO QUESTIONS FROM SENATOR SMITH

Question 1. The EPA and the Alaska Department of Environmental Conservation agree that there are unique features about Alaska that require special regulatory treatment. The EPA and the State, however, disagree over whether Alaska should be a separate region. It could reasonably be argued that having a separate Regional Administrator for Alaska is necessary because only a political appointee can effectively go to bat for the State. Political appointees carry more weight in the battle for scarce funds than even the most talented civil servants. The policy views of political appointees also carry more weight in the debate over the best environmental regulation. Does the EPA agree or disagree with the proposition that a political appointee can better represent the views of Alaska within the EPA than can a civil servant?

Response. EPA does not agree with the proposition that a political appointee could better represent the interests of Alaska than a civil servant. Nonetheless, we note that the Regional Administrator for Region X, which has responsibility for Alaska, has traditionally been a political appointee. The experience of this Agency is that environmental and public health priorities must be balanced with resources available to address them, and that it is the strength of the argument rather than the status of the advocate that is likely to be most persuasive.

Question 2a. In your testimony, you said that having a separate Region for Alaska is not the most effective means of addressing the unique circumstances faced by Alaska. Please explain in detail your reasons for that conclusion. In doing so, please address the following subjects.

Please identify the cost and non-cost factors on which you rely for that conclusion, as well as identify the relative weight given to each factor.

Response. The data that was analyzed when the establishment of a Regional Office for Alaska was first proposed suggested that the creation of such an office would not be cost effective. That conclusion remains valid. For example, one expert on the subject of underground storage tanks provides service to the four States in Region X. Creating a separate Regional Office for Alaska would necessitate duplicating this expertise for Alaska alone. Other areas of scientific and technical expertise would also have to be duplicated.

Question 2b. What is the cost of establishing a separate Alaska region? Please separately identify and distinguish the cost of immediately creating a fully staffed Regional Office from the cost of creating a fully staffed office gradually.

Response. Information on the cost of establishing a separate Regional Office was provided to the committee on July 27. A table with "phase-in" information on estimated costs of creating such an office over a 4-year period is attached.

Question 2c. Please identify all personnel positions (e.g., Regional Administrator) that would need to be filled in order to operate a separate Alaska Region, as well as all other matters (e.g., office space) that would be needed in order to establish a separate Alaska Region.

Response. This information has been provided as above in answer to (b).

Question 2d. Please provide to the committee any formal analysis of the foregoing factors that has been prepared during this Administration.

Response. No analysis of the foregoing factors was undertaken during this Administration.

Question 3a. Mr. Diaz, one of the documents that you provided to the committee is entitled "Region XI Approaches to Closure" and is dated June 23, 1993. The document is unsigned. The document states the following (at page 1): "The 12th floor has been told by OGC that reversing the order establishing Region XI will require the written approval of the President." Please explain this statement in detail for the committee. In doing so, please address the following subjects.

Who prepared this document?

Response. We have not been able to determine the author of this document.

Question 3b. To whom was this document sent?

Response. We have not been able to determine the intended recipient of this document nor whether it was ever sent.

Question 3c. Was the Administrator or Deputy Administrator ever briefed regarding this document or the subject of this document?

Response. The Administrator was briefed on the Alaska Region XI issue, but has no recollection of being briefed on the document or the subject of the document. We have not been able to find any information in the files of the Administrator or Deputy Administrator indicating that either official had been briefed on the document.

Question 3d. Does the quotation note[d] above represent the EPA's current position?

Response. No.

(i) If not, what is the EPA's new position?

Response. After informally consulting with the Office of Legal Counsel, Department of Justice, EPA's Office of General Counsel (OGC) has advised that only the President can rescind a Presidential memorandum and that the President may do so orally or in writing. To the best of our knowledge, this is not a "new" position because the unsigned document dated June 23, 1993, entitled "Region XI Approaches to Closure" did not, and did not purport to, State EPA's position on this issue.

(ii) When did the EPA change its position?

Response. As indicated in the answer to (i), to the best of our knowledge, EPA has not "changed" its position. OGC examined this issue once Chairman Smith questioned Mr. Diaz about the June 23, 1993 background document at the committee's June 6, 2000 hearing.

(iii) Who was involved in the process by which the EPA changed its position?

Response. To the best of our knowledge, EPA has not changed its position. Subsequent to the hearing, staff in the Office of General Counsel, EPA, and in the Office of Legal Counsel, Department of Justice, were involved in addressing the legal issues of whether the President must rescind a Presidential memorandum and whether this must be done in writing.

Question 3e. Did the Office of General Counsel issue a written opinion on the following subjects:

(i) The validity of the order entered by former President Bush on January 19, 1993, or the order entered by former EPA Administrator William Reilly on January 20, 1993, establishing a separate Region 11 for Alaska?

Response. Based on a thorough inquiry and review of our files, to the best of our knowledge, the Office of General Counsel did not issue a written opinion on this question.

(ii) The steps necessary to implement the order entered by former President Bush on January 19, 1993, or the order entered by former EPA Administrator William Reilly on January 20, 1993, establishing a separate Region 11 for Alaska?

Response. Based on a thorough inquiry and review of our files, to the best of our knowledge, the Office of General Counsel did not issue a written opinion on this question.

(iii) The steps necessary to rescind the order entered by former President Bush on January 19, 1993, or the order entered by former EPA Administrator William Reilly on January 20, 1993, establishing a separate Region 11 for Alaska?

Response. Based on a thorough inquiry and review of our files, to the best of our knowledge, the Office of General Counsel did not issue a written opinion on this question.

If so, please provide a copy of those opinions to this committee.

Question 4. At the hearing, you acknowledged that President Clinton has never revoked the order entered by former President Bush on January 19, 1993, or the order entered by former EPA Administrator William Reilly on January 20, 1993.

Why has the EPA not established a separate Region 11 for Alaska?

Response. The proponents for establishing a separate region for Alaska argue that the special geographic, climatic, and economic conditions of the State require unique responses to its environmental and public health conditions. A study undertaken by EPA, Implications of Establishing a Regional Office in and for Alaska, at the request of the Alaska Department of Environmental Conservation and Senator Murkowski, concluded that a proposed new region would not be cost effective nor would it provide the advantages that the State and others believed possible. After reviewing the report and considering the concerns expressed by Alaska's elected officials, its citizens, and State industry and environmental groups, EPA determined that the issues which formed the basis for the order to create a new Region could be more effectively and efficiently satisfied through a variety of other means. These included improving collaboration with the State in developing program priorities, improving delivery strategies, and modifying administrative structures. We believe these strategic and administrative improvements have been effective in addressing the unique circumstances faced by Alaska and have eliminated the need for establishing a separate Regional Office for the State.

Table.—R11 Estimated Costs Over a Four-Year Period

Category	Year 1	Year 2	Year 3	Year 4	Total
Personnel compensation and benefits (PC&B)	3,854,052	3,683,206	4,657,038	4,685,924	16,880,220
Travel	283,100	101,900	133,500	133,500	652,000
Operating expenses, contracts & support	2,258,100	833,100	1,018,100	1,023,500	5,132,800
Start-up costs	5,787,500	2,290,100	2,085,200	1,837,200	12,000,000
Total per year:	12,182,752	6,908,306	7,893,838	7,680,124	34,665,020
Totals	12,182,752	19,091,058	26,984,896	34,665,020	

Assumptions:

- Costs do not include any inflation factors.
- The RA's Office would be fully staffed the first year.
- The support offices would not exist the first year, but would be phased in at 1/3 total strength for Years 2 thru 4.
- The program offices would be at 1/3 total strength the first year, 1/2 strength the second year and 3/4 strength the third year.

STATEMENT OF MICHELE D. BROWN, COMMISSIONER, ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Chairman and members of the committee: I am Michele Brown, Commissioner of the Alaska Department of Environmental Conservation. On behalf of Alaska Governor Tony Knowles, I am pleased to testify that the State of Alaska supports the bill before you to create a separate region of the EPA for Alaska, which will foster a far more effective Federal-state partnership to protect Alaska's environment and the health of its people.

ALASKA'S ENVIRONMENTAL CHALLENGES ARE UNIQUE AND DISTINCTIVE

Alaska is a national treasure. You have participated in the debates over opening the Arctic National Wildlife Refuge, about timber harvest levels in the Tongass National Forest, and over how to prevent and improve response to oil spills such as the Exxon Valdez. There is great passion in those debates. Alaska is America's proud symbol for environmental purity and primal wilderness. It should also be America's model for environmental management. Yet, the key Federal agency charged in this country with environmental management has only a meager presence in Alaska.

EPA's 1992 report entitled "Implications of Establishing a Regional Office in and for Alaska" states that a new Alaska region should not be established because no one wants to live and work in Alaska. My 450 employees and I would like to tell you that when it comes to environmental splendor and to the ability to practice creative and meaningful environmental management, it simply doesn't get any better than Alaska.

For public health and environmental challenges, and for the opportunity to do development right, as Alaska's Governor Tony Knowles requires, Alaska is where the rubber meets the road.

Issues range:

- from addressing third world sanitation conditions in hundreds of inaccessible, tiny communities in a State where there is virtually no county or borough regional health management system, to regulating the U.S.'s most sophisticated and complex oil development, production and transportation system, one which yields 20 percent of the U.S.'s oil production. Another 30 percent of the U.S.'s proven oil reserves lies under Alaska's surface and we all know that Americans will not tolerate drilling those reserves without assurances that it can be safely managed.

- from protecting the water quality that produces and processes over 50 percent of the U.S.'s seafood production and houses the largest seafood landing port in the U.S., while regulating the discharges from the U.S.'s largest zinc and silver mines and the U.S.'s leading placer gold and tin production mines.

- from generating electricity from diesel engines for almost all of Alaska's numerous remote villages, and all the mines and oil and gas production facilities I just mentioned, because there is no other available power source, while assuring air quality for two-thirds of all the U.S.'s national parklands, the largest State park system in the United States, and the U.S.'s largest national forests, as well as preserving the vistas and fresh air quality for the 1.4 million tourists who visit Alaska each year.

And, this all needs to be done over a land base that equals 20 percent of the United States. As you can see from the map, when superimposed on the lower 48 States, Alaska extends north to south from the United States-Canada border to southern California and, east to west, from Tennessee to Texas and that's not even including the Aleutian Islands.

Alaska shares no border with another State and at our closest point is 2½ miles from Russia. Alaska has 7 ecosystems, including the United State's only arctic and subarctic ecosystems. Alaska has 6,600 miles of coastline (3 times the coastlines of California and Florida combined), 34,000 miles of shoreline, 3,000 rivers, 3 million lakes over 20 acres each, and more wetlands than those in all the other States combined.

Alaska's entire economic base—oil and gas, seafood, tourism, and mining—depends upon its natural resources and its environment and how well they are managed. And, our Nation too depends heavily on these products.

Alaska needs strong and effective environmental management from our Federal agency partners. Virtually all pertinent Federal agencies, with the notable exception of EPA, recognize both the importance and the difficulty in managing some of America's most important assets and have Regional Offices in Alaska. This includes not just land management agencies but also those with regulatory protection programs such as the National Oceanic and Atmospheric Association, the Corps of Engineers, and the Minerals Management Service. EPA alone tries to provide this management from Seattle with a small operations staff in Alaska. Region 10 covers the largest geographic areas of any EPA region, yet has the fewest staff of any region.

We believe that having a lean, but focussed EPA Region 11 can accomplish far more in effective environmental management than the so-called leveraging of its larger staff in Seattle.

It takes strong environmental management and standards to balance competing demands on the environment and to protect Alaska's national assets. Strong and effective management means setting priorities based on sound risk assessments and tailoring management to real-time conditions to produce on-the-ground, meaningful results. In the multi-layered and increasingly complex Federal/State/tribe local system of environmental management that has developed in this country, Alaska needs a Federal partner that is aware of and can produce solutions rather than rote and oft-times arbitrary applications of rules developed for other circumstances.

I am not here to criticize EPA but to highlight a serious problem in allocation of resources and attention. Let me explain why. I'd like to give you four reasons and some brief examples:

FIRST, ALASKA'S ENVIRONMENT NEEDS MORE EFFECTIVE MANAGEMENT

Despite efforts by EPA Region 10 to be more responsive in Alaska, we have seen that managing for results simply does not work from a Seattle office. EPA's Alaska operations office basically does direct implementation of programs that have not been delegated to or are not shared with Alaska's regulators. Consequently, my staff interacts with Seattle 90 percent more than it does with the Alaska operations office. It's quite frustrating to see State regulators and facility operators troop to Seattle to meet with an EPA regulator who has never even viewed the facility's site.

Unfortunately, Seattle staff too often have neither the knowledge of Alaska's conditions and cultural diversity or the funds or time to travel and study. Lacking that core understanding and a sense of the big picture, they merely tackle what shows up on their desks. They do this by adhering to tunnel vision one-size-fits-all solutions prescribed in regulations and guidance while facing intense pressure under a large Region 10 workload and trying to advance EPA headquarters virtually endless assault of new initiatives. It's a hard job and one that leads to wasted time and resources without producing environmental results; and, at its worst, results in nonsensical situations.

Let me share some examples:

First, thousands of migratory birds die year after year in a wetlands estuary outside of Anchorage due to poisonous phosphorous from Army weapons. Two-thirds of Alaska is federally owned and managed, much with left over contamination such as this from past management practices. Yet, EPA, the Federal agency charged with preventing and remediating fellow Federal agencies' actions, has virtually no presence to address these hundreds of acres of contaminated wetlands.

At the same time, however, less than 15 air miles away, the Anchorage sewage treatment plant has been through three years of bureaucratic red tape to renew its permit in order to account for naturally occurring conditions in the Cook Inlet waters. The so-called "pollution" being addressed is due to trace metals and high sediments caused by the glaciers grinding up the local mountains. Despite countless hours by EPA and Alaska's environmental staff, this permit is still not done and, even when it is finished, it will not improve water quality whatsoever.

Second, EPA imposed on Alaska an arsenic standard for point discharges that was virtually impossible for any discharger to meet due to naturally occurring arsenic in Alaska's waters. No arsenic was being added in the mine process. This discharge standard was 300 percent lower than the drinking water standard for arsenic. This meant that you could dip a glass into a stream and drink the water. That was safe. But if you didn't finish the water, you would not be allowed to pour it back into the stream because it would violate the arsenic discharge standard. It took four years to get this resolved while dozens of major and minor mine permits were substantially delayed or went through expensive, time-consuming paperwork processes to get around the requirement. Again, there was no resulting benefit in water quality for all this effort.

Third, Alaska has a desperate need for safe drinking water for thousands of public water systems serving less than 500 people, most located in isolated communities that lack any economic base. The average annual income in a village in Alaska is \$13,000. EPA is generous with the construction funding granted by Congress, but the community is expected to maintain the system at its own expense once built. That's hard enough to do under the best of circumstances, but it becomes nearly impossible when the community has to meet EPA requirements that don't make sense in Alaska, such as testing for contaminants never found in Alaska or having to repeatedly re-draw and fly water quality samples to a lab because EPA rejects the results when arbitrary sample holding times cannot be met due to distance and frequent weather delays. Communities who fail these requirements don't get help; they face fines.

In short, Alaska wants and needs effective management. We do not want relaxed standards or to skate from requirements. But, neither do we want to go through pointless activities that don't produce environmental improvements. A Region 11 would allow Alaska to structure compliance in a way that works and to target resources on what truly engenders better environmental performance.

SECOND, PUBLIC HEALTH INFRASTRUCTURE PROGRAMS MUST FIT ARCTIC CONDITIONS

EPA's role in water, sanitation, and waste disposal infrastructure development in Alaska villages is unique in the region, if not the country, especially when you consider that there is virtually no road access to the villages, transportation corridors are only open when rivers aren't frozen, each village is autonomous, and system design and operation require the most extreme arctic engineering. EPA's assistance in funding construction is great, but its system management requirements can be

frustrating and an enormous waste of time due to its lack of specific knowledge of Alaska's condition.

For instance, there's a new requirement that operators of small drinking water systems be trained and certified. That's good, but it is based upon a model that envisions that a single, certified operator will be able to circuit ride from one drinking water system to the next and serve as the certified operator for a number of systems in an area. This works fine when the circuit rider can drive from one system to the next and visit several systems in a day, but sure doesn't work in Alaska, where traveling from one system to another can often take two days, cost thousands of dollars in air fare, and involves overnighing when there are no facilities. Despite the pleas from Alaska to have alternative certification requirements, we're now scrambling to figure out how to comply.

The national rules for State Revolving Loan programs for drinking water and wastewater projects set the course for disbursing loan funds, for construction times, and for costs based upon a 9- or 12-month construction season. Those standards assume that materials can be purchased nearby and relatively easily trucked to a construction site. That simply isn't the case in Alaska. Even the best run, most cost-effective projects often take longer and cost more in Alaska.

Further, there is a serious need to integrate the water and wastewater system activities with other Federal agencies working in same field: Housing and Urban Development, U.S. Department of Agriculture-Rural Development, Army Corps of Engineers, and Indian Health Service. It is critical to have master planning where housing, energy improvements, sewage lagoons, and water and sewer systems are all coordinated. All of these other agencies have key, decisionmaking offices in Alaska. EPA does not.

THIRD, TRIBAL RELATIONS IN ALASKA REQUIRE MORE RELEVANT PARTICIPATION

Alaska's cultural diversity—a 17 percent native population from five distinct ethnic groups—and unique government to government tribal relationships requires more attention and coordination than Seattle has been able to offer. One-half of all federally recognized tribes are in Alaska, yet only one has a reservation land base. EPA out of Seattle is now forming environmental policy and passing large amounts of grant funds to 228 tribes in Alaska in a way that may make good sense in the other Region 10 States, but sure doesn't in Alaska.

For instance, EPA passed grant funds to tribes to collect and recycle batteries and other household hazardous materials. That was good in the other Region 10 States where there is both recycling opportunities and a road system to move these materials. When the village of Galena, located on the Yukon River, received funds to do that, villagers collected the hazardous materials and then started calling around to find someone to fly or boat hundreds of miles to pick up the materials. When they couldn't find anyone to volunteer to do that, the villagers dumped the batteries into the local, substandard landfill that was being closed out and created a serious water contamination threat.

As I previously mentioned, communities must operate and maintain their water and wastewater systems after construction is completed. This requires a community organization such as a tribal entity, a city government, or a non-profit. Several times, EPA's tribal office has passed funds to tribal entities to begin development of new water or sanitation systems in communities where villagers are already struggling to maintain a current system operated by a local government. The result, in a community with a few hundred people, is duplicate systems competing for rate-payers.

Facilitating the government to government relationship that EPA promotes must happen in a knowledgeable and sensitive way. It cannot be done by merely replicating activities undertaken with tribes with reservations. Surely, when half of the tribes that EPA deals with in the U.S. are in Alaska, a regional leader is critical to develop that government to government relationship in a meaningful and effective manner.

FOURTH, ARCTIC CONTAMINATION IS BECOMING A SERIOUS THREAT TO ALASKA'S ECOSYSTEMS AND THE PEOPLE WHO RELY UPON ARCTIC RESOURCES

The Arctic is a sink capturing chemical coming from the former Soviet Union and Asia. Heavy metals and persistent organic pollutants concentrate in the Arctic due to air and water currents and persist longer in the Arctic than in more temperate climates. These chemicals accumulate in the ecosystem and, in particular, in fatty tissues in animals. These threatened ecosystems are relied upon for subsistence foods, for the seafood trade, and for traditional ways of life. Northern people rely

on fatty animal foods and there is now increasing and frightening evidence of long-term health effects on Alaskans and other Arctic peoples.

EPA is participating in Arctic research and management to address these issues but in a fractured and uncoordinated fashion. Having a regional focus on this issue would greatly assist the State Department as it negotiates treaties on international management of these pollutants, would be a more effective partner with the National Oceanic and Atmospheric Association, the U.S. Fish and Wildlife Service and other Federal agencies grappling with this issue, and could make valuable information available to subsistence users on the quality of their natural food sources.

FUNDING REGION 11 DOESN'T HAVE TO NEGATIVELY AFFECT REGION 10

Those are some of the reasons why a Region 11 would make a positive difference in promoting and effectuating meaningful environmental management in Alaska. However, I know it must be cost effective and must not lessen resources devoted to other Region 10 States.

EPA's 1992 report on costs—I do not know if that has been updated—says 84 FTEs in Region 10 work on Alaska issues. It also says that 40 FTEs could be removed from Region 10 without harm to other States' coverage.

There are currently 30 positions on the books for the Alaska operations office. Together, that makes 70 positions available for Alaska work without compromising the Region 10 workload, pretty close to the 84 EPA said work these issues already.

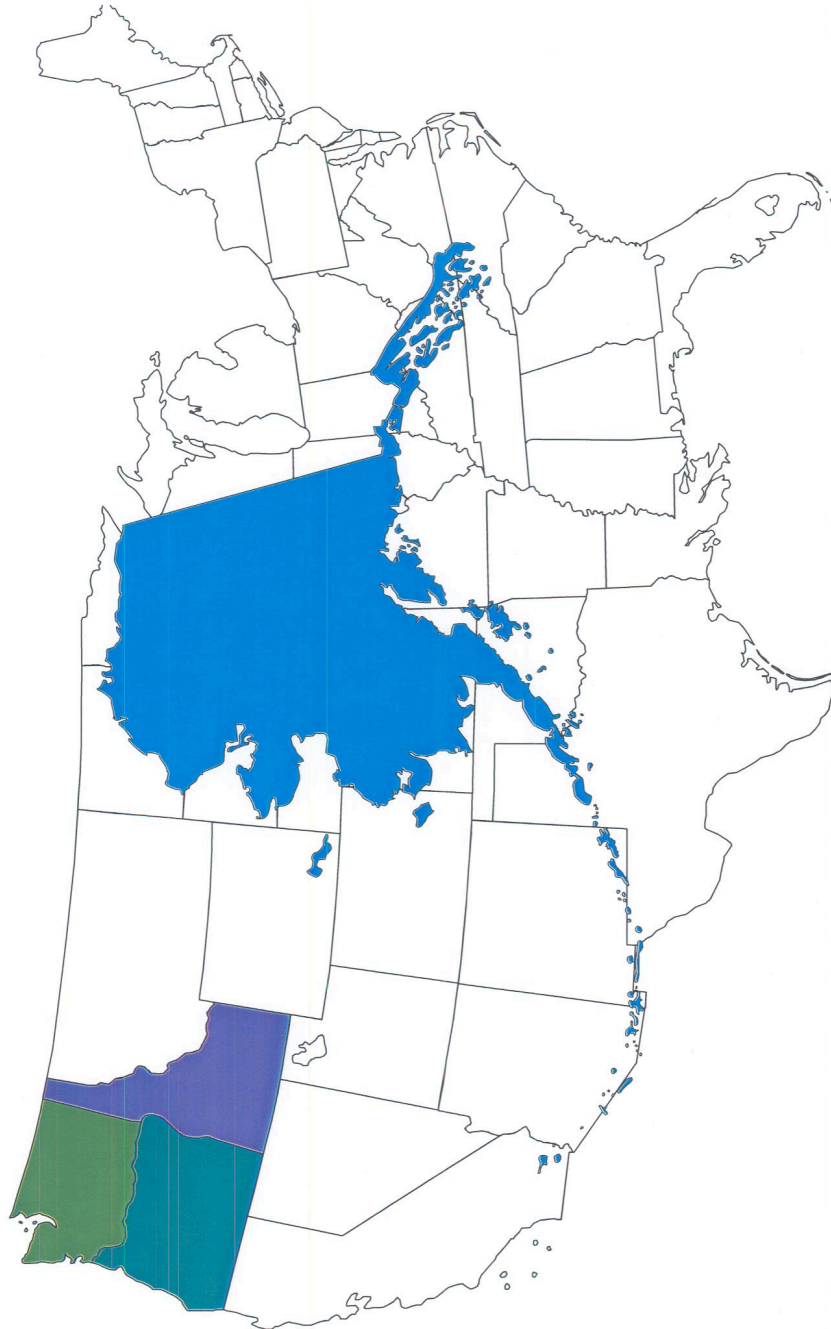
Somehow, however, EPA then adds about 130 percent more staff when it says in that same report that it needs 180 FTEs to run a Region 11 office. Even if the 84 FTEs it cites as working on Alaska issues does not include administrative or legal staff, surely a new Region would not need 96 more staff for these functions.

Maybe it would take 180 positions to open an ideal regional office. It would probably take a 130-percent increase to create an ideal Region 10 too. But, we're not asking for that. Rather, we're asking that an Alaska-proportionate share be placed in a regional office that can make knowledgeable, relevant decisions and be an equal voice as headquarters develops rules and guidance on how to achieve compliance in ways that make sense.

A thoughtful and gradual transition could ameliorate the costs. This is especially true if, through a core task analysis, staff were actually tasked with work that produced tangible environmental results. We believe that a Region 11 can be created that would not have negative consequences to the other Region 10 States.

CONCLUSION

Alaska wants and needs a true partner to manage Alaska's national treasures and provide a healthy quality of life for Alaskans. The best government is the one closest to the people and Alaskans need our Federal EPA partner to be present in a way that furthers rather than frustrates our mutual goals.



RESPONSES OF MICHELE D. BROWN TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Your written testimony states that the EPA has pursued several misguided policies in Alaska—such as requiring small Alaskan communities to have duplicate drinking water systems.

Please identify specific examples of the problems that you have found in working with the EPA. In giving examples, please address the following matters:

- (a) How long have these problems existed?
- (b) Have you brought those problems to the attention of the EPA?
- (c) If so, to whom in Alaska and in Seattle?
- (d) If so, what was the EPA's response to your action?
- (e) Is action by the EPA necessary to resolve those problems?
- (f) If so, please identify what action is necessary; whether you brought that action to the attention of the EPA; if so, to whom; when that was done; and what was the EPA's response?

Response. The following are examples in several areas where EPA has generated needless work or wasted limited, valuable resources due to the lack of Alaska-specific knowledge.

WATER QUALITY STANDARDS.

- *Arsenic*—EPA imposed an arsenic standard for point discharges that was virtually impossible for any discharger to meet due to naturally occurring arsenic in Alaska's waters. No arsenic was being added in the mine process. This discharge standard was 300 percent lower than the drinking water standard for arsenic. The result, in effect, was that you could dip a glass into a stream and drink the water. That was safe. But if you didn't finish the water, you would not be allowed to pour it back into the stream because it would violate the arsenic discharge standard. It took four years to get this resolved while dozens of major and minor mine permits were substantially delayed.

- *Anchorage sewage treatment plant*—the Anchorage sewage treatment plant has been through three years of bureaucratic red tape to renew its permit in order to account for naturally occurring conditions in the Cook Inlet waters. The so-called "pollution" being addressed is due to trace metals and high sediments caused by the glaciers grinding up the local mountains. The permit was finally completed after hundreds of hours of work for no improvement in water quality whatsoever.

SOLID WASTE

- Although courts have ruled that most Alaska tribes do not have Indian Country, EPA Headquarters has mailed a number of letters and publications to all 200+ tribes in Alaska concerning solid waste management in Indian Country. These mailings were done without notice to the State and resulted in considerable confusion, as the State has jurisdiction over solid waste in most tribal areas.

- EPA has issued solid waste grants to tribes without notifying the State. In some instances, the work funded by these grants duplicates work already being done by the State. In another instance, the work funded by these grants increased the threat of environmental contamination. EPA passed grant funds to tribes to collect and recycle junk vehicles, batteries, and other household hazardous materials. That worked in the other Region 10 States where there is both recycling opportunities and a road system to move these materials. When the village of Galena, located on the Yukon River, received a "cleanup" grant, villagers dutifully collected the hazardous materials and then started calling around to find someone to fly or boat hundreds of miles to pick up the batteries and dispose of or recycle them. When they couldn't find anyone to volunteer to do that, the villagers disposed of the batteries in the local, substandard landfill. This landfill was in the process of being closed out and the additional hazardous material created a serious water contamination threat.

DRINKING WATER AND SEWAGE DISPOSAL

- Alaska has a desperate need for safe drinking water for the thousands of public water systems serving less than 500 people, most located in isolated communities that lack any economic base. The average annual income in a village in Alaska is \$13,000. EPA is generous with construction funding but the community must maintain the system at its own expense. That's hard to do under the best of circumstances but even more so when limited dollars have to be spent testing for contaminants never found in Alaska and repeatedly re-drawing and flying water quality samples to a lab because EPA rejects the results when arbitrary sample holding

times cannot be met due to distance and frequent weather delays. Communities who fail these requirements don't get help; they face fines.

- EPA has imposed a new requirement that operators of small drinking water systems be trained and certified. That's good, but it is based upon a model that envisions that a single, certified operator will be able to circuit ride from one drinking water system to the next and serve as the certified operator for a number of systems in an area. In Alaska, traveling from one system to another can often take two days, costs thousands of dollars in air fare, and involves overnighting when there are no facilities. Despite the pleas from Alaska to have alternative certification requirements, we're now left scrambling to figure out how to comply or face loss of construction funds.

- The national rules for State Revolving Loan programs for drinking water and wastewater projects present another set of problems for Alaska. For example, national standards for the pace of disbursing loan funds, for construction times, and for costs envision a 9- or 12-month construction season. Those standards assume that materials can be purchased nearby and relatively easily trucked to a construction site. That simply isn't the case in Alaska. Even the best run, most cost-effective projects often take longer and cost more in Alaska.

Question 2. You recommended that the EPA create a separate region for Alaska, while the EPA believes that the special needs of Alaska can be addressed by devoting more resources to Alaska's needs. Please explain in detail why the problems and needs of Alaska can be addressed only (or better) through the creation of a separate Region for Alaska, instead of (for example) increasing the number of EPA employees devoted to Alaska's issues, either in Alaska or in Seattle.

Response. EPA's Alaska operations office implements programs that have not been delegated to or are shared with Alaska's regulators. Although EPA claims that the Alaska operations office has more staff than any other State operations office, my staff interacts with Seattle 90 percent more than it does with the Alaska operations office. It's quite frustrating to see State regulators and facility operators troop to Seattle to meet with an EPA regulator to discuss a site never viewed or understood. In the last fiscal year, DEC employees spent over 120 work days in Seattle meeting with Region 10. Even when we do work with EPA's Alaska office, it is often "overruled" by Seattle staff.

Question 3. One argument against having a separate Alaska office is that having such an office is inefficient, because of the separate infrastructure needed for a separate EPA Regional Office. Please address that concern. In so doing, please address the following issues as well:

(a) Based on your experience with your own agency, what personnel would be necessary to establish a separate Alaska region?

(b) What would be the cost of creating separate Alaska region cost? In making an estimate, please address both the cost from immediately staffing an EPA regional office fully and the cost from doing so gradually.

(c) To what extent can the EPA hire from Alaska new employees in whatever scientific and technical fields are necessary to staff a regional office?

(d) How much additional time and resources would you and your staff have to serve Alaska better if there were an EPA Regional Administrator located in Alaska, instead of in Seattle?

Response. If efficiency is measured in terms of genuine environmental protection and the quality and relevance of EPA's decisions, opening a separate Alaska region will increase efficiency. Being closer to the regulated resources and activities will increase the amount of time staff can spend directly on protection activities and reduce the amount of time required to gather information or correct misguided policies.

We believe that having a lean, but focussed Region II can accomplish far more in effective environmental management than the so-called leveraging of its larger staff in Seattle. Local expertise and knowledge about Alaskan conditions should increase efficiency as less time will be spent heading down wrong paths. More relevant decisions will mean less time spent on reviews and appeals.

EPA's 1992 report entitled "Implications of Establishing a Regional Office in and for Alaska" states a new region should not be established because no one wants to live and work in Alaska. Despite their claims to the contrary, however, many people enjoy living in Alaska—especially people with an environmental background. The stability and possibilities for advancement that EPA offers should be sufficient to find technically well-qualified applicants with specialized knowledge and experience in Alaska's unique conditions.

EPA's earlier report on costs—I cannot comment on its updated version since I haven't seen it—says 84 FTEs in Region 10 work on Alaska issues. It also says 40

FTEs could be removed from Region 10 without harm to other States' coverage. There are currently 30 positions on the books for the Alaska operations office. Together, that makes 70 positions available for Alaska work without compromising the Region 10 workload, pretty close to the 84 EPA said work these issues already.

Somehow, however, EPA then adds about 130 percent more staff when it says it needs 180 FTEs to run a Region 11 office. Even if the 84 FTEs it discusses earlier does not include administrative or legal staff, surely the Region would not need 96 more staff for these functions.

Maybe it would take 180 positions to open an ideal Region. It would probably take a 130 percent increase to create an ideal Region 10 too. But, we're not asking for that. Rather, we're asking that an Alaska-proportionate share be placed in a regional office that can make knowledgeable, relevant decisions and be an equal voice as headquarters develops rules and guidance on how to achieve compliance in ways that make sense.

A thoughtful transition could ameliorate costs and impacts. This is especially true if, through a core task analysis, staff were actually tasked with work that produced real results rather than bean counting, creating Region 11 would not have negative consequences to the other Region 10 States.

Question 4. Why is Alaska better off with a separate EPA Region, instead of (for example) just having more EPA personnel stationed in Alaska and more funds distributed to Alaska?

Response. Please see answer to question 2.

Question 5. Please address the following proposition: Alaska needs to be a separate Region with its own Regional Administrator because only a political appointee, drawn from the State and having the same status as the other EPA Regional Appointees, will have sufficient awareness of the unique features of Alaska best to address the environmental issues that arise in your State, as well as sufficient political muscle to represent Alaska's interests to EPA Administrator and to obtain for Alaska the needed personnel and fiscal resources from the scarce funds available to environmental protection.

Response. Our experience is that EPA is a bureaucratically bound agency rife with second guessing by the regional office over the State operations office and by headquarters over the regions. Because of this, even relatively simple issues suffer from paralysis by analysis. A recent letter from Alaska's Governor took over 6 months for a reply.

It is necessary to have a Regional Administrator with an equal amount of "clout" inside the organization to even be heard. Over the last several years, Region 10's Administrator has been a great resource, but he has to choose carefully from the many Region 10 issues he can take on with headquarters. Alaska's issues often don't make the list. Furthermore, a Region 11 Administrator could weigh in very early in a regulations project to ensure that Alaska-specific problems are appropriately addressed, and the result is achieved in a way that makes sense, rather than waiting for State comments which EPA too often discounts.

Question 6. Some people may fear that creating a separate Alaska Region will lead to the despoliation of Alaska's lands, including its wilderness. The argument that could be made is that an Alaska Regional Administrator will become too friendly with Alaska's businesses, particularly Alaska's oil businesses, to regulate business effectively. What is your answer to that concern?

Alaska's entire economic base—oil and gas, seafood, tourism, and mining—depends upon its natural resources and its environment and how well they are managed. Alaska wants quality environmental management. A Region 11 will foster a far more effective Federal-State partnership to protect Alaska and its people. In short, we do not want relaxed standards or to skate. A Region 11 would allow Alaska to structure compliance in a way that works.

It takes strong environmental management and standards to balance competing demands on the environment and to protect Alaska's national assets. Strong and effective management means tailoring management to real-time conditions to produce on-the-ground, meaningful results. In the multilayered and increasingly complex Federal/State/tribe/local system of environmental management that has developed in this country, Alaska needs a Federal partner that is aware of and can produce solutions rather than rote and oft-times arbitrary applications of rules developed for other circumstances.

STATEMENT OF KEN FREEMAN, EXECUTIVE DIRECTOR, RESOURCE
DEVELOPMENT COUNCIL

Good morning. My name is Ken Freeman, Executive Director of the Resource Development Council (RDC). I am a life-long, fourth-generation Alaskan. I am here before you today to express RDC's support for S. 1311.

RDC is an Alaska statewide organization consisting of all resource sectors, including oil and gas, mining, fishing, tourism and forestry. Our membership also includes business associations, labor unions, Native corporations, local governments and hundreds of individuals. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the State's economic base through the responsible development of our natural resources.

Historically, RDC has supported the creation of an EPA regional office focusing exclusively on Alaska and there is consensus among our members on the merits of establishing an EPA region specific to Alaska.

Alaska has always provided unique challenges for both industry and Federal regulators. Alaska is a State of vast physical dimensions. Covering 375 million acres, it stretches over 2,000 miles from west to east and over 1,000 miles from north to south. Alaska is one-fifth the land mass of the United States. With 10,000 miles of coastline, Alaska has more salt water shoreline than the entire continental United States combined. It is the only State with an Arctic and Sub-Arctic environment. We have more wetlands, more sensitive ecosystems and more need for specialized management than any other State. Special circumstances present special problems that demonstrate the need for an EPA region for Alaska.

Oil production from Alaska accounts for nearly 20 percent of all of the oil produced in the U.S. Yet, Alaska is the only State within EPA Region 10 that has oil and gas exploration and production. Given the importance of Alaska oil to the nation's energy security, it is imperative that agencies have an in-depth understanding of oil and gas exploration and production operations, and specifically operations conducted in extreme arctic conditions. Although Alaska is large in size, it is small in population and industries; as such, the focus of Region 10 employees expertise often-times is on industries and conditions in the Pacific Northwest—not on upstream oil and gas operations—and certainly not on operations conducted in extreme Arctic conditions.

An excellent example of EPA programs uniquely impacted by these operating extremes, and why it is critical that agency personnel have the appropriate level of understanding of Alaska, is the NPDES Storm water program. This program requires sampling following storm events if runoff from facilities reaches waters of the U.S. Virtually all of the North Slope is classified as wetlands—and therefore "waters of the U.S." Facilities are often located in very remote areas with no road access. And "storm events" usually occur in the dead of winter when temperatures can reach -80 degrees, producing a serious safety situation. Without a thorough understanding of these factors, it is difficult to convince Seattle-based regulators that programs and permits must be adjusted to be workable in Alaska.

Alaska faces special challenges like no other State when it comes to regulating development on wetlands. Because of a broad Federal definition, nearly half of the State's land area is considered wetlands, accounting for three quarters of the State's non-mountainous developable land. Virtually all development—from schools, hospitals, and roads to public water and sewer systems—requires using lands regulated as wetlands. In Alaska wetlands cannot be avoided. Dry land is scarce.

While many States like California have developed most of their wetlands, Alaska has achieved its current level of development while preserving 99.9 percent of its wetlands. Yet the 49th State must comply with a Federal wetlands policy designed to be a solution to the alarming loss of wetlands in other States. The policy has presented major economic and permitting challenges in Alaska. While Federal regulators may flash statistics showing a small percentage of rejected permits, those records do not reveal the numbers of permits voluntarily withdrawn by a project sponsor—and sometimes at an agency's request.

The establishment of a Region XI office in Alaska would bring opportunities for Federal regulators to become more familiar with Alaska wetland issues and unique circumstances. Regulators based in Alaska, with decision-making power, are more likely to respond to local realities and the need for flexibility in permitting, especially considering the fact that many Alaska wetlands are very different than those in the Lower 48, especially in terms of critical functions and value.

While EPA does have staff based in Anchorage with representatives elsewhere, decisions vital to Alaska's environment and economy are largely driven by Region's X's Seattle headquarters. In reality, the local office simply does not have the latitude to implement creative solutions. Decisions are made by Seattle regulators who

do not fully understand the unique environmental characteristics and special circumstances which prevail in Alaska. As a result, Alaskans face longer delays, some questionable or inappropriate decisions and limited field knowledge.

The EPA has made some improvements in Alaska, but much more remains to be achieved and it would be best accomplished through a new regional office. The new EPA region would have increased opportunities to build knowledge based on first-hand observation of Alaska conditions. As the new Region's primary focus, Alaska would get more policy-level attention than it would from a regional office serving three other States with conditions much different than Alaska.

Another issue which doesn't reflect realities found in Alaska is the Clean Air Act. For example, the geography and winter climatic conditions found in Fairbanks creates an extreme atmospheric inversion unlike anywhere else. As a result, Alaska's second largest city has a greater inversion problem than not only Los Angeles, but perhaps anywhere in the world. In previous years, the EPA regional director threatened to close downtown Fairbanks to autos because of high carbon monoxide levels recorded during the winter inversions.

In the fall of 1992, the EPA required the additive MTBE (methyl tertiary butyl ether) in local gasoline supplies, but then-Governor Walter Hickel ordered the program stopped less than two months after it began, and the EPA backed off after admitting it had done nothing to test the effectiveness and health effects of MTBE in cold climates.

The city has made progress in complying with air quality regulations, but despite its best efforts, Fairbanks still exceeds national standards at least three days per year, two more than allowed. But that's a big improvement over previous years when Fairbanks was out of compliance on dozens of days each year. Yet despite major progress, the community is at risk of losing Federal funding and faces other punitive sanctions if it does not come into compliance. According to local officials, there isn't much else the community can do—short of impounding every vehicle in Fairbanks and forcing people to walk to work in 50 below zero temperatures.

Alaska is truly different than the Lower 48 States. Its weather, remoteness, vast distances, and special Arctic conditions such as permafrost, glacier till and high background levels that contribute to higher metals in rivers, set Alaska apart from other States. Frankly, Alaska has very little in common with its neighbor 2,000 miles to the south. Washington State, the home base of EPA's Region X, is more like its neighboring States, Oregon and Idaho, than Sub-Arctic and Arctic Alaska.

Establishing an Alaska EPA region does not set a precedent since eleven other Federal agencies have fully staffed offices in the 49th State specifically dedicated to Alaskan issues. These agencies range from landlords like the U.S. Forest Service to others like the EPA with specific oversight and regulatory functions, including the Army Corps of Engineers, the Bureau of Indian Affairs, Federal Aviation Administration and U.S. Geological Survey.

Many Alaskans believe Federal and State regulators could do a better job of addressing our environmental challenges when decision makers are based in Alaska, together, rather than formulating policy and implementing regulation by telephone or air shuttle from Seattle. Having a regional EPA office in Alaska would overcome distance, communication and coordination problems. It would also quite likely improve the agency's responsiveness to specific permitting needs.

For example, the Chuitna Project, a "green field" coal development located in the Beluga Field of Southcentral Alaska, has had two significant engagements with Region X. One involved preparation of a third party EIS and the other required processing the renewal of NPDES permits. In the first circumstance, Region X was the lead agency with the Army Corp of Engineers Regional Office in Anchorage being the cooperating agency. The third party was an Anchorage contractor, Dames and Moore. With the EPA Regional Office located some 1,500 miles from the contractor, the project and the cooperating Federal agency, the project developer encountered significant communication and coordination problems, many of which could have been avoided if all the participants would have been located in Alaska.

In the second instance, the project developer has had an application for renewal of four NPDES permits on file with Region X for approximately five years. The original permits were issued in 1990 after publication of a Final Environmental Impact Statement. In spite of several initiated contacts by the project developer, no response has been received from Region X on renewal of the permits. Here again, were the permitting office located closer to where the "action" is, the agency would most likely be more responsive.

Another example of why a new Alaska EPA region is needed comes from the timber industry. At issue is recent permitting for a general permit on Log Transfer Facilities (LTFs). There was a huge and unnecessary amount of time that was required to work through the process. Region X regulators from Seattle apparently did not

fully understand the unique challenges posed by the remoteness of Alaska and the isolation of the LTFs. Regulators actually requested street addresses and towns for the LTFs. They asked for road directions to the sites. They didn't understand that these facilities were located far from local communities and that there were no roads, no services, no infrastructure—just remote, isolated wilderness accessible by aircraft or boat. It took the permittee months to get all the logistical issues resolved. The permittee noted that Region X regulators showed little trust toward those in Alaska they were regulating and did not have a reasonable understanding or sense of the magnitude of Alaska, its remoteness and unique characteristics.

A new Region XI office could go further than a local branch office with limited latitude, staffing and capabilities in overcoming these challenges and developing a much-needed northern and arctic expertise in wetlands management, permafrost, ice fog, NPDES permitting and other issues. A Region XI office could better respond to Alaska's special problems with Alaska solutions. The establishment of an EPA region specific to Alaska would be a major step toward achieving the goal of ensuring that Federal regulations applied in Alaska reflect Alaska realities.

A current issue making headlines in Alaska is the State's rights in respect to its air permitting program. Alaska cannot administer a viable air permitting program if EPA's Region X office in Seattle continues to summarily overrule carefully made decisions that take into account Alaska's unique circumstances.

The Alaska Department of Environmental Conservation's (ADEC) has appealed a recent order by EPA prohibiting the issuance of a Prevention of Significant Deterioration (PSD) permit for a diesel generator at the Red Dog Mine in Northwest Alaska. This permit is vital and necessary to Cominco Alaska's operation at the world's largest deposit of zinc. The generator will have a negligible environmental impact.

ADEC has an EPA-approved State program for issuing PSD permits. This approved program gives ADEC full permitting and discretionary authority over PSD permits for the State of Alaska.

Our members across Alaska, from resource developers to local communities, need to be able to rely on ADEC's decisions on air permits and to be able to proceed based on those decisions. The EPA Region X action at Red Dog is alarming because of the harm it may cause our members in planning for new or modified air permitting to meet their needs. The uncertainty or nullification of the State's PSD program would likely have adverse economic effects on Alaska. Permittees, unsure of the reliability of the State's process, will wonder if EPA's Seattle office can nullify a permit at any time, thus delaying projects until PSD authority has been defined.

If EPA has the power to summarily overrule ADEC's permit decisions and demand additional measures beyond what has been determined sufficient by ADEC, then our members in effect would be forced to permit their projects a second time through EPA.

Cominco Alaska and ADEC spent an exhaustive 18 months working on the permit for this engine, resulting in a determination that Low NO_x Technology was Best Available Control Technology (BACT). Cominco Alaska even agreed to install Low NO_x technology on all of the existing engines not requiring permits. In short, ADEC is requiring more Best Available Control Technology in this PSD permit on these engines than EPA or any other State has ever required on any other diesel generators.

To develop the permit, Cominco Alaska and ADEC held meetings every other week for over a year. These discussions often centered on the Best Available Control Technology decision for the diesel-fired generators. Because Selective Catalytic Reduction (SCR) provided the greatest decrease in nitrogen oxides (NO_x) emissions, ADEC staff strongly pursued determining SCR to be Best Available Control Technology for the Red Dog Mine diesel-fired generators.

However, according to EPA guidelines, the Best Available Control technology determination is not solely based on pollution control efficiency, but must also consider energy, environmental, and economic factors. The selection of SCR for the Red Dog Mine would not have been similar or comparable, as required, to the economic imposition placed on other, recently permitted diesel-fired engines. In fact, with the exception of one demonstration unit, SCR has not been required on any diesel-fired engine in the United States except in areas where an ambient health standard is being exceeded.

Cominco Alaska and ADEC noted that the cost of implementing SCR at the Red Dog Mine would be prohibitively expensive. Additional concerns related to the use of SCR at Red Dog include the loss of waste heat availability to provide building heat and the lack of a demonstration proving that SCR is reliable control technology for diesel-fired engines in an Arctic environment.

Furthermore, the high cost of SCR was not justified because the predicted ambient nitrogen dioxide (NO₂) impact was less than one third of the ambient air quality standard that was adopted to protect human health.

As a result, ADEC determined Best Available Control Technology for the diesel-fired generators at the Red Dog Mine would be the Low NOx Technology. Prior to issuing a final permit, but after the public review process, EPA contacted ADEC to inform them that Region X objected to the determination. EPA also informed ADEC that it would issue an order against the State if ADEC did not change the determination to require SCR. Several months of discussion among EPA, ADEC and Cominco Alaska then followed. After this discussion, ADEC resumed the process of issuing the final permit because EPA had not convinced ADEC that SCR was justified. That final permit required Low NOx on the new engine and also required, through the voluntary agreement, Low NOx on all other existing powerhouse engines, bringing those engines up to current standards in pollution control technology.

Just prior to issuance of the final permit, EPA issued an order prohibiting the issuance, or requiring retraction, of the permit unless SCR is implemented. ADEC, acting under their EPA-approved authority to use their own discretion in determining Best Available Control Technology, decided that EPA's order was not legally valid and issued the permit. In a written request, ADEC asked EPA to retract the order. EPA refused the request. ADEC then filed a petition for review with the U.S. Ninth Circuit Court of Appeals where the issue now resides.

This issue is not only a battle between agencies on Clean Air Act jurisdiction, but it shows once again how a distant EPA region does not fully understand Alaska's circumstances. The Red Dog Mine sits in complete isolation, far removed from any community. It is not connected to Alaska's road system and there are no air quality concerns, especially given its location.

In concluding, a specific Alaska region would allow EPA to work closer with Alaska regulators and other Federal agencies on many critical issues ranging from wetlands management to NPDES permitting. NPDES permits issued from an Alaska regional office would be more efficient and reduce the backlog of applications in Region X. While it would be wrong to imply that Region X is doing a poor job in respect to Alaska issues and concerns, Federal decision makers in Seattle and Washington are relatively insulated from Alaska realities. An Alaska region is a better option for implementing solutions that protect Alaska's environment while supporting the State's economy.

Thank you for the opportunity to testify on the merits of establishing a separate EPA region for Alaska.

STATEMENT OF MELANIE L. GRIFFIN, DIRECTOR OF LANDS PROTECTION PROGRAM,
SIERRA CLUB

The Sierra Club is opposed to the bill, S. 1311, put forward by Senator Frank Murkowski (R-AK) to direct the Administrator of the Environmental Protection Agency (EPA) to establish a separate EPA region for the State of Alaska. While the idea of a separate Alaska EPA region may seem appropriate given Alaska's size and its distance from the contiguous United States, we believe that the proposal is neither cost-effective, nor equitable, nor necessary given the administrative structure already specially tailored to address the needs of our 49th State.

The Sierra Club agrees that the great State of Alaska has unique and varied natural resources that deserve the highest level of protection. In fact, protecting the unparalleled landscapes of wild Alaska has long been a top priority for Sierra Club members. Because Alaska's abundant clean water and air are vulnerable to ever expanding oil and gas exploration and other extractive industries, we also agree that the State could benefit from additional on-the-ground personnel and oversight. However, the political environment in Alaska indicates that a new Alaska EPA region would not be in the public interest at this time.

Establishing a new Alaska EPA region would be imprudent given the hostile attitude towards national environmental goals, policies, and regulations on the part of the majority of elected Alaska officials at the local, State, and national levels. In addition, numerous large and politically influential national and multi-national corporations involved in the exploration and development of Alaska's natural resources tend to oppose EPA policies and regulations in Alaska.

To establish an Alaska EPA region under these circumstances would deprive Alaska EPA decision-making officials of the appropriate degree of insulation and protection from undue political pressure that they now have as part of the Northwest Regional Office. Northwest region officials, operating in a political setting where en-

vironmental protection enjoys widespread support among elected officials and the public, are able to support their Alaska colleagues as national policies and regulations are applied in Alaska. An Alaska regional office, cut-off from the EPA Northwest Region, would be more vulnerable than at present to direct pressure and interference by Alaska development interests and their elected supporters. EPA's mandate to protect the public health and environment in Alaska would be made more difficult.

EPA has previously studied the proposal to create an 11th region for Alaska and determined that it was not cost effective. The Sierra Club believes that the tremendous costs involved in the establishment of a separate region are unwarranted. The proposal also raises questions as to fairness to other States, as the ranking member from Montana has raised in his own statements during the hearing.

In the interest of protecting Alaska's abundant clean air and water, Congress should not agree to the proposed change in the existing EPA organizational structure.

We recommend that no further action be taken on S. 1311.

Thank you for considering our views.

106TH CONGRESS
1ST SESSION

S. 1311

To direct the Administrator of the Environmental Protection Agency to establish an eleventh region of the Environmental Protection Agency, comprised solely of the State of Alaska.

IN THE SENATE OF THE UNITED STATES

JUNE 30, 1999

Mr. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To direct the Administrator of the Environmental Protection Agency to establish an eleventh region of the Environmental Protection Agency, comprised solely of the State of Alaska.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ESTABLISHMENT OF EPA REGION FOR ALASKA.**

4 (a) IN GENERAL.—The Administrator of the Envi-
5 ronmental Protection Agency shall establish—

6 (1) an eleventh region of the Environmental
7 Protection Agency, comprised solely of the State of
8 Alaska; and

2

1 (2) a regional office for the region located in
2 the State.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as are nec-
5 essary to carry out this Act.

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