REGULATORY REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

FEBRUARY 8, 1996

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REGULATORY REFORM

THURSDAY, FEBRUARY 8, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Sioux City, IA.

The subcommittee met, pursuant to notice, at 12:04 p.m., in the ballroom, Sioux City Hilton, 707 Fourth Street, Sioux City, IA, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, and Gutknecht.

Also present: Representatives Latham, and Dornan.

Staff present: Mildred Webber, staff director; Karen Barnes, professional staff member; David White, clerk; and Bruce Gwinn, minority professional staff member.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs will come to order.

Welcome to this 11th field hearing. The subcommittee thanks you for joining us today. We look forward to hearing testimony from citizens about one of the most important issues facing the country today, and that is what are we going to do about the problem of excessive and burdensome regulation? A regulation that weaves a web of red tape around many of our activities, costs us in terms of jobs and competitiveness on the world market, ends up costing consumers in higher prices and ultimately ends up costing billions of dollars in resources that could be spent for other, more worthwhile goals.

The subcommittee has held field hearings around the country. It is our goal to get outside of Washington and hear testimony from real Americans about the effect of government regulations and then take that information back with us to Washington to help write legislation to correct those problems.

Now, we have heard a lot of different examples of regulation, and the more that I hear, the more I realize there are an incredibly large number of problems that need to be corrected. I am from Muncie, IN, and we have a large farming community there, and at one of our early subcommittee hearings a farmer named Kay Whitehead came and testified about a problem she had. The Indiana Soil and Conservation Service told her that she could only dispose of her manure from her pig farm by spreading it on the fields but not plowing it in. They were worried about soil erosion and told her that that was the preferred method. Well, a little while later EPA came by and told Kay that when she disposed of her ma-

nure—and she had quite a large pork-producing facility—she had to plow it in because they were worried about the runoff. Now, Kay testified she did not care which rule she followed, but she realized no matter what she did, she would be violating one of the two agencies' regulations. She did confide that her neighbors much preferred that she plow the manure in.

That type of confusion caused by Federal regulations is but one example of many where average citizens are trying to do their best, trying to protect the environment, protect health and safety, but the morass of conflicting and confusing and often burdensome regulations make it nearly impossible for them to do a good job and yet comply with all of those regulations.

As I say, we are delighted to be here today in Iowa to hear this. This is the first of two hearings. Tomorrow, we will be over in Des Moines for additional hearings. I want to take a moment to thank my colleague, Tom Latham, who is one of the stars in our freshman class. Tom and I were talking about the problems with regulations and he invited us to come out here and have a hearing in his district. He said, I hear a lot of the same things, David, and you should hear firsthand some of the experiences we have in Iowa. So, if I might, I am going to ask unanimous consent that Tom be able to join our committee today.

We have one more member of the committee who is going to be here and join us. It is Representative Gil Gutknecht from Minnesota. He is driving down today and is apparently a little bit delayed. So we will have him join us as soon as he arrives here.

Tom, do you have any opening statement?

Mr. LATHAM. Yes. I want to thank you, Congressman McIntosh for bringing your subcommittee to Sioux City to the Fifth Congressional District. This is a subject that is near and dear to my heart.

One of the major reasons that I ran for Congress, as a small business person, was because of some of the regulations that have hindered growth and job opportunities in small business. We had a case—we are 2 miles outside of a town of 168 people and we had to spend about 80 hours and about $12,000 trying to determine how much dust blew out of a wagon when you unloaded soybeans, even though that dust blew right back into the field that it came from. And this wagon, supposedly, had to be unloading 24 hours a day, 365 days a year. We have got to inject some common sense into the whole regulatory system. When we look at business today that pays about $500 billion to the Federal Treasury in taxes but spends about $650 billion a year complying with regulations, I think it has gone out of control in many areas. We all understand the need for regulations, for common-sense regulations. But, I think we all believe that things have gone too far and we have to swing the pendulum back.

I just want to thank you for bringing the committee here and look forward—I think in addition to Gil Gutknecht from Minnesota, I understand Bob Dornan is also going to be in later on. That will liven things up, too, when Bob is here.

Mr. MCINTOSH. That is right.

Mr. LATHAM. I want to thank you for being here.

Mr. MCINTOSH. Thank you very much, Tom. Thank you and your staff for helping us set this up.

One other comment I would like to make for the record is, the ranking Democratic member, Collin Peterson, was hoping to be here today but was unable to make it and asked me to express his regrets. He has been enormously helpful in moving forward the work of this committee, making it a bipartisan effort to cut back on these unnecessary regulations.

Before we start with our formal session taking testimony, I would like to give thanks to the Iowa Secretary of State, Paul Pate, who has been helpful and encouraged us in coming out here to hold the field hearings. Paul has done a lot of work in this area himself in holding similar sessions around the State and listening to people in Iowa about problems they have at the State level. I wanted to ask, Paul, if you have any comments for us before we begin with the official panel?

STATEMENT OF PAUL PATE, SECRETARY OF STATE, STATE OF IOWA

Mr. PATE. Thank you for the opportunity to share with you the concerns of Iowa's small businesses, Congressman McIntosh. Congressman Latham, I think, articulated it very well. Coming from his business background, he knows firsthand the challenges that these business people are encountering and I hope to expound on those a little bit here this afternoon and share with you some of the issues that have come forward.

While I might be involved in politics, I am also grounded in the real world with my background as a paving contractor. My family is third-generation in construction and we know firsthand the struggles and the frustrations that Iowa businesses go through every day in trying to deal with government red tape. I have filled out boxes of government forms to get a small contract and have had to wade through volumes of paperwork and months of waiting for payment.

I have got DNR sniffer wells on my property that were imposed on me, even though the spill was not mine. I have had to meet a payroll. In those early years, I can remember the challenge of meeting that payroll and making the tough decisions of running my own company. I have often worked alongside my crews. I know many of us are looking outside now and probably thinking about when the sunshine is going to come back, but I also remember the heat of that hot July working with my crew in putting down 300 degree asphalt. We were looking for cooler weather. I will take today's weather any day.

I truly believe that government and business can work together as a team. I think government can wear the white hat. That is my theme and that is one I try to share. I think we can be the good guys when we come together. I think part of this committee process that you are performing here today is going to make that happen.

This past year, I have traveled the State meeting with business owners and community leaders in over 50 communities and I have heard some of their frustrations firsthand from real people in the real world. I have listened to their common-sense solutions. I think these folks that I have met within these communities are true leaders. They are not evil business owners who want to destroy the environment or hurt their employees. They are not fly by-night own-

ers working out of a pickup truck or a back alley. They are owners who are trying to make something happen for the good of the people. In many cases, these are second-generation owners hoping that they can pass those businesses or farms on to their children. They are volunteers that are active in their communities and their churches and they care about their State, their communities, their neighbors, their employees and their businesses. Many of them share a common concern; I think a common frustration and even a common fear. They are honest and they want to provide jobs with good wages and they want their communities to grow and they want to hire more people. But, I think, they are also frustrated at Government and the rules and what sometimes does not make sense to them. They want to follow those rules, but they sometimes need a little help understanding why Government is doing what they are doing. I think sometimes Government needs to sit down and figure out why they are doing what they are doing. Today's hearings should provide key insight on those issues.

If you will give me a moment here, I would like to share with you a couple of examples of my own. One happens to be a central Iowa company that told me that OSHA had fined them $500 during an inspection on the job site. On the back of their truck was a water cooler—and we have seen those plastic water coolers, and the workers use paper cups for it. After they use it, they wad it up and throw it on the ground. Well, unfortunately, the OSHA inspector happened to come by and see this and he reasoned that some worker might come along, pick it up, unwad it and reuse it again.

I think later, you are going to hear about the Sioux City Fire Department's experiences with Iowa OSHA. Now, this was a wakeup call for many people in this State. While OSHA has agreed not to fine the city, they feel they were right and in similar circumstances could fine another fire department.

Now, the positive side to this story is that momentum for positive change is happening in Iowa. Iowa OSHA has agreed to not fine emergency workers during crisis situations and is starting the process of implementing a common-sense approach.

Now, the movement by Congress and the White House to improve a partnership approach to worker safety, I think, is to be applauded and I want to make sure that it is encouraged. I think it is a key area.

Another key area of runaway government red tape is EPA's role in the air and water quality guidelines. Iowa businesses face such regulatory hurdles that we had a backlog of 300 applications for economic growth, jobs, right here that were being held hostage.

One more example of red tape comes from a small business in western Iowa. I think this is intriguing. It goes along with Congressman Latham's remarks, I think. A crematory was applying for an air permit and one of the questions the agency asked was for them to project the amount of emissions if they ran 24 hours a day, 7 days a week, 365 days a year. I think you can quickly figure out the dilemma they ran into. They had already cremated everybody in Sioux City, Council Bluffs, Omaha and were working their way toward Des Moines and they had not even dented the market. So,

I think there is a key thing here about common sense in how we approach this.

Two small towns, Rome and Hillsboro, IA, which are in southeast Iowa, worked with the Federal Government to bring sewage services to their small towns, about 60 or 70 homes in that area. Engineers wanted to use several innovative designs, including a 6-inch sewage pipe which could handle about 150 to 200 homes. Our Iowa DNR insisted that they use 8-inch pipe which could service 400 homes. Now, if they could have been allowed to use the new-design standards which other States, including Nebraska, use, these two small cities could have saved up to $200,000. Now, on a positive note, DNR has set up a pilot system to explore alternative designs for 13 communities that are members of the rural water system. DNR has not agreed to allow towns outside that system, like Rome and Hillsboro, to use the designs though—and there are over 220 communities in Iowa without sewers that could save substantial money.

Some have criticized my efforts on the State level for regulatory reform because they say businesses, if they operate honestly, the owner would have nothing to fear. I think I have got a pretty good handle on the fact that I have met with hundreds of honest business people in this State who are stalwarts in their community, and these business owners want clean air. They breathe the same air as we do. They want clean water because they drink the same water as we do. They do not want to hurt their employees. Their children play with other children just like we do in our own communities. They go to the same schools. They attend the same churches, and in many cases, these owners work alongside their employees under the same conditions.

The bottom line is, what can the Government do to become more user friendly?

No. 1, they can consult with businesses before administrative rulemaking.

No. 2, establish a rules review process 5 years or sooner after implemented.

No. 3, with industry review the Federal rules already on the books.

No. 4—and I think this is a very important one—customer service training for the bureaucrats. Let them see how their regulations affect business. Have them view a part of their job as growing the economy.

No. 5—and from my perspective as the Secretary of State, I think it is very important. Our Department of Natural Resources and our Department of Economic Development have started to work together to assist new Iowa businesses with environmental regulatory hurdles. We have also gone to accelerating our permitting process for basic air quality permits and more general permitting. What I would like to see us do here, is please continue to let the States develop these innovative programs. Do not tie their hands. Let them be creative and try to get through the process.

No. 6. While I am not an advocate of increasing government programs, in Iowa, we have two very successful programs that work with small businesses. The first helps the business fill out air permits. The second works with businesses to cut down their waste

streams. I think both of these are successful programs that are not run out of a bureaucratic government agency. They are run out of a State University. They are not threatening to businesses. They are designed to work with businesses. They cannot fine or penalize. I think we should consider using this successful model to restructure OSHA, consulting or other Federal mandated programs possibly.

In Iowa, we are working together in an effort to have jobs environment that promotes a partnership in government and business. The theme that I think we all ought to focus on is government can wear the white hat.

I thank you for the opportunity to visit with you today and I encourage you to carry our message back to Washington. If we can assist in any way, we would be happy to. Thank you.

Mr. MCINTOSH. Thank you very much.

Tom, do you have any questions?

Mr. LATHAM. I just want to make one additional statement that I failed to earlier. About 90 percent of the problems that we deal with are with regulators—in our office. I think one very chilling fact in this hearing today that should be brought out and made part of the record is that we actually had people who were afraid to come here and testify today because they felt if a regulator found out that they were testifying about some of the problems that they were having, that somehow, they would get back at them. And, I think, in a free society that is simply outrageous.

Mr. MCINTOSH. You are exactly right. And let me state for the record, if there is any incident of that happening or any effort to intimidate anyone, our committee will fully investigate that and hold the agency and the personnel accountable to the public for their actions. It is outrageous that someone would not feel fully confident in being able to come before their elected representatives and tell them about problems they are having with their Government.

Paul, I could not help thinking as you were describing your personal business of an incident that happened in my district over the summer. During the heat wave, we had a real problem on the construction crews in a couple of the road construction sites where the Indiana OSHA was telling them that they had to wear long pants. Finally, it got so bad that people were falling over with heat exhaustion and the employers sent their employees home because that was the safer route. Well, the employees—not the employer, the employees, men who were working on these sites called my office and said you have got to do something about this. This is Government at its worst. We would much rather be working. Frankly, we would much rather do it in our shorts because we know how to stay away from all of the hot asphalt. We can get the job done without having to wear these long pants.

We wrote to IOSHA, Indiana OSHA, and pointed out the problem. We did not get that much of an immediate response. Fortunately, the heat wave broke and they were able to get back to work. It was just yet another example where the failure to use common sense caused more problems than it solved.

Thank you for coming today and thank you for all of your assistance in helping us to prepare for these hearings. And as you find

out more examples of that, let me invite you to submit them to us and we will also make sure they get into the record so that we can have those looked at by the appropriate agencies in Washington.

Mr. PATE. Very good. Thank you.

Mr. MCINTOSH. Let us now turn to our first panel. The first group of witnesses today will be several small businessmen who will be talking about different issues they have had with regulatory agencies. Let me introduce each of the four and then ask you all to please rise. Harold Higman, who is the owner of Higman Sand and Gravel; David Calhoun with the Wells Blue Bunny Dairy; Corky Bailey, who is with JEBRO and Ellen Prescott. I am sorry, Ellen. I did not mean to refer to only men. I am glad to see a small businesswoman here. She is vice president and general auditor of Security National Bank.

The chairman of the full committee has asked that we have each of our witnesses sworn in for all of our hearings. So, if I could ask each of you to please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you very much. Let the record show that each of the witnesses answered in the affirmative.

Mr. Higman, if you could begin for us. Thank you for coming by today.

STATEMENTS OF HAROLD HIGMAN, HIGMAN CO.; DAVID CALHOUN, WELLS' BLUE BUNNY DAIRY; CORKY BAILEY, JEBRO; AND ELLEN PRESCOTT, SECURITY NATIONAL BANK

Mr. HIGMAN. Thank you, Congressman.

I have entitled my testimony today Regulatory Agencies Out of Control. Mr. Congressman, this is a list of regulatory agencies that can touch my business at any moment of any given day.

[Displays long list.]

Mr. HIGMAN. The first example I use is my company, Higman Sand & Gravel of Akron, IA. Higman Sand & Gravel was founded 53 years ago by Harold Higman, Sr., who loaded trucks one shovel at a time. Today, this small business employs some 50 persons from the Akron, IA community and provides sand and gravel building materials to a large part of northwest Iowa and surrounding States.

In its 53 years of operation, neither this company nor its owners have ever had a criminal infraction of any kind. But, on August 23, 1991, approximately 18 agents from the EPA raided our business with guns loaded and drawn with their usual stick them up procedure, which included bursting into the private office of a newly hired secretary, placing a loaded and cocked pistol to her face and yelling don't move. Needless to say, it scared the wits out of her. This resulted in later charging the company and its two principal officers with storage of hazardous waste. This hazardous waste found amounted to a small amount of paint thinner dumped on our property by an unknown party.

This case went to Federal court in Sioux City, IA. During the court proceedings, it was discovered that the individual who turned the Higmans into the EPA had himself placed the waste on Higman property. This person was a paid informant, who at that

time had received $2,000 with the promise of receiving $24,000 if this case was successful.

We mounted the best legal defense team we could afford, which included the hiring of the largest law firm in the United States and adding to it numerous outside attorneys, research personnel and investigators. During this time, one of our original attorneys was hired by the EPA and when confronted about this, her comments were, I do not understand why the EPA is coming down so hard. They did not find anything significant, but having spent so much money developing this case and thinking you have deep pockets, they must now go for the big bucks to cover their cost.

Second, she said, I cannot afford not to work for the EPA for what they are offering me. Obviously, the Government pays much more than the private sector so it can win large amounts in settlements and fines.

After a costly trial, Higman Sand & Gravel was found not guilty by a Federal jury. Had we lost this case, we were facing fines amounting to some $50 million and prison terms in excess of 5 years.

My second example is the Mine Safety and Health Administration, called MSHA. On July 18, 1995, Higman Sand & Gravel was visited upon by two Federal mine inspectors. These inspections have taken place semi-annually since MSHA's inception in the early 1970's. This mine site has an impeccable record. It has never had an injury or a lost-time accident. It is operated by an experienced and trained employee who has worked for Higman Sand & Gravel for 23 years. On that date, your inspector, Lloyd Ferron, issued some 23 citations and orders on alleged violations which he claims to have found affecting one person. This is the paperwork that was generated that day, Mr. Congressman.

[Displays paperwork.]

Mr. HIGMAN. That is one copy. It has never had an injury or lost-time accident and is operated, as I said, by an experienced and trained employee.

Even though it was explained to Lloyd that we were at that time under pressure to furnish material for a highway project and needed to continue to produce material, his demand was that he considered violations were to be fixed immediately, resulting in a plant shut down. These citations and orders are now on the Federal court docket for this spring.

Since this plant has been inspected twice annually and kept in compliance, why then should it be cited for so many infractions? Guesses have been made by a former Higman attorney now working for the Government, as well as our staff attorneys, that it is because the Higman Co. so vigorously and legally fights these injustices. And also, because the Government regulators are so vindictive and will retaliate at all cost to protect and elevate their positions. We therefore reach a point of impasse.

Never once have I had a government regulator, regardless of agency, visit my place of business to offer help. Instead, they come with a combative attitude. Can you imagine an IRS agent coming to your door and saying, may I help you with your taxes? I have found what I believe to be several errors. As one agent publicly acknowledged, we are under pressure, career path pressure, to come

up with bigger and more newsworthy cases, thus resulting in promotion. When visiting a U.S. attorney's office, I read a letter from the Justice Department complimenting that office on the number of dollars that it had taken in on fines, penalties and settlements. Why is it the Government system does not promote its personnel based on positive helpful attitude?

Even considering the mind-boggling number of rules, regulations and orders handed down each year by Congress and its regulators, I feel the problem lies not so much in the rules but in the rulers who implement them. The Federal regulators have a bottomless pocket of dollars to work within the judicial system preventing the challenging of regulations by small business.

The small businessman of today must stay focused on his company's goals in order to survive in a competitive climate. He has neither the time or expertise or finances to understand the vast regulatory system which today is held over his business. For him to survive, this system must be changed.

In conclusion, Mr. Congressman, America is a great and diverse society evolving from a mix of which is tried and true. Yet, the single key ingredient lacking from the recipe to make her the greatest ever, is common sense.

Thank you, Mr. Congressman.

[The prepared statement of Mr. Higman follows:]

PRESENTATION FOR CONGRESSIONAL SUB-COMMITTEE

Sub-committee Chairman
DAVID MCINTOSH of Indiana
Congressman
TOM LATHAM of Iowa
Congressman
GIL GUTKNECHT of Minnesota
Congressman
BOB DORNAN of California

REGULATOR AGENCIES "OUT-OF-CONTROL"

Testimony by

Harold Higman Jr.

Febraury 8, 1996

Regulatory Agencies "Out-of-Control" !

The first example I use here today is my company Higman Sand & Gravel of Akron Iowa. Higman Sand & Gravel was founded 53 years ago by Harold Higman Sr. who loaded trucks one shovel at a time.

Today this small business employs some 50 persons from the Akron Iowa community and provides sand and gravel building materials to a large part of N.W. Iowa and surrounding states.

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But on August 23, 1991 approximately 18 agents from the EPA raided our business with guns loaded and drawn with their usual stick'em up procedure which included bursting into the private office of a newly hired secretary placing a loaded and cocked pistol to her face, and yelling, "don't move! "

Needless to say, he scared the wits out of her! This resulted in later charging the company and its 2 principle officers with storage of hazardous waste. The hazardous waste found amounted to a small amount of paint thinner dumped on our property by an unknown party.

This case went to Federal court in Sioux City, Iowa. During the court proceedings it was discovered that the individual who turned the Higmans into the EPA, had himself placed the waste on Higman property. This person was a paid informant, who had at that time received $ 2000 with the promise of receiving $ 24,000 if this case was successful.

We mounted the best legal defense team we could afford which included the hiring of the largest law firm in the U.S. and adding to it numerous outside attorneys, research personnel and investigators. During this time one of our original attorneys was hired by the EPA, and when confronted about this her comments were. " I don't understand why the EPA is coming down so hard. They did not find anything significant, but having spent so much money developing this case and thinking you have deep pockets, they must now go for the big bucks to cover their costs."

SECOND: "I cannot afford NOT to work for the EPA for what they are offering me." Obviously the government pays much more than the private sector, so it can win large amounts in settlements and fines.

After a costly trial procedure, Higman Sand & Gravel was found not guilty by a federal jury. Had we lost this case we were facing fines amounting to 50 million dollars and prison terms in excess of 5 years.

My second example is the Mine Safety and Health Administration called MSHA. On July 18, 1995, Higman Sand and Gravel was visited upon by 2 federal mine inspectors. These inspections have taken place semi- annually since MSHAs inception in the early 70's. This mine site has an impeccable record. It has never had having an injury or lost time accident. It is operated by an experienced and trained employee who has worked for Higman Sand & Gravel for 24 years.

On that date your inspector, Lloyd Ferron, issued some 23 citations and orders on alleged violations which he claims to have found affecting one person. Even though it was explained to Lloyd that we were at that time under pressure to furnish material for a highway project and needed to continue to produce material, his demand was that what he considered violations were to be fixed immediately, resulting in a plant shut down. These citations and orders are now on the federal court docket for this spring. Since this plant has been inspected twice annually and kept in compliance, why then should it be cited for so many infractions? Guesses have been made by a former Higman attorney now working for the government, as well as our staff attorneys, that it is because the Higman Co. so vigorously and legally fights these injustices. And also because the government regulators are so vindictive and will retaliate at all costs to protect and elevate their position. We therefore reach a point of impasse.

Never once have I had a government regulator, regardless of agency, visit my place of business to offer help. Instead, they come with a combative attitude. Can you imagine an IRS agent coming to your door and saying "May I help you with your taxes, I have found what I believe to be several errors." As one agent publicly acknowledged " We are under pressure, career path pressure, to come up with bigger and more news worthy cases! " thus resulting in promotion! When visiting a U.S. attorney's office, I read a letter from the justice department complimenting that office for the number of dollars it had taken in on fines, penalties and settlements. Why is it, the government system does not promote its personnel based on a positive helpful attitude.

Even considering the mind boggling number of rules, regulations and orders handed down each year by congress and its regulators, I feel the problem lies not so much in the rules, but in the rulers who implement them. The Federal regulators have a bottomless pocket of dollars to work with in the judicial system preventing the challenging of regulations by small business.

The small business man of today must stay focused on his company's goals in order to survive in todays competitive climate. He has neither the time, expertise or finances to understand the vast regulatory system which today is held over his business. For him to survive, this system must be changed.

In conclusion, America is a great and diverse society evolving from a mix of that which is tried and true. Yet the single key ingredient lacking from the recipe to make her the greatest ever, is common sense !

Thank you
Respectfully Submitted

Harold Higman Jr.

Mr. MCINTOSH. Thank you very much, Mr. Higman. Those are two incredible incidents. I was amazed when I was reading through your testimony that EPA would feel it necessary to come in at gun point in that situation. Tell me this, who had actually paid the informant who ended up bringing the substance onto the property?

Mr. HIGMAN. In testimony from the individual's wife, $2,000 had already been paid to him by the Government and they were in consideration of paying the additional money and bringing it to $24,000 had the case been successful.

Mr. MCINTOSH. So the taxpayer was ultimately the person paying this informant to come into your business and take care of this and inform the Government on you?

Mr. HIGMAN. That is right.

Mr. MCINTOSH. That is an amazing use of taxpayer moneys on that. We definitely need to look into that one.

Let me ask you this, what single thing do you think would most help us, if we were to change it, make sure that the agencies did not engage in this type of unhelpful behavior?

Mr. HIGMAN. First of all, I do not think you need any agency within the bounds of government coming in on anybody at gun point in a business of that type for any infraction. Second, I think we need a clear cut means of giving information back to the Government. That is to say, checks and balances in dealing with our regulators. As I aforementioned, I do not think it is so much the rules. There are certain rules that we need today to maintain our status of society. By the same token, when placed in the hands of individuals that are not schooled and properly conditioned as our Secretary of State said, these people have to be taught that, you know, we are human beings too and we need to be treated as such.

Mr. MCINTOSH. Statutory authority is required before an agency can use firearms in its enforcement activities. I think you raise a good point, that perhaps what we ought to do is make them refer any cases where they think there may be violent episodes to the FBI or some other enforcement agency and let them use what is better discretion often. I will look into that. I think that is a very good point.

Mr. HIGMAN. I appreciate that, sir.

Mr. MCINTOSH. I have no other questions.

Tom, do you have anything?

Mr. LATHAM. I would just like to have the record show that we have about 20 feet of paper stretched out across the floor here and it is only about half unrolled—all the forms that were filled out.

Do you have a copy of the court record from the case where the individual—where it was shown that the individual was paid the $2,000?

Mr. HIGMAN. That is correct, Tom. We had a court record made for our own well-being. We considered taking it to court to come back on them. In all truthfulness, it was my mother who said, no, we were not brought up that way. You leave well enough alone and you go on about your business.

Mr. LATHAM. Would it be possible to provide us with a copy of that? I would ask unanimous consent that that be inserted in the record, Mr. Chairman.

Mr. MCINTOSH. I see no objection. I think that would be helpful to have as a part of that record.

Mr. LATHAM. I just think it is outrageous what happened to you. It is simply a case of government gone amuck and quite honestly—I mean, I go back to—people do not mind paying taxes but when you have regulators, who because of rules written by someone sometimes with agendas, that come in and do things like this, this is a free country and things like this should never happen. I just appreciate very much your testimony.

Mr. HIGMAN. One point you might appreciate, Mr. Congressman. It cost us approximately a quarter of a million dollars to fight that case. Had that money been left in the community, it would have gone out in terms of salaries, goods and services within the community. And if you use the three-time-turnover rule on the community, the community was really robbed of $750,000 at that time, and it is a community of about 1,500 people.

Mr. LATHAM. In your testimony, you say that you believe that the reason you were singled out for the second charge was just because you had fought the first one. Those were statements made by people from in the Government, or how did you determine that?

Mr. HIGMAN. I was not in reference—I am sorry if I made that inference to the EPA case. I was at that moment inferring that we fight all MSHA cases. Maybe fight is not the proper word for it, but we did take them to court, and we were successful. And in conversation with my attorney and with one of the government attorneys, Mr. Higman just has a bad attitude and wants to fight on all these cases and we are going to push forward and fight back.

Mr. LATHAM. But your testimony is not that the EPA case had anything to do with the mine case?

Mr. HIGMAN. No, sir.

Mr. LATHAM. OK. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Latham.

The staff has suggested that we have all the other witnesses testify and then ask questions in order to make sure we have enough time to hear from everyone. Let me take a moment to introduce some of the staff who are with us because they worked very hard to put this on. Mildred Webber is the staff director for the subcommittee. Karen Barnes is with the staff and David White. Also, Bruce Gwinn, who is the staff director for the minority staff. And helping us keep time is Troy Rue with Congressman Latham's staff. I appreciate your help, Troy. He will flash up when we get close to the 5 minute mark. I will ask people to summarize at that point so we can hear from everybody.

Our next witness is David Calhoun with Wells' Blue Bunny Dairy. Mr. Calhoun.

Mr. CALHOUN. Good morning.

Mr. MCINTOSH. Good morning. Thanks for coming.

Mr. CALHOUN. As an employer, we have an obligation to provide a safe work place. The employer also has the responsibility not to abuse the environment. The Federal Government a number of years ago decided that it had a role in these areas as well and began introducing regulations in an effort to ensure that employers lived up to these responsibilities.

The question I ask myself at work daily—the question I ask myself as I work daily to meet the responsibilities I have at Wells' Dairy of protecting the environment and providing a safe work place is, how is what I am working on right now making a difference? As I drive home at night and think about this question, the answer all too often is that what I did throughout the course of my day probably did not make the workplace a whole lot safer or the environment any cleaner. The reason that I sometimes do not make much of a difference is that I probably spend much of my day trying to comply with government regulation. Most of these regulations were probably developed with the best of intentions by people who have a sincere interest in these areas. But the goals of a safe workplace and a clean environment have become clouded. For example, material safety data sheets are required on chemicals in the workplace. A recent survey of 500 employees that we put through a refresher safety training course revealed that only seven employees had ever used a material safety data sheet. A tremendous amount of time is spent copying, indexing and distributing these sheets to our facilities. One cannot help but wonder if this time could be better spent doing something which has a positive impact on a larger percentage of employees.

Several years ago, we discovered that we had an underground storage tank site that had experienced a leak. We immediately discontinued the use of the tank and began working with consultants and regulators to clean up the free product at the site. Seven years and some $40,000 later, we have actually started to clean up the site by pumping the free product out of the ground.

When a company has a release of a hazardous substance into the environment which is equal to or exceeds the reportable quantity established by EPA, a report must be made to the national response center immediately. An EPA official has defined immediately to me as within 15 minutes. That means at a time of crisis for your company, someone needs to remember to drop what they are doing and call the NRC. Instead of having everyone involved in evacuations, repair work or containment work, somebody needs to be on the phone complying with the immediate reporting requirement.

The reportable quantity for the refrigerant we use, ammonia, is 100 pounds or roughly 20 gallons. If a company has an ammonia leak, they must estimate the amount of release within this timeframe. This results in some releases being reported that might not need to be reported because it is impossible to determine the amount of the leak in that timeframe.

When you report a leak to the NRC, they send you a 10-page questionnaire to complete. So when you called the NRC, you were not sure if the report was necessary because you did not know the exact amount of the leak. You did not have any specific information to provide them with about the situation because it had not been adequately assessed, and you are guaranteeing your company additional paperwork. It would seem to me more beneficial to take the time necessary to assess the situation with the help of local officials before deciding to report the release to Federal officials. If regulators were truly focused on what should be their goals of protecting the environment and providing a safe work place, I seriously

question if my office would have to spend time completing some of these tasks. The regulators' efforts need to be refocused on the goals of protecting the environment and providing a safe work place.

Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Calhoun. I look forward to asking you a little bit about those MSDS criteria.

Our next witness is Mr. Corky Bailey. Mr. Bailey, thank you for coming today. Before we start, let me just ask unanimous consent, if people do not mind if the gentlemen and ladies who feel like it could remove their coats. It is awfully hot in here and I certainly do not mind if we become a little less formal in this process. So anybody who would like to, feel free to.

Mr. Bailey.

[The prepared statement of Mr. Calhoun follows:]

Underground Storage Tank Site

In 1988 we received notification of rules pertaining to such things as inline leak detection , overfill protection, monthly monitoring, etc. In the process of complying with these rules, a leak was discovered at our site. Last month, some seven years later, after numerous studies conducted by consultants and a tremendous amount of correspondence between regulators, consultants and Wells' Dairy we have finally begun the process of cleaning up the leak.

There have been no significant changes at this site during this time period. We knew there was free product at the site then and we know it still exists today. Why did it take seven years to begin clean up?

Hazard Communication Standard

Companies are required to have Material Safety Data Sheets (MSDS) on hand for every chemical that they use at their facility. A MSDS can range in length anywhere from one page on up. It is not uncommon to have a 6 page MSDS. We currently have six, three inch binders full of Material Safety Data Sheets. The definition of a chemical ranges anywhere from Mercury to Windex. Companies are required to train each employee about the chemicals they will potentially be exposed to while performing their job duties. An employee performing plant maintenance work could potentially be exposed to all of the chemicals in the facility, when they are fixing the plumbing under the sink where the Comet is stored, using a tool in the shop where the solvent tank is located or working in the ammonia compressor room. According to the regulation the company should sit down with this individual and one by one review the MSDS.

A distinction needs to be made between chemicals. Which ones are hazardous and which ones pose little if any risk. Should employers continue to be required to keep notebooks full of MSDS on chemicals as basic as household cleaners and office supplies.

Storm Water Discharges

Every year companies, which fall into one of 11 land use classifications, have to pay an annual fee of $150 in Iowa to renew their Storm Water Discharge Permits. These permits had to be obtained in order to comply with the EPA regulations as a result of the reauthorization of the Clean Water Act in 1987. To obtain the permit a company had to complete an application, send in an initial fee of $100 per application and run ads in several local newspapers notifying the public of the companies intent to let the rain water that falls on their property run into the storm sewer. Initially there was a tremendous amount of confusion among regulators about this program and it was difficult to get answers to your questions. There is still confusion in industry as to what is necessary to comply with this regulation.

Hazardous Waste Disposal

Hazardous waste can be anything from the Latex paint left over from a break room painting project to the mercury recovered from a broken thermometer. If a company has several locations in town and they are arranging for hazardous waste pick up this waste must be picked up at the facility where it was generated. For instance, if we have five gallons of waste video jet ink at one facility and a mile down the street we have another facility with five gallons of waste video jet ink, two separate pick ups must be arranged and two sets of paperwork must be completed. It would be more efficient if the company could take the five gallons of waste ink to one plant, prepare it for shipment and have the trucking company make one stop. Currently this cannot be done because the hazardous waste can only be moved from location to location by a hazardous waste carrier. This requires the hazardous waste generator to pay for two stops by the trucking company and complete twice as much paperwork.

National Response Center Notification

When a company has a release of a hazardous substance into the environment which is equal to or exceeds the reportable quantity it must be reported to the National Response Center immediately. This means that at a time of crisis for your company, when you already have enough things to deal with, someone needs to remember to drop what they are doing and call the National Response Center. Instead of having everyone involved in evacuations, repair work or containment work somebody needs to be on the phone ideally within 15 minutes to comply with the immediate reporting requirement. The reportable quantity for ammonia is 100 pounds or roughly 20 gallons. If a company has an ammonia leak they must estimate the amount of ammonia released to decide if it exceeds the reportable quantity. It takes a fairly quick engineer to estimate the release in this time frame. This results in some releases being reported that might not need to be reported. When you report a leak to the NRC they mail you a 10 page questionnaire to complete about the leak. So when you called the NRC you were not sure if was necessary because you did not know the exact amount of the leak, you did not have any information to give them because the situation probably had not been adequately accessed and you guaranteed your company additional paperwork.

It would seems more beneficial to take the time necessary to access the situation with the help of local officials, if necessary, before deciding to report the release to the federal officials.

Mr. BAILEY. Thank you, Congressman.

Mr. LATHAM. Did you expect me to object to that or something? [Laughter.]

Mr. MCINTOSH. No. I knew you had a lot of common sense. [Laughter.]

Mr. BAILEY. After hearing Harold's testimony, it reminded me of a line comedians use, never follow animal acts or children. This is not as tough as Harold's was. My conversation here will deal primarily with the EPA.

Companies can follow the letter of the law and be proved innocent like Harold and the legal fees can far exceed any fines. Those are hard to recoup. Also, if you dispose of waste classified as nonhazardous by today's standards in a landfill or under any approved regulations today, you will still probably be paying legal fees in the future to protect yourself against this landfill site when it does become a Superfund site. You will be drawn into lawsuits because you were forthright, because you registered as required by the law today. You paid tariffs, disposal fees, did everything up front instead of going in the back alley and dumping it in the shadows somewhere. The people that are trying to do things right are really the ones that are probably suffering the most today.

A direct case. The EPA completed a survey of soil and ground water on April 12, 1990, at a site called the Des Moines Barrel and Drum and they concluded because of various hazardous waste with paint drums, lead batteries and so forth that the site was now contaminated highly and would be classified a Superfund site and went into remedial action at the site officially on July 9, 1992. The records show that there was 137,770 drums left at this site. Going back, this report was April 12, 1990.

Six months after the EPA testing, one of our construction companies delivered 87 empty barrels to this Des Moines Barrel and Drum site to dispose of containers that were used in the road construction business around Des Moines. The majority of these drums were just as clean as the day they were manufactured. The majority of these drums had a silicone product inside the drum that was actually inside a plastic liner in the barrel. When the silicone was put into the joints of the new pavement, it would empty the drum and you simply had a little plastic bag left that was disposed of. A few of the other drums were white cure, which is a resin that the manufacturer says is not hazardous. It is sprayed on new pavement, kind of as protection for new pavement. It eventually wears off with the traffic. These drums, as I said earlier, were disposed of 6 months after the initial cleanup site report was issued by the EPA. That has made no difference to date.

This file is just the attorney letters back and forth.

[Displays file.]

Mr. BAILEY. The company has paid $10,500 to a group that is part of a larger contaminator group that is suing other people that had record of receipt into this landfill site. We have also paid over $8,700 in legal fees in-house just to try to bring this to a resolve.

Time/effort management, who knows. We had to bring in employees out of Des Moines that were at the drum site to ask them what happened. Besides this $19,000, there is probably another $20 or $30,000 in direct labor costs, not to mention management time.

Like I said, Harold, it is nothing compared to your quarter of a million. It is tough today to do business in the construction industry.

EPA storm water runoff regulation. While it is tough on the construction industry, the next phase being proposed is going to be really tough on the average citizen. They are now proposing in Washington the regulation of rain water from our streets and highways. These proposed regulations will demand tremendous amounts of administrative time from cities, counties, States and, ultimately, the taxpayer is going to be paying for a bureaucracy that it never envisioned and for protection they really do not care to have. It is going to be a tough battle to regulate rain water coming off the street.

Road contractors now have staffs of personnel to secure land, water and air permits required to construct or repair a road under government contract for the taxpayer. It takes the same effort from the contractor whether it is to repair 1 mile of road or 100 miles of road, and it does not take very long for this to be millions in each State. Millions soon turn into tens of millions, which multiplied by 50 turn into billions. Like one good Senator once said, a billion here, a billion there, before you know it, you have got a lot of money.

Another challenge for industries like the MSDS is spill prevention. If we could just have one plan, but we have to have a spill prevention for the Coast Guard; we have to have a spill prevention plan for the EPA; we have to have a spill prevention plan for OSHA and now the DOT wants to have a spill prevention plan and none of these plans are the same. Nobody will take the other agency's plan. So now we have to have a staff of people that are well versed and educated in each one of the plans to hopefully limit our future liability. But as evidenced by the case in the Des Moines Barrel and Drum site, you can do things right today and still not limit your future liability.

That is all I have to say. Thank you very much.

Mr. MCINTOSH. Thank you, Mr. Bailey. I look forward to getting back to you. You describe a classic case of gotcha, when the agency gets you after the fact.

Our final witness on this panel is Ms. Ellen Prescott, who is with the Security National Bank. Thank you for coming today.

[The prepared statement of Mr. Bailey follows:]

Regulatory Affairs Testimony
February 6, 1996

1) EPA

Legal fees can be more expensive than the fines if you defend yourself. Complying with all of the laws and regulations in place today, you are still liable for these actions taken if changes occur in the same laws and regulations in the future.

If you dispose of waste, classified as non-hazardous by today's standards in a landfill, under approved regulations, you will probably be paying legal fees in the future to protect yourself because the landfill or site you disposed in has been deemed a Superfund site. You are drawn into the law suits because you were forth right and registered as required by laws or regulations, and paid the tariffs and disposal fees in-lieu of dumping in the shadows.

Example: notice received;
Des Moines Barrel and Drum Site
Environmental Protection Agency Region VII
Administrative Order on Consent for Removal
Response Activities, CERCLA Docket No. VII-92-F-0017
Dated July 8, 1992

A report was compiled and completed on April 12, 1990 by Region VII EPA on soil and ground water contamination testing at this site in Des Moines, IA. The site was found to be contaminated with high levels of various hazardous waste from paint drums, lead batteries, and numerous other chemicals. Based upon EPA Findings of Fact, EPA's conclusion of Law, EPA's Determinations, and Administrative Record for this Site, EPA ordered all parties to perform certain removal actions at the Site on July 9, 1992. The records show there were 137,770 barrels left at the site.

Six months after the EPA testing of the site, the Irving F. Jensen Company delivered 87 empty barrels to the Des Moines Barrel and Drum site to dispose of containers used for materials on a road construction project in the area. The majority of the barrels were as clean as the day they were manufactured.

Majority of the barrels originally contained silicone used for joint sealing on concrete paving. The silicone product was in a plastic bag lining the barrel thereby leaving a clean barrel when the contents of the barrel were used in the process of the paving project. The remaining barrels left at the site by the Jensen Company where empty white pigment cure barrels. A spokesman for the company manufacturing the white cure advised that the resin is not a hazardous substance. It is merely a plastic that is used as a fine spray over the concrete and it eventually wears off with traffic.

The reality is the Irving F. Jensen Company did not contribute in any way to the contaminates found at this site. The fact that the barrels delivered were listed as empty on all records and they were delivered after the EPA report on the site has meant very little.

To date, the Irving F. Jensen Co. has paid $8711.75 in attorney fees and $10,500 to the Scott Avenue Site Group for the buyout agreement and covenant not to sue. The $19,211.75 expense to date does not include staff and management cost involved for record searching, meetings with legal representation, company field personnel, phone calls.

2) EPA Storm Water Runoff Regulations; the next step being proposed is regulation of rain water from our streets and highways. These proposed regulations will demand tremendous amounts of administrative time from our Cities, Counties, and States. Ultimately, the tax payer will be paying for bureaucracy they had never envisioned, for protection they had no desire to have.

A road contractor now has a staff of personnel to secure land, water, and air permits required to construct or repair roads and highways under government contract for the tax payer. The same effort is required whether the construction is for one mile or 100 miles of pavement. This expense is in the millions of dollars per state.

3) Spill Prevention. The USCG requires a spill plan one way, the EPA another, OSHA is now getting in the act in regards to this, the DOT wants another way & individual states want another way.

We have reached a point whereby it now takes one (1) expert staff member per division to interpret all of the individual laws in each state and for each federal regulatory agency.



MIDWEST FLY ASH AND MATERIALS, INC.

February 6, 1996

Honorable Tom Latham
U.S. House of Representatives
516 Cannon House Office Bldg.
Washington, D.C. 20515

Re: Federal Regulatory Impediments

Dear Mr. Latham:

Our business is predicated upon developing markets for coal combustion by-products in lieu of placing these materials into landfills. We can be viewed as having founded a business that is the beneficiary of the federal clean air standards, which mandated the removal of coal ash from the exhaust stacks of coal fired energy generation units.

The difficulty with federal regulations is that the government seldom seems to know when "enough is enough". We have so many regulations imposed by such a myriad of agencies, that the regulations often conflict because the agencies do not communicate with each other. Worse yet, some agencies are so huge that the various subdivisions within each agency do not know what the other is doing. For example, consider the Environmental Protection Agency.

The Air Quality Division imposes regulations on coal fired energy units which demand that the "best known technology" be employed to move from clean air toward "pristine" air. These mandates are resulting in technologies (i.e. fluidized bed boilers, low NOx burners, flue gas desulfurization units, etc.) which are hugely inefficient in terms of fuel consumption. And, these technologies actually increase the volume of solid waste, while simultaneously imparting qualities to those wastes which render them unusable for wide spread applications that have been developed for "older" types of coal residues. Fluidized bed boilers can produce fifteen times the quantity of coal ash generated in a similarly sized pulverized coal boiler equipped with an electrostatic ash precipitator. Quite often the fluidized bed units produce ashes which are so caustic in nature as to border on qualifying them as "hazardous wastes" while pulverized coal boilers routinely produce ashes which can be used in concrete and for a variety of useful purposes.

It seems that federal bureaucrats in the EPA do not understand that if one removes a minor constituent of air pollution by converting it into a major potential constituent of land and water contamination, that the net effect is a negative value. There seems to be little "common sense" that prevails in federal policy making. Just because there exists the technology to clean the air to very "pristine" standards does not imply that such technology should be applied, especially when the entirety of its implementation causes extensive environmental degradation in ecological circuits that are separate from the atmosphere.

Please use your influence to install mandates on regulatory legislation and implementation that requires a cost/benefit analysis as well as a broadly interpreted environmental impact assessment, developed by the regulatory agency that is to impose the regulations. Perhaps this would deter passage of ever more stringent regulations which are poorly developed and horrendously expensive to American businesses and consumers.

Very truly yours,

Lon Zimmerman

Lon Zimmerman, President

2220 HAWKEYE DRIVE · BOX 3957 · SIOUX CITY, IOWA 51108 · TELEPHONE [illegible]

Ms. PRESCOTT. Thank you.

Security National Bank is a $400 million community bank located here in Sioux City. We are part of a five-bank holding company. The other four banks range in size from $25 to $65 million in asset size. I have chosen to talk to you today about mortgage lending regulations and I want to make it clear that only because of the time limitations have I limited my comments to the mortgage loan area. There are lots of other areas.

Mortgage lending has become more and more important to the banking industry. Customers want mortgage loans because of the tax benefits. As the customers want that product more and more, regulators pile on more and more disclosures that we have to give to those customers.

If you come to Security National Bank tomorrow morning and want to open up a mortgage loan to buy a house, we have to deal with nine regulations to put the money in your hands. When you walk in the door, you have to fill out an application. With that application, you sign six documents which include seven different kinds of disclosures. When you come to close the loan, you sign 21 documents. That is 49 pieces of paper. There is a lot of good information in here and some important information, but the important things fall through the cracks because there is just too much information here. To be perfectly honest, customers think it is a joke when they come to sign all the documents. And the sad part is, this joke costs us—we estimate probably three-quarters of a full-time employee annually to complete.

In addition to the employee time, we cannot afford to produce these forms in-house. The liability as far as penalties from the regulatory agencies, bad publicity, loss of customers, is just too great. So we had to buy software to produce all these forms. The software company guarantees that they will stay in compliance with the regulations, although we sought to fill them out properly and get all the right signatures. That software cost us $42,500 and an additional $4,500 annually for the upkeep. That is just software. That does not include PC's, printers, paper and the rest of the things that go along with it.

In addition, to show that as we go along, the regulations just keep getting bigger and bigger, last year, the National Flood Insurance Reform Act was passed. With that regulation, we have some more burdens. In the past, we have always been required to determine whether or not property that we take as security interest on loans is in a flood zone and whether or not customers need to get flood insurance. Now, we have to fill out a specific document. That document is so detailed that we need flood maps for each determination. It has become so expensive. Plus, there is a $350 fine for each violation. You cannot afford to take the risk. So, again we had to go to an outside firm that specializes in flood insurance determinations. That costs our customers $12.50 per loan application. They get nothing more than they ever had in the past, but it costs us that much to comply with the regulation. And the additional requirement of that regulation is, we have to monitor that loan for life. Now a mortgage loan could be 30 years in life. We have to monitor that and determine whether or not changes in the flood zones puts that customer in a flood zone or takes them out and

then notify the customer and require them to get insurance. Our system is simply not sophisticated enough to deal with something like that. So again, we had to go to a specialized firm, the same one that does the determination forms. This costs our customers an additional $10 per loan. So now, we have customers out there paying $22.50 more for the same loan they could have gotten 2 years ago and they have absolutely nothing to show for it except that now we are complying with the regulation. And, by the way, they do not like flood insurance. They feel that it is some sort of punishment the bank is visiting on them rather than the Federal Government. So while we are trying to provide good customer service, we are making our customers angry by making them comply with these regulations.

I realize that there have been bills introduced into Congress to help relieve some of these regulations. It is important that they be given their due, Regulation B, getting RESPA away from HUD, Community Reinvestment Act, all of those things just add to our burden. Again, the customer demand is there. The regulatory burden keeps getting heavier and heavier and we are caught in the middle. The Community Reinvestment Act says give your customers what they need, provide the products that they want. Regulatory burden makes that more expensive and more difficult for us to do. We need some relief. We need some room so that we can give those customers the products that they want. And you are the people that can do that by passing some of those bills and making sure that the OCC and the FDIC lift some of those rules from us.

Thank you.

[The prepared statement of Ms. Prescott follows:]

WRITTEN TESTIMONY
CONGRESSIONAL COMMITTEE HEARING
FEBRUARY 8, 1996

SUBJECT: OVERREGULATION OF THE BANKING INDUSTRY.
GIVEN BY: ELLEN PRESCOTT
VICE PRESIDENT & GENERAL AUDITOR
SECURITY NATIONAL BANK OF SIOUX CITY IOWA

MORTGAGE LENDING

MORTGAGE LENDING HAS BECOME IMPORTANT TO THE AMERICAN CONSUMER BECAUSE OF THE TAX ADVANTAGES. IT INCLUDES SUCH PRODUCTS AS HOME PURCHASES, SECOND MORTGAGES, AND OPEN END HOME EQUITY LINES WHICH COULD BE FIXED OR VARIABLE RATE. THE DISCLOSURE REQUIREMENTS ARE DIFFERENT FOR EACH MORTGAGE LOAN PRODUCT. FOR EXAMPLE, ON A FIXED RATE HOME PURCHASE LOAN THE DISCLOSURE REQUIREMENTS OF THE VARIOUS REGULATIONS AND SECONDARY MARKET FORCE EACH CONSUMER TO SIGN AND RECEIVE A COPY OF SIX DOCUMENTS AT APPLICATION AND 21 DOCUMENTS AT CLOSING. THIS ADDS UP TO 49 PIECES OF PAPER FOR A SINGLE BORROWER FOR EACH HOME PURCHASE OR REFINANCED LOAN. THE VOLUME OF THESE DISCLOSURES TENDS TO HIDE THE IMPORTANT FACTS AND DISCOURAGES CONSUMERS FROM READING ANY OF THEM. SOME SPECIFIC EXAMPLES OF OVER DISCLOSURE AND OVER BURDENSOME RULES ARE AS FOLLOWS:

REGULATION Z (12 CFR 226)

SECTIONS 12 CFR 226.5b(d)(12)(xi) AND 12 CFR 226.19(b)(2)(viii) OF REGULATION Z REQUIRE A HISTORICAL EXAMPLE OF RATE AND PAYMENT CHANGES BASED ON INDEX VALUES FOR THE MOST RECENT 15 YEARS FOR VARIABLE RATE OPEN END AND CLOSED END MORTGAGE LOANS. THE INDEXES MUST BE UPDATED EACH YEAR WHICH MEANS PROGRAMMING TIME AND THROWING OUT OLD DISCLOSURES AND PURCHASING OR PRINTING NEW ONES. THE HISTORICAL INFORMATION IS NOT NECESSARY FOR THE CUSTOMER TO MAKE A DECISION AS TO WHETHER THIS LOAN PRODUCT IS FOR THEM AND IS OFTEN TIMES MISLEADING. THE RATE CHANGES OVER THE LAST 15 YEARS DO NOT IN ANY WAY PREDICT FUTURE MOVEMENT ESPECIALLY WHEN RATES 15 YEARS AGO WERE 9 OR 10 PERCENT HIGHER THAN TODAY'S MARKET. AS PART OF THESE SAME DISCLOSURES BANKS ARE ALREADY SHOWING THE MAXIMUM RATE AND PAYMENT AMOUNT FOR A $10,000 LOAN ORIGINATED AT A RECENT RATE ASSUMING THE MAXIMUM INCREASES ALLOWED BY THE PROGRAM. THIS IS MEANINGFUL AND SHOULD ALLOW THE CUSTOMER TO DETERMINE WHETHER THIS LOAN PRODUCT IS BEST FOR THEM ASSUMING THE WORST CASE SCENARIO.

SECTIONS 12 CFR 226.15 AND 12 CFR 226.23 REQUIRE FINANCIAL INSTITUTIONS TO GIVE CONSUMERS THE RIGHT TO RESCIND A LOAN TRANSACTION WHERE A SECURITY INTEREST HAS BEEN TAKEN IN THEIR PRINCIPAL RESIDENCE. THIS DOES NOT APPLY IF THE LOAN PROCEEDS ARE USED TO ACQUIRE OR CONSTRUCT THE PRINCIPAL RESIDENCE. EACH CONSUMER WHO IS A PARTY TO THE TRANSACTION HAS THREE BUSINESS DAYS TO RESCIND THE TRANSACTION. THE BANK CAN NOT DISBURSE PROCEEDS DURING THESE THREE DAYS BUT THEY CAN CHARGE THE CONSUMER INTEREST. CONSUMERS ARE NOT ALLOWED TO WAIVE THEIR RIGHT TO RESCIND EXCEPT IN A BONA FIDE PERSONAL FINANCIAL EMERGENCY. THERE ARE VERY FEW

SITUATIONS THAT MEET THIS CRITERIA AS INTERPRETED BY THE REGULATORY AGENCIES. MOST CONSUMERS DON'T WANT OR NEED THIS RIGHT. THEY FIND IT CONFUSING AND DON'T UNDERSTAND WHY THEY HAVE TO BE INCONVENIENCED BY COMING BACK TO THE BANK IN THREE DAYS TO RECEIVE THEIR PROCEEDS. IT TAKES TIME TO PREPARE THE LOAN DOCUMENTS AND DO THE VERIFICATIONS NEEDED IN A MORTGAGE TRANSACTION DURING WHICH THE CONSUMER CAN STILL BACK OUT. THIS REQUIREMENT CAUSES MANY CUSTOMERS TO LEAVE FEELING ANGRY WITH THE BANK FOR FOLLOWING THE RULES. IT WOULD SEEM MORE REASONABLE TO ALLOW CUSTOMERS TO WAIVE THIS RIGHT IF THEY DESIRED WITHOUT REGARD TO ANY EMERGENCY SITUATION.

REAL ESTATE SETTLEMENT PROCEDURES ACT (24 CFR 3500).
REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA) HAS BECOME A NIGHTMARE FOR THE BANKING INDUSTRY. FIRST IT HAS BECOME A MOVING TARGET HAVING CHANGED SEVERAL TIMES IN THE PAST TWO YEARS. IT HAS BECOME MORE DIFFICULT TO COMPLY WITH AS HUD HAS MADE THE REQUIREMENTS MORE COMPLICATED WITH EACH CHANGE. THERE ARE SEVEN EXEMPTIONS TO THE RESPA REQUIREMENTS. ONE OF THESE IS BUSINESS-PURPOSE LOANS WHICH THE REG STATES "GENERALLY PARALLELS REGULATION Z". RATHER THAN LEAVING THIS THE SAME AS REG Z, HUD ADDED LANGUAGE WHICH SAYS THE EXEMPTION FOR BUSINESS-PURPOSE LOANS DOES NOT INCLUDE ANY LOAN TO ONE OR MORE PERSONS ACTING IN AN INDIVIDUAL CAPACITY TO ACQUIRE, REFINANCE, IMPROVE, OR MAINTAIN ONE- TO FOUR-FAMILY RESIDENTIAL PROPERTY USED, OR TO BE USED, TO RENT TO OTHER PERSONS. THIS ADDS ONE MORE TWIST TO THE REQUIREMENTS THAT COULD BE MORE UNIFORM WITH REG Z.

RESPA DEALS WITH SIX DIFFERENT DISCLOSURE FORMS: SPECIAL INFORMATION BOOKLET, GOOD FAITH ESTIMATE, HUD SETTLEMENT STATEMENT, MORTGAGE SERVICING RIGHTS DISCLOSURE, AND THE INITIAL AND ANNUAL ESCROW ACCOUNT STATEMENTS. ONCE AGAIN RATHER THAN BEING SIMPLY ALL REQUIRED OR NOT, YOU MUST READ THE DESCRIPTION OF EACH DISCLOSURE TO DETERMINE WHETHER IT APPLIES TO A FIRST LIEN OR SUBORDINATE LIEN, WHETHER IT APPIES TO OPEN END AND/OR CLOSED END MORTGAGE LOANS. THERE ARE ALSO DIFFERENT TIMING REQUIREMENTS FOR EACH DISCLOSURE. FOR EXAMPLE, THE GOOD FAITH ESTIMATE WHICH LISTS THE ESTIMATED SETTLEMENT COSTS MUST BE GIVEN WITHIN THREE DAYS OF THE LOAN APPLICATION. THE MORTGAGE SERVICING RIGHTS DISCLOSURE WHICH JUST PROVIDES AN ESTIMATE OF WHETHER THE INSTITUTION WILL SERVICE THE LOAN OR SELL IT MUST BE GIVEN AT THE TIME OF APPLICATION IF IT IS RECEIVED IN PERSON OR YOU HAVE THE THREE DAYS IF IT IS NOT SUBMITTED IN PERSON. THIS IS VERY CONFUSING ESPECIALLY WHEN THE GOOD FAITH ESTIMATE INFORMATION WOULD APPEAR MORE IMPORTANT THAN THE SERVICING RIGHTS DISCLOSURE.

MOST OF THE DISCLOSURES ARE IMPORTANT AND IT IS GOOD BUSINESS TO MAKE SURE THE CUSTOMER IS AWARE OF THE COSTS ASSOCIATED WITH THEIR LOAN, HOWEVER, THIS REGULATION NEEDS TO BE SIMPLIFIED AND MADE MORE UNIFORM WITH REGULATION Z. IT SEEMS AFTER SEVERAL ATTEMPTS THAT HUD IS NOT CAPABLE OF DOING THIS AND THE RESPONSIBILITY FOR RESPA WOULD BE BETTER HANDLED BY THE FEDERAL RESERVE.

NATIONAL FLOOD INSURANCE REFORM ACT.
SECTION 528 REQUIRES THE DEVELOPMENT AND USE OF A STANDARD FORM TO DETERMINE WHETHER IMPROVED REAL ESTATE IS IN A FLOOD ZONE. BECAUSE OF THE DETAILED INFORMATION ON THIS FORM AND THE LIABILITY TO THE BANK WE NOW

HAVE AN OUTSIDE COMPANY COMPLETE THE DETERMINATION FORM FOR US. THE COST IS $12.50 PER LOAN WHICH IS PASSED ON TO OUR CUSTOMERS.

SECTION 524(e)(1) REQUIRES BANKS TO NOTIFY THE BORROWER AT THE TIME OF ORIGINATION OR AT ANY TIME DURING THE TERM OF A LOAN WHEN FLOOD INSURANCE IS NEEDED. THIS MEANS THAT IF THE FLOOD MAPS CHANGE BANKS MUST BE ABLE TO TRACK THEIR LOANS SECURED BY IMPROVED REAL ESTATE BY ADDRESS OR LEGAL DESCRIPTION TO BE ABLE TO IDENTIFY THOSE THAT NEED FLOOD INSURANCE. TO REQUIRE BANKS TO PERFORM A DETERMINATION OTHER THAN AT ORIGINATION SEEMS EXCESSIVE. WE COULD NOT DO THIS WITHOUT SUBSTANTIAL INVESTMENT IN SOFTWARE OR PROGRAMMING. THE MOST COST EFFECTIVE METHOD FOR US TO HANDLE THIS REQUIREMENT WAS TO AGAIN HIRE THE SAME COMPANY THAT DOES THE INITIAL DETERMINATION TO TRACK FLOOD MAP CHANGES OVER THE LIFE OF THE LOAN. THIS OPTION COSTS OUR CUSTOMERS AN ADDITIONAL $10.00 FOR EACH LOAN WHETHER THEY ARE IN A FLOOD ZONE OR NOT. BANKS HAVE BEEN REQUIRED TO DOCUMENT THEIR DETERMINATION OF FLOOD ZONE FOR SOME TIME, HOWEVER THESE NEW REQUIREMENTS HAVE FORCED US TO ADD COSTS TO THE CUSTOMER WITH NO BENEFIT TO THEM. WHY SHOULD BANKS BE REQUIRED TO NOTIFY CONSUMERS OF FLOOD MAP CHANGES? THIS RESPONSIBILITY WOULD BE BETTER HANDLED BY FEMA OR ONE OF THE OTHER GOVERNMENT AGENCIES INVOLVED WITH FLOOD INSURANCE. THIS ISN'T A BURDEN FOR WHICH OUR CUSTOMERS SHOULD HAVE TO PAY.

SECTION 522(b)(1) REQUIRES BANKS TO ENSURE THE LOANS IN A FLOOD ZONE ARE COVERED BY FLOOD INSURANCE FOR THE LIFE OF THE LOAN. AGAIN THIS ADDS A BURDEN ON THE BANK TO DEVISE A SYSTEM TO TRACK THE INSURANCE. CURRENTLY SECTION 1364 (C) REQUIRES FEMA TO NOTIFY THE SERVICER OF THE LOAN OF THE EXPIRATION OF THE FLOOD INSURANCE 45 DAYS PRIOR TO EXPIRATION. IT WOULD SEEM MUCH SIMPLER TO REQUIRE FEMA TO NOTIFY THE SERVICER ONLY IF THE FLOOD INSURANCE WAS NOT RENEWED. THE SERVICER COULD THEN RELY ON THOSE NOTICES AND FOLLOW UP ON NONRENEWALS RATHER THAN TRACKING ALL FLOOD INSURANCE POLICIES ON ITS OWN SYSTEM.

FAIR HOUSING ACT

THE RECORDKEEPING REQUIREMENTS OF THIS REGULATION ARE DIFFERENT FOR NATIONAL BANKS AND STATE BANKS. ALL NATIONAL BANKS MUST OBTAIN 20 PIECES OF INFORMATION AS PART OF A COMPLETED APPLICATION FOR A HOME LOAN. 12 CFR 27.3(b) SPECIFICALLY SAYS "SHALL ATTEMPT TO OBTAIN THE INFORMATION", HOWEVER, THE OCC HAS INTERPRETED THIS TO MEAN THE INFORMATION MUST BE DOCUMENTED EVEN IF THE BANK AND THE CUSTOMER DON'T KNOW. SOME OF THE ITEMS REQUIRED ARE: YEAR THE HOUSE WAS BUILT, NUMBER OF YEARS APPLICANT HAS BEEN EMPLOYED IN THEIR PRESENT LINE OF WORK AND NUMBER OF YEARS APPLICANT HAS BEEN EMPLOYED IN THEIR PRESENT JOB.

STATE BANKS REGULATED BY THE FDIC NOT LOCATED IN A METROPOLITAN STATISTICAL AREA (MSA) OR WITH TOTAL ASSETS OF $10 MILLION OR LESS ARE ONLY REQUIRED TO OBTAIN NINE PIECES OF DATA PER FDIC REGULATION 338.7(a)(1). STATE BANKS WITH AN OFFICE LOCATED IN A MSA AND TOTAL ASSETS OVER $10 MILLION NEED TO REQUEST 34 ITEMS ON A HOME PURCHASE LOAN APPLICATION.

THE DIFFERENCES IN REQUIREMENTS FOR NATIONAL AND STATE BANKS ARE UNNECESSARY. IT IS ALSO UNNECESSARY TO REQUIRE ALL OF THIS INFORMATION BE COMPLETED. THE ITEMS ARE REQUESTED ON THE APPLICATION. IF THE CUSTOMER DOESN'T KNOW OR CHOOSES NOT TO ANSWER AND THE LOAN OFFICER CAN MAKE A

DECISION WITHOUT IT, THE BANK SHOULD NOT BE PENALIZED FOR NOT FILLING IN ALL THE BLANKS.

OVERALL MORTGAGE LENDING HAS BECOME SO COMPLICATED THAT BANKS CAN NOT AFFORD TO DO ALL OF THE DISCLOSURES IN HOUSE. IN ORDER TO REDUCE THE RISK OF NONCOMPLIANCE MOST ORGANIZATIONS SUBSCRIBE TO AN OUTSIDE VENDOR WHICH GUARANTEES ITS DISCLOSURES AND CALCULATIONS WILL REMAIN IN COMPLIANCE WITH FEDERAL REGULATIONS. SECURITY NATIONAL BANK'S CURRENT SOFTWARE WAS PURCHASED FOR APROXIMATELY $32,500 AND COSTS $4,500 ANNUALLY. IN ADDITION TO THE SOFTWARE COSTS, WE ESTIMATE THAT IT TAKES THREE QUARTERS OF A FULL-TIME EMPLOYEE TO ENSURE COMPLIANCE WITH THE MORTGAGE LOAN REGULATIONS ALONE. THIS SEEMS EXCESSIVE FOR ONLY ONE BANK PRODUCT.

Mr. MCINTOSH. Thank you very much. I appreciate that. There is also the Banking Reform Act that is pending in the committee that will deal with some of those but not all of those problems. I appreciate hearing that, particularly the testimony making it very real to the average person. I know there are a lot of regulations that the banks have to deal with, but the mortgage is probably the one where most people have the intersection with what you do. Thank you for coming and giving that.

I have a couple of questions. First, let me introduce a couple of our colleagues. One is Congressman Gil Gutknecht from Minnesota, who is here. Gil, welcome. Would you like to make any opening remarks at this time?

Mr. GUTKNECHT. Well, the only thing I would say, Mr. Chairman, I am sorry I am a little late. It is great to be in Sioux City. I am a native of Cedar Falls, IA but I must confess I have never been to Sioux City before.

Mr. LATHAM. What? [Laughter.]

Mr. GUTKNECHT. We have been by it. I have flown through the airport but I have never been downtown. It is great to be here. I would also say that one of the greatest compliments I receive in Washington is sometimes people mistake me for Congressman Latham. [Laughter.]

So, it is great to be here.

Mr. LATHAM. You have my sympathy. [Laughter.]

Mr. GUTKNECHT. I think the testimony—and this is another issue that I am interested in because I am also a real estate broker. I mean, when you look at the mountains of paperwork and disclosures that we now require, some at the Federal and some at the State, it is amazing. This is excellent testimony. I am sorry that I am a little late.

Mr. MCINTOSH. No problem. Welcome. I am glad you made it here.

Another of our colleagues is here with us today. We invited all of the Presidential candidates and the one from the House of Representatives who is running took us up on the offer to come and make a statement about regulations. Bob, if you can let us finish with this panel and then I would like to have you join us in making statements.

Mr. DORNAN. Sure. I was also a real estate broker at one time. I just realized that is not in my bio or resume. So, hello, fellow real estate brokers. [Laughter.]

Hello, folks. How are you doing?

Mr. MCINTOSH. Thank you for joining us today. I know you have a busy schedule.

Mr. DORNAN. I do.

Mr. MCINTOSH. Let me ask a couple of questions and turn it over to my colleagues, if they have additional ones.

Mr. Calhoun, you mentioned the MSDS, or material safety data sheets. I am familiar with those and some of the strange requirements that they have in that area, hearing examples of people who tell me they have been fined for not having a material safety data sheet for Dawn dishwashing liquid. They happened to have the one for Joy but they bought Dawn that week and put it in their washroom and were fined for having the wrong one on file. So there are

a lot of instances where people were being—the agency seemed to be using it as a way of generating fines by finding minor technical violations. But what intrigued me was, I had always suspected that no one really paid attention to these, because in addition to some very real hazards in the workplace, they required paperwork in the same area and on the same proportion and seriousness on a lot of more trivial substances. Dirt, sand and sawdust were some of the ones that I have seen. And I always wondered, would that mean that people would just choose to ignore them because they did not know which were serious and which were not? Your survey seems to confirm that. But I wanted to check with you if your employees indicated—the 493 who had not looked at them, if they gave you any reasons why they had decided not to do that, or chose not to?

Mr. CALHOUN. Well, quite frankly, what generally happens is, we train our employees in orientations and then in refresher types of training throughout the course of the year, and when asked—and we always cover these areas over and over and over again. And when asked if people knew about MSDS's and asked if they had used them, as I indicated, I think that seven said they had and the majority of the others had forgotten they existed or forgotten where they were stored.

Mr. MCINTOSH. So they were not something that they were that conscious about?

Mr. CALHOUN. No.

Mr. MCINTOSH. Is it your experience that there is indeed some valuable information in there but it ends up being diluted by a lot of information that is not of great value to people who are concerned about safety?

Mr. CALHOUN. Well, I think there is an obvious need to have information available to employees on hazardous chemicals. I think that the problem comes in is that the definition of hazardous chemicals is rather gray and as a result, I would agree with you that it dilutes the importance of some of the other materials.

Mr. MCINTOSH. I will tell you the most recent example I heard was yesterday when I was visiting with several doctors in a hospital and one of them reported that a colleague had been cited by OSHA for failing to have an MSDS on white out that they kept in their nurses station. So when you start getting those type of hazards on the same plane with very real chemical threats that if they are not treated correctly could be very life threatening, it is no wonder people find it difficult to differentiate the risk.

Thank you. I would be interested if you have any more information on that survey. That is something that I think I would like to make use of and let other people know about. If you would not mind? That would be very helpful to us.

Mr. CALHOUN. Certainly.

Mr. MCINTOSH. The other question I have; Mr. Bailey, you mentioned legal fees and the costs that were imposed there. Do you think it would help if the agencies had to live under something we call the loser pays rule or the English rule that says if they come in and they challenge you, or they cite you for something but you prove that you are innocent and have not done anything wrong, that they had to compensate you for the legal fees spent. Would

that make them think twice about some of the citations that they issue?

Mr. BAILEY. I think it may make them do their homework a little bit better before they dive in. I would like to comment, regulations are good. I think this is one of the greatest countries in the world and regulations are kind of like locks. They keep honest people honest. Right now with the tremendous pressures in Washington on these agencies to cut funds, they are going—they have to get funds somewhere else and they are tending to turn from accident prevention or aid regulatory agencies to criminal prosecution agencies and they need capital to finance their business of regulating people. Desperate people do desperate things, somewhat like locks keep honest people honest. If somebody needs something, a lock is not going to make any difference. That is what happens with some of these regulatory agencies. They need funds to continue and it puts tremendous pressure on them to break down your door. Most people will just pay the legal fee and cut it short like we did, or else we would sit and battle this thing—this started in—the first letter was in 1993. We would be into the next century as part of this $5 million cleanup, and we would have half a million dollars in legal fees. We chose to cut our losses. But as is evidenced by the testimony submitted, this was a clear cut deal, we were not involved. Gotcha, as you say.

Mr. MCINTOSH. Yes, I know exactly. And one of the things President Clinton has done is task the Vice President with finding out ways of improving the efficiency of government. I actually borrowed that phrase from him. His goal is to prevent the agencies from playing gotcha. Hopefully, we will be able to pass some legislation to make that stick and create the right incentives for it.

Thank you all. I appreciate it.

Tom, do you have any questions?

Mr. LATHAM. Yes, just briefly.

Mr. Calhoun, can you—and I know your company very well. They are very responsible corporate citizens. What substance was leaking? What was found in your underground storage tank?

Mr. CALHOUN. Gasoline.

Mr. LATHAM. It was gasoline. Do you have any estimate about what it cost to have all of the studies and consultants and everything? Do you have a number as to any estimate of what that cost you to go through the whole process that has taken 7 years?

Mr. CALHOUN. Well, the $40,000 number—actually, it is not a complete cost of Wells' Dairy. Some of that funding is supplied through GAB and the State of Iowa. So, surprisingly enough, most of that $40,000 is taxpayer money. The additional money that was spent—and there was a substantial amount of money spent on consultants and so forth; no, I do not have an exact figure.

Mr. LATHAM. But the cost of the cleanup was about $40,000?

Mr. CALHOUN. The clean up has actually just begun.

Mr. LATHAM. So even though you spent—or there has been $40,000 used up in the whole process over 7 years and it is still not cleaned up, you do not know what the whole thing is going to cost you?

Mr. CALHOUN. No, sir.

Mr. LATHAM. Seven years later?

Mr. CALHOUN. Right.

Mr. LATHAM. Mr. Bailey, I would just like to ask you about your experience with Superfund obviously, and the idea of retroactive liability and if you have any feelings as far as that is concerned. The committee I serve on, Transportation and Infrastructure has some authority as far as reforming Superfund. Your insights on that would be very helpful to me.

Mr. BAILEY. I believe companies need a way to protect themselves against future liability if they can prove that they have followed the letter of the law today.

Mr. LATHAM. I think you are probably well aware there are businesses—small businesses complying with the law today—communities in their own dump sites that are complying with the law today, that some day down the road they can come back and go after you again, the communities or the businesses, even though at the time you did it, you were in compliance with the law. To me, it seems a lot like extortion in a sense.

Mr. BAILEY. No comment.

Mr. LATHAM. Oh. [Laughter.]

Hey, you can feel free to talk to me.

Mr. BAILEY. The technologies advance in time and that is really how we know about some of these hazardous wastes today. Our fathers, grandfathers, great grandfathers, they were trying to do right, and as we developed advances to determine levels of different toxics and chemicals and so forth, we found that some of the things we did in the past were not the right thing to do. But, we do not know that today.

Mr. LATHAM. But they were legal when you did them.

Mr. BAILEY. They were legal when we did them. But we can go back 1 year, 10 years—I do not know how far back we can really go—and be brought into things that were very innocent at the time.

Mr. LATHAM. Yeah.

I guess I would like to hear Mr. Higman's opinion on the loser pays situation when he spent a quarter of a million dollars fighting an agency and was found not guilty.

Mr. HIGMAN. Quite frankly, I think it is a good idea, Mr. Latham.

Mr. LATHAM. I thought maybe you would.

Mr. BAILEY. And we would like that retroactive, too. [Laughter.]

Mr. LATHAM. I guess one thing, Ms. Prescott, all of the regulations that you have to comply with—and you have been focusing pretty much on mortgage loans. Having some experience in my background with the CRA and everything else, I mean, what you are focused on here is just one aspect of the cost of regulatory burden that you share and you pass the cost on to your customers obviously. I think one very interesting statement that you made in your testimony is how it is very important for the disclosure of very important facts in the transaction, but because you have got 21 documents and they are signing 49 pieces of paper, the customer looks at this pile and really does not read anything because it is too much to comprehend. What is your feeling on that? I mean, I think we are doing a terrible disservice to your customers because

they are not being made aware of what is important. It is being blurred in this huge barrage of paper.

Ms. PRESCOTT. Exactly. I mean, I think it is important that we make those disclosures. It is important for us that they know what the cost of this loan is going to be up front. I do not have any problem with that. But when you put all of the extras in there that the regulations are requiring us to disclose and calculate, they do not want to know those things. Then they do not understand or they do not hear the important things that they need to know. You are exactly right.

Mr. LATHAM. Thank you, Mr. Chairman.

Mr. MCINTOSH. My pleasure. Thank you.

Mr. LATHAM. And I want to thank the witnesses personally for appearing here.

Mr. MCINTOSH. I appreciate that. This information will be very helpful to us in several areas.

Mr. Gutknecht, do you have any questions for our panel?

Mr. GUTKNECHT. No. I want to allow enough time—the only thing I would say in terms of comments made about our ability to measure now. We did have at one of our other field hearings a gentleman who actually helped develop the technology for the spectrometer which allows us now to measure parts per billion and soon to be parts per trillion, where we could not measure them before. I am not sure we are really better off knowing that. But we did have the gentleman who helped develop that technology. He sometimes rues the day that he helped work on that.

Mr. MCINTOSH. Well, thank you very much.

Thank you very much for joining us today. And if there are any additional materials that you think we should be aware of, please do not hesitate to contact us or let Tom know and he can get them to our subcommittee. We appreciate greatly your participation.

Mr. HIGMAN. Thank you for the time.

Mr. CALHOUN. Thank you.

Mr. BAILEY. Thank you, Tom.

Ms. PRESCOTT. Thank you.

Mr. LATHAM. Can we keep the roll of paper here?

Mr. MCINTOSH. Yes. Actually, that would be helpful. I think we should go on the floor and have a colloquy.

Mr. GUTKNECHT. It might make a nice special order.

Mr. MCINTOSH. Yeah. I think when we get back, we ought to share this with our colleagues.

Mr. LATHAM. I think so, too. Look for this on C–SPAN some night, a special order.

Mr. MCINTOSH. That is right.

Before we move to our second panel, let me now turn to our colleague, Mr. Dornan, from California and welcome him to our field hearing. This is the 11th field hearing we have had outside of Washington where we are hearing from real people about real problems our government creates.

Mr. DORNAN. I have one question and then I will skip through an opening statement that is more generic to the whole country than specific to what a lot of people are calling the great State of Iowa this week. Have you had any restauranteurs, people who feed us, as witnesses in the course of your travels?

Mr. MCINTOSH. We have. We have had a couple.

STATEMENT OF HON. ROBERT DORNAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DORNAN. In California, whenever I visit one of the restaurants in my district, the owner, the proprietor or the manager will take me to a wall where there are about 10 or more plaques on the wall, licenses put up, things to conform to. My dad was a restaurant owner for awhile and it is one of the tightest profit margins—like some farming, I guess—1, 2, 3 percent. And you can just break a person so quickly in the first year with over-regulation when they have put all of their capital into it. And it is usually a family operation with in-laws and an extended family putting in some money to invest in a restaurant, and if you break them in the first year with over-regulation, they will never do it again. They will never come back in. I think that is why we see family restaurants disappearing and franchises spreading where they have an army of lawyers to handle all of this.

Let me—just by way of letting your audience here at this hearing—to get into the formal record here, just give some opening remarks, if I may, Mr. Chairman. Thank you again for holding these field hearings. I did not know that you already had 11 under your belt. I have been impressed by your dedication and the commitment to making government work on behalf of all Americans, rather than working against their best interest. And this, of course, applies to the whole dynamic freshman class which takes a lot of heat from the dominant media culture. But, I think that those of us who were reaching a frustration level in the Congress that was causing a lot of departures and a lot of frustration were relieved to see you come in. I have said more than one time to you and to Tom and to Gil in the cloakroom that if ever there was a calvary movie with a cliche ending of 73 troopers coming up over the ridge with bugles blowing, that is the way I look at the freshman class of the 104th Congress.

I am equally impressed with you particularly, Mr. Chairman, your understanding of the legislative process. Again, this goes through the whole freshman class, but very few freshman Congressmen know the ropes as well as you do, Mr. Chairman, and I have certainly enjoyed serving and working with all of the members on the panel here.

I hope my own short testimony today is helpful and will just fill a niche that might not be otherwise addressed to inform anybody that sees the videotape product of this or that is in the audience today. One of my primary interests in serving in the new Republican majority—and I had 6 years in west Los Angeles County and 10 years in Orange County. I am the Congressman for Disneyland. I represent a Democrat district by 51 percent to 40. A blue collar district, but Reagan Democrats basically. We do have some farming, strawberries. There used to be orange groves but they are pretty much gone. But it is basically a bedroom suburban community for a lot of the surrounding light manufacturing and some aerospace industry in the area. It is a landlocked district, unlike the other districts of our friends Mr. Cox and Mr. Rohrabacher who have upscale beautiful homes overlooking the Pacific. But in that

area, there are a lot of similarities in income level to the entire State of Iowa.

We all know that we need a fundamental change to our tax structure. Perhaps we are going to get a shot at a flat tax this year. I do not know where to squeeze it in with only 6 months of activity and 13 appropriations bills to pass, given that we will take off, I guess, some part of August and will adjourn around the first week in October to have 1 month of campaigning. But maybe with a little luck, we might get a shot at it. Then next year seriously consider under our great chairman of the Ways and Means Committee, Bill Archer, who is about the best tax expert I think in the city. Even our Speaker would concede this. He replaced George Bush in 1970 in the Houston seat and Bush had been given a seat on Ways and Means as a freshman, which was unheard of in those days, and he did not even have a primary—or a general challenge on his first go around. So Bush really got a 4-year run on Ways and Means, lost to Lloyd Bentsen, who has now gone back to farming in Texas. And 26 years ago, a very young man named Bill Archer got that seat and for the last year he has been chairman of Ways and Means, and he convinced me 3 years ago that the flat tax would only be a resting spot—a plateau, he calls it—on the way to a consumerism tax where the States would go back to our original Federal system. They would collect the revenue and they would send it to the central government and not have the central government dangling grants back at the States as though it was wonderful to return the States own taxpayers' money to them. And by doing it that way, a consumerism tax, we could totally shut down the IRS, repeal the 16th amendment and return this country to a true Federal system which it is not anymore.

Other systemic reforms do not always get the same kind of attention as big tax held defense issues. Even so, they are just as important. For instance, something the chairman and I have worked on—and the freshmen are great on it—is lobbying reform. It is a huge issue affecting the very nature of how things get done in Washington. I was very pleased to see during that first 1995 session, that with your help, Mr. Chairman, my provision to prohibit certain lobbying groups from receiving tax dollars finally made it into law. Those of us who know how our government works know the importance of that single small step.

Another reform which is yet to occur is a counterpart. Government oversight and regulatory review are desperately needed in the area of Federal grants. Thirty billion dollars every year is poured into direct grants going to various entities and organizations, and yet, there is very little, if any, accountability in the system. Mr. Chairman, you have been a leader in attempting to reform this problem. And while various procedural strategies arose last year, I must say that I appreciate your support for my zero tolerance approach. This approach is very simple to understand. A long-standing law has held that no tax dollars can be used to lobby any level of government or influence any legislation. In other words, take a group, XYZ, they get a grant of $100,000 to provide Head Start in the community is prohibited from spending $1 of that money on lobbying Congress. What is not widely known, and certainly is not completely understood by most taxpayers, is that

group, XYZ, can get another $100,000 from a private sector donor, say the Ford Foundation, given for the exact purpose of lobbying Congress to appropriate more taxpayer money in the future. The $100,000 grant from taxpayers in essence frees up for lobbying purposes the $100,000 received through private donations. As we know, this money game is called fungibility. Tax dollars are fungible, hence, a group involved in lobbying Congress that also happens to receive a Federal grant is thereby doing so at taxpayer expense. I have got some specific examples and I will just submit them for the record.

In each of these cases—hundreds of others—a grant recipient was lobbying Congress to continue the taxpayer money flow. Not once over the years have I ever received a letter—I wonder if any Member of Congress on the panel has—from a giant recipient telling me it is time to cut back their funding. Mr. Chairman, it is the nature of the Federal beast, this problem just is not some aberration, it is the rule. The only thing left for us to do is to disconnect the tube. We must effectively prohibit grantees from directly lobbying for the continuation of the grants they receive. And, of course, any time you dry out an addict, you meet intense resistance. All sorts of excuses will be made as to why these groups ought to be able to lobby for the tax dollars they receive. And you will recall my plan embodied in H.R. 1130, this plan takes each of these main objectives into consideration. And again, I will submit for the record how that works out.

Let me just conclude—and again, reemphasizing how happy I am to join this panel. To take a moment to raise another regulatory subject that is often overlooked. In 1987, then Ronald Reagan, who celebrated his 85th birthday 2 days ago, he issued an Executive order requiring all new Federal regulations to undergo scrutiny, prior to being issued, regarding how that regulation might impact families. Of course, that in a broad sense is what you discuss at every hearing. The intent of President Reagan's order—actually written by our friend Gary Bauer of the Family Research Council—was to stop confiscatory financial assault and immoral cultural attacks by the Federal Government that was underway against the traditional two-parent family. Mr. Chairman, I strongly urge your subcommittee to look into reviving this regulatory oversight that protects the American family. After all, we should not pursue regulatory reform for the singular reason of increasing Wall Street's profit margins. We should look deeper into the soul of our Nation and find our ultimate purpose in increasing the quality of life for the fundamental social, moral and yes, economic foundation of all western civilization, the traditional American family.

I thank you for this opportunity to come to the great State of Iowa and participate in one of your important hearings. Again, I am very impressed with your spirit and dedication. And again, out of the whole freshman class, on behalf of our American people, God bless you in all or your efforts out there on the road in the heartland, the real America.

[The prepared statement of Hon. Robert Dornan follows:]

REMARKS BY
CONGRESSMAN ROBERT K. DORNAN
BEFORE THE
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS
FIELD HEARING, SIOUX CITY, IOWA
FEBRUARY 8, 1996

Thank you, Mr. Chairman, for holding these field hearings on government and regulatory reform. I have been one of the most impressed by your dedication, and commitment to making government work on behalf of all Americans rather than against their best interests. I am impressed with your understanding of the legislative process. Few freshmen congressmen know the ropes as well as you do. I have enjoyed serving and working with you.

I hope my testimony today is helpful and will fill a niche that might not otherwise be addressed. One of my primary interests in serving in our new Republican majority has been how we might best be able to permanently reform a system that has long been out of control. We all know the need for fundamental changes to our tax structure. Perhaps we might get a shot at a flat tax this year rather than next ... and then next year we might consider getting rid of the IRS altogether, repealing the

16th Amendment, and establishing a consumption tax in its place.

Other systemic reforms don't always get the same kind of attention as big tax, health, or defense issues. Even so, they are just as important. For instance, ~~and the Chairman can probably anticipate what I am about to say,~~ lobbying reform is a huge issue affecting the very nature of how things get done in Washington. I was very pleased to see during our 1995 session ~~last~~ — with your help — that my provision to prohibit certain lobbying groups from receiving tax dollars made it into law. Those of us who ~~really~~ know how our government works know the importance of this single small step.

Another reform which has yet to occur is a counterpart ~~to the aforementioned.~~ Government oversight and regulatory review are desperately needed in the area of federal grants. Over thirty billion tax dollars every year are poured into direct grants going to various entities and organizations. And yet, there is very little accountability in the system. Mr. Chairman, you have been a leader in attempting to reform this problem and, while various procedural strategies arose last year, I must say that I appreciate your support for and encouragement of my "zero tolerance" approach.

This approach is very simple to understand. A long-standing law

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has held that no tax dollars can be used to lobby any level of government or influence any legislation. In other words, Group XYZ getting a grant of $100,000 to provide Head Start in a community is prohibited from spending one penny of that money on lobbying Congress. What isn't widely known, and certainly isn't completely understood by most taxpayers, is that Group XYZ might get another $100,000 from a private sector donor given for the exact purpose of lobbying Congress to appropriate more taxpayer money in the future. The $100,000 grant from taxpayers, in essence, frees up for lobbying purposes the $100,000 received through private donations. As we know, this money game is called *fungibility*. Tax dollars are fungible, hence, a group involved in lobbying Congress, that also happens to receive a federal grant, is thereby doing so at taxpayer expense.

Let me get even more specific. Every day in Congress we are flooded with mail asking us to support this program or reject that program from organizations which are drawing heavily from the United States Treasury. I remember one letter received last year from the American Association of Retired Persons (AARP) lobbying me to vote against our Budget Committee's budget resolution, which of course cuts federal spending dramatically in many areas supported by AARP. A cursory check of the Post-Award Grants Information Services, available to every Member online from House Information Resources, revealed that AARP received

no less than 16 federal grants in 1994 totaling over $19 million. I was sent a similar letter from the American Federation of State, County and Municipal Employees (AFSCME). Even this pro-big government labor union received $150,000. Other letters followed from various environmental organizations all of whom receive tax dollars.

In each case, and hundreds of others like these, a grant recipient was lobbying Congress to continue the taxpayer money flow. Not once over the years have I received a letter from a grant recipient begging me to CUT their funding. Mr. Chairman, it is the nature of the federal beast ... this problem isn't just some aberration. It is the rule. The only thing left for us to do is to disconnect the two. We must effectively prohibit grantees from directly lobbying for the continuation of the grants they receive.

Of course, any time you try to "dry out" an addict you will meet with intense resistance. All sorts of excuses will be made as to why these groups ought to be able to lobby for the tax dollars they receive. You may recall my plan, Mr. Chairman, embodied in my bill HR 1130. This plan takes each of these main objections into consideration. We would not keep any citizen from rightfully contacting his or her Member of Congress on any subject. Neither would my bill affect those individuals who receive federal funds other than awards, grants, or contracts -- for

instance, entitlements. Notwithstanding these preclusions, HR 1130 would apply across the board – no exceptions. No exceptions for universities. No exceptions for state or local governments. No exceptions for media or religious entities. [redacted] exceptions for defense contractors. [redacted] exceptions [redacted] create a slippery-slope that [redacted] take accountability away from Members who were elected to make smart and informed spending decisions in an atmosphere of impartiality.

Before I conclude, allow me to take a moment to raise another regulatory subject that is often overlooked. In 1987, then-President Ronald Reagan issued an Executive Order requiring all new federal regulations to undergo scrutiny, prior to being issued, regarding how that regulation might impact families. The intent of the Order, actually written by Gary Bauer of the Family Research Council, was to stop the vicious confiscatory financial and immoral cultural attack by the federal government that was well underway against the traditional two-parent family. Mr. Chairman, I strongly urge your subcommittee to look into reviving this regulatory [redacted] the American family. After all, we should not pursue regulatory reform for the singular reason of increasing Wall Street's profit margins. We ought to look deeper, into the soul of

our nation, and find our ultimate purpose in increasing the quality of life for the fundamental social, moral, and, yes, economic foundation of all western civilization: the traditional family.

Mr. Chairman, thank you for this opportunity to come to this great State of Iowa and participate in this important hearing. Again, I am very impressed with your spirit and dedication on behalf of the American people. God bless you in your continued efforts.

Mr. MCINTOSH. Thank you very much, Bob. Thank you for joining us today. It is an exciting time for us to be in Iowa, as I am sure everyone is aware, as the Nation begins to focus their attention here. It is an appropriate occasion for us to be gathering some information about very real problems from people.

I want to work with you also on this notion of the impact of regulations on families because I think you have a very good point there. It is often overlooked in the economic data, but there are real and severe impacts on some regulations on our families and it would be a good thing for us to focus attention there as well.

Mr. DORNAN. Well, the family farm, the family real estate business, as I said, the family restaurant. We break them. And unless you have an army of corporate lawyers—one line I stumbled into in this Presidential chase, and if I lifted it from somebody, it was deep in my subconscious. And that is that rich people do not need a President. They live in gated communities. They drive around in limousines with tinted windows. If they do not have their own Canadian Challenger jet or a Gulfstream jet, they wait in a special lounge and get a five course meal behind curtains in first class. Usually they are in their own jet. They just do not feel the effect of downturns in the economy. They do very well in bad times; they do exceedingly well in good times, and they just do not need a President. First of all, if you look at Iacocca or Eisner of Disney, their income, they make 100 or 200 times more than the President of the United States. So who is the President really for? Middle class taxpaying Americans, and as Mother Theresa would say, the truly poor and vulnerable. They need a President. And if that middle group, the taxpayer, is asked to carry the load of the people that are vulnerable and have had a couple of tough shots in life, then they ought to be part of process and asked permission more instead of just told to ante up the tax dollars and shut up and take the regulations as they come at them. That is why this is important work we are doing, and I just hope the American people understand that there are 347 days until the next inauguration. That is my Clinton countdown watch. [Laughter.]

If the Republican party loses control of the House and the Senate, no matter what your politics are, then just understand that it was not Hoover's election that turned control of the Government over to Democrats and within about 20 years it became the liberal Democrats. That was 1930, the first election after the crash of October 1929, and 1930 to 1996 is 66 years, and the Republicans had two 2-year bursts before this last year. So if this is to be a 2-year burst again, that will mean the Republican party has had three 2-year operations where you barely gin up a reform program, let alone a revolution, and that means 60 out of 66 years belong to one party and they are going to get it again in 1997 and 1998. I hope the American people understand that they ought to give the loyal opposition that just took the House back a year ago and the Senate at least 4 years to try and see if we can turn around this headlong rush toward financial bankruptcy. And what I have tried to bring to this campaign—and I think I am having some effect. Everybody is starting to talk about faith, family and freedom, my battle cry from day one. I have used it five out of my nine campaigns. That the moral bankruptcy that we are heading toward—that we are in

in some cities—is equally, if not superior, to the financial bankruptcy. So, I just hope that your chairman, 1 year from now, is still having hearings in the field. It may be my last term, but I just hope that our party is up to holding onto the House and the Senate and getting a 4-year burst for the first time since 3 years before I was even born, and I am a senior citizen.

Mr. MCINTOSH. Thank you. I appreciate you joining us today in the middle of your busy schedule.

Let us now turn to our second panel, which is several people who have been active in the agriculture industry. If Mr. Craig Davis could come forward; Mr. George Valentine and Mr. Ron Marr.

Mr. GUTKNECHT. Mr. Chairman, I would like to congratulate Congressman Dornan for saying what certainly needs to be said outside of the beltway. Just to reiterate one point that he made, because I am not certain it has been covered as well as it needs to be outside of the beltway. We have had an awful lot of flack about your efforts to rein in on the amount of subsidies that special interests get. But, I want to reiterate a point to be made, over $30 billion in Federal grants are going out to various groups and we really have an incredibly weak level of accountability for those funds, and it is amazing. There have been estimates—we have heard wild estimates anywhere from $200 million to several billion dollars that actually gets plowed back into some kind of political activities. I think if the American people begin to hear more about that, I think they are going to share the outrage that you and I have had. I want to thank Congressman Dornan for raising that point because I think it is something that the American people need to understand, how much money is flowing through the Federal Government back to special interests and then back through the political process. It is a revolving door that needs to stop. Thank you for bringing it up.

Mr. MCINTOSH. Thank you, Gil. I appreciate that. You are absolutely right.

Our next panel are three businessmen who have been very active in the agricultural area here. Let me ask you all to please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you very much. Let the record show that each of the witnesses answered in the affirmative.

Our first witness is Mr. Craig Davis who is the owner of Davy's & Jim's Seed Store. Welcome and thank you for coming, Mr. Davis.

STATEMENTS OF CRAIG DAVIS, DAVY'S & JIM'S FEED STORE; GEORGE VALENTINE, TERRA INDUSTRIES, INC.; AND RON MARR, PETROLEUM MARKETERS OF IOWA

Mr. DAVIS. Thank you.

Mr. Chairman, first of all, for the record, I would like to say it is Davy's & Jim's Feed Store, not seed store. I do not want Congressman Latham to have any defensive reaction here. [Laughter.]

Mr. MCINTOSH. Thank you for catching that. He might be worried that you were branching out.

Mr. DAVIS. No, not at all. [Laughter.]

Davy's & Jim's—excuse me. Davy's Feed Store started as a small feed dealership in 1958. Later it was incorporated into Davy's & Jim's Feed Store. In 1964, Davy's brother-in-law, Jim Bleil, pur-

chased 49 percent of the business. At that time, we began selling liquid fertilizers that we purchased from the Lohry brothers who owned and operated Nutra-Flo Chemical Co. in Sioux City.

In 1974, my brother Rob and I purchased Jim's share of the company stock. Both of us graduated from Iowa State University in Ames. Davy, which is our dad, has since retired and my brother and I operate the business. Davy's & Jim's sells fertilizer, chemicals, feed and seed and we provide custom application services.

We have seven full-time employees and hire five part-time people for help in the spring. Davy's & Jim's operates six different custom application machines, some of which cost several hundred thousand dollars each.

Our feed business had decreased each year with the ever-decreasing numbers of livestock in this part of the State. Our current customer base is made up of average sized to small farms. We do not deal with any quote, wealthy farmers, or those who farm over 2,000 acres. Twenty years ago, 90 percent of our farmers raised hogs, 60 percent of them fed cattle and all of them, of course, were raising grain. Today, we are losing livestock farmers by alarming numbers. I would estimate that no more than 25 percent of our farmers are raising hogs and less than 10 percent of them are feeding cattle.

Almost all of our fertilizer is custom applied and many of the chemicals we sell are applied with the fertilizer. Our gross sales for 1995 were over $1.7 million and were somewhat less than in past years. I would say that Davy's & Jim's is small to typical of the independent, full-service ag business in Iowa.

We started in business—when we started in business there were little regulations from Federal or State governments. Today, however, it is a different story. We are required to comply with EPA, OSHA, DOT, Iowa Department of Agriculture and Land Stewardship, the U.S. Department of Agriculture, Food and Drug Administration. As we speak, Tier II forms are being filed with the State. This form lists all the chemicals we have stored in our warehouse, including the determination of their physical and health hazards if they are involved in a fire or a spill. An emergency action plan is required to determine how chemical fires or incidents at our facility would be handled. All of this needs to be updated and filed annually with the local fire department, the local Emergency Service Planning Committee and the State.

The EPA regulates repackaging of bulk pesticides. Annual reports, maintenance and special equipment are all important in the proper handling of bulk pesticides. Atrazine use restrictions require careful monitoring of its use, both for our custom applied materials and for farmer applications. The Worker Protection Standard involves posting of warning signs in fields where certain pesticides are used and the use of personal protective equipment when handling pesticides. The point I want to make here is that not all regulations are bad; however, they just take up a lot of time.

Training has become a major effort for small agribusinesses. We must attend or provide training for employees to make them aware of the hazards associated with pesticides and/or any other hazardous materials they come in contact with while performing their job. We have to teach them how to read material safety data sheets and

product labels. All hazardous substances have MSDS's and they must be available for employee inspection and emergency use. We even must maintain MSDS's for a number of years. Two hours of continuing education are required for commercial applicators each year or they must retest. Anhydrous ammonia safety training is required annually for everyone who works with ammonia. The DOT requirement for drug and alcohol testing of commercial vehicle drivers requires that we train them on the effects of drugs and alcohol. My point again is not that the training is bad. It just takes too much time and so much money to complete it.

The DOT requires our drivers to have commercial drivers license and to inspect vehicles before every use of every day in addition to the annual inspection of our vehicles. We must have physicals for some of our drivers. All our CDLs must be on drug and alcohol random testing programs and we must provide shipping documents and hazardous material placards for almost all of the pesticides we sell. Again, all this takes time and money.

Our most costly regulation is still ahead of us. I am talking about secondary containment of our fertilizer storage. We have already complied with part of the law and have containment for a rinse pad and load out at a cost of over $5,000. The law requires licensed engineers to prepare the plans and with construction, the total containment system completed will cost approximately $100,000.

With our feed business, I have to comply with FDA regulations requiring drug inventories and usage information. Grain warehousing requires a considerable amount of paperwork. We have scale licenses, annual inspections on our feed delivery trucks and feed assays. I have not even mentioned workmen's compensation regulations, water waste management, unemployment laws, licenses and all forms of taxes and permits.

It has come to my attention that all of these regulations are not here just to help us, our business, but possibly to put us out of business.

I would like you to know that we are very concerned about the health and well-being of our employees and our community. I accept some of the regulations that we have knowing full well that it protects the environment, our people and our communities.

The problem that I have with regulations is the additional cost to me as a small business owner. Regulations which are passed and later rescinded still cost me time and money until they are changed. Clean air and emissions inventory questionnaires are a good example. I spend hours and hours filling out forms that are never used. I probably spend at least 6 weeks a year working on regulations in some form or another.

We are just a small family business trying to compete with major corporations. We live in Moville, a town of about 1,200 people in northwest Iowa and are very involved in our community. The financial support that we provide to our community is essential in keeping our small town alive. My concern for the burden of regulations on small businesses is not only the effect on the business but on my employees and my town. The real problem is that Government makes blanket regulations. I would like to continue to help farmers in my community. Unfortunately, if the Government con-

tinues to control my business with costly regulations, agriculture will be left to only the big corporations.

Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Davis. I appreciate that. We will come back for a couple of questions.

Our next witness on this panel is Mr. George Valentine who is the senior vice president, general counsel and corporate secretary for Terra Industries. I understand that you have been in the news a lot lately and I appreciate you coming forward and telling us about the situation with your company.

[The prepared statement of Mr. Davis follows:]

ebruary 8, 1996

Testimony
of
J. Craig Davis
Davy's and Jim's Feed Store, Inc.
Highway 20 West
Moville, Iowa

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Almost all of our fertilizer is custom applied and many of the chemicals we sell are applied with the fertilizer. Our gross sales for 1995 were over 1.7 million dollars and were somewhat less than past years. I would say that Davy's and Jim's is pretty typical of an independent full service agribusiness in Iowa.

When we started in business there was very little regulation from the federal or state governments. Today, however, it's a different story. We are required to comply with Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), Department of Transportation (DOT), Iowa Department of Agriculture and Land Stewardship (IDALS), United States Department of Agriculture (USDA) and Food and Drug Agency (FDA). As we speak Tier II forms are being filed with the state. This form lists all the chemicals we have stored in our warehouse, including a determination of their physical and health hazards if they are involved in a fire or spill. An Emergency Action Plan is

required to determine how chemical fires or incidents at our facility would be handled. All of this needs to be updated and filed annually with the local fire department, the Local Emergency Planning Committee and the state.

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Training has become a major effort for small agribusinesses. We must attend or provide training for employees to make them aware of the hazards associated with pesticides and/or any other hazardous substance they come in contact with while performing their job. We have to teach them how to read material safety data sheets (MSDS) and product labels. All hazardous substances have MSDSs and they must be available for employee inspection and emergency use. We even must maintain MSDSs for a number of years. Two hours of continuing education are required for commercial applicators each year or they must retest. Anhydrous ammonia safety training is required annually for everyone who works with ammonia. The DOT requirement for drug and alcohol testing of commercial hicle drivers requires that we train them on the effects of drugs and alcohol. My point again is not that the training is bad it just takes so much time and so much money to complete it.

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It has come to my attention that all these regulations aren't there to help our business, but to possibly put us out of business.

I would like you to know that we are very concerned about the health and well being of our employees and our community. I accept some of the regulation that we have, knowing full well that it protects the environment, our people, and our communities.

The problem I have with regulation is the additional cost to me as a small agribusiness owner. Regulations which are passed and later rescinded still cost me time and money until they are changed. Clean air and emission inventory questionnaires are a good example. I spent hours and hours filling out forms that were never used. I probably spend about 6 weeks each year working on regulations in some form or another.

We are just a small family business trying to compete with major corporations. We live in Moville, a town of 1200 people, in Northwest Iowa and are very involved in the community. The financial support that we provide to our community is essential in keeping our small town alive. My concern for the burden of regulations on small business is not only the effect on the business but on my employees and my town. The real problem is government makes blanket regulations. I would like to continue to help farmers in this community, unfortunately if the government continues to control my business with costly regulations, agriculture will be left to the big corporations.

Thank you.

Sincerely,

J. Craig Davis

Mr. VALENTINE. Thank you.

Mr. DAVIS. Happy Valentine's Day.

Mr. VALENTINE. Well, thank you for that.

As you mentioned, my name is George Valentine and I am the general counsel of Terra which is headquartered here in Sioux City. In my remarks today, I want to focus on one particular Federal agency and that is the U.S. EPA. Time is short and my written testimony is rather lengthy. I am going to try to get through this quickly by painting some quick strokes.

Fourteen months ago, my company experienced the worst disaster in its corporate history. We had a massive explosion of our fertilizer plant about 10 miles south of here in Port Neal, IA. There was a loss of life; there was serious injury and there was major, major property damage. In the aftermath of that horrible tragedy, about a dozen or so Federal and State agencies showed up to investigate.

Over time, two decided to stay for the long haul. One was OSHA, the Occupational Safety and Health Administration. And OSHA, of course, focused on their Federal mandate which is safety issues. And after a big-time investigation lasting about 6 months, OSHA issued some citations, none of which had anything to do with the cause of the explosion. Thereafter, we were able to reach a pretty amicable resolution on safety issues on terms that I think were quite favorable to Terra.

The other Federal agency that stayed for many, many months at Port Neal, IA was U.S. EPA. U.S. EPA wore two hats. The first hat was its traditional role as an environmental regulatory agency and that took them about 3 or 4 weeks after the explosion at Port Neal in which they focused on air issues and water and soil. Over time, they decided that the public safety was being taken care of and they decided to bring no enforcement action and left town.

They were followed by a whole new set of people from U.S. EPA who came in and decided to do—the first ever in the history of EPA—a safety investigation. They decided to utterly duplicate exactly what OSHA was doing over many, many months and involving many, many personnel on their part. So what Terra had was two simultaneous and identical investigations involving the same subject matter, safety. This, of course, meant a lot of inefficiency, it meant a lot of double teaming, and particularly in the area of discovery—as lawyers use that word. We had to turn over not just thousands and thousands of documents to OSHA, we had to turn around and do it again with EPA. Slightly different requests but an enormously added burden. Instead of going through site inspections with a whole raft of people from OSHA, we had to do it also with EPA. We had to have dozens and dozens of interviews of our employees on safety issues first with OSHA and then with EPA and there was no sensitivity to the fact that our employees had been seriously emotionally scarred by this massive explosion. Essentially, they were shell shocked and yet they were paraded through interview after interview. So there was a lot of extra burden on our employees; a lot of extra burden on Terra and we think it was a burden on the U.S. taxpayer who had to foot the bill for these dozens of regulators who came in covering the same subject from two different Federal agencies.

But beyond the waste and inefficiency, we at Terra were also subjected to some other forms of "regulatory abuse" and that is what I want to talk about in the rest of my remarks. This particularly came out when EPA decided after 14 months to finally issue the results of their investigation in a full-dress press conference called 2 weeks ago here in Sioux City, next door at the Sioux City Convention Center, with TV lights like we have now and with all the local media there.

Let me tell you now about this "regulatory abuse" and particularly as they announced their conclusions. I have grouped it under three headings. The first of the headings is a serious denial of due process to Terra. What EPA decided to do when they announced the results of this explosion was to basically deny Terra any kind of notice and opportunity to be heard on these conclusions and to prevent our questioning them or otherwise scrutinize what they had to say.

Let me be real specific. One, they barred us from getting an advanced copy of their 100-page report. They flat out told us no.

No. 2, they concealed from us the fact that the press conference had been called. They told us there was going to be a press conference at 5 p.m. and it turned out they had told the local media it was 3 p.m. They did not want Terra to attend. When we found out by a local reporter accidentally that there was a 3 o'clock conference, we called up and were told that Terra would not be able to come to a public news conference.

We then turned to our elected representatives. We asked Senator Grassley to run interference for us and also Congressman Latham here. And Senator Grassley's office—and I think Congressman Latham's as well—was told that there was quote, an embargo by EPA on sharing any information with Terra. That the Senator's office could have it, but he could not give it or share conclusions with Terra. When at the last minute Terra did, through Senator Grassley only, get into the press conference, when we tried to ask questions about the conclusions that were being reached by EPA on these non-environmental safety issues, we were cut off from questioning and told that although this was called a "public forum," that EPA did not really want to hear from us.

The final twist was, the day before they called this full-dress press conference, they decided to do a blitz of safety inspections—again, not environmental but safety—around the country at our other plants. So while the news conference is going on, Terra had to send lawyers from my law department to our other plants around the country in order to respond to these requests for safety inspections. Now interestingly, when the inspections occurred, which took all of—a few hours at each of our plants because they had nothing really to inspect, the EPA inspectors and lawyers told us that they had no independent basis for doing these inspections, no safety concerns at any of these plants, that they were simply doing it because the same company owns all of these plants. They also knew, because we told them ahead of time, that there was completely different processes and equipment at these other plants than the one in Sioux City, and once they got onsite, they quickly acknowledged that. Finally, they were candid enough, these inspectors, to admit that what was really going on was to support the

extra drama of the press conference up here in Sioux City. That is what those other inspections were about.

The second form of regulatory abuse—Using a fundamental technique that insulates EPA from any kind of challenge either at the time of the press conference or even at a later date such as right now. How do they do that? Well, they do it by announcing at their press conference that they are going to bring no enforcement action against Terra for anything. Now, do not consider that a gift because if they had, they knew that they could be blown out of court on what in a criminal context would be called double jeopardy, i.e., OSHA, the real safety agency, had already fully litigated this issue and basically the U.S. Government cannot come at you twice on the same subject matter. So what they did by not having an enforcement action and not giving Terra a means to challenge anything in this report and in these conclusions that they were sharing with the Sioux City media in their press conference is, they were free to do a hit and run. They could announce conclusions, not defend them and have their cake and eat it too.

Now, it so happened that we strongly disagreed with their conclusions. I will not bore you with details, other than to say that we have got pieces of metal that eminent scientists, metallurgists and forensic engineers will tell you shows exactly how our plant exploded. EPA does not want to look at those pieces of metal. We were forced—to have any kind of redress from EPA, we were forced to issue a public challenge a week ago through the local media where we wrote a letter to Carol Browner, the head of EPA, challenging EPA to have their experts and our experts meet and then share it with the media. Let the chips fall where they may. Say whatever EPA's experts want. They have declined—thus far declined to respond to that challenge of a week ago.

The third and last element of my regulatory abuse point is improper interference in a private dispute. It is no secret that Terra is locked in some very intense litigation with a company we believe that negligently designed the piece of equipment that I referred to. That company's name is Mississippi Chemical. Now there is no question that EPA was fully aware of this litigation. Nonetheless, at their press conference the other week, they acknowledged publicly that, No. 1, they declined at any time to talk to Terra's experts about what happened out at Port Neal. But the second part of their admission at this press conference—and this is the amazing one—was that they admitted publicly that they made Mississippi Chemical one of the consultants for their analysis. So what you had was a case of the Government choosing up sides in a private dispute. It was no coincidence that after the press conference ended by EPA that Mississippi Chemical promptly issued a press release congratulating itself on being vindicated by EPA. This is not withstanding the fact that a couple of weeks ago they paid the incredible sum of $18 million to our employees who brought suit on the same legal theory that Terra was suing Mississippi Chemical on.

Where does all of this lead us? Terra has some specific proposals to deal with this double teaming by EPA on safety issues and also the due process concerns that I have mentioned. No. 1, Congress should stop EPA from doing safety inspections. They are not really

equipped to do this. This is not their expertise. It is not their experience. They are an environmental agency, not a safety agency.

No. 2, and it is consistent with one. OSHA should have exclusive jurisdiction over safety matters. We do not have two State Departments, we do not have two Departments of Defense and Lord knows, we do not need two safety agencies at the Federal level.

Now most importantly, our third proposal is that Congress enact a regulatory bill of rights for all of us to protect Terra and all other U.S. citizens from the kind of abuse that we have outlined today. Specifically, they need to stop the kind of manipulation of the media the way EPA has done here. I would simply say on that point that you can hurt a company a whole lot more by damaging its reputation than you can by a monetary fine.

We also need to prohibit EPA from making substantial charges—unsubstantiated charges against a private business where there is no way to challenge. This is the hit and run technique that I referred to earlier and it is particularly insidious when you do it against the backdrop of private litigation going on here in Sioux City.

Finally, you need to stop the kind of bureaucratic arrogance that bars Terra from attending a press conference on its own plant. An arrogance that tells a U.S. Senator that there is an embargo on the Senator sharing information with one of its constituents.

That concludes my remarks. I appreciate the opportunity and I look forward to questions.

Mr. MCINTOSH. Thank you very much, Mr. Valentine. I appreciate your very forceful testimony, and I do have several questions when we get to that point. I appreciate your recommendation of a bill of rights for the regulated community. I like that approach quite a bit.

Our final witness on this panel is Mr. Ron Marr who is with the Petroleum Marketers of Iowa. I have just visited with several of your colleagues in Washington. They are having their national conference.

Mr. MARR. Correct. We just came back from Washington yesterday.

Mr. MCINTOSH. I got to see everybody on Monday morning. I appreciated that group. Welcome and thank you. Please share with us your comments.

[The prepared statement of Mr. Valentine follows:]

STATEMENT BY TERRA INDUSTRIES INC. IN SUPPORT OF THE NEED FOR FEDERAL REGULATORY REFORM

HEARINGS ON FEDERAL REGULATORY REFORM
THE UNITED STATES OF AMERICA
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

SIOUX CITY, IOWA

FEBRUARY 8, 1996

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Terra is pleased to present testimony on federal regulatory reform. We thank the Chairman, the Subcommittee, and particularly Congressman Latham for giving us this opportunity.

My name is George Valentine and I am senior vice president, general counsel, and corporate secretary of Terra Industries Inc. For those unfamiliar with Terra, it is one of our country's largest producers and marketers of fertilizer, agricultural chemicals, seed, and related products for the American farmer. Terra also produces nitrogen and methanol products for American industry.

As many of you know, about 14 months ago my company experienced the worst disaster in its history -- namely, a massive explosion at our fertilizer plant at Port Neal, Iowa. This tragedy touched the lives of all of our employees and many of those who

live in the Sioux City community. In the aftermath of the explosion, we worked with a wide array of federal and state agencies who investigated the accident. I am here today to speak with this Subcommittee about one of those agencies -- the U.S. Environmental Protection Agency (EPA). In my remarks, I will touch on three themes that we at Terra have distilled from our experience with EPA -- specifically: bureaucratic overreaching, a lack of due process safeguards and interference with private disputes. At the end of my remarks, I will make a proposal to this Subcommittee on how the process might be reformed.

THE EXPLOSION AT PORT NEAL

At 6:04 a.m. on December 13, 1994, the entire Sioux City community was shaken by an explosion at Terra's Port Neal plant, which is located approximately 10 miles south of the city. The blast destroyed a significant portion of the plant, damaged most of the remaining structures and, most tragically, brought death and serious injury to a number of Terra employees.

In the immediate aftermath of the explosion, our first concern was to care for the injured employees and the families of those killed. Most of us in management spent that first day of the explosion at area hospitals caring for our employees. Quickly, we assembled a team to ensure that each injured employee and each family of a deceased employee received whatever assistance they needed.

As Terra and the Sioux City community struggled to comprehend and deal with their loss, agencies from the federal government and the State of Iowa arrived on the scene. Within hours of the accident, EPA, the Department of Natural Resources of the State of Iowa, the U.S. Occupational Safety and Health Administration (OSHA), the Iowa Occupational Safety and Health Administration (IOSH), the Iowa Fire Marshall, the Federal Emergency Management Agency (FEMA), the U.S. Coast Guard, and numerous other state and local emergency response agencies reported to the Port Neal plant, each with its own separate regulatory mandate.

Government activity in and around the Port Neal plant and Sioux City was intense during the first days and weeks following the accident. Ultimately, after most of the other agencies dropped out of the picture, two agencies remained. Both of these agencies addressed the same subject, safety, and between the two of them Terra faced parallel and essentially identical regulatory reviews. (My remarks today ignore a wholly separate EPA investigation of legitimate environmental issues which was concluded within the first month or so of the explosion and resulted in no enforcement action.) One of these inspections was conducted by OSHA (a joint activity by federal OSHA and IOSH), and a separate inspection, covering the same issues, was carried out by EPA.

From Terra's perspective, there appeared to be no attempt by the two agencies to coordinate their activities in order to ease the burden on Terra and its employees. Throughout the ordeal, there appeared to be no appreciation by the agencies for the

sensitivity of the situation or the emotional state of Terra's employees. One intense agency inspection during this period would have been difficult enough to handle. Instead, Terra had to deal with:

- Two identical document productions involving thousands and thousands of pages -- one production to OSHA and a second production of the same documents to EPA;
- Two identical and repeated inspections of its plant -- one series of on-site inspections by OSHA and a second series of essentially identical on-site inspections by EPA;
- Multiple rounds of interviews of the same Terra employees (many of whom were suffering emotionally) in order to satisfy both OSHA's and EPA's need for information -- i.e., the <u>same</u> information.

In short, Terra had to deal with two massive, identical and simultaneous regulatory investigations, both on safety matters.

<u>OSHA</u>

On May 25, 1995, approximately five months after the accident, OSHA issued citations to Terra alleging violations of its process safety management (PSM) standard. In general, the citations dealt with certain paperwork and documentation matters. None of the citations were in any way related to the ultimate cause of the explosion. Terra disagreed with the citations and thereafter pursued the appropriate procedures to

contest OSHA's findings and conclusions.

After a series of negotiating sessions, Terra and OSHA reached a settlement of the case. In the settlement, OSHA withdrew over 75% of the citations, and Terra agreed to pay a reduced fine. The fine paid by Terra ($330,000) was less than 10% of the fines issued to other companies in the industry for similar accidents. (For example, the penalty for a similar explosion involving another fertilizer manufacturer, IMC, was $11.1 million.)

OSHA thus carried out its regulatory mandate and ended its involvement with the Port Neal accident by early October 1995.

EPA

EPA's team of investigators did not leave the Port Neal plant until August 1995, some three months after OSHA had already completed its field investigation and issued its citations. In August EPA stated that it would be issuing a report on safety issues by the end of September 1995. The report issuance date first slipped to the end of October, then to the end of November, and then to no fixed date. Terra was told that because this was EPA's first attempt at doing such an investigation and issuing such a report, the report was being scrutinized by officials at both the regional and national levels of the agency.

Finally, on January 17, 1996, EPA attorneys contacted Terra's outside counsel, Robert C. Gombar, to say that EPA's report would be released in two successive "public information forums," one at 5:00 p.m. and a second at 7:00 p.m., at the Sioux City Convention Center on January 23, 1996 -- almost 14 months after the accident and 8 months after OSHA had issued its findings and conclusions on the same issues. In the conversation with Terra's counsel, EPA steadfastly refused to share the contents of its report in advance of the two forums. EPA also did not disclose to Terra the agency's plans for a third, earlier press conference to announce its findings, which was scheduled to be held 3:00 p.m. on the same day, January 23, 1996, prior to the first of the "public forums." (The scheduling of the press conference for 3:00 p.m. provided the press with enough time to prepare for the 6:00 p.m. local television news; by delaying the "public forum" in which Terra was to have its first chance to see the report until 5:00 p.m., EPA was effectively blunting Terra's ability to reply publicly to the EPA allegations.)

On January 22, 1996, through a local reporter, Terra learned of the 3:00 p.m. press conference and Terra's counsel, Mr. Gombar, contacted EPA to confirm the information. Ms. Anne Rauch, an EPA attorney, admitted that a press conference was, indeed, planned for 3:00 p.m. but that Terra would be barred from attendance. Mr. Gombar's request for an advance copy of the report -- so Terra would at least be in a position to respond to press inquiries -- also was denied.

Thereafter, Senator Grassley and Congressman Latham intervened with EPA on Terra's behalf. While for several days EPA told Terra's elected representatives that the report was under an "embargo" and therefore could not be shared with Terra, Senator Grassley was ultimately able to obtain for Terra an advance copy (albeit only two hours prior to the press conference) and Terra was at the last minute admitted to the EPA press conference.

Despite the best efforts of Senator Grassley and Congressman Latham, however, they were unable to thwart entirely EPA's efforts to block meaningful response by Terra. Not only was the two hour lead time insufficient for Terra (or anyone else) to fully digest a 100-plus page report, EPA also made it clear in other ways that it did not encourage close scrutiny of its analysis. For example, at the 5:00 p.m. "public forum" on January 23, 1996, EPA invited questions from the public at the end of the Agency's presentation. When Terra officials started to ask questions, EPA abruptly ended the forum and told Terra that it was not part of the "public."

EPA'S INSPECTIONS OF OTHER TERRA PLANTS ONE DAY EARLIER

On January 22, 1996, the day before the EPA press conference and as a prelude to the public release of its report, EPA attempted to do "safety" inspections at two of Terra's other plants outside of Iowa. According to EPA, these were to be the first such "safety" inspections done by the agency (other than the Port Neal investigation itself).

There had been no explosions at these two Terra plants, the one being in Eastern Oklahoma and the other in Western Oklahoma. There had been no chemical releases at these Terra plants. And the equipment and procedures in use in the two plants are different from those in use at the Port Neal plant on the day of the explosion. In short, EPA had no independent cause for these "safety" inspections. The only factor common to the Port Neal plant and the plants in Oklahoma is the owner: Terra.

In conversations with Terra's counsel, EPA attorneys admitted that the inspections of Terra's plants in Oklahoma were being conducted by EPA's national office and were being coordinated as part of the press coverage planned for the release of the agency's report on January 23, 1996. From Terra's perspective, it also appears that these EPA inspections were part of a "turf battle" between EPA and OSHA to settle which agency should be doing "safety" inspections.

EPA INTERFERENCE WITH A PRIVATE DISPUTE

In a report issued in July 1995, Terra's blue ribbon panel of outside experts announced, after months of analysis and careful testing, that a piece of equipment designed by Mississippi Chemical Company – a nitric acid sparger – was the ultimate cause of the Port Neal explosion. Mississippi Chemical Company disagrees with Terra, and the two companies are now engaged in intensive litigation over the issue in both Iowa and Mississippi.

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During its press conference on January 23, 1996, EPA admitted publicly that the agency did not consult with Terra's experts while preparing its report on the Port Neal accident. Unbelievably, EPA also admitted publicly that it used Mississippi Chemical Company -- Terra's adversary in litigation and the designer of the sparger -- as a consultant during the preparation of the agency's report. Promptly after EPA made its report public, Mississippi Chemical issued a press release to the Sioux City media claiming that EPA's report supports Mississippi Chemical's theory of the Port Neal explosion. This was notwithstanding the fact that Mississippi Chemical had recently paid $18 million to settle lawsuits by our employees based on Terra's sparger findings.

There is no question that EPA, for some time, has been well aware of the litigation between Terra and Mississippi Chemical. The agency also clearly understood the potential impact of its report on the litigation. In effect, therefore, EPA has chosen sides in a private dispute and is inappropriately attempting to influence the outcome.

EPA'S CONCLUSIONS ON PORT NEAL

EPA concluded in its January 23 report that it could not develop "one irrefutable scenario" to explain the Port Neal explosion. Moreover, at the press conference on January 23, EPA admitted that it did no testing or simulations to support its report and, therefore, that it could not discount Terra's conclusion -- i.e., that the explosion was triggered by in improperly designed nitric acid sparger.

Nevertheless, EPA's report goes on to put forth two principal conclusions – first, that the explosion was caused by a lack of written (as opposed to oral) operating procedures, and second, that there was an explosion outside, not inside, the Mississippi Chemical nitric acid sparger. Each of these conclusions is flawed.

The first conclusion, regarding written operating procedures, amounts to nothing more than a documentation issue. Terra had in place all operating procedures necessary to safely run its ammonium nitrate plant on December 13, 1994. In essence, therefore, EPA's allegation is simply a disagreement about how Terra's already existing procedures should appear on paper.

Regarding EPA's key assumption that there was an explosion outside, not inside, the nitric acid sparger, Terra is able to prove conclusively that EPA is wrong. Because of a design defect, an explosion did occur in the nitric acid sparger on December 13, 1996 and the sparger explosion, in turn, touched off the two much larger explosions. In doing its investigation, EPA had a metallurgical analyses performed on only a small portion of the reconstructed nitric acid sparger, even though all of the sparger pieces were made available to EPA. EPA's decision to severely limit its metallurgical examination led to the error in its analysis.

It is important to understand that the report issued by EPA on January 23, 1996, is not an enforcement action. Indeed, if it were an enforcement action, it would be

duplicating OSHA's citations, which would be a clear case of double jeopardy. Because the report is not an enforcement action, there is no procedure available to Terra to challenge EPA's conclusions and make EPA prove its allegations publicly.

Therefore, in order to contest and correct EPA's flawed conclusions, on January 29, 1996, Terra issued a challenge to EPA to prove its findings and conclusions in a public forum. (A copy of Mr. Joyce's letter containing the challenge is included as an attachment). To date, EPA has not accepted the challenge, even though EPA's regional administrator, Mr. Dennis Grams, said to me before the first of the "public forums" on January 23, 1996, that EPA would be willing to meet with Terra and, in response to a question about whether EPA would be willing to change its report if it is shown by Terra to be wrong, Mr. Mark Thomas, EPA's team leader, nodded affirmatively.

TERRA'S POSITION

By giving this testimony today, Terra is not challenging the legitimate regulatory roles of either OSHA or EPA. The health and safety of all workers is vitally important to our country, and Terra respects the part that OSHA plays in ensuring that the objective of a safe and healthful workplace is achieved. Likewise, protecting the quality of the air we breath, the water we use, and the land that provides our food is a must in today's world, and EPA's role in providing that protection is obvious.

However, when two federal agencies engage in turf battles at a company's expense, and when they use what is claimed to be overlapping authority to double-team employers, there is an unnecessary burden placed upon American business and, we submit, our economy as a whole (given the budget appropriations needed to support dual regulatory programs). That is Terra's message to this Subcommittee, and that is why Terra is thankful for the opportunity to present this testimony.

TERRA'S PROPOSAL

To correct the problems discussed here today, Terra makes the following proposal for the consideration of the Subcommittee:

- Stop EPA from doing "safety" inspections
- Assign the responsibility for safety inspections to OSHA exclusively
- In cases where EPA believes, nevertheless, that there is a need to revisit the same ground covered by OSHA, require EPA to obtain the information from the existing inspection record assembled by the other agency
- Create a Regulatory Bill of Rights to protect American business from:
  - Unfair public relations manipulation by federal agencies (irresponsibly damaging the reputation of a company in the press is as real a "sanction" as any fine an agency can issue)

- Federal agency allegations that effectively cannot be challenged; and
- Pure bureaucratic arrogance – when agencies try to find a way to do something TO the public rather than looking for ways to do something FOR the public.

Thank you, once again, for giving Terra this opportunity. I would be happy to answer any questions you might have.

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Burton M. Joyce
President and Chief Executive Officer

January 29, 1996

BY TELECOPIER AND FIRST CLASS MAIL

Ms. Carol Browner
Administrator
United States Environmental
Protection Agency
401 M Street, S.W.
Washington, DC 20460

Mr. Dennis Grams
Regional Administrator, Region 7
United States Environmental
Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

Dear Ms. Browner and Mr. Grams:

On January 23rd your agency issued a report, which I believe was the first of its kind by EPA, about the cause of the explosion at Terra's nitrogen fertilizer plant in Port Neal, Iowa. It is a report about an event that occurred almost fourteen months ago. Given EPA's lack of authority for such a foray into safety issues, it cannot be the basis of an enforcement action. Absent a directly related enforcement action, there are no procedures available to Terra to challenge the report and make EPA prove its findings and conclusions in a public forum. At the end of this letter, I have a proposal, which if you believe in the accuracy of EPA's report and EPA's ability to defend it, you should be more than willing to accept.

What is perhaps most shocking about the report is the serious ethical taint in its preparation. As you may know, Terra's experts are convinced that the cause of the explosion was the negligent design of a piece of equipment called a "sparger". This piece of equipment was designed by Mississippi Chemical Corporation (MCC) and it is the subject of substantial ongoing litigation between MCC and Terra. In his public comments on January 23rd, EPA spokesman Mark Thomas admitted that, while declining to consult with Terra's experts, one of the consultants for the report (although not named in the report) is MCC -- the very company Terra has engaged in litigation. Ironically, MCC, despite its role as an EPA consultant, has cast serious doubt on EPA's conclusion by recently agreeing to pay $18 million to Terra employees injured in the explosion and the families of deceased employees to settle a suit brought against them (MCC) based on Terra's findings.

In addition to our substantive differences, there are some basic due process issues to be addressed in EPA's handling of its Port Neal report. For example, when Terra found out that EPA was going to hold a press conference on its Port Neal report at 3:00 p.m. on January 23rd, Terra (through its representative, Mr. Robert Gomber) contacted EPA and was told by EPA counsel, Ms. Ann Rausch, that Terra could not attend the conference. It was only through the work of Senator Grassley that Terra was ultimately able to be present at EPA's press conference about Terra's Port Neal explosion and to get an advance copy of the EPA report (albeit only two hours before the press conference began).

Fairness was also lacking when, despite the absence of legal authority for issuing such a report, EPA used it as leverage to launch safety inspections of other Terra plants around the country the day before the January 23rd press conference – inspections that have no legal basis. More specifically, the equipment and procedures in use in the other Terra plants inspected by EPA are very different from those in use at Port Neal on December 13, 1994 – the date of the explosion. We believe EPA was well aware of these differences before it launched the inspections. During these inspections it was clear from comments by EPA personnel that there was no independent basis for concern over safety issues at these plants, which leads one to conclude that the inspections were done only in support of the press conference in Sioux City, Iowa.

These due process issues aside, in order to resolve the differences between Terra and EPA on substantive grounds, I propose the following:

1. Our experts will meet with EPA's experts to address the key issue in the Port Neal explosion – namely, whether the explosion started outside the MCC-designed sparger (as EPA contends) or inside the MCC sparger (as Terra's testing and analysis has established).

2. After the meeting, EPA and Terra, in a joint press conference, will make the results known to the public.

This proposal is consistent with your (Mr. Grams') statement to Terra's General Counsel, George Valentine, shortly before the press conference that you would be glad to have EPA and Terra meet to discuss their findings. Furthermore, given Mr. Thomas' public comment last Tuesday that EPA will change its report if it is wrong about its key assumption concerning the MCC-designed sparger, EPA should be eager to join in this proposal.

Terra is flexible on the timing of the experts' meeting. I look forward to hearing from you.

Sincerely,

Burton M. Joyce

BMJ:rmb

Mr. MARR. Thank you.

Good afternoon. My name is Ron Marr and I appreciate this opportunity to be here on behalf of the Petroleum Marketers of Iowa and the Petroleum Marketers Association of America. Our members comprise about—we have about 1,500 members in the Petroleum Marketers of Iowa. They are independent petroleum marketers. They are not major oil. They are probably major oil's best customers. Our national association represents about 11,000 petroleum marketers nationwide. Nearly all these businesses represented by our two associations are small businesses using SBA guidelines.

Because many of the marketers I represent face regulatory excesses every day, I would like to present you two of our most troubling issues in regard to over-regulation. Our industry, like the two to the right of me, face the same bureaucratic nightmares. I would like to focus on two, one that is happening today and one that has been going on for a decade. I would also like to commend Congressman Latham for your efforts in Iowa to help propel the regulatory reform agenda forward.

The first issue which I would like to discuss is the issue of the U.S. Department of Transportation's regulation for yearly testing of small cargo tanks. We commonly call them in our industry tank wagons. These tank wagons are used primarily in rural, low population regions of the country and until September 1995 these small tanks were exempt from the Federal DOT testing requirements. At that time when the regulations first came—were promulgated, the Petroleum Marketers of Iowa and the Petroleum Marketers of America submitted comments on this issue immediately before they were implemented and subsequent to that, the PMAA in conjunction with our association sent RSPA, an agency of DOT, an application for exemption to illustrate why compliance with these new regulations would be especially difficult for petroleum marketers nationwide.

Although that application for exemption was filed in July 1995, we have yet to hear any response from the DOT, and that is after eight congressional inquiries to the DOT on that matter of where the petition stands. DOT went ahead and implemented the regulation in September 1995, and yet has the audacity to disregard a legitimate petition for exemption based on good argument and a precedent. But, of course, the bottom line is our marketers must now comply with these new rules even though no action has been taken by the U.S. DOT.

I would like to give you a little bit of an average scenario of what happens to a member in the country with regard to these new regulations. The DOT requires marketers to have their tank wagons inspected yearly for leaks. That is a little bit like you could not tell if a glass of water was not already leaking on the ground. In the State of Iowa, we are aware of only four or five licensed testing facilities that can perform that test. And if a marketer goes to a testing facility in Iowa, he has probably got an average drive of about 150 miles. That takes the tank wagon out of commission for at least a day. In many cases, the marketer would have to spend the night or put an employee up for overnight expenses.

On top of those, the test costs themselves will average between $750 and $1,500, and should any problems—and if you go to a DOT licensed shop and you have a little bit of a problem—you are always going to find they have a little bit of an upper hand on the marketer. You are going to have to correct that before you get out of the test shop and that is added on top of the expense. Not only will the average marketer spend these sums to have the test conducted, but he will also have to pay for the travel time, the loss of sales and other costs which are incurred by the inspections, when actually the majority of the time it is completely unnecessary.

There is an interesting little twist to this scenario. If a marketer chooses to go to the closest location, it may be well across the State line. One of the closest test shops or licensed test shops in western Iowa happens to be in Omaha, but in these cases, the marketer who crosses the State line becomes an interstate marketer and under the rules of the DOT, he loses any protection the State of Iowa affords him for staying within the bounds of Iowa as an intrastate marketer. Once he becomes an interstate marketer, he faces even more onerous regulation than what he has under the State of Iowa.

The fact that the U.S. DOT has not even responded to our application adds insult to injury. It is yet another glaring example of the bureaucracy's inability to reasonably work with the very community it regulates.

Another example, and the last one I would like to pass along to you is the issue of underground storage tanks. In 1986, the underground storage tank universe became regulated by the Federal Government. The Government and the State agencies then determined that not only the tanks need to be upgraded but the soil has to be cleaned up to what I would call Adam and Eve standards, or so clean you could eat the State of Iowa every day for 2 months and never have any loss of health.

In Iowa, we have cleaned up about 450 to 500 sites. We say that a little bit loosely, cleaned up. These have been the easy ones. The average cost per site has been $277,000. The Iowa cleanup program has budgeted over $300 million for potential clean up costs. And all of this money is to be spent on the clean up of underground storage tank contamination, which in most cases poses no threat to the groundwater.

Just in October and November. Excuse me. An October 1995 study gives a little bit of validation to that claim. That study was commissioned by the State of California and issued by the Lawrence Livermore Foundation—and for those of you who have California ties, that is a fairly liberal, pro-environment California-based group—and they agreed with what is pretty well common knowledge in our industry, that three-quarters of the soil which was cleaned up in California was cleaned up at great expense and unnecessarily cleaned up. Finally, you have a study from the most stringently regulated State environmentally which tells what marketers have been saying all along; we are spending too much money for something on which there is no scientific basis.

The State of Iowa is now beginning to move to risk-based corrective action standards which our industry fully supports. However,

I would like to see the Federal Government and the EPA fully implement a required—require the risk-based approach. Under Iowa's original underground storage tank clean up requirements, we did a study and 63 of 126 currently leaking sites would have had to have been cleaned up. Under our new risk-based corrective action rules which are currently being drafted into final form, we took those same 126 sites, ran them through the risk-based corrective action program and came up with 15 sites that had to be cleaned up. My question is—and have we not been saying this all along—the majority of sites presents no threats to the drinking water or environment.

The bottom line is we are losing our bottom line. It is time that the bureaucrats start listening to the very people they regulate. We would be very happy as an industry to work together on issues to reach a consensual approach to compliance, but we ask not that we be mandated to do something when there is no scientific data to back up those requirements.

Please encourage regulators to base decisions on reason and science and not their personal agenda. Again, I appreciate the opportunity to testify today and would be more than happy to answer any questions you may have.

Thank you.

[The prepared statement of Mr. Marr follows:]

Draft Testimony for Ron Marr
Iowa Petroleum Marketers Association
Before Congressman Tom Latham
Field Hearing on Regulatory Reform

Hello, my name is Ron Marr and I appreciate the opportunity to be here on behalf of the Iowa Petroleum Marketers Association and the Petroleum Marketers Association of America. The Iowa Petroleum Marketers Association represents over 1,500 petroleum marketers in the State of Iowa. PMAA, our national organization, represents over 11,000 marketers nationwide. Nearly all of the businesses represented by IPMA and PMAA are small businesses according to the Small Business Administration's definition of a small business.

Because many of the marketers I represent face regulatory excesses every day, I am here to present a few of the most troubling issues marketers in Iowa face with regard to overregulation. I commend you, Congressman Latham, for your efforts in gathering information to help propel the regulatory reform agenda forward.

The first issue which I would like to discuss is the issue of the Department of Transportation's requirements for yearly testing of small cargo tanks. Until 1995, these tanks were exempted from federal DOT testing requirements. PMAA issued comments on this issue immediately after the proposed regulation was issued. Subsequent to that, PMAA sent an application for exemption to DOT to illustrate why compliance with the new regulations would be especially difficult for petroleum marketers nationwide.

Although that application for exemption was filed in July, 1995, PMAA has yet to hear a response from DOT -- and that is after over 8 Congressional inquiries to DOT on the matter. DOT implemented the regulation in September of 1995 and yet has the audacity to disregard a legitimate petition for exemption based on good argument.But, of course, marketers must now comply event though no decision has been reached at DOT.

Let me give you the average scenario that a marketer faces with regard to the new DOT regulation. DOT requires marketers to have their tanks inspected yearly for leaks (as if marketers could not make that determination on their own). In the state of Iowa, there are 4 or 5 licensed testing facilities where marketers can go. If a marketer goes to a testing facility in Iowa, he or she would have to travel, on average, 150 miles to the testing location. This takes the tank out of commission for at least one day. In many cases, the marketer would have to spend the night while the tank is inspected.

On top of those costs, the average test costs $750.00 to $1,500.00 just to be conducted. Should any upgrades need to be made, that too, is added to the marketers expenses. Not only will the average marketer spend these sums to have the test conducted, but will also have to pay for travel time, loss of sales and other costs which are incurred by the inspection, when the majority of the time spent is completely unnecessary.

If a marketer chooses to go to the closest location, it may well be across state lines. In these

cases, the marketer who crosses those lines then becomes an interstate marketer. DOT has even more stringent regulations for interstate marketers and marketers who cross state lines face the loss of Iowa exemptions on certain requirements.

The fact that DOT has not even responded to our application adds insult to injury and is another glaring example of the bureaucracy's inability to reasonably work with the very community it regulates.

Another example I would like to pass along to you is the issue of underground storage tank clean-up. In 1986, underground storage tanks became regulated by the federal government. The government and state agencies then determined that not only did tanks need to be upgraded, but the soil has to be cleaned up to what I call "Adam and Eve" standards (i.e., so clean, you could eat the soil regularly without getting sick).

In Iowa, marketers average $277,000 in clean-up costs per site. The state clean-up program has budgeted over $300 million in potential clean-up costs. All this money spent on clean-up of tanks, which in most cases pose no threat to groundwater.

An October, 1995 study commissioned by the State of California and issued by the Lawrence Livermore Foundation (a liberal, pro-environment, California-based group) agreed with common knowledge - three quarters of the soil which was cleaned at great expense to marketers was unnecessary clean-up. Finally, a study from the most stringently regulated state (environmentally), tells us what marketers have known all along -- we are spending too much on something for which there is little scientific basis.

Iowa is now beginning to move toward Risk-Based Corrective Action which I fully support. However, I would like to see the federal government fully implement this approach. Under Iowa's original requirements, 63 out of 126 leaking tank sites would have to be cleaned up. Under the new rules, only 15 out of 126 would have to be cleaned up. My question is...haven't we been saying this all along -- the majority of sites present no threat to drinking water.

The bottom line... is we are losing ours. It is time that bureaucrats started listening to the very people they regulate. We would be happy to work together on issues to reach a consensual approach to compliance, but ask that we not be mandated to do something when there is no scientific data to back up those requirements.

Please encourage regulators to base decisions on reason and science and not their personal agendas. Again, I appreciate the opportunity to be here today and would be happy to answer any questions you may have.

Mr. MCINTOSH. Thank you. I appreciate you coming forward today and sharing that information with us. I have got a couple of questions.

First, Mr. Valentine, did either of the agencies—either OSHA or EPA come out to your facility before the explosion and talk with you about safety?

Mr. VALENTINE. Well certainly not EPA. As far as OSHA goes, Iowa OSHA, they have made inspections in the past. I do not know how often, but there have been inspections in the past.

Mr. MCINTOSH. From your testimony, it sounded as if it was a defective part on the valve that was likely the cause?

Mr. VALENTINE. Yes.

Mr. MCINTOSH. I take it those inspections did not identify that as a potential hazard that could lead to that result?

Mr. VALENTINE. No.

Mr. DORNAN. When was that explosion date?

Mr. VALENTINE. It was December 13, 1994. It was unfortunately the lead story on CNN Headline News that day to the whole of the country.

Mr. MCINTOSH. It sounds like a genuine tragedy——

Mr. VALENTINE. Yes.

Mr. MCINTOSH [continuing]. For the company and for the families of the workers involved. The way I was leading with the questions is, oftentimes even with good inspections it is difficult to find these, and then you find yourself confronting two agencies duplicating the effort on safety. Did EPA ever cite to you statutory authority to be inspecting for safety concerns?

Mr. VALENTINE. Well, they had issued some regulations themselves—proposed regulations that would allow them to do inspections in the area of so-called process safety management, PSM, that were an exact duplication of Federal OSHA's PSM regulations. They had not however—in fact, to this day are not final. There is a real question whether they had the authority to do anything at all in this area.

Mr. MCINTOSH. Because even under a broad interpretation of a statute, an agency has to point to some statutory authority before they can regulate in an area.

Mr. VALENTINE. There is a so-called general duty clause in the Clean Air Act which they point to as giving them authority to investigate safety issues. This is, I should tell you, a pet project of EPA, Washington EPA. They are looking forward to expanding their safety jurisdiction. They are frankly engaged in a turf fight right now with Federal OSHA at the highest levels. And they also were quite candid when they first came to Port Neal, that they were using the Terra explosion as a practice case to learn about safety matters to be able to sort of flesh out this area as part of their portfolio. I am told that there is a lot of inner-agency rivalry on this issue. That OSHA and EPA are at odds. One, not two, ought to have jurisdiction over this area.

Mr. MCINTOSH. The turf battles are not new to Washington. They do go on quite a bit. This is a new one to me. I did not realize there was that struggle there. It is something I think our committee would be interested in looking into in its oversight capacity. I appreciate you coming forward.

One other request for you, which is, you mentioned a bill of rights. I do not know if you have thought anything in terms of—you mentioned some general outlines—but specifics on that. Let me just issue an invitation, if you have got some ideas, if you can get those to Tom or to me, I would be very interested in that. I have been thinking on a slightly different line of applying some of the procedural rights in the first 10 amendments in the Bill of Rights and the Constitution to the regulatory process because it occurred to me that as we moved away from a court proceeding to regulatory oversight proceedings, that we did not carry those procedural protections. So oftentimes citizens are confronted by their government and they are without the protections our founders thought were important. When a magistrate would come in and you would be hauled in front of the government for an enforcement proceeding, you would have those protections in the Bill of Rights. Now under our regulatory process, we have allowed those to fall by the wayside. That was the angle that I have been looking at. But, I think your ideas in terms of the use of the media and some of the more modern problems would be good to incorporate into this.

Mr. VALENTINE. Yes, I think it is a real good idea for your subcommittee to think in terms of maybe—as one of the end products that you come with in your hearings, to think about a regulatory bill of rights, a statute. There is the Administrative Procedures Act which has been around for decades but it is mostly a statute that helps the regulators do certain things rather than the regulated. I think there is real scope for your subcommittee to do something in that area. As far as whether I would be willing to draft something on that, absolutely. I would very much like to and I will submit it to your committee.

Mr. MCINTOSH. Thank you. I appreciate that. I appreciate that input and that assistance.

One further question for Mr. Davis. Are you familiar with the pesticide Atrazine? I think there is a whole group of them in the triazine area.

Mr. DAVIS. Triazines.

Mr. MCINTOSH. A farmer in my home district came up to me last year and said, you know, FDA is thinking of banning these and he said this would be devastating to him. What have you been hearing on this, and are there alternatives? What is the situation with Atrazine?

Mr. DAVIS. I do not have the material in front of me but a few years ago they dropped the Atrazine or triazine usage to 2 pounds active ingredient per acre on all ground. DuPont, I know, for example, is disbanning the product X-razine, which is Blade-X and Atrazine. I believe in the 1999 year it will be completely done. They are doing that—quite frankly, even DuPont, I think, because they are tired of fighting all of the regulations. Atrazine was a product that remained in the soil longer than others. A lot of new chemistry has come out now that are not that way. Atrazine is a product that is very usable if they can control the amounts of it, which I think is good. I do not know the current status of the government regulation as far as what they plan to do, whether they plan to disban Atrazine or not. I know some of the companies are dropping

their triazine products because they no longer want to fight the battles.

Mr. MCINTOSH. But are there substitutes out there with current technology?

Mr. DAVIS. There are many new chemistry chemicals out there, none of which have the same chemistries of the Atrazine products.

Mr. MCINTOSH. Thank you. I appreciate that insight.

Tom, do you have any questions?

Mr. LATHAM. Yes. Let me start off, I guess, in the order the testimony was given.

Mr. Davis, being a small business person myself, and from my experience, I would just ask you if you would concur that, you know, one or two regulations you can deal with, but it is kind of the cumulative effect of all of the regulations, all of the different bodies, agencies, that you have to deal with that really is choking small business in this country. I do not know if you want to say anything more about that, your testimony is pretty clear I think in that regard.

Mr. DAVIS. I agree there—I do not want to give the impression that all regulations are bad because we need to clean up our own backyard and, I guess, one of the things I am trying to say is we do that. We work closely with the Agbusiness Association of Iowa, Agricom and—for example, General Fire and Safety come to our place and help us with things that we need to stay in compliances. It takes a lot of time and a lot of money. But we as an industry are really cleaning up our own backyard and there is so many regulations today that time-wise, financially, we cannot retain a list of lawyers and everything to get all this done. It is very difficult.

Mr. LATHAM. I would ask you—as a small business person, do you have any attorneys on staff? I mean——

Mr. DAVIS. No.

Mr. LATHAM [continuing]. We have a comparison here of two agribusinesses in a sense.

Mr. DAVIS. No, I do not.

Mr. LATHAM. Do you have an office of regulatory compliance at your business?

Mr. DAVIS. Yes, it is called me and my secretary. [Laughter.]

Mr. LATHAM. That is the thing that just goes right over a lot of people's heads I think in Washington that I have come in contact with. They do not understand the cumulative effect of this and the tremendous stifling effect it has on businesses like yours. I have great empathy for the situation and that is why we are here today.

Mr. Valentine, this is a case that I was somewhat involved with as far as trying to get information from EPA. I just want to tell the chairman, I was absolutely outraged as a Member of Congress to contact an agency that gets its authority and jurisdiction from Congress, that they would withhold information from a Member of Congress, that they felt that they had more power, more control, whatever than the people who are paying and authorizing them to do their job and also appropriating money for them to do their job. It simply is wrong. And that is one prime example of an agency that has absolutely gone—it does many good things but in many ways is totally out of control and really believes that they have more power than Congress itself does. And that is one thing. Ap-

parently, they wrote their own authority in their regulations to come in because they do not by statute have authority to come in and talk about safety issues. That is OSHA.

Mr. VALENTINE. Even if you believe—you know, if you accept the legal proposition that somehow they have authority to do this, as a matter of public policy going forward, they need to be stopped from doing it. They need to focus on what they were charged to do, which is to look after the environment of this country, not the safety issues.

Mr. MCINTOSH. Mr. Latham, I will share with you the shared frustration in I think a lot—well, definitely a majority of the Members in both the Senate and the House felt that it was for that type of attitude that we needed to make a reduction in their funding. That they were going beyond their bounds and not actually successfully protecting the environment.

Mr. VALENTINE. Mr. Chairman, let me make one comment. I think Congressman Latham is absolutely right, the much more typical victim is a company like the one—the gentleman's company to my left here. No, they do not have lawyers on staff to deal with this sort of thing. They are completely—they are victims and they have little way to fight back. Now, I think what the Terra experience shows, even if you are a $2.3 billion company that has a law department and lots of resources and knows the telephone number to the Senator Grassleys and the Congressman Lathams, even those kinds of companies can be victimized by an agency like U.S. EPA.

Mr. MCINTOSH. If you are stalled on your ability to recover from this and once again begin manufacturing either at that site or an alternative site, is it not also your workers who end up suffering if you have difficulty as a company getting back to business and making sure that safety is fully taken care of?

Mr. VALENTINE. Our workers have suffered an awful lot. We are on the verge—well, we are in production in part of the plant and we expect to have the rest of it in production in the next couple of months. But the last year and a half has been terribly hard on them, and a lot of this regulatory business with OSHA and EPA has not made it any easier for them.

Mr. MCINTOSH. Could you have been up and running sooner if you would have only had to work with OSHA on the safety concerns?

Mr. VALENTINE. I cannot say it slowed down our rebuild, but it certainly made Terra's life much harder in many ways.

Mr. LATHAM. How many of your employees were able to keep working after the explosion? How many did you keep employed?

Mr. VALENTINE. We kept everybody on the payroll. We were out of operation for a whole year. We kept the entire work force on the payroll. We have a little over 100 employed at Port Neal. But most of them are now back at work on the job. There are some who just are not in the position to do that yet and they are on disability.

Mr. LATHAM. I think the chairman of the committee should be aware of the fact that even though there was nothing being produced out there, as far as corporate citizens here in the community, along with doing a tremendous amount for the families that were affected in this tragedy, that they did employ all of their employees

even though they were not producing anything. We appreciate that very much. Thank you very much.

Mr. Marr, where is the nearest inspection site here?

Mr. MARR. From here?

Mr. LATHAM. Yes.

Mr. MARR. Probably Omaha or Sioux Falls.

Mr. LATHAM. OK. So you would have to go out of State for either one?

Mr. MARR. I would be going out of State.

Mr. LATHAM. That would make you an interstate marketer and so you would come under a whole different level of regulations to do that. I think from your testimony—and we visited a few weeks ago also on expressing your concern. But one thing this Congress has tried to do was fundamentally try to write laws so that the regulators would take into account cost benefit analysis. That whatever was spent that there was at least an equal amount of benefit. I think this case is a prime example where that is not necessarily happening. A risk assessment, that we have to know that there is a danger out there before we spend a great deal of money.

The third thing, and that is the individual property rights which goes more probably to agriculture and wetlands and things like that.

I really appreciate all of your testimony. Thank you.

One more thing. I did not welcome Mr. Gutknecht and Mr. Dornan here. It is always a pleasure to have my good colleagues from Minnesota and California with us.

Mr. MCINTOSH. Thank you, Mr. Latham. I appreciate that.

Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. A couple of questions and comments.

First of all, Mr. Marr, most of the issues that you are talking about though are related more to the State regulations than Federal, are you not?

Mr. MARR. No. They all have their parentage with Federal regulations, DOT and the EPA. The EPA has an office of underground storage tanks and those flow back down through the States. So the States are licensed by the EPA on how they can address underground storage tank cleanup problems. A lot of the Federal DOT regulations flow through—most States adopt the Federal code of regulations for DOT and then we will run an exemption through. This is a case where the Federal superseded the State. The point is that some of these—and the comment was made on the panel—I had a member 3 weeks ago get stopped by the Iowa Department of Transportation. He was inspected for the—if he had a medical card, proof that he had a medical exam. He had a medical card. He had gone to his local physician, and that is a requirement for both. However, it was written on an old form. The old form had date of exam on it and the new form was date of expiration of the medical card. That piece of cardboard—the little pocket-size piece of cardboard, the wrong words cost him $70. That is typical of the regulations we fall into.

Mr. GUTKNECHT. A $70 solution to the $5 problem.

Mr. MARR. No, a 2-cent problem.

Mr. GUTKNECHT. We have had the problem up in Minnesota—and I think we have made some progress—where—and particu-

larly—and again, we are talking in many cases mom and pop type operations and many times in small towns. They go to sell the property and all of a sudden they have to do some test wells, and the answer to every question is, we have to do more testing. And every one of those tests costs them—I think you are lower than we are in Minnesota. I mean, we are talking $1,500 just to do another test. Have you begun to resolve that problem here in Iowa? That is sort of a separate—because I have one particular constituent that is wrestling with this right now.

Mr. MARR. We call that marketability of property or the ability to market it. It comes back to haunt you in two ways. One, even though the property may be valueless because it is contaminated, you cannot—we have been unsuccessful, even through court, in reducing the property tax valuation.

The second, once you have the problem with contamination, it is basically unmarketable because under RCRA the liability—actually, it is not RCRA, it is the Superfund. They use the Superfund statute where the liability goes from owner to owner to owner, or in this case, a bank which is afraid they would assume a cleanup in case they foreclosed. Iowa has tried to address that through their cleanup fund by issuing an insurance policy for what we call property transfer. Even with that policy, it has been a problem to market your property. Iowa started out with about 31,000 underground storage tanks on about 12 or 13,000 sites. We are down to about 12,000 underground storage tanks on about 6,000 sites in 10 years. Most of those people went out of business. You go through many parts of Iowa, small-town Iowa, and you will find abandoned gas stations. They are a blight.

Mr. GUTKNECHT. And nobody can buy them. They cannot do anything with them.

Mr. MARR. And no one wants them. Even the counties will not take them back now. They just sit there.

Mr. GUTKNECHT. Mr. Davis, I am becoming—I am not an expert in fertilizers or herbicides, but Atrazine was brought up. I think it is a good case because we have a colleague—a former colleague of mine in the State senate, who is a veterinarian, put on a great presentation a few weeks ago for me about the toxicity of chemicals like Atrazine. Are you familiar with how toxic Atrazine really is when compared to some other chemicals? For example, do you——

Mr. DAVIS. Yes, I am. I do not have any material in front of me, but the old adage I remember was on bacon that Paul Harvey had on one time, if you ate 454 pounds of bacon every day, in 29 years you may develop a cyst. Similar things happen. Atrazine is probably not as contaminant as—I should not use Coca Cola, but I will. As far as pop or some type of other products that we willingly consume. One of the problems with agriculture is the misconception by the public and that is they think that people out there putting a quart of a product on an acre are contaminating our environment, which, in fact, we probably take better care of it than anybody else. When you get into a town the size of Des Moines, the Drainos and the other solvents people are using, or even the fertilizers that they are putting on their lawns are 10, 20, 100 times as much as we are using out there on the land. Those are probably more toxic than anything we are doing.

Mr. GUTKNECHT. I am going to get that information and I am going to make sure I am scientific on this thing. But you are absolutely right, it is not much more toxic than many of the things that people use and eat every day.

Mr. DAVIS. Correct.

Mr. GUTKNECHT. The second point that needs to be made about farm chemicals is their half-life. I am told that the half-life on—which means that every period of time it breaks down in half of Atrazine is like 6 weeks. That is something that the farm chemical companies frankly have not done a very good job of explaining to the general public, that these chemicals are far less dangerous and far less toxic than sometimes some of the groups out there purport them to be. And I think those of us who represent farm States ought to do a better job of helping to communicate to our city constituents as well that while we do want a clean environment and we want to make certain that there is, you know, legitimate controls and there is a need for certain regulations, but I think we have to have some common sense in all of this. Everybody eats and everybody appreciates the low prices that we have for food in this country and part of that is because we have the technology and the chemistry that we do. I agree with you, we need some regulation but we need some common sense.

Finally, I want to come back to Mr. Valentine because I think we have had lots—I do not know how many, 100 hours of testimony. I do not think we have had any more compelling testimony than yours. In fact, while you were testifying, I leaned over to Congressman Dornan and said—when you were talking about the almost storm troop response that you got from the various groups—that these groups must have read Patton's theory on total war because they seem to, you know, be setting backfires around you so you did not have a chance to even tell your story. One of the concerns I would have—I am not an attorney, but it does concern me that in some respects any defense and/or prosecution or, you know, litigation that may have well have been hampered or jeopardized by the activities of the people who were in effect supposedly working for the public good. Could you comment on that?

Mr. VALENTINE. We are very seriously disturbed at the way EPA used the media here with this press conference a couple of weeks ago and issuing press releases left and right in the middle of what—we have some serious civil litigation going on right here in Sioux City. I think that it was an entirely improper role for a government agency to play but unfortunately, we have not been able to think of any redress. As you may know, suing the Government is a difficult thing. There are, you know, notions of governmental immunity and such. But, I think they have colored the view of Terra here in our own hometown. I hope I am wrong about that.

Mr. GUTKNECHT. Well, in any event, I am, with the chairman, very intrigued by your notion of some form of bill of rights. Frankly, I think—I do hope we will hear from some of the EPA people who were involved in this investigation. Frankly, I would like to hear their side of the story. But it does disturb me when Federal agencies deny information to Members of Congress, or embargo the information and then use sort of a political campaign of selected news releases and news conferences against what—at least from

your perspective—was a completely cooperative corporate citizen who was trying to get to the bottom of this and take care of the people who worked for you and to try and make certain this does not happen again.

Mr. VALENTINE. I encourage you, Congressman, to share a copy of my testimony with anybody at EPA. It is pretty hard to refute. We have got some firsthand witnesses and your own colleague here, Congressman Latham, as well as Senator Grassley. What I have said is consistent with my oath—it is the truth. It was, to use Congressman Latham's term, an agency out of control—a very arrogant agency.

As far as the regulatory bill of rights, that is not just a rhetorical device. As I say, I think it is something that you—particularly as you hear more and more stories, that would be one way for you—for your committee to redress the balance. And again, I plan to do what I told the chairman, which is to submit something in the nature of the Bill of Rights of the U.S. Constitution, but for the 1990's and for dealings with regulatory agencies. As the chairman said, the original Bill of Rights had in mind the State, the Government, not regulatory agencies and in that respect, maybe it is time that we updated it.

Mr. GUTKNECHT. The founding fathers really had a deep appreciation for the need for checks and balances. I think what you are indicating here is there really is not a good set of checks and balances as it relates to some of these agencies. Again, we all want a clean environment. We all want safe work environments. We all want safe work places. We all want to live—you know, we all share the same planet. But on the other hand, I mean, there is some reasonableness here. I do hope, Mr. Chairman, you will write a letter and get the names of the people involved in it. I would like to have them, if not here, back in Washington. I would like to hear their side of the story and I would like to ask them some questions.

Mr. VALENTINE. I would be glad to repeat my points back in Washington.

Mr. GUTKNECHT. Thank you.

Mr. VALENTINE. One of the most frustrating things was this business of no legal action, them simply coming to town, calling a press conference, reading their conclusions and turning around and going home. We tried to grab for air, you know, to say wait a minute, that is not true. But there was no where to grab. They either ought to have the nerve to stand and, you know, give us an opportunity to respond or not issue these kinds of reports.

Mr. MCINTOSH. I appreciate that. I think this would be an appropriate inquiry for us to take this information and put it to EPA and find out what their justification is. Maybe, Tom, you can join us in that.

Mr. LATHAM. Thank you.

Mr. MCINTOSH. Well, thank you all.

Mr. DORNAN. One comment, Mr. Chairman. Up in New Hampshire, less than 2 weeks ago, there was a gathering of a lot of environmental groups from New England. There must have been like eight or nine of them. And the principal sponsor of a Presidential forum group was the wildlife—New Hampshire Wildlife Association. They invited all of the nine candidates and I was the only one

who showed up. I thought they all were going to be there, or most of them. And the hostility of all those groups toward the Republican party was peculiar. They were shocked at my respect for the environment, my involvement with animal rights, amendments that I had passed years ago as a freshman to protect and save the peregrine falcon. I told them about one of my grown daughter's activities with some animal welfare groups. Then, I said something similar to what you said about—or what Gil said about we all share the planet. I just had a 10th grandchild born within the week and I said I want clean air for Molly Dornan. I want clean water for her. We all do.

Well, I was immediately followed by Carol Browner, head of EPA, and the next day was Al Gore, the Vice President. He got national press coverage the next day, she got some the night before. I was grateful they did not beat up on me as the only Republican who dared to come into the lion's den. And one of the tragedies was—and I am not being partisan in saying this. It was the level or rhetoric by Carol Browner, head of the EPA. It was more like a Saturday Night Live skit of what our party was trying to do to the environment, to poison our grandchildren. I am a classmate of Al Gore's from 1976, an interesting class. Bob Walker in our Congress now is retiring. But it is Dan Quayle and Al Gore and Leon Panetta. I have always gotten along with Al Gore as a classmate, but his rhetoric the next day was also inflammatory and divisive in the extreme. That is why these hearings will have a difficult time in the dominant media trying to do what is fair and why these hearings are so important. We have got to hear from good American citizens under oath giving straight truth so that we can cut our way through this inflammatory rhetoric that the dominant media, without ascribing any evil motives to them, just is, you know, screaming fire. It sells newspapers and it sells soap on TV.

But we are all protective of the environment and I do not know how my party is going to fight back and re-establish what I laid a claim to that night and that was Teddy Roosevelt's conservationism. We are not too far from South Dakota where he is up there as one of the four Presidents on Mount Rushmore. The root word of conservative is to conserve and that is where you get the word conservationist. So we have really got our work cut out of us to try and have hearings like this, seek the truth, write good law that do just what all of you want; protect the water; protect the land; protect the air, of course, that we breathe every day and do it without destroying jobs and do it in a fair way.

Mr. MCINTOSH. Thank you.

Thank you all for joining us today. We look forward to following up with you. We appreciate that.

Let us now turn to our third panel of this hearing. These are ladies and gentlemen who have been working in the public sector. If I could have Mr. Bob Hamilton who is the chief of the Sioux City Fire Department; Dr. Linda Madison, assistant superintendent at the Sioux City Community School District and Stephen Brevig who is general manager of the Northwest Iowa Power Cooperative; also, Don Meisner, director of Siouxland Interstate Metro Planning Council. Thank you all for joining me.

If I could ask you all to please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show that each of the witnesses answered in the affirmative.

Our first witness on this panel is Mr. Bob Hamilton with the Sioux City Fire Department. I appreciate you coming. I understand part of what you will be telling us today is a followup on the incident we just heard about with the explosion.

Mr. Hamilton.

STATEMENTS OF BOB HAMILTON, SIOUX CITY FIRE DEPARTMENT; DR. LINDA MADISON, SIOUX CITY COMMUNITY SCHOOL DISTRICT; STEPHEN BREVIG, NORTHWEST IOWA POWER COOPERATIVE; AND DON MEISNER, SIOUXLAND INTERSTATE METRO PLANNING COUNCIL

Mr. HAMILTON. Thank you, Mr. Chairman.

First and foremost, let me preface my statement by echoing comment from the Chair and the distinguished Members of Congress who are here, and that being that I also am a strong supporter of health and safety issues for workers and also, I am extremely concerned about the environment. It is one of the reasons that I entered the profession that I did, into the fire service. I believe very much in human issues and so on and so forth.

I have had two experiences with OSHA. I have outlined those for you in some written statements I provided to the committee, but I would just like to briefly discuss those with you here this afternoon.

The first I will describe as a friendly intervention. What happened was, we had a situation where——

Mr. MCINTOSH. Just so you will know what is happening, we have not distributed copies of your testimony. Could we make those available to each of the committee members? Excuse me, Mr. Hamilton.

Mr. HAMILTON. Oh, that is OK.

The Sioux City Fire Department is the only fire department in the northwest quadrant in the State of Iowa that has a hazardous material team, an active, on duty, full-time, paid, active hazardous material team that does respond to emergencies that threaten either the public safety or the environment. We respond within the jurisdictional limitations of the city of Sioux City. However, we will respond to mutual aid requests, as is a prevalent practice in the fire service to mutual aid calls primarily rural squads. We have done that for sometime as well.

The first incident that we had an opportunity—that I had a personal opportunity to have some intervention with an OSHA investigator was a result of our hazardous material team being called to a hazardous material situation at a local meat processing plant where a small amount of ammonia had been released and some of the workers there had been injured. As a matter of fact, we had to go in and rescue actually one of the workers out of there. I am not sure how the investigation by OSHA was initiated, whether it came through an employee complaint, whether it is the standard practice from OSHA to investigate worker injuries in these types of incidents. But in the broader scope, we were on scene. Our haz-

ardous material program became a secondary part of the investigation.

I would characterize that investigation as being very professional, very straight-forward and was done, I believe, in a very adequate manner. The investigator came to our location, came to the Sioux City Fire Department, came to the headquarters. He inspected our operating procedures. He inspected under 1910.120 (Q)—FR 1910.120(Q). He investigated and inspected our written mask program that we are required to have, mask meaning self contained breathing apparatus under 1910.134. And at the end of it, the conclusion—to make a long story short, the conclusion was he gave us a clean bill of health. This occurred in 1991.

The regulations that govern fire service and other emergency response or public safety officials in the area of hazardous materials was adopted by Congress and officially became part of the statute in 1989. We had believed at that point in 1991—we were grateful and thankful that we were at least in compliance at that particular moment.

The second involvement that we have had with OSHA was a result of the Terra incident. The portion our hazardous material team—maybe just to set the stage for you and I will be as brief as I can here. We were on scene for 11 days down there trying to assist Terras hazardous material technicians and their officials, other local fire jurisdiction officials, other State resources and agencies that all played a role in trying to mitigate this terrible tragic event that occurred on December 13, 1994.

At the conclusion of our involvement there several days later, we received a call from OSHA that they would like to come up based on a complaint that was filed by one of our employees. The OSHA investigator asked to and wanted to interview several of the members of our hazardous material team. We provided that exposure for that individual at that particular time. The initial characterization of this individual was, I would again characterize as somewhat friendly. He did interrogate several members of our hazardous material team, and based on that initial investigation, he concluded at that time—his summarization to us was, we believe that from everything I have seen and talked to here today, that you probably acted appropriately, but there may be a couple of paper violations we will need to look at and try to get to the bottom of.

The individual that filed the complaint against us, the employee—the member of our department that filed the complaint alleged 53 different violations of 1910.120(Q). It was obvious to me what he had done—or this individual had done—he or she, I am not sure—went right down paragraph-by-paragraph and basically said that we violated every portion of that section according to the regulations.

Our subsequent visits from OSHA in the investigations were quite confrontational. They were at best antagonistic. The individual took us to the point where he concluded that under 1910.120(Q)—any of you that know anything about incident command, I do not care whether you learned it in the military or whether you learned it from some other source, it is all the same. The term superior officer is used in the regulations. Superior officer to us has always been—and I have been in this business for nearly

28 years—is a person that has a higher rank. Iowa OSHA interpreted that word to mean most qualified. It is the first time ever that that has ever been—that particular word underneath the regulations has ever been moved forward. We had a consulting firm research the data bases of the 31 State OSHA programs, as well as Federal OSHA, and there has never been an interpretation with that word under that—or concluded that that was what that word meant, or ever was the intent of Congress.

With that in place, what they said to us because we responded to another fire jurisdiction under a mutual aid call—even though in our mutual aid written agreements under State code 28(E), we indicate in our mutual aid agreements, which are very generic, that we will not take command and control of anybody else's incident or anybody else's jurisdiction. Our own operating procedures preclude us from taking command and control of anybody else's—anyone else's jurisdiction. They indicated to us that because they felt when we went on scene and when the volunteer fire chief left the scene without our knowledge—but when he left the scene, who was the authority having jurisdictional control at that point, that we had an obligation because we were the most qualified agency that was on scene at that particular time. And because we were the most qualified and because in their judgment they felt that we should have at that point then assumed command and control of the incident, we would have been the incident commander. Based on that, the incident commander has various responsibilities under 1910.120(Q). We never assumed command and control. It was never offered to us; we never accepted it. It was never passed to us in any form or fashion or shape or any other thing. But that was the basis for the vast majority of the citations that were issued against us, or based on that fact. Needless to say, you can imagine once that word got out in the State of Iowa and the rest of the country for that matter.

The fire service was founded several hundred years ago in this country based on the premise that we shared resources during times of emergency because most departments, including ours, do not have the resources to mitigate every potential possibility that we can be confronted with. It is a general practice in the fire service in this State and almost every State of this Union, if not all States in this Union to share resources through mutual aid agreements. This ruling had the potential to totally unravel that. What they were saying to us is because we had—they felt that we were the most qualified—and I do not know how they made that determination because later in the thing they told us we were incompetent. [Laughter.]

But irregardless of that, telling us that we were the most qualified, certainly after the fact, was a very interesting, at best to us anyway, interpretation of the regulations.

There was an outcry, as you an imagine, from the fire service, all fire service professionals, volunteers, professionals and others and a combination of departments in this State. I also personally received several phone calls from professionals throughout the country that stated to me their concern for this ruling. Even though it is an Iowa interpretation, because of its uniqueness, it has a potential to be a precedent-setting ruling and therefore had

even national implications. Subsequent to that, we have gone through a series of behind-the-scenes negotiations with the OSHA people and subsequent to, I guess, this meeting or previous to this meeting, we have reached a tentative agreement with them and have signed off on everything. I think we ended up admitting to two minor paper type violations, but all of the operational violations have been vacated.

The concern we still have is that we still believe—and I still believe personally that it is the belief of the OSHA staff in this State, and I think maybe elsewhere, that that is a correct interpretation of those regulations. If this event does occur somewhere else in this State, potentially under the same or similar type circumstances, they would exercise exactly the same judgment. That is a grave concern to me.

It is absolutely essential from my perspective that the sharing of resources does not need to be discouraged. It needs to be encouraged, especially in times of tight budgets and especially in times that all of us are currently in. We need people to collectively assimilate their resources together.

I have put together some thoughts that I think are absolutely critical to improving the situation as it relates to our experiences, and maybe they will be beneficial and helpful to someone else in the future. I think it is absolutely essential that OSHA be changed from a reactive to a proactive agency in the sense that they need to work with employers. I am talking now strictly from the perspective of public safety. They need to work with us proactively. I have personally made phone calls to them to try to ensure that we are in compliance. You never get an answer that says you are in compliance. They will say, well, it sounds like you are doing the right thing but we are not quite sure. We do not really know. We do not see what you are doing and all sorts of things. We need to have those types of relationships.

We need to create in my estimation minimum training standards for OSHA investigators. I have been in this business for 28 years. Let me tell you something, the first thing I learned in hazardous material training that I took 6 years ago is there is no such thing as an expert. And yet, the OSHA investigator that we had, his credentials, in my estimation anyway, were far lacking and far less than what my own personnel had. And for that individual to come in and try to determine what took place on an emergency scene under emergency conditions to me is just not correct.

We need to rewrite the OSHA regulations pertaining to public safety agencies now in clear understandable language. They are vague, they are ambiguous at best, and this should be done with direct involvement with public agency officials that represent all the public safety disciplines so that we have some input into the regulations.

I also believe because I think—and I am going to say this in—I guess I am very candid in this respect. I think we were victimized by a process that allows or provides for employees to abuse a privilege or a regulatory agency to try to retaliate against an employer for whatever the motives might be. I think there needs to be language created that would punish those that initiate unfounded complaints or abuse the current system protections. Employees

need to be protected, they should be and need to be protected. But if they abuse that privilege there should be some recourse. There should be something that that employee should sustain some type of damage for that type of practice. We should encourage mutual problem-solving and pursue arbitration in differences rather than the legal system. We do not have—and I think it was very clear in the last panel that you had an opportunity—that I had an opportunity to listen to, that the majority of the people do not have the financial resources and the wherewithal to be able to fight or to litigate discrepancies or differences. That came out very clearly when several members of the Fire Service testified before the Administrative Rules Committee here in the State before the State legislature here a few weeks ago.

The gentleman that really touched my heart strings and probably would everyone else was a volunteer firefighter representing the Iowa Firemens Association, which is a volunteer firefighter group. I think he very clearly explained to the committee, they do not have the resources. They are not in compliance. They will admit that they are not in compliance. They cannot come into compliance because they do not have the resources to be able to do so and they are absolutely terrified of OSHA. They are absolutely terrified of what OSHA can do to them if in fact one of their employees gets—or one of their volunteer fire fighters gets hurt or injured or they are involved in some type of an emergency scenario or situation like we are. I think that pretty much characterizes or summarizes my frustration in this whole process.

Having been a public official myself for this many years, a government agent, I see myself as an ambassador. I do not feel like I was treated like an ambassador. I made comments in the paper, so it is public record. I felt like, you know, I understand now what Gestapo tactics mean and some of the other things. You heard storm troopers before. If I treated my constituency, the people that I represent, the way that I was treated, I would not be in this job or this position very long, believe me. I think it is appalling that we have Federal representatives or agents of our government that treat people the way we were treated. I just think that is absolutely not acceptable to me and it should not be acceptable to any of us as citizens of this country.

Mr. MCINTOSH. Thank you very much, Mr. Hamilton. That was very powerful testimony. I appreciate you coming forward and sharing that with us.

Let us continue on with the panel and then we will get to some questions. Dr. Madison, I appreciate you coming today. I understand you are going to be talking to us about IDEA. I serve on the Education Committee as well, so I am doubly interested in this. Thank you for coming.

Ms. MADISON. Thank you for giving me the opportunity to speak to you today. Today, as you said, I am going to address concerns that we in the Sioux City Community School District have about the Individuals with Disabilities in Education Act, commonly known as IDEA.

It is ironic that each disabled student receives services through an individualized educational plan, but there is nothing individual about the funding of those individual plans. In one case in Sioux

City, a student was a danger to himself and others to such an extent that he required the services of a full-time teacher, one-to-one, just for him and a full-time teacher's assistant. In other words, two adults were necessary at all times in order to provide a safe education for this child. His weighted funds generated about $9,200 but the salary expense alone for this child was over $40,000 per year. Some other social service agencies can determine when a client has reached maximum benefit from a program and can then discontinue services if continued assistance appears to be a waste of time and resources. That is not true under the Individuals with Disabilities in Education Act. This child must be educated in the least restrictive environment and that appears to be in a regular school with two adults assigned to him. Where do we draw the line between realistic expectations and intensive assistance from birth to age 21?

Another student was severely visually impaired. This child also required a full-time teacher's assistant, equipment to help her learn Braille, services of a teacher who specialized in teaching students with visual disabilities, assistance in learning to use a cane, and assistance of a multi-categorical teacher. This child was educated in the neighborhood school and in the normal classroom with over 20 other children. The school district received about $2,400 in assistance for this child, while the expense for that assistance ran over $10,000 annually. In this situation, the student displayed great potential. The neighborhood school was the best placement for her but the funding did not nearly cover the expense. A hidden cost in situations like this is the necessity to keep class size lower so that the teachers have opportunities to work with the disabled children and also to provide time for regular education students. So a classroom that normally would accommodate 25 students may be held down to 20 students.

Related services are an area of concern for educators as well. School personnel today are required to do tube feedings, catheterizations and other related services in order for children to attend school. Carried to an extreme, schools could be required under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act to provide glasses to students who cannot see well enough to read. Where does the responsibility of the home and other community agencies end and where does the responsibility of the school district begin? That is the question we need to have answered.

How much money should be spent in an attempt to educate a nearly comatose student and is that service education or is it therapy? With the arrival of assistive technologies, some students have been found to have great potential where we previously thought they were mentally disabled. Assistive technology holds great promise but it also holds a great price tag.

When the Federal Government requires States and local districts to provide an education for all students who have disabilities, regardless of the potential for benefit, the Federal Government should provide the necessary financial support. Public Law 94–142, as originally adopted, provided States with a formula for special education funding at 40 percent of the national average per pupil spending for each student served in special education classes. Ac-

tual funding has remained at or below 12.5 percent. The Federal Government needs to honor its commitment to fund its mandates, or eliminate the mandates.

School districts sometimes acquiesce to unreasonable demands for services because attorney fees from the resulting court tests are often more expensive than simply providing the service. It would help if the Federal Government would place restrictions on attorney fees. Administrative law judges are often sympathetic to parents. They do not understand the complexity of providing services to students with disabilities while maintaining a quality program for all students. There should be a better, less expensive way of handling differences.

Special education mandates have caused the Sioux City Community School District to spend over $1 million more than it received in the area of special education, and that was for 1 year alone. The State will reimburse the district for about $29,000 of that $1 million. Where will the remainder of the money come from? Either we must reduce regular education programming to pay for these special education programs or we need to raise local property taxes. I have provided a sheet detailing the financial impact of special education in Sioux City.

A few years ago, the visually impaired student I described earlier would have been educated in the State school at Vinton, IA. Instead, today she is a bright, popular student attending regular education classes receiving support services for her disabilities. The IDEA worked for her, but it has not worked for all disabled students and it certainly has not worked for the taxpayers of Iowa.

Thank you for giving me this opportunity to speak to you today.

Mr. MCINTOSH. I appreciate it. Thank you very much for raising this issue. I look forward in the questioning period to talking with you more about it. It is a grave concern for us.

Our next witness on the panel today is Stephen Brevig who is the general manager of NIPCO. Mr. Brevig, thank you for coming.

[The prepared statement of Ms. Madison follows:]

U.S. House of Representatives Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Field Hearing
February 8, 1996
Sioux City, Iowa

Testimony submitted by: Dr. Linda R. Madison, Assistant Superintendent
Sioux City Community School District
Sioux City, Iowa.

Thank you for giving me the opportunity to speak to you today. My name is Linda Madison and I represent the Sioux City Community School District here in Sioux City, Iowa. Today, I will address concerns about mandates required through the Individuals with Disabilities in Education Act, commonly known as IDEA.

It is ironic that each disabled student receives services through an individual educational plan but there is nothing individual about the funding of that individual plan. In one case in Sioux City, a student was a danger to himself and others to such an extent that he required the services of a one to one teacher full time and a full time one to one teacher's assistant. In other words, two adults were necessary at all times to teach this child. His weighted funds generated about $9200, but the salary expense alone was over $40,000 each year. Some other social service agencies can determine when a 'client' has reached 'maximum benefit' from a program and can then discontinue services if continued assistance appears to be a waste of time and resources. That is not true with the Individuals with Disabilities in Education Act. This child must be educated in the least restrictive environment and that appears to be in a regular school but with two adults assigned to him. Where do we draw the line between realistic expectations and intensive assistance from birth to age twenty-one?

Another student was severely visually impaired. This child also required a full time teacher's assistant, equipment to help her learn Braille, services of a teacher who specialized in teaching students with visual disabilities, assistance in using a cane, and assistance of the multi-categorical teacher. The child was educated in the neighborhood school and in the normal classroom with over twenty other children. The school district received about $2400 through weighted funds, while the expense for the assistant alone was over $10,000 annually. In this situation, the student displayed great potential. The neighborhood school was the best placement for her, but the funding did not cover the expense. A hidden cost in situations like this is the necessity to lower the general education class size to allow time for the teacher to serve students with disabilities. A classroom which normally would accommodate twenty-five students, may be held to twenty students.

Related services are an area of concern for educators. School personnel are required to do tube feedings, catherizations, and other related services in order for children to attend school. Carried to an extreme, schools could be required, under the Americans with Disabilities Act, to provide glasses to all students who cannot see well enough to read. Where does the responsibility of the home and other community agencies end and where does the responsibility of the school district begin?

How much money should be spent in an attempt to 'educate' a nearly comatose student? Is that service 'education' or is it 'therapy'? With the arrival of assistive technology, some students have been found to have great potential for learning, when previously they were considered mentally disabled. Assistive technology holds great promise, and it carries an expensive price tag.

When the federal government requires states and local districts to provide an education for all students who have disabilities, regardless of the potential for benefit, the federal government should provide the necessary financial support. Public Law 94-142, as originally adopted, provided the states with a formula for special education funding at 40 percent of the national average per-pupil spending for each student served in special education. Actual funding has remained at or below 12.5 percent. The federal government needs to honor its commitment to fund its mandates, or eliminate the mandates.

School districts sometimes acquiesce to unreasonable demands for services because attorney fees from the resulting court tests are often more expensive than simply providing the unreasonable service. It would help if the federal government would place restrictions on the attorney fees. Administrative law judges are often sympathetic to parents. They do not understand the complexity of providing services to students with disabilities while maintaining a high quality program for the other students. There should be a better, less expensive way of resolving differences.

Special education mandates have caused the Sioux City Community School District to spend over one million dollars more than it received in the area of special education--and that was for one year alone. The state will reimburse the district for about $29,000 of the one million dollars. Where will the remainder of the money come from? Either we must cut general education programming to pay for special education or we must raise local property taxes. I have provided a sheet detailing the financial impact of special education in Sioux City.

A few years ago, the visually impaired student I described earlier would have been sent to the state school at Vinton. Instead, today she is a bright, popular, visually disabled middle school student, attending regular classes in her neighborhood school, and receiving support services for her disability. The IDEA worked for her, but it has not worked for all disabled students and it certainly has not worked for the taxpayers of Iowa. Thank you for giving me this opportunity to speak to you today.

SIOUX CITY SPECIAL EDUCATION

FINANCES 1994-95

1. 1994-95 Revenues and Expenditures for Resident Pupils

	- Revenues	$11,666,263
(−)	- Expenditures	$12,698,990
(=)	- Deficit	< $1,032,727 >

2. Total Resident Pupils Served - 1,997
3. Total Non-Resident Pupils Served - 50
4. Total Pupils Tuitioned Out to Other Agencies - 95
5. Total Tuition Dollars Received - $429,797
   With $159,680 of Receivable as of 6-30-95
6. Total Tuition Dollars Paid Out - $565,498
   With $26,542 Payable as of 6-30-95

Mr. BREVIG. Good afternoon, Mr. Chairman. I also happen to have the distinct pleasure of having come from Minnesota and now reside in northwest Iowa. So similar to Congressman Gutknecht.

NIPCO is a wholesale electric generation and transmission cooperative serving a 6,500 square mile area in western Iowa. NIPCO receives a portion of its power supply from a member/owner, Basin Electric Power Cooperative headquartered in Bismarck, ND. Basin Electric owns and operates over 3,000 megawatts of generation capacity for 126 rural electric member systems in eight States including Minnesota and Iowa.

The story that I am about to tell you about is a regulatory story that is still unfolding at this time, which we are really in great need of your help. The Great Plains Synfuels Plant located in Beulah, ND is the only facility in the world that manufactures pipeline quality synthetic gas from coal. Great Plains is owned and operated by Dakota Gasification Co., a wholly owned subsidiary of Basin Electric. Great Plains was constructed pursuant to a $1.5 billion loan guarantee issued by the Department of Energy. DOE issued the loan guarantee based upon FERC Opinion 119 which approved high-priced gas purchase agreements with Great Plains and the four pipeline purchasers and allowed the pipelines to pass these costs on to their customers.

The project sponsors ultimately abandoned the project following its completion in August 1985. The DOE assumed operation of the project and eventually secured ownership through foreclosure. At this point in time, the Reagan administration had determined certain assets held by the Federal Government would be more appropriately held by the private sector. The Great Plains project topped this list and it was determined that the DOE would put the Great Plains project up for sale.

The Congress instructed DOE to pursue a buyer committed to the long-term operation of this project so that it could acquire the technical, financial and environmental information that caused DOE to guarantee the loan in the first place, that could continue to gather the information from this project.

Basin Electric's bid was selected because it provided the highest value to the Federal Government. The bid provided DOE with 85 million in up-front cash and called for DOE sharing in the revenues generated by sales from synthetic gas. Based upon the plant production to date, Basin Electric has saved the Federal Government $360 million by elimination of plant taxpayer operating subsidies.

Shortly after Basin however purchased the facility, a dispute arose between Dakota and the four pipeline companies that purchased the synthetic gas output from the Great Plains plant. These disputes led Dakota and DOE to file a lawsuit against the pipelines. Rather than take these matters to trial, the parties entered into a four-party, nearly identical settlement agreement, and because of these settlements—of the purchase—the gas purchase agreements, the settlements were subject to FERC approval.

In April 1993, a group of gas distribution companies filed a complaint with the FERC claiming that the prices charged by Dakota for the synthetic gas exceeded those authorized by FERC Opinion 119. This is the one—this is the 1981 FERC opinion approving the

gas purchase agreement to begin with. FERC consolidated consideration of the settlements and the complaints and then set the matter for hearing.

Following the trial before the administrative law judge, the ALJ ruled that pipeline companies were not prudent in the settlement agreements. In addition, though it was clearly not within the scope of his assignment, the ALJ made the findings that because of the changes in the natural gas industry, extraordinary circumstances warranted—existed warranting the modification of Opinion 119. Based upon these findings, the ALJ modified the pricing of the synthetic gas and limited the amount of synthetic gas to be sold.

Finally, despite the fact that FERC had no jurisdiction with respect to intrastate pipelines such as the 34-mile one that runs between the Great Plains plant and the Northern Border Pipeline, the ALJ established a new transportation rate at approximately 40 percent of the rate that had been in effect since 1985.

To add insult to injury, the ALJ ordered that these changes with respect to price, output and transportation be retroactive to May 1, 1993 and ordered that the pipelines refund their customers all amounts paid by the customers in excess of limitations established by the ALJ. Dakota estimated that these refund obligations would aggregate approximately $276 million from Dakota.

If this decision of the ALJ stands, the results are tragic. The plant would close and 640 Dakota employees would lose their jobs, as well as 220 additional Basin Electric employees for a total loss of 860 direct jobs. In addition, North Dakota Tax Department has estimated that the impact of the plant closing would result in elimination of almost 3,900 additional full-time equivalent positions, or a total of 4,700 jobs.

Dakota is also now in the process of completing an anhydrous ammonia plant that would directly—that would direct approximately 20 percent of the plant's raw synthetic gas into production of approximately 1,000 tons per day of anhydrous ammonia. If Dakota is unable to complete this facility, the market of anhydrous ammonia will not receive the additional supply, keeping the price of fertilizers at high historic levels.

Dakota is also in the process of completing construction of a flu gas desulphurization scrubber which will produce 350,000 tons per year of ammonia sulfate fertilizer. Dakota's production will equal 10 percent of U.S. consumption. Loss of this new facility will also have an impact on the price and supply of this fertilizer.

Dakota is also negotiating a major oil—negotiating with a major oil producer to construct a pipeline to sell the oil company a portion of its projects, carbon dioxide waste gas steam for use in tertiary oil recovery. The technology can double the actual total production of maturing oil fields that would otherwise cease production.

The most immediate concern for the people of Iowa served by NIPCO is the fact that if the Great Plains plant did in fact have to close down because of the ALJ's decision, Basin Electric estimates that it would have to increase the wholesale electric rate it charges to its members, including NIPCO, at least 13 percent and this would result in an increased cost to the rural consumers served by NIPCO of $2.16 million annually. And that also equates to $1.1 million annually to Minnesota.

Mr. Chairman, I want to take this opportunity to thank you for this opportunity to express our concerns about this regulatory nightmare. As you can see, Basin Electric, NIPCO and Dakota are doing everything possible to develop the full potential of this facility under extraordinary regulatory difficulties. We appreciate your time and assistance and hope that you can help us in this matter.

Mr. MCINTOSH. Thank you. I appreciate you bringing it forward. We look forward to hearing more on that.

Our final witness on the panel is Mr. Don Meisner with Siouxland Interstate Metro Planning Council. Mr. Meisner, thank you for coming today.

[The prepared statement of Mr. Brevig follows:]

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NORTHWEST IOWA POWER COOPERATIVE
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Testimony of Steve Brevig, General Manager of Northwest Iowa Power Cooperative (NIPCO) at a hearing to be held at Sioux City February 8, 1996, before Representative Dave McIntosh, Chair, U. S. House of Representatives Subcommittee on Economic Growth, Natural Resources and Regulatory Affairs.

Good morning Mr. Chairman:

My name is Steve Brevig. I am General Manager of Northwest Iowa Power Cooperative (NIPCO), which is a wholesale electric generation and transmission cooperative owned by 9 rural electric cooperatives and one full-service municipal electric cooperative. NIPCO also provides transmission service to another municipal cooperative providing electricity to 13 Iowa towns. Together, the NIPCO Power Network serves farms, homes and industry in a 6,500 square mile area of western Iowa. The NIPCO headquarters is located in Le Mars, Iowa.

NIPCO receives a portion of its wholesale power supply as a member of Basin Electric Power Cooperative (Basin Electric), headquartered in Bismarck, North Dakota. Founded in 1961, Basin Electric is a consumer-owned regional cooperative which operates 3,304 megawatts of electric generating capacity. Basin Electric operates 2,351 megawatts of this capacity for 126 rural electric member systems, including NIPCO, in the eight states of Iowa, Colorado, Minnesota, Montana, Nebraska, North Dakota, South Dakota and Wyoming.

The Great Plains Synfuels Plant located near Beulah, North Dakota, is the only facility in the world that manufactures pipeline quality synthetic gas from coal. Great Plains is owned and operated by Dakota Gasification Company (Dakota), a wholly owned subsidiary of Basin Electric. Great Plains was constructed pursuant to a $1.5 billion loan guarantee issued by the Department of Energy (DOE) pursuant to the Federal Non-nuclear Energy Research Act of 1984. The balance of the cost of this $2 billion project was provided by the project sponsors, four of whom are affiliates of the four pipeline companies that purchase the plant's synthetic gas output. DOE issued its loan guarantee based upon Federal Energy Regulatory Commission (FERC) Opinion 119 which approved high priced gas purchase agreements between Great Plains and the four pipeline purchasers and allows the pipelines to pass these costs on to their customers. Basin Electric joined with the project sponsors in developing joint mine, rail and water facilities to be shared by Great Plains and the adjacent Antelope Valley Station, a 900 MW power plant then being constructed by Basin Electric.

As a result of the down turn in world energy prices, the project sponsors abandoned Great Plains following its completion on August 1, 1985. The DOE assumed operation of the project and eventually secured ownership through foreclosure.

At that point in time, the Reagan Administration had taken an inventory of various government assets to determine which assets held by the federal government would be more appropriately held by the private sector or otherwise result in the federal government competing with the private sector. The Great Plains project topped this list and it was determined that the DOE would put the Great Plains project up for sale.

Seventeen firms expressed an interest in purchasing the Great Plains project and the DOE narrowed the field down to three bidders which included The Coastal Corporation, Mission Energy, a subsidiary of Southern California Edison and Basin Electric. In considering the various bids, the Congress instructed the DOE, pursuant to Section 317 of Public Law No. 100-202 to seek a buyer committed to long-term operation of the project so that the technical, financial and environmental information that caused DOE to guarantee the loan in the first place could continue to be gathered from the project.

Ultimately, the Basin Electric bid was selected because it would return the highest value to the federal government as well as because of Basin Electric's commitment to the long-term operation of the project. The bid provided DOE with $85 million in up-front cash and calls for DOE sharing in the revenues generated by sales of synthetic gas. In part, Basin Electric was successful in its bid because, unlike the other two finalists, it agreed to waive taking any production tax credits associated with the production of synthetic gas thereby

avoiding a continuation of the taxpayer subsidy of the operation of this project. Based on production to date, this waiver has saved the federal government $360 million.

Basin Electric formed Dakota, a wholly owned subsidiary, which purchased the Great Plains facility on October 31, 1988. Shortly thereafter, disputes arose between Dakota and the four pipeline companies that purchase the synthetic gas output of the Great Plains plant. These disputes led Dakota and DOE to file a lawsuit against the pipelines over the price for synthetic gas, the amount of gas the pipelines are required to purchase and the rate for compression and transportation of synthetic gas on the project's 34-mile pipeline. Rather than take these matters to trial, in February 1994 the parties entered into four nearly identical settlement agreements. Because these settlements would amend the gas purchase agreements, the settlements are subject to approval of the FERC.

In April of 1993, a group of gas distribution companies from Michigan and Wisconsin filed a complaint pursuant to Section 5 of the Natural Gas Act with the FERC claiming that the prices charged by Dakota for synthetic gas exceeded those authorized by FERC Opinion 119, the 1981 FERC Opinion approving the gas purchase agreements. This complaint claims that there are standards with respect to the price of synthetic gas in Opinion 119 independent of the pricing provisions of the gas purchase agreements approved by Opinion 119. Upon the pipelines' submission to the FERC of the settlements, FERC consolidated

consideration of the settlements and the complaint and set the matter for hearing.

A trial before an Administrative Law Judge (ALJ) Michel Levant was held during June and July of 1995 and the ALJ issued his initial decision on December 29, 1995. In his initial decision, the ALJ ruled that the pipeline companies were not prudent in entering into the settlement agreements with Dakota and DOE. In addition, though it was clearly not within the scope of his assignment, the ALJ made the finding that because of the changes in the natural gas industry occasioned by wellhead deregulation and Orders 436 and 636, extraordinary circumstances existed warranting the modification of Opinion 119. Based upon this finding, the ALJ modified the pricing of synthetic gas and limited the amount of synthetic gas to be sold under the Gas Purchase Agreement to the original design capacity of the synfuels plant.

Finally, despite the fact that FERC has no jurisdiction with respect to intrastate pipelines such as the one that runs between the Great Plains plant and Northern Border Pipeline, the ALJ established a new transportation rate at approximately 40% of the rate that has been in effect since 1985.

To add insult to injury, although only prospective relief from and after the date of a FERC order is available as a result of a complaint pursuant to Section 5 of the Natural Gas Act, the ALJ ordered that these changes with respect to price,

output and transportation be retroactive to May 1, 1993, and ordered that the pipelines refund to their customers all amounts paid by the customers in excess of the limitations established by the ALJ. Presumably, the pipelines would seek reimbursement for these amounts from Dakota. Dakota has estimated that these refund obligations would aggregate approximately $276 million annually.

This matter is now before the full FERC. Dakota, DOE and the pipelines filed exception to the ALJ's decision with the FERC on January 29, 1996, and the customer group's exceptions are due on February 20, 1996. A copy of DOE's exceptions is included with my written testimony for your information. The FERC in its deliberations is free to adopt the decision of the ALJ, reject his decision or modify it.

It is our hope that the gross errors committed by this ALJ will be obvious to the FERC and that the FERC will stand by the commitment made to the Great Plains project in Opinion 119 as the continued operation of that facility is at stake. Clearly if this commitment is not honored, it would put a chilling effect on future privatization efforts of the federal government as potential purchasers in a private sector would be concerned as to whether or not they could rely on receiving the same regulatory treatment as their federal government predecessor. A more immediate concern to the people served by NIPCO is that if the Great Plains plant did in fact have to be closed because of this ALJ's decision, Basin Electric estimates that it would have to increase the wholesale

rate it charges its members at least 13% from 39.7 mills to 44.9 mills. This would result in an increase cost to the rural consumers served by NIPCO of $2.16 million annually.

Mr. Chairman, that concludes my prepared remarks, however, if there are any questions I would be happy to answer them. In addition, here with me is Mark Foss, General Counsel of Dakota.

Mr. MEISNER. Mr. Chairman, thank you for the invitation allowing me to be here.

I am Don Meisner and I direct SIMPCO which is an organization of 70 local governments in Iowa, Nebraska and South Dakota. We are very seriously—very serious about our concerns on mandates to the local governments. Some of those have been expressed at the table here earlier by this panel and other panels before you.

I also serve on and am the Chair of the Iowa Advisory Commission on Intergovernmental Relations and we have completed 2 years of intensive study of regulations on local governments and businesses in Iowa. We have many specific examples I can share with the staff at this time or at a later time.

We, in our studies in Iowa, have made many recommendations to the Iowa legislature and we are rolling back some of the unnecessary mandates such as the underground storage tank issue as talked about by Mr. Marr earlier. Generally, we have come to some concerns that we think that we should consider as Federal and State regulatory agencies. We believe there should be a moratorium on new mandates on local governments, businesses and industry. There should be a periodic review of mandates to make sure that they are working and the excessives that you have heard here today are not repeated. Every mandate should have a funding mechanism. We simply cannot absorb any more mandates at the local level. The mandate rulemaking process must include those people who the mandate affects, and it certainly has not in many cases in the past.

The Federal Advisory Commission on Intergovernmental Relations has just released a very interesting report on the role of Federal mandates in intergovernmental relations. I submit that to you. The summary of that is included in your material today. They make several specific recommendations repealing provisions in several laws that extend coverage to State and local governments, providing flexibility in others and providing funding in others.

Some specific examples. Under the Safe Drinking Water Act, the city of Sioux City, for instance, currently spends $90,000 in the water testing and that is growing at about $10,000 per year. The level of expenditure by the city of Sioux City would be much higher than that had they not significantly invested in the laboratory and equipment. In addition, because of the primacy issue with Iowa Department of Natural Resources from the Environmental Protection Agency, a fee of $13,000 per year is paid to Iowa DNR as another cost to the local users of water.

The village of Concord, NE, a little smaller, population of 135, last year spent $2,011.01 on water testing. That was a big issue of a meeting we had in Nebraska last week. It is a very interesting issue.

The city of Sloan, IA, south of us, spent $972 in their 1994–1995 budget and $7,000 in the current year budget. That is happening all over. It is not just Iowa. It is Nebraska, South Dakota and it is out of hand. Many of these tests are simply not needed from our opinion.

Another example, the Siouxland Regional Transit System is a rural transit system that we operate for a private—or a public corporation. We expect to spend $10,000 this year for drug and alcohol

testing of our 59 part-time drivers at about $70—well, exactly $76.50 per test. We will be expending over $2,500 in administrative costs in the paperwork, plus the staff time it is taking for training and implementing of these rules. The testing for these small rural transit systems clearly is not needed, in our opinion.

We have hundreds of examples like this for you. I could give you some rather humorous ones of implementation of some of the tests that are required under the Endangered Species Act in looking for the American Burrowing Beetle and spending $30,000 in looking for that thing under one of our public projects. Or the Home Mortgage Disclosure Act we are the depository for, or the Flood Insurance Act, or the Storm Water Drainage Permit proposal that would be an absolute disaster for small communities. I will be glad to share any of our additional examples with your staff or you.

[The prepared statement of Mr. Meisner follows:]

MEISNER

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February 8, 1996

U. S. House of Representatives
Subcommittee
on
National Economic Growth, Natural Resources,
and Regulatory Affairs
Sioux City, Iowa

Congressman Tom Latham, Committee Members:

The Siouxland Interstate Metro. Planning Council (SIMPCO) is concerned with unfunded mandates. We are concerned with federal mandates on state and local governments, business, and industry. We believe that federal mandates have grown to be too far to costly and burdensome.

I serve as a member and chair of the Iowa Advisory Commission on Intergovernmental Relations (IACIR). The IACIR have been studying state and federal mandates on local government and business for the last two years. The Iowa Legislature has and is addressing several of the recommendations of the IACIR. Many of the mandates that we have considered are federal in origin. State agencies implement or enforce many of these mandates.

My comments address general and specific concerns.

General Concerns

1) There should be a moratorium on new federal mandates on state and local governments, business, and industry.
2) There should be a periodic review of existing mandates.
3) Mandates on state and local governments should have a funding mechanism.
4) Mandates and rule making processes should include input from those affected.

The federal Advisory Commission on Intergovernment Relations (ACIR) recently completed and released a report on mandates. Their report, *The Role of Federal Mandates in Intergovernmental Relations*, contains many accurate observations and sound recommendations

The ACIR recommends repealing the provisions in several laws that extend coverage to state and local governments. They also recommend modifications in other laws to accommodate budget and administrative constraints on state and local governments. The also recommend revising other laws to provide greater flexibility and increase consultation. A summary of the ACIR recommendation is attached.

Specific Examples

•The City of Sioux City and costs of the Safe Drinking Water Act. Lab costs are approximately $90,000 per year and are growing at approximately $10,000 per year. The level of expenditure would be significantly higher if the City of Sioux City had not invested in their own lab equipment. In addition, the City pays the Iowa Department of Natural Resources a fee of approximately $13,000

per year to pay for state water testing "primacy" from the Environmental Protection Agency.
•The Village of Concord, Nebraska (population 135) spent $2,011 for water testing in 1995, up from $584 in 1994.
•The City of Sloan, Iowa (population 938) spent $972 in their 94-95 budget year and expect to spend $7,000 in 95-96. The fee to the Iowa Department of Natural Resources is $132 in 95-96.
We beleive most of these tests are not needed.

•The Siouxland Regional Transit System expects to spend $10,000 in the current year for drug and alcohol testing of its 59 drivers at $76.50 per test. We estimate it requires approximately $2,500 per year in administrative expenses of these requirements. Additional resources were expended in the training necessary for implementation of these regulations.
This testing is not needed for small rural transit systems.

These examples can be multiplied hundreds of times in Siouxland.

Don Meisner, Director

SUMMARY OF RECOMMENDATIONS ON INDIVIDUAL MANDATES

ACIR's proposed recommendations for individual mandates can be summarized into three categories.

The Commission finds that the following mandates as they apply to state and local governments do *not* have a sufficient national interest to justify intruding on state and local government abilities to control their own affairs. While the Commission does not take issue with the goals of these mandates, it believes that achieving those goals can be left to elected state and local officials. **Thus, ACIR recommends repealing the provisions in these laws that extend coverage to state and local governments.**

Fair Labor Standards Act

Family and Medical Leave Act

Occupational Safety and Health Act

Drug and Alcohol Testing of Commercial Drivers

Metric Conversion for Plans and Specifications

Medicaid: Boren Amendment

Required Use of Recycled Crumb Rubber

The Commission finds that the following mandates are necessary because national policy goals justify their use. However, the federal share of the costs should be increased or the stringent requirements and deadlines imposed on state and local governments should be relaxed. These mandates impose substantial costs on state and local governments as a result of requirements that are unnecessarily burdensome. **Thus, ACIR recommends retaining these mandates with modifications to accommodate budgetary and administrative constraints on state and local governments.**

The Clean Water Act

Individuals with Disabilities Education Act

Americans with Disabilities Act

The Commission finds the following mandates are related to acceptable national policy goals, but they should be revised to provide greater flexibility in implementation procedures and more participation by state and local governments in development of mandate policies. **Thus, ACIR recommends revising these mandates to provide greater flexibility and increased consultation.**

The Safe Drinking Water Act

Endangered Species Act

The Clean Air Act

Davis-Bacon Related Acts

COMMON ISSUES IN FEDERAL MANDATES

ACIR's review of existing mandates found a number of common issues that are troubling federal, state, and local government relations. These issues and ACIR's proposed recommendations to address them include:

1. Detailed procedural requirements. State and local governments are not given flexibility to meet national goals in ways that best fit their needs and resources. The imposition of exact standards or detailed requirements, in many instances, merely increases costs and delays achievement of the national goals. *The federal role in implementation should be to provide research and technical advice for those governments that request it, but, in general, state and local governments should be permitted to comply with a mandate in a manner that best suits their particular needs and conditions.*

2. Lack of federal concern about mandate costs. When the federal government imposes costs on another government without providing federal funds, the magnitude of costs is often not considered. If the federal government has no financial obligation, it has little incentive to weigh costs against benefits or to allow state and local governments to determine the least costly alternatives for reaching national goals. *The federal government should assume some share of mandate costs as an incentive to restrain the extent of the mandate and to aid in seeking the least costly alternatives.*

3. Federal failure to recognize state and local governments' public accountability. State governments often are treated as just another interest group, as private entities, or as administrative arms of the federal government, not as sovereign governments with powers derived from the U.S. Constitution. Local governments, despite the important role they play in delivering government services, have been given even less consideration. Non-governmental advocacy groups' views have sometimes been given more attention than those of state and local governments. *Federal laws should recognize that state and local governments are led by elected officials who must account to the voters for their actions, just as the President and Members of Congress.*

4. Lawsuits by individuals against state and local governments to enforce federal mandates. Many federal laws permit individuals or organizations to sue state and local governments over questions of compliance, even though a federal agency is responsible for enforcement. Federal laws, however, are often written in such broad terms, it is not clear what is required of federal, state, and local officials. In these circumstances, permitting litigation brought by individuals subjects state and local governments to budgetary uncertainties and substantial legal costs. Because the federal agency is not directly involved with the costs and problems of this litigation, it has little incentive to propose amendments that would clarify the law's requirements. *Only the federal agency responsible for enforcement of a law should be permitted to sue state and local governments.*

5. Inability of very small local governments to meet mandate standards and timetables. The requirements for many federal mandates are based on the assumption that all local governments have the financial, administrative, and technical resources that exist in large governments. Many very small local governments have only part-time staffs with little technical capability and very limited resource bases. Extending deadlines or modifying requirements for these small governments may have minimal adverse effects on the achievement of overall national goals but may make it possible for such governments eventually to comply. *Deadlines should be extended and requirements modified for very small local governments.*

6. Lack of coordinated federal policy with no federal agency empowered to make binding decisions about a mandate's requirements. There are mandates that involve several federal agencies. This has resulted in confusion about what the law requires and how state and local governments can know when they are in compliance. In addition to making state and local governments aware of mandate requirements, federal agencies should explain the reasons for the mandate and should assist in taking the actions necessary for implementation. *A single federal agency should be designated to coordinate each mandate's implementation and to make binding decisions about that mandate.*

Mr. MCINTOSH. Thank you, Mr. Meisner. I will take you up on that. One of the things I have found in talking with people about this problem is, if you go through a dry analytical description of it, your audience goes to sleep because it is regulations and their eyes glaze over, but if you can show them some of the ridiculous as well as the serious examples, it drives the point home. So, I am always looking for new examples of stupid regulations and there seem to be many of them. So, thank you, I appreciate that.

A real quick question for Dr. Madison. You talked about the IDEA Act and we have looked at that in the Education Committee and have some reform legislation in that area. Another problem that I have heard with that regulation was that teachers felt it made it difficult for them to do a good job teaching students who were not handicapped. Everyone wants to see handicapped students have an opportunity to learn and an opportunity to be full members of our society, but the teachers felt that it was making their job, if not impossible, much more difficult with the other students in the classroom. Has that been your experience as well?

Ms. MADISON. Yes, some teachers do feel that way. They need to make accommodations for all students obviously. That requires additional training for teachers who may have started in the profession 20 years ago. The other thing is, we are looking at efficiency in education trying to make the best use of tax dollars. So, if you have students who learn at an average to above average rate of speed, they do not have difficulties. You can have 25 to 30 students in a classroom, when you place a severely disabled student into one of those classrooms for half a day or so, you have a serious problem with the amount of education the teacher can provide. So then the solution is to provide a one-to-one assistant and that is expensive.

Mr. MCINTOSH. And the other aspect of that I have heard was the inability to remove problem children if they come under one of the categories in the IDEA. The teacher felt they could not discipline the classroom adequately.

Ms. MADISON. That is a concern. If you have a student that is not receiving special education services who has a discipline problem, you can deal with that discipline problem swiftly which is usually appropriate. With a student receiving special education services, you need to call the IEP team together; they need to determine whether the action was related to the student's disability or not and after that discipline is applied. It takes time to get that IEP team together.

Mr. MCINTOSH. Meanwhile the rest of the students may be distracted.

Ms. MADISON. And may wonder why one student was disciplined right away and another student appears to have nothing happening.

Mr. MCINTOSH. Let me ask you another question. I just cannot resist to see if you have heard this. As I was touring some of the schools in my district in Indiana some of the kids came up to me and started talking about—that one school that they called it crazy checks and another school it was funny money. Have you heard that from the kids?

Ms. MADISON. No, I have not heard that at all.

Mr. MCINTOSH. What it turned out to be was payments to their parents under the Social Security Disability portion, the SSI provisions. They were labeled learning disabled, and as a result, their parents were getting a monthly payment. The teachers then explained that the kids acted a little bit crazy once in a while, were certified as learning disabled and the parents were pushing them, the school to make that certification even when the teachers thought it was not appropriate. This was shocking to me as you might imagine. But it was something that the kids were talking about very freely with visitors to the school.

Ms. MADISON. I have heard about that in other States. We have seen a little push from parents in that direction, but that is not a significant problem in Sioux City.

Mr. MCINTOSH. That is good. It is a dumb idea for the Government to create incentives for parents to want their kids to be learning disabled.

Thank you very much for your testimony on this.

Ms. MADISON. You are welcome.

Mr. MCINTOSH. Mr. Hamilton, I really appreciated your testimony as well and the forthright and candid nature in which you explained the problem there with OSHA and the way it would have severe consequences with your ability to work with other departments. I look forward to making use of your testimony actually in talking with others about this issue. I think this too might be a good example where we could send a letter perhaps to the appropriate officials, and in this case maybe urge OSHA at the national level to indicate that that should not be the policy or the interpretation of those types of regulations and perhaps forestall that concern you had that it would become a precedent.

Those were the questions and comments I wanted to make.

Tom, do you have any questions?

Mr. LATHAM. Yes, and I understand we are working under a time constraint here.

Mr. MCINTOSH. Yes, and we still have some people from the open microphone period that I want to get to.

Mr. LATHAM. Right. I would love to pursue this more.

Mr. Hamilton, I just want to congratulate you on the fabulous job you not only did with Terra, but I think my other colleagues should be aware that this is the same fire department that did such a miraculous job with the United flight several years ago here in Sioux City. It was nationally recognized for not only heroic efforts but what a fabulous job you did at that time. This is extremely unfortunate as far as I am concerned.

The meat processing plant situation, when did that occur?

Mr. HAMILTON. 1991.

Mr. LATHAM. 1991. Have you noticed—apparently, you have noticed some change in OSHA since then—their attitude?

Mr. HAMILTON. Well the regulation verbiage has not changed at all. I believe personally it was due to the circumstances that the investigation was initiated under. The first one was a non-hostile, friendly type. We were a different—we were not the target, if you will, of the investigation. We were merely involved as a part of the investigation in a broader scope. The second incident we had, Mr. Latham, was related directly due to an employee complaint alleg-

ing some 53-odd violations of the hazardous material regulations. So the scope of the investigation was completely different in the 1994–1995 investigation.

Mr. LATHAM. I have had many constituents tell me they think the attitude in that agency has changed dramatically, that they have reversed their role from being one of—we talked today about being proactive rather than reactive. That they are now coming in with the intention of finding people and looking for violations rather than trying to help with the safety of the workplace. I just want to emphasize to the chairman and everybody on the committee that this is a very, very significant incident. Nationally, it is going to very much affect not only all the relationships here in Iowa but across the country when we talk liability wise and everything else in the communities. It really opened the gate up for a lot of different interpretations of what should be very clear. I thank you very much and your suggestions are excellent.

Dr. Madison, I just wanted to ask you; in your testimony, you talked about there are other social—that you are not a social service agency, or at least, you were not intended to be. There are agencies who determine when a client has reached maximum benefit in their system. How do they make that determination and how would you suggest maybe in the school system that you could make a determination like that?

Ms. MADISON. I do not know how they make that determination. That would be a new concept to us. During one of the earlier panels, a comment was made that government should look at the cost-benefit analysis sort of concept. Maybe that is what we should do. I do not have a formula for that, but we would sure be happy to look at it.

Mr. LATHAM. Could you give us examples of possibly—and I really appreciate the fact that you brought out a very positive story in your testimony of something where it had been successful for a student who had a certain disability and was able to mainstream and was very successful. I am very sensitive to that also. Could you give us an idea maybe of some of the duties or services that you are asked to provide for some of the students possibly that maybe you would not expect in the school system?

Ms. MADISON. Well, I think the tube feedings and the catheterizations are two things. We have medically fragile students that are in regular schools and appropriately so. I mean, I think they need to be in school. But we are providing what is traditionally health services and that is a difficult thing for schools, I think, to do.

Mr. LATHAM. You think of yourself as an educator and not a medical provider in that regard.

Ms. MADISON. Right.

Mr. LATHAM. Thank you very much.

Steve, in the interest of time, I want to ask you what—and maybe Mr. Foss would know too—what the status is today—right now, in your situation, what is the time table coming up as far as getting any resolution?

Mr. BREVIG. Why do I not have Mark—I have got Mark Foss with me who is the general counsel with Dakota. He has been—

he just came back from Bismarck and he is here to give us the closest update.

Mr. LATHAM. Use the microphone, if you would.

Mr. FOSS. Thank you.

There has been a meeting with the Secretary of Energy and obviously this problem started with a lawsuit in 1990, and the settlements were entered into 2 years ago. In the real world, of course, people enter into settlements, the deal is cut and you go on with your life. Here, of course, we had to submit it to the FERC, the FERC set up a 2-year schedule to decide it. I think the parties have come to the realization that perhaps a solution that is worked out with the parties is going to be more timely than waiting for the FERC to act. The Secretary has suggested that DOE act as coalescing party, if you will, to see if negotiations can get started again. We have, in fact, scheduled a meeting with the ratepayer group at the end of the month. So, we are hopeful that a settlement could bring this situation to a close.

Mr. LATHAM. Thank you.

Mr. BREVIG. The actual decision is back at FERC right now. So, FERC is going to have to make a decision based on the recommendation of the administrative law judge. So we think that is going to happen sometime in?

Mr. FOSS. 1996.

Mr. BREVIG. Yes.

Mr. LATHAM. I thank you very much.

Don, just very briefly; are we still testing in Iowa for pineapple herbicides and things in our water systems here?

Mr. MEISNER. Some of those have been turned back because of the actions in Iowa and Nebraska and your actions. But, we really do need to put some sense in that because we need clean water. We are not arguing about that, but there has got to be a limit.

Mr. LATHAM. But it is—and we are trying to get some help in the reauthorization of the Safe Drinking Water Act. We have been working very hard as far as targeting the rural areas. My town of 168 people, you know, I think next year is going to be expecting $4,000 or $5,000 to test their wells, I guess. So it is a huge issue to a small town.

Thank you very much, Mr. Chairman.

Mr. MCINTOSH. You are quite welcome. Was this pineapple herbicide because of the name Dole being so prevalent in Iowa? [Laughter.]

Mr. LATHAM. Would you like to talk about Dole pineapples for a while or whatever?

Mr. GUTKNECHT. You better do it before Mr. Dornan comes back. [Laughter.]

Mr. MCINTOSH. Well, thank all of you for joining us. Oh, Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. Just ever so briefly, Mr. Chairman. The more I hear, the more I am struck with this basic notion. In fact, Congressman Dornan and I were talking as an aside, particularly as Dr. Madison testified, about a book that is now being circulated entitled "It Takes a Village" and how there—there seems to be a growing attitude—or we are trying to define what the village really is. I was really struck by your testimony because it reminded me

of something that we need to ask ourselves once in awhile and that is, who really cares more about those kids? Folks from Washington who have never met the kids or the people who live here, who work here and the parents? Somehow, we have gotten this notion wrong that there is more caring and more compassion and more concern than there is out here. Every day on the news, we see examples. I'm glad that Congressman Latham reminded us of the DC–10 incident that happened here in Sioux City, only to have that very same department—which I think everyone in the Unites States who watched that whole thing—it seems like it was replayed again and again and again and the actions of your department. And then to be called incompetent by your own Federal Government is—it strikes me that somehow we have got to get back to some basic common sense. And more importantly, we have got to remind ourselves that people who live and work out here in the Great Plains, you know, we care about people too. We care about the environment. And all care and compassion in the village does not necessarily have to be centered in Washington, DC, to care about these people.

We have got a big task ahead of ourselves because there is a mindset that is difficult to change. We have been told by some of the agencies in some of these hearings that they understand they have problems and they have undertaken some phone etiquette programs and so forth to try and be more consumer friendly. I am somewhat dubious as to whether or not those efforts will ever really bear fruit as long as they are predicated on the basic notion that people out here do not care about people and do not care about the environment and do not care about anything else. Somehow, we have got to get back to the notion that the founding fathers started this whole experiment with.

The testimony here has been just excellent, Mr. Chairman. I do not really have any questions. I thank you all.

Mr. MCINTOSH. Yes, thank you very, very much. I appreciate it. It has been tremendously helpful to us.

At this point, we will move to the open microphone section of the hearing. This is something a little bit unusual for congressional hearings where we invite people who are from the audience and would like to share their testimony with us. What I will do is call the names of four people at a time. If you could come forward then and we will administer the oath. I will ask each person to testify for 3 minutes or less and any additional remarks we will accept in written testimony.

The first four names that were given to me by the staff were Mr. Tom Pittman; Mr. Ken Streck; Ms. Barb Renfro and Mr. Daniel Cougill. If you would all please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Let the record show each of the respondents answered affirmatively.

I appreciate you participating in this hearing. Your testimony will become an official part of the record of this congressional hearing. Mr. Pittman, would you please lead off.

STATEMENTS OF TOM PITTMAN; KEN STRECK; BARB RENFRO; AND DANIEL COUGILL

Mr. PITTMAN. Good afternoon. My name is Thomas Pittman and I am the dairy procurement manager for Wells' Dairy. I have been in this capacity at Wells' Dairy for 2 years and I was previously employed by the U.S. Department of Agriculture as an auditor in the Federal Milk Marketing Orders. I did that for 7½ years.

The reason why I am here today is, I would like to inform you of some of the regulatory issues concerning the dairy industry and the Federal orders. Also, I would like to touch on a few of the possible ramifications of the additional regulation from the proposed farm bill that is in the House right now. Because of my work history, I am fully aware of what is going on with these regulations and what potential regulations could mean to processors like Wells' Dairy.

First, I would like to start off with—the current Federal order regulations do not allow the processors and the dairy producers an opportunity to set up pricing contracts. We have a competitor to the north of us that is not regulated by the Federal orders that do have pricing contracts for their producers. They have a waiting list for producers 100 names long, waiting to get on. We at this point have to follow announced prices by the Federal orders. Wells' Dairy does not have an option to be regulated. We have to be regulated because we do bottle milk. If we do not pay the minimum order to these producers, the Federal order will come in and force us to by imposing fines or possibly a prison sentence to any of the individuals involved.

Our idea of the set up of a pricing contract is to—hidden objective is to hit that average market price for a year for our producers. Some months that price is going to be lower than the announced price and sometimes it is going to be higher. When the market administrator announces the market price for the month, and if we would happen to fall below it, we would be forced to pay that. This is one of the reasons why we are reluctant.

One of the main reasons producers like to have a contract price, they are getting to the point where their margins are getting so tight, if they can go to their banker and say here, I have got a contract price for the next 12 to 24 months for my milk. I need this much cash to make my cash-flow. They can easily obtain their operating loans. Especially with newer producers that want to start out or expand, they are the guys that are looking for it.

One of the other things I wanted to touch on was the possible ramifications of the current farm bill. Right now in present form, this bill would create a lot of chaotic conditions for the industry. Fortification of milk solids, creating a Class I pool, creating a Class IV pool, increasing support prices and make allowances and artificially creating these high fluid milk prices are all examples of increased regulation, and all of these examples are part of the farm bill.

Wells' Dairy would pay over $9 million more in increased ingredient cost just for the fluid milk portion alone, and we would be forced to pass this along to the consumers here in this local area. I do not know if our consumers are willing to pay all of that. To top it off, our consumers would be forced to pay these higher prices

for extra solids that they have no desire for anyway. So at this point, Wells' Dairy has taken the stand that we are firmly against any action to increase these government regulations. We would like to see them move toward deregulation. I believe this would benefit the consumers, our dairy producers and the dairy processors in total.

Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Pittman.

What I think I will do is hear from everybody on this—these four and then maybe see if there are questions. Tom is the expert on the Ag bill.

Mr. GUTKNECHT. We will have him explain milk marketing.

Mr. MCINTOSH. That is right. [Laughter.]

It is impossible, if you ask me.

Mr. Ken Streck.

[The prepared statement of Mr. Pittman follows:]



Quality Dairy Foods & Ice Cream

Good afternoon.

My name is Thomas Pittman. I am the Dairy Procurement Manager for Wells' Dairy, Inc. I have been employed by Wells' Dairy for 2 years in this capacity. I also worked as an auditor for the United States Department of Agriculture in the Federal Milk Marketing Orders for 7 1/2 years.

The reason why I am here today it to let you know of the regulatory issues concerning the dairy industry. Also, I would like to address the potential ramifications of additional regulation from the proposed Farm Bill that is in the House of Representatives and the Senate. Because of my work history, I am fully aware of current regulation problems and what the possible additional regulations would mean.

First, the current federal order regulations do not allow dairy producers and processors the opportunity to set up pricing contracts. Current federal order regulations state that the dairy producers must be paid at least the minimum price announced by the federal order. If the minimum value is not paid, the processors are subject to fines and possibly a prison sentence.

To set up a pricing contract, the objective is to hit the average market or the announced price, in this case, for the length of contract. Some months, the announced price will be higher than the contract price, and some months the announced price will be lower than the contract price. Currently, dairy processors would be required to make extra payments to the dairy producer when the announced price is higher than the contract price. This is why processors have been reluctant to set up a pricing contract.

There are two main reasons why this is a concern. First, with a set price for a dairy processor largest cost, it takes away alot of the price volatility in milk. If the price of milk is contracted for the next twelve months, processors can have their prices set for that same period.

Second reason, dairy producers are requesting a pricing contract for their operations. If a dairy producer knows what his milk price will be for the next 12-24 months, he can go to his lender and can show him the cash flow for his operation and can more easily obtain loans. Also, producers in other farm commodities can lock in prices in advance if they so desire.

With the current dairy regulations that Wells' Dairy has to follow, we have to employ four extra people to help prepare reports, handle the paperwork, and file our market reports. These four people shuffle a tremendous amount of paperwork in a one-month period. In summary, Wells' Dairy would like to see less government regulation in the dairy industry.

This leads into my next area of concern. The proposed Farm Bill that is in the House of Representative Rules Committee. This bill, if passed in present form, would create chaotic conditions for all dairy processors. Fortification of fluid milk by adding milk solids, creating a Class I pool, creating a Class IV pool, increasing support prices and make allowances, and creating artificially high fluid milk prices, are all examples of increased government regulation. And, all of these examples are part of the House Farm Bill!

If the House Farm Bill were to go into effect as it currently stands, Wells' Dairy would pay over 9 million dollars a year in increased ingredient costs. We would have to pass this extra cost along to our customers. So in effect, the dairy processors are forced to tax the consumer extra money for milk that they buy. To top it off, the consumer would be buying milk that is not in its true natural form. The consumers would be forced to pay higher prices for added solids they have not expressed any desire for.

At this point, Wells' Dairy is firmly against any increased government regulations as proposed in the House Farm Bill. We would like to see a move towards deregulating the dairy industry. I believe the consumers, the producers, and the processors would all benefit if the dairy industry were deregulated.

Mr. STRECK. I am Kenneth Streck and I manage the Ida County Rural Electric Cooperative in Ida Grove, IA. It is a small electric utility coop serving about 1,200 members. We too come under a lot of rules and regulations.

I guess I would like to try to simplify some of things that we have to do. I guess I am speaking to the Federal Government here. I am not sure you can simplify these things for us, but I hope that you can help us do that.

We consider ourselves a small business, so we feel entirely there are too many rules and regulations. But if we must abide by them, tell us in plain English what the rules say. We do not have a staff to go through hundreds of pages of rules and regulations so that we can tell what we are to do to comply.

Most all businesses operate safety, value their employees and do not intentionally harm the environment. It would be refreshing if the Office of Compliance would treat the regulated community as partners in our compliance efforts—and we have heard that this afternoon.

Also, we are required to do many written plans. It would be very helpful if we had some draft models of these plans for small business to use.

Also, we suggest that maybe an 800 hotline number could be established to give us practical correct advice. However, I want to stress very clearly we want to make that call without fear that our questions would bring about enforcement activities.

So in closing on this little segment, I would suggest, first, be sure the regulation is necessary and cost effective. Second, put it in plain English so we can understand it. Third, provide us some draft models of the necessary paperwork. Fourth, give us an 800 number to call for advice and finally, help us comply, not just be an enforcement agency.

I do have copies of this available for you, if you have not got them, right now.

Mr. MCINTOSH. Thank you. I appreciate that. We would like that to become part of the record. Yours is one of the best and most succinct statement, I think, of the goals we have, and I appreciate that. Thank you.

Mr. LATHAM. That is the way they are in Ida County.

Mr. MCINTOSH. Well done.

Mr. STRECK. The second issue I have got to touch is a little—something a little different. This is a regulation that is in—already in the FERC and in the country where we have regulated electric utility service. We have kind of a monopoly. We are required to serve everybody but we have territorial protection, especially in the State of Iowa. However, FERC, the Federal Energy Regulatory Commission, has decided that it would be good to deregulate the industry. Not that we have any problem with deregulation of the industry, but we also have some problems with what the potential is for small time rural America, the small customer out at the end of the line. I am going to make my comments very brief here.

In regard to municipals and electric cooperatives. Bonds are sold by municipals to finance their systems and the revenues collected from sales of electricity to their customers are pledged to the lender as security for the money received for the sale of the bonds. In the

rural electric cooperatives, we borrow a lot of our funds through the old REA, now the RUS, to finance our facilities. Revenues collected from sale of existing loads is collateral and security to the U.S. Government for these loans. If retail wheeling or open competition comes in the electric industry, we stand a chance or a danger of default if we lose our loads to competition or to cherry picking of our best loads.

We also have a concern about energy efficiency. We all in the last 10 years have really done a lot in the area of energy efficiency. But with open competition, we feel that these efforts will be severely hampered in a competitive market.

We also have a problem with service reliability. If everyone is allowed to use our transmission grid, our distribution lines and poles, who will be responsible for servicing those lines and those poles and who will get service first?

We also have the obligation to serve everyone, low income people, farmers, the grain bins that are out there, the small water pump loads, they are not profitable. Who is going to serve those loads in a competitive environment?

The large industrial customers are pushing for retail wheeling. They want to be able to negotiate with multiple utilities to obtain the best deal for themselves. They say they need special treatment in order to compete in a global economy. In some instances they may be right; however, at whose expense are they getting the special treatment? I say it is the small consumer.

So in conclusion, my recommendation would be to keep the pressure on FERC to proceed very slowly, cautiously and in the long range best interest of all consumers, not just the large consumers. America is totally dependent on electricity. The wrong decision today could affect our country's future for many years to come.

Mr. MCINTOSH. Thank you very much for joining us.

Our next panelist is Ms. Barb Renfro.

[The prepared statement of Mr. Streck follows:]

STRECK #2

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RETAIL WHEELING

Deregulations of the electric utility industry will bring about many challenges. The goal is competition which will bring about lower electric rates for all consumers.

The evidence suggests that electricity prices could likely fall in the short term. The magnitude of this decrease is not clear. The probability of average long term retail prices rising appears larger than for such electric rates falling.

Utility rates in the midwest are among the lowest in the country. With open access we could see our power moving out of our region forcing us to buy power from someone else at a much higher rate.

In an electric industry structure that is more competitive, it is likely that different choices or levels of quality, reliability, and service will be provided at varying price levels. Customers would have the opportunity to pick services that best meet their needs. The actual billing is likely to become more complicated with charges from different companies for energy, transmission, distribution, and retail services. Detailed billing can lead to more educated choices for some customers. It can also lead to poor choices among customers who cannot understand all the information.

It is probable that expenditures for maintenance and reliability will decline. That a poorer quality service could result, is possible. Who will provide the maintenance and who receives service first when service is needed?

Many years ago, utilities were not concerned about energy efficiency. However, in the past ten years it has been a different story. All electric utilities have been actively working on demand side management, energy efficient products, conservation, and education of our customers. Energy efficiency efforts in order to compete will be severely hampered by a competitive market. Utilities will be interested in peak load management but off peak demand side management, conservation, and energy efficiency types of services would decline.

The effects of direct retail access on Municipals and Cooperative Utilities with regard to stranded investment are tremendous. Bonds are sold by municipals to finance their systems. The revenues collected from sales of electricity to their customers are pledged to the lender as security for the money received from the sale of the bonds. The rural electric cooperatives have borrowed money through the REA, now RUS, to finance their facilities. Revenues collected from sales of existing loads is collateral and security to the United States Government for these loans. In both instances there is danger of default if municipals or REC's loose their loads to competition or someone cherry picking their best loads.

Without the obligation to serve, deregulation will put the low-income customer at risk. Customers who are perceived as having a high risk of non-payment will either not be offered service, or will need to pay a high deposit before service is available.

The large industrial customer is really pushing for retail wheeling. They want to be able to negotiate with multiple utilities to obtain the best deal for themselves. They say they need "special treatment" in order to compete in a global economy. In some instances they may be right, however, at whose expense are they expecting "special treatment"? It is going to be at the expense of the little user, someone who cannot negotiate for their small loads.

In conclusion, my recommendation would be to keep the pressure on FERC to proceed slowly, cautiously, and in the long range best interest of all customers. America is totally dependent on electricity, the wrong decision today, could affect our country's future for many years to come.

Kenneth Streck

Kenneth Streck

Manager

Ms. RENFRO. Good afternoon, Mr. Chairman and distinguished panel members. Thank you for allowing me this opportunity to speak today.

To be honest, the issue is not regulatory reform as it applies to the Individuals With Disabilities Education Act, IDEA, whether or not the Federal regulations are too excessive, burdensome or counter-productive. The unvoiced issue is that the student with the disability is viewed as a burden. Taking the punch out of the Federal regulations will not reduce the number of students in Sioux City, in Iowa, in the United States. It will only result in the reversal of quality education for students with disabilities.

Logic tells us that for all students, a solid education is the foundation for successful independent adulthood. For most students, this process follows a form of a pyramid. A strong educational foundation peaking as adults contributing as independent members of a community. Too often, students with disabilities operate within an inverted pyramid. The most minimal of support is given to the foundation of education resulting in an adulthood of dependency, under-employment or unemployment. It is only strong implementation of Federal regulations, as it is now written, that will allow students with disabilities to operate within the same pyramid offered to everyone else. Let us flip that pyramid for these students.

Except for those in this room that are family members of students with disabilities, no one else will have to live with the negative impact of the dilution of IDEA. Where will everyone be 5 years from now, 10 years from now, 20 years from now? Who will be there when the outcome of a newly deregulated system mirrors pre-1974? I do not believe Dr. Madison will be present. But as a parent of a child with a disability, I will be there to pick up the pieces.

Let history teach us a lesson. Students with disabilities were not welcome in schools before IDEA. The same mindset will close the doors again 22 years later. It was not the kindness of local and State entities that allowed these students into school with an appropriate education—it was Federal law. The process described in testimony today is a smoke screen in my belief. Districts want to hide behind the veil of a burdensome, excessive regulation, but they need only to look in a mirror. It has nothing to do with their hands being tied with wasteful spending or constricting Federal demands. This is about valuing all students. Offering equal opportunities for quality education.

History has also amply demonstrated how systems, if not governed, will neglect and ban the student with the disability. The trust-me theory hurts the weakest among us, because contrary to popular rhetoric, to constantly live your life fighting city hall, whether it be a school district or a State agency, cannot be done by individuals without the uniformity of Federal regulations. If a person is worthwhile in Massachusetts, that same person should be worthwhile in Iowa and every other State. That is only going to hold true through enforcement and implementation of Federal regulations nationwide.

The trust-me theory may be all right when speaking about produce but not about human beings. IDEA and its implementing regulations are the written guarantees of appropriate education for students with disabilities. We would not purchase a car without a

guarantee, why should parents of students with disabilities trust local school districts to do the same when rarely they have before.

Who truly is the culprit? The student with the disability or a system inadequately serving them? The system is magnifying their own burden. The solution should not be to reward non-compliance with the removal of regulations that only now supply minimal benefit. The emphasis should be on increasing that benefit by maximizing implementation. Federal regulations set forth the parameters within which State and local entities have the freedom to operate, but not to demean us or devalue a human life.

All students need to be able to compete in the global economy. We cannot afford to send one uneducated or under-educated student into the work force. The U.S. economy is a team competing against economic teams from other nations. The team members are the graduates of our schools. The weakest team member will impact the entire effort. The success and well-being of the strongest team member is dependent on the contribution of all others. Education is not a charity, it is the future of each of us, of our country. What is the cost benefit of IDEA? Spend money now on education for all students, or spend much, much more money later.

How can education be harmful, excessive or counter-productive? Education is productive. Please do not throw us back into the pre-depression era. Americans should not be afraid of the harm their government can do. We truly need a kinder and gentler nation. Who should judge whether a child is worthy of education? Who judges a 5-year old's potential?

In closing, I would like to tell you one more personal story to add to Dr. Madison's list. My son is a 16-year-old young man with autism. When he was diagnosed, I was told he would never communicate meaningfully nor be able to participate in society; in fact, to institutionalize my son. My son now—with most effort placed on his own shoulders—does not have an aide in school. He now is in advanced placement classes. He is on the honor roll educationally the majority of the time. He was just named to the varsity on the wrestling team. Here is another success story of appropriate education.

Thank you.

Mr. MCINTOSH. Thank you. And thank you for sharing with us your personal experience. I appreciate that very, very much.

Our fourth witness on this panel is Daniel Cougill. Welcome.

[The prepared statement of Ms. Renfro follows:]

RENFRO

CHILDREN FIRST ADVOCATES' COMMENTS TO THE UNITED STATES HOUSE SUB-COMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

Let's be honest. The issue isn't regulatory reform, as it applies to the Individuals With Disabilities Education Act (IDEA), whether or not the federal regulations are too excessive, burdensome or counterproductive, the unvoiced issue is that the student with a disability is viewed as a "burden." Taking the "punch" out of the federal regulations will not reduce the number of students with disabilities in Sioux City, in Iowa, or in the United States. It will only result in the reversal of quality education for students with disabilities.

Logic tells us that for all students, a solid education is the foundation for a successful, independent adulthood. For most students, this process follows the form of a pyramid. A strong educational foundation peaking as adults contributing as independent members of a community. Too often, students with disabilities operate within an inverted pyramid. The most minimal os support is given to the foundation of education, resulting in an adulthood of dependency, underemployment, and unemployment. It is only strong implementation of the federal regulations, as it is now written, that will allow students with disabilities to operated within the same pyramid offered to everyone else. Let's flip that pyramid for these students.

Except for those in this room that are family members of students with disabilities, no one else will have to live with the negative impact of the dilution of IDEA. Where will you all be five years from now, ten years from now, 20 years from now? Will you be there when the outcome of a new de-regulated system mirrors pre-1974?

Let history teach us a lesson. Students with disabilities weren't welcome in schools before IDEA. The same mind set will close the doors again twenty-two years later. It wasn't

the kindness of local and state entities that allowed these students into school with an appropriate education - it was federal law! This process is a smoke screen. Districts want to hide behind the vail of burdensome, excessive regulations, but they need only to look in a mirror. It has nothing to do with their hands being tied with wasteful spending or constricting federal demands, this is about valuing all students. Offering equal opportunities for quality education.

History has also amply demonstrated how the "systems," if not governed, will neglect and ban the student with a disability. The "trust me" theory hurts the weakest among us. Because, contrary to popular rhetoric, to constantly live your life fighting city hall, whether it be a school district or state agency, cannot be done by individuals without the uniformity of federal regulations. If a person is worthwhile in massachusetts, then that same person should be worthwhile in Iowa and every other state. That is only going to hold true through the enforcement and implementation of federal regulations nationwide.

The "trust me" theory may be alright when speaking about produce, but not human beings. The IDEA and its implementing regulations, are the written guarantees of appropriate education for students with disabilities. We wouldn't purchase a car without a guarantee. Why should parents of students with disabilities "trust" local districts to do the right thing? Especially when then rarely have before.

Who truly is the culprit? The student with a disability or a system not adequately serving them? The system is magnifying their own burden. The solution should not be to reward non-compliance with the removal of regulations that now only supply minimal benefit. The emphasis should be on increasing that benefit by maximizing implementation. Federal regulations set forth the parameters within which local and state entities have the freedom to operate, but they do not

have the freedom to demean and devalue a human being.

All students need to be able to compete in the global economy. We cannot afford to send one uneducated or undereducated student into the work force. The U.S. economy is a team competing against economic teams from other nations. The team members are the graduates of our schools. The weakest team member will impact the entire effort. The success and well-being of the strongest team member is dependant upon the contribution of all others. Education is not a charity, it is the future of each one of us, of our country. What is the cost benefit of IDEA? Spend money now on education for all students, or spend much, much more later.

How can education be harmful, excessive, and counterproductive. Education is productive! Don't throw us back into the pre-Depression era. Americans shouldn't be afraid of the harm their government can do. We truly need a kinder and gentler nation.

Thank you.

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Mr. COUGILL. Thank you.

Mr. Chairman, my name is Daniel Cougill and I am the president of the Sioux City Professional Firefighters Local 7 of the International Association of Firefighters. I appreciate this opportunity to appear before you today to represent my local and the IAFF and to share the views of 210 professional firefighters on Federal and State occupational safety and health regulations and their role in protecting firefighters. It is the regulation that has saved the lives of thousands of firefighters and citizens over the last 25 years.

The profession of fire fighting is and always has been a hazardous occupation. Every year the IAFF publishes an annual death and injury survey and each year the hazards of fire fighting continue to exist and display ever-varied forms. During the 10-year period 1984 to 1993, the death and injury survey has found that professional firefighters experienced 345 line of duty deaths, 598 occupational disease deaths, 362,000 injuries and 7,372 forced retirements due to occupationally induced diseases or injuries. Firefighter line of duty fatalities have ranked fire fighting among other publicized hazardous occupations in the private sector such as mining and construction.

Of the injuries reported, approximately 80 percent occur while at the emergency scene. Sprains and strain are the leading cause of on-duty injury, followed by lacerations, contusions, burns, inhalation of hazardous materials and eye injuries. The data has showed that more than 40 percent of all firefighters can be expected to be injured at least once during the next year. Occupational diseases such as heart disease and cancer constitute more than 90 percent of all the reported firefighter deaths when their occurrences are combined.

These figures only roughly scratch the surface when it comes to detailing the hazards of fire fighting. The nature of the job is so varied and extensive, often people do not truly understand what a firefighter's job is all about. Firefighters are physically and psychologically challenged. Challenges exist at all building fires, vehicle accidents, hazardous material incidents, rescues, wildland fires, explosions, chemical exposures, extreme temperature environments, infectious disease exposure, occupational disease and cancer, fire ground accidents, environmental exposures, psychological stress, noise, physical fitness conditioning and personal time management. Firefighters are constantly making transitions from the calm, peaceful environment of the firehouse to the hostility presented by fire. The constant transformations from quiet to raging infernos have numerous psychological and physiological side effects. Within 15 to 30 seconds after the fire alarm sounds, research studies have found that firefighters' heart rate—that a firefighter's heart rate can increase by as much as 117 beats per minute. In addition, a firefighter's heart can beat twice its normal rate throughout the entire fire fighting operation. These extreme psychological stresses obviously—and physiological stresses obviously lead to severe coronary problems which have been documented by numerous authorities.

The working environment can also mean a transition from below freezing temperatures to temperatures with 100 degrees to 500 de-

grees Fahrenheit at the fire itself. These extremes can lead to frostbite along with numerous cardiovascular and pulmonary disorders such as acute circulatory collapse, hypertension, pneumonia and bronchitis.

Fire fighting involves strenuous physical activity that is made more burdensome by the fact that the protective clothing and breathing apparatus a firefighter wears adds 45 to 60 pounds to his body weight, nevertheless, the fire fighter performs such vital activities as carrying heavy hose up flights of steps, fighting water pressure to keep the hose pointed at the flames, climbing on roof tops carrying axes to ventilate the burning structure and so forth.

When a fire destroys a residential home or industrial factory, it represents a work environment that closely resembles at first glance what firefighters faced several hundred years ago. However, technology has created a distinct difference in the modern fire environment—polyvinylchloride asbestos and polychlorinated bifonals to name just a select few. These chemical compounds are commonplace ingredients in our environment as components of household furniture, plastic pipes, wall coverings, automobiles, buses, airplanes and coverings for electrical and other insulation materials. Thus, the proliferation of synthetic substances into the marketplace has added a new dimension to fire fighting. Firefighters are increasingly exposed to known and suspected carcinogenic agents whether at a residential, hardware store, drug store or dry cleaning establishment, pesticide warehouse or chemical manufacturing plant fire. The more than 30,000 hazardous waste sites and the transportation of such hazardous substances poses new—still more new and significant health hazards for the firefighters.

This list of potential carcinogenic agents that firefighters can be exposed to is almost as long as a list of all known or suspected carcinogens. Nevertheless, firefighters constantly enter potential toxic atmospheres without adequate protection for knowledge—or knowledge of the environment. Firefighters like most workers in this country have little idea about the identity of many of the industrial—of the materials that they are potentially exposed to and the hazards of such exposures. Nevertheless, firefighters continue to respond to the scene and work immediately to save lives and reduce property damage without regard to the potential hazards that may exist. A fire emergency has no controls or occupational safe and health standards to reduce the effect of toxic chemicals. It is an uncontrollable environment that is fought by firefighters using heavy, bulky and oftentimes inadequate personnel protective equipment and clothing.

The hazards of a firefighter are not always initially obvious. Cancer directly related to fire fighting may take several years or decades to exhibit itself. Reports of excess occupational cancer in firefighters compared to the general public include excess mouth and throat cancer, excess intestinal and rectal cancer, excess colon cancer, excess lung and lymphatic cancer, and excess total cancer and leukemia deaths. Much of the epidemiological work performed thus far strongly suggests that cancer is an occupational disease afflicting firefighters.

Infectious diseases has become more—has become a hazard to firefighters too big to ignore. More firefighters in city governments

need to take progressive steps toward eliminating the risk of these hazardous. Firefighters and emergency medical responders can be exposed during motor vehicle accidents in which blood and sharp surfaces often present—are present, excuse me, by rescuing burn victims and through the administration of emergency care.

Mr. MCINTOSH. Mr. Cougill, I hate to do this, but would you mind summarizing the rest of your written testimony.

Mr. COUGILL. I will try to.

Mr. MCINTOSH. I want to make sure that we get to everybody. We can put it all in the record for you.

Mr. COUGILL. Firefighters face the possibility of death and injury every time they respond to an alarm where they provide emergency assistance to the citizens of this country. While risk may be a part of the profession, firefighters' deaths and injuries should not be a part of the job. Life threatening and health hazardous are numerous for firefighters. The greatest effort should be made to eliminate such hazards. Since the OSHA legislation was passed in 1970, the IAFF has had 1383 of our members die in the line of duty. Countless more firefighters have been killed without—would have been killed without this legislation, and if OSHA requirements were stronger and universally applied to firefighters, many of those firefighters would be alive today. Any attempt at killing OSHA will kill this Nation's firefighters.

Thank you.

Mr. MCINTOSH. Thank you very much. I appreciate all of you testifying. Let me ask you a couple of questions. Actually, Mr. Cougill, I will start with you.

I think you made a very powerful statement on the hazards that individuals who take up fire fighting subject themselves to and take the risks and society owes you a real debt of gratitude for being willing to do that. The question I would have is—and you indicated you are very satisfied with OSHA and the record there and want to see that continued. Are there ways that we can make sure that those regulations are targeted very closely on reducing the risks. You would not want, for example, the regulations in a manufacturing facility to be applied to your job or one in a mining facility because there would be different risks that you would want to make sure they were applied to.

Let me say that I, in talking to some of the firefighters in my district, have actually changed my mind about one OSHA rule, the four-man rule that you may be familiar with. It appeared to me to have the unintended consequence that—especially in a small town—that if you only had three firefighters, you might not go in an emergency. They said that is not what it is really all about. We just want to make sure the standards are there that establish what is safe for us when we do go in and we think that is four people present. Two in and two out I think is the way they described it to me. They were very compelling. In fact, I have changed my mind on that particular regulation. So, I think there is a lot that can be learned by this in making sure that we look at the purpose, that it is tailored to achieve its objective. Some of the testimony you heard earlier was the frustration that it did not seem to really necessarily be aimed at safety in a particular setting on that.

I just wonder if you have seen any opportunities where we could fine tune it even more in the fire fighting area?

Mr. COUGILL. Oh, I think there is a lot of things. We could go on—I could sit here for hours and talk to you about it. I do not know. As far as the two in and two out, I was going to touch on that in my summary here. That is something no one understands, the two in and two out concept, until it happens to your family and you have two firefighters go in; they are trapped rescuing your children and you have one firefighter to go in and get them. In all likelihood, you are going to end up with three dead firefighters and the dead children. You have got to have enough people to do it. That standard was called dumb and stupid during Mr. Gingrich's—one of his—what is your regulation—getting rid of dumb and stupid legislation.

Mr. MCINTOSH. Corrections Day. That was cited as an example.

Mr. COUGILL. Corrections Day. It was called dumb and stupid. I do not find that dumb and stupid and I kind of take that personal.

Mr. MCINTOSH. Let me ask you to indulge us because I probably was one of the people who thought that way and I have changed my mind. It is difficult for public officials to admit it when we were not right about something, but in that case, your colleagues in Indiana convinced me I was not right. We need to learn more. So, I appreciate that.

Mr. COUGILL. Thank you.

Mr. MCINTOSH. I do not have any further questions right now. Tom, do you have any?

Mr. LATHAM. Just very briefly. I think the dairy section is going to be revised anyway. I am certainly going to work toward that end as far as the California standards and things like that.

I guess the only other thing I would say, Ken, you did very well, very quick on the first half. [Laughter.]

Anyway——

Mr. STRECK. You ought to read the second half.

Mr. LATHAM. I know.

And, Barb, I really appreciate your testimony. We are in a very difficult situation because—and I honestly believe one of the roles of the Federal Government is to make sure that some of the responsibilities when we go back to people with disabilities are not discriminated against because of race or color or anything else. I think that is a Federal role. We have a real problem in—I think you maybe understand. You know, Dr. Madison's concerned—they have a real—they are also concerned with their budgets and that is a real concern to them also. They have got to find a way to pay for everything. I just, you know, want to work together with you. I hope everybody can work together to resolve it but, I mean, it is essential for the opportunities, the success story that she talked about. Your child is a great example of what can happen with people working together. I appreciate that very much.

Mr. MCINTOSH. Let me also ask, if you would not mind, Ms. Renfro—and you do not need to right now. But it would be helpful to me to have a description of some of the programs that your son benefited from, because there is a fellow on my staff who is assisting me on the Education Committee as they work on rewriting that bill. I would like to just make sure that we do not inadvertently

affect programs that are successful as we are trying to solve some of the problems in that area. I know you think that we should probably leave it exactly the way it is, but there is a chance it is going to change. It would be helpful for me to know the good parts of it that you have experienced.

Ms. RENFRO. If I may comment?

Mr. MCINTOSH. Certainly.

Ms. RENFRO. Thank you. I would also ask you to exercise caution when you look at the regulations, that you are not making decisions based on fear being invoked with isolated, exaggerated stories. I am a parent of a 16-year-old. I am also here today as a representative of an organization, volunteer organization called Children First Advocates, a group of parents of students with disabilities——

Mr. LATHAM. What was the name of it?

Ms. RENFRO. Children First Advocates.

Mr. LATHAM. Excuse me.

Ms. RENFRO. That advocate for the rights and responsibilities of students and their families with special education. So, my experience, personally and professionally, is long in this district and actually across the Nation, as I served on the Autism Society of America's board as education chair for 3 years as well. So, it is not just isolated to Iowa. It is a nationwide problem, but it is not because of school districts, in my opinion, being asked to perform heroic tasks for the students. The incidences that Dr. Madison quoted, I can speak personally in this district, are isolated. She could probably only tell you one story where there was a child with a one-to-one aide and a one-to-one teacher. I can guarantee you that is not the majority in this district.

She also spoke about needing to maximize benefits—when could they decide about maximum benefits. Under IDEA, as I am sure you know, it does not allow best or maximum. It only allows minimal benefit. So a parent going in and asking for maximum is not going to get it.

The other caution that I would ask you to exercise is that she talked about the irony of how an IEP, an individual education program, is individual. That is true. But it is individually funded. In the State of Iowa, each student is weighted individually for funding, and that IEP is not decided by a parent who walks in and makes grand demands. The parent is just one person on that team. The majority of the team members are educators making the decision on what that individual student needs. So the hidden cost that she spoke of, like needing to lower class size, I do not see happening in this district. In fact, the Sioux City Teacher Association, one of their—during contract negotiations, one of their demands were smaller class sizes. They are not getting it lowered because of students with disabilities, in my experience.

And last, the ALJs that she spoke of that were sympathetic to parents. Administrative law judges are appointed by the Director of Education for the State of Iowa. Most of them too are educators. I have yet to see one be sympathetic to one side or the other. They follow finding of fact and conclusion of law. What I think may have being been spoke to is, recently seven due processes against this district were brought forth for the same reason, illegal expulsion

and suspension of a student with disabilities. Seven of them in the same school. It was founded for the parents. So, I think we need to hear the complete story before hopefully any decisions are made about the regulations of IDEA.

Thank you.

Mr. MCINTOSH. Thank you.

Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. No. Each one of these stories really should be pursued individually. The testimony has been very good. We just do not have time.

Ms. RENFRO. Thank you.

Mr. MCINTOSH. Thank you all. I appreciate that. Please submit to the staff your written testimony so we can include that in the record.

Let me call four more individuals forward. The next person on the list was Mr. Byron Orton, the Iowa Labor Commissioner. We will get rebuttal from some of the earlier testimony.

Mr. GUTKNECHT. No, he is a fresh perspective.

Mr. MCINTOSH. A fresh perspective. That is right.

The next name, I am having difficulty, so excuse me if I mispronounce it, but Dan Varaur, is it?

Mr. VARNER. Varner.

Mr. MCINTOSH. Varner. And Mr. Jim Marshall and Mr. Jerome Skeers. We have got time for one more, so let us go for—I am going to guess, Dr. Sprague.

Dr. SPRAGUE. I have to write that way to be a doctor.

Mr. MCINTOSH. My mom said I should be a doctor because I cannot write well at all. So, I am sympathetic.

If you would all please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show each of the witnesses answered in the affirmative.

Mr. Orton, welcome. I appreciate you coming forward to share your thoughts.

STATEMENTS OF BYRON ORTON, IOWA LABOR COMMISSIONER; DAN VARNER; JEROME SKEERS; AND DR. RON SPRAGUE

Mr. ORTON. Thank you, Mr. Chairman. I appreciate the opportunity. Let me initially say I am not here for rebuttal. I am here for some information that I think perhaps you and other folks might find informative.

First of all, my entire professional career has been spent in Iowa State government, totaling 22 years. First as chief administrative law judge in Iowa, then I served 5 years as Governor Branstadt's appointment as Industrial Commissioner administering the workers compensation laws and on September 13, 1995, Governor Branstadt appointed me as Labor Commissioner.

During that entire 22 years, I have been involved in employment related issues. I think you will find that during that period of time, I have gained a degree of respect and trust with both the employer and the labor communities in this State. I have an immense respect for the employers of this State, likewise, I have an immense respect for the working people of this State. I would suggest that

employer organizations and employee organizations might perhaps tell you the same thing.

When I became Labor Commissioner in September 1995, I inherited two files. The Terra chemical explosion from December 1994, and the Sioux City Fire Department file. Let me initially say that approximately 2 weeks after becoming Labor Commissioner, the Terra file was at a complete standstill. That is the way I inherited that file. The Labor Division's attorneys and Terra's outside attorneys were barely speaking. Two weeks after my appointment, I took the initiative of contacting Mr. George Valentine who spoke to you earlier today. It took Mr. Valentine and myself approximately 5 minutes to reach a rapport where we wanted to sit down and negotiate a settlement to this particular catastrophe as it relates to OSHA.

Mr. Valentine and myself in that same conversation set up a meeting where—while both of us would have some technical people to rely upon—Mr. Valentine and myself would be the only individuals in the room negotiating settlement. That is exactly what we did. Over a 2-day period of time, we reached a settlement agreement in that.

I am not going to go into the details of our situation as it relates to Terra explosions. George and I, I think, have a rapport. I consider George to be a friend. I think he might say the same about me. Let me only say this, my staff of OSHA inspectors are courteous and professional in each and every instance. I have invited a particular State official, who is a critic of OSHA, to accompany my OSHA inspectors, and that is a standing invitation. It has not yet been accepted. I have also invited that individual to speak with me regarding any of his concerns. He has not afforded himself of that opportunity.

But in any event, the Division of Labor was in a situation as it related to Terra and the Sioux City Fire Department where we were receiving a great deal of bad press in the Sioux City area because the story was coming from one side. I had officially taken the position and established a policy in my office that even though myself and other IOSH administrators had an opportunity to speak to the press and were asked to do so, that under no circumstances while there are contested cases before this agency will we try an active case in the media. And as a result, there were certain releases that were certainly unfavorable to the Division of Labor but, in my opinion, in many instances one-sided. I agree with Congressman Dornan when he states that inflammatory rhetoric does not belong in the debate. My office has not engaged in inflammatory debate, period. Although a certain employer in this State who was subject to an OSHA inspection calls this gentleman from my office and my other employees—this gentleman having served in the U.S. Army and Army Reserve for 21 years—calls him a Nazi and Communist. We do not respond in that fashion.

The individual that is engaged upon that campaign and has written many, many letters asking that I terminate this gentleman's employment, who has been nothing but a valued public servant, speaks out of context as far as what the Division of Labor had done in his particular inspection. I can assure you that that inspection was conducted exactly as I would have had my staff do it. The rea-

son that I know it, that particular employer videotaped the entire inspection. It is available to you folks any time you would like to see it. I probably will use it as a training film for OSHA inspectors.

Let me just very briefly—and I know I am taking more time than I should, but if I might take 1 more minute and simply point out this. I have spoken to many, many employer groups and many, many employee groups since becoming Labor Commissioner. I have pledged to employers that they can expect certain things from this Labor Commissioner. First and foremost, if they are an employer that is committed to workplace health and safety, OSHA need be of no fear to them. If we have employers who are having difficulty complying with OSHA regulations but are trying to do so, I have assured them they have no fear of OSHA in that we have consultation folks and that is our preferred approach to issues of workplace health and safety. For those employers who are uncommitted to workplace health and safety and are unconcerned about abating serious hazards, then yes, this Labor Commissioner will vigorously enforce OSHA laws.

I cannot conclude without briefly mentioning the Sioux City Fire Department situation. The story was not completely told by Mr. Hamilton. I saw that he found it necessary to refer to my people as Gestapo, Gestapo tactics. I do not sit by and take that. It is not true. Mr. Hamilton has never informed me that my people acted in a Gestapo fashion. I heard him say that my people called him and his fire department incompetent. I would be extremely shocked if that was said. As a matter of fact, I will be on the telephone to Mr. Hamilton tomorrow asking him to identify that person, and if indeed that did take place, that individual will be severely, severely punished and disciplined up to and including discharge. My first day on the job, my staff was told I have zero tolerance for discourteous behavior.

In concluding, let me simply point out that the Division of Labor seeks cooperative partnerships with employers and employees on matters of workplace health and safety. That message has been spread throughout this entire State. I would suggest that employers who know me and have heard me will agree with that. Employee groups also know that they have rights under the OSHA laws which will be enforced when common sense dictates enforcement. Cooperative partnerships is our preferred approach. Enforcement when necessary is the vehicle that is then utilized.

In conclusion, I would like to say that until 2:45 this afternoon, I was planning on also being at the event tomorrow morning in Des Moines; however, that now will not be possible in that I have a policy of going on OSHA inspections on all fatality investigations, and recently received a telephone call where a construction worker this morning in Des Moines fell 20 stories to his death.

Thank you.

Mr. MCINTOSH. Thank you for your testimony. Let me commend you for making that decision to be there personally on that type of tragedy. I appreciate your strong testimony on behalf of your agency. I want to say that I think we are in perfect agreement on your philosophy about consultation where someone takes safety seriously and vigorous enforcement where it is needed.

Mr. ORTON. Absolutely.

Mr. MCINTOSH. Let me now call on Mr. Dan Varner.

Mr. VARNER. Thank you for allowing me this opportunity to testify before you and maybe I get to do the opportunity of rebuttal here on some of the issues that were touched upon earlier today.

First of all, I am a employee representative of public employees in the State of Iowa and throughout the country, I work for the American Federation of State, County and Municipal Employees. I live here in Iowa and have lived here most of my adult life. And, as a matter of fact, on employee issues have had a good relationship with Iowa OSHA since their existence here. We have had some problems with OSHA, too. We feel that in some cases their enforcement has not been strict enough in some issues and that our members have been placed at risk.

I would like to read to you, or read into the record—it is part of the EPA report that was issued on the Terra situation, and it is on page 32 of the report in the level of preparedness to respond. "The level of effort, ability to coordinate a multi-agency response and utilization of available resources by the local response community was exceptional. The Woodbury County Disaster and Emergency Services incident commander, Gary Brown, coordinated the actions and resources of over 165 private, local, State and Federal agencies which participated during the response." That is the Terra response that I think there was some testimony earlier they were called incompetent.

Mr. LATHAM. This is the EPA report?

Mr. VARNER. Yes.

Mr. LATHAM. OK. Are we talking about OSHA?

Mr. VARNER. This—well, I am responding to a comment that was made by Mr. Hamilton on——

Mr. LATHAM. But in relationship with OSHA was my understanding?

Mr. VARNER. Yes.

Mr. LATHAM. But this is an EPA report?

Mr. VARNER. Yes. It is a report that was issued January 31st at—I guess there was a news conference.

Mr. LATHAM. OK.

Mr. VARNER. So contrary to what may have been said, they were given commendations not only on this incident but the Disaster Services for Woodbury County on the DC–10 incident was given exceptional marks. The fire department was a part of this Disaster Services. Mr. Hamilton should be complimented for his role in that and commended for it no differently than the hospital personnel, the emergency medical personnel, and the airport firefighters. They all did a great job in that. As a matter of fact, the city of Duluth, MN came down here after that incident and met with the city and has used their emergency preparedness as a model and taken it back to Duluth. The risk manager up there came down personally and met with the city of Sioux City. So for somebody to say they were called incompetent, I find that hard to believe. They were not by EPA and they certainly were not by OSHA. They should be commended for their actions.

On that same line, incident command, as Mr. Hamilton referred to, is different in emergency response to hazardous materials than it is to structural fires. Mr. Hamilton is mistaken when he said

that it is a matter of rank. It is not a matter of rank. It is a matter of qualifications. As a matter of fact, the incident commander has to go through some intense schooling in order to become an incident commander in a hazardous material release situation. it is two different things. They have to be approached differently. A member of the city council, for example, could not come to an incident like that and give Mr. Hamilton orders if the member of the city council was not qualified to be an incident commander on an incident, or neither could the mayor or neither could anybody else. There seems to be an internal conflict within the fire department of incident command. The standards are very clear on it. The standards say that incident command will be set up before an incident takes place, not after or not during an incident. And this is the communication process that the Disaster Services community and that the fire departments have to have before these incidents, and it is very clear. The reason I know this is, I teach those courses. That is what I do. I teach emergency response at the awareness level, at the operations level, at the technician level and I know the subject matter fairly well. And it is important to establish that incident command before the incident takes place so that the left hand knows what the right hand is doing and if the fire department decides to leave that there is an incident commander there in charge of that situation. That is the way it works.

Duluth, MN, that is the way it is set up. You have got utility employees that are trained at Level III in incident command that take over incident command from the fire department up there because they know more about responding to a utility incident that the fire department would know. Or sewer incident or something like that.

The lady that was up here before, I think did a very nice job of saying take caution. Mr. McIntosh, I heard some of the stories. You know, we talk about rhetoric and we talk about the tooth fairy incident and we talk about the hole in the bottom of the bucket incident, all these things. I agree, if those—I mean, if you find out the whole story, I think you might change your mind on some of those, on the bloodborne pathogen standard that OSHA may have. There are some real—there was a lot of testimony on that and a real need for those type of standards because we have people that have died because they have been exposed and died horrible deaths.

In Indiana this summer, you had a construction worker that was killed in an excavation in front of a Supreme Court judge's house out in the street this summer.

You have the city of Kokomo that had employees exposed to high levels of hydrogen sulfide, and if it was not for IOSHA in the State of Indiana, those employees would still be exposed today. They are not. They went in and they did the proper air monitoring and they found out there was an exposure problem there, and those employees were pulled back and there was some training done. Fortunately, it was before there was an incident that took place or a fatality.

I had some more remarks on some of the other issues. I have not got time to do that. I do not want to take up all of the time. EPA does have authority in States where public employees are not covered by OSHA. And for your information, there are 27 States in

this country where public sector employees do not have health and safety coverage under Federal OSHA.

Mr. LATHAM. Is that the case in Iowa?

Mr. VARNER. Iowa has OSHA coverage because they have adopted OSHA law because they have adopted OSHA law into State law and have their own administration here in the State of Iowa. Nebraska does not. South Dakota does not for their public sector employees. So we have got 27 States out there where public sector employees have no coverage. But in emergency response—in emergency response to chemical releases, which was the Terra situation, in those States where OSHA does not have jurisdiction for the public sector, EPA enforces 1910.120. That is the OSHA standard. EPA enforces that.

Mr. MCINTOSH. Is the opposite true in those States where OSHA does have jurisdiction over the public sector employees, then EPA does not?

Mr. VARNER. I cannot answer that because I questioned that myself. All I do know is that in those States—because we do training in States that do not have State OSHA and EPA enforces OSHA's laws there. Your question was how did OSHA get in the health and—or how did EPA get in the health and safety business? That is one example that I can offer you there.

Mr. LATHAM. We are going to have to move on.

Mr. MCINTOSH. Yes, perhaps we can cover some of these during the question and answer segment. I do have a couple of questions for you, Mr. Varner. Let me catch some of the other people, if I may, unless you want to conclude with a couple——

Mr. VARNER. I just want to be real brief in a conclusion.

Mr. MCINTOSH. OK.

Mr. VARNER. The gentleman said the impact on family. Byron has had firsthand experience, and will have another experience tomorrow that nobody wants to have. And that is going to an incident where there is a fatality. And that is going to an incident where the family is there. If you want to talk about real family impact, talk about a death, a fatality. It has happened here in the city of Sioux City. It has happened to 20—it has happened to 45 of our young people in the State of Iowa since 1972 in trench collapses alone. These were not the employers that were the good employers. We have seen several good employers here and they have got the highest of intentions and I applaud them. I applaud the employer that gives his employees right to know training because I was a victim of not knowing what chemicals. But when you go and you see a family that has seven kids and a father that is killed in a trenching accident—and it is most generally severe head injuries. In a trenching accident, most generally the people's heads are blown off. They are unrecognizable. And our kids—most generally the young kids because they are the ones down in the trenches, you know, doing the work and us older guys are up there running the backhoes. We have had 45 fatalities, even with OSHA laws, in the State of Iowa since 1974. That is impact on family.

Thank you.

Mr. MCINTOSH. Thank you for your testimony. I would like to actually gain some more information about this incident command question during the questioning time.

Jim Marshall, was he—I think he was not here.

Mr. Jerome Seeks.

Mr. SKEERS. Skeers.

Mr. MCINTOSH. Skeers. I am sorry. Welcome.

Mr. SKEERS. Chairman McIntosh and distinguished committee members, thank you for this opportunity to address this panel. My name is Jerry Skeers and I am a labor safety officer with the Department of Employment Services in the Division of Labor. Yes, what that means is, I am in OSHA enforcement in Iowa.

I am especially appreciative of your concern for regulatory retaliation that you prefaced this hearing with against small businesses. Not because I believe it is very likely—I would like to assure you that it is not something that our agency would involve themselves in—but because on a daily basis, I talk with people who believe they will be retaliated against. This is not always an employer. Sometimes it is another small businessman who they believe will retaliate against them. The problem is, if you are not an employee and you become aware of an unsafe situation, there are limited things that our agency is allowed to do by law. We cannot take anonymous complaints and go respond with an investigation.

I would like to tell two stories, both about small business people. I am sorry Congressman Dornan is not here because the first one concerns a restauranteur that I talked to yesterday. She has a small restaurant in a small town in Iowa. Some of her customers who came to lunch the day she called me were talking while they were eating of the hazards they faced at a work site. The boss was there with them, he went to lunch with them because he was exposed to the hazards with them too. This concerned the potential of a fall into a manure pit because of the leaning walls on that pit and the planks that were in use. I had quite a long conversation with the lady and she was calling because the contractor who was engaged for the job was afraid to approach the much larger corporate employer and try to do something because he thought that his small business would suffer by losing that job. The employees were all afraid because they felt that they would cost their employer the job.

She borrowed the fax machine of another small employer in that town. They shared their resources. I faxed them a complaint form. She has filed a complaint form with our agency concerning the problem. We will have to take other action other than an investigation of that situation because it is not a formal complaint. This is a technical provision of the law.

The other story concerns actually three small businesses. Two small businesses share one building owned by a landlord. During the cold weather we had here last week—which I understand went to Minnesota, too—the employer—the owner of the business in one side of the building called me. He was very concerned because his employees were being exposed to high levels of carbon monoxide and they had called the gas company out to try to figure out if that was in fact the case because the employees were suffering headaches, nausea and the gas company confirmed that they were suffering from carbon monoxide poisoning. The strange thing for this employer was that he had no carbon monoxide producing equipment except a furnace which was running full blast, which was

tested, it did not leak. It was not producing carbon monoxide. The carbon monoxide was coming from a propane powered forklift in the business next door. Now, that is not fact, that is what the gas company thought. They were the most expert people on the scene. They believed that it was through the ventilation system of the building that the two businesses shared. I had to tell that employer that I could not assist him unless he wanted to make a complaint. I offered, while the employer was on the phone, to call the other business and that employer said to me, it will not do any good, they will retaliate.

Now, I am not sure these people were accurate in their assessment of the potential for retaliation. But frequently in my job, I hear about retaliation against individual employees either by employers or by others in the community. I realize this is not a common thing. It is just common for me to hear about it because that small minority of people that it happens to turn to whoever they can turn to.

Thank you.

Mr. MCINTOSH. Thank you very much. And frankly, if we need to strengthen the laws where you have more ability to go in and provide assistance in these situations, I think we should entertain that as we are looking at reviewing the OSHA law anyway. If the current rules do not allow you to be effective where you do find real problems, that is something I think you would find—at least us on this committee interested in hearing about.

The last person on this group was Dr. Sprague.

Dr. SPRAGUE. Thank you. I have been sitting dry a little while, so I am a little voice-cracked right now.

I was struck today about how difficult it must be to be a legislator as I heard all the different ideas that people had. More government regulation, less government regulation, help us here, we need to protect the individual, we need to protect the community and how difficult these decisions are for everyone involved. I suppose the only more difficult job around would be our timekeeper who is trying to control the panel members.

What I have to say in light of some of the issues I heard today is probably not as in vogue. A year ago at this time, we were in the middle of a health care debate which now seems to have drifted to a back burner. But I still think there are parts of health care policy, or lack of health care policy that need to be addressed to help patients on the whole. In particular, what I want to speak to is that as a chiropractor, we see many times when the playing field for provision of health care is not a level field. Not only us chiropractors but many other non-traditional, non-medical physicians.

In times past, the argument has been as medical physicians we provide better care than the other providers. But truthfully, empirical data does not state that to be so. If you will evaluate the data that is out there, non-traditional, non-medical health care providers in many areas provide what is as efficient, safe, effective care as do the medical care providers. And not only is it as efficient and safe, in many, many cases it is more patient satisfying and almost invariably less costly.

On the other hand, almost as invariably, we find Federal programs that encourage medical care as opposed to non-traditional

medical care, such as the availability not only by access but economic incentives to seek the non-traditional care. The one that comes to mind most for us as chiropractors would be Medicare for instance.

In my office right down the street—and incidentally, right now, we are working with a management company to have a medical doctor come into our office. For the exact same services, my office is not reimbursed and their office is reimbursed. The things that I do are at a certain fee schedule. The exact same thing is done in the medical office and they are reimbursed at a much higher scale. It really does not make a whole lot of sense to do that sort of thing. I think that is the sort of thing that is being addressed now by many health care analysts. I will be submitting today a document produced by the Cato Institute of Washington, DC, that says such things.

Another example that really has been difficult for many non-traditional health care providers is the establishment of the ERISA plans which allow private industry to come in and set up laws that will bypass State regulation, particularly State insurance equality acts. I understand the concept behind it but it just—again, it is the same kind of plan that makes difficult access and economic disincentives for people who do not seek the traditional medical care.

Thank you.

Mr. MCINTOSH. Thank you. I appreciate that testimony. Let me just note that when you hear from people on the other side of that ERISA question, if we had to do 50 plans, we just could not deal with it. You have got those competing pressures on that.

Dr. SPRAGUE. Just like today.

Mr. MCINTOSH. Yes, exactly.

The staff is urging me not to have a lot of questions. I do have one though. Just so I understand the incident command structure, is there a problem with the regulation in the way they specify the command when it butts up against either a policy or an agreement of the different firefighters that they will not take command in somebody else's jurisdictions? And is there a protocol for preempting that? That seemed to be the issue where they were butting up against each other.

Mr. VARNER. It goes deeper than that and maybe I will share that with you. Yeah, this has to be planned ahead of time with shared services. For example, my region in Ottumwa has the southeast Iowa hazmat response team. Their area of responsibility is seven counties. Now, they sit down with the local emergency planning committee and they talk about if an incident happens in Davis County, if an incident happens——

Mr. MCINTOSH. So they plan out all of the contingencies.

Mr. VARNER. Sure. Now, your volunteer fire departments are not going to be qualified in most cases—probably all cases, to respond to a chemical incident. First of all, they do not have the level of training and they cannot afford it to be quite frank.

Second of all, they do not have the level of protection. When you go into an incident like that, you have got to be at Level A, and that is the Three Mile Island moon suits. And the two in and two out there is very important and we teach only that.

In this particular incident, there was some communications that should have been done well in advance of any incident taking place. Now what happened in this incident, my understanding is that an individual from the fire department was the qualified incident commander through training and through schooling and refused to send some of the fire department personnel into that situation because they were not trained to respond to the level that they were expected to.

Mr. Hamilton took exception to that. He says I am the fire chief and I will give orders in the administrative structure of things, which he is right. But when it comes to incident command, it could be Gary Brown, the Disaster Services chairman, that may be the incident commander at that particular incident and calling the shots. He is to be listened to, or whoever the designated incident commander is.

Mr. MCINTOSH. I understand and appreciate the value of that rearrangement of the command structure where there is a pre-existing plan. I think the concern that Mr. Hamilton had, and should be thought through by people on all sides, is where you do not have a chance—that agreement has not occurred yet. And his concern is obviously you do damage to the settled chains of command.

Mr. VARNER. I understand.

Mr. MCINTOSH. It is a more complex issue than the way it first appeared. I appreciate your testimony.

Mr. VARNER. It is.

Mr. MCINTOSH. I will talk with you perhaps later about some of these examples because there is some good evidence for them and some problems that are legitimate there, but I will not take further time.

Mr. LATHAM. Very briefly, in this case however, only did OSHA become concerned when the fire chief—who you would have to say was probably not as well trained as the people from Sioux City to begin with—left the scene. Then you are saying—I mean, you are kind of saying two different things. One, that the person who has the most training should take over the situation, but on the other hand, you are saying that is only the case when the fire chief, local, who is not trained as well to begin with, who you said should have replaced in the site of authority. It is a jurisdiction question. It is not a—in this particular case, it is jurisdiction.

Mr. VARNER. I will not argue that with you. It really should not have been.

Mr. LATHAM. Well, I mean—but that is where you kind of—you are talking both ways here a little bit.

Mr. Orton, I appreciate your words very, very much and what you are saying. But, I will have to tell you—I mean, everywhere I go in this district, in this State, I hear people day after day saying that the OSHA has become not an agency of assistance, of cooperation, but one of penalizing and fining people only. That there is not the cooperation. And, I respect very much—maybe it has not had time to change. But, I mean, I am hearing what you are saying and I am hearing what hundreds of people have told me. They do not mesh.

In the interest of time, we will move on because everyone has a very tight schedule here.

Mr. VARNER. I would like to respond to that briefly. That is not necessarily true. There was a survey that was done—it was legislatively mandated and it was done—it was a customer satisfaction survey that was completed last fall that was conducted by Drake University. There was a focus group that was created and I was on that focus group, along with some business leaders, and the results of that survey did not reflect what you are saying. As a matter of fact, that survey reflected that the customer satisfaction with OSHA for professionalism was fairly high. If you have not read that——

Mr. LATHAM. I am just reporting what I am hearing all the time, day after day.

Mr. MCINTOSH. We hear similar things I think in most Members districts.

Any further comments that any of you would like to submit, please do so for the record. I appreciate you taking your time and waiting through the hearing and participating. Thank you.

We have two other individuals who have asked to be able to testify. Tom, I know you have got something at 4:30. If you feel you have to go, I can handle it.

Mr. LATHAM. No, we will hold off.

Mr. MCINTOSH. OK.

Mr. Tim Orwig and Ms. Kathy Hansen. Thank you both. If you would please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show both witnesses answered in the affirmative.

Mr. Orwig, thank you for coming.

STATEMENTS OF TIM ORWIG; AND KATHY HANSEN

Mr. ORWIG. Thank you, and I promise I will be under 3 minutes.

My name is Tim Orwig. I am newsletter editor of the Northwest Iowa Sierra Club. I really want to thank the committee for the opportunity to speak.

Regulatory reform is important and there is a need to look at unnecessary regulations; however, I would ask the committee to reconsider its approach. None of your invited guests to the hearing represent citizens groups whose first priority is clean air, clean water, worker safety, intact ecosystems, safe food, consumer protection. We need some of these regulations for the public good and unfortunately, Congress has seemed to turn a deaf ear to the greater public good. This Congress has passed or attempted to pass devastating forest salvage laws, circumvention of clean water laws, destruction of the Endangered Species Act, opening the Arctic National Wildlife Refuge to oil drilling, clear cutting the Tongas National Forest, slashing the budgets of EPA and other environmental agencies, seeking to sell off national parks and monuments, dismantling the National Biological Survey. Congressman Dornan has even sponsored an amendment that will force the immediate discharge of all patriotic service men and women who happen to be HIV positive. How are these legislative initiatives in the public interest? Maybe what we really need are regulations to protect us from legislators.

Thank you.

Mr. MCINTOSH. Thank you for coming today, Mr. Orwig.

Ms. Hansen.

Ms. HANSEN. Thank you for having this open forum. I am a citizen from Orange City, IA. I am a member of a number of citizen groups, including the National Peace Corps Association, Return Peace Corps Volunteers for Environment and Development. I am president of the Iowa Division of the United Nations Association. I am active in politics and I produce a newsletter for small nonprofits, volunteer groups and citizen groups.

I am concerned—I am also concerned here that you have not had a panel of citizen groups represented here, or citizens in general. Government—I would like to go back to a couple of basics. Government regulations exist to serve the interest of the citizens and the values that we hold. I value my health and safety and the health and safety of my neighbors. Business values rest with the bottom line.

You, as elected Representatives, are here as our—the citizens' representatives. I do not think citizens would object to simplification or stopping abuse by bureaucratic power, but I personally want to have a safe environment in which to live. Your top priority should be my safety and my values, not the bottom line of the businesses which have been testifying here today. I want clean water to drink, clean rivers and streams. I want a safe workplace for myself and for my neighbors. I do not want to pay businesses to follow environmental or safety regulations. I want you to ensure that our businesses are responsible to citizen values. I do not want our children to have to deal with pollution from today's companies who are not being responsible or because you, our representatives, have not insisted that they be responsible.

Thank you.

Mr. MCINTOSH. Thank you. Thank you for coming.

I do have just one question for both of you. What would you think of proposals—and I know it is hard to answer without specifics. But if we had a proposal that very genuinely and effectively gained additional environmental benefits, but used economic incentives and got rid of some of the particular requirements but actually led to better environmental results, would you say that is a good idea or bad idea in terms of the direction to head?

Mr. ORWIG. Well, I guess I would have to know the details of it. I think that—you know, I do not think bureaucracies or regulations are sacred. I think that the results are important. And I think that taking care of the environment that we all live in is the paramount concern. So how it is done is up to you, of course.

Mr. MCINTOSH. Ms. Hansen.

Ms. HANSEN. I would agree with that. I do think it is a mistake to burden taxpayers with huge amounts of incentives to say, for instance, businesses to follow environmental regulations. This is just another huge burden on taxpayers. I think businesses and individuals should be able to be responsible relative to environment without having to be paid for it.

Mr. MCINTOSH. Although sometimes you get more flies with honey than with vinegar. You might want to think about it. One of the things I want to challenge our party to do is think along those lines. Is there a way we can have a pro-environmental agen-

da that incorporates some of the economic philosophy that the Republicans have articulated. I appreciate your coming today. If you have additional things that you would like us to have in the record, please feel free to get it to us.

Let me ask Gil or Tom if they have anything.

Mr. LATHAM. I just want to thank you, Mr. Chairman, for having the hearing here, and Gil for coming down. I especially want to thank my staff for working so hard putting this all together here with the cooperation of the chairman's staff. So, I just thank you very much for having this hearing here.

Mr. MCINTOSH. Our pleasure. It is a real pleasure to be here in Iowa. Let me tell those of you who sat here through the whole thing that I appreciate your coming today. This is a very important record for our subcommittee and it will become part of the overall record when we move forward with Corrections Day ideas and oversight issues that will be coming up. So, I want to thank Tom, you and your staff for making it possible.

I also want to let everyone know our subcommittee motto probably ought to be Gil's statement, $50 solutions for $5 problems. In fact, it is one from Winston Churchill, that in matters of principle and honor, we will never, never, never, never back down.

Mr. LATHAM. That is right.

Mr. MCINTOSH. Thank you all for coming. And with that, these hearings shall be adjourned.

[Whereupon, at 4:35 p.m., the subcommittee was adjourned.]

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