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ELECTRONIC SUBMISSION OF HAZARDOUS WASTE MANIFESTS: MODERNIZING FOR THE 21ST CENTURY

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

JUNE 21, 2012

Serial No. 112–154

Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE
80–936 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
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ELECTRONIC SUBMISSION OF HAZARDOUS WASTE MANIFESTS: MODERNIZING FOR THE 21ST CENTURY

THURSDAY, JUNE 21, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:13 a.m., in room 2322 of the Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, Harper, Green, Butterfield, and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Charlotte Baker, Press Secretary; Jerry Couri, Professional Staff Member, Environment; Andy Duberstein, Deputy Press Secretary; David McCarthy, Chief Counsel, Environment and the Economy; Chris Sarley, Policy Coordinator, Environment and the Economy; Jacqueline Cohen, Democratic Counsel; Greg Dotson, Democratic Energy and Environment Staff Director; and Stephen Salsbury, Democratic Staff Assistant.

Mr. SHIMKUS. We are going to start about 2 minutes early. We do have votes pending that will be called fairly soon, so we are going to try to make sure that we get people through the cycle as fast as possible, get the testimony, and then move forward. So we want to welcome you, and I call the hearing to order. I recognize myself for an opening statement.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Good morning. Today, our subcommittee will be looking into the issue of hazardous waste manifests required under Section 3002 of the Solid Waste Disposal Act, and whether it makes sense to have these manifests submitted in paper form, or converted into an electronic format. I think it undoubtedly makes sense to modernize to electronic filing.

With the commonplace usage of laptops, computers, scanners, PDAs, and tablets, the idea of having this information maintained electronically seems like a no-brainer to me. I hope this hearing helps us understand what good reason has prevented us from using an electronic system, and if it is legal in nature, how Congress can help encourage a transition.

When I first learned EPA was requiring multiple copies of a paper manifest to track every movement of hazardous waste from the generator through the transporter, and to final disposal site, I was surprised a more user-friendly format was not being used. When I then found out EPA required these same manifests be sent via postal mail back to the original waste generator and the State regulator to be kept on file, I was astounded at the inefficiency of the system, and the cost to both government and the private sector.

When the agency was last proposing revisions that would standardize RCRA subtitle C manifesting data requirements, EPA's Web site claims about 12 million tons of hazardous waste per year was being manifested for shipment, involving 2.4 to 5.1 million RCRA manifests, requiring about 4.4 to 9.2 million waste handling labor hours, costing about $187 to $733 million annually. That is a staggering amount. Moreover, 34 State governments reportedly spend $199,000 to 416,000 labor hours, costing $6.3 to $37 million annually to administer the current RCRA hazardous waste manifest program, which when added to waste handler burden totals 4.6 to 9.7 millions hours, or in terms of cost, $193 to $770 million per year in baseline national paperwork burden.

According to EPA, the agency estimates the cost of the paperwork burden on State and private entities from the current paper manifest system to be from $193 million to over $400 million annually. Specifically, EPA's fiscal year 2013 budget states a fully implemented electronic manifest system is estimated to reduce the reporting burden for firms regulated under RCRA's hazardous waste provisions by $76 to $124 million annually.

Especially in a time of unacceptably high unemployment and enormous Federal debt and limited State budgetary resources, Congress should be looking for ways to lighten the fiscal burden generated by the paper manifest system, but do so in a way that makes sense for tracking enforcement and public health concerns.

In addition to the regulatory and economic relief an electronic manifest provides, proponents also believe collateral benefit of an electronic system to include increased transparency, access to critical public safety and security information for first responders, better tracking services for our citizens, improved data for informed policy decisions, and program management and greater accountability for how hazardous wastes are transported and managed.

The Senate has twice passed legislation with the support of environmental advocacy groups, industry stakeholders, and State regulators that created an electronic manifest system at EPA. Their approach melded private sector expertise with technology and EPA's concern for what a meaningful manifest system needed. If the House is going to act on this issue, we need to understand why this needs to be done, and how best to make it work for Federal and State regulators, the regulated community, and the U.S. taxpayer. Furthermore, if the industry wants this system and is willing to pay for it, the system should be viable, performance-based, and industry should not be forced to overpay for the system, nor have their money held hostage by Congress or the Executive Branch.

I am aware that there have been concerns raised about various facets of the Senate-passed bill, including whether it requires some spending offset, even though it would be fully funded by user fees,

and whether those funds, once collected, should be appropriated. These are issues that we will investigate fully and address to the extent that they need to be.

I look forward to working with all parties, and I want to thank the witnesses for taking time out of their busy schedules to be with us. We appreciate your testimony and look forward to being better educated by your experience.

Before I yield back, I want to finish this. I am going to forward this so it is submitted for the record to Monica back in the back. This is obviously a new technology, and we are going to send it, and that is all we are asking for us to do electronically to be able to follow this and in a very transparent system.

[The prepared statement of Mr. Shimkus follows:]

Opening Statement of the Honorable John Shimkus
Subcommittee on Environment and the Economy
Hearing on "Electronic Submission of Hazardous Waste Manifests – Modernizing for the 21st Century"
June 21, 2012
(As Prepared for Delivery)

Today, our subcommittee will be looking into the issue of hazardous waste manifests, required under Section 3002 of the Solid Waste Disposal Act, and whether it makes sense to have these manifests submitted in paper form or converted into an electronic format. I think it undoubtedly makes sense to modernize to electronic filing.

With the commonplace usage of laptop computers, scanners, PDAs, and tablets; the idea of having this information maintained electronically seemed like a "no brainer" to me. I hope this hearing helps us understand what good reason has prevented us from using an electronic system, and, if it is legal in nature, how Congress can help encourage a transition.

When I first learned EPA was still requiring multiple copies of a paper manifests to track every movement of hazardous waste, from the generator through the transporter and to final disposal site, I was surprised a more user friendly format was not being used. When I then found out EPA also required these same manifests be sent – via postal mail – back to the original waste generator and the state regulator to be kept on file, I was astounded at the inefficiency of this system and the cost to both government and the private sector.

When the agency was last proposing revisions that would standardize RCRA's subtitle C manifesting data requirements, EPA's website claims about 12 million tons of hazardous waste per year was being manifested for shipment, involving 2.4 to 5.1 million RCRA manifests, requiring about 4.4 to 9.2 million waste handler labor hours, costing about $187 to $733 million annually. That is staggering.

Moreover, 34 state governments reportedly spend 199,000 to 416,000 labor hours, costing $6.3 to $37 million, annually to administer the current RCRA hazardous waste manifest program, which when added to waste handler burden, totals 4.6 to 9.7 million hours or, in terms of cost, $193 to $770 million per year in baseline national paperwork burden.

According to EPA, the agency estimates the cost of the paperwork burden on states and private entities from the current paper manifest system to be from $193 million to over $400 million annually. Specifically, EPA's fiscal year 2013 budget states a fully-implemented "electronic manifest system is estimated to reduce the reporting burden for firms regulated under RCRA's hazardous waste provisions by $76 to $124 million annually."

Especially at a time of unacceptably high unemployment, an enormous Federal debt, and limited state budgetary resources, Congress should be looking for ways to lighten the fiscal burden generated by the paper manifest system, but do so in a way that makes sense for tracking, enforcement, and public health concerns.

In addition to the regulatory and economic relief an electronic manifest provides, proponents also believe collateral benefit of an electronic system to include increased transparency, access to critical public safety and security information for first responders, better tracking services for our citizens, improved data for informed policy decisions and

program management, and greater accountability for how hazardous wastes are transported and managed.

The Senate has twice passed legislation, with the support of environmental advocacy groups, industry stakeholders, and state regulators that created an electronic manifest system at EPA. Their approach melded private sector expertise with technology and EPA's concerns for what a meaningful manifest system needed. If the House is going to act on this issue, we need to understand why this needs to be done and how best to make it work for federal and state regulators, the regulated community, and U.S. taxpayers. Furthermore, if the industry wants this system and is willing to pay for it, the system should be viable, performance based, and industry should not be forced to overpay for the system nor have their money held hostage by Congress or the Executive Branch.

I am aware that there have been concerns raised about various facets of the Senate passed bill, including whether it requires some spending offset, even though it would be fully funded by user fees, and whether those funds, once collected, should be appropriated. These are issues that we will investigate fully and address to the extent they need to be. I look forward to working with all parties.

I want to thank the witnesses for taking time out of their busy schedules to be with us. We appreciate your testimony and look forward to being better educated by your experience.

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Mr. SHIMKUS. With that, I yield back my time and yield to my ranking member, Mr. Green from Texas.

OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Thank you, Mr. Chairman. Just so we don't get to the point where you and I are e-mailing between us up here, that we can sit down and talk to each other. We don't want to lose the history of conversation by e-mailing.

But I appreciate the chairman calling the hearing today, and welcome both our panels.

Commonsense change should have broad support in this committee, with the Senate having already acting on the issue. I hope we will move expeditiously to introduce legislation establishing an electronic manifest system that ensures that hazardous wastes are designated for and indeed arrive safely at designated hazardous waste management facilities.

The benefits of an electronic manifest are obvious, ranging from reduced paperwork, administrative burdens, and millions of dollars such a system could save. That is why both EPA and the regulating industry agree that we should develop legislation to create an e-Manifest system and fund it through user fees. With this kind of agreement and participation, there is no reason why we cannot pass the bill into law this year.

So my goal for this hearing is to hear from any concerns our witnesses have with Senate Resolution 710, if any, so that we can address them and move forward with the bill in the House.

Mr. Chairman, I would like to ask unanimous consent to insert a letter in the record from the Natural Resource Defense Council, showing their support for e-Manifest program.

Mr. SHIMKUS. Without objection, I am happy to receive this from my friends at the NRDC.

[The information follows:]

NATURAL RESOURCES DEFENSE COUNCIL

March 28, 2011

Honorable John Thune
U.S. Senator
Washington, DC 20510

Dear Senator Thune:

On behalf of the Natural Resources Defense Council's 1.3 million members and supporters, I am writing to express our support for your legislation authorizing electronic tracking of hazardous waste shipments.

The current paper manifests used for the country's hazardous waste tracking system are paper documents with multiple copies prepared by all generators who transport hazardous waste for off-site treatment, recycling, storage, or disposal.

In 2006 the need for a national electronic e-manifest system became very evident when a fire erupted at a hazardous waste disposal facility in Apex, North Carolina, burning the building to the ground. Although emergency personnel were on the scene quickly and safely evacuated over 10,000 residents from nearby homes, they couldn't attempt to extinguish the blaze because the records about what was on site had gone up in smoke. We believe your legislation not only better protects our environment, but would also create greater certainty and accessibility as it relates to the contents of hazardous waste as it is transported, treated and disposed of in our country.

An e-manifest tracking system would improve the quality of data available and allow for "real-time" tracking by enforcement officials and first responders. In an emergency, this could mean the difference between life and death.

Therefore, NRDC supports your legislation to modernize the way the federal government and states track the shipment of hazardous waste throughout the country by establishing a federal electronic manifest system.

Sincerely,

Scott Slesinger
NRDC Legislative Director

www.nrdc.org
1200 New York Avenue, NW, Suite 400
Washington, DC 20005
TEL 202 289 6868
FAX 202 289 1060
NEW YORK · SAN FRANCISCO · LOS ANGELES · BEIJING · CHICAGO

Mr. GREEN. I feel the same way sometimes.

With that, thank you again to our witnesses for appearing. I look forward to hearing your testimony. I will just hand you my statement.

Mr. SHIMKUS. I will see that. The gentleman yields back his time. Does the gentleman from Georgia seek time?

Seeing no other members present, the chair now recognizes Ms. Rudzinski from the Environmental Protection Agency. Welcome. Your full statement is considered accepted into the record, and you have 5 minutes for an opening statement. Thank you for coming.

STATEMENT OF SUZANNE RUDZINSKI, DIRECTOR, OFFICE OF RESOURCE CONSERVATION AND RECOVERY, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Ms. RUDZINSKI. I will focus my remarks on the need for and efforts necessary to establish a national electronic manifest system, or e-Manifest, to track hazardous waste shipments more effectively and efficiently.

The uniform manifest to track hazardous waste shipments in use today is a six-copy multiple paper form that documents the chain of custody for waste shipment. Each person in the chain must sign the manifest and then ultimately file a copy at their own facility, as well as the final facility must file a copy back with the original generator to confirm that the waste got received.

Each year, hazardous waste generators prepare about two to five million manifest forms. We believe it is time that this paper-intensive process enter the 21st century with an efficient e-Manifest system, but legislation is needed to do so.

The administration believes there are very significant benefits to an e-Manifest system, both in cost savings and program efficiencies for the regulated community and the regulators. Eliminating most of the manual processing steps is expected to result in significant cost savings. The cost savings that we would be estimating would be at least $75 million annually for users and State agencies. The savings should be higher if updated to account for today's costs.

Additionally, an e-Manifest system would improve the overall efficiency and effectiveness of the national hazardous waste tracking system, providing increased protection to human health and the environment. For example, the e-Manifest would produce better data quality. Second, the e-Manifest system would provide nearly real time tracking capabilities. Users would no longer have to wait 30 days or more for paper copies to be mailed, processed, and then finally learn whether or not their shipment arrived. You could track delays and discrepancies very quickly. Third, users could rely on a national e-Manifest system as their single point of contact for both their Federal and State required manifest data reporting. Fourth, the e-Manifest system could reduce the need for onsite labor intensive inspection of paper records. Finally, full implementation of e-Manifest could foster new data management and cost saving possibilities, such as simplification and consolidation of existing requirements and systems for our biennial reporting of hazardous waste.

The administration supports the development of a fee-based centralized e-Manifest system. Legislation must be enacted to make

this a reality. Since manifest users would receive the greater part of the benefits and cost savings from using the e-Manifest, it seems fitting to the Agency and the users themselves that the manifest users should fund the development and operation of the system. On May 23 of 2011, the administration transmitted to the House and Senate an e-Manifest legislative proposal. Legislation would need to authorize EPA to collect user fees for system related activities, and to deposit those fees in a special Treasury account from which funds could be expended only for system-related activities. This authorization could explicitly provide that the monies collected as user fees would be available to EPA for use for the payment of e-Manifest system costs.

Additionally, legislation may need to clarify any requirements for use of unique or unconventional contracting arrangements for e-Manifest. If e-Manifest legislation or related appropriation bills were to authorize and appropriate funds to EPA to build the e-Manifest system, as suggested in the administration's proposal, EPA would likely procure the development of the system using conventional Federal acquisition procedures and rely on user fees to cover systems operations and maintenance costs. However, if Congress authorizes use of a different contracting approach for the system build, such as the "Share-in-Savings" type of performance-based contract that was authorized in the Electronic Government Act of 2002, then the contents and requirements of such a contract may need to be addressed in the legislation.

It is also important for the legislation to include provisions that will ensure that the e-Manifest system and the authorizing regulations developed by EPA be effective in States on the same date, initially as a Federal requirement, but which the States can subsequently be authorized for after enacting the necessary State laws. The e-Manifest can be effective as a cost savings tool for users and a profitable venture for vendors only if it is assured that the e-Manifest will be implemented consistently in all States on the same date.

We look forward to working with Congress to enact legislation to provide for the development of an efficient, effective e-Manifest system. Thank you very much, Mr. Chairman, for the opportunity to be here today. That concludes my statement, and I would be pleased to answer any questions that you or other members of the subcommittee may have.

[The prepared statement of Ms. Rudzinski follows:]

STATEMENT OF SUZANNE RUDZINSKI
DIRECTOR, OFFICE OF RESOURCE CONSERVATION AND RECOVERY
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON
ENVIRONMENT AND ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

June 21, 2012

Good morning, Mr. Chairman and members of the Subcommittee. I am Suzanne Rudzinski, Director of EPA's Office of Resource Conservation and Recovery. I am pleased to be here today to discuss the tracking of hazardous waste shipments under the Resource Conservation and Recovery Act (RCRA). In particular, I will focus my remarks on the efforts necessary to establish a national electronic manifest system, or e-Manifest, to track hazardous waste shipments more effectively and efficiently.

I will summarize EPA's current authority to track hazardous waste shipments under RCRA, and the paper-based manifest system that EPA and the Department of Transportation (DOT) established nearly 30 years ago. In addition, I will describe EPA's efforts revise and modernize the manifest system, within the scope of our current authority. Finally, I will discuss the new statutory authorities that EPA will need in order to establish a national e-Manifest system that will enable transition of the manifest system from one that is very paper-intensive and burdensome to a system that will rely on information technology to track waste shipments.

The Agency looks forward to working with the Congress as an e-Manifest bill moves through the legislative process.

HAZARDOUS WASTE CONTROL AND THE RCRA MANIFEST SYSTEM

Subtitle C of the Resource Conservation and Recovery Act establishes the statutory framework for the regulation of hazardous wastes. Consistent with the statute, EPA has developed a comprehensive regulatory system prescribing "cradle-to-grave" controls on the generation, transportation, storage, and disposal of hazardous waste. As a threshold level of protection, Subtitle C of RCRA requires that EPA establish a manifest system to ensure that hazardous wastes are designated for, and indeed arrive safely at, designated hazardous waste management facilities. The manifest requirement was the Congress's answer to frequent episodes of "midnight dumping" in the hazardous waste transportation and management industries.

The manifest implements the very important function in our "cradle-to-grave" waste management system of documenting that the hazardous waste shipments that originate at a specific "cradle" or generator site arrive intact at the selected "grave" or waste management facility. The manifest collects information about the quantity, composition, origin, and destination of all hazardous waste shipments. The manifest also documents the actual chain of custody for a waste shipment, by recording in turn the signatures of the generator, the transporters, and the receiving facility responsible for handling the waste.

Under Section 3003(b) of RCRA, EPA is required to coordinate our waste transportation regulations with the Department of Transportation (DOT). This requirement exists to minimize duplication and ensure consistency between RCRA's hazardous waste transportation requirements and DOT's hazardous materials regulations. EPA's manifest requirements have been coordinated with DOT, with the result that

completing a hazardous waste manifest also assures compliance with DOT's requirements for completing a hazardous materials shipping paper.

The manifest requirements, which were jointly developed by EPA and DOT in 1984 and then revised in 2005, require the use of the Uniform Manifest for the tracking of all hazardous waste shipments that are transported over public highways to an off-site destination facility for management. The Uniform Manifest is a multi-copy form that generators of hazardous waste must first complete before hazardous wastes can be delivered to a transporter for shipment off-site. The generator is responsible for entering information that describes its hazardous wastes and identifies the transporters and the waste management facility that will receive such waste.

The manifest form is then physically carried with the waste shipment, and with each change of custody that occurs during transportation, a signature is obtained from the waste handler receiving custody. Each waste handler that signs the manifest must also retain a signed copy of the form among its company records to document its compliance. Finally, when the hazardous waste arrives at the designated waste management facility, that facility must sign the manifest and either verify that all the hazardous waste types and quantities were received, or identify any discrepancies. This final copy verifying receipts must then be sent back to the generator by mail, so that the generator receives confirmation of receipt by the designated facility.

Since the states are the primary implementers of the hazardous waste program, a number of authorized states also require the submission of one or more manifest copies so that the data may be entered into these states' tracking systems. There are currently 24 states that collect manifest copies, and use manifest data for program management.

revenue collection, and enforcement purposes. The states that collect manifest copies generally must enter the data manually into their tracking systems.

All of the manual processing steps described above add up to a very significant paperwork burden. We estimate that each year, hazardous waste generators prepare about 2 to 5 million manifest forms, and that the completion and processing of all these forms results in an annual paperwork burden that exceeds $200 million.[1]

BENEFITS of an E-MANIFEST SYSTEM

The Administration believes there are very significant benefits of an e-manifest system -- both in cost savings and program efficiencies for the regulated community and regulators. One benefit of moving to an e-Manifest system is the cost savings that will result to manifest users and to the state agencies that collect manifests and process their data. When EPA began analyzing the business case for the e-Manifest several years ago, we projected that an e-Manifest system that handled 75% of the current manifest traffic electronically could result in annual net savings that exceeds $75 million to users and to State agencies. [2] The savings would be expected to be higher if updated to account for today's costs. These substantial cost savings result primarily from eliminating most of the manual processing steps that are necessary to support the completion, carrying, signing, filing, and mailing of paper manifests and data.

However, a variety of other significant benefits also would be realized that are equally important, if not more important, to the hazardous waste program. An e-manifest system would improve the overall effectiveness of the national hazardous waste tracking

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[1] U.S. EPA E-Manifest alternatives analysis document, version 4.0, November 11, 2009.

[2] U.S EPA E-Manifest alternatives analysis document, version 4.0, November 11, 2009.

system and thus, provide increased protection to human health and the environment. I would like to highlight a few of these benefits.

First, we would expect that the e-Manifest would produce better quality data and more timely information on waste shipments. The e-Manifest could be developed with automatic quality checks that would identify data entry errors, and we would likely avoid many of the data interpretation errors that result currently from illegible handwritten entries or from illegible copies.

Second, the e-Manifest system would make it possible to have nearly real-time tracking capabilities for waste shipments. Users could check the status of shipments as needed, and would no longer need to wait 30 days or more for paper copies to be mailed and processed before they could determine if their hazardous waste shipments have been delivered. This electronic tracking capability would also provide much more rapid notification of any discrepancies, delays, or other problems connected with a particular shipment.

Third, users could rely on the national e-Manifest system as their single point of contact for both their federal and state-required manifest data reporting. Since all states would be linked to the e-Manifest network, the submission of one e-Manifest to the national system also would supply necessary copies to those state programs that collect the manifest. Thus, there would be one-stop reporting of manifest data. Regulatory program management also would benefit by having access to manifest data that can be imported easily into a federal or state agency's tracking system, without having to re-enter data from paper forms.

Fourth, the e-Manifest system, with its ability to provide a single point of contact for transmitting and storing manifests, also would support enhanced inspection and enforcement capabilities. Federal or state regulators conceivably could inspect a facility's manifests and shipment data quite readily without having to go on-site for a labor intensive inspection of paper records.

Finally, the full implementation of e-Manifest could foster new data management possibilities, such as simplification or consolidation of existing requirements and systems for biennial reporting of hazardous waste data, for reporting of hazardous waste export and import data, and possible consolidation or streamlining of duplicative federal and state tracking systems.

A FEE-FUNDED E-MANIFEST SYSTEM

The Administration supports the development of a fee-based, centralized e-Manifest system. Since manifest users would receive the greater part of the benefits and cost savings that would result from using the e-Manifest, it seems fitting to the Agency and to the users themselves that the manifest users should fund the development and operation of the system.

In early 2005, EPA sought to fund the development of the e-Manifest system under the Electronic Government Act of 2002 which authorized, on a pilot basis, a new contracting approach for federal information technology (IT) projects known as "share-in-savings." The General Services Administration (GSA) was authorized to manage the program, and we worked closely with GSA to formulate a project plan and a procurement action for developing e-Manifest as a share-in-savings project. EPA was not able to

complete the e-manifest procurement activity before the expiration of the share-in-savings pilot authority in September 2005.

STATUTORY AUTHORITY

EPA's efforts in 2005 to initiate an e-Manifest procurement under the share-in-savings program did help us to understand better what authorities might be needed to pursue such an approach. First, legislation would need to authorize EPA to collect user fees for system-related activities and to deposit those fees in a special Treasury account from which funds could be expended only for system-related activities, including the development, operation, support, management, and future upgrade or enhancement of the e-Manifest system. This authorization could explicitly provide that the monies collected as user fees will be available to EPA to use for the payment of e-Manifest system costs. EPA believes that the manifest user community, and states support a dedicated funding source to support an e-Manifest system.

Second, it may be necessary for e-Manifest legislation to clarify any requirements for the use of unique or unconventional contracting arrangements for e-Manifest. EPA has developed a number of information technology systems under conventional Federal procurement arrangements specified in the Federal Acquisition Regulations (FAR). So, if the e-Manifest legislation and related appropriation bills were to authorize and appropriate funds to EPA for the e-Manifest system build, as suggested in the Administration's proposal, EPA would likely procure the development of the system using conventional Federal Acquisition procedures and rely on user fees to cover system operations and maintenance costs. However, if Congress authorizes use of a different contracting approach for the system build, such as the "Share-in-Savings" type of

performance based contract that was authorized in the Electronic Government Act of 2002, then the contents and requirements for such a contract may need to be addressed in the legislation.

Third, legislation should include provisions that will ensure that the e-Manifest system and the authorizing regulations developed by EPA will be effective in all states and effective on the same date. The e-Manifest can be successful as a cost savings project for users and a profitable venture for vendors only if it is assured that the e-Manifest will be implemented consistently in the states. The e-Manifest will not be successful if some states choose not to recognize the validity of electronic manifests, or if some states require a full paper manifest to be completed in addition to an e-manifest. Similarly, EPA believes that the e-Manifest should be effective in all states as a federal requirement on the effective date designated in EPA's authorizing regulations. Thereafter, as authorized state programs revise their regulations to adopt the e-Manifest system and become authorized for this program modification, the e-Manifest would become effective as well under state law. However, to avoid confusion for users of an e-Manifest system, we need to be sure that e-Manifest will be effective as a federal requirement on the same date in all the states.

E-MANIFEST IS CONSISTENT WITH COMMONSENSE REGULATION

On January 18, 2011, President Obama signed Executive Order 13563, which reaffirmed the principles, structures, and definitions governing regulatory review that was established in Executive Order 12866. As stated in the Executive Order, "each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs

are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity.

The Executive Order also contained a specific provision entitled, "Retrospective Analysis of Existing Rules," which requires agencies to "look back" at its existing "rules that may be outmoded, ineffective, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." The e-Manifest system is one example of such regulatory revision that should be undertaken, and in fact, EPA included it as a burden reduction effort in the Agency's Final Plan for Retrospective Reviews for Existing Regulations.

Finally, we would note that as part of the President's FY 2012 and FY 2013 Budgets, the Administration supported the development of an electronic hazardous waste manifest system. On May 23, 2011, EPA transmitted to the House and Senate an e-Manifest legislative proposal. The Administration proposal is similar in many respects to S.710 insofar as establishing a national e-Manifest system funded through user fees. The proposal differs by incorporating an annual appropriation provision into the user fee funding approach, and relies upon conventional contracting arrangements for the initial system build.

CONCLUSION

The Administration supports the enactment of legislation that would authorize EPA to establish a national e-Manifest system funded by user fees. We believe that such an electronic system can produce better tracking services for our citizens, better data for informed policy decisions and program management, greater accountability for how hazardous wastes are transported and managed, and provide significant cost savings to both the e-Manifest users and regulators, consistent with Executive Order 13563. I look forward to working with Congress to enact legislation to provide for the development of an efficient, effective e-Manifest system.

Mr. SHIMKUS. Great, thank you very much. It sounds like there is much in agreement, and great possibilities forward. So we indeed look forward to working with you.

Let me recognize myself for the first set of questions.

In 2006, the Senate Environment and Public Works Committee received testimony that the hazardous waste manifest burden was the most expensive paperwork requirement EPA imposes under Subtitle C. Do you believe that that is still the case?

Ms. RUDZINSKI. I believe that is correct.

Mr. SHIMKUS. And in your testimony, you mentioned that EPA first started analyzing the economic benefits of transitioning to an electronic manifest system. The agency estimated that a 75 percent participation rate could result in an annual net savings of $75 million to users and State agencies. How realistic do you think that 75 percent rate in that evaluation is?

Ms. RUDZINSKI. The 75 percent relates to not the generators themselves, but actually the number of manifests that would be covered, so that would be out of the two to five million paper forms that are floating around every year. We think that is a very realistic number initially and could go higher over time.

Mr. SHIMKUS. And I agree with you. I think people are just itching to move from this to this, away from that.

So if given the authority to set up an electronic manifest system, what is a reasonable and appropriate time frame for finding a vendor, negotiating a contract, and issuing implementing rules, and how much do you think this would cost?

Ms. RUDZINSKI. The length of time for the contract will depend on what kind of mechanism we use, because there have been different types of mechanisms suggested. If we use a very conventional procurement approach, typically those contracts for other things take in the range of 12 to 18 months. If in the case of a novel contract, it may potentially take more time.

Mr. SHIMKUS. And my last question is how much do you envision it will cost a vendor to build a viable electronic manifest system?

Ms. RUDZINSKI. At this point, we are estimated somewhere probably between $7 and $16 million, but that is based on old estimates that have not yet been updated, and would also be dependent upon what the actual specifications are of the system.

Mr. SHIMKUS. Great, thank you. That ends my questions.

I would like to yield to Mr. Green, the ranking member, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Ms. Rudzinski, you mentioned in your testimony that if e-Manifest legislation or related appropriations bill were to authorize and appropriate funds for EPA for the e-Manifest system build as suggested by the administration's proposal, EPA would like to procure the development of the system by using conventional Federal acquisition procedures and rely on user fees to cover the cost of system operations and maintenance. Senate bill 710 instead does a "Share-in-Savings" approach, and you indicate the EPA would need the contents and requirements for such a contract to be addressed in the legislation.

I really hesitate for Congress to pick winners and loser, although I have to admit the Federal Government doesn't have a good his-

tory of picking technology programs. The IRS is probably the best at that.

But anyway, has EPA ever done a "Share-in-Savings" contract before?

Ms. RUDZINSKI. I am not positive, but I can certainly get back to you for the record if you would like.

Mr. GREEN. OK. When the authority was available for these contracts under the e-Government Act of 2002, EPA worked with GSA to use a "Share-in-Savings" contract for e-Manifest. Is that correct?

Ms. RUDZINSKI. That is correct.

Mr. GREEN. Can you discuss that further, what happened from there?

Ms. RUDZINSKI. Basically we were in the process of working on it with GSA. We were working on getting the necessary regulations out that would enable us to do the "Share-in-Savings" and I believe the Act expired before we were able to implement.

Mr. GREEN. OK. Does Senate Resolution 710 adequately address the requirements you will need for a "Share-in-Savings" approach? If not, can you elaborate on what needs to be done?

Ms. RUDZINSKI. The bill S.710 does address the requirements. It has the basic needs in it for us, if that was the bill that was going to be enacted.

Mr. GREEN. OK. Mr. Chairman, those are all my questions.

Mr. SHIMKUS. The gentleman yields back his time. The chair, without objection, would like to go into a colloquy with Mr. Waxman. You have permission to do an opening statement, if you would like to do so.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman, and I appreciate the——

Mr. SHIMKUS. Gentleman is recognized.

Mr. WAXMAN [continuing]. Witness for your testimony. I want to thank Ranking Member Green. We requested this hearing back in January, and we are looking to see how we modernize the tracking system for hazardous waste shipments in this country. The goals of these efforts are to reduce burden, save money, improve data quality. At present, the Federal manifest system still relies on paper manifests, just as it did when the system was established in 1980.

So we have got to bring this system into the 21st century. Technology has advanced significantly over the last 32 years, and we shouldn't be relying on carbon copies to track potentially dangerous shipments. I think you would get a unanimous agreement on that point from members of the committee here.

The adoption of an electronic manifest system was proposed by EPA more than 11 years ago. It has been supported by the chemical companies, State agencies, environmental organizations. But it still hasn't been adopted. Ironically, there were technological concerns—questions about the enforceability of digital signatures are one.

So I didn't hear your testimony, but I know that it has been submitted in writing. So we are concerned about how this program is going to be funded. For many years, hazardous waste generators, shippers, processors have expressed a willingness to fund the program through user fees. I hope we can adopt that concept. I think we will hear legislation—about legislation from the Senate that embodies the concepts that are widely supported, authorizing an electronic manifest system with regulatory authority for EPA, and a user fee to cover its costs.

I think, Mr. Chairman, the rest of my statement I would like to have in the record. I appreciate the courtesy you have given me in letting me come in at this point in the hearing to make these comments. In S.710—I think we ought to look at it. The bill calls for a "Share-in-Savings" contract, and in a standard "Share-in-Savings" contract, the contractor agrees to bear the initial project cost. I think this is something we ought to examine carefully.

I thank you for holding this hearing, and I hope we can work together to solve this problem.

[The prepared statement of Mr. Waxman follows:]

Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Hearing on "Electronic Submission of Hazardous Waste Manifests – Modernizing for the 21st Century"
Subcommittee on Environment and the Economy
June 21, 2012

I would like to thank the chairman for calling today's hearing, which Ranking Member Green and I requested back in January.

Today we will hear about efforts to modernize the tracking system for hazardous waste shipments in this country. The goals of these efforts are to reduce burdens, save money, and improve data quality. At present, the federal manifest system still relies on paper manifests, just as it did when this system was established in 1980.

We should bring this system into the 21st century. Technology has advanced significantly over the last 32 years, and we should no longer be relying on carbon copies to track potentially dangerous shipments. I think we will hear unanimous agreement today on that point.

The adoption of an electronic manifest system was proposed by EPA more than 11 years ago, and it has been supported by chemical companies, state agencies, and environmental organizations. But it hasn't been adopted.

Initially, there were technological concerns; questions about the enforceability of digital signatures are one example.
As we will hear from EPA on the first panel, those concerns have been addressed.

How the program will be funded is also an important issue. For many years, hazardous waste generators, shippers, and processors have expressed a willingness to fund this program through user fees.

I hope we will all agree on the concept of adopting an electronic manifest system and on adopting a user fee to cover the costs of the program. But there are still issues to resolve once we get into the details of user fees and contract funding.

Today, we will hear testimony about legislation from the Senate which embodies concepts that are widely supported. It would authorize an electronic manifest system, with regulatory authority for EPA, and a user fee to cover costs. The bill passed the Senate unanimously in August last year.

I hope we will look at the costs of this legislation and where the funds to implement it will come from. CBO has scored this bill, but it does not yet have a pay-for. We should also

look at the scope of the user fee created here and the structure created to administer the dedicated trust fund.

And we should look at the type of contract specified in this legislation, and whether it is appropriate.

The user fee established in S. 710 is unusual and bears some scrutiny. The idea of a user fee is that the parties using a government system and benefiting from it can cover part of the costs of its operation. But here, the so-called "user fee" will apply to all hazardous waste generators, shippers, and processors, regardless of whether they use the new electronic system. That means that even small shippers who choose to keep using paper manifests will face a fee.

The contract specified in S. 710 is also unusual and worthy of scrutiny. The bill calls it a Share-in-Savings contract. Under a standard share-in-savings contract, the contractor agrees to bear the initial project costs, including capital outlays, until the client agency begins to achieve specified results from the work. Payment is based on a percentage of the savings realized by the agency. Here, payment would be based on a percentage of the user fees collected by the EPA.

I look forward to hearing from the panel today about the requirement to use this contract type and to working with my colleagues to ascertain whether it is appropriate in this context.

I think the Committee should act on this legislation and am hopeful that we can get the details right before doing so.

Mr. SHIMKUS. Thank you, Mr. Waxman. Now would you like to ask any questions of the witness?

Mr. WAXMAN. I am going to pass on asking questions and let others who have been here longer have their chance, because we are going to have votes.

Mr. SHIMKUS. Thank you, sir. Now the chair recognizes the gentleman from Georgia, who has no desire for questions.

Gentleman from North Carolina is recognized.

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman. Thank you, Director, for your testimony today. I will try to be as brief as I can.

Protecting the public from hazardous waste is certainly a critical mission of the Department of Transportation and EPA. Both departments, in coordination with industry and State agencies, have been vigilant in the treatment and transport of hazardous waste because of the safeguards established by the hazardous waste manifest system. Paper manifests provide shipping information to help with the tracking of potentially dangerous materials, and information about the contents of each shipment for emergency responders. Since 2001, EPA has proposed a nearly paperless manifest system which would reduce the financial burden of paperwork on States and the industry by more than $75 million per year.

I support improving the hazardous waste manifest system by using information technologies. I look forward to transitioning from the existing paper system while continuing to make safety our top priority.

Let me just ask you, if I can, Madam Director. S.710 proposes a user fee on people who continue to use paper manifests. Is that generally how user fees are allotted, or is that tantamount to a tax?

Ms. RUDZINSKI. In terms of the user fees for paper, users that want to stay with paper currently, in many States, do actually have a user fee because at the end they have to submit it to the State and the State oftentimes charges fees for being—to enter that manifest data into a system.

In the system that is being proposed for electronic manifests, a user would have an option of either going electronically or continuing to use paper. At the end of that time, you would still need to submit the paper—the final paper form back into the system. So they will still be users of the system and they will be appropriately charged.

Mr. BUTTERFIELD. I guess what I am getting at, would a sliding fee scale be better?

Ms. RUDZINSKI. One of the things—that is an issue that we would certainly look at if legislation is enacted so that we could impose user fees, and we would certainly work with the user community to try to make sure we knew what was appropriate.

Mr. BUTTERFIELD. Just trying to mitigate the amount that would be assessed to small businesses, you know. We are always trying to protect small businesses and their bottom line, if we can.

Do paper manifests get lost during transit?

Ms. RUDZINSKI. Paper manifests can get lost. They can have data quality issues. You can have illegible handwriting so that people

don't know exactly what is there. E–Manifest offers a far superior approach to that.

Mr. BUTTERFIELD. Is intentional fraud an issue with paper manifest?

Ms. RUDZINSKI. How large an issue that is, I am not sure, but I can get back to you.

Mr. BUTTERFIELD. All right. Those are my four areas of interest. Thank you. I yield back.

Ms. RUDZINSKI. Thank you.

Mr. SHIMKUS. Gentleman yields back his time. Now the chair recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman, and welcome. I appreciate your being here today with us, and I have a few questions.

If a vendor is operating the electronic manifest system on behalf of EPA, how many EPA staff would be required to work full-time on issues related to the electronic manifest system?

Ms. RUDZINSKI. Initially the number of people at EPA that would be working on it would be working not only on procuring the contract, and also developing the regulations that would be needed, but that should go down over time because the regulations, once they are actually in place, those staff would no longer be needed. So it would depend on the actual nature of the contract system adopted as to how many staff would be needed. Initial estimates are about five to cover the entire span of contracting and regulatory activity.

Mr. HARPER. What would be the benefit to EPA or DOT of real time tracking that the electronic manifest would provide, just in general?

Ms. RUDZINSKI. Real time tracking allows you to know where a shipment is, if there's a problem on the road, if the shipment has been delayed you know immediately where you can find it and can actually get help to it more quickly. It will also allow you to—if there is some kind of an incident, it will help first responders being able to get there.

Mr. HARPER. All right. You had mentioned that the e-Manifest system could foster new data management possibilities. Could you quantify what the cost savings to EPA would be through these possibilities that you mentioned?

Ms. RUDZINSKI. Qualitatively I can talk to you about it, because it will be dependent upon what system is actually adopted. The types of things that we are looking at right now is you have got biannual reporting systems that for all hazardous waste, a lot of that could be incorporated into the e-Manifest system so that potentially you do not have to do extra reporting. Things like our hazardous waste export notifications could potentially be melded in as well, so you could do away with other system requirements.

Mr. HARPER. OK. Why does the administration believe that a fee-based centralized e-Manifest system has the greatest chance of succeeding, versus other methods?

Ms. RUDZINSKI. The industry and EPA have—and the States have—all been working together, and indicated that user fees are important because in these budget times, it is important to find ways to fund the system. So the thought was that the users, and

the users themselves agree, that they should help bear the cost of the system.

Mr. HARPER. Thank you, Mr. Chairman. I will yield back.

Mr. SHIMKUS. I want to thank my colleague real briefly before we let you go. The only system-related activities on user fees is—I think that was a great point to raise. This real-time tracking is like UPS, like FedEx, like the U.S. Postal Service, so we should be able to get there. And by the time I did my opening statement, sent it back to the clerks to file, they had already sent me a confirmation that they have it. That is really where we want to go and I think we can get there, we just need to work together.

I appreciate my colleagues on the minority side. It looks like there is something we might be able to do.

With that, we want to dismiss you. Thank you for coming, and I call our second panel up.

Ms. RUDZINSKI. Thank you, sir.

Mr. SHIMKUS. I want to thank the second panel. First I would like to ask unanimous consent for a letter from Dow Chemical in support of e-Manifest legislation. Is there any objection? Hearing none, so ordered.

[The information follows:]

The Dow Chemical Company
1776 Eye Street, N.W.
Suite 1060
Washington, DC 20006
USA

July 10, 2012

The Honorable Fred Upton
U.S. House of Representatives
Washington, DC 20515-2206

Via fax: 202-225-4986

Dear Congressman Upton:

I am writing to express my company's support of S. 710, the Hazardous Waste Electronic Manifest Act. On August 2, 2011, the Senate passed this bill by unanimous consent. We encourage the Energy and Commerce Committee and the House of Representatives to pass this legislation without change.

We believe an e-manifest system will improve the efficiency and cost effectiveness of the hazardous waste management system. It will benefit state agencies, EPA, and those companies that choose to avail themselves of the system. The system would also help to provide important real-time information to first responders.

Thank you for your leadership, and we look forward to enactment of this bill this year.

If you have any questions about our perspective on this bill, please contact Mr. Keith Belton, Director of Government Relations, at kbbelton@dow.com (phone: 202-429-3435).

Sincerely,

Peter A. Molinaro
Vice President, Federal and State Government Affairs

Mr. SHIMKUS. Now we also want to welcome Ms. Silvia—is that pronounced correctly?

Ms. SILVIA. Yes, sir.

Mr. SHIMKUS. Who is the Virginia Department on Environmental Quality, the Senior Waste Inspector. Thank you very much. Also joining her is David Case, Executive Director, Environmental Technology Council. Your full statements are in the record. We will give you 5 minutes to summarize, and we will start with you, Ms. Silvia. So welcome.

STATEMENTS OF LISA SILVIA, SENIOR WASTE INSPECTOR, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, ON BEHALF OF THE ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS; AND DAVID R. CASE, PRESIDENT, ENVIRONMENTAL TECHNOLOGY COUNCIL

STATEMENT OF LISA SILVIA

Ms. SILVIA. All right. Thank you, Mr. Chairman, and members and representatives of this subcommittee. My name is Lisa Silvia, and I am a senior waste inspector with the Virginia Department of Environmental Quality, Tidewater Regional Office in Virginia Beach, Virginia. I am here today on behalf of the Association of State and Territorial Solid Waste Management Officials, ASTSWMO, to offer perspective as a regulatory compliance inspector of a uniform hazardous waste manifest system, in particular, the proposed development and enactment of the electronic manifest system.

In addition to the views expressed in this testimony, I would like to note that individual, State, or territorial waste programs may have other perspectives based on their State experience with the use and management of manifests.

ASTSWMO supports the development and enactment of a hazardous waste electronic manifest system for many reasons, including reason one, real time tracking of hazardous waste from generation through transport to its final destination for treatment, storage, or disposal. At each stop along this travel route, a signature is collected and a page of the current multi-copy paper manifest form is removed. Oftentimes, the waste is transferred between transporters and they make many stops prior to its final destination. The generator may be unaware of the location of his waste along the route, although he continues to maintain responsibility for it. Knowledge of the waste being received and accepted at its final destination is not certain until the generator receives a final signed paper copy of the manifest from the destination facility. With an electronic database, the waste could be tracked at each stop, allowing the regulated community, that is, businesses, government entities, and non-profits, as well as regulators and other government officials, to know where the waste is in real time.

Electronic tracking also provides an emergency response benefit. Emergency responders would be able to access information online of a transport vehicle's contents, or the expected hazardous wastes at a facility, thus potential hazards could be known or anticipated prior to or en route to a transportation or facility incident.

Second, for the time and cost savings of the regulated community as well as regulators from postage and paper form acquisition and retention costs, to the time impact on businesses as I, the inspector, review paper on site. During a hazardous waste compliance regulatory inspection, inspector will typically review 3 years worth of manifests. This time includes reviewing the documents, but may also include time waiting for the forms to be located and pulled. In addition, the regulated community loses time while overseeing the inspector as she completes her review on site. This is time lost to the regulated community member's business. As an inspector, I would prefer to spend the time on site with the regulated community providing compliance assistance and reducing hazardous waste generation as opposed to reviewing paper.

Reason three, providing access to tracking information in real time across State borders, something not readily accessible under the current paper-based manifest system.

Four, giving an inspector access to information to prioritize and focus inspection efforts through desktop reviews. This allows for more productive use of the taxpayer's dollar.

Reason five, electronic manifests would provide for a true adherence to paperwork reduction. Virginia, like many States, has moved toward electronic retention of all documents. This not only reduces paper, but makes records more accessible to everyone, most importantly, the public.

And finally, six, making compliance with regulatory manifest retention requirements easier for business by having everything in one place.

In conclusion, an electronic manifest system would ensure national consistency and compliance, save time and costs, make information more accessible, and provide for safer roads and emergency response. ASTSWMO is committed to moving hazardous waste management, like most every other government program, into the 21st century.

That concludes my statement. I am open to questions, and thank you for the opportunity to speak with you today.

[The prepared statement of Ms. Silvia follows:]

Association of State and Territorial
ASTSWMO
Solid Waste Management Officials

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment and the Economy

Hearing
"Electronic Submission of Hazardous Waste Manifests – Modernizing for the 21st Century"
June 21, 2012

Testimony of
Lisa A. Silvia, Senior Waste Inspector from the Virginia Department of Environmental Quality
On Behalf of the
Association of State and Territorial Solid Waste Management Officials

One Page Summary of Major Points

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) ASTSWMO supports the development and enactment of a hazardous waste electronic Manifest system (System). There are many reasons why ASTSWMO supports this System. Such a System would 1) provide real-time tracking of hazardous waste on our nation's roads, 2) provide time and cost savings for the regulated community, as well as State regulators, 3) provide multi-State data availability in real time, 4) enable State regulators to prioritize and focus inspection efforts through desk-top reviews, 5) reduce paper, and 6) assist the regulated community with complying with regulatory Manifest retention requirements.

The Honorable John Shimkus

1. EPA' s testimony mentions that just under half of states, 24, currently collect paper manifests and use manifest data for program management.

a. Does the Commonwealth of Virginia collect the paper manifests?

b. Would it be useful to your state to have this data electronically?

c. Has the Virginia's electronic shipping system for medical waste tracking provided any lessons about the benefits or problems of an electronic tracking system?

1a. The Virginia Department of Environmental Quality ("the Department") does not collect paper manifests by regulatory or statutory requirement. However, some paper manifests are voluntarily submitted and received by the Department and subsequently retained in Department files. Some paper photocopies of manifests are requested by inspectors in the course of completing an evaluation and are also retained in Department files.

1b. Manifest data available electronically would be useful and beneficial to the Department, as well as other entities. Ready access to individual manifests prior to, during, or after an inspection allows for more accurate data gathering for the inspector. Access to manifest data prior to an inspection would allow the inspector to focus and better prepare for a site visit to the facility by providing information on the types of wastes, waste-generating activities and processes, and quantities accumulated, as well as identifying transporters and designated facilities, in and out of state.

1c. Virginia's Regulated Medical Waste Management Regulations regarding the labeling and record keeping of regulated medical waste shipments are similar to RCRA Subtitle C but not as stringent. Tracking of medical waste shipments during transport is satisfied through package labeling. The label contains the generator's name, address and telephone number, the words "Regulated Medical Waste" and the biological hazard symbol. At the request of a single medical waste treatment company, the Department approved the use of affixed barcode labels in lieu of printed generator information. The system is supported entirely, and only used, by this company. The benefits of the barcode tracking system include locating waste shipment packages at a given point in time throughout the service area of this company, and tracking of the treatment. The electronic barcode system for tracking regulated medical waste shipments reduces the amount of paper recordkeeping. The one difficulty that has been encountered by the Department is information on the generator of the medical waste shipment can only be obtained through the company as the Department does not have direct access to the system. This is an issue not expected with the proposed electronic manifest system

2. You mention that you would rather be providing guidance and compliance assistance or identifying pollution prevention and waste minimization alternatives, as opposed to reviewing paper manifests. What would you say the lost opportunity costs are for improving environmental stewardship because of the inefficiency of the existing paper manifest system?

2. Time on site with a facility is often limited due to the travel and overall inspection commitments for the Department's inspector. In addition, time reviewing paper manifests on site varies based on a variety of factors, including the number of manifests the facility has, the facility's ability to locate the manifests and associated paperwork, and the number of problems (i.e., quality) with the paperwork. Electronic manifests, available for review in the inspector's office, would reduce not only that amount of time spent on site, but would also provide an inspector knowledge prior to the site visit of the waste, and therefore possibly the materials and/or processes employed at the facility. With this knowledge in hand, as well as the "extra" time gained, the inspector might feel more inclined to offer pollution prevention and waste minimization information during the site visit, including material substitutions or process changes. The inspector could arrive to the inspection with guidance and information in hand.

3. Paperwork violations, no matter how unintentional, are subject to citation.

a. Is not having the paperwork a violation?

b. What other types of paperwork violations or errors are not substantial to overall compliance?

c. Do you believe an electronic system would actually protect innocent actors from unintentionally incurring violations?

d. Why?

3a. Not having manifests on file is a potential violation for the facility being evaluated. The federal regulatory language at 40 CFR 262.40(a) of RCRA, which is adopted by reference at 9VAC20-60-262 of the Virginia Hazardous Waste Management Regulations, states that a generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter. Similar manifest retention requirements apply to hazardous waste transporters (40 CFR Part 263) and permitted treatment, storage or disposal facilities (40 CFR Part 264).

3b.The central tenet of RCRA is the "cradle to grave" management of hazardous waste from generation to final treatment or disposal. Since most of the regulations for generators of hazardous waste under RCRA are self-implementing, documentation of the proper management of hazardous waste is the use of the hazardous waste manifest, which identifies the person and place of generation as well as the place and management method of the waste's destination. As a result, all data elements on the manifest, as well as all paperwork associated with the manifest, is a potential violation. Receiving terminated manifests, and subsequent notification requirements if not received, as well as missing or incorrect information, are all substantial to a facility's overall compliance.

3c. I believe an electronic system would actually protect innocent actors from unintentionally incurring the most common paperwork violation, which is not having the paperwork.

3d. Hazardous waste generators are required by the regulations to make correct hazardous waste determinations and to complete the manifests. While an electronic manifest system may not necessarily eliminate all potential issues, particularly with the waste determination, the system would remove the most common violations of missing or lost manifests and timely receipt of the terminated copy of a manifest from the destination facility. An electronic manifest system would especially help those facilities which do not have dedicated environmental compliance staff. Oftentimes, environmental compliance is only a very small part of an employee's daily activities among the many numerous functions and tasks for which the employee is responsible. With this scenario, paperwork is easily misplaced or destroyed.

4. Many times over the last Congress, we have focused on how Federal regulations would affect small businesses. As an inspector, do you have any thoughts about an electronic manifesting system as it relates to small businesses?

4. As mentioned above, an electronic manifest system would especially help those facilities which do not have dedicated environmental compliance staff, in particular small business. Oftentimes, environmental compliance is only a very small part of a business owner's daily activities among the many numerous functions and tasks for which the owner or employee is responsible. Small businesses in particular often rely on their hazardous waste transport and/or disposal vendors for meeting hazardous waste compliance requirements without a true understanding of the regulatory requirements and the implications of failure to meet the requirements which remain the generator's responsibility, with or without a vendor's assistance. An electronic manifest system would certainly assist small business in meeting the record retention requirements of the regulations. In addition, the electronic manifest system would provide the generator direct access to track the waste along its travel route, a benefit of comfort in knowing where the waste is located, as well as the same benefit to regulators and emergency response personnel.

Environmental Technology Council
1112 16th Street NW • Suite 420 • Washington DC 20036 • (202) 783-0870

August 21, 2012

Environmental Technology Council's Responses to
Questions Presented by the Honorable John Shimkus

Q1. Do you believe that if industry-collected user fees are building a surplus in the E-Manifest trust fund that your fees should be lowered?

Yes. The user fees should be solely used to pay for the e-manifest system. We are very concerned that the user fee not become an indirect corporate tax by collecting monies in excess of the amount needed for the e-manifest system. We would strongly oppose collecting excessive fees or directing surplus monies to any purpose other than the e-manifest system.

However, we also recognize that setting the correct amount of the user fee will depend on several variables in the early years, such as the total number of users. As more manifest users convert to the electronic system, economies of scale should apply and the user fee should be reduced. Until these variables are determined, though, there is the possibility that a surplus might be collected in the trust fund. In that case, we strongly agree that the user fee should be lowered in subsequent years to reduce the surplus and utilize the monies solely for the e-manifest system.

It is important to keep in mind that an e-manifest system is estimated to save approximately $75-100 million per year in paperwork reduction. These savings will only be recognized if industry voluntarily uses the program, which we expect to be the case. However, an excessive user fee that results in a surplus in the trust fund, without the assurance that the surplus will result in lowering the fee, will discourage industry from using the e-manifest system. The safeguards provide in the legislation are well warranted.

Q2. Do you think the fees collected for E-Manifest should be sequestered from being spent on something unrelated to the E-Manifest system?

Yes. As explained above, the user fees must be limited to funding the design and implementation of the e-manifest program exclusively. Remember that the e-manifest system will be voluntary, and users can always continue to use the paper manifest. If the user fees are not sequestered from being spent on unrelated government programs, many potential users are likely to refuse to convert to the e-manifest system. Potential users need assurance that the fees they pay are not more or less than the amount needed for the e-manifest service, and that excessive fees will not be collected and spent on some other unrelated government programs. We believe the legislation addresses this issue by requiring the fees to cover only the costs of operating the e-manifest system.

Focused inspections

Being able to review Manifests online, at my desk or through a mobile device, would allow me to focus my site visits on priority sites with potential problems. Return trips to sites to review paperwork not found or available when initially on site would be a thing of the past. Being able to review Manifests prior to a site visit would focus efforts once in the field on what to expect and the probable processes to be found on site. Inspection selection could be focused on certain waste streams or industries, using Manifests to find larger generators or unique generators, and grouping inspections to reduce preparatory time in "learning" an industry. Each of these is time saved in the field or in the office, allowing more productive use of the tax payer's dollar.

Save paper

Electronic Manifests would provide for a true adherence to paperwork reduction. Virginia, like many States, has moved toward electronic retention of all documents. This not only reduces paper, but makes records more accessible to everyone, most importantly the public.

Less noncompliance for the regulated community

As mentioned above, the regulated community must maintain and retain Manifests for three years. Missing paperwork is a fairly common noncompliance found during inspections. It is very common to find that the initial form signed and kept as the waste leaves is kept with company environmental staff, and the return copy is kept by accounts, or frequently, by the waste broker/service provider. With an electronic System, the inspector could review the initial

and return Manifests without having to request the paperwork be pulled from multiple file cabinets.

Conclusion

ASTSWMO fully supports an electronic Manifest System that would benefit the regulated community and State and federal government officials. This System would ensure national consistency and compliance, save time and costs, make information more accessible, and provide for safer roads and emergency response. ASTSWMO is committed to moving hazardous waste management, like most every other government program, into the 21st century.

Mr. SHIMKUS. Thank you very much.

The chair now recognizes Mr. Case. Sir, your full statement is in the record. You have 5 minutes.

STATEMENT OF DAVID R. CASE

Mr. CASE. Mr. Chairman, Ranking Member Green, and members of the subcommittee, thank you very much for your invitation to testify this morning.

The Environmental Technology Council is the leading trade association for the hazardous waste management industry, and our companies produce two to five million manifests every year in order to track hazardous wastes from the original point of generation at our customer's facility, over the highways or over the rail tracks, to eventually the recycling or treatment or disposal facility that our member companies operate.

I, too, have a list of reasons why the electronic manifest system is so important, but I have heard from the chairman most of my list of reasons, and from the other witnesses this morning. I think we are all in agreement that an electronic manifest system is long overdue. Therefore, I would like to use my 5 minutes this morning to address some of the other questions that have been raised about the system, and in particular, I thought I would focus first on the user fee.

Industry stepped up many years ago when we were first planning an electronic system and said we would be willing to pay for the system through a user fee. I know that raises concerns about whether the user fee is a kind of indirect tax on industry, but we don't see it that way. The important point to remember is we already pay for the paper system. We pay an enormous amount of money for the paper system. We have buy the manifests, we have to bear the cost of mailing all the copies through the U.S. mail. We have storage facilities where there are reams and reams of file drawers containing paper manifests, and we have to bear that cost. We see the user fee as a way of obtaining a much more efficient and cost effective system that will save us money. So in the end, the user fee is a way of getting a net savings while also improving the operation of the e-Manifest system.

The second question that has been raised is about our proposal—our support for a "Share-in-Savings" contract as the way of developing the e-Manifest system, and the reason we support that is we think a "Share-in-Savings" contract incentivizes the IT contractor to build a system that would be best for all the users, otherwise, the contractor won't properly get back its investment and its profit. The vendor will only get paid if it develops an efficient, cost effective, user friendly system. We much prefer that approach to a standard government contract where the contractor simply meets specifications that EPA issues in order to get paid. So we think the "Share-in-Savings" contract is a preferable way to go. We are not wedded to it. If the only way this bill could move forward is if there were some conventional contract requirement, we could live with that, but we just think a "Share-in-Savings" contract is a much preferred way.

The third issue that has come up has to do sometimes with the security of the system. We recognize that paper manifests are not

particularly secure. They can errors, they can have all sorts of problems associated with them, including not being able to read handwriting, and we think an e-Manifest system will provide a much more secure system. The vendor will have security provisions in the software to avoid people hacking in or whatever, and I think it will work out just fine.

Lastly, we have been asked why doesn't the industry develop a system on their own? Why do you need legislation? Why do you need EPA to do this? We thought very seriously about developing our own system. As you can imagine, our industry, our companies have already developed very sophisticated and innovative business-to-business electronic systems. We do all of our hazardous waste management, from the initial customer order to waste profiling to waste receipts to invoicing, electronically. The only thing that is not done electronically is the manifest, and we could very easily integrate that into our system. However, in our discussions with EPA and most particularly, the Justice Department, they have emphasized that the manifest is not just a data collection system, it is a very important compliance and enforcement system under the law, and therefore, it has to be designed, operated, and enforced by the government, by EPA. It could not be done by a private entity.

I think those are the major questions, Mr. Chairman. I am open to any other questions, of course, that the committee may have. Thank you very much.

[The prepared statement of Mr. Case follows:]

Testimony of David R. Case

"Electronic Submission of Hazardous Waste Manifests – Modernizing for the 21st Century"

Subcommittee on Environment and the Economy
June 21, 2012

Mr. Chairman, Ranking Member Green, and Members of the Subcommittee:

Thank you for inviting the Environmental Technology Council (ETC) to testify on the importance of creating an electronic manifest system in this country for tracking shipments of hazardous waste.

My name is David Case and I am the Executive Director of the ETC, which is the leading business association representing all sectors of the industrial and hazardous waste management industry. ETC member companies provide technologies and services to customers for recycling and reuse, treatment, and disposal of industrial and hazardous wastes and for contaminated site cleanups.

As you know, the Senate has passed S. 710, the "Hazardous Waste Electronic Manifest Establishment Act," and the subject matter of that bill is within the jurisdiction of this subcommittee. Legislation to establish an electronic manifest system has broad bipartisan support, and equally broad support among stakeholders and potential users. S. 710 was introduced by Senator John Thune and co-sponsored by Senator Barbara Boxer, Senator James Inhofe, Senator Ben Cardin, Senator Amy Klobuchar, and Senator Frank Lautenberg. The bill was unanimously passed by the Senate Environment Committee and then passed by unanimous consent in the full Senate. Quite frankly, I am here today to request that you take prompt action so this legislation can become law in this Congress.

S. 710 is an important piece of legislation for our country. Since 1980, we have tracked all shipments of hazardous waste using a multi-page paper document, as required by law. While the paper document was an important innovation in its time – requiring that all hazardous waste shipments be manifested to a designated disposal facility to guard against illegal dumping – an electronic tracking system would be far superior today.

Let me explain why passage of S. 710 is so greatly needed. Once enacted, the legislation will:

- Allow authorized users to track hazardous waste shipments on a real-time basis electronically, much like Federal Express or UPS can track your personal packages;
- Provide a safe way for emergency responders to electronically obtain accurate information on hazardous wastes in the event of a spill or other emergency during in-transit storage and transportation;
- Save an estimated $100 million per year in compliance and government administration costs;
- Enhance homeland security as it relates to the tracking of hazardous waste shipments throughout the country; and
- Provide EPA, the states, and the public with more accurate and timely data on hazardous waste management.

The current requirement to use a paper manifest has existed for more than 25 years. Manifests are a key element of the Resource Conservation and Recovery Act, known as RCRA, which was enacted in 1976. The purpose of the manifest system was to help prevent the uncontrolled disposal of so-called "orphaned waste" that could not be traced back to its origins, and require waste generators, transporters, and disposers to be accountable for proper hazardous waste management. Since 1980, RCRA has

required that a manifest accompany all shipments of hazardous wastes, and that requirement has brought accountability and greater environmental protection to our national hazardous waste management system.

Manifests contain two key types of information – first, the manifest identifies who shipped the waste, who is transporting the waste, and where it will ultimately be recycled, treated or disposed, so that it can be tracked every step of the way to ensure its proper disposition. Second, the manifest describes the contents of each hazardous waste shipment so that in the event of an emergency, first responders know what materials they are managing.

The waste manifest tracking system is clearly a key element in avoiding past problems associated with improper waste handling and disposal, but the question today is "can we do a better job?" I believe the answer is yes, and that S. 710 provides a solid framework for moving in that direction. We think the benefits to American citizens of enhanced environmental protection and safety are compelling, as described by other witnesses today, but let me also focus specifically on the benefits we foresee for American industry.

Currently, each manifest form has six to eight copies, containing up to eighty-three fields of information. The form must be filled out by the customer using a combination of computer-generated and manually-inserted information, then signed in ink, and a copy must be physically carried by the transporter with each waste shipment. Upon delivery, the manifest must be signed by the receiving facility and a completed copy must be mailed back to the customer. Copies, and sometimes multiple copies, also have to be mailed to state agencies, and ETC member companies must keep their

copies of all manifests at their facilities for state and EPA inspection. For some companies mailing costs alone can reach one million dollars per year, and physical storage of the reams of paper manifests impose additional costs. In fact, the paperwork burden is so significant for the states that 22 of them no longer even accept paper copies of manifests. In addition, many of the small business waste generators are faced with excessive storage fees as they are required under RCRA to keep copies of the paper manifest for a minimum of three years.

EPA estimates[1] that the present paper manifest takes about an hour for the generator and waste receiver to complete, and that by the time all of the necessary parties have processed and approved the document, that labor cost increases to two hours per document for every hazardous waste shipment that occurs in the United States. EPA also estimates[2] that the labor costs alone for creating, handling, and processing the paper manifests are about $274 million annually. An electronic system could reduce this time and expense considerably, for all the parties involved, and result in a system that is more efficient, reliable, accessible and timely.

Today's manifest tracking system was developed before the widespread use of computers, information networks, and fully-integrated information technology architectures. Today's system works, but is seriously outdated – it does not take advantage of any of the quality, cost and productivity improvements that computers and

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[1] US EPA (Nov. 24, 2004), "Economic Analysis of the US EPA's Final Rule Revisions to the RCRA Waste Manifest Form," pp. 37, 44.

[2] E-Manifest Alternatives Analysis Document, version 4.0, by Project Performance Corporation for EPA's Office of Resource Conservation and Recovery (Nov. 11, 2009).

handheld devices allow. Most ETC companies have already developed sophisticated business-to-business electronic systems, so that transactions from initial ordering, waste profiling, shipment status, to invoicing are already completed electronically – everything but the required paper manifest. We anticipate substantial cost savings from integrating an electronic manifest system with our legacy B-to-B systems because labor, mailing, and storage costs will be greatly reduced, and the costs associated with data quality reviews and corrections will also be reduced.

S. 710 would allow for the establishment, structure, and management of an electronic manifest system by amending Subtitle C of the Solid Waste Disposal Act (42 U.S.C. §§ 6921, et seq.) In commenting on specific provisions in the bill, I will refer to proposed Section 3024 which would be added under the bill.

I would note for the Subcommittee four specific items with regard to the system as established under the bill:

1. Any fee structure established to pay for an e-manifesting system must be limited to providing funding for designing and implementing that program specifically and exclusively. In other words, any fee structure must not become a de facto tax to fund other programs. In my opinion the language in Subsection 3024 (c) (3) addresses this issue by requiring the fee to cover only the costs of operating the e-manifest system. We believe the language in Subsections (c) (3) (A) (IX) and (e) (4) (C) (ii) should be read narrowly and should not allow indirect government personnel costs not related to the e-manifest system to be passed along as part of the fee structure. The fee structure must result in overall cost savings to the regulated community and I would

encourage the Subcommittee to conduct oversight in the future to ensure that these savings materialize.

2. An e-manifest system must be cost-effective to the regulated community and to the government as a whole. We endorse the bill's proposal to have a qualified IT contractor build the system, and then receive payment from users on a per-manifest basis. The benefits of such a system are numerous. For example, the winning contractor's risk and profit will depend on the quality of service provided – it will establish a proper business incentive for solid performance. Specifically, the "Achievement of Goals" requirements in Subsection (e) (3) will make this a performance-based contract that will have the best chance of creating an e-manifest system that will benefit all users. The "Cancellation and Termination" requirements in Subsection (e) (5) will allow for the termination of the IT contract if the e-manifest system is not used enough to generate sufficient funds.

3. The regulated community needs to have a place at the table to provide recommendations to the Administrator on the e-manifest system. The new "Hazardous Waste Electronic Manifest System Advisory Board" established under Subsection (f) provides for such opportunities. In addition, ETC fully endorses Subsection (f) (2) (B) (ii) that requires at least three seats on the Board to be allocated to users of the manifest system.

4. An e-manifest system will provide real-time information regarding the generation, transportation and final disposition of wastes, and part of such information may be proprietary to the generator or hazardous waste disposal facility – that is, it may include business information that would provide competitors an advantage if disclosed.

It is very important to share e-manifest information with necessary governmental agencies throughout the transportation process, and to be able to do so easily, but it should also be an imperative that special consideration be given to information designated as "business confidential" in order to protect customer/service provider relationships. We believe the legislation will allow EPA to treat confidential business information in this manner.

In closing, I believe S. 710 provides a solid foundation for moving our nation to a 21st century hazardous waste manifest tracking system. Enactment of this legislation will produce significant improvements in data quality, real-time tracking capability, costs and productivity for industry and state regulatory agencies. We believe, however, that time is running out on enactment of this legislation in this Congress, and so we urge the Subcommittee to give full and prompt consideration to S.710 or a counterpart House bill.

Thank you, again, for the opportunity to testify and I would be pleased to answer any questions Members of the Subcommittee may have.

Mr. SHIMKUS. Thank you, Mr. Case, and Mr. Case does yield back his time.

Let me just go briefly to a couple questions. First of all, we understand storage here, and we understand digitization of records. If you go to any member's office, especially in this building, you have a whole wall of file cabinets, which I would guess, other than Mr. Sarley's softball gear, I am not sure what is being stored in there anymore because everything is digital and filed away—and we just don't have that space. So multiply that by numerous copies along the process of what you put in. That is a very good point.

I think the other one is—and I would like to go to Ms. Silvia, explain the real time—I guess your testimony talked about real time, but you added the phrase "across State lines." So can you just expound on that, and the importance of that for you?

Ms. SILVIA. Well, I guess I will start with in Virginia, the facilities that I inspect, most of that waste leaves Virginia. It may be generated in Virginia but it leaves Virginia, and in order for me to verify it has been received, or if I want to check on the status, I would have to coordinate with my counterparts in other State agencies, where with this system, I would in theory be able to pull that information up and see that it is there.

In some enforcement cases, there may be a requirement on a generator to verify that they have removed some hazardous waste. This would give them the opportunity of being able to show me instantaneously when it was received in whatever State it went to. So it would bring them back to compliance quicker.

So it is just—right now we don't have—each State does not necessarily manage manifests in the same way when they are received. A single system like this would allow me to see what is going on across the country.

Mr. SHIMKUS. I think any young adult 25 years or younger would be aghast at the file cabinets and carbon copy documents that you have got to pull from file cabinets, especially in your job inspecting, and I think your testimony also raised that issue of when you are doing a 3-year back look, actually going and grabbing and pulling the files out, that really happens, right?

Ms. SILVIA. Oh yes, it does.

Mr. SHIMKUS. Very time consuming?

Ms. SILVIA. Very time consuming. There is no regulatory requirement to keep the paper on site, so oftentimes there is a need to coordinate to go get the paper from wherever it is being kept. For smaller businesses in particular, they don't know what these pieces of paper really mean so some pieces may be in one department, another may be with another person, or it may not have even been kept. So there is a time element just waiting for them to locate those pieces of paper.

Mr. SHIMKUS. Thank you. I am going to end and I am going to yield now to Mr. Green, the ranking member.

Mr. GREEN. Thank you, Mr. Chairman.

Ms. Silvia, you mentioned in your testimony Virginia has established electronic shipping system to track medical waste, and how was the upstart of that system paid for?

Ms. SILVIA. I am afraid I can't answer that. I am aware of the system. It was done at the request of a medical waste transporter,

but I don't work directly in the medical waste program. But I would be happy to find that information out for you, if you like.

Mr. GREEN. Yes, I would be interested because obviously when we are talking about hazardous waste it would be similar for medical waste, how it works and how it was created, a much smaller system.

I know you represent a number of State governments, and I have a very urban district in Houston, and industrial wastes are part of our everyday life that we live. I have five refineries and chemical plants. We try and recycle everything that we can because you make money doing it, but there are some things you just can't do, and so you do have to transfer it though to different locations, including some, you know, landfills.

I know we have a big effort in our area, both with our State agency, our city agencies, going down the road our trucks get stopped real often. When I am driving in my district I see—whether it is Houston police, the country sheriff, or like I said, Department of Public Safety, and I am sure they are going to stop some of the trucks that are in our district. Would that still be—comply with what most State laws require to have that manifest on that vehicle with electronic waste? Would your members who—I know I probably represent a bunch of your members, but would they be able to do that with that vehicle?

Mr. CASE. The Department of Transportation, separate from EPA, requires certain kinds of shipping papers to be on the vehicle, and those would continue to be on the vehicle. The manifest, though, is different. It has lots of very important information on the hazard posed by the waste, the volumes, the proper responses, so that unlike—you are describing kind of a standard DOT stop——

Mr. GREEN. Typically it is weight issues, but they also do a full inspection.

Mr. CASE. Right. But even the larger concern, I think, is if there is an emergency, if there is a fire on the truck, if there is a spill. The current regulations require that the manifest be kept on the vehicle. You can imagine if there is a fire in the back of the vehicle, and emergency responder doesn't want to crawl into the cab to find the manifest. We would like them to be able to go on a laptop or use their smartphone to find all the information they need for the response.

Mr. GREEN. So that would be available to the regulatory agency to the law enforcement who is having the response—the first responders?

Mr. CASE. Yes, indeed. The system as we envision it—and another reason for a "Share-in-Savings" contract is it gives us an opportunity to work with that vendor and make sure all these features are in the system. We would like emergency responders to have their own password and identities and ability to access the information they need in the event of an emergency.

Mr. GREEN. Mr. Chairman, I know I am almost out of time and I want to have time for my North Caroline colleague, but like I said earlier, I have some hesitancy about the Federal Government picking a system, because we don't have a good record of picking our own computers, much less one like that. So I think "Share-in-Sav-

ings" may give us that kind of trial and error, because we want to make sure it works when you pay for it.

Mr. CASE. Precisely.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. SHIMKUS. Gentleman yields back his time. Chair recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman, and thanks to you each for being here today.

Ms. Silvia, I have a couple of questions I would like to ask you first, if I may. You mentioned that you have encountered problems with the regulated entities' paperwork, including their inability to find the paperwork. EPA also testified about the ability of an electronic system to substantially reduce data problems.

So my first question would be, how prevalent is it that regulated entities either cannot find their paperwork, the paperwork is hard to comprehend, or the regulated entity has had problems filling out the paperwork?

Ms. SILVIA. Well, I will just state that from my own experience as an inspector, particularly the smaller businesses, they rely often on their service vendor to prepare the form for them. They are unaware of what it means, what the information on it says. It is all Greek to them, excuse the term. And so they don't understand the significance of that piece of paper, so it tends not to get the respect that it would deserve and gets lost. It is a bill for them, for want of a better term. And so oftentimes when I go to a smaller business who does not have staff that just do environmental compliance, they don't have this paper. That is a citable violation, and so to have an electronic system that would be already in existence. They would not have that violation—apparent violation assessed against them.

Mr. HARPER. So you obviously agree with the EPA's assessment that the electronic system would certainly improve that manifest data quality?

Ms. SILVIA. Absolutely, and we see oftentimes because they rely on a third party to complete the form for them, there may be errors on the form because the person filling it out doesn't necessarily have the firsthand knowledge that the generator themselves have, and that too can lead to potential violations for that generator.

Mr. HARPER. Thank you.

Mr. Case——

Mr. CASE. Sir.

Mr. HARPER [continuing]. Our witnesses have mentioned the benefit of the electronic manifest for first responders. I wasn't here, I haven't heard anybody mention the case out of Akins, North Carolina, and could you tell me how that e-Manifest system may have been helpful in that instance?

Mr. CASE. I would be happy to.

There was an incident in Akins, North Carolina, probably 4 years ago in which a small storage facility—we call them 10-day transfer facilities—contained a variety of hazardous wastes and a small fire began. We now think that the fire was a result of pool chemicals that had been picked up and stored at the facility, and that the fire was then accelerated by other wastes that were present. When—as I understand it, when the emergency responders arrived they

did not have the manifest information for what was in the warehouse. They didn't want to go into the warehouse to try to find it, and so they evacuated an enormous amount of people as a safeguard, and they let the building burn down.

Our belief is the fire could have easily been put out initially if the information about the waste was available immediately, electronically and the emergency responders could have had that information.

Mr. HARPER. Thank you. I yield back, Mr. Chairman.

Mr. SHIMKUS. Gentleman yields back his time. The chair recognizes the gentleman from North Carolina, Mr. Butterfield, for 5 minutes.

Mr. BUTTERFIELD. Thank you, Mr. Chairman.

Mr. Case, let me just pick up where you left off there with the emergency responders. Do you envision if we go to an e-Manifest system that the responders will have that technology in their vehicles onsite, or would they have to rely on a third party for the information?

Mr. CASE. We believe they will have ready access on their vehicles to the electronic information. They case use an iPhone, a smartphone, an iPad, as Mr. Chairman has in front of him, any of the commonly available electronic devices——

Mr. BUTTERFIELD. And would you envision them getting all of the manifest, or just relevant portions of it?

Mr. CASE. An advantage of an electronic system is it would be indexed by transporter, by generator, by any way you wanted to index the information so you could easily access it. You wouldn't be searching through lots of electronic documents.

Mr. BUTTERFIELD. Do you represent the smaller shippers or the waste generators?

Mr. CASE. As customers we do. Our companies are major hazardous waste management companies, but we service dry cleaning shops, gas stations, all of the small businesses across the United States.

Mr. BUTTERFIELD. Would you speak to the sliding fee scale that I mentioned earlier? Would a fee scale based on the amount of waste be helpful?

Mr. CASE. Yes. I think the vendor will have to come up with a fee scale that promotes maximum usage of the electronic system, and for those generators who have to use paper, we will accommodate them and simply require some sort of fee for transferring their data into the electronic system. It will still be a lot cheaper for them than the current system.

Mr. BUTTERFIELD. Just thinking ahead about the small businesses, I don't want them to be overly burdened with large fees.

Mr. CASE. Absolutely, and I think they will be able to take advantage of the electronic system and the savings inherent in that, and whatever paper manifests are still required will be handled more cheaply.

Mr. BUTTERFIELD. Thank you. I yield back, Mr. Chairman.

Mr. SHIMKUS. Gentleman yields back his time.

I will just finish by saying for the first-line responders, which we work with very closely, especially in the Telecom Subcommittee, and some of the pieces of legislation, whether it is spectrum auc-

tion and whatever dollars go to, what we have been trying to do is make sure that Federal dollars do help the local first-line responders and so that the chief or the engine does have the iPad or the iPad 2 where they can take pictures or they can drill down and look at a building and see the structure and stuff. So I do think working together that they can have much more information than they have now, which they really have zero now.

So this is very exciting. We look forward to working with you. Thank you for your time. Thank you for the expeditious nature in us getting through this, as they have just called votes. Seeing no other members and hearing no requests for time, I will call the hearing now adjourned.

[Whereupon, at 11:04 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Enclosure

EPA Responses to Questions for the Record from the June 21, 2012 Hearing on "Electronic Submission of Hazardous Waste Manifests – Modernizing for the 21st Century" Before the House Energy and Commerce Committee Subcommittee on Environment and the Economy

Responses to Questions from Subcommittee Chairman John Shimkus

Q1: Does EPA consider the use of an electronic manifest system to be a better way to avoid unintended paperwork and improve data quality?

Answer: Yes. For several years, the EPA has stated that one of the principal benefits from an eManifest system will be the reduction of the paperwork burden and compliance costs associated with the use of the current paper forms. Most manifests are associated with repeat transactions between a particular generator, the transporter, and a waste management facility regarding the management of hazardous wastes. The eManifest system will enable the manifests for these repeat transactions to be more easily prepared with templates or other time-saving processes, and will avoid the substantial burden that companies and states incur from keying and re-keying data between their data systems and paper forms. Because eManifest will eliminate these and other manual steps involved with the use of the paper forms, we expect that the use of eManifest will reduce paperwork burdens substantially. Data quality should also be greatly improved, because the system will retain customers' commonly used waste and handler information in these templates, and there will be edit checks included in the system design to minimize data entry and transcription errors, as well as errors that currently result from handwritten and illegible entries on paper copies.

Q2: While section 3002 of the Solid Waste Disposal Act requires the manifesting of hazardous waste, it does not mandate the form in which the manifest should be delivered. Absent legislation, would EPA be able to set up an electronic manifest system?

Answer: Current RCRA statutory provisions do not preclude the EPA from establishing an electronic manifest, however, they do not authorize an eManifest system to be funded through user fees or ensure consistent implementation across states.

The Administration requested that Congress amend existing RCRA provisions to provide authority for user fee funding of the eManifest system, with collections and spending subject to provisions in future appropriations acts.

In addition, current RCRA authorities do not require that eManifest be allowed in all states and effective in all states on the same date. Otherwise, individual authorized states might not allow

electronic manifests to be used in their states, or, they might establish different timeframes under state law for using electronic manifests. This would result in a patchwork of varying state requirements that would undermine the efficiencies of an electronic manifest system and introduce uncertainties for the EPA and the IT contractor tasked to develop and operate the system. For example, if a hazardous waste shipment passes through two states and one such state has adopted the eManifest while the other requires only paper manifests, the eManifest system would not function as effectively and efficiently as possible.

Q3: Could you please explain the benefit of the eManifest system for first responders and accident response by EPA's Office of Solid Waste and Emergency Response.

Answer: Emergency response actions could occur with respect to two types of scenarios: (1) emergency response at facilities that receive and manage hazardous waste; and (2) responses to accidents involving the transport of hazardous waste. As for emergency responses at facilities that receive hazardous wastes, this is the area where the eManifest could provide significant benefit in the near term. With information about the name, location, and EPA ID Number of the facility involved in an incident, one could query the eManifest system and obtain information about the types and quantities of hazardous wastes recently delivered to the facility. These would be the materials that could be involved in an incident, and information identifying these materials and their hazard properties could be electronically shared with emergency responders.

As to responses to accidents involving transport of hazardous waste, the Department of Transportation (DOT) rules require a paper copy on the vehicle when the manifest is used as the shipping paper. The EPA will retain this requirement for one paper copy on the vehicle for as long as DOT retains such a requirement in its hazmat regulations. Moreover, should DOT alter this requirement in the future by adopting an electronic substitute for the paper copy, the EPA will coordinate with DOT so that eManifest data will be available to emergency responders consistent with DOT requirements.

Responses to Questions from Representative Henry A. Waxman

Q1: Did the lack of funding in FY 2012 impact the Agency's ability to start up an electronic manifest?

Answer: Yes, In addition, Congress has indicated funding would not be provided for an e-Manifest system until user fees were authorized to finance the program. In FY 2012, EPA performed no work on e-Manifest system development.

Q2: The FY 2013 EPA spending bill introduced by House Republicans would cut the Agency budget by 17% on top of the drastic cuts the Agency has experienced for the last several years. It would leave the Agency with less money in 2013 than it had in 1998. What impact would cuts that significant have on the Agency's ability to start up an electronic manifest system?

Answer: Unless Congress appropriates sufficient funds to develop the system, EPA will be unable to develop and operate an e-Manifest system. If Congress authorizes the system and sufficient funds are appropriated, EPA will make every effort to comply with the legislative direction to develop the system within the 3-year development timeframe.

The Honorable John Shimkus

1. EPA' s testimony mentions that just under half of states, 24, currently collect paper manifests and use manifest data for program management.

a. Does the Commonwealth of Virginia collect the paper manifests?

b. Would it be useful to your state to have this data electronically?

c. Has the Virginia's electronic shipping system for medical waste tracking provided any lessons about the benefits or problems of an electronic tracking system?

1a. The Virginia Department of Environmental Quality ("the Department") does not collect paper manifests by regulatory or statutory requirement. However, some paper manifests are voluntarily submitted and received by the Department and subsequently retained in Department files. Some paper photocopies of manifests are requested by inspectors in the course of completing an evaluation and are also retained in Department files.

1b. Manifest data available electronically would be useful and beneficial to the Department, as well as other entities. Ready access to individual manifests prior to, during, or after an inspection allows for more accurate data gathering for the inspector. Access to manifest data prior to an inspection would allow the inspector to focus and better prepare for a site visit to the facility by providing information on the types of wastes, waste-generating activities and processes, and quantities accumulated, as well as identifying transporters and designated facilities, in and out of state.

1c. Virginia's Regulated Medical Waste Management Regulations regarding the labeling and record keeping of regulated medical waste shipments are similar to RCRA Subtitle C but not as stringent. Tracking of medical waste shipments during transport is satisfied through package labeling. The label contains the generator's name, address and telephone number, the words "Regulated Medical Waste" and the biological hazard symbol. At the request of a single medical waste treatment company, the Department approved the use of affixed barcode labels in lieu of printed generator information. The system is supported entirely, and only used, by this company. The benefits of the barcode tracking system include locating waste shipment packages at a given point in time throughout the service area of this company, and tracking of the treatment. The electronic barcode system for tracking regulated medical waste shipments reduces the amount of paper recordkeeping. The one difficulty that has been encountered by the Department is information on the generator of the medical waste shipment can only be obtained through the company as the Department does not have direct access to the system. This is an issue not expected with the proposed electronic manifest system

2. You mention that you would rather be providing guidance and compliance assistance or identifying pollution prevention and waste minimization alternatives, as opposed to reviewing paper manifests. What would you say the lost opportunity costs are for improving environmental stewardship because of the inefficiency of the existing paper manifest system?

2. Time on site with a facility is often limited due to the travel and overall inspection commitments for the Department's inspector. In addition, time reviewing paper manifests on site varies based on a variety of factors, including the number of manifests the facility has, the facility's ability to locate the manifests and associated paperwork, and the number of problems (i.e., quality) with the paperwork. Electronic manifests, available for review in the inspector's office, would reduce not only that amount of time spent on site, but would also provide an inspector knowledge prior to the site visit of the waste, and therefore possibly the materials and/or processes employed at the facility. With this knowledge in hand, as well as the "extra" time gained, the inspector might feel more inclined to offer pollution prevention and waste minimization information during the site visit, including material substitutions or process changes. The inspector could arrive to the inspection with guidance and information in hand.

3. Paperwork violations, no matter how unintentional, are subject to citation.

a. Is not having the paperwork a violation?

b. What other types of paperwork violations or errors are not substantial to overall compliance?

c. Do you believe an electronic system would actually protect innocent actors from unintentionally incurring violations?

d. Why?

3a. Not having manifests on file is a potential violation for the facility being evaluated. The federal regulatory language at 40 CFR 262.40(a) of RCRA, which is adopted by reference at 9VAC20-60-262 of the Virginia Hazardous Waste Management Regulations, states that a generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter. Similar manifest retention requirements apply to hazardous waste transporters (40 CFR Part 263) and permitted treatment, storage or disposal facilities (40 CFR Part 264).

3b.The central tenet of RCRA is the "cradle to grave" management of hazardous waste from generation to final treatment or disposal. Since most of the regulations for generators of hazardous waste under RCRA are self-implementing, documentation of the proper management of hazardous waste is the use of the hazardous waste manifest, which identifies the person and place of generation as well as the place and management method of the waste's destination. As a result, all data elements on the manifest, as well as all paperwork associated with the manifest, is a potential violation. Receiving terminated manifests, and subsequent notification requirements if not received, as well as missing or incorrect information, are all substantial to a facility's overall compliance.

3c. I believe an electronic system would actually protect innocent actors from unintentionally incurring the most common paperwork violation, which is not having the paperwork.

3d. Hazardous waste generators are required by the regulations to make correct hazardous waste determinations and to complete the manifests. While an electronic manifest system may not necessarily eliminate all potential issues, particularly with the waste determination, the system would remove the most common violations of missing or lost manifests and timely receipt of the terminated copy of a manifest from the destination facility. An electronic manifest system would especially help those facilities which do not have dedicated environmental compliance staff. Oftentimes, environmental compliance is only a very small part of an employee's daily activities among the many numerous functions and tasks for which the employee is responsible. With this scenario, paperwork is easily misplaced or destroyed.

4. Many times over the last Congress, we have focused on how Federal regulations would affect small businesses. As an inspector, do you have any thoughts about an electronic manifesting system as it relates to small businesses?

4. As mentioned above, an electronic manifest system would especially help those facilities which do not have dedicated environmental compliance staff, in particular small business. Oftentimes, environmental compliance is only a very small part of a business owner's daily activities among the many numerous functions and tasks for which the owner or employee is responsible. Small businesses in particular often rely on their hazardous waste transport and/or disposal vendors for meeting hazardous waste compliance requirements without a true understanding of the regulatory requirements and the implications of failure to meet the requirements which remain the generator's responsibility, with or without a vendor's assistance. An electronic manifest system would certainly assist small business in meeting the record retention requirements of the regulations. In addition, the electronic manifest system would provide the generator direct access to track the waste along its travel route, a benefit of comfort in knowing where the waste is located, as well as the same benefit to regulators and emergency response personnel.

Environmental Technology Council
1112 16th Street NW • Suite 420 • Washington DC 20036 • (202) 783-0870

August 21, 2012

Environmental Technology Council's Responses to
Questions Presented by the Honorable John Shimkus

Q1. Do you believe that if industry-collected user fees are building a surplus in the E-Manifest trust fund that your fees should be lowered?

Yes. The user fees should be solely used to pay for the e-manifest system. We are very concerned that the user fee not become an indirect corporate tax by collecting monies in excess of the amount needed for the e-manifest system. We would strongly oppose collecting excessive fees or directing surplus monies to any purpose other than the e-manifest system.

However, we also recognize that setting the correct amount of the user fee will depend on several variables in the early years, such as the total number of users. As more manifest users convert to the electronic system, economies of scale should apply and the user fee should be reduced. Until these variables are determined, though, there is the possibility that a surplus might be collected in the trust fund. In that case, we strongly agree that the user fee should be lowered in subsequent years to reduce the surplus and utilize the monies solely for the e-manifest system.

It is important to keep in mind that an e-manifest system is estimated to save approximately $75-100 million per year in paperwork reduction. These savings will only be recognized if industry voluntarily uses the program, which we expect to be the case. However, an excessive user fee that results in a surplus in the trust fund, without the assurance that the surplus will result in lowering the fee, will discourage industry from using the e-manifest system. The safeguards provide in the legislation are well warranted.

Q2. Do you think the fees collected for E-Manifest should be sequestered from being spent on something unrelated to the E-Manifest system?

Yes. As explained above, the user fees must be limited to funding the design and implementation of the e-manifest program exclusively. Remember that the e-manifest system will be voluntary, and users can always continue to use the paper manifest. If the user fees are not sequestered from being spent on unrelated government programs, many potential users are likely to refuse to convert to the e-manifest system. Potential users need assurance that the fees they pay are not more or less than the amount needed for the e-manifest service, and that excessive fees will not be collected and spent on some other unrelated government programs. We believe the legislation addresses this issue by requiring the fees to cover only the costs of operating the e-manifest system.

Additionally, we believe the bill language on this issue should be read literally and should not allow indirect government personnel cost not related to the e-manifest system to be passed along as part of the fee structure.

Q3. Your testimony mentioned that many small business waste generators are faced with excessive storage fees due to recordkeeping requirements. Can you help us put that in context?

EPA itself has admitted that the paper manifest system is the most costly and onerous paperwork burden imposed under RCRA, and a large portion of that cost burden is excessive storage costs. RCRA requires that both small and large waste generators, transporters, and destination facilities retain manifests for at least three years from the initial date of transport of the waste. Because of liability concerns, many companies must store the paper manifests for much more than the required three years. This storage requirement is excessive because the same identical manifest is being stored at the generator and disposal facility sites, and also copies are kept by many states, resulting in duplicative, redundant and expensive storage. Centralized electronic data storage that will be possible with the e-manifest system will relieve small business waste generators of this excessive recordkeeping requirement.

In addition, during a hazardous waste compliance inspection of small businesses, the State inspector will frequently want to review all manifests. Since small business waste generators often do not have sufficient physical space and file-keeping capabilities, all manifests may not be found resulting in fines. An electronic manifest system would relieve small business waste generators of this liability since the State inspector would be able to inspect the manifest electronically and the small businesses would no longer have to pay storage fees and potential fines.

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