

Environment and Public Works Committee Hearing
May 12, 2009
Follow-Up Questions for the Record for Peter Silva, Nominee for
EPA Assistant Administrator for Office of Water

Senator Barbara Boxer

1. Under the Safe Drinking Water Act, EPA has established maximum contaminant levels (MCLs) to protect public health. EPA data show that hundreds of drinking water systems around the country have failed to comply with the MCLs for arsenic and radionuclides, as well as other contaminants. If confirmed, will you commit to brief my committee staff within 90 days of your confirmation to describe the actions that EPA can take to help bring these systems into compliance, and thereafter to work closely with the EPW Committee staff regarding EPA's implementation of such measures?

Answer: *Yes.*

2. Mr. Silva, green infrastructure projects, like decentralized wastewater treatment, protect the environment and public health through effective treatment, water conservation, and energy efficiency. They also contribute to the reduction of greenhouse gas emissions. While the use of these practices is growing, many of these technologies are new to municipalities. Do you commit, if confirmed, to report back to this Committee on the use of green infrastructure nation-wide and any institutional barriers to implementation of green infrastructure projects?

Answer: *Green infrastructure is a promising and logical approach for helping to reduce stormwater pollution. If confirmed, I will work closely with EPA partners on this exciting initiative. I look forward to reporting back to the Committee on the Agency's progress.*

Senator Frank R. Lautenberg

1. The EPA estimates that about eight hundred fifty (850) billion gallons of untreated wastewater and storm water from Combined Sewer Systems are released into our streams, lakes, and rivers each year. I have introduced a bill with Senator Voinovich that would provide grants to local governments to help fight this public health risk. What steps will you take to reduce the frequency and amount of sewer overflows?

Answer: *EPA published the Combined Sewer Overflow Policy in 1994. To date, most CSO communities have developed CSO control plans as called for by the CSO Policy and have begun construction of the improvements. If given the opportunity to serve EPA as the Assistant Administrator for the Office of Water, I will place a high priority on ensuring that the remaining communities complete their plans and begin implementation. Once the grants program is enacted, I will work with states to award grants expeditiously to CSO permittees to allow construction to move forward as soon as possible to reduce the environmental and public health impact of sewer overflows.*

Senator James M. Inhofe

1. Please expand on the answer you gave during the hearing regarding your views on the Clean Water Act: Should federal jurisdiction under the Act extend beyond "navigable waters"? If so, how far beyond?

Answer: *When enacting the Clean Water Act in 1972, Congress used the term "navigable waters" to describe the geographic scope of the Act. Both legislative history and subsequent U.S. Supreme Court decisions recognize that term is intended to include waters broader than the traditional understanding of the term "navigable," and I agree with that view.*

2. Do you believe federal jurisdiction should include all intrastate waters?

Answer: *No.*

3. Do you believe federal jurisdiction should include ephemeral features?

Answer: *I understand that current federal jurisdiction extends to some ephemeral features, a decision being made on a case-by-case basis. I believe this practice is consistent with the requirements of the Clean Water Act, its regulations, and existing case law.*

4. Would you please characterize your understanding of what the Corps and EPA definition is for tributary?

Answer: *My understanding is that existing Corps and EPA regulations do not define the term tributary.*

5. Would your definition of tributary include all ditches, some ditches, or no ditches?

Answer: *I understand that the Corps and EPA currently regulate some ditches, for example, ditches excavated from waters of the U.S. I believe this practice is consistent with the Clean Water Act, implementing regulations, and existing case law.*

6. How would you suggest the federal government distinguish between a nonjurisdictional ditch and a tributary?

Answer: *This decision must be made consistent with the requirements of the Clean Water Act, implementing regulations, and existing case law. If confirmed, I look forward to working with you and the Committee to further clarify this important question.*

7. Would your definition of tributary include areas that have flowing water only during, and for a short duration after, precipitations events in a typical year?

Answer: *As I have said, this important decision must be made consistent with the Clean Water Act, implementing regulations, and existing case law. I look forward to the opportunity to work with you and the Committee on these jurisdictional questions if I am confirmed.*

8. Based on your understanding of the term "intrastate" water, could that term reasonably include groundwater? Why or why not?

Answer: *No. See question 9 below.*

9. What in your opinion constitutes "intrastate" waters?

Answer: *I believe intrastate waters are those that lie wholly within the jurisdiction of a single state, and do not cross or form the border of a state, tribe, or international boundary.*

10. To your knowledge has EPA ever had a regulatory definition of what constitutes a water?

Answer: *While EPA has defined the term "waters of the United States," I am unaware of a regulatory definition of the term "water."*

11. Are there any waters you would not include in federal jurisdiction?

Answer: *Yes. Consistent with the Clean Water Act, implementing regulations, and existing case law, certain waters are not subject to federal jurisdiction.*

12. In your opening statement, you said, "The challenges that we face now are similar in scope to those we confronted in the late 60's and early 70's. We need to confront them with a similar national leadership." Would you please explain what you mean, and cite specific examples of environmental challenges of today that are comparable to those of 40 years ago?

Answer: *Forty years ago, the foremost challenges for safe and clean water were toxic and conventional pollutants from industrial and municipal point source discharges. While we must continue to address those issues, it has become clear that our nation is facing new challenges. Nutrient pollution from nonpoint source run-off and other sources is a key challenge. Another major challenge is the fact that our nation's water and wastewater infrastructure is aging and facing increasing demands due to population growth, changes in land use, and socioeconomic pressure.*

As an example, nitrogen and phosphorus pollution from urban stormwater run-off, municipal wastewater treatment, agriculture, and atmospheric deposition of nitrous oxide has the potential to become one of the most difficult environmental problems we face in the 21st century. The most publicized consequence of nutrient pollution can be

seen in the increasing number and size of 'dead zones', areas where nutrients have caused the lack of oxygen, such as in the Gulf of Mexico, the Chesapeake Bay, and the Columbia River Basin.

I believe that challenges like nonpoint source pollution require that we find innovative ways of protecting the nation's water quality. If confirmed, I look forward to working collaboratively with you and the Committee and with partners in the States, Tribal governments, local communities, Regions, other Federal agencies like USDA, and the public to address these challenges.

13. Small communities struggle financially to meet increasing federal regulations. How do you plan to assist communities trying to comply with drinking water and clean water regulations but lacking the financial and technical resources they need?

Answer: The resources of small communities can be limited, and we need to be mindful of these resource limits in implementing environmental programs. I believe SDWA and the CWA give EPA the ability to provide support and flexibility to small systems as they implement public health standards. If confirmed, I will evaluate EPA's drinking water policies and consider the authorities provided by SDWA and the CWA, such as capacity development and operator training programs, to determine how best to assist small communities to comply with drinking water regulations.

14. The Safe Drinking Water Act amendments of 1996 directed EPA to identify affordable technologies for each drinking water standard that the Agency finalizes. If the Agency is unable to identify a treatment technology that is affordable for small systems, it must identify a variance technology that is protective of public health. To date, EPA has never issued or approved a variance technology. Small communities in Oklahoma and across this country struggle with costs of compliance. Will this policy change under your leadership?

Answer: If confirmed, I will evaluate EPA's drinking water policies to determine how best to provide equitable treatment of small system customers. I will review EPA's small system variance policy and other measures such as the financial assistance to disadvantaged systems through the State Revolving Fund, and technical assistance through capacity development and operator training programs.

15. What is your understanding of the shared role of the EPA and Army Corps of Engineers in implementing the Clean Water Act? Do you intend to seek to modify the shared responsibilities? Do you intend to coordinate with other agencies in implementing the Clean Water Act?

Answer: Both agencies have important roles defined by the Clean Water Act. If confirmed, I look forward to coordinating closely with my counterparts at the Corps and other involved federal and state agencies, to ensure that Clean Water Act programs are implemented in a consistent, predictable, and environmentally responsible manner.

16. The EPA Office of Inspector General (OIG) plays an important role in ferreting out fraud, waste and abuse and in assessing the efficiency and effectiveness of agency programs. How do you plan to work with the OIG if confirmed?

Answer: *I recognize that the OIG plays a significant role in holding the Agency accountable in meeting its financial and programmatic commitments, and if confirmed, I will cooperate with the OIG in any review it undertakes of OW activities*

17. The OIG may make recommendations designed to improve Agency operations and programs that you may not agree with. How will you respond when such disagreements arise?

Answer: *I understand that there is an existing process to address disagreements between OIG and Agency offices concerning OIG recommendations. If confirmed, I anticipate following that process in the event that the OIG makes a recommendation that I do not believe is appropriate.*

18. Having free and unfettered access to Agency employees and information is critical for the OIG function. How will you ensure the OIG has such access?

Answer: *I understand how important it is for the OIG to obtain access to the information it needs to carry out its duties and responsibilities, and if confirmed, I will cooperate with the OIG in any review it undertakes of OW activities.*

19. What do you plan to do differently to get USDA to use their substantial amount of conservation grant funds to achieve the greatest environmental results? Why might USDA not already be doing this?

Answer: *I believe that USDA and EPA can work together more effectively to ensure that conservation funding is targeted to achieve the best environmental results. If I am confirmed, I will be interested in finding new ways to work together with USDA to ensure that conservation funding is used, for example, to reduce the amount of nutrients and sediment being discharged into surface waters and to enhance ecosystem protections. As USDA continues to focus more resources on environmental protection, it is likely that of such funding will achieve greater environmental benefits.*

20. How do you plan to get more out of the States that are authorized to run their own water programs?

Answer: *To date, 46 states have authorization to administer their NPDES programs. Drawing upon my long-standing experience with the California Water Board, I would seek to build upon and strengthen partnerships with states and state associations to better understand their needs, the challenges they face and how to collaborate together*

on areas of common interest. EPA would continue to provide guidance and technical assistance to States to assist in implementing Clean Water Act programs

21. Are you willing to change the management structure of the Office of Water to better utilize taxpayer dollars? What specific changes would you make?

Answer: It would be premature for me to commit to any specific changes until I have more fully witnessed the structure and operations of the Office of Water. However, when I worked for the State of California, we utilized EPA infrastructure funds, and I know how critical those funds are to States. Even though I feel that EPA's programs are good mechanisms, there is always room for improvement. If confirmed, I want to look both at the internal structure at EPA, and at how to improve the way EPA's Office of Water works with states and regional governments.

22. What do you think needs to be changed in the Clean Water Act to allow you to meet your responsibilities as EPA's national program manager for water?

Answer: I do not currently have enough information to comment on potential specific revisions to the CWA. I would reiterate the Administrator's concern, however, that legislation clarifying the scope of Clean Water Act jurisdiction is necessary. If confirmed, I look forward to working with you and the Committee to evaluate our options for ensuring the CWA allows EPA to meet its responsibilities. In addition to this, I believe that collaboration with other federal agencies, States, NGOs, and others is an important component of how EPA does its work.

23. What do you see as the greatest challenges facing the Office of Water? How do you intend to address them?

Answer: The complex issues facing the water program demand a new model of collaboration. Major issues such as those facing the Great Lakes, the Mississippi River, and the Chesapeake Bay, for example, involve many States and jurisdictions, and many different sources of pollution. If confirmed, I intend to work together with stakeholders to develop coordinated solutions.

24. How do you plan to work with OECA to ensure adequate enforcement of the Clean Water Act?

Answer: I understand the importance of ensuring that the National Water Program coordinate closely with EPA's Office of Enforcement to ensure adequate enforcement of the Clean Water Act. If confirmed, I will work with my counterpart in OECA and ensure effective communication and collaboration.

25. How will you ensure that EPA works with States and municipalities to ensure that

water infrastructure is maintained or updated?

Answer: *I recognize the importance of ensuring that EPA coordinates closely with our partners in the states and local communities to maintain water infrastructure. Drawing upon my long-standing experience with the California Water Board, if confirmed, I would seek to build upon and strengthen partnerships with states and state to better understand their needs, the challenges they face and how to collaborate together on areas of common interest. EPA would continue to provide guidance and technical assistance to States to assist in implementing Clean Water Act programs.*

26. How will you work to ensure EPA appropriately uses Recovery Act funds?

Answer: *The economic recovery of this nation is one of the Administration's highest priorities. If confirmed, I will work with the States to ensure that the recovery funds for water infrastructure provided through the ARRA are put to work quickly and effectively.*

27. EPA has engaged in a review process for all coal mining permits pending in the central and eastern Corps Districts. This process is essentially holding back the issuance of critical permits until EPA Headquarters reviews and signs off on them. With only a few exceptions, these are permits that EPA Regions have already had an opportunity to comment on and in many cases have seen issues brought to resolution. In addition, with only a few exceptions, the state water quality authority has also certified that the projects will not violate state water quality standards under the CWA. I remain extremely concerned that this re-review of permits appears more politically than environmentally driven. How long do you expect this review process to take? What do you believe this review process seeks to accomplish?

Answer: *If confirmed, I look forward to working closely with you and the Committee to ensure that Clean Water Act permitting of surface coal mining operations proceeds in a timely, consistent and environmentally responsible manner and in coordination with the requirements of the Surface Mining Control and Reclamation Act.*

28. Based upon Acting Assistant Administrator Mike Shapiro's response to my earlier questions about this process, I am concerned that EPA intends to develop policy changes in the CWA Section 404 regulatory program for issuance of Section 404 permits for coal mining operations. There is a regulatory process for accomplishing this, but it appears EPA is skirting that process and making policy changes that will have real implications in the regulatory program outside the requirements of the Administrative Procedures Act. If you are confirmed, what will you do to ensure this is not the case and that any changes EPA seeks in the Section 404 regulatory process will be done in compliance with the APA, including the required public notice and comment?

Answer: *I understand the importance of coal mining for jobs, state economies, and the Nation's energy needs. I also appreciate that Clean Water Act programs must be implemented with consistency, timeliness, transparency, and based on the best available*

science. If confirmed, I look forward to working with you and the Committee, if confirmed, to assure these critical objectives are met.

29. What can you do to ensure the views of agriculture are represented and understood by your office and the Office of Prevention, Pesticides and Toxic Substances?

Answer: As a member of the California Water Resources Control Board, worked successfully with farmers to develop BMPs when the agricultural waiver in the California Porter-Colgone Act expired. I learned that it is essential that USDA and other stakeholders are involved in crafting solutions. It is my understanding that EPA has regular meetings with other government agencies, including USDA and state departments of agriculture, as well as meetings with private sector agricultural representatives where there is an opportunity for all parties to discuss environmental issues that directly affect agricultural interests. If confirmed, I will continue to promote these discussions and to consider the contributions of the agricultural community in achieving solutions to environmental concerns.

30. EPA and National Academy of Sciences (NAS) undertook a comprehensive review of the chemical perchlorate, which is found at a variety of levels from a variety of sources across the country. Recently, EPA has asked again for assistance from NAS regarding the health effects of perchlorate in drinking water. There is considerable activity underway on perchlorate, and top scientific bodies are working in and outside EPA to reach the best result from a scientific and public health perspective. Will you pledge to obtain the best available scientific information on perchlorate, without regard to politics or ideology?

Answer: Yes.

31. Can you assure me that any recommendation you then make to Administrator Jackson regarding a final regulatory determination for perchlorate will be based upon the best available, peer reviewed science and not influenced by politics and ideology? Will you be transparent in showing how you make your determination on perchlorate and its effects, showing what scientific information you used?

Answer: Yes.

32. The EPA OIG recently conducted a scientific analysis suggesting meaningful health benefits are more likely to be achieved by increasing iodide consumption for certain populations than EPA's current focus on removing exceedingly small amounts of perchlorate from drinking water. The OIG report concludes that a "cumulative risk assessment approach is required to identify potential actions that will effectively lower risk to public health." Do you agree with the conclusion of the OIG report that public health policy is better informed by reviewing the cumulative risks presented by perchlorate and other chemicals that stress the thyroid's ability to uptake iodide, such as thiocyanate and nitrate?

Answer: *If confirmed, I will evaluate the draft report entitled Office of Inspector General Scientific Analysis on Perchlorate, the comments received by the OIG on its draft report (see <http://www.epa.gov/oig/reports/perchlorate.htm>) and I will consider the recommendations in the final OIG report when it is published.*

Senator George V. Voinovich

1. What is your philosophy regarding the balance between expeditiously achieving wet weather controls and the economic climate in which we currently find ourselves?

Answer: *I understand the challenges that many communities face in the current economic climate. At the same time, the public demands and deserves clean and safe water. If confirmed, I pledge to work with States, communities and other stakeholders to find solutions that are as affordable as possible while protecting public health and the environment. Indeed, the recent increases from the ARRA and in the Clean Water SRF and the Drinking Water SRF funds will be a significant help, and I pledge to help communities make effective use of these funds.*

2. Do you think your background lends itself to a more creative approach to working with regulated entities as it relates to preventing water pollution and the realities of operating those entities? If so, please describe some examples.

Answer: *I have worked as both a regulator and as someone who is regulated, and so I understand the tension between ensuring the law is implemented and providing affordable services. This background will help me work with stakeholders and partners to craft collaborative approaches to the many challenges faced by the national water program. For example, when the agricultural waivers expired in the Porter-Cologne Act (California's implementation of the Clean Water Act), The Water Resources Control Board on which I sat worked closely with the agricultural sector to craft solutions that protected water quality. Similarly, when the 9th Circuit upheld EPA's stormwater Phase II regulation, The WRCB developed a general permit for small Municipal Separate Storm Sewer Systems (MS4s) that sought to adopt proactive and flexible approaches for planning and implementation that reduced burden on communities while protecting watersheds and sensitive waters. When I worked for the City of San Diego, I was involved in a major planning and construction effort to comply with CWA secondary treatment standards. I also worked hands-on for five years at the City's water treatment plant. My understanding of the issues from many perspectives will enable me to guide the Office of Water in working with regulated entities.*

