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TO CONSIDER A DISCUSSION DRAFT ENTITLED "INCREASING MANUFACTURING COMPETITIVENESS THROUGH IMPROVED RECYCLING ACT OF 2012" AND H.R. 2997, "THE SUPERFUND COMMON SENSE ACT"

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 27, 2012

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[1] Mr. Johnson did not answer submitted questions for the record by the time of printing.

TO CONSIDER A DISCUSSION DRAFT ENTITLED "INCREASING MANUFACTURING COMPETITIVENESS THROUGH IMPROVED RECYCLING ACT OF 2012" AND H.R. 2997, "THE SUPERFUND COMMON SENSE ACT"

WEDNESDAY, JUNE 27, 2012

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

The subcommittee met, pursuant to call, at 10:18 a.m., in room 2322 of the Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, Murphy, Pitts, Harper, Cassidy, Gardner, Upton (ex officio), Green, Butterfield, Dingell (ex officio), and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Jerry Couri, Senior Environmental Policy Advisor; Dave McCarthy, Chief Counsel, Environment and the Economy; Andrew Powaleny, Deputy Press Secretary; Tina Richards, 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; Kristina Friedman, Democratic EPA Detailee; and Caitlin Haberman, Democratic Policy Analyst.

Mr. SHIMKUS. The committee will now come to order. Most people know how we will conduct this day's hearing. We have four panels. We actually have two subject matters. The first panel will go relatively quickly, it will be Congressman Billy Long, and then the second panel will be the EPA, and then we will follow it by panel three and panel four, so probably a productive couple of hours this morning.

So with that we would like to welcome you all, and I recognize myself for 5 minutes for my opening statement.

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

This subcommittee set an official record last week for length of a two-panel hearing, which was very short, but today we make up for it with four panels. The chair appreciates Members' judicious use of their time last week and hopes that we can have a repeat performance.

On behalf of the whole subcommittee, we extend congratulations to a lucky guy, Jonathan Elkin, and our very best wishes to him and his new bride, minority counsel Jacqueline Cohen, who were recently married.

Throughout this Congress, our committee has been investigating places where Congress can enhance opportunities for growing the private sector of our economy, as well as examining places where duplicative red tape creates more burdens, but not greater protection. Our hearing today will examine legislative measures that touch upon each of these concepts.

The first bill is a Discussion Draft which directs EPA to collect better information on recyclable materials. As cochairman of the House Recycling Caucus, I think the aspect we are looking into is particularly interesting and I think we should better understand the need for this legislation.

For decades, the EPA has been publishing a biannual report showing what products and materials are commonly collected and disposed. All of these materials, including paper, glass, and aluminum, are generated by residential and commercial sectors and are recycled, reused, combusted, or land-filled.

Despite all that has been accomplished in the collection of recyclables, there is concern among several recyclers that a considerable amount of quality feedstock materials are not ultimately being processed and reused. Many recyclers believe asking smarter questions and collecting better data will lead us to solutions to this problem.

The Discussion Draft directs the EPA, with the Energy and Commerce Departments, to gather and review voluntarily submitted information on waste streams and recycling from government and private entities. Specifically, the Discussion Draft requires EPA to report to Congress within 2 years on each type of recycled material separately and cover the quantities collected, the method of collection, the amount of recoverable material, and amount disposed. Importantly, the Discussion Draft leaves it to the private sector to figure out how to best use this information and does not create Federal recycling regulations.

The second bill under consideration today is H.R. 2997, the Superfund Common Sense Act. The bill arises from the concern that courts or EPA will spell out something in law that is unwarranted or redundant and never directed by Congress.

Currently, Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, commonly known as CERCLA; and Section 304 of the Emergency Planning and Community Right-to-know Act, commonly known as EPCRA, establish reporting requirements for the release of hazardous substances that are above reportable quantities.

Superfund also imposes strict, joint, several, and retroactive liability for the release of hazardous substances and has response and abatement provisions. While manure has not been classified as a hazardous waste, concern exists—based on past legal challenges—that litigation or future regulation could change that equation.

Of note, in 2008, EPA issued a final rule exempting all reporting requirements for air releases from manure at farms under Section

103 of CERCLA. The final rule also exempted certain livestock farms, based upon size, that had air emissions from animal waste that met or exceeded the level for reporting under EPCRA Section 304. However, on October 21, 2011, EPA stated in the Federal Register it was "on a separate track" to develop regulations to amend reporting requirements for livestock operations for air emissions under CERCLA and EPCRA.

H.R. 2997 clarifies manure is not included in the meaning of "hazardous substance" or a "pollutant or contaminant" under CERCLA. H.R. 2997 also eliminates the emissions reporting requirement for releases associated with manure under CERCLA Section 103 and Section 304 of EPCRA. In addition, by changing the definition of "hazardous substance," "pollutant," or "contaminant" under CERCLA, H.R. 2997 also removes liability for releases of manure and precludes use of CERCLA sections dealing with response authorities and abatement actions.

While H.R. 2997 makes explicit the application of CERCLA and EPCRA as it relates to releases associated with manure, the bill preserves the applicability of other Federal, State, and local environmental law as it relates to the definition of manure, or the responsibilities or liabilities of persons regarding the treatment, storage, or disposal of manure.

I want to thank all of our witnesses for coming here to lend their time and experience to us. I look forward to their testimony.

My time has expired and now I would like to recognize the ranking member of the subcommittee, Mr. Green from Texas, for 5 minutes.

[The prepared statement of Mr. Shimkus follows:]

Opening Statement of the Honorable John Shimkus
Subcommittee on Environment and the Economy
Hearing on The Superfund Common Sense Act and The Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012
June 27, 2012

(As Prepared for Delivery)

Throughout this Congress, our committee has been investigating places where Congress can enhance opportunities for growing the private sector of our economy as well as examining places where duplicative red tape creates more burdens, but not greater protection. Our hearing today will examine legislative measures that touch upon each of these concepts.

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Despite all that has been accomplished in the collection of recyclables, there is concern among several recyclers that a considerable amount of quality feedstock materials are not ultimately being processed and reused. Many recyclers believe by asking smarter questions and collecting better data it will lead us to solutions to this problem.

The Discussion Draft directs the EPA, with the Energy and Commerce Departments, to gather and review voluntarily submitted information on waste streams and recycling from government and private entities. Specifically, the Discussion Draft requires EPA to report to Congress within two years on each type of recycled material separately and cover the quantities collected, the method of collection, the amount of recoverable material, and amount disposed. Importantly, the Discussion Draft leaves it to the private sector to figure out how to best use this information and does not create federal recycling regulations.

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Currently, Section 103 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA) establish reporting requirements for the release of hazardous substances that are above reportable quantities. Superfund also imposes strict, joint, several, and retroactive liability for the release of hazardous substances and has response and abatement provisions. While manure has not been classified

as a hazardous waste, concern exists -- based on past legal challenges -- that litigation or future regulation could change that equation.

Of note, in 2008, EPA issued a final rule exempting all reporting requirements for air releases from manure at farms under section 103 of CERCLA. The final rule also exempted certain livestock farms, based upon size, that had air emissions from animal waste that met or exceeded the level for reporting under EPCRA section 304. However, on October 21, 2011, EPA stated in the Federal Register it was "on a separate track" to develop regulations to amend reporting requirements for livestock operations for air emissions under CERCLA and EPCRA.

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I want to thank all of our witnesses for coming here to lend their time and experience to us, I look forward to their testimony.

[The information follows:]

[DISCUSSION DRAFT]

112TH CONGRESS
2D SESSION

H. R. _____

To direct the Environmental Protection Agency, the Department of Energy, and the Department of Commerce to cooperate in the collection and analysis of recycling data; to increase the collection of recyclable materials; to increase the use of recyclable materials in manufacturing processes throughout the United States; and to thereby increase energy efficiency.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To direct the Environmental Protection Agency, the Department of Energy, and the Department of Commerce to cooperate in the collection and analysis of recycling data; to increase the collection of recyclable materials; to increase the use of recyclable materials in manufacturing processes throughout the United States; and to thereby increase energy efficiency.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Energy-intensive manufacturers are essential to American manufacturing competitiveness.

(2) The Congress and States can put into place policies that recognize and promote the increased volume of high quality recyclable materials made available to manufacturers and recognize that recyclable materials are essential commodities, rather than waste.

(3) Energy-intensive industries, including iron and steel, aluminum, forest and paper products, metal casting, glass, and plastics manufacturing, increase their competitiveness by increasing their energy efficiency.

(4) The manufacturing sector can increase its competitiveness, reduce its energy costs and emission levels, and further improve diversion through an increase in the volume of high quality recyclable materials used in its manufacturing processes.

(5) Through the use of recycled materials in lieu of raw materials, manufacturers can achieve en-

1 ergy savings of 92 percent for aluminum cans, 84
2 percent for mixed plastics, 63 percent for steel cans,
3 45 percent for recycled newspaper, and 34 percent
4 for recycled glass.
5 (6) In 2010, the United States recycling indus-
6 try collected, processed, and consumed over
7 130,000,000 metric tons of recyclable material.
8 (7) More than 10,000 communities in the
9 United States have residential recycling and drop-off
10 programs that collect a wide variety of recyclable
11 materials, including paper and steel, aluminum, and
12 plastic and glass containers.
13 (8) Use of recyclable materials in manufac-
14 turing processes can reduce energy utilization and
15 associated greenhouse gas emissions, and the cost of
16 producing goods.
17 (9) Increased energy efficiency in the energy-in-
18 tensive manufacturing sector can lead to an increase
19 in domestic employment, including high-paying,
20 highly skilled jobs.
21 (10) Recyclable materials can be used as feed-
22 stock to produce new materials and products in the
23 United States and exported throughout the world.
24 (11) Current Environmental Protection Agency
25 recycling data do not provide adequate information

on the uses of recyclable materials after they are collected in various municipal collection systems, and thus do not present an adequate picture of the amount of recyclable material available to manufacturers for reuse in their processes, or the cost and energy savings resulting from the use of recyclable materials in manufacturing processes.

(12) Improved data would lead to more informed decision-making among policy makers and governmental officials, and would help private sector users of recyclables increase their use of recyclable materials.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) MANUFACTURER RECOVERY RATE.—The term "manufacturer recovery rate" means the amount of recyclable material (by weight) that is used by manufacturers, compared to the amount of recyclable material (by weight) that is diverted from the waste stream.

(3) MUNICIPAL COLLECTION SYSTEM.—The term "municipal collection system" means any sys-

tem that facilitates diversion from municipal solid waste, including dual stream and single stream curbside collection programs, container deposit systems, drop-off collection systems, or any other system that results in such diversion.

(4) DIVERSION.—The terms "diversion" and "divert" mean the collecting of recyclable materials that would otherwise be incinerated or sent to a landfill.

(5) RECOVERY BY MANUFACTURERS.—The term "recovery by manufacturers" means the processing and reuse of recyclable materials in a manufacturing process to produce new consumer and commercial goods, and products and packaging, including use of imported recyclable materials in a manufacturing process and the export of recyclable materials for use in a manufacturing process, but excluding any recyclable material used for any purpose other than use by a manufacturer, whether or not such uses would in other contexts be considered "recycling", "diversion", or "recovery", including incineration, or for use in roadbeds, surfacing, and landfills as alternative daily cover.

1 (6) RECYCLABLE MATERIAL.—The term "recy-
2 clable material" means aluminum, glass, paper, plas-
3 tic, and steel.

4 **SEC. 4. AGENCY REVIEW OF DATA ON THE COLLECTION OF**
5 **RECYCLABLE MATERIALS, RECOVERY RATES,**
6 **DISPOSAL AVOIDED AND RESULTING ENERGY**
7 **SAVINGS.**

8 (a) IN GENERAL.—Not later than 2 years after the
9 date of enactment of this Act, the Administrator, following
10 consultation with the Secretary of Energy and the Sec-
11 retary of Commerce, and, as appropriate, with States, mu-
12 nicipalities, manufacturers, brand owners, environmental
13 organizations, trade associations, processors, recovery fa-
14 cilities, and other relevant stakeholders, shall gather and
15 review information on the collection, handling, processing,
16 and use of recyclable materials diverted by municipal col-
17 lection systems and the recovery by manufacturers of such
18 recyclable materials, and shall submit to the Congress a
19 report that includes the information specified in sub-
20 section (b).

21 (b) REPORT COMPONENTS.—The report under sub-
22 section (a) shall include, to the extent possible—

23 (1) the tonnage of recyclable materials that are
24 diverted by each type of municipal collection system;

1 (2) the tonnage of recyclable materials that are
2 recovered by manufacturers, broken down by the
3 type of material and type of collection system;
4 (3) the manufacturer recovery rate achieved for
5 each type of recyclable material, from each type of
6 municipal collection system;
7 (4) the tonnage of recyclable materials that are
8 disposed of in a landfill directly after use, broken
9 down by type of recyclable material;
10 (5) the tonnage of recyclable materials that are
11 disposed of in a landfill, following diversion, sorting,
12 separation, cleaning, or any beneficiation, broken
13 down by type of recyclable material and type of mu-
14 nicipal collection system;
15 (6) the tonnage of recyclable materials that
16 goes to other identifiable end uses; and
17 (7) the energy consumed and costs incurred to
18 collect and beneficiate recyclable materials, broken
19 down by type of municipal collection system and
20 type of recyclable material.
21 (c) DATA COLLECTION.—
22 (1) The report under subsection (a) shall be
23 based on information provided voluntarily pursuant
24 to an information collection request as well as data

1 published by government entities and trade associa-
2 tions.
3 (2) Information provided voluntarily by private
4 entities pursuant to an information collection re-
5 quest shall be considered confidential business infor-
6 mation.
7 (3) To the extent practicable, information pro-
8 vided voluntarily shall include aggregated informa-
9 tion collected from trade associations.

10 **SEC. 5. LIMITATION.**

11 Nothing in this Act shall be interpreted to provide
12 the Administrator, the Secretary of Energy, or the Sec-
13 retary of Commerce with any authority to regulate recy-
14 cling goals or rates, energy use goals or rates, recycling
15 content, or recycling collection programs, or to set min-
16 imum recycled content requirements.

17 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

18 There is authorized to be appropriated to the Envi-
19 ronmental Protection Agency to carry out this Act
20 $400,000 for each of fiscal years 2013 through 2015, to
21 remain available until expended.

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112TH CONGRESS
1ST SESSION

H. R. 2997

To amend the Comprehensive Environmental Responsive Compensation and Liability Act of 1980 ("Superfund") to provide that manure is not considered a hazardous substance or pollutant or contaminant under that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2011

Mr. LONG (for himself, Mr. LUETKEMEYER, Mr. AKIN, Mrs. EMERSON, Mrs. HARTZLER, Mr. PEARCE, Mr. CARTER, Mr. SMITH of Nebraska, Mr. HUIZENGA of Michigan, Mr. SIMPSON, Mr. LUCAS, Mr. PETERSON, Mr. HARRIS, Mr. TERRY, and Mr. THOMPSON of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To amend the Comprehensive Environmental Responsive Compensation and Liability Act of 1980 ("Superfund") to provide that manure is not considered a hazardous substance or pollutant or contaminant under that Act, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as "The Superfund Common Sense Act".

SEC. 2. ANIMAL WASTE.

(a) AMENDMENT OF SUPERFUND.—Title III of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding the following new section at the end thereof:

"SEC. 312. EXCEPTION FOR MANURE.

"(a) IN GENERAL.—Upon the date of enactment of this section, manure shall not be included in the meaning of 'hazardous substance' under section 101(14) of this Act or 'pollutant or contaminant' under section 101(33) of this Act.

"(b) ELIMINATION OF PAPERWORK REQUIREMENTS.—The enactment of this section shall not be construed to impose any liability under provisions of the Emergency Planning and Community Right-to-Know Act of 1986 for manure.

"(c) NO EFFECT ON OTHER ENVIRONMENTAL LAW.—Nothing in this section shall affect the applicability of any other environmental statute as it relates to the definition of manure, or the responsibilities or liabilities of any person regarding, the treatment, storage, or disposal of manure.

"(d) DEFINITION.—For the purposes of this section, the term 'manure' means—

"(1) digestive emissions, feces, urine, urea and other excrement from livestock (as defined by 7 C.F.R. 205.2);

"(2) any associated bedding, compost, raw materials or other materials commingled with such excrement from livestock (as defined by 7 C.F.R. 205.2);

"(3) any process water associated with the items referred to in paragraph (1) or (2); and

"(4) any byproducts, constituents, or substances contained in, originating from, or emissions relating to the items described in paragraph (1), (2), or (3).".

(b) AMENDMENT OF SARA.—Section 304(a)(4) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499; 100 Stat. 1655) is amended by adding the following at the end thereof: "The notification requirements under this subsection shall not apply to releases associated with manure (as defined in section 312 of the Comprehensive Environmental Response Compensation and Liability Act of 1980).".

○

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

Mr. GREEN. Mr. Chairman, I want to thank you for holding this hearing today, and I would like to welcome our witnesses and particularly our fellow Member from Missouri, Congressman Long. Thank you for coming.

Today, we are here to discuss two different bills—a Discussion Draft entitled "Increasing Manufacturing Competitiveness through Improved Recycling Act of 2012" offered by our colleague on our committee, Mr. Sullivan from Oklahoma; and H.R. 2997, the Superfund Common Sense Act, offered by Congressman Long from Missouri. While I appreciate your willingness to testify today, I have some concerns about your bill which would exempt manure from cleanup injunction and reporting authorities available under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, also referred as Superfund; and the Emergency Planning and Community Right-to-Know Act of 1986.

The Superfund Act, as amended by amendments over the years, authorizes Federal cleanup of releases of hazardous substances, imposes liability for cleanup, and provides a restoration and replacement of natural resources affected by the release. I have two Superfund sites in our district and so I can appreciate the necessity of the program.

While I share and appreciate your concern that small farms not be required to file reports on animal waste, I think you need to recognize that exempting concentrated animal feeding operations, also known as CAFOs, is highly controversial and could have serious ramifications for communities across our country should contamination occur at a large agribusiness facility. CAFOs store very large amounts of animal waste and contrary facilities which does not occur naturally at most farms. That is why the EPA currently differentiates between the two and the small farms are exempted.

Studies have shown that these CAFOs emit large amounts of hazardous ammonia and hydrogen sulfide, which have been linked to health concerns including chronic respiratory, neurological, and other problems. That is why the law requires reporting because emergency response removal and hazardous release controls depend on the accurate information in order to protect public health and the environment. H.R. 2997 would eliminate both the notification and reporting requirements for all releases associated with manure, including ammonia and hydrogen sulfide air releases.

Reporting aside, the bill also prevents EPA from using CERCLA to clean up hazardous substance releases from manure or issuing an order to a facility to clean up releases of hazardous substances resulting from manure components, meaning that the bill would exempt large agribusiness from Federal liability of any natural resource damage as it may result from damage and spills.

I mentioned before I have concerns about small farms, and I know our committee is interested in recycling on our second bill. Obviously, a lot of that could be recycled in very beneficial use. But my concern is H.R. 2997 with the cost of cleanup, damage by that hazardous substance, it is the responsibility of the ratepayers and local communities.

The second bill we are looking at today is Increasing Manufacturing Competitiveness through Improved Recycling Act. I agree that it is important for us to understand where recyclables collected through recycling programs end up. Better information leads to more efficient recycling that maximizes environmental gain and material efficiency and makes sense for our businesses. However, I am concerned that by making a survey voluntary, the participation would not lead to the type of data that we are aiming for.

I am also struggling to understand why States or trade associations cannot do the same type of voluntary survey. Given our budget issues, I think we should ensure that data could not be obtained through existing reporting regiments.

With that, I look forward to the testimony of our witnesses, Mr. Chairman, and thank you for calling the hearing.

Mr. SHIMKUS. I thank my friend. And I would like to recognize the chairman of the full committee, Mr. Upton, for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman.

Today, we are going to hear testimony on two bills—Mr. Sullivan's Discussion Draft on recycling and Mr. Long's bill clarifying that manure is not defined as a hazardous substance under CERCLA.

Monday, I visited a paper recycling plant in Michigan employing hundreds of folks who make 100 percent recycled paperboard. In my view, these private sector innovators are the real green jobs that we need to be promoting. The folks at this facility in Kalamazoo are concerned about getting access to high quality paper fibers that they can recycle into new paper products, whether it be cartons, cereal boxes, or other types of packaging. They are frustrated that more than 40 percent of good paper fiber goes overseas or into a landfill. They are not asking for Federal laws mandating recycling, but they do feel that better information is needed both to help the American public understand recycling and to help the recycling community gain access to the types and quantities of feedstock that it needs to be competitive.

The second bill that we are going to consider is H.R. 2997, the Superfund Common Sense Act, by Mr. Long. This legislation will remove a lot of anxiety and bureaucratic compliance cost for folks who operate animal feeding operations. The bill would do two things. First, it clarifies that manure is not included in CERCLA as a hazardous substance or a pollutant or contaminant. This alleviates farmer and rancher worries over possible CERCLA exposure for manure, but it preserves claims under a host of other environmental laws, from the Clean Water Act and Clean Air Act to various State and local ordinances.

Second, the bill eliminates some red-tape paperwork reporting concerns. So Mr. Chairman, we all expect animal feeding operations to operate responsibly and with respect for their neighbors and the law. But today we ask is it more important to apply lots of laws to one operation or just the right ones?

So to our witnesses I say thanks for coming. I yield back to other Members that would like to speak. Mr. Harper? Mr. Gardner? Mr. Gardner.

[The prepared statement of Mr. Upton follows:]

Opening Statement of Chairman Fred Upton
Subcommittee on Environment and the Economy
Hearing on The Superfund Common Sense Act and The Increasing Manufacturing Competitiveness Through Improved Recycling Act
June 27, 2012

(As Prepared for Delivery)

Today we'll hear testimony on two bills. Mr. Sullivan's Discussion Draft on recycling and Mr. Long's bill clarifying that manure is not defined as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA.

The other day I visited a paper recycling plant, a terrific facility in my district employing a couple hundred folks who make 100 percent recycled paperboard. In my view, these private sector innovators are the real green jobs we need to be promoting.

The folks at this plant are concerned about getting access to high quality paper fibers that they can recycle into new paper products, whether cartons, cereal boxes, or other types of packaging. They are frustrated that more than 40 percent of good paper fiber goes overseas or into a landfill. They are not asking for federal laws mandating recycling, but they do feel better information is needed both to help the American public understand recycling and to help the recycling community gain access to the types and quantities of feedstock they need to be competitive.

The second bill we will consider today is H.R. 2997, The Superfund Common Sense Act, by Mr. Long. H.R. 2997 will remove a lot of anxiety and bureaucratic compliance cost for people who operate animal feeding operations.

The bill would do two things. First, it would clarify that manure is not included in the CERCLA definitions of "hazardous substance" or "pollutant or contaminant."

This alleviates farmer and rancher worries over possible CERCLA exposure for manure, but it preserves claims under a host of other environmental laws, from the Clean Water Act and Clean Air Act to various state and local ordinances.

Second, the bill eliminates some red-tape paperwork reporting concerns. Mr. Chairman, we all expect animal feeding operations to operate responsibly and with respect for their neighbors and the law. But today we ask: is it more important to apply lots of laws to one operation or just the right ones?

To all our witnesses, thank you for coming. We look forward to your testimony.

OPENING STATEMENT OF HON. CORY GARDNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. GARDNER. Thank you, Chairman Upton, for the opportunity, for yielding time. And thank you, Chairman Shimkus and Ranking Member Green as well for convening this hearing on two very important pieces of legislation which will help our agricultural community improve energy efficiency and increase international competitiveness.

The first bill that we have talked about—Increasing Manufacturing Competitiveness through Improved Recycling Act—directs the EPA and stakeholders to take steps to improve data collection related to the recovery of recyclable material and review ways to increase the collection of recyclable materials. EPA Franklin Associates report—we found out that the State of Colorado generates approximately 157,000 tons of glass and only 32,000 tons, or 21 percent, is recycled, making a big difference.

One of my constituents, an employer that has over 200 men and women working at the facility, Owens-Illinois, is very interested in the issues of recycling, and as I toured their facility learning about what it takes to make their glass product, the important role that recycling has within that industry, and that is why I think this legislation could be helpful.

The second bill we are considering today will provide needed certainty to our agricultural community and help protect the livelihood of farmers and ranchers throughout the United States. My district is the 11th largest agricultural producing district in Congress. Many of our producers use concentrated animal feeding operations, or CAFOs, and CERCLA and the Emergency Planning and Community Right-to-Know Act could soon be used to subject manure to redundant requirements or stringent regulations.

This H.R. 2997 would exclude animal manure from the definition of hazardous substance. In a letter that we received from the Colorado Livestock Association, they believe that H.R. 2997 "will reduce unproductive expenditures by individuals engaged in producing the Nation's supplies of protein and milk products without in any way compromising the health and safety of the public. CAFOs are used throughout Colorado and this legislation is essential to protecting our producers from undue regulations that could significantly hurt their business.

A thank you to our colleague from Missouri, and certainly thank you, Chairman, and I yield back my time.

Mr. SHIMKUS. The time has been yielded back.

The chair now recognizes the ranking member of the full committee, Mr. Waxman, for 5 minutes.

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

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

Today, we will hear testimony on a bill called the Superfund Common Sense Act. While my Republican colleagues will talk about the small family farmer with a single cow grazing out in the pasture, they will warn of EPA rushing through the farm gate, call-

ing a cow patty hazardous and placing costly and burdensome requirements on an innocent, freckle-faced farm boy. And they will use this imagery to argue that farmers need to be protected from Superfund and the EPA.

We have all heard of what is called a Trojan Horse. I call this a Trojan Cow. There is one big problem with the Republican narrative—it is completely made up. In reality, this legislation is about exempting giant agribusinesses from liability if they pollute the land and groundwater.

Time after time, this committee has put the interests of big corporations and their billionaire owners over the interests of the struggling middle class.

Many farming operations comply with the law. But there are times when some do not. And when that happens, liability under Superfund is essential. That is common sense.

An example is what happened in Waco, Texas, where poultry factory farms contaminated the sole source of drinking water. The city successfully made a claim under Superfund for reimbursement for the cost of cleaning up the phosphorous pollution. Without Superfund, the local taxpayers would have been defenseless.

Another example occurred in Tulsa, Oklahoma, which recovered funds from Tyson Foods under Superfund when poultry operations there contaminated the city's water.

That is why I am so worried about this piece of legislation, despite its very nice name, because it is being promoted under false pretenses. We have already voted over 250 times on the House Floor to roll back environmental protections. And if this bill makes it to the floor, it will only add to this total.

We have considered a bill that would have blocked President Obama's historic tailpipe standards that will save consumers thousands of dollars and dramatically reduce our dependence on foreign oil. The false pretense for that bill was that money-saving fuel efficiency standards are an energy tax.

We passed a bill to allow mining operations like the one in Libby, Montana, to spew cancer-causing particles into neighboring communities. Well, the rationale for that bill was that we needed to prevent EPA from regulating farm dust even though EPA told us they have no intention of regulating farm dust.

Last week, the House passed legislation that included the Latta amendment, which would cut the heart out of the Clean Air Act by gutting the Act's health-based standards. The completely unrelated argument for that bill was that we needed to study rules that might be proposed on refineries.

Well, House Republicans have voted to nullify rules to cut mercury pollution from waste incinerators, industrial boilers, and cement kilns. The argument was that we just need to give EPA more time to get the rules right.

Mr. Chairman, I have said this before and I repeat it again: This is the most anti-environment House of Representatives in the history of the country. And today, this bill is one more effort to make the country safe for pollution and I strongly oppose the bill.

Before I yield back, however, I would like to note that we are also examining legislation relating to recycling today. While this

bill appears likely to accomplish very little, I look forward to hearing testimony about it.

Superfund Common Sense, well, we are all for Superfund and common sense, but it is not common sense to put shackles on Superfund and let polluters cause serious consequences to the taxpayers and the middle-class people living in the communities nearby.

I yield back my time.

Mr. SHIMKUS. The gentleman yields back his time.

Now, the chair recognizes our own freckle-faced farm boy from the State of Missouri. Mr. Long, you are recognized for 5 minutes.

STATEMENT OF HON. BILLY LONG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. LONG. Thank you.

First off, I would like to thank you, Chairman Shimkus and Ranking Member Green and all of the subcommittee members, for allowing me to testify this morning.

Last year, I introduced a bill which would exempt livestock operations from the Comprehensive Environmental Response, Compensation, and Liability Act—or CERCLA—regulation. The bill, H.R. 2997, or the Superfund Common Sense Act, would also exempt livestock operations from Emergency Planning and Community Right-to-Know Act, the EPCRA, reporting requirements.

Livestock producers, along with other small businesses, face increasing regulatory uncertainty, much of it stemming from potential or proposed Environmental Protection Agency rules. The Nation's livestock producers or agricultural industry as a whole cannot afford to comply with unnecessary regulations.

The CERCLA law, which we know created the Superfund, was enacted in Congress in 1980 because of the Love Canal incident. The law was never meant to regulate livestock manure, but its activists may use ambiguities in the law to create new livestock operation regulations. My bill clarifies that the reporting requirements under CERCLA and EPCRA will not apply to animal manure or its emissions. It does not make sense to lump tens of thousands of farms and livestock producers under the same severe liability provisions that apply to nearly 1,300 Federal Superfund toxic waste sites. My bill will provide more certainty for producers and more common sense to these laws.

If the EPA does not choose to exempt cattle operations from released reporting obligations, the operations may be required to file daily reports with Federal, State, and local emergency responders. Additionally, measuring ammonia from open air beef feedlots is impractical since there is no pipe or other way to measure ammonia emissions directly. Because ammonia is dispersed in the air before measurement, the wind speed and direction, air pressure, and temperature all affect emissions. Measuring the emission depends on capturing the whole "cloud" or air sample in a specific time and space. This would require all kinds of instruments upwind, downwind from the source, much like a complete set of meteorological instruments measuring wind speed, direction, pressure, and the like. Since these instruments could only measure concentrations at relatively few points in the air space of varying size and shape over

short periods of time, large errors are likely and data would be unreliable. These are supposed to be livestock operations, not small weather stations.

Annual continuous release reports may be a continued option for large operations, but because emissions from open air beef cattle operations also vary depending on the climate, the feed, the weather, the age of cattle, and many other variables, there is no guarantee the reports would be useful since the emissions are obviously not continuous or stable.

A continuous release by the law's definition "a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes." The release must also be "stable in quantity and rate," which means that it is "predictable and regular in the amount and rate of emission."

Finally, neither ammonia nor hydrogen sulfide is a regulated hazardous air pollutant under the Clean Air Act.

I introduced my bill in September of 2011. When the EPA was asked for comment, an EPA spokesman stated the following on October the 20th, 2011, in the Energy and Environment Daily article—"this one joins the growing list of myths being perpetuated about the EPA rules." And then she added, "it is unfortunate that time is being spent on solving a perceived problem that does not exist." I will note for the record there was no mention of a freckled-face farm boy, but the intent was there.

After they denied it, the next day's Federal Register was printed. The EPA is currently in the process of developing a rulemaking to amend reporting requirements for livestock operations on air emissions under CERCLA Section 103 and EPCRA Section 304.

Also, on November 8, 2011, Congressional Research Service report stated that the EPA anticipates it will propose a new or revised rule regulating livestock waste in 2012.

Mr. Chairman, I would also like to mention that the United States Department of Agriculture has gotten so out of control with regulations. I have had constituents of mine threatened with large fines and confiscation of property because their small rabbit breeding operation was considered illegal. This kind of regulatory overreach does not reflect self-governance, and come to think of it, there was a small, freckle-faced boy involved in that case. This kind of regulatory overreach does not reflect self-governance, which is a fundamental principle of our Nation.

Where does the individual citizen go to vote out an abusive regulator or overbearing bureaucrat? Where is that ballot box? It is time for us, the United States Congress, to reclaim much of the authority we have surrendered to the Executive Branch bureaucracy. The Federal Government's job is not to stifle economic growth and intimidate the American people. The constituents I mentioned earlier only wanted to breed rabbits and be left alone in peace, but they instead were punished by an expensive and time-consuming process brought on by ridiculous regulations. I would mention that they had ceased raising rabbits for a few years before they brought this charge, which was also ridiculous.

I would also like to point out what happened in Illinois last August. At a town hall meeting where President Obama held in At-

kinson, Illinois, a local corn and soybean farmer asked the President about more possible EPA regulations covering dust, noise, and water runoff. The President said, "the folks in Washington like to get all ginned up" about things that aren't necessarily happening. Then, he instructed the gentleman to contact the USDA. Well, one reporter followed this direction and called the USDA. After several phone calls and referrals to various agencies, including the Illinois Department of Agriculture and the Illinois Farm Bureau, an answer was not found.

I again want to thank you, Chairman Shimkus and Ranking Member Green, along with members of the subcommittee for allowing me to testify today. I look forward to working with you on this commonsense solution.

[The prepared statement of Mr. Long follows:]

Testimony of Congressman Billy Long (MO-07)
Before the House Energy and Commerce
Subcommittee on Environment and the Economy
Wednesday June 27, 2012

Legislative Hearing on "The Superfund Common Sense Act" and "The Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012"

First off I would like to thank Chairman Shimkus, and Ranking Member Green and all of the Subcommittee Members for allowing me to testify this morning.

Last year I introduced a bill which would exempt livestock operations from Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA, regulation. The bill, HR 2997, or the Superfund Common Sense Act, would also exempt livestock operations from Emergency Planning and Community Right-to-Know Act (EPCRA) reporting requirements.

Livestock producers, along with other small businesses, face increasing regulatory uncertainty, much of it stemming from potential or proposed Environmental Protection Agency (EPA) rules. Our nation's livestock producers and our agricultural industry as a whole cannot afford to comply with unnecessary regulations.

The CERCLA law, which as we know created the Superfund, was enacted by Congress in 1980 because of the Love Canal incident. The law was never meant to regulate livestock manure, but activists may use ambiguities in the law to create new livestock operation regulations. My bill clarifies that the reporting requirements under CERCLA and EPCRA will not apply to animal manure or its emissions. It does not make sense to lump tens of thousands of farms and livestock producers under the same severe liability provisions that apply to the nearly 1,300 federal Superfund toxic waste sites. My bill will provide more certainty for producers and more common sense to these laws.

If EPA does not choose to exempt cattle operations from release reporting obligations, the operations may be required to file a daily report with federal, state and local emergency responders. Additionally, measuring ammonia from open air beef cattle feedlots is impractical since there is no pipe or other way to measure ammonia emissions directly. Because ammonia is dispersed in the air before measurement, the wind speed and direction, air pressure and temperature all affect

the emission. Measuring this emission depends on capturing the whole "cloud" or air sample in a specific time and space. This would require all kinds of instruments upwind and downwind from the source, much like a complete set of meteorological instruments measuring wind speed, direction, pressure and the like. Since these instruments could only measure concentrations at relatively few points in an air space of varying size and shape over short periods of time, large errors are likely and the data would be unreliable. These are supposed to be livestock operations, not small weather stations.

Annual continuous release reports may be an option, but because emissions from open air beef cattle operations also vary widely depending on climate, feed, weather, age of cattle, and many other variables, there is no guarantee the reports would be useful since the emissions are obviously not continuous or stable. A continuous release is by the law's definition "a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes." The release must also be "stable in quantity and rate," which means that it is "predictable and regular in the amount and rate of emission."

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In the next day's Federal Register, the following was printed - EPA is currently in the process of developing a rulemaking to amend reporting requirements for livestock operations on air emissions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103 and (Emergency Planning & Community Right-to-Know Act) EPCRA section 304.

Also, a November 8, 2011 Congressional Research Service report stated that the EPA anticipates it will propose a new or revised rule regulating livestock waste in 2012.

Mr. Chairman, I would also like to mention that the United States Department of Agriculture has also gotten out of control with regulations. I have had constituents

of mine threatened with large fines and confiscation of property because their small rabbit breeding operation was considered illegal. This kind of regulatory overreach does not reflect self-governance, which is a fundamental principle of our nation. Where does the individual citizen go to vote out an abusive regulator or overbearing bureaucrat? Where is that ballot box? It is time for us, the United States Congress, to reclaim much of the authority we have surrendered to the Executive Branch bureaucracy. The Federal Government's job is not to stifle economic growth and intimidate the American people. The constituents I mentioned earlier only wanted to breed rabbits and be left alone in peace, but instead they were punished by an expensive and time consuming-process brought on by ridiculous regulations.

I would also like to point out what happened in Illinois last August. At a town hall meeting President Obama held in Atkinson, Illinois, a local corn and soybean farmer asked the President about more possible EPA regulations covering dust, noise and water runoff. The President said that "folks in Washington like to get all ginned up" about things that aren't necessarily happening. He then instructed the gentleman to contact the USDA. One reporter followed this direction and called the USDA. After several phone calls and referrals to various agencies, including the Illinois Department of Agriculture and the Illinois Farm Bureau, an answer was not found.

I again want to thank you, Chairman Shimkus and Ranking Member Green, along with Members of the Subcommittee for allowing me to testify today. I look forward to working with you on this common-sense solution.

Mr. SHIMKUS. Thank you for joining us and it is our tradition not to take questions. So thanks and we will now—Billy——

Mr. WAXMAN. May I ask a question?

Mr. SHIMKUS. Billy? Without objection, the ranking member of the full committee will be recognized for—how much time do you want?

Mr. WAXMAN. Let us try 5 minutes and I will try not to go that long.

Mr. SHIMKUS. OK, for 5 minutes.

Mr. WAXMAN. I thank you.

Mr. SHIMKUS. Without objection, so ordered.

Mr. WAXMAN. I thank you for your explanation of the bill and willingness to answer my questions.

Your statement says that the bill clarifies that "the reporting requirements under Superfund and EPCRA will not apply to animal manure or its emissions." That is what you are trying to accomplish. Is this the sole intent of the bill to exempt manure and its emissions from the reporting requirements under Superfund and EPCRA?

Mr. LONG. The intent of the bill is to stop trying to use something that was created for Times Beach in Missouri or Love Canal, an actual toxic waste Superfund Cleanup Act for manure.

Mr. WAXMAN. OK.

Mr. LONG. That is the intent of the bill.

Mr. WAXMAN. Now, EPA is going to testify that the impact will go far beyond the reporting requirement and it blocks authority to clean up contaminated sites, prevent further contamination through injunction, recover compensation from responsible parties for cleanup activities. Now, this would severely undermine the principle of the polluter should pay to clean up their pollution. Instead, the cost of cleanup would be shifted to the taxpayers. Is it your intent in this legislation to shield polluters from liability and shift the cost of cleanup to taxpayers?

Mr. LONG. Absolutely not, but I want the EPA to use the rules that are on their books now for such ventures. I do not want them to get off into this la-la land of trying to use a Superfund that was for Times Beach and Love Canal for cow manure.

Mr. WAXMAN. OK. And then one last question, would you support redrafting the language in your bill to ensure that the polluter-pays principle is upheld and that the cleanup costs are not shifted to innocent taxpayers?

Mr. LONG. I will have to get back to you on that, which I will do.

Mr. WAXMAN. But you want to accomplish that goal?

Mr. LONG. I will get back to you on it, yes.

Mr. WAXMAN. Thank you very much. I appreciate your answers.

Mr. SHIMKUS. And I thank you, my colleague. And Billy, if you would just wait. I will recognize myself for a minute and a half without objection.

Things we want to continue to highlight is the Clean Water Act, Section 311(f), authorizes recovery of costs incurred pursuant to hazardous substance mitigation. Requirements under Section 311(c) of the Clean Water Act. Section 3007, the Solid Waste Disposal Act, authorizes the EPA to obtain information or inspect fa-

cilities where hazardous waste had been generated or stored, disposed, and/or transported. And then Section 7002 of the Solid Waste Disposal Act authorizes citizen suits against any person or the Federal Government to enforce solid or hazardous waste laws. Section 7003 of the Solid Waste Disposal Act gives EPA authority to address imminent hazards.

So the point being—and I think part of my colleagues coming forward is a set of regulations that you can follow, not piling on. And this is a legislative hearing. I appreciate my colleague from California raising the question and I thank my colleague from Missouri for joining us.

And with that I will dismiss this and call the second panel.

Mr. GREEN. Mr. Chairman, I just want you to know for public information I told our colleague that I wouldn't ask him any questions about the bill.

Mr. SHIMKUS. And now I would like to welcome the Honorable Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response with the United States Environmental Protection Agency. He has been here before. Thank you for coming back. Sir, your full statement is in the record and you are recognized for 5 minutes.

STATEMENT OF MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Mr. STANISLAUS. Mr. Chairman, Ranking Member Green, and members of the subcommittee, I am Mathy Stanislaus, Assistant Administrator for EPA's Office of Solid Waste and Emergency Response. Thank you for the opportunity to testify today on H.R. 2997, which would amend the Comprehensive Environmental Response, Compensation, and Liability Act, otherwise known as CERCLA; and on a legislative proposal regarding recycling data collection and a report to Congress, the Increasing Manufacturing Competitiveness through Improved Recycling Act of 2012.

Regarding H.R. 2997 and the issue of air emissions from animal waste, EPA in December 2008 issued a final rule referred to as CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms. The exemption became effective on January 20, 2009, and exempts farms from reporting under CERCLA Section 102. The final rule also exempts farms that release hazardous substances from animal waste to the air from reporting under EPCRA Section 304 if they are stable or confine fewer than the number of animals to be considered under large concentrated animal feeding operation thresholds as defined in the Clean Water Act regulations.

Let me be clear. EPA has never designated manure as a hazardous substance, nor has the EPA ever designated a farm a Superfund site and has no plans to do so. We believe EPA's 2008 final rule has addressed concerns raised by the farm sector related to air release reporting under CERCLA and EPCRA without removing important CERCLA response authorities. While we do not consider manure a hazardous substance, there are substances associated with manure such as ammonia and hydrogen sulfide that

are by definition hazardous substances and can threaten public health and the environment.

The effect of H.R. 2997 would be to prevent the EPA from using CERCLA-response authorities to respond to releases to the environment when the manure is the source of those hazardous substances even if the release, for instance, such as the failure of a large manure waste lagoon presents a substantial danger to the public health and the environment.

It would also prevent the Agency from issuing CERCLA abatement orders to require immediate response to damaging releases that could threaten drinking water sources, as well as residents. Therefore, we have concerns with the broad impacts of this bill.

Now turning to the Increasing Manufacturing Competitiveness through the Improved Recycling Act and recycling data collection, the EPA recognizes that there are limited aggregate data to evaluate the success of recycling programs at the local, State, regional, or national level. EPA's Municipal Solid Waste Characterization Report was designed to provide a snapshot of the U.S. municipal solid waste stream and is a primary data source at the national level. The report includes data and trends since 1960 and analyzed the composition and amounts of municipal solid waste in the U.S. and how those materials are recycled, incinerated, and land-filled. It is used by a broad range of entities, including local, State, Federal governments, NGOs, the public, academia, and industry for a variety of progressively more complex and specific purposes, some of which were not originally anticipated or designed for in the original report.

Recognizing that revisions of the MSW Characterization Report could be helpful, EPA issued a Federal Register Notice in September 2011 and received public comments from industry, local and State governments, and recycling groups. EPA plans to revise and expand the next Characterization Report to reflect an ongoing shift to sustainable materials management essentially to identify opportunities to maximize the economic and environmental benefit from reusing materials rather than throwing them away.

We believe that the data collected for the MSW Characterization Report will inform the public and private sector on current recycling trends and practices and identify areas needed to be addressed to support increased recycling and support sustainable materials management efforts. The EPA is evaluating new methodologies and will continue to publish a report annually with incremental changes over time.

Moreover, we continue to engage industry to identify ways to enable greater reuse and recycling of materials because of the economic benefits including job creation, as well as its environmental benefits.

While we support the goals of the draft bill, we have several comments. The bill does not provide authority to require various sources referenced in the draft bill to provide specified information to achieve its goal. While the draft legislation intends for the information collected to be voluntary, it may fall short of its goal to provide the enhanced data needed to help more informed decision-making among policymakers and government officials and help the private sector increase the use of recyclable materials.

EPA's planned revision and expansion of its MSW Characterization Report will help inform the public and private sector about sustainable materials management. While the draft bill states that the information collected by EPA is intended to be voluntary, this appears to be contradicted by the Confidential Business Information provision. Current law already provides those protections, and should an owner have such confidential proprietary information, they could seek those protections. Having the broad protections defined in the bill kind of gets in the way of the intention of the bill.

With that, Mr. Chairman, I close my remarks.

[The prepared statement of Mr. Stanislaus follows:]

Testimony of Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Before the
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
United States House of Representatives

June 27, 2012

Mr. Chairman, Ranking Member Green, and Members of the Subcommittee, thank you for the opportunity to testify today on H.R. 2997, which would amend the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and on a legislative proposal regarding recycling data collection and a report to Congress. My testimony will first include a brief overview of federal reporting requirements related to releases from animal waste under CERCLA and the Emergency Planning and Community Right-To-Know Act (EPCRA) before turning to H.R. 2997. I will then address the Agency's current recycling data efforts and issues identified by the Agency related to the draft bill "Increasing Manufacturing Competitiveness Through Improved Recycling Act."

FEDERAL REPORTING REQUIREMENTS: EMISSIONS FROM ANIMAL WASTE

In December 2008, EPA issued a final rule "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms." The exemption became effective on January 20, 2009 and exempts farms from reporting under CERCLA section 103. The final rule also exempts farms that release hazardous substances from animal waste to the air from reporting under EPCRA section 304 if they stable or confine *fewer*

than the number of animals to be considered a large concentrated animal feeding operation (CAFO) threshold as defined in Clean Water Act regulations. That final rule is currently under EPA review to address issues raised by a range of stakeholders. In reviewing the final rule, we will take into account concerns raised by the agricultural community as well as address the statutory objective of public transparency.

To help inform future Agency decision making based on the best science, EPA, initiated a two-year National Air Emissions Monitoring Study. The study, funded and conducted by certain operators in the agriculture sector, gathered air emissions and process data from farms in nine states. The Agency is currently reviewing data from the study as well as other relevant data submitted in response to the Agency's 2011 Call for Information, and we have developed two draft emissions estimating methodology (EEM) reports. In March 2012, the EPA requested the Science Advisory Board (SAB) to review the draft EEMs and also made the draft EEMs available for public review and comment[1]. In developing the final emissions estimating methodologies, the EPA will consider public comments submitted to EPA and the Science Advisory Board panel recommendations which will be made through an open and public process. The EPA public comment period and the SAB review are concurrent but independent processes that will provide the agency with independent scientific and technical advice from the SAB panel of experts while also providing all stakeholders an opportunity to review and comment via an open transparent public review process.

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[1]SAB Review: http://yosemite.epa.gov/sab/sabproduct.nsf/0/ae6639dd6b79360e852579a4004e5529!OpenDocument

Draft EEMs: http://www.epa.gov/airquality/agmonitoring/techdocs.html

H.R. 2997

H.R. 2997 would amend CERCLA to specifically exempt manure from the definitions of hazardous substance and pollutant or contaminant under Section 101 of the Act. EPA has concerns with the bill. Let me be clear: EPA has never designated manure as a hazardous substance nor has the Agency ever designated a farm a Superfund site and has no plans to do so. As discussed above, we believe EPA's 2008 final rule ("CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms") has addressed concerns raised by the farm sector related to air release reporting under CERCLA and EPCRA without removing important CERCLA response authorities.

Manure is not a hazardous substance. However, there are substances associated with manure, such as ammonia and hydrogen sulfide, which are by definition hazardous substances and can threaten public health and the environment. The effect of the bill would be to prevent the EPA from using CERCLA response authorities to respond to releases to the environment when manure is the source of those hazardous substances, even if the release, for instances such as the failure of a large manure waste lagoon, presented a substantial danger to the public health and the environment. It would also prevent the Agency from issuing CERCLA abatement orders to require response to damaging releases. Therefore, we have concerns with the broad impacts of this bill.

EPA's CURRENT RECYCLING DATA COLLECTION EFFORTS

EPA continues to recognize the positive environmental and economic benefits that can result from the reuse/recycling of used industrial, commercial and residential materials, including reduced air emissions, reduced need for disposal, and reduced use of virgin resources, when

these activities are conducted in a protective manner. For instance, increasing the safe and effective management and handling of used electronics in the United States is one of the goals of the *National Strategy for Electronics Stewardship*, the federal government's plan to enhance the management of electronics throughout the product lifecycle. Mismanagement of used electronics is not only potentially harmful to human health and the environment, it is a missed opportunity to recover valuable, often scarce resources that can be returned to the electronics supply chain to make new products.

Consistent with the actions identified in the Strategy, EPA is currently developing an Electronics Challenge that will increase responsible recycling through the use of certified refurbishers and recyclers in the U.S., increase transparency and accountability through public posting of data and commitments, and engage stakeholders across the electronics sector (including manufacturers, retailers, state and local governments, and recyclers).

In addition, in an effort to realize the many benefits associated with materials management, we have launched a broader effort to advance the concept and practice of sustainable materials management. Reducing waste and increasing recovery and reuse of materials in lieu of virgin materials are critically important for the future of the environment and our economy. Without looking at waste as a potential valuable commodity and capturing its value and thereby reducing the environmental footprint from materials use, we will travel down a path that is unsustainable both economically and environmentally.

Today, there are limited aggregate data to evaluate the success of recycling programs at the local, state, regional or national level. The EPA's annual *Municipal Solid Waste (MSW) Characterization Report*, was designed to provide a snapshot of the U.S. municipal solid waste stream and is the primary data source at the national level. The report includes data and trends

since 1960, and analyzes the composition and amounts of municipal solid waste in the U.S., and how those materials are recycled, incinerated, and landfilled. It is used by a broad range of entities including local, state, and federal governments, NGOs, the public, academia, and industry for a variety of progressively more complex and specific purposes, some of which were not anticipated or designed for in the original Report and methodology. For this reason, EPA issued a *Federal Register* Notice in September of 2011, and received public comments on potential revisions to the Report. Currently, EPA is evaluating new methodologies and will continue to publish the report annually, with incremental changes over time.

EPA has found that while some states have financial incentives tied to their recycling rates, and either report or require that such data be collected, most states do not have the data necessary to provide accurate recovery rate information. Other barriers to data collection include business-to-business recycling where large streams of recycled commodities go from retailers and manufacturers directly back to recycling market end users, as well as market competition and privacy concerns. In addition, there are large construction and demolition and non-hazardous materials recycling enterprises that are not included in conventional MSW generation or reporting protocols.

As discussed above, the EPA is shifting its emphasis from waste management to life cycle-based, sustainable materials management. Data and metrics are the foundation for a sustainable materials management program, as well as the basis for reporting the EPA's performance which includes recovery rates achieved by U.S. recycling programs. For this reason, EPA plans to begin to revise and expand the next *MSW Characterization Report* to reflect the shift to sustainable materials management. We believe that the data to be collected for the *MSW Characterization Report* would help inform the public and private sector on current

recycling trends and practices and identify areas needed to be addressed to support increased recycling and support sustainable materials management efforts.

THE INCREASING MANUFACTURING COMPETITIVENESS THROUGH IMPROVED RECYCLING ACT

While EPA supports the goals of the draft bill, we have several concerns. The bill should provide EPA the authority to require the various sources referenced in the draft bill to provide the specified information to EPA. While the draft legislation intends for the information collection to be voluntary, it may fall short of its goal to provide the enhanced data needed to help more informed decision-making among policy makers and government officials and help the private sector increase the use of recyclable materials.

First, as noted above, EPA is revising and expanding the *MSW Characterization Report* to reflect the shift to sustainable materials management. EPA believes that this increased data collection will help inform the public and private sector about sustainable materials management. However, as I noted, there are constraints with obtaining more information due to lack of consistency in data collection and reporting. The draft bill notes that the information collected by EPA is intended to be voluntary; however, this appears contrary to the provision which states that information submitted to EPA from private entities shall be considered confidential business information (CBI). Current law already provides protections to confidential business information and private entities may designate information submitted to EPA as CBI. Applying CBI protection to all recyclable materials information submitted to EPA seems unnecessary and would limit the information the Agency could include in a report to Congress. Finally, the bill

provides two years for the data collection and report to Congress. This timeframe may be insufficient for both the extensive data collection and analysis and resulting report to Congress.

CONCLUSION

EPA has concerns with H.R. 2997 and with the draft "Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012," bills. EPA's CERCLA authority to respond to releases of hazardous substances and pollutants or contaminants and to compel parties who caused or contributed to releases to respond or to pay for the cleanup of damaging releases is an important statutory tool to help protect public health and the environment. EPA has already addressed the perceived burden to farmers related to air release reporting under CERCLA and EPCRA through rulemaking. In addition, while EPA supports the goals of the "Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012," EPA has concerns with how these goals would be met.

Mr. SHIMKUS. Thank you very much.

I now recognize myself for 5 minutes for opening round of questions.

I want to follow up on what Mr. Long started about really addressing a timeline because I think that has kind of raised a lot of issues, too. So on October 21 of 2008, the EPA proposed in the Federal Register the National Pollutant Discharge Elimination System Concentrated Animal Feeding Operation Reporting Rule. In it, EPA stated that it is "on a separate track to develop a rulemaking to amend reporting requirements for livestock operations on air emissions under CERCLA Section 103 and EPCRA Section 304." Can you tell me the status of this separate rulemaking for the reporting of EPCRA Section 304 and CERCLA Section 103?

Mr. STANISLAUS. Sure. Currently, we are in the midst of collecting air emissions data working with industry on that modeling. There is actually a separate office outside of my office collecting that data. So we are in the midst of evaluating that data. We cannot move forward on rulemaking until that data collection is done, so I don't have a precise date but I can follow up with information regarding that.

Mr. SHIMKUS. And if you would, we would appreciate that. And what was the impetus for changing the rule issued by EPA in 2008 on these matters? What caused the change from the position taken in 2008 to the position of the 21 October 2011?

Mr. STANISLAUS. Well, I mean we heard from various stakeholders as to the underlying basis of that determination of where we drew the line in terms of the size of the facility that would be exempted and those that will still be covered by the rule. So we are taking a hard look as to the data support for that determination.

Mr. SHIMKUS. Were you petitioned?

Mr. STANISLAUS. I am not sure. Yes, I think we were in litigation and we remanded from that litigation to evaluate the rule. So we were sued. So we decided to remand to EPA to examine another rule.

Mr. SHIMKUS. Which brings up my favorite subject, which is the judgment fund and compensation pursuits and who pays what, but that is for another hearing.

What is the status of the proposed rule of October—well, we have kind of answered that. Will that proposed rule have any impact on the way these agriculture operations are governed under CERCLA or EPCRA?

Mr. STANISLAUS. Well, we are taking a look at just the public notification provision and looking at the air emission studies to inform that strictly with respect to the notification of emissions from these facilities and not other aspects of CERCLA.

Mr. SHIMKUS. EPA has testified that it has never filed a CERCLA Section 104 action nor anything under CERCLA Section 106 or 107 with regard to animal farming operations. How many total RCRA Section 703 Imminent Hazard Action cases has EPA brought against a farming operation?

Mr. STANISLAUS. I don't have that information. I will get that to you.

Mr. SHIMKUS. Thank you. Is it fair to say that EPA considers laws other than CERCLA emergency authority as appropriate re-

sponse to environmental threats which may occur at animal agriculture facilities?

Mr. STANISLAUS. Clearly, we have used other authorities in certain circumstances. As I testified, what this would do, it would prevent the use of what we call an abatement order. So immediately moving forward to clean up the result of a major spill and to prevent immediate impacts like drinking water impacts and impacts to local residents.

Mr. SHIMKUS. If EPA changed the 2008 reporting regulation to include more animal facilities in CERCLA Section 103 and EPCRA Section 304, how many new facilities are subject to EPCRA reporting?

Mr. STANISLAUS. We don't have that analysis yet. We have not made a decision to change.

Mr. SHIMKUS. Do you have a projection of a cost that it would incur of the additional reporting?

Mr. STANISLAUS. I mean clearly if we decide to change, we will conduct that analysis.

Mr. SHIMKUS. And will you conduct an analysis of the additional cost to the Agency of receiving those reports?

Mr. STANISLAUS. Sure.

Mr. SHIMKUS. How about the cost of receiving and acting on those reports?

Mr. STANISLAUS. Acting depending, yes, on our authorities, yes.

Mr. SHIMKUS. OK. And I thank you for your time. You know, the point being we think that under current law as I stated earlier that duplication of this is just redundant, costly, inefficient, and that is why we raise this issue.

So thank you for your time and I yield back my time and recognize the ranking member of the subcommittee, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Administrator, again, thank you for being here. Supporters of H.R. 2997 say that the Clean Water Act, Clean Air Act, and the Resource Conservation Recovery Act sufficiently regulate and address any environmental damage that would result from manure contamination. Why do you feel that CERCLA is still necessary?

Mr. STANISLAUS. Well, CERCLA serves a distinct purpose. There are two aspects that we are talking about here today, and one is to preserve the ability to respond to a major catastrophic event that requires an immediate cleanup so there are no public health or environmental harms. You want to preserve that and it is critical that we preserve that authority.

The other is for large facilities. Particularly local responders and local government have pointed out during our original rulemaking the real important need for that information so they can effectively prepare should an event occur.

Mr. GREEN. There are concerns about small farms being captured by future regulations. I know there is a difference between my family farm and a feedlot——

Mr. STANISLAUS. Yes.

Mr. GREEN [continuing]. For example, although there could be a family farm that includes a feedlot. So what are the distinctions?

Mr. STANISLAUS. Well, yes, it is defined under the Clean Water Act. Currently, only large CAFOs are subject to the rule but a significant large number of species. I can give you the various—afterwards.

Mr. GREEN. Yes, if you——

Mr. STANISLAUS. OK.

Mr. GREEN [continuing]. Just submit it to us——

Mr. STANISLAUS. Yes.

Mr. GREEN. And granted, there is some concern obviously that if you are downwind or downstream or down a hill from a large feedlot that there is an issue, but again a small farm typically is not the issue. So I think that is——

Mr. STANISLAUS. That is correct.

Mr. GREEN. Some witnesses today argue that phosphates in manure are not now nor have they ever been equivalent to harmful chemicals that CERCLA has been addressing in the last 32 years. Do you agree with that?

Mr. STANISLAUS. I am sorry. Could you say that one more time?

Mr. GREEN. That phosphates in manure are not now nor have they ever been equivalent to harmful chemicals that CERCLA has been addressing for the last 32 years. Do you think phosphates or those type of harmful chemical in certain numbers?

Mr. STANISLAUS. Yes. I mean really those chemicals and other chemicals listed as a hazardous substance, they are listed for a reason because there are underlying studies that show a risk and impact if it is above a certain level of concentration.

Mr. GREEN. OK. Congressman Long's statement talked about measuring ammonia from open-air beef cattle feedlots is impractical since there is no pipe or any other way to measure ammonia emissions. I have in our district lots of industrial capacity and most of my plants now do fence-line monitoring. Could we see the same type of fence-line monitoring if you had a huge feedlot operation for testing for ammonia like we test for other releases?

Mr. STANISLAUS. We don't currently envision that. I mean that is not part of the rule that we are talking about.

Mr. GREEN. But that is what happens. Like I said, I have refineries and chemical plants who, in the last 10 years, have adopted that simply because they want to know what they are going to blamed for——

Mr. STANISLAUS. Yes.

Mr. GREEN [continuing]. Instead of their neighbors since they are literally fence line to fence line. But that is a way that you can measure ammonia from a facility?

Mr. STANISLAUS. Well, yes. But again we are not proposing that at the moment.

Mr. GREEN. On the recycling bill, I share your concerns about the surveys being voluntary. Can you elaborate on why these concerns, if we make them mandatory, would these specific authorities that would need to be included in the legislation for you to carry out your study?

Mr. STANISLAUS. Well, very simply, I think the good intent of a bill is to provide more granular data from a variety of sources. So some of those sources are State and local governments, some of them are industry, and some of the data is industry-to-industry. So

to really provide the kind of information, the granular, that industry wants and other sectors want, we would need to have a comprehensive set of data. So we have data gaps that really cut against the intended nature of really advancing the environmental economic protections of that. So without that, I don't see how the goals would be met.

Mr. GREEN. Well, and you could end up with just self-selection and really holes in your data that you couldn't really address effectively.

Mr. STANISLAUS. That is right. Some industries, some companies voluntarily put that information up and others would not, but we would not be able to make an industry-specific judgment that is statistically significant in some cases if we have data gaps.

Mr. GREEN. OK. The 2012 Interior/Environment Appropriations Act Congress directed EPA to report to Congress on development of a process to collect additional data on recovery rates achieved by U.S. recycling programs. That report was due in March of this year. Do you know the status of that report?

Mr. STANISLAUS. Yes, that was submitted on that day. That was submitted, yes.

Mr. GREEN. OK, thank you.

Mr. Chairman, I don't have any other questions.

Mr. SHIMKUS. Gentleman's time is expired.

The chair recognizes the vice chairman of the committee, Mr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you. Welcome here.

I understand EPA identified better collection of data on recycling as an issue in your fiscal year 2012 justification on appropriations. In addition, I understand that in the fiscal year 2012 appropriations bill Congress directed the EPA to develop a plan to collect better information and report on that to Congress. Finally, I understand that EPA has solicited public comment on what information you should include in your Municipal Solid Waste Characterization Report. So first of all, if you and Congress agree this is important, when can we expect the report to Congress on improving recycling data? When can we expect that?

Mr. STANISLAUS. Yes, so the report has already been submitted per the congressional direction. We are advancing more granular data versus a characterization study. We did a Federal Register Notice. We solicited comments from a variety of stakeholders and gradually expanding the data collection under that report.

Mr. SHIMKUS. So if the gentleman would yield.

You have given an initial response but it is going to be a fuller analysis. Is that what you are testifying?

Mr. STANISLAUS. Well, we——

Mr. SHIMKUS. You are talking about granular.

Mr. STANISLAUS. Yes, so I just want to make sure I understand the question.

Mr. MURPHY. I would like to know what granular means. Is it the full report?

Mr. STANISLAUS. So we submitted a report per congressional direction this year. You know, as identified in that report, we identified the need to have better data, particularly data that goes beyond historic recycling and really looks at what we call material

management opportunities and where can we look at opportunities to reuse and reengineer. So we solicited comments with a Federal Register Notice. We are in the midst of evaluating that and our intention is, with respect to the data collection and the report that we issue publicly biannually, to have an expanded set of data.

Mr. MURPHY. So that full report is done or not done?

Mr. STANISLAUS. Yes. We are talking two reports. The report to Congress is done.

Mr. MURPHY. OK.

Mr. STANISLAUS. The MSW Characterization Report, we issue that——

Mr. MURPHY. And you responded to all the public comments, too?

Mr. STANISLAUS. State that again.

Mr. MURPHY. Have you responded to the public comment on the matter?

Mr. STANISLAUS. We are in the midst of evaluating that——

Mr. MURPHY. OK.

Mr. STANISLAUS [continuing]. Before that, yes.

Mr. MURPHY. Can you detail the steps that EPA is taking to improve your existing Municipal Solid Waste Characterization Report? Can you detail for us, can you give information on the steps that EPA has taken to improve the existing Municipal Solid Waste Characterization Report?

Mr. STANISLAUS. So I mean it is contained in the report. I can follow up on that.

Mr. MURPHY. OK. Does the administration consider private sector recycling part of the green economy on green jobs?

Mr. STANISLAUS. Oh, absolutely.

Mr. MURPHY. It does? OK. And why hasn't EPA, through your next report—though your next report is due—why isn't EPA improving this data? I am still confused in terms of how you are working this.

Mr. STANISLAUS. Well, that is exactly the point. Our effort currently is to actually improve the data with the real focus on identifying reuse opportunities and reengineering opportunities because, you know, we have heard from lots of industries who have told us that that information will be critical for them to make informed judgments.

Mr. MURPHY. OK. Let me shift to another thing about electronics recycling initiatives if I could. Would you support electronic recycling initiatives that violate our trade obligation under the WTO?

Mr. STANISLAUS. I guess I am not informed enough with respect to the international——

Mr. MURPHY. You can get back to us on that?

Mr. STANISLAUS. I can get back to you on that.

Mr. MURPHY. Thank you. Does EPA have existing authority to conduct the study called for in the Discussion Draft on these things?

Mr. STANISLAUS. The study called for in the Discussion Draft? I would say we have general authority but I guess not as specific as set forth in the bill.

Mr. MURPHY. How much funding will the expanded study—do you have any idea how much funding is going to be necessary to do that?

Mr. STANISLAUS. Well, we took a look at the estimate, the amount set forth in the bill and we believe that is inadequate. You know, our estimate is roughly about $800,000 a year to do that, as well as within the timeline is too restricted to complete the job. We think 2 years will not be enough to really do the kind of rigorous data collection that is set forth in the bill.

Mr. MURPHY. Thank you, Mr. Chair, and I will submit other questions for the record. Thank you.

Mr. SHIMKUS. I thank my colleague.

Now the chair recognizes the chairman emeritus, Mr. Dingell, for 5 minutes.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy.

Yes or no answers if you please.

If manure is consolidated into a big lagoon, does EPA consider that circumstance a naturally occurring substance in its unaltered state from a location where it is naturally found? Yes or no?

Mr. STANISLAUS. Well, I would have to ask within the answer to this be the CERCLA authority. CERCLA authority would not attach to that circumstance.

Mr. DINGELL. Thank you. Has EPA ever responded to the release of a naturally occurring substance? Yes or no?

Mr. STANISLAUS. No.

Mr. DINGELL. Do you have any plans to do so?

Mr. STANISLAUS. No.

Mr. DINGELL. Is EPA aware that substances such as phosphorous are added to the feed at animal feeding operations? Yes or no?

Mr. STANISLAUS. I guess I am not specifically aware but I am sure my staff is.

Mr. DINGELL. OK. Were the Waco and Tulsa examples, situations where local governments were trying to recover response costs for protection of drinking water supplies from contamination caused by dairy or other animal feeding operations? Yes or no?

Mr. STANISLAUS. I am not specifically aware of that litigation. We were not involved in that. That is my understanding——

Mr. DINGELL. But it was an action by the local governments——

Mr. STANISLAUS. That is right.

Mr. DINGELL [continuing]. To protect their water supplies and the public health, is that not so?

Mr. STANISLAUS. That is what has been represented. We were not involved in that.

Mr. DINGELL. And it was causing substantial amounts of algal bloom, phosphorous, and other pollution of the waters of Lake Waco and the people in the area who used that for their water supply, is that right?

Mr. STANISLAUS. Again, I am not intimately familiar with the facts.

Mr. DINGELL. All right. Is EPA aware of any small farm operations as opposed to large-scale industrial AFOs that have triggered the reporting requirements for ammonia and hydrogen sulfide? Yes or no?

Mr. STANISLAUS. Well, the reporting requirements currently strictly apply to large CAFOs.

Mr. DINGELL. All right. EPA finalized an exemption in December 2008 which exempted hazardous substance releases from animal

waste from the reporting requirement. Therefore, no data has been reported since that time. Is that true?

Mr. STANISLAUS. Yes, data under CERCLA 103, that is correct.

Mr. DINGELL. The air emission monitoring study was supposed to take 2 years but the draft development of emissions estimating methodologies for lagoons and basins at swine and dairy animal feeding operations reported that additional analysis is needed. Is there any data that shows that the broad exemption in the bill before is justified? Yes or no?

Mr. STANISLAUS. We are in the process of evaluating that data. We have not made a conclusion.

Mr. DINGELL. But you do not have the data because the study is not available to you, is that right?

Mr. STANISLAUS. Well, there is a separate study that a separate office of EPA is conducting with data from various industrial sources.

Mr. DINGELL. All right. Has any public agency determined that a public health hazard existed based on the release of hydrogen sulfide at a dairy farm or other animal feeding operation? Yes or no?

Mr. STANISLAUS. I don't know whether a public health agency has made that——

Mr. DINGELL. You know of none?

Mr. STANISLAUS. I know of none, no.

Mr. DINGELL. Now, Mr. Chairman, we are in an extraordinarily dangerous situation. On one hand, we have a reporting exemption that has prohibited collection of any data for over 3 years. On the other hand, we know that the Agency for Toxic Substances and Disease Registry has previously testified before this panel that there was a public health hazard as a result of high levels of hydrogen sulfide at a dairy farm in Minnesota. I do not believe that we need a broad exemption from reporting where we know that there is at least one significant problem.

Now, if you have a big animal feed operation, i.e., one of these gigantic hog farms or a tremendous, large animal operation like you would find at Monfort out around Longworth, Colorado, you can smell that damn thing 40 miles away. Approximately what size city would have that much manure flowing through its waste treatment system?

Mr. STANISLAUS. What size city?

Mr. DINGELL. Yes.

Mr. STANISLAUS. I am not sure that——

Mr. DINGELL. The huge hog farm there got thousands of hogs, you got a huge beef lot, how many animals would be at those and what would be the amount of the manure that would be collected there? And how would that equate to the size of a city, say Minneapolis or Cedar Rapids or Muskegon or Detroit?

Mr. STANISLAUS. I can get back to you with respect to data.

Mr. DINGELL. I would like to have that. Please give us a table if you could——

Mr. SHIMKUS. Gentleman's time——

Mr. DINGELL [continuing]. Of just how much manure is out there and what you do to a city if it had that kind of operation, risking both air and water pollution?

Mr. Chairman, I thank you for your courtesy.

Mr. SHIMKUS. The gentleman's time has expired.

The chair now recognizes Mr. Harper for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman.

EPA received $9.5 million for waste minimization and recycling in 2012 and the Obama administration requested EPA about this same amount for fiscal year 2013. At the same time, you said that you want to focus on sustainable materials management.

Mr. STANISLAUS. Um-hum.

Mr. HARPER. So my first question is don't you agree that if EPA wants to be a leader on this issue, you need good information about how materials are being recycled currently?

Mr. STANISLAUS. Absolutely.

Mr. HARPER. And are you telling me that you can't spend $400,000 a year for 3 years from within your current appropriations level to help get better information to solve problems you say you want to solve?

Mr. STANISLAUS. Well, as I testified earlier, we in fact have collected information and plan to include that as part of our characterization report.

Mr. HARPER. If you break down that figure, it comes to about $182 per employee——

Mr. STANISLAUS. Um-hum.

Mr. HARPER [continuing]. So how do those folks even know what they should be focusing on if they don't understand how that existing recycling system works?

Mr. STANISLAUS. Well, we have a significant amount of data that we report on regularly that is used by industry, used by local government to identify economic and environmental opportunity. And we also recognize that additional and more precise data would be beneficial to advance the recycling market, and that is our intention to do so.

Mr. HARPER. All right. Let me ask this. Does the administration consider private sector recycling part of the green economy or green jobs it is trying to promote?

Mr. STANISLAUS. Well, I mean clearly recycling by private industry is critically important. We work with industry all the time. We recognize the economic environmental value of that. In fact, we have ongoing conversations with industry to advance that.

Mr. HARPER. My next question would be I understand that the EPA does not have an approved information collection request under the Paperwork Reduction Act for recycling data. That means that your current report on solid waste and recycling can only rely on published information collected from I believe no more than nine people. Is that correct?

Mr. STANISLAUS. I am not sure that is correct but I will get back to you on that——

Mr. HARPER. OK.

Mr. STANISLAUS [continuing]. In terms of the sources of data that we use for the characterization study.

Mr. HARPER. Is the information asked of in the Discussion Draft already requested and published by EPA?

Mr. STANISLAUS. Well, if you are asking how the bill compares with the data we current collect, you know, we acknowledge that,

one, there is aggregate data that we are currently going by and clearly the ability to collect more data is important. We also identified earlier in my testimony that if we focus on just voluntary data, it is still going to leave a gap in terms of the comprehensiveness of the data.

Mr. HARPER. I just want to be clear. Are you saying that you only surveyed nine people——

Mr. STANISLAUS. No, that is not——

Mr. HARPER [continuing]. Or you didn't or you don't know in this recycling——

Mr. STANISLAUS. Well, I believe the nine people relates to whether you do or do not need information collection provision. This is developed over many years so our sources include local and State government, as well industry. In terms of our total sources of data, I will get back to you on that.

Mr. HARPER. Well, you know, I am just curious if there are just a few surveys that were done and then there was an extrapolation done and based upon that information or how that came about.

Mr. STANISLAUS. It is a yearly collection of data from multiple sources.

Mr. HARPER. OK. You say that you use the materials flow methodology to estimate the amount of recycling nationwide using estimates of goods produced and materials discarded or recycled and trying to do a mass balance. How can that method tell you anything about recycling systems?

Mr. STANISLAUS. Well, based on data we collect, we analyze the systems and some of those systems are dependent on various kinds of industries, so based on the data we extrapolate and do systems-based analysis.

Mr. HARPER. Is it safe to say or fair to say that we really don't know where recycled material is coming from?

Mr. STANISLAUS. No, I wouldn't say that. I think we have a fairly good feel for recycling and various industries and opportunities for recycling in various industries. We have ongoing conversations with numerous industries that want to promote that. Clearly, more data will help advance the opportunities in recycling.

Mr. HARPER. So are you able to give us a breakdown of where the recycled material comes from across——

Mr. STANISLAUS. Sure. Sure. In fact, we submitted a report to Congress and we could provide you that characterization study any supplements to that.

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

Mr. SHIMKUS. The gentleman yields back.

The chair now recognizes the ranking member of the full committee, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

Proponents of this legislation have said that Superfund was never meant to address manure and that it is not needed to address contamination from manure. This is simply not true. The legislative history of Superfund shows that manure was considered and Superfund has been used to address contamination from manure and could be an essential tool in addressing potential future contamination. On May 19, 2000, EPA issued a Notice of Violation to the Nation's second-largest pork producer, Premium Standard

Farms, for failing to comply with release reporting obligations in Section 103 of Superfund and Section 304 of EPCRA with respect to releases of ammonia at 12 lagoons on facilities owned by Premium Standard Farms. Is that correct, Mr. Stanislaus?

Mr. STANISLAUS. I can get back to you. I don't have the specific information in front of me.

Mr. WAXMAN. OK. Those violations were resolved in a settlement on November 19, 2001, and a payment of a civil penalty. In September 2006, EPA also filed a civil complaint against Seaboard Foods, concentrated animal feeding operation in Oklahoma for releases of ammonia. Proponents of this bill discount the importance of these emissions. Can you explain how a community would experience an ammonia release that drifts through its neighborhood?

Mr. STANISLAUS. Well, I could generally describe it and get back—I mean clearly ammonia is listed as a hazardous substance because of underlying health studies that show a detriment-to-health consequence from inhaling ammonia.

Mr. WAXMAN. Well, ammonia can cause acute and long-term health effects. What I went through were examples of Federal responses to contamination from manure. States and local governments have also brought suit under Superfund based on contamination caused by manure to recover taxpayer funds spent on cleanups. The city of Tulsa, Oklahoma, brought suit for contamination under Superfund, as did the city of Waco, Texas. Both of those suits settled. The State of Oklahoma acting through the Attorney General also brought suit under Superfund to recover cleanup costs against poultry farms in Arkansas. That case is still pending.

If H.R. 2997 becomes law, will States and towns be able to use Superfund in the future to recover public funds spent cleaning up contamination from manure?

Mr. STANISLAUS. As I testified, this would prevent the use of all of CERCLA authorities, including response and abatement orders, as well as other provisions of CERCLA.

Mr. WAXMAN. You testified, Mr. Stanislaus, that a large manure waste lagoon could fail and present a substantial danger to public health and the environment. In such a case, if this bill were enacted, what impact would H.R. 2997 have on EPA's ability to require a response to such a spill?

Mr. STANISLAUS. Well, one, we would not be able to issue an abatement order against the responsible party to immediately ameliorate that public health risk. Separately, if a responsible party was not willing to do so, it would prevent us from using our resources to prevent that immediate risk to public health.

Mr. WAXMAN. As I understood the testimony from Representative Long, he said he wanted to preserve existing authorities and requirements just argue we don't need new ones. These authorities and requirements under Superfund that we have discussed are existing authorities, aren't they?

Mr. STANISLAUS. That is correct.

Mr. WAXMAN. And they have been since 1980, is that right?

Mr. STANISLAUS. That is right.

Mr. WAXMAN. So turning quickly to the recycling bill, I expect that we will hear concerns from later panels and information voluntarily given to EPA about municipal waste streams will not be

protected appropriately from disclosure. If a company or trade association submitted confidential business information to EPA in the context of the MSW Characterization Report or in any other context, what protections would the Agency provide for that CBI?

Mr. STANISLAUS. We have an existing process where if a company claims confidential business information, we evaluate whether that is or not and engage the company. So there is an existing rigorous process to protect proprietary information.

Mr. WAXMAN. OK. Thank you very much, Mr. Chairman. I will yield back my time.

Mr. SHIMKUS. The gentleman yields back his time.

The chair recognizes the gentleman from Colorado, Mr. Gardner, for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman.

And thank you, Mr. Stanislaus, for being here today.

In your opening statement you stated that, "as discussed above, we believe EPA's 2008 final rule"—it goes on to talk about CERCLA, EPCRA—"has addressed concerns raised by the farm sector." Is the farm sector supportive of this provision?

Mr. STANISLAUS. The bill?

Mr. GARDNER. You are talking about some of the things I think in your opening statement—I wrote it down—where you talked about the EPA acting in response to concerns raised by the farm sector.

Mr. STANISLAUS. You are talking about the 2008 rule?

Mr. GARDNER. Right.

Mr. STANISLAUS. Yes, I think it reflects their comments in terms of particularly ensuring the small farmer's burdens are addressed.

Mr. GARDNER. OK. So the farm sector supports the 2008 rule?

Mr. STANISLAUS. Well, we have heard from lots of farms and I think particularly it recognizes the small farms' issues. So——

Mr. GARDNER. So the farm sector supports the rule, then?

Mr. STANISLAUS. Well, again, we have had multiple stakeholders and I am sure that is many segments of—particularly the small farmers support that provision.

Mr. GARDNER. What is a small farm to you?

Mr. STANISLAUS. Well, small farms are those that are defined in the Clean Water Act. These are not concentrated animal feeding operations. They are below that size. And I can give you the specific details based on the——

Mr. GARDNER. So people who don't have feedlots then basically?

Mr. STANISLAUS. I am sorry. Say it again.

Mr. GARDNER. So they don't have feedlots? That is what you are describing as a small farm is somebody without a feedlot?

Mr. STANISLAUS. Well, someone without basically an industrial level animal feeding operation.

Mr. GARDNER. What is an industrial level——

Mr. STANISLAUS. Well, it is defined based on the various kinds of animals used and we could give you a list of what those definitions are.

Mr. GARDNER. Have you ever been to a concentrated animal feeding operation?

Mr. STANISLAUS. I have been adjacent to them, yes.

Mr. GARDNER. But have you been onsite? Have you been on one?

Mr. STANISLAUS. Not in it, but adjacent to it, yes.

Mr. GARDNER. Adjacent? What do you mean? You have driven by one?

Mr. STANISLAUS. No, I have walked in the periphery of that, the fence line of that.

Mr. GARDNER. So you have seen a feedlot? You have gone through it?

Mr. STANISLAUS. I have.

Mr. GARDNER. OK, very good.

A couple of questions for you. In considering and requiring all CAFOs to report emissions of ammonia and hydrogen sulfide under CERCLA, you are considering that right now?

Mr. STANISLAUS. Well, we are first looking at data as well as estimating methodologies with industry and other stakeholders to make sure that we are able to estimate their emissions first. Based on that, that is going to inform our rulemaking. So we have not come to any conclusion on that.

Mr. GARDNER. But you are considering it then?

Mr. STANISLAUS. Well, yes. We issued a Federal Register Notice regarding that.

Mr. GARDNER. In your October 2011 Proposed Clean Water Act Section 308 rule that you were talking about using this reporting rule to gain information for livestock operations, it implies that you are considering wrapping all livestock operations under these reporting rules. And I certainly hope that that is not the path that you are planning on going down?

Mr. STANISLAUS. Yes, I am not familiar with that specific provision.

Mr. GARDNER. Do open-air cattle feedlots present an emergency situation?

Mr. STANISLAUS. Not inherently. Again, as I testified earlier with respect to this bill, what we want to preserve is those limited circumstances where there could be a catastrophic kind of failure that results in potential public health and environmental risk.

Mr. GARDNER. And so what is it that responders are going to respond to at a feedlot?

Mr. STANISLAUS. So just to be clear, during the 2008 rule development, what I was articulating earlier is that from a need-to-know information, particularly of large CAFOs, emergency responders, local government officials noted that they need to know, particularly these large facilities so they can have the infrastructure in place to respond should there be a release of a significant quantity.

Mr. GARDNER. So I live in a small town of about 3,000 people in the eastern plains of Colorado. It is no longer the Monfort feedlot but it is certainly still in existence outside of my town. It is a very large operation, employs a great number of people. And so my volunteer fire department, the first responders there, would they be equipped with a HAZMAT operation to deal with this proposed emergency situation? Is that what you are trying to get at?

Mr. STANISLAUS. Well, generally, emergency responders need to know the kind of equipment based on what is within their jurisdiction. So it is going to be tailored around the potential releases and making sure the proper equipment.

Mr. GARDNER. So what would that proper equipment be for my local police department or fire department for the feed lot down the road?

Mr. STANISLAUS. Well, it is various kinds of cleanup equipment. Cleanup equipment varies depending on the kind of releases. You know, so I can get back to you with the specific kinds——

Mr. GARDNER. Well, what kind of a release do you anticipate happening?

Mr. STANISLAUS. No, again, with respect to the particular issue we are talking about, we want to preserve the ability—we have a catastrophic failure that impacts, for example, drinking water sources, impacts residents, then making sure that we can immediately clean that up——

Mr. GARDNER. This is like a cloud of ammonia you anticipate moving toward town?

Mr. STANISLAUS. No, what I was specifically referring to is a major CAFO having a breach and significant volumes that impacts drinking water source and being able to clean that up so it doesn't compromise public health.

Mr. GARDNER. I see my time has expired. One last question, Mr. Chairman, if you will indulge.

Are you using aerial surveillance right now to monitor CERCLA compliance with CAFOs?

Mr. STANISLAUS. Well, yes, I think that the Agency has made a statement regarding its aerial surveillance and we could provide that to you.

Mr. GARDNER. So you are using——

Mr. SHIMKUS. Thank you——

Mr. STANISLAUS. Well, again, the Agency has made a statement and it doesn't come under my jurisdiction.

Mr. SHIMKUS. Thank you. The gentleman's time has expired.

We now recognize the gentleman from North Carolina for 5 minutes, Mr. Butterfield.

Mr. BUTTERFIELD. Thank you, Mr. Chairman. And thank you, Administrator, for your testimony today.

Continuing to improve our country's recycling programs is an important issue for many of our colleagues, and certainly it is important for me. It is important for the district that I represent in eastern North Carolina.

EPA currently reports the amount of materials recycled each year by collecting information made publicly available by recycling stakeholders and municipalities. The EPA has expressed interest in collecting more extensive data about recycling and has been soliciting public comments. And so I just wanted to say for the record that I look forward to working with the EPA to identify the most effective way to generate accurate and useful information to improve our recycling programs.

I am also pleased the subcommittee is discussing agriculture, very important to my district, agriculture, which accounts for nearly $70 billion annually to North Carolina's economy. I appreciate your testimony on this and other subjects as well.

Let me just ask you, Administrator, let me start with this very quickly. Does EPA intend to take into consideration views of the

agriculture community and the other stakeholders when revising the rule?

Mr. STANISLAUS. We are already in conversations with them, yes. So the answer is yes.

Mr. BUTTERFIELD. All right. Can the EPA issue orders to require response for damaging releases of hazardous substances from manure using other statutes such as the Clean Air Act or the Clean Water Act, the Resource Conservation and Recovery Act or FIFRA? Are there other statutes that you can depend on?

Mr. STANISLAUS. Not to conduct an immediate cleanup.

Mr. BUTTERFIELD. You mentioned that manure is not a hazardous substance. You agree on that, is that correct?

Mr. STANISLAUS. Say again.

Mr. BUTTERFIELD. Manure is not a hazardous——

Mr. STANISLAUS. That is right.

Mr. BUTTERFIELD [continuing]. Substance according to your definition.

Mr. STANISLAUS. That is right.

Mr. BUTTERFIELD. Is manure the only nonhazardous substance under the jurisdiction of the Superfund?

Mr. STANISLAUS. Well, again, manure is not listed as a hazardous substance so I guess I am not clear about your question.

Mr. BUTTERFIELD. Well, let me read it again. You mentioned that manure is not a hazardous substance.

Mr. STANISLAUS. That is right.

Mr. BUTTERFIELD. Is manure the only nonhazardous substance under the jurisdiction of CERCLA and EPCRA or do you have other examples?

Mr. STANISLAUS. Well, again, as CERCLA is constructed, there is a list of hazardous substances so it could be a contaminant that is not a hazardous substance that we could use our authorities to do cleanup.

Mr. BUTTERFIELD. Can EPA designate a farm a Superfund site in the future prospectively?

Mr. STANISLAUS. As I have testified, that is not something we have done or plan to do again because manure is not a listed hazardous substance.

Mr. BUTTERFIELD. That was in response to Mr. Dingell's question earlier I believe?

Mr. STANISLAUS. Yes.

Mr. BUTTERFIELD. Are there any barriers in place that prevent the EPA from conducting more voluntary surveys about recycling? Are there any barriers?

Mr. STANISLAUS. I don't believe there are explicit barriers but there are procedures that we need to go through to collect information.

Mr. BUTTERFIELD. Have you evaluated the usefulness of voluntary surveys?

Mr. STANISLAUS. Well, yes. In fact, we in fact do that currently as part of our efforts.

Mr. BUTTERFIELD. All right. I think I will stop right there. I yield back. Thank you.

Mr. STANISLAUS. Thank you.

Mr. SHIMKUS. The gentleman yields back his time.

The chair now recognizes the gentleman from Louisiana, Mr. Cassidy, for 5 minutes.

Mr. CASSIDY. Hey, Mr. Stanislaus. How are you?

Mr. STANISLAUS. Good, how you are doing?

Mr. CASSIDY. I am good, thank you.

I am interested in the recycling almost as a discussion of the topic because I am trying to understand it. It almost seems like it is such a moving target that you may take a snapshot of what recycling activity takes place, but if somebody suddenly puts a premium on aluminum cans, it is going to dramatically increase aluminum can recycling. And if that occurs just after your snapshot, then your data are dated. And I am saying that not to accuse or anything, just to kind of ponder.

Similarly, I think I see in the bill that the use of recycled material to develop energy if you will, waste burning, is not included in the bill but if you have a cost differential that would say burn a plastic bottle for its potential energy as opposed to recycle, you are going to shunt one way versus the other. Does that make sense?

Mr. STANISLAUS. Well, clearly those decisions are made on a regular basis today.

Mr. CASSIDY. Correct.

Mr. STANISLAUS. Yes, and it is based on the price value of reusing one direction or the other and commodity prices vary. So there is a regular shift based on that.

Mr. CASSIDY. I don't want to seem nihilistic, but it almost seems more important for you to look at the variables that would influence recycling than to do a particular measure of how much we recycle.

Mr. STANISLAUS. Well, we do both, so really the intention of looking at materials more holistically as we are doing right now, it is to not only look at the historic recycle waste stream but really look at various industrial sectors and how to really maximize sometimes closed-loop, sometimes reengineering from third parties, so looking at recycling in the economy overall.

Mr. CASSIDY. So I accept that. And so again it almost seems like the measuring at a point in time, what is happening, is far less important than helping a business optimize their use of recycled material to decrease marginal cost. Does that make sense?

Mr. STANISLAUS. Well, I do think that partially makes sense but in our conversations—and I am sure you are going to hear from panelists later on—I think it is fair to say that numerous industrial sectors, as well as State and local governments in terms of really identifying the opportunities and how to put in place infrastructure and make decisions, they would welcome EPA's data to help inform those decisions.

Mr. CASSIDY. But you seem to be agreeing with me that if you wanted to have more use of something as opposed to going to a landfill, it doesn't really matter as much to measure the amount going into the landfill as much as to measure the potential benefit from either burning it for energy combustion or for recycling at a certain given price.

Mr. STANISLAUS. Well, I think we want to take a comprehensive look at the materials field. And so looking at what goes in a landfill is an indicator of success or failure and so if you track it over time,

you could see how effective your upstream actions have been. And have you in fact been successful in putting in place the kinds of programs so that industry can take advantage? So there is a net reduction to landfill. So I would argue that you need to have a full lifecycle of information and data.

Mr. CASSIDY. I could almost see, though, that the price they are paying for aluminum cans would give you the same information. If there is a lot of aluminum cans, they are not paying very much, but if there are few, they are going to pay more for that which they get.

That said, in your testimony you said that you would like to have the ability to require entities to produce certain information to make your analysis more robust I assume. I am just asking who would be required to produce this and what amount of information would they be required to produce and how onerous would be that requirement?

Mr. STANISLAUS. Yes, you know, what I testified is where the proposed bill relies exclusively on voluntary information, I think exclusively relying on voluntary information inherently means that you will have some data gaps. So I would say it constrains the ability to meet the overall——

Mr. CASSIDY. I am almost out of time——

Mr. STANISLAUS. OK.

Mr. CASSIDY [continuing]. But, again, I am concerned that we are going to put some small municipality under a great burden of reporting requirements. So who would be required and how much, how onerous would be the requirements?

Mr. STANISLAUS. Well, I would say that where the greatest data sources are and where I think both the various aspects—the recycling industry and prospective recycling industry—would benefit is again a granular level of data from industry-to-industry recycling opportunities. So I will leave it all to——

Mr. CASSIDY. So not just municipal dumps but also a manufacturing outfit that leaves scrap metal on the floor?

Mr. STANISLAUS. Well, that is where I see the greatest opportunity is the industry-to-industry opportunity.

Mr. CASSIDY. OK, but still how onerous would it be? Do you see what I am saying? That is the key thing.

Mr. STANISLAUS. Sure, that is a fair point.

Mr. CASSIDY. Yes.

Mr. SHIMKUS. The gentleman's time is expired. I will tell you that as the chair of the Recycling Caucus, it is not industry who is—you don't have to worry about recycling. They are going after everything and they leave nothing on the floor. And the importance of this debate is really the municipal side, what is being left on the table through the municipal waste stream.

So Mr. Stanislaus, thank you for your time. As per tradition, 10 days you may get additional questions submitted for the record. If you would reply based upon Members' written questions during that period of time, we would appreciate it.

Also, I would like to get a list of programs that receive voluntarily submitted information that the EPA has. You may——

Mr. STANISLAUS. On the recycling side?

Mr. SHIMKUS. Overall.

Mr. STANISLAUS. I am sorry. Say that one more time. I am sorry.

Mr. SHIMKUS. You stated in the question that there are programs in which you receive voluntary information so I would like to know what type of programs are getting voluntary information and how you are gathering that data and what it is used for.

Mr. STANISLAUS. OK.

Mr. SHIMKUS. And with that, seeing no other questions, you are allowed to leave. And we will empanel the third panel. Thank you for your time.

Mr. STANISLAUS. Thank you.

Mr. SHIMKUS. We want to welcome everybody. It almost felt a little schizophrenic bouncing back and forth between two bills.

This third panel is based upon the recycling portion of the hearing, so we are happy to get back singularly focused. And with that, your full statements are submitted for the record. You will get 5 minutes.

I am going to welcome you all first and then we will go to you individually for your opening statements.

With us on the third panel is Mr. Charles D. Johnson, Vice President, Environment, Health, and Safety of the Aluminum Association, Inc; also Ms. Lynn Bragg, President of the Glass Packaging Institute; Mr. Jonathan Gold, Senior Vice President, Recovery and Recycling Division of the Newark Group; and then Mr. John Skinner, Executive Director of the Solid Waste Association of North America. Again, we welcome you all. And we will start with Mr. Johnson for a 5-minute opening statement.

STATEMENTS OF CHARLES D. JOHNSON, VICE PRESIDENT, ENVIRONMENT, HEALTH, AND SAFETY, THE ALUMINUM ASSOCIATION, INC.; LYNN M. BRAGG, PRESIDENT, GLASS PACKAGING INSTITUTE; JONATHAN GOLD, SENIOR VICE PRESIDENT, RECOVERY AND RECYCLING DIVISION, THE NEWARK GROUP, ON BEHALF OF THE PAPER RECYCLING COALITION; AND JOHN H. SKINNER, EXECUTIVE DIRECTOR AND CHIEF EXECUTIVE OFFICER, SOLID WASTE ASSOCIATION OF NORTH AMERICA

STATEMENT OF CHARLES D. JOHNSON

Mr. JOHNSON. Chairman Shimkus, Ranking Member Green, and members of the committee, thank you for this opportunity to testify. My name is Charles Johnson; I am the vice president of Environment, Health, and Safety with the Aluminum Association. We are the trade association representing U.S. aluminum producers, recyclers, and industry suppliers. On behalf of our industry, I would like to commend Congressman Sullivan for offering this draft bill and his continued efforts to increase recycling as a critical piece of U.S. energy and sustainability efforts.

The U.S. aluminum industry believes this legislation is critical because recycling is a source of sustainable, private sector-driven green jobs; recycling is a vital part of energy efficiency and should be part our Nation's energy solutions; and the collection of better waste and recycling data, facilitated by this legislation will allow consumers, policymakers, and industry to more rapidly achieve higher recycling rates.

In 2010, Americans recycled $1.6 billion in aluminum cans. If the industry's beverage can recycling goal of 75 percent was achieved, the payback to American consumers would be $2.1 billion. Aluminum's infinitely recyclable nature means scrap metal has high value, and the processing and recycling of the metal yields a significant impact on the economy and in job creation.

Market trends are leading all recycling industries to take back more recycled materials but this material is not always available. At the same time, the American public is demanding more environmentally responsible solutions. Wal-Mart, Target, and many others are demanding increasingly sustainable packaging with higher environmental benefits. The demands for those benefits are part of a larger shift in consumer preferences and this is becoming as important to our industry as access to raw materials.

Our industry views the Increasing Manufacturing Competitiveness through Improved Recycling Act of 2012 as a critical next step in advancing the practice of recycling and improving operating efficiency and environmental impact for the aluminum industry. Thirty-nine percent of consumers have said they are confused about what is good or bad for the environment. Quality data allows consumers, as well as industry and policymakers, to successfully examine new proposals and plans for improving recycling using facts and not suppositions.

Aluminum recycling provides a massive opportunity for energy efficiency. The metallic, elemental nature of aluminum means that it is infinitely recyclable. It can be recycled over and over with no loss of quality or down-cycling. In fact, 75 percent of all aluminum ever produced since 1888 is still in use today. Recycling aluminum saves 95 percent of the energy and emits only 5 percent of the greenhouse gases associated with primary aluminum production. In the simplest form, our business case for recycling is based on the fact that increasing recycling increases energy efficiency. The aluminum industry's position in favor of recycling is not green washing; it is green business.

The most widely recognized application for aluminum is the beverage can. The aluminum can is the most recycled beverage container in America. In an average can, 68 percent is recycled content, the highest amount of any beverage container. In 2010, 58 percent of aluminum cans were recycled in the United States. This bill, to improve our understanding of municipal recycling, is vital for our industry to bring consumer recycling in line with aluminum recycling in other sectors, which is greater than 90 percent. It will also be vital to help our understanding of how we might raise our can recycling rate to the level of other countries, many of which are in the area of 90 percent or higher.

Our industry has established a goal of reaching a 75 percent aluminum can recycling rate by 2015. We are engaged in various initiatives, including establishing and funding a new organization called the Curbside Value Partnership with other materials manufacturers. CVP works with municipalities to increase consumer participation in existing recycling programs. Our evaluation of the program indicates that it routinely results in a 17 percent increase in household participation, translating into a 22 percent increase in tons of recycled materials. Data generation and analysis is a re-

quirement for cities implementing this program and is a key to the program's success.

A robust material tracking and data gathering system is necessary because of the complexities of materials recycling value chains. For example, differences in material weights and scrap value complicate consumer behavior choices. Aluminum's material characteristics of high strength to weight and corrosion resistance allow for uses that weigh less than other materials performing the same job. Then measuring recycling by comingled weight undercuts the full benefit of aluminum recycling to the environment and its subsidizing role in most curbside programs. This is just one of many considerations which improved municipal waste data could influence.

The aluminum industry is committed to increasing recycling because it is good business and good for the environment and recycling efficiency should be a key consideration in our country's energy strategy. For these reasons, the aluminum industry is ready to work with EPA to improve our understanding of the waste and recycling streams.

There are many proposed solutions to increasing recycling in America, but industry and policymakers first need the best data possible to understand which method is best.

I look forward to answering questions. I would thank the committee again and the chairman. And thank you.

[The prepared statement of Mr. Johnson follows:]

Chairman Shimkus, Ranking Member Green and Members of the Subcommittee on Environment and the Economy:

Mr. Chairman, thank you for the opportunity to testify before this committee today. My name is Charles Johnson and I am the Vice President for Environment, Health and Safety at The Aluminum Association. The Aluminum Association is a membership trade association representing U.S. aluminum producers, recyclers, and industry suppliers. I am responsible for the Association's efforts to limit the impact of our industry on the environment while increasing the positive impacts on the economy.

Before moving further with my statement, on behalf of industry I want to commend Congressman Sullivan for offering this draft bill and his continued efforts to increase recycling as a critical piece of U.S. energy and sustainability efforts.

The U.S. aluminum industry believes this legislation is critical because:

- Recycling is a source of sustainable, private sector driven green jobs;
- Recycling is a vital part of energy efficiency and should be part of our nation's energy solutions;
- The collection of better waste and recycling data, facilitated by this legislation will allow consumers, policymakers and industry to more rapidly achieve a higher recycling rate; and
- Increasing recycling will further benefit industry, improve sustainability, contribute to our country's energy efficiency goals, decrease solid waste in landfills, and create jobs.

In 2010, Americans recycled $1.6 billion in aluminum cans. If the industry's beverage can recycling goal of 75 percent was achieved, the payback to American consumers would be $2.1 billion. Aluminum's infinitely recyclable nature means scrap metal has high value, and the

processing and recycling of the metal yields a significant impact on the economy and in job creation. Because aluminum recycling saves energy, recycling jobs are green jobs.

Marketing trends are leading all recycling industries to take more recycled materials but this material is not always available. The American public is demanding more environmentally responsible solutions. Wal-Mart, Target and many others are demanding increasingly sustainable packaging with higher environmental benefits. The demands for those benefits are part of a larger shift in consumer preferences for our products. This shift is becoming as important to industry as access to raw materials.

Our industry views the "Increasing Manufacturing Competitiveness through Improved Recycling Act of 2012" as a critical next step in advancing the practice of recycling, and improving the operating efficiency and environmental impact of the aluminum industry. Gathering basic data that is not currently available is critical for understanding the current recycling situation in America. In 1990, 39% of consumers said they were confused about what was good and bad for the environment. Quality data allows consumers, industry and policymakers to successfully examine new proposals and plans for improving recycling using facts, and not suppositions.

The U.S. aluminum industry is a great example of an industry providing a positive economic impact while mitigating negative environmental impacts. In 2009, 87 percent of the energy consumed by the North American aluminum industry was offset by energy saving achieved through the use of aluminum to make automobiles and light trucks more fuel efficient. Similarly, in 2009, 92 percent of the aluminum industry's cumulative greenhouse gas emissions could be considered to be offset from GHG emissions reductions achieved by increasing aluminum content in the transport sector. Automotive aluminum represents only 26 percent of North American sector shipments. Aluminum's use in other sectors, including building and construction, consumer durables, electrical wiring and packaging imparts greater energy and emissions saving through the material's use-phase and helps to neutralize energy usage and emissions by the industry.

The metallic, elemental nature of aluminum means that it is infinitely recyclable. It can be recycled over and over with no loss of quality. In fact, 75 percent of all aluminum ever produced since 1888 is still in use today. Recycling aluminum saves 95 percent of the energy and emits only 5 percent of the greenhouse gases associated with primary aluminum production.

Therefore, aluminum recycling provides a massive opportunity for energy efficiency. The recycling of one aluminum can saves enough energy to power a 100-watt light bulb for four hours. In the aluminum industry, recycling directly translates to energy saving. The metal of a beverage container can be thought of as solid energy and recycling saves that energy each time it is re-used instead of burying it in a landfill.

In the simplest form, the business case for increasing aluminum recycling is based on the fact that increasing recycling will increase energy efficiency. The aluminum industry's position in favor of recycling is not green washing; it's green business for us.

Over the last twenty years, the North American industry has decreased energy usage 17 percent and greenhouse gas emissions 42 percent for primary production. During the same period, recycling energy requirements and greenhouse gas emissions have gone down about 60 percent. Based on our interactions with recycling experts, waste haulers and municipal recycling facilities, we know that better information leads to more efficient recycling that maximizes environmental gain and material efficiency, while minimizing collection and reclamation costs.

The most widely recognized application for the aluminum is the beverage can. The can is the most recycled beverage container in America. In an average aluminum can, 68 percent is recycled content; the highest amount of any beverage container. The metal's infinite recyclability and high value means a beverage container goes from recycling bin and back to store shelves in less than 60 days.

In 2010, 58.1 percent of aluminum cans were recycled in the United States. This bill, to improve our understanding of municipal recycling, is vital for our industry to bring consumer recycling in line with aluminum recycling in other product sectors, which is greater than 90 percent. It will

also be vital to help our understanding of how we might raise our recycling rate to the level of other countries – many of which are in the 90 percent level or higher…more than 35 percentage points higher than that of the US.

The aluminum industry has an established goal of reaching a 75 percent aluminum can recycling rate by 2015. We are engaged in various initiatives including establishing and funding a new organization called the Curbside Value Partnership with other material manufacturing organizations and makers of packaging products. Curbside Value Partnership works with municipalities to increase consumer participation in existing recycling programs. Our evaluation of the program indicates that it routinely results in a 17 percent increase in household participation, translating into a 22 percent increase in tons of recycled materials. Data generation and analysis, a requirement that must be carried out as part of the program, is a key to that success. Cities must implement a tracking system to better understand what material is coming back and re-introduced into a new useful life; this is a critical part of the program.

A robust material tracking and data gathering system is necessary because of the complexities of materials recycling value chains. For example, differences in material weights and scrap value complicate consumer behavior choices. Aluminum's material characteristics of high strength to weight and corrosion resistance allow for uses that weigh less than other materials performing the same job. Measuring recycling by comingled weight undercuts the full benefit of aluminum recycling to the environment and its subsidizing role in most curbside programs.

The aluminum industry is committed to increasing recycling because an increased recycling rate is good for business and good for the environment. Recycling is key to the sustainability of the aluminum industry in an economic and environmental context. Recycling efficiencies should also be a key consideration in our country's energy strategy. For these reasons, the aluminum industry is ready to work with EPA to improve our understanding of the waste and recycling streams.

A more robust understanding of the quantity of materials in the solid waste stream provides industry and policymakers with the most appropriate data to develop solutions to increasing the U.S. recycling rate.

There are many proposed solutions to increasing recycling in America but industry and policymakers need data to best understand which method is best.

I look forward to answering your questions and the Aluminum Association stands ready to assist the Committee in exploring ways to advance our country's recycling goals.

Mr. SHIMKUS. Thank you.

And now I would like to have Ms. Lynn Bragg. Thank you again for appearing and you are recognized for 5 minutes.

STATEMENT OF LYNN M. BRAGG

Ms. BRAGG. Thank you, Chairman Shimkus, Ranking Member Green, members of the subcommittee. I am Lynn Bragg, President of the Glass Packaging Institute, representing the North American glass container manufacturing industry. Thank you again for inviting me.

After hearing EPA testify, some of you may be wondering why this bill is needed. Explaining how we make glass containers I think will help answer that need.

Glass is originally made from sand, soda ash, and limestone. The raw materials are melted together at extremely high temperatures in a glass furnace creating molten glass that is formed into beer, wine, and food and beverage containers. New glass containers also can be made from recycled glass or cullet. When we make new containers by adding cullet, we can operate our furnaces at a much lower temperature, reducing our energy use and emissions.

In terms of production, approximately 25 billion glass containers were made in the United States in 2010. Our member companies can make over 3 million beer bottles a day at a single plant. At each of the 48 glass container plants in 22 States, recycled glass energy savings keeps our plants competitive against increasing global competition, helps the plants comply with Clean Air Act regulations, and keeps 18,000 people employed in high-paying salaried and hourly jobs.

GPI member companies use cullet on a daily basis and compete heavily to buy it. Understanding the data behind the recycled glass we purchase and from which recycling system it comes from is a critical need for our industry. We know the majority of Americans are committed to recycling. As manufacturers, we rely on their voluntary efforts. There is a good chance that you recycle using the green or the blue bin. Have you ever wondered where the recyclables end up? We believe most people do and the same is true for the manufacturing industries that purchase these recyclables.

Currently, EPA issues a report on municipal solid waste generation, recovery, and disposal. In that report, EPA estimates the total amount of recyclables entering the municipal waste stream and the total amount recovered. However, EPA defines recovery as materials removed from the waste stream for the purpose of recycling. For glass, EPA also counts as recovery uses such as roadbed construction. Just collecting materials or using materials as roadbed is very different from the actual recycling of glass into new containers and other products such as fiberglass.

Based on EPA's current reports, we have a rough idea of how many glass containers are collected. Glass plants know how much recycled glass they buy. We know that there is a big difference between those numbers. And right now, what happens between collection and actual recovery by a manufacturer is a black box. We don't know what happens to the material that gets lost along the way. We suspect that much of it becomes what the recycling indus-

try calls residue, material lost to manufacturers after spending time and money collecting and sorting that material.

Again, why are we talking to Congress about this issue? Isn't recycling a State and local issue? We emphatically agree that it is but we also believe the Federal Government has a role in collecting and disseminating data. For example, the Commerce Department through the U.S. Census reports vital data on the production and sale of goods. That doesn't mean it regulates those activities.

We think that EPA can play an important role in recycling by collecting information and making it available to everyone. With new data points on recycling that consider manufacturing and markets, State and local governments can evaluate different options for recycling. Municipalities may want to tailor their recycling contracts to reach different outcomes, and industry may find opportunities to form partnerships to recover more recyclable materials collected.

Manufacturers frequently meet with States, local governments, the solid waste industry, brand owners, and environmental groups, and the need for better recycling data is frequently discussed. In fact, I am attending such a meeting today. We all share the goal of increasing recycling, but the first asked typically involves information, what do we know, what we don't know.

While the Discussion Draft doesn't allow EPA to force organization to respond to information requests, we think EPA will get a better response than if industry were asking the questions. We know EPA will not get perfect information but it will be an improvement. Right now, EPA issues their MSW report without an approved information collection request under the Paperwork Reduction Act. That means by law EPA can only ask nine people for information. This draft does not waive the Paperwork Reduction Act, but by requiring EPA to collect better data on recycling, EPA can go to OMB and get approval for an ICR, be able to ask more than nine people for information, and produce a report that will help all of us better understand our municipal recycling programs. I would also note that the draft is only intended to address the MSW recycling stream and not the industrial pre-scrap.

Thank you. I would be happy to answer any questions.

[The prepared statement of Ms. Bragg follows:]

Testimony of Lynn M. Bragg
President
Glass Packaging Institute (GPI)

Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012

U.S. House of Representatives Energy & Commerce Committee
Subcommittee on Environment and Economy
June 27, 2012

Chairman Shimkus, members of the Subcommittee, I appreciate the opportunity to testify today in strong support of draft legislation that would assist manufacturers, states, localities and other stakeholders in better understanding existing recycling data and related recycling collection systems, through a cooperative effort to voluntarily provide information to EPA. Recycling is a critical component of the glass container manufacturing process and is essential to numerous other industries.

The Glass Packaging Institute (GPI) is the North American trade association for the glass container manufacturers, glass recyclers, and suppliers of materials, equipment and transport to the industry. GPI member companies operate the vast majority of the 48 glass

container plants located in 22 states, and also represent dozens of glass recycling facilities. Our membership manufactures over 28 billion food and beverage containers annually, all of which are 100% and endlessly recyclable, suitable for use in the manufacture of a new glass container. To support its manufacturing activities, the glass container industry provides approximately 18,000 direct, highly paid salaried and hourly jobs in its glass container plants, warehouses and sales forces ... along with thousands more in our supplier companies across the U.S.

As an "Energy Intensive, Trade Exposed" industry, GPI member companies continue to be focused on preserving U.S. jobs by improving global competitiveness, reducing foreign energy dependency and supporting improved materials management models, many of which currently face serious economic and performance challenges.

GPI member companies are strongly impacted by the outputs of the municipal solid waste (MSW) and recycling streams. A top priority for

GPI is to divert and recycle glass containers currently in the MSW stream—rather than commit those valuable commodities to perpetual, wasteful loss by being buried in landfills--- and to ensure that as many containers as possible are re-utilized in the production of new packaging.

When glass plants can increase the levels of recycled glass as part of the overall batch mix, they can reduce furnace temperatures, resulting in reduced energy use and lower greenhouse gas emissions. Utilizing recycled glass enables our industry to compete internationally, by allowing us to produce containers more efficiently. The inclusion of recycled materials reduces energy and emissions for other energy intensive manufacturing industries.

For example - energy costs drop about 2-3% for every 10% recycled glass used in the manufacturing process. For every six tons of recycled container glass used, a ton of carbon dioxide, a greenhouse gas, is reduced. A relative 10% increase in recycled glass reduces particulates by 8%, nitrogen oxide by 4%, and sulfur oxides by 10%.

The discussion draft the Subcommittee is considering appropriately does not institute recycling goals, prescribe particular recycling programs for communities or set minimum content rates. GPI does not support federal regulation of recycling. However, GPI, along with other packaging based industries and companies have established goals to increase the use of recycled materials in the manufacturing process. Success in achieving these goals is largely dependent on the strength of the recovery systems that generate recycled materials used by the industry and as important, understanding where the recyclables collected through these programs end up.

Accordingly, GPI members are vigorously engaged at the local, state and federal levels to improve collection systems, improve the usability of quality of recyclables for manufacturers and better link collection systems with end markets.

Many states and communities already issue reports on the outcomes of their recycling initiatives. However, most of these entities report

what is being collected, but not the final disposition of recyclable materials.

There is a widespread consensus on the need for improving existing data on recycling at both the stakeholder and agency levels. In its FY2012 budget justification for Environmental Program & Management account, EPA stated as follows: "EPA's current measurement approach, as reported in the annual Municipal Solid Waste Characterization Report, has been based on an approach, assumptions, and methodology developed decades ago." "Currently, EPA is re-examining the data sources, methods, and assumptions used to estimate U.S. materials throughout their life cycle". Last August, EPA solicited comments on how to improve its current report but has yet to respond to comments. In September 2011, an EPA-convened stakeholder group issued a report that recognized the critical need for better data on recycling. However, we are unaware of any follow-up actions EPA plans to take. In December 2011, in the 2012 Interior-Environment Appropriations Act, Congress directed EPA to report to Congress on the development of a process to collect

additional data on the recovery rates achieved by the variety of U.S. recycling programs. That report was due on March 22, 2012, but has not yet been submitted and, even when it is complete it will only identify a process; the report will not start any actual improvements to data collection.

The discussion draft would require EPA to take action to address the problem of inadequate recycling data. Specifically, the discussion draft requires EPA to more effectively utilize existing data on collection of recyclable materials, already being reported by states and communities, and to seek additional data to identify the recovery of those same materials, broken down by type of collection system. This information will allow states, communities and other stakeholders to evaluate the effectiveness of recycling programs. In particular, these data will allow stakeholders to understand what happens to recyclable materials after collection.

The EPA MSW Report currently reports out data on glass generation/production and glass "recovery" rates. Recovery of glass

is now defined in the Report as the reuse of glass in a manufactured product (such as a new container) as well as one-time applications, including its use in roadbed aggregate. The distinction and understanding the difference in what is recovered for use in manufactured products, and those utilized as part of roadbed aggregate and other similar applications is very important to our industry.

This discussion draft requests EPA, in conjunction with stakeholders, to distinguish "recovery", by identifying recyclables recovered for reuse by manufacturing industries versus other final disposition– a critical distinction for the glass container industry.

Under the discussion draft, EPA would collect data through an information collection request (ICR). Under the Paperwork Reduction Act, agencies are limited to contacting 9 entities on any given particular subject if they don't have an approved ICR. EPA does not currently have an approved ICR to collect data for its Municipal Solid Waste Characterization report so that report is based on

extrapolations from a few surveys and published reports. A mandate from Congress to collect data will help EPA obtain approval of an ICR from the Office of Management and Budget. An ICR gives EPA authority to ask questions. Neither an ICR nor the discussion draft would give EPA authority to compel answers.

While the information collected under the discussion draft will be voluntary submittals, it is our belief that states, communities, local governments, numerous manufacturing, processing and other industries will consider submitting data on recycling (including aggregated data from trade associations) that the EPA could utilize, making this Congressional effort extremely worthwhile.

Importantly, this legislation is judiciously limited and focused in scope; the bill would improve the understanding of the recycling data – however, as stated, it specifically prevents the EPA or any other federal agency from mandating specific recycling programs, collection systems, minimum-content requirements, or establishment of any recycling goals in this Act. We believe that decisions on recycling

programs remain appropriately determined at the local and state levels, where they can be tailored to meet local needs and circumstances.

Ultimately, this legislation will provide important and new data points on the results of recycling systems, while at the same time, provide additional insight and information to decision makers at the local level, as they choose a recycling program that is right for their community.

In closing, I want to express our thanks and gratitude to Congressmen John Sullivan and Dan Boren and their staffs, for their diligent efforts in working with the glass industry and other stakeholders in crafting legislation that would provide significant assistance to the country's manufacturing industries.

Thank you again for the opportunity to testify on this legislation. Please consider the GPI as both a resource and advocate for

recycling. If you have any questions or if we can provide you additional information we would be happy to respond.

Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012 **Glass Packaging Institute (GPI) - Testimony Summary**

- This important discussion draft would assist manufacturers, states, and other stakeholders in better understanding existing recycling data and related recycling collection systems – Specifically, it would allow EPA to reach out to a variety of stakeholders to improve their Municipal Solid Waste (MSW) Report by placing a larger focus on the important role manufacturers play in the recycling arena.

- When glass container manufacturers increase the levels of recycled glass as part of the overall batch mix, they reduce furnace temperatures, resulting in reduced energy use and lower greenhouse gas emissions.

- As an "Energy Intensive, Trade Exposed" industry, GPI member companies are focused on preserving U.S. jobs by improving global competitiveness, reducing foreign energy dependency and supporting improved materials management models.

- The discussion draft does not institute recycling goals, prescribe particular recycling programs for communities or set minimum content rates. GPI and member companies will continue to work independently (and without federal mandate) to increase their use of recycled materials.

- Many states and communities already issue reports on the outcomes of their recycling initiatives. However, most of these entities report what is being collected, but not the final disposition of recyclable materials collected. As the manufacturing industries are a critical end market for recyclable material, a better understanding of the recycling systems is needed.

- There is widespread consensus on the need for improving existing recycling data on recycling at both the stakeholder and agency levels.

- Ultimately, this legislation will provide important and new data points on the results of recycling systems, while at the same time, provide additional insight and information to decision makers at the local level, as they choose a recycling program that is right for their community.

Mr. SHIMKUS. Thank you very much.

Now, I recognize Mr. Jonathan Gold. Sir, you are recognized for 5 minutes.

STATEMENT OF JONATHAN GOLD

Mr. GOLD. Thank you, Chairman Shimkus, Ranking Member Green, and members of the committee. My name is Jonathan Gold. I am the senior vice president of the Recovery and Recycling Division of the Newark Group. The Newark Group is one of the oldest 100 percent recycled paperboard companies in the United States. This year, we are celebrating our 100th anniversary. In 1916, my grandfather started the North Shore Recycled Fibers paper recovery plant in Salem, Massachusetts, but I swear I haven't been with the company that long—only about 35 years—but paper recycling is in my blood.

I want to thank the committee for the opportunity to present the views of the Paper Recycling Coalition on the importance of data collection for recovered materials.

The PRC is comprised of 10 companies who manufacture 100 percent recycled paperboard and containerboard—basically cereal, cake boxes, game boards, construction tubes, corrugated boxes and beverage containers. PRC member companies operate over 400 facilities in 42 States employing over 50,000 American workers in well-paying jobs.

Recycling reduces the need for new landfills, saves energy, creates jobs, reduces greenhouse gas emissions, conserves natural resources, and supplies valuable raw materials to American industry. It is the last point that brings me here today.

Despite the well noted growth of electronic media, the demand for recycled paper products is increasing every year. Our society continues to be paper-intensive for numerous reasons, including a rising demand for packaging. Recovered paper is the only "raw" material that can be used by the 100 percent recycled paper industry, and by doing so, we are extending the fiber supply. Our raw material comes from homes, offices, and businesses all across this country. Each State is responsible under the Resource Conservation and Recovery Act, known as RCRA, for municipal solid waste (MSW) programs and the systems for collection vary widely from State to state and from municipality to municipality, producing vastly different results.

For more than 20 years, EPA has been generating an annual report on the Characterization of Municipal Solid Waste. It currently details how much MSW is collected and how much is diverted. However, that report has never been able to disclose how much of that diverted material is actually reaching the manufacturers who can turn it into a new product and how much all of these recycling efforts are benefiting our society.

Let me give you an example from my own personal experience. In the State of Massachusetts, which reports a 39 percent municipality recycling rate, the material that comes into our mill has a contamination level as high as 15 to 18 percent because of broken glass, plastic bottles, plastic bags, and steel cans, for example, as well as other unmentionables. When you factor in wet weather, this level can be as high as 22 percent on a day-to-day situation.

To a large extent this is caused by single-stream collection, a curbside collection process that allows for all material to be collected in one bin versus separating paper from all other collected material. This material is still counted by the Commonwealth as recycled. What is too contaminated for us to recycle in our mills ends up at the landfill casting serious questions on the "true" recycling rate. Improved data would help us get a better handle on the problem in order to identify solutions.

We know that there is a great deal more that can be done to improve basic collection. For example, every 2 weeks, we could fill Fenway Park in Boston to the top with paper that is not recovered for recycling. That is raw material and jobs that we will never see due to the inefficiencies in the collection system.

The paper industry has done an astonishing job of increasing the recycling rate for paper 81 percent over the past 20 years so that now we are collecting 66.8 percent of all the paper available for recycling. However, with an ever-increasing domestic and international demand, we need better data tools to identify the paper that we are not currently accessing in order to stimulate U.S. job growth.

The data collection bill under consideration today would focus EPA's attention on the material that is actually recovered for reuse in manufacturing. This material is the bulk work of our business and essential to maintain our position as a vital and vibrant American industry.

In the current economic climate, municipalities are struggling to maintain funding for material collection. We understand their problems and this proposal will not add to their burden. We want to be part of the solution to that problem, but we need better data in order to target our approach to increasing collection.

We support this basic principle of this bill but remain adamantly opposed to any government mandates on the private sector because they distort market outcomes and efficiencies.

Mr. Chairman, this concludes my oral testimony. I would ask that the committee consider my written testimony on this matter on behalf of the Paper Recycling Coalition. I would be happy to answer any questions from members of this committee. Thank you.

[The prepared statement of Mr. Gold follows:]

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

Mr. Jonathan Gold
Senior Vice President – Recovery and Recycling Div.
The Newark Group

June 27, 2012

Mr. Chairman and Members of the Committee,

My name is Jonathan Gold and I am the Senior Vice President of the Recovery and Recycling Division of The Newark Group. The Newark Group is one of the oldest 100% recycled paperboard companies in the United States. This year we are celebrating our 100th anniversary. In 1916 my grandfather started the North Shore Recycled Fibers paper recovery plant in Salem, Massachusetts, but I swear I haven't been with the company that long – only about 35 years - - but paper recycling **is** in my blood.

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For more than 20 years, EPA has been generating an annual report on the Characterization of Municipal Solid Waste. It currently details how much MSW is collected and how much is diverted. However, that report has never been able to disclose how much of that diverted material is actually reaching the manufacturers who can turn it into a new product and how much all of these recycling efforts are benefiting our society.

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international demand, we need better data tools to identify the paper that we are not currently accessing in order to stimulate U.S. job growth.

The data collection bill under consideration today would focus EPA's attention on the material that is actually recovered for reuse in manufacturing. This material is the bulwark of our business and essential to maintain our position as a vital and vibrant American industry.

In the current economic climate, municipalities are struggling to maintain funding for material collection. We understand their problems and this proposal will not add to their burden. We want to be part of the solution to that problem, but we need better data in order to target our approach to increasing collection.

We support the basic principles of this bill, but remain adamantly opposed to any government mandates on the private sector because they inevitably distort market outcomes and efficiencies.

Mr. Chairman, this concludes my oral testimony. I would ask that the committee consider my written testimony on this matter on behalf of the Paper Recycling Coalition. I would be happy to answer any questions from Members of the Committee.

Johnny Gold

Mr. SHIMKUS. Thank you very much.

The chair now recognizes Mr. John Skinner from the Solid Waste Association of North America. Sir, 5 minutes.

STATEMENT OF JOHN H. SKINNER

Mr. SKINNER. Thank you. Good morning. Mr. Chairman, members of the committee, it is a pleasure for me to be testifying here about the importance of recycling of solid waste. It is a strategy that has significant environmental energy efficiency and economic benefits. We strongly support recycling and we reviewed the draft discussion legislation and have some comments that we would like to make about it.

Let me just tell you a little bit about who I represent. Our members, 8,000 of them, are the people that collect, process, recycle, and dispose of municipal solid waste across the country. They are the professionals that are on the frontline carrying out those programs. Thirty-five percent of them work for the private sector; 65 percent of them work for the public sector and we have 45 chapters in North America.

Our mission is professional development of our members—education, training, scholarships, networking, certification, and publications and we provide our members with the tools necessary to do their jobs the best way throughout the year.

Recycling is very important to our members. It is environmentally and economically sound and we provided an extensive array of programs for our members in the areas of recycling. I have listed some of those programs in my testimony and in the interest of time I am not going to go over them, but it is a wide range of training, education, certification, research, and publication programs.

Turning now to the draft legislation, we certainly agree that the manufacturing sector can increase its competitiveness, it can reduce its energy cost, reduce its emission levels, and improve the amount of materials that are diverted from landfills through the increased use of recycled materials. That is a goal that we entirely support. And we acknowledge that increasing energy efficiency in the manufacturing sector can increase employment, including higher-paying jobs. And we acknowledge also that recycled materials are perfectly acceptable feedstocks to produce new materials and products.

It is important that the data specified in the bill lead to increased use of recycling, and communities have many variables that they consider, but the key determinants of whether they recycle a material or ship it for recycling are cost and revenues. It is an economic decision and I am sure you all know the situation that our local governments are in these days with respect to their tax revenues and their economics.

We agree that improved data are very important and more informed decision-making by policymakers will help private sector users of recyclables increase their understanding of what recyclable materials might be available. We also agree that the report called for under Section 4 of the draft bill would provide very detailed and very useful information at a level of detail which is not available now and we think that that is extremely good goal.

We had three areas of concerns that we raised: the time frame for collecting this data, the cost estimate for collecting it, and the authorities that will be necessary to obtain that data. We have seen the changes that have been made in the current draft of the bill and we think they go a long way in that direction. The 2-year time frame is much better than the earlier time frame that was indicated, and the fact that the authorization would be an annual authorization and not a 1-year authorization annual over 3 years would also be a very important direction to move in.

I also heard Administrator Stanislaus say that he thought that $800,000 a year and longer than 2 years was necessary, and I think that we should listen to his reasons for that. There might be some very good reasons for that. Tracking the flow of materials throughout the economy from collector to broker to manufacturer could be a difficult task and could take considerable resources.

Finally, whether this type of information can be obtained from voluntary information requests and existing published data is questionable to obtain it at this level. I am not saying we shouldn't try, but we may come up short and not get the type of information that we need and we might need to go back and look at other options. And we recommend that the committee consider ways of obtaining that information and increasing voluntary information submittals.

And we do recognize the fact that this bill would provide EPA with the authority to conduct more wide-scale surveys, would give them the ability to go and get approval of those surveys under the Paperwork Reduction Act, but the question is here how to increase the response rates. So let me say we would be pleased, my association would be very pleased to work with EPA on this effort and we would encourage our members to cooperate with it. We believe the information would be very useful and helpful to both the suppliers and the users.

Thank you, Mr. Chairman, be happy to answer any questions.

[The prepared statement of Mr. Skinner follows:]

Statement of John H. Skinner, Ph.D.
Executive Director and CEO
The Solid Waste Association of North America (SWANA)
Hearing on Recycling Legislation
House of Representatives Energy and Commerce Committee
Subcommittee on Environment and Economy
June 27, 2012

I am pleased to testify before this Committee on the importance of recycling of solid waste materials as a strategy that has significant environmental, energy efficiency and economic benefits. The Solid Waste Association of North America (SWANA) strongly supports recycling and is very pleased that the U.S. Congress is exploring ways to expand recycling nation-wide. We have reviewed the discussion draft legislation, Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012, and believe that having Congress recognize the importance of recycling and its contributions to the economy and environment is very significant.

SWANA is a not-for-profit professional association operating under Section 501(c)(3) of the Internal Revenue Code. We have over 7,800 individual members, 65 percent from the public sector and 35 percent from the private sector; and 45 Chapters in the United States and Canada. We provide our members with extensive professional development opportunities including training, education, certification, networking, scholarships, internships, research and publications.

SWANA's mission is to advance the practice of environmentally and economically sound management or municipal solid waste in North America. Since recycling is often both economically and environmentally sound, and is a preferred technology for managing municipal solid wastes, it is an essential part of SWANA's professional development efforts.

A brief listing of SWANA's recycling programs include:

- Cutting edge training programs with courses targeted toward recycling professionals including courses on Managing Recycling Systems and Managing Recycling of Construction and Demolition Materials.
- A Certification Program where individuals can demonstrate their competence and expertise in various aspects of recycling.
- A Recycling and Special Waste Technical Division, one of the largest technical divisions at SWANA, that works to promote state-of-the-art approaches to recycling through conferences, symposia, newsletters, and which provides the faculty for our training courses.
- An Excellence Awards Program that recognizes outstanding solid waste and recycling programs that utilize effective technologies and processes in system design and operations, advance worker and community health and safety, and implement successful public education and outreach programs.
- An Applied Research Foundation that produces research reports on various recycling and solid waste topics that have reached tens of thousands of solid waste management professionals through articles in industry magazines and journals.
- An Advocacy Program that represents the interests of solid waste and recycling professionals by being a proactive advocate of environmentally and economically sound recycling and solid waste management legislation and regulations.

Now turning to the discussion draft legislation, we certainly agree that the manufacturing sector can increase its competitiveness, reduce its energy costs and emission levels and improve landfill diversion through an increase in the use of recyclable materials in its manufacturing processes. Increased energy efficiency in the manufacturing sector can increase domestic

employment, including higher paying jobs. It is clear that recyclable materials are perfectly acceptable feed stocks to produce new materials and products.

It is important that the data specified in the bill lead to increased use of recycled materials in manufacturing. Communities have many variables to consider when determining where there recyclables will be marketed, however the key determinants are costs and revenues. We do recognize the limitations of the current recycling data, and agree that improved data would lead to more informed decision-making by policy makers, and help the private sector users of recyclables increase their understanding of what recyclable materials may be available.

The report that would be developed by EPA in consultation with the Departments of Energy and Commerce under Section 4 of the draft Bill would provide very detailed and useful information on the amounts of various materials actually diverted by various collection systems, the amounts recycled by manufacturers, and the amounts disposed of by landfills. We have three cautionary areas of concern: the time frame for collecting this data, the cost estimate for the data collection effort and the authorities that would be provided to the agency to accomplish this task.

Two hundred and seventy days seems to be a very short time to produce this information, especially if new surveys are necessary. The coordination with other agencies and public and private recycling programs, along with putting in place survey documents and contracts to carry out the work, will require significant time even before the work can begin. Furthermore, the authorization of $499,000 for these purposes may not be sufficient. To obtain information regarding tonnage by collection type and destination may require surveys carried out at the municipal level. Tracking the flow of materials from collector to broker, to processor, to manufacturer could be a difficult task. The costs would depend on the number and extent of

any new surveys that were needed. Finally, whether this type of information can be obtained from voluntary information requests and existing published data is questionable. We suggest that the Committee consult with EPA on the schedule and budget, and consider incentives that would significantly increase voluntary information submittals. We do recognize that this bill would provide EPA with the authority to conduct more wide-scale voluntary surveys, but the question is how to increase response rates.

In conclusion, let me say that SWANA would be pleased to work along with EPA on this effort, and we would encourage our members to cooperate with it, because we believe that the information would be useful and very helpful to both the suppliers and users of recycled materials.

I would be happy to answer any questions.

Mr. SHIMKUS. Thank you, Mr. Skinner.

Now, I will recognize myself for the first 5 minutes.

And I will start with, you know, just the basic observation: Recycling is good for everybody. There is really no downside. So the question stems from in the new Congress, the new House specifically, we are trying to shy away from Federal mandates, mandating things. And so part of this bill, my understanding, is obviously getting the EPA to collect information but a voluntary system. So a question is do you think the Discussion Draft, when introduced, should mandate Federal recycling, recycling systems, or recycling goals? Mr. Johnson, briefly if you can.

Mr. JOHNSON. No. We believe actually that those solutions do exist. There are many of them, and this bill does exactly what it should, which is to collect more information and reevaluate the way we analyze that data so that we can make those decisions after that fact.

Mr. SHIMKUS. Great. Ms. Bragg?

Ms. BRAGG. I agree with Mr. Johnson. The Discussion Draft and future legislation should not prescribe or mandate recycling programs at the Federal level. It shouldn't be mandating anything.

Mr. SHIMKUS. Mr. Gold, you sounded a little impassioned about this in your opening statement. Do you concur?

Mr. GOLD. Absolutely not. It is not practical or economical.

Mr. SHIMKUS. OK, great. Mr. Skinner?

Mr. SKINNER. Certainly not at this stage. There are a lot of things that can be done to increase recycling short of going that far.

Mr. SHIMKUS. Do you support any Federal mandates or regulation as a way of increasing recycling?

Mr. JOHNSON. Not at this time. We don't have enough information to know what those programs would look like and how they would affect our industry and our material stream.

Mr. SHIMKUS. Ms. Bragg?

Ms. BRAGG. No.

Mr. SHIMKUS. Mr. Gold?

Mr. GOLD. No.

Mr. SHIMKUS. Mr. Skinner?

Mr. SKINNER. Not regulations or legislation but I think the Federal Government can play a very significant leadership role in encouraging people to do these types of activities.

Mr. SHIMKUS. And let me just follow up on that because obviously in the opening statement it seems like everybody is pretty supportive, I think. Mr. Skinner, you were raising some concerns but not, "Stop, no way." And as I mentioned earlier, I am co-chair of the Recycling Caucus. One of the reasons why was to make sure that on the corporate side people really understood how much is recycled there and it is really a solid waste issue.

Good data could help us answer one question that perplexes me—single-source versus multiple bins. And Mr. Gold, you raised the contaminated or tainted material in a single source issue. But the reality is we don't know nationally how much is lost. There is no way we can provide information to local communities or you all to say single source is good because, my observation, more people find it easier to put everything in a single bin. Simplicity helps. So

there may be more generated recyclable material but then we forget about that portion that may be tainted and thrown out. But we don't know that answer. Is that correct?

Mr. JOHNSON. That is absolutely correct. That is one of the problems that we have pointed out repeatedly and we cite the need for a study of this type. We need to know more about what is happening to the material between collection and reclamation.

Mr. SHIMKUS. Ms. Bragg?

Ms. BRAGG. That is absolutely correct. Mr. Johnson's answer is perfect really. We have the same issue.

Mr. SHIMKUS. And you are with the glass recyclers, is that right?

Ms. BRAGG. Yes.

Mr. SHIMKUS. So I toured the waste-to-energy plant across the river, which is another huge option. They are very successful in even reclaiming some of the metals, but glass, I think, melts and that is one thing that if it is a single source goes to waste-to-energy, I don't think the glass portion is recoverable. Do you know anything about the waste-to-energy and do you lose all that?

Ms. BRAGG. I would have to do some additional searches on waste-to-energy in terms of glass, but just in terms of recycling, if the glass isn't collected properly, it does break into very many small pieces and usually gets entangled with paper and other liquids and becomes a big mess.

Mr. SHIMKUS. Is colored glass a challenge anymore for your sector or——

Ms. BRAGG. No.

Mr. SHIMKUS. No.

Ms. BRAGG. No.

Mr. SHIMKUS. Mr. Gold?

Mr. GOLD. Nationally, no, but internally with our own company we know it is 10 to 15 to 18 percent contaminants from single stream. It is unscrambling the scrambled egg.

Mr. SHIMKUS. Right. Yes. Mr. Skinner?

Mr. SKINNER. Yes, the important thing is to understand why municipalities go for single-stream or single sort. It is an economic decision. It makes collection of the material much less costly and collection is 80 percent of your costs of managing of wastes. If you have to send down multiple trucks to pick up multiple streams or you have sorting by the collector, the collection is much more expensive. You can put it all in one container. It reduces the collection cost if you can collect it automated. So that is the reason that they are moving in that direction. But I do acknowledge that when you do that, you have to be very, very careful about your materials recovery facility and sort out the contaminants so that the products that you are producing are valuable.

Mr. SHIMKUS. And I will end on that. But I guess my final point is I think centralized voluntary information is better than no information to start making these decisions either from the municipal waste collection side or the folks who want to be end users of recycled products. There is a gap there of things we don't know. And so I am very interested in this process and we will follow it forward with great consultation with my friend, Mr. Green, who I would like to recognize for 5 minutes for questions.

Mr. GREEN. Thank you, Mr. Chairman. Again, I thank our panel for being here.

This question is for anyone on the panel. Many States and communities already issue reports on the outcomes of their recycling initiatives. Is there a reason this type of survey cannot be attached to those current reporting regimens?

Mr. JOHNSON. Are we still going in order?

The first reason is scope and scale. Many municipalities attack their questions about their municipal material streams at the local level and answer those questions. Industries need information about the national and international movement of our materials and the material flow.

Mr. GREEN. OK. Anybody else? Is that pretty well everyone is agreed?

What makes you think that voluntary responses to the EPA would differ from an initiative that your associations could jointly initiate? I know, for example, I represent five refiners and they cooperate all the time on surveys. It is pretty regular. Would that be any different than what your associations would cooperate on?

Ms. BRAGG. Speaking for the glass industry, we do have our own internal surveys but the type of information that we are looking for in terms of this gap is something that we couldn't do alone in terms of our own industry because we are really looking for additional information where we can get a better handle on the end markets. And we also need to know the gap in the middle, what is happening to it, and that is very difficult for us. We wouldn't be able to handle that on our own.

Mr. GREEN. But a good example, Mr. Skinner represents the group of recyclers and when somebody brings in—they bring in glass, they bring in paper—and in the case of city of Houston where I live they bring in e-waste that, you know, you have to separate from everything else. It seemed like that the cooperation you could get a lot of this good information, you know, with your associations doing it with the folks who actually are picking up and are the receiver of those recyclable items.

Ms. BRAGG. You are making a very good point but many of us are involved in groups that are seeking answers to why we aren't getting more recycled material back. We are working cooperatively together but we really do feel that if the government, if EPA could request this additional information we are asking for, we would have a better overall picture than trying to piece it all together ourselves.

Mr. GREEN. OK. Mr. Skinner, you represent a huge number of groups—I assume municipalities but also private recyclers like——

Mr. SKINNER. That is correct.

Mr. GREEN [continuing]. In my area in incorporated Houston Waste Management has a recycling program that a community may decide because it typically increases their cost to do that, so you represent both private and public entities?

Mr. SKINNER. That is correct.

Mr. GREEN. When your members pick up that waste, I assume they divide it up or do they just have the different associations that specialize in it. You know, does a glass person come in and get your glass or aluminum person come in or paper?

Mr. SKINNER. It generally goes to a facility after it is collected and depending upon how it is collected, it may need to be sorted further and sorted considerably if it is collected as comingled. And then it is basically baled and goes to a broker and the broker would take it to the ultimate end markets. So there is a process where they work through the existing scrap markets to get that material.

In response to your prior question, I think there is good data from the trade associations on how much material is being used and how it is being used within their manufacturing. The data that is limited is the supply side, what is coming out of the municipalities and how much more could come out of municipalities. That data is available. Some of it is on Web sites and a good data collection effort could get it and bring it all together. You might not get a complete national picture but I think working on the supply side is important.

Mr. GREEN. Let me ask in my last 30 seconds I have a real interest in e-waste and I partner with the city of Houston on a number of these e-waste events. And Mr. Johnson, you talked about the end user because I know a lot of my scrap paper is actually sent overseas. I don't worry about how they dispose of scrap paper as much as I am how they are doing and it has been very publicly, internationally how some countries take e-waste and literally it is a danger to the folks that do it. I want to be able to track that.

And I know that is not today's hearing but, Mr. Chairman, somewhere along the way I would like to see how we track what e-waste is picked up now and how it is tracked to where we know what is being done with it. And I appreciate the time.

Mr. SHIMKUS. The gentleman's time is expired.

The chair recognizes the gentleman from Colorado, Mr. Gardner, for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman. And I know my colleague and I and Mr. Latta from Ohio have a number of issues in common in terms of concerns when it comes to recycling and the facilities that we have in our districts—bottle manufacturing and glass manufacturing, glass packaging—and so, Ms. Bragg, I will direct a couple of questions your way. In your testimony you claim that better recycling will help energy-intensive manufacturers reduce their energy costs and greenhouse gas emissions. How does the bill that we are discussing today fit with that goal? How does it relate to international competition and job preservation right here in the United States?

Ms. BRAGG. Thank you for the question. When a glass manufacturer uses cullet instead of raw materials to make glass, we can operate our furnaces at lower temperatures. So once the cullet has already been melted into glass, it is much easier to melt it again. And lower temperatures mean less energy use. The glass industry relies mostly on natural gas to run our furnaces and less energy use means lower emissions. And they are, of course, directly related.

All of this helps us compete internationally and keep jobs here in the U.S. As you would expect, profit margins are slim and glass companies compete for customers by lowering their prices, but you can't set your prices so low that the company stops making money. And then if that happens, you have to close your doors and people

lose their jobs. And unfortunately, some of our members have lost customers to foreign glass plants, which really don't operate under the same regulatory environment that we have here in the U.S.

So we need to do everything we can to cost-effectively keep our energy costs and air emissions down. And really using cullet instead of those raw materials to make glass really helps us achieve those goals.

Mr. GARDNER. And one thing I didn't realize until visiting the manufacturing facility is the importation of recycled glass into the country. Is that still occurring regularly?

Ms. BRAGG. You know——

Mr. GARDNER. Within the country, excuse me, like from, you know, taking recycled glass from California to Colorado to meet needs at the plant there.

Ms. BRAGG. Yes, absolutely. Cullet is transported from unbelievable locations to be used in a glass manufacturing plant thousands of miles away.

Mr. GARDNER. And the EPA believes that the bill requires that it sample every single community and recycling facility in the United States. Do you agree with that assessment?

Ms. BRAGG. No, we do not. I mean even right now the EPA uses statistical sampling and extrapolation of data and we don't believe they would have to go to every single municipality across the United States.

Mr. GARDNER. Thanks. And you mentioned that the information collection request in your testimony, what is that and why does that matter?

Ms. BRAGG. Well, as I mentioned in my testimony, the information collection request is under the Paperwork Reduction Act, and it limits the amount of people you can ask for that information. So again with just nine people the reports are estimates that are really extrapolated from a few surveys. And it is my understanding that the EPA has not even tried to get an information collection request to request any recycling data like the data we are asking for in the Discussion Draft. So again the Discussion Draft doesn't waive the Paperwork Reduction Act but it does require EPA to collect information in accordance with an ICR. So they would then have to put together the survey, seek public comment, submit the surveys to OMB, and given the legislation, we would expect OMB to approve the surveys. So they would be able to ask more people than just nine.

Mr. GARDNER. Thank you, Ms. Bragg, and I yield back my time.

Mr. SHIMKUS. Would the gentleman yield for his last 50 seconds?

Mr. GARDNER. Absolutely.

Mr. SHIMKUS. We are a market-based competitive majority in the House right now. And why wouldn't just the purchases of recycled goods send a price signal? There will be a break point where adding the recyclable material to your production process is profitable based upon EPA regs, energy costs, and the like, and when it is not. I will have to get an answer to this question for my colleagues. Why wouldn't a price signaled by you all on the cost of an input product send a signal we want more recycled cans? We want more recycled glass. We want more recycled paper. Why isn't that working?

Mr. JOHNSON. I would make two points. First is because that signal is not received by the disparate end users of the products who are the first step in recycling the material. So the average household is not recycling aluminum cans because they can get back the individual monetary value of each of those cans. They are doing it because it is the right thing to do for the environment and because it is an available service in their community.

The second point I would make is that those price signals are being sent through our economy. Each year, the aluminum that is produced in the United States is almost half recycled material and we have a shortage still of material coming into our processes. So we are sending that signal but the first and possibly the second step of the scrap stream is never going to receive that signal.

Mr. SHIMKUS. Ms. Bragg, same?

Ms. BRAGG. I can't really speak directly to price. Our industry is especially very wary of antitrust. We really abide very strictly by the antitrust regulations, so individual companies could respond to that. I know as individual companies, they work every day with recyclers and processers.

Mr. GOLD. I think in the paper side the two major grades that are recovered are corrugated and residential mixed papers, and we are way over 70, almost 80 percent recovery rate on those two. There is not a lot more that can be recovered unless you go into the landfills and start to pull back.

Mr. SHIMKUS. Mr. Skinner?

Mr. SKINNER. If the price signal is strong enough and if there are contracts for the long-term, municipalities will put in the collection programs to get that material out. And that is what needs to be done. It has to be a program that you can't turn on and off municipal recycling. It has to be something that you sustain over a period of time.

Mr. SHIMKUS. Great. Well, we appreciate your testimony and thank you for your time.

And with that, we will empanel the fourth panel. Thank you.

We welcome the fourth panel, and I will do as I did with the third panel, introduce you all at one time and then ask you to give your opening statements. So with us is Ms. Susana Hildebrand, Professional Engineer, Chief Engineer, Texas Commission on Environmental Quality. And we want to welcome you. Mr. Water Bradley, Director of Government and Industry Relations with the Dairy Farmers of America, and having the largest dairy county in the State of Illinois, I particularly welcome you.

Mr. BRADLEY. Great.

Mr. SHIMKUS. It is not huge but it is the largest.

Mr. Ed Hopkins, Director, Environmental Quality Program with the Sierra Club, sir, welcome back.

And with that your full statements are in the record. As always, you have 5 minutes and we would like to start with you, Ms. Hildebrand.

STATEMENTS OF SUSANA M. HILDEBRAND, CHIEF ENGINEER, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; WALTER BRADLEY, GOVERNMENT AND INDUSTRY RELATIONS REPRESENTATIVE, DAIRY FARMERS OF AMERICA; AND ED HOPKINS, DIRECTOR, ENVIRONMENTAL QUALITY PROGRAM, SIERRA CLUB

STATEMENT OF SUSANA M. HILDEBRAND

Ms. HILDEBRAND. Good afternoon. Again, my name is Susana Hildebrand and I am the chief engineer at the Texas Commission on Environmental Quality. Thank you for the opportunity to speak today.

The Texas Commission on Environmental Quality regularly weighs matters that affect the environment and economy. Decisions made by the TCEQ are based on the law, common sense, good science, and fiscal responsibility. The Superfund Common Sense Act, H.R. 2997, is also based on these principles. This hearing is not about whether manure should be regulated. Animal agricultural operations that produce manure are already adequately regulated under other environmental laws such as the Federal Clean Water Act and Clean Air Act, as well as State-specific authorities in Texas—the Texas Water Code and Texas Clean Air Act.

The question is whether additional regulatory burdens of CERCLA are necessary for manure. H.R. 2997 would remove the question from the purview of the courts and EPA ensuring that resources dedicated to CERCLA are used to address the problems that Congress had intended.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), authorizes Federal cleanup of releases of hazardous substances, imposes liability for cleanup, and provides restoration or replacement of natural resources affected by a release. CERCLA defines a hazardous substance as a substance designated under various acts, including the Clean Air Act and the Clean Water Act.

CERCLA also specifies reporting requirements when specific quantities of hazardous substances are released into the environment. CERCLA Section 103(a) excludes, "federally permitted" releases, including discharges addressed through a National Pollutant Discharge Elimination System (NPDES) permit from the release notification requirements of CERCLA. This exclusion is appropriate because effective regulatory and enforcement mechanisms already exist under the applicable laws, including the Clean Water Act and the Clean Air Act.

Specific agricultural operations, such as the confined animal feeding operations (CAFOs), are already regulated under the NPDES program and the Texas Pollutant Discharge Elimination System (TPDES program) in Texas. TPDES permits regulate discharges from CAFOs; they include best management practice requirements for manure management. With regard to air emissions, facilities in Texas are subject to the Texas Health and Safety Code, through the Texas Clean Air Act, and must be authorized prior to construction.

In considering issuance of a permit, the TCEQ considers possible nuisance odors and addressing handling and storage of manure. Violations of State law or agency regulations, including odor and nuisance conditions, are subject to enforcement. Congress should make it clear that current environmental laws are adequate and that regulation under CERCLA is not necessary.

Moreover, as the United States EPA describes in its Superfund Web site, the CERCLA law was enacted following the discovery of high-risk toxic waste dumps such as Love Canal in New York and Times Beach in Missouri in the 1970s. Also, according to EPA, "this law created a tax on the chemical and petroleum industries and provided broad Federal authorities to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment." CERCLA was never intended to address the removal or cleanup of agricultural sites that are comprised of manure created by biological processes, as defined by H.R. 2997.

The CERCLA and the Federal Superfund program have had tremendous benefit in cleaning up legacy pollutants from some of the Nation's worst toxic waste sites. Applying CERCLA to agricultural operations that produce manure is not consistent with its original intent and will likely result in the diversion of Federal, State, and local resources away from the cleanup of sites that contain hazardous substances and truly present the most significant risks to human health and the environment. Manure clearly does not fit into this category.

Regulating manure as a hazardous substance would be unduly burdensome to business owners who by and large manage manure properly. Congress should make it clear that manure is not a hazardous substance regulated under CERCLA. If Congress does not act to exclude manure, then it will allow the courts or EPA to define CERCLA applicability, resulting in ambiguous, duplicative, and inappropriate requirements to other mechanisms already available to State regulators charged with the mission of protecting human health and the environment. There is no additional benefit to regulating manure under CERCLA as there are regulatory programs already in place to address environmental concerns.

The facts are clear: stringent requirements meant for truly hazardous substances, such as those imposed under CERCLA, should not apply to manure.

[The prepared statement of Ms. Hildebrand follows:]

U.S. House of Representatives
Energy and Commerce Committee
Subcommittee on Environment and the Economy
H.R. 2997 "The Superfund Common Sense Act"
Testimony of Susana M. Hildebrand, P.E., Chief Engineer of the TCEQ

The Texas Commission on Environmental Quality (TCEQ) regularly weighs matters that affect the environment and economy. Decisions made by the TCEQ are based on the law, common sense, good science, and fiscal responsibility[1]. The Superfund Common Sense Act, H.R. 2997, is also based on these principles. This hearing is not about whether manure should be regulated. Animal agricultural operations that produce manure are already adequately regulated under other environmental laws, such as the federal Clean Water Act and Clean Air Act, as well as state-specific authorities such as the Texas Water Code and Texas Clean Air Act in Texas. The question is whether the additional regulatory burdens of CERCLA are necessary for manure. H.R. 2997 would remove the question from the purview of the courts and EPA, ensuring that resources dedicated to CERCLA are used to address the problems that Congress had intended.

CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), authorizes federal cleanup of releases of hazardous substances, imposes liability for cleanup, and provides for restoration or replacement of natural resources affected by a release. CERCLA defines a hazardous substance as a substance designated under various acts, including the Clean Air Act and the Clean Water Act. CERCLA also specifies reporting requirements when specific quantities of hazardous substances are released to the environment. CERCLA §103(a) excludes, "federally permitted" releases including discharges addressed through a NPDES permit from the release notification requirements of CERCLA. This exclusion is appropriate because effective regulatory and enforcement mechanisms already exist under applicable laws including the Clean Water Act (CWA) and the Clean Air Act. Specific agricultural operations, such as confined animal feeding operations, are already regulated under the NPDES Program and the Texas Pollutant Discharge Elimination System (TPDES) in Texas. TPDES permits regulate discharges from CAFOs and include best management practice requirements for manure management. With regard to air emissions, facilities in Texas are subject to the Texas Health and Safety Code, through the Texas Clean Air Act, and must be authorized prior to construction. In considering issuance of a permit, the TCEQ considers possible nuisance odors and addressing handling and storage of manure. Violations of state law or agency

[1]Texas Commission on Environmental Quality Mission and Philosophy
http://www.tceq.texas.gov/about/mission.html

regulations, including odor and nuisance conditions, are subject to enforcement. Congress should make it clear that current environmental laws are adequate and that regulation under CERCLA is not necessary.

Moreover, as the United States Environmental Protection Agency (EPA) describes on its Superfund website, the CERCLA law was enacted following the discovery of high-risk toxic waste dumps such as Love Canal in New York and Times Beach in Missouri in the 1970s.[2] Also according to the EPA, "This law created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment."[3] CERCLA was never intended to address the removal or cleanup of agricultural sites that are comprised of manure created by biological processes, as defined by H.R. 2997.

CERCLA and the federal Superfund program have had tremendous benefit in cleaning up legacy pollutants from some of the nation's worst toxic waste sites. Applying CERCLA to agricultural operations that produce manure is not consistent with its original intent and will likely result in the diversion of federal, state, and local resources away from the cleanup of sites that contain hazardous substances and truly present the most significant risks to human health and the environment. Manure clearly does not fit into this category.

Conclusion

Regulating manure as a hazardous substance would be unduly burdensome to business owners who by and large manage manure properly. Congress should make it clear that manure is not a hazardous substance regulated under CERCLA. If Congress does not act to exclude manure, then it will allow the courts or EPA to define CERCLA applicability, resulting in ambiguous, duplicative, and inappropriate requirements to other mechanisms already available to state regulators charged with the mission of protecting human health and the environment. There is no additional benefit to regulating manure under CERCLA as there are other regulatory programs already in place to address environmental concerns. The facts are clear: stringent requirements meant for truly hazardous substances, such as those imposed under CERCLA, should not apply to manure.

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[2] United States Protection Agency Superfund Basic Information
http://www.epa.gov/superfund/about.htm

[3] United States Environmental Protection Agency Superfund CERCLA Overview
http://www.epa.gov/superfund/policy/cercla.htm

Mr. SHIMKUS. Thank you very much.

Now, I would like to recognize Mr. Bradley for 5 minutes.

STATEMENT OF WALTER BRADLEY

Mr. BRADLEY. Thank you, Mr. Chairman, members of the committee.

I am former New Mexico Lieutenant Government Water Bradley, and today, I am here to represent the 15,000 farmer owners of Dairy Farmers of America. And we are in strong support of H.R. 2997. This measure will once and for all affirm that the very small livestock manure that is used to fertilize our Nation's organic crops is not a hazardous or toxic substance under Superfund.

The last few years have posed extraordinary challenges for producers across the country but especially in my region where a majority of feed is imported from other regions. And in 2009 and 2010, our producers dealt with a very volatile milk price and input costs, a supply-and-demand imbalance, and other world factors which drove down the price of milk and our operating margins. Many lost a generation's worth of equity while others left the business. In New Mexico, most every one of our survivors had to take on more debt.

Prices, feed costs, supply-demand fluctuations, and weather are all things farmers cannot always control. The uncertainty that these and other factors bring to the industry is startling, but one thing we can deliver, that we should be delivering to our dairymen is regulatory surety. I ask this committee to do just that, specifically make clear the intent of Congress to not regulate manure under CERCLA and EPCRA. We are not seeking an exemption from the Federal Clean Water Act or the Clean Air Act or similar State laws including any Federal or State worker protection laws. We are merely seeking clarification under CERCLA and EPCRA that animal manure does not necessitate an emergency response, nor does it create a Superfund site.

It should also be pointed out that both CERCLA and EPCRA include exemptions for animal operations. The example of the definition of hazardous chemical under CERCLA excludes any substance to the extent it is used in agriculture operations. Without this clarity, the courts can and ultimately will be left to redefine the regulation. And some lawyers have already jumped on this bandwagon. In fact, in 2009, the Middleton Law Firm in Georgia and the Spear Law Firm in Missouri formed the Center to Close and Expose Animal Factories and have filed numerous lawsuits around the country on all sizes of farms.

I don't believe Congress ever intended for manure to be regulated as a hazardous substance, and recent history demonstrates that Congress understands the value of manure to America and has encouraged its creative use. Laws have been passed and initiatives undertaken to encourage rural America to participate in the renewable energy field through the development of on-farm energy production by producing biogas, electricity, and biodiesel derived from manure. This very Congress has acknowledged manure's value by funding research, passing tax credits and mandates for its use. How can we possibly ask dairy producers to invest millions of dollars in technologies to support the Nation's energy needs without

addressing the threat that manure will be classified as a hazardous substance?

And how are organic farmers going to fertilize their crops? Government regulations forbid the use of manufactured fertilizers. Besides being used for bioenergy production, manure is frequently spread on fields for fertilizer. This simple, long-standing, and environmentally respectful practice is threatened by the insecurity surrounding manure's possible regulation under CERCLA. Conversely, I find it interesting that petroleum-based fertilizers, the alternative to the naturally occurring fertilizer, are exempt from these laws.

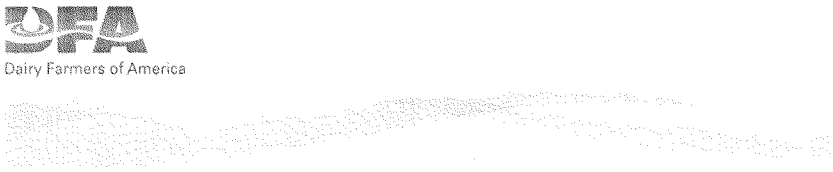
In closing, I would like to point out that animal agriculture operations are subject to a vast array of Federal, State, and local environmental laws and authority to deal with every conceivable environmental problem presented by them. They include the Clean Air Act; the Clean Water Act; the Resource Conservation Recovery Act; the Toxic Substance Control Act; FIFRA; soil conservation, dust, and odor mitigation controls; as well as nuisance laws, which have all been applied broadly throughout the country to provide environmental protection from every conceivable aspect of animal agriculture operations.

In New Mexico, we have the Ground Water Protection Bureau, the Surface Water Bureau, the Air Quality Bureau, and a set of New Mexico dairy rules for permitting of all dairies in addition to all the federal rules and regulations I mentioned above.

There has been no indication that environmental laws such as these are inadequate and we certainly don't need another layer of duplicative regulatory actions. I hope Congress addresses this issue and makes clear their original intent that manure from animal agriculture is exempt as a CERCLA hazardous substance, and I commend Congressman Long for his leadership on this issue and hope to soon see H.R. 2997 passed and signed into law.

Thank you, Mr. Chairman, members of the committee, for this opportunity.

[The prepared statement of Mr. Bradley follows:]



Statement of
Walter Bradley, Dairy Farmers of America, Inc.
To The House Committee on Energy and Commerce
Subcommittee on Environment and the Economy
Regarding H.R. 2997, the Superfund Common Sense Act of 2011

June 27, 2012

Mr. Chairman, members of the Committee, my name is Walter Bradley. I currently work in government and business relations at Dairy Farmers of America, Inc. (DFA) in the southwest council, which includes New Mexico, and portions of Texas, Oklahoma, Kansas and Arizona. In this capacity I work directly with New Mexico state legislators and state environmental agencies on legislation and regulations. After a 4 year effort, we have recently completed passing comprehensive dairy rules that included agreement between industry, government and environmental groups in the state. I also work directly with dairy producers in various business efforts including energy audits and anaerobic digesters, whose feedstock is manure, for on-farm energy production. Formerly, I served as a state senator and lieutenant governor for the great state of New Mexico, and I have a great understanding and appreciation of public service for our country.

I am testifying today on behalf of the nearly 15,000 farmer-owners of DFA, who raise their herds and their families in 48 states across the nation, in strong support of H.R. 2997. H.R. 2977 will once and for all affirm that the very same livestock manure used to fertilize our nation's organic crops is not a hazardous or toxic substance under Superfund.

DFA's members are diverse in size, thought and farm management. They are all similar, however, in that they are proud stewards of the land who understand quality feed and quality milk comes from land that is respected and well cared for. Additionally, DFA's members and the manure generated from their herds are already regulated by state and federal law.

I have the pleasure of specifically serving the dairy industry of New Mexico. New Mexico's average dairy herd is about 2,500 cows, considerably larger than the average dairy nationally, and the state is the eight largest producer of the nation's milk. While farms are large in our state, they are owned and run by families who live and work on their farms. Most support several family members and are multi-generational.

The last few years have posed extraordinary challenges for producers across the country, but especially in my region, where a majority of feed is imported from other regions. In 2009 and part of 2010, our producers dealt with very volatile milk prices and input costs, a supply/demand imbalance, and other world factors, which drove down price and operating margins. Many lost a generation's worth of equity while others left the business. In New Mexico, most took on more debt.

This year, we are facing another low margin cycle. Some in our area are still paying for feed and other bills acquired during 2009. Since January of this year, we have lost 21 dairies in the area and 5 in New Mexico specifically with several on the cusp of exiting the business. Prices, feed costs, supply/demand fluctuations and weather, are all things farmers cannot always control. The uncertainty that these and other factors bring to the industry is startling.

One thing we can deliver – that we should be delivering to our dairymen – is regulatory surety. I ask this committee to do just that. Bring certainty to the nation's dairy farmers on the treatment of manure, a resource and potential source of income, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Emergency Planning and Community Right to Know Act (EPCRA) regulation.

Specifically, make clear the intent of Congress to not regulate manure under these laws. We are not seeking an exemption from the federal Clean Water Act (CWA) or the Clean Air Act (CAA) or similar state laws including any federal or state worker protection laws. We are merely seeking clarification under CERCLA and EPCRA that animal manure does not necessitate an emergency response nor does it create a Superfund site.

Congress created the Superfund to deal specifically with the problem of cleaning up toxic waste sites, including hazardous materials such as petrochemicals, inorganic raw materials and petroleum oil used to make hazardous products and waste. At the same time, EPCRA was adopted to require the reporting of releases of hazardous chemicals and to enable emergency responses from governmental authorities when necessary. The composition and use of animal manure by farmers does not meet the threshold of being considered a hazardous waste.

It should also be pointed out that both the CERCLA and EPCRA include exemptions for animal operations. For example the definition of a "hazardous chemical" under CERCLA excludes "any substance to the extent it is used in agriculture operations". At the same time, EPCRA specifically exempts "any substance to the extent that it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer from the definition of being a hazardous chemical."

CERCLA was passed in the wake of Love Canal for the purpose of dealing with the "legacy of hazardous substances and wastes which pose a serious threat to human health and the environment." The law states that it was intended "to clean the worst abandoned hazardous waste sites in the country." The legislative history contains a litany of references to "synthetic," "manmade" chemicals, "chemical contamination," and the results of "modern chemical technology" as the problems CERCLA intended to address. It contains no reference to an intention to clean up manure or urea, or their byproducts, from cattle or any other animal agricultural operations.

Without this clarity, the courts are left to redefine the regulation. Animal manure has been safely used as a fertilizer and soil amendment all over the world for centuries. In recent years,however, we have seen litigation challenge the use of animal manure as a fertilizer by claiming contamination and damage to natural resources.

The issue of CERCLA/EPCRA's applicability to the livestock industry has been discussed in Congress several times in the last decade. I believe congressional intent is clear. When the law

was passed, Congress did not intend for manure to be regulated as a hazardous substance. Moreover, recent history demonstrates that Congress understands the value of manure to producers and has encouraged its creative use. Laws have been passed and initiatives undertaken to encourage rural America to participate in the renewable energy field through the development of on-farm energy production. Whether it is producing biogas, electricity or biodiesel derived from manure, Congress has acknowledged manure's value by funding research, passing tax credits and mandates for its use. How can we possibly ask dairy producers to invest millions of dollars in technologies to support the nation's energy needs without addressing the threat that manure might be classified as a hazardous substance.

Besides being used for bio-energy production, manure is frequently spread on fields for fertilizer. When waterways are near, farmers often use a buffer strip as they are sensitive to keeping water sources clean. The buffer strip produces no income or feed, but protects the environment. This simple, long standing and environmentally respectful practice is threatened by the insecurity surrounding manure's possible regulation under CERCLA/EPCRA. Conversely, I find it interesting that petroleum-based fertilizers, the alternative to this naturally occurring fertilizer are exempt from such laws.

As a fertilizer, manure is excellent as it contains nitrogen, phosphorus, potassium and other nutrients. Manure not only supplies many nutrients for crop production, including micronutrients, but it is also a valuable source of organic matter. Increasing soil organic matter improves soil structure or tilth, increases the water-holding capacity of coarse-textured sandy soils, improves drainage in fine-textured clay soils, provides a source of slow release nutrients, reduces wind and water erosion, and promotes growth of earthworms and other beneficial soil organisms. Additionally, its use reduces an operations dependence on man-made chemical fertilizers, which have become very expensive.

If Congress does not act, if the courts are allowed to determine the specifics of this law, how will this law be applied to dairy and other agriculture producers? Will producers need a special permit to dispose of manure? What about the phosphates used by people on their lawns, golf clubs or other community green areas? Would they be classified a Superfund site? On this issue, the science and common sense are in agreement. The phosphates in manure are not now, nor have they ever been, equivalent to the harmful chemicals that CERCLA has been addressing for the last 32 years.

In 2005, the United States Environmental Protection Agency (EPA) entered into a Consent Agreement with animal agriculture to address emissions of air pollutants from animal feeding operations that may be subject to requirements of the CAA, the hazardous substance release notification provisions of CERCLA and the emergency notification provisions of EPCRA. In order to secure a substantive sampling, covering different types of operations in different geographic regions, the impacted industries paid for their portion of the study themselves. The data is currently being analyzed for the purpose of proposing "threshold requirements" for reporting air emissions from animal operations of various sizes that could be put into effect next year. It is clear that CWA and the CAA already provide sufficient authority to address the needs and challenges associated with animal agriculture. EPA is currently moving under the provisions of the CAA to deal with air emissions from ammonia, hydrogen sulfide and other substances. Using CERCLA and EPCRA authority to enforce water and air quality standards on animal agriculture is another example of "regulatory overkill" at its worst.

I will also note that legal action can already be brought against animal operations that are not complying with the CWA to require cleanup. At the same time, Total Maximum Daily Load requirements have been instituted in watersheds requiring farmers to comply with nutrient runoff.

Lastly, animal agricultural operations are subject to a vast array of federal, state and local environmental laws and authority to deal with every conceivable environmental problem presented by them. They include the CAA, CWA, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, FIFRA, soil conservation, dust and odor mitigation controls, as well as nuisance laws, which have been applied broadly throughout the country to provide environmental protection from every conceivable aspect of animal agricultural operations. In New Mexico, we have the Ground Water Protection Bureau, the Surface Water Bureau, the Air Quality Bureau and a set of New Mexico Dairy Rules for permitting of all dairies in addition to all the federal rules and regulations. There has been no indication that environmental laws such as these are inadequate.

The statute is clear in my view. However, that has not been enough to prevent litigation over applying the Superfund Laws to manure from animal agriculture, and decisions that they apply. I hope Congress addresses this issue and makes clear their original intent that manure from animal agriculture is exempt as a CERCLA hazardous substance.

I commend Congressman Long for his leadership on this issue and hope to soon see H.R. 2997, the Superfund Common-Sense Act of 2011, passed and signed into law.

Thank you for the opportunity to participate in today's hearing.

Mr. SHIMKUS. Thank you very much.

And our final witness for today on the fourth panel is Mr. Ed Hopkins, Director of Environmental Quality Programs, Sierra Club. Sir, welcome.

STATEMENT OF ED HOPKINS

Mr. HOPKINS. Thank you, Mr. Chairman, Ranking Member Green. I appreciate being here today representing the Sierra Club. We have worked at the local, State, and Federal level for over the past decade to protect public health and the environment from factory farm pollution.

Unlike in earlier decades, many of today's large-scale operations contains thousands and in some cases even millions of animals in closed buildings producing huge volumes of waste material that can pose serious threats to air and water. A recent GAO report cited an example of one hog operation generating some 1.6 million tons of manure a year. That is about one-and-a-half times the amount of sanitary waste produced by the city of Philadelphia. There is an important difference is that the city of Philadelphia has a wastewater treatment system; the hog operation doesn't.

Some large livestock operations now find themselves producing more waste than they can responsibly manage by traditional land application practices. But instead of adopting more advanced treatment or moving waste materials outside of watersheds that can't tolerate more pollution, some operations simply dump excess manure. Whether they allow leaks and spills from manure storage lagoons, spray or apply manure to frozen or bear ground, or simply over-apply far in excess of the agronomic needs of crops, their practices result in pollution of ground and surface waters with excess nutrients and dangerous pathogens, arsenic, other toxic mineral compounds, and antibiotics.

As a result, more than half of the States cite animal feeding operations as sources of water pollution. Some of these operations release more ammonia into the air than industrial facilities. The GAO documented many government-sponsored or peer-reviewed studies that directly or indirectly linked pollutants from animal feeding operations to specific health and community environmental impacts.

That is why cities like Tulsa, Oklahoma, and Waco, Texas, desperate to protect their drinking water from upstream manure pollution resorted to CERCLA as their only source of relief. These cities want to protect their ratepayers from footing the bill to clean up somebody else's pollution. In Waco, for example, the city had to spend some $54 million to install new drinking water treatment systems.

Passing H.R. 2997 and exempting poultry and livestock waste from CERCLA and EPCRA will only exacerbate these real-world problems. It will increase threats to drinking water supplies, force water users to bear the cost imposed by sloppy operators, and withhold important information about air toxics from emergency responders in neighboring communities.

What is the problem that proponents of this bill are trying to solve? Are they trying to stop lawsuits threatening farmers? There have been three lawsuits to address manure-related contamination

of water in CERCLA's 32-year history. Isn't it completely understandable that communities want polluters held responsible for contaminating their drinking water?

Is it overregulation of agriculture? If anything, poultry and livestock operations are grossly under-regulated. Twenty-nine States report that CAFOs are responsible for pollution. Only 40 percent of 20,000 large livestock and poultry operations have obtained Clean Water Act permits, and as far as I am aware, no livestock or poultry operation in the country has a Federal Clean Air Act permit.

Is it duplication between CERCLA and the Clean Water Act? Actually, these laws were carefully crafted to complement one another. If an operation has a Clean Water Act permit, the releases covered in that permit are shielded from CERCLA. CERCLA is the only Federal law that allows for State and local governments to recover cleanup costs from those responsible for contaminating drinking water supplies.

Are these laws making manure into a hazardous waste and turning farms into Superfund sites? No one is arguing that manure itself is hazardous and no one is seeking to ban its use as a fertilizer. If a farm operator is using manure as a fertilizer, there is no liability under CERCLA. There is a specific exclusion for that in the law. Only farmers mismanaging manure so as to cause hazardous releases of phosphorous and other pollutants into water need be concerned. In the history of CERCLA, not one single farm has been named to Superfund's National Priority List because of manure.

This bill does nothing to help responsible farmers. It is aimed at eliminating legal safeguards communities can use to protect their drinking water supplies and their ratepayers from irresponsible livestock and poultry operators that are dumping their manure and causing pollution.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hopkins follows:]

STATEMENT OF ED HOPKINS
SIERRA CLUB
BEFORE THE
U.S. HOUSE SUBCOMMITEE ON ENVIRONMENT AND ECONOMY
OF THE COMMITTEE ON ENERGY AND COMMERCE
JUNE 27, 2012

Summary

Production of livestock and poultry has concentrated greatly in the last several decades, and this has concentrated large amounts of animal waste. While manure is not a hazardous waste, improper handling can release phosphorus into water supplies, and its degradation can release large amounts of ammonia and hydrogen sulfide into the air. These are hazardous substances under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA). Some large livestock and poultry operations release more of these chemicals than major industrial facilities.

Phosphorus can contaminate communities' drinking water supplies, burdening ratepayers and taxpayers with cleanup costs. At least 29 states have reported damage to lakes, rivers and streams from large animal feeding operations. Air releases of ammonia and hydrogen sulfide – manure degradation products – trigger respiratory problems, eye and nose irritation, and in some extreme cases, death. Many university reports, peer-reviewed literature and government-sponsored studies have documented the adverse public health and environmental effects of animal feeding operations.

The Sierra Club opposes H.R. 2997, which would create a special exemption for livestock manure from CERCLA and EPCRA. If Congress creates this exemption, communities whose waterways or drinking water has been damaged by hazardous substances will lose a vital tool for recovering cleanup costs. The cost of cleaning up water damaged by excess phosphorus and other hazardous substances in manure would fall on communities and ratepayers rather than those responsible for causing the contamination. Communities would remain in the dark about toxic chemicals these facilities release into the air. Poultry and livestock operators will also lose a powerful incentive to manage their waste responsibly.

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today. My name is Ed Hopkins, and I am Director of the Sierra Club's Environmental Quality Program. Sierra Club is a grassroots environmental organization with 1.4 million members and supporters. For more than decade, we have advocated at the local, state and federal level for more effective protection from public health and environmental problems caused by large factory farms.

We support the provisions of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Reporting and Community Right to Know Act (EPCRA) that hold polluting industries accountable for the damage they cause and require reporting of hazardous releases associated with manure, including ammonia and hydrogen sulfide. Without these statutes, the government is powerless to protect critical natural resources like public drinking water supplies, and the public is unwittingly exposed to potentially dangerous quantities of hazardous pollutants.

We oppose legislation, such as H.R. 2997, that would create special exemptions from environmental laws for the vast quantities of manure and other waste created by factory farms. If Congress creates this exemption, communities whose drinking water has been damaged by hazardous substances will lose a vital tool for recovering cleanup costs. Poultry and livestock operators will also lose a powerful incentive to manage their waste responsibly. The cost of cleaning up water damaged by excess phosphorus and other hazardous substances in manure would fall on communities and ratepayers rather than those responsible for causing the contamination.

Modern Livestock Operations Concentrate Large Amounts of Animal Waste

Most animal feeding operations do not resemble the livestock farms of years past. Instead, many are industrialized operations that confine thousands of animals at a single location, often generating the waste equivalent of a small city.[1] Unlike traditional livestock farms where the animals grazed on pastureland, these

facilities confine thousands, or even millions, of the animals in closed buildings for most of their lives, where they are fed a regimented diet in a closely controlled indoor environment.[2]

A General Accountability Office study estimated that between1982 and 2002, the number of large farms that raise animals increased by 234 percent and that almost half of all animals were raised on large farms.[3] These large operations produce about 300 million tons of manure annually or three times more waste than humans generate each year in the United States.[4] Depending on the type and number of animals, the GAO estimated that individual farms can produce from over 2,800 tons to more than 1.6 million tons of manure each year. The GAO estimated that one large hog farm could generate 1.6 million tons of manure a year, which is one and one-half times the amount of sanitary waste generated by the 1.5 million residents of Philadelphia in a year.[5] An important difference: the City of Philadelphia treats its wastewater, the large hog operation does not.

Livestock Waste Threatens Public Health and the Environment

With so much manure concentrated in small areas come threats to public health, water and air. According to the most recent National Water Quality Inventory, 29 states specifically identified animal feeding operations as contributing to water quality impairments.[6] Waste pits full of manure fail, inundating rivers and killing fish. In 1995, approximately 25 million gallons of manure were discharged from a single hog operation in North Carolina.[7] Similarly, discharges of thousands of gallons of animal waste have been reported in Iowa, Illinois, Minnesota, Missouri, Ohio and New York.[8]

Waste applied to fields in large quantities can run off into lakes and rivers. The nutrient-rich runoff alters the chemical composition of receiving waters, and triggers a surge in algae and other aquatic vegetative growth. This vegetative growth can choke out fish and other marine life, and lead to increased treatment requirements for drinking water supplies. According to the EPA, "over-enrichment of waters by nutrients

(nitrogen and phosphorus) is the biggest overall source of impairment of the nation's rivers and streams, lakes and reservoirs, and estuaries."[9]

When large farms are clustered in a region for easy access to processing facilities, the GAO reported that: "According to agricultural experts and government officials that we spoke to, such clustering of operations raises concerns that the amount of manure produced could result in the overapplication of manure to croplands in these areas and the release of excessive levels of some pollutants that could potentially damage water quality."[10] According to a U.S. Department of Agriculture report, the numbers of counties with excess manure nitrogen increased by 103 percent, from 36 counties in 1982 to 73 counties in 1997. Similarly, the number of counties with excess manure phosphorus increased by 57 percent, from 102 counties in 1982 to 160 counties in 1997.[11]

This contamination poses serious risks to human health. Manure-related microbes in water can cause severe gastrointestinal disease, complications and even death.[12] In May 2000 in Walkerton, Ontario, an estimated 2,321 people became ill and seven died after drinking water from a municipal well contaminated with *E.coli* and *Camplyobacter* from runoff resulting from manure spread onto fields by a nearby livestock operation.[13] Manure can also carry arsenic and other toxic metal compounds, as well as antibiotics, into water contributing to antibiotic resistance.[14] Finally, pollution from animal confinements can cause nitrate contamination of drinking water supplies, which can result in significant human health problems including methemoglobinemia in infants ("blue baby syndrome"), spontaneous abortions and increased incidence of stomach and esophageal cancers.[15]

Air emissions also cause significant health problems in workers and in nearby residents. Livestock and poultry operations emit significant amounts of particulate matter (fecal matter, feed materials, skin cells, bioaerosols, etc.), ammonia, hydrogen sulfide, sulfur dioxide, volatile organic compounds, and other harmful contaminants into the air.[16] Many adverse human health effects associated with air pollution from these operations, including respiratory diseases (asthma, hypersensitivity pneumonitis, industrial bronchitis),

cardiovascular events (sudden death associated with particulate air pollution), and neuropsychiatric conditions (due to odor as well as delayed effects of toxic inhalations.).[17] Other problems include increased headaches, sore throats, excessive coughing, diarrhea, burning eyes, and reduced quality of life for nearby residents.[18] This air pollution is especially problematic, because neighboring communities are exposed on a near constant basis.[19]

Ammonia is a human toxin that EPA lists alongside arsenic, cyanide, and benzene as a hazardous substance under CERCLA. 40. C.F.R. § 302.4. The livestock sector produces roughly 73% of all ammonia emissions nationwide.[20] Human exposure to ammonia triggers respiratory problems, causes nasal and eye irritation, and in extreme circumstances, is fatal.[21] Ammonia also contributes to the development of fine particulate matter. Fine particulate matter causes significant health problems, including aggravated asthma, difficult or painful breathing, chronic bronchitis, decreased lung function, and premature death.[22] Fine particulate matter has been linked to increased hospital emissions and emergency room visits for people with heart and lung disease, and decreased work and school attendance.[23]

Animal feeding operations expose downwind neighbors to elevated ammonia levels, as well as other pollutants. For example, the Missouri Department of Health and Senior Services documented ambient ammonia levels downwind of a swine operation ranging from 153 to 875 ppb. The EPA submitted comments on the Missouri study, comparing the ambient ammonia levels to recommended exposure limits and noted that "the conclusion could be drawn that a *public health hazard* did exist at the time the...data was acquired."[24] Some of the largest facilities produce staggering quantities of ammonia gas—comparable to pollution from the nation's largest manufacturing plants.[25] For example, Threemile Canyon Farms in Boardman, Oregon, reported that its 52,300 dairy cow operation emits 15,500 pounds of ammonia per day, more than 5,675,000 pounds per year.[26] That is 75,000 pounds more than the nation's number one manufacturing source of ammonia air pollution (CF Industries of Donaldson, Louisiana) reported releasing

that year.[27] Buckeye Egg Farm's facility in Croton, Ohio reported ammonia emissions of over 4,300 pounds per day – 43 times the reporting threshold under CERCLA and EPCRA.[28]

In addition to ammonia, EPA also lists hydrogen sulfide as a hazardous pollutant under CERCLA. High-level exposures of hydrogen sulfide, an asphyxiate, can cause loss of consciousness, coma and death. At least 19 workers have died from sudden hydrogen sulfide exposure during liquid manure agitation.[29] Epidemiological studies of communities exposed to hydrogen sulfide reported symptoms such as asthma, chronic bronchitis, shortness of breath, eye irritation, nausea, headaches and loss of sleep.[30]

The GAO study found that that "Since 2002, at least 68 government-sponsored or peer-reviewed studies have been completed on air and water pollutants from animal feeding operations. Of these 68 studies, 15 have directly linked pollutants from animal waste generated by these operations to specific health or environmental impacts, 7 have found no impacts, and 12 have made indirect linkages between these pollutants and health and environmental impacts. In addition, 34 of the studies have focused on measuring the amount of certain pollutants emitted by animal feeding operations that are known to cause human health or environmental impacts at certain concentrations."[31]

These risks to public health led the American Public Health Association to call for a moratorium on new concentrated animal feeding operations "until scientific data on the attendant risks to public health have been collected and uncertainties resolved."[32]

EPCRA and CERCLA Requirements

CERCLA has two main policy objectives. First, Congress intended to give the federal government the necessary tools for a prompt and effective response to problems of national magnitude resulting from hazardous waste disposal.[33] Second, Congress intended that the polluters bear the costs and responsibility for remedying the harmful conditions that they created.[34]

Specifically, section 103 of CERCLA provides that any person in charge of a facility from which a hazardous substance has been released in a reportable quantity (RQ) must immediately notify the National Response Center ("NRC").[35] For example, releases of ammonia and hydrogen sulfide that exceed 100 pounds per day must be reported under section 103.42 Section 103(f)(2) of CERCLA further provides for relaxed reporting requirements for substances that are classified as a continuous release.[36] If a reported release demands a response, the government may act, pursuant to section 104, to respond to that release.[37] And if the government acts, it may recoup the costs of the recovery action under CERCLA section 107.[38]

In addition to the reporting requirements under CERCLA, owners and operators of facilities must also provide immediate notice of the release of an extremely hazardous substance under EPCRA. Section 304(a) requires an owner or operator of a facility to report the release of an extremely hazardous substance to designated state and local officials, if "such release requires notification of section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980."[39] The EPCRA emergency reporting requirements, therefore, track the CERCLA requirements and ensure that federal, state and local authorities are notified of potentially dangerous chemical releases.

The right-to know provisions of CERCLA and EPCRA not only empower government but also citizens. Information about chemical releases enables citizens to hold companies and local governments accountable in terms of how toxic chemicals are managed. Transparency also often spurs companies to focus on their chemical management practices since they are being measured and made public. In addition, the data serve as a rough indicator of environmental progress over time.

CERCLA/EPCRA Fill Important Gaps in Permitting Statutes

CERCLA and EPCRA require the reporting of only non-federally permitted releases. Therefore, if a facility's emissions are authorized by a permit under another federal statute, they do not have to report these emissions. Releases that are federally permitted are exempt not only from CERCLA and EPCRA notification

requirements but from CERCLA liability as well.[40] Although EPA and the States have permitted some feeding operations under other federal statutes, CERCLA is still necessary to fill critical gaps. Although the Clean Water Act has required large livestock operations to obtain permits for almost 40 years, noncompliance has been widespread. As EPA indicates in a proposed information collection rule, only about 8,000 concentrated animal feeding operations out of a universe of about 20,000 facilities – about 40 percent – have obtained Clean Water Act NPDES permits.[41]

Even if a facility were to have a federal permit, the permit would not necessarily address all of the releases of hazardous chemicals. A Clean Water Act permit, for example, would not address releases of hazardous chemicals to the air and, conversely, a Clean Air Act permit would not address releases of hazardous chemicals to water. Furthermore, not all statutes regulate the same chemicals. For example, the Clean Air Act does not regulate ammonia or hydrogen sulfide as hazardous air pollutants. Although CERCLA's list of hazardous substances were first identified under other statutes, including the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, CERCLA authorizes the Administrator of EPA to add to this list "substances [like ammonia and hydrogen sulfide] which, when released to the environment may present a substantial danger to public health or welfare or the environment..."[42]

Thus, EPCRA and CERCLA are necessary complements to federal permitting statutes to address hazardous pollutants that would not otherwise be regulated. They do not duplicate other federal laws.

Animal Production Operations Should Not Be Exempted from EPCRA/CERCLA

The poultry and livestock industry argues that Congress never intended to apply CERCLA and EPCRA requirements to animal agriculture. However, they cite to no authority for this claim. If Congress had intended such a result, it could have excluded animal production facilities, like hog or poultry facilities, from the reporting requirements of CERCLA.[43] Instead, Congress only chose to exempt "the normal application of fertilizer" from the CERCLA definition of release,[44] and provided an exemption under EPCRA for reporting

releases when the regulated substance "is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer."[45]

Both of these exemptions were considered by a federal district court in Kentucky which held that neither of the exemptions should apply to Tyson's poultry production operations. Tyson did not qualify for the routine agricultural use exemption, because it did not store ammonia in the chicken houses for agricultural use, nor did it use the ammonia in an agricultural operation.[46] Rather, it used exhaust fans and vents to release the ammonia to the environment so that it would not kill the chickens. Tyson did not qualify for the normal application of fertilizer exemption, because they were not applying ammonia to farm fields as fertilizer when they vented it into the atmosphere.[47]

A federal court in Texas also considered the normal application of fertilizer exemption. The court ruled that the exemption does not apply if Plaintiffs prove that the Defendants improperly stored and maintained large amounts of waste on their property, causing hazardous releases of phosphorus and other pollutants to nearby sources of drinking water.[48] Industry representatives also argue that the CERCLA exclusion for "naturally occurring substances" should apply to livestock operations. Section 104(a)(3)(A) of CERCLA prohibits the President [through EPA] from ordering a remedial or response action "in response to a release or threat of release...of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found..." Industry argues that CERCLA should not apply to farming operations because "[s]ubstances, such as orthophosphate, ammonia and hydrogen sulfide, occur naturally in the environment in the same forms as they occur as byproducts of biological processes on farming operations." However, releases of hazardous substances from agribusinesses would not qualify for the exemption, because they occur as a result of activities associated with milk or meat production.[49] For example, as discussed below, in both of the response actions taken to date, the governments' actions were not based on releases of naturally occurring phosphorus or orthophosphate undisturbed by human activity. Rather, the governments sought to remove hazardous

substances that were added to the environment and disposed of by the operations during the improper storage and handling of waste.

CERCLA/EPCRA Cases against Agribusinesses, Not Family Farms

There have only been a handful of cases filed against poultry and livestock operations for violations of CERCLA and EPCRA. In most of the cases, the defendants have been large corporate agribusinesses, not family farmers, and the releases of hazardous chemicals have been significant. Courts have consistently held that CERCLA and EPCRA reporting requirements apply to agricultural operations if releases of regulated hazardous substances meet regulatory thresholds.

Premium Standard Farms – In November 2001, the United States and Citizens Legal Environmental Action Network, Inc. settled a case against Premium Standard Farms, Inc. (PSF), the nation's second largest pork producer and Continental Grain Company. PSF's and Continental's operations in Missouri consist of more than 1,000 hog barns, 163 animal waste lagoons and 1.25 million hogs, primarily located on 21 large-scale farms in five counties. The settlement resolved numerous claims of violations under the CWA,[50] CAA,[51] CERCLA and EPCRA.[52]

PSF exposed downwind neighbors to elevated ammonia levels, as well as other pollutants.[53] Measurements taken pursuant to the settlement agreement reveal that PSF releases 3 million pounds of ammonia annually from the cluster of barns and lagoons at its Somerset facility.[54] At the time, these emissions made PSF the fifth largest industrial emitter of ammonia in the United States. This data does not include the ammonia gases released when liquid manure is sprayed on the company's nearby fields.

Seaboard Corporation – On January 7, 2003, the Sierra Club reached partial settlement of a lawsuit against the Seaboard Corporation, concerning pollution at one of the largest hog factories in North America. The settlement resolved all claims, except for Sierra Club's CERCLA and EPCRA claims. CERCLA requires a person

to report releases of a hazardous substance from a "facility." In an effort to avoid regulation, Seaboard argued that each pit and building should be counted separately. An appellate court found Seaboard's arguments "unconvincing." The Court held that the entire 25,000-head hog operation was a single "facility" and that Seaboard must report the combined emissions from all its waste pits and confinement buildings.[55] Seaboard estimates that the total average daily emissions of ammonia are from its Dorman Sow Facility is 192 pounds per day, almost double the 100 pound per day reporting threshold under CERCLA.

Tyson Foods, Inc. – On January 26, 2005, the Sierra Club entered into a settlement agreement with Tyson Foods. Tyson is the number one poultry producer in the nation, and each of its four facilities that were involved in the case could confine approximately 600,000 chickens at one time. Under the decree, Tyson agreed to study and report on emissions from its chicken operations and mitigate ammonia emissions that have been plaguing rural residents for years. The settlement came in the wake of a court decision in 2003, when a federal judge ruled that the term "facility" should be interpreted broadly, including facilities operated together for a single purpose at one site, and that the whole farm site is the proper regulated entity for purposes of the CERCLA and EPCRA reporting requirements.[56]

City of Tulsa – The City of Tulsa filed suit against some of the largest poultry producers in the nation including Tyson, Simmons and Cargill.[57] The City alleged that the Defendants' growers polluted Lakes Eucha and Spavinaw, from which Tulsa draws its water supply, by applying excess litter to land application areas. As of September 1, 2002, just one of the Defendant's growers produced approximately 40,715,200 birds and an estimated 39,859 tons of litter in the affected watershed.[58] The City's complaint included claims for cost recovery and contribution under CERCLA. A federal court ruled that phosphorus contained in the poultry litter in the form of phosphate is a hazardous substance under CERCLA.[59]

The City of Tulsa continues to experience water quality problems as a result of pollution from animal feeding operations. The following comment, submitted in response to the EPA's proposed information collection request for large animal feeding operations, supports the need for more regulation of these operations, not

less: "The City of Tulsa used a significant amount of financial resources in an attempt to coordinate with the poultry industry on ways to promote environmental stewardship, improve nutrient management practices and stakeholder communication, but with no success. Success only came from subsequent court order directives."[60]

City of Waco – In 2004, the City of Waco filed suit against fourteen commercial dairies for failure to properly manage and dispose of waste. The complaint alleges that hazardous pollution from these dairies contaminated Lake Waco, which is the sole source of drinking water for the City of Waco and a significant source of drinking water for surrounding communities.[61] The City's complaint includes claims for cost recovery and contribution costs under CERCLA. The Court denied the dairies' Motion to Dismiss and held, among other things, that the type of phosphorus that was released by the dairies was a hazardous substance under CERCLA.[62] The Court also held that the normal application of fertilizer exemption would not apply if Plaintiffs could prove that the releases of hazardous substances were caused by the dairies' improper handling of animal waste.[63] The City subsequently settled its case. To address taste and odor problems caused by excessive phosphorus in its water supply, the City is spending more than $54 million in upgrades to its drinking water treatment system.[64] The City also opposed legislation similar to H.R. 2977 in a previous session of Congress.

State of Oklahoma – On June 18, 2005, the Oklahoma Attorney General's Office filed a lawsuit against some of the nation's largest producers of chickens, turkeys and eggs for water pollution in the Illinois River watershed caused by the improper dumping and storage of poultry waste.[65] The watershed contains elevated levels of a number of pollutants found in poultry waste. For example, the phosphorus from the poultry waste dumped into the Illinois River watershed is equivalent to the waste that would be generated by 10.7 million people, a population greater than the states of Arkansas, Kansas and Oklahoma combined.[66] The watershed also serves as the source of drinking water for 22 public water supplies in eastern Oklahoma.[67] The Attorney General's complaint alleges violations of state and federal nuisance laws, trespass, as well as other violations

of state environmental regulations. The State also seeks to recover the costs that it has had to incur, and will incur, to respond to the pollution. These costs include "the costs of monitoring, assessing and evaluating water quality, wildlife and biota in the [Illinois River Watershed]."[68] The State also seeks to recover Natural Resource Damages for the injury to, destruction of, and loss of natural resources.[69] This case remains unresolved.

Citizens Cannot Recover Natural Resources Damages or Penalties Under the Response Sections of CERCLA

Industry representatives have incorrectly asserted that citizen suits threaten to impose natural resource damage liability under CERCLA.[70] In fact, natural resource damages may only be recovered by a designated federal, state or tribal trustee.[71] Industry has also raised alarms about high penalties from citizen suits and cases brought by municipal and state governments. Again, there is no rational basis for this assertion. Tyson and Seaboard did not pay a single penny in their cases brought by Sierra Club for failure to report their hazardous air emissions under CERCLA and EPCRA. Furthermore, penalties are unavailable under CERCLA for removal or remedial actions, regardless of whether they are initiated by government or by a private party.[72] Finally, citizens are even limited in their cost recovery actions. A private party must prove as part of its prima facie case that the cleanup activities for which it incurred response costs were consistent with the National Contingency Plan.[73]

Exempting Agribusinesses from EPCRA/CERLA Requirements Would Prevent EPA from Gathering Critical Data

By exempting reporting requirements for poultry and livestock waste emissions, the EPA would be prevented from even knowing the scope or consequences of this pollution. Ignoring this problem will not make it go away; virtually every study that has been done on this subject emphasizes the need for more information.

The National Academy of Sciences (NAS) issued a report in 2003 in which it expressed concern over air pollution from animal feeding operations and criticized EPA and USDA for not devoting the necessary technical or financial resources to estimate air emissions and to develop mitigation technologies.[74] The 2008 GAO report underscored the need for more information: "Although EPA is aware of the potential impacts of air and water pollutants from animal feeding operations, it lacks data on the number of animal feeding operations and the amount of discharges actually occurring. Without such data, according to EPA officials, the agency is unable to assess the extent to which these pollutants are harming human health and the environment."[75]

Failing to require reporting may impede responses to acute health threats. Emissions of hydrogen sulfide from the Excel Dairy in Marshall County, Minnesota, illustrate the importance of retaining the reporting requirements so that health officials can respond to emergencies. According to a September, 2008, Exposure Investigation by the Agency for Toxic Substances and Disease Registry, high and persistent emissions of hydrogen sulfide from the dairy prompted a finding of a "public health hazard associated with community exposures." With concentrations of hydrogen sulfide exceeding the measuring capability of the Minnesota Pollution Control Agency's monitoring equipment, ATSDR recommended immediate action to reduce emissions from the dairy, more sophisticated air monitoring, and restricted access to the dairy property to reduce exposures.[76]

In conclusion, because of the demonstrable public health and environmental threats that animal feeding operations pose, CERCLA and EPCRA provide critical safeguards complementing other statutes. Sierra Club strongly opposes legislation like H.R. 2997 that would create special exemptions for hazardous substances released from poultry and livestock operations. This bill serves only to shift cleanup costs to taxpayers and ratepayers and keep regulatory agencies and the public in the dark about exposures to chemicals that these facilities release. Thank you for considering our views.

[1] EPA, Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations, EPA–821-B-01-001 at 2-2 (2001) ("Environmental Assessment").

[2] EPA, Development Document for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations, EPA–821-R-03-001 at 4-3 (2002) ("Development Document").

[3] GAO, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern*. September, 2008. Pp. 4-5. [hereinafter GAO]

[4] EPA, National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 68 Fed. Reg. 7176, 7180 (2003) [hereinafter USEPA, *CAFO Final Rule*].

[5] GAO at 5.

[6] U.S. EPA; *National Water Quality Inventory: Report to Congress: -- 2004 Reporting Cycle*, January, 2009.

[7] Environmental Assessment at 2-17.

[8] Id. at 2-18; see also The New York Times, *How to Poison a River*, (Aug. 19, 2005) (commenting on a 3 million gallon spill from a 3,000-head dairy in New York

[9] USEPA and USDA, *Clean Water Action Plan: Restoring and Protecting America's Waters* at 56 (Feb. 1998).

[10] Id.

[11] R. L. Kellogg, C.H. Lander, D. C. Moffitt, and N. Gollehon. *Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States*. (Washington, D.C.: December 2000).

[12] David Wallinga, M.D., Institute for Agriculture and Trade Policy, *Concentrated Animal Feeding Operations: Health Risks from Water Pollution* (Aug, 2004).

[13] Id.

[14] Id.; see e.g., Chapin et al., Airborne Multidrug-Resistant Bacteria Isolated from a Concentrated Swine Feeding Operation, 113 Environmental Health Perspectives 137 (2005).

[15] EPA, *CAFO Final Rule*, at 7238. *See also*, U.S. Environmental Protection Agency, Office of Children's Health Protection, *Drinking Water Contaminants—America's Children and the Environment: A First View of Available Measures*, http://yosemite.epa.gov/ochp/ochpweb.nsf/content/drinking-water-contam.htm; Centers for Disease Control and Prevention, *Spontaneous Abortions Possibly Related to Ingestion of Nitrate-Contaminated Well Water-La Grange County, Indiana 1991-1994*, Morbidity and Mortality Weekly, Report 45 (26) (1996), at 569-571 (linking high nitrate levels in Indiana well water near confinement operations to spontaneous abortions in humans),http://www.cdc.gov/mmwr/preview/mmwrhtml/0042839.htm

[16] Iowa State University and The University of Iowa Study Group, Iowa Concentrated Animal Feeding Operations, Air Quality Study, Final Report (2002) ("Iowa Air Quality Study"), http://www.public-health.uiowa.edu/ehsrc/CAFOstudy.htm

[17] Iowa Air Quality Study at 122; see also Minnesota Planning Agency Environmental Quality Board, Final Animal Agriculture Generic Environmental Impact Statement (2002), ("Minnesota EIS for Animal Agriculture"), http://www.eqb.state.mn.us/geis/ for information concerning health impacts of particular AFO air pollutants.

[18] S. Wing & S. Wolf, Intensive Livestock Operations, Health, and Quality of Life Among Eastern North Carolina Residents, 108 Envtl. Health Persp. 223-38 (2000); see also K. Thu et al.,A Control Study of the Physical and Mental Health of Residents Living Near a Large-Scale Swine Operation, 3 J. Agric. Safety & Health 1, 13-26 (1997).

[19] Iowa Air Quality Study at 122.

[20] EPA, *Ammonia Emission Factors from Swine Finishing Operations*, http://www.epa.gov/ttn/chief/conference/ei10/ammonia/harris.pdf.

[21] Schiffman, S.S., et al., *Health Effects of Aerial Emissions from Animal Production and Waste Management Systems*, http://www.cals.ncsu.edu/waste_mgt/natlcenter/summary.pdf

[22] EPA, *Health and Environmental Impact of PM*, http://www.epa.gov/air/urbanair/pm/hlthl.html.

[23] EPA, *Chief Causes for Concern*, http://www.epa.gov/air/urbanair/pm/chf.html.

[24] Memo from Mario Jorquera to Scott Clardy (December 2, 2002).

[25] EPA, *National Emission Inventory – Ammonia Emissions from Animal Husbandry Operations,Draft Report*, http://www.epa.gov/ttn/chief/ap42/ch09/related/nh3inventorydraft_jan2004.pdf.

[26] Letter from Tom Lindley on behalf of Threemile Canyon Farms to EPA Region X, April 18, 2005.

[27] U.S. EPA, Toxics Release Inventory, 2003. Search performed at: <http://www.epa.gov/triexplorer/>.

[28] U.S. Department of Justice, *Ohio's Largest Egg Producer Agrees to Dramatic Air Pollution Reductions from Three Giant Facilities*,http://www.usdoj/opa/pr/2004/February/04_enrd_105.htm.

[29] EPA, *Health and Environmental Impact of PM*, http://www.epa.gov/air/urbanair/pm/hlthl.html.
[30] United States Public Health Service (1964).
[31] GAO at 23.
[32] American Public Health Association, *Precautionary Moratorium on New Concentrated Animal Feed Operations*, 2003-7, http://www.apha.org/legislative/policy/2003/2003-007.pdf.
[33] U.S. v. Reilly Tar & Chemical Corp., 546 F. Supp. 1100, 1112 (D. Minn. 1982); see also Walls v. Waste Resource Corp., 823 F. 2d 977, 980 (6th Cir. 1987); Dedham Water Co. v. Cumberland Farms Dairy, Inc. 805 F.2d 1074, 1081 (1st Cir. 1986).
[34] Id.
[35] 42 U.S.C. § 9603(a).
[36] 42 U.S.C. § 9603(f).
[37] 42 U.S.C. § 9604(a).
[38] 42 U.S.C. § 9607(a)(4)(A).
[39] 42 U.S.C. § 11004(a); 40 C.F.R. § 355.40(b)(1).
[40] USEPA, Office of Solid Waste and Emergency Response, *Questions and Answers on Release Notification Requirements and Reportable Quantity Adjustments*, EPA/540/R-94/005 (Jan.1995).
[41] National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule, 76 Fed. Reg. 65445 (Oct. 21, 2011).
[42] 42 U.S.C. § 9602 (a).
[43] Sierra Club v. Tyson Foods, et al, 299 F. Supp. 2d 693, 706 (W.D.Ky. 2003).
[44] 42 U.S.C. § 9601(22)(D).
[45] 42 U.S.C. § 11021(e)(5).
[46] Sierra Club v. Tyson Foods, et al, 299 F. Supp. 2d 693, 714 (W.D.Ky. 2003).
[47] Id.
[48] City of Waco v. Dennis Schouten, et. al., No. W-04-CA-118, slip op. at 9 (W.D. Tx. 2005).
[49] 53 See, e.g., U.S. v. Iron Mountain Mines, et.al., 987 F. Supp. 1244 (E.D. Cal. 1997). (exemption held not apply to releases of metals altered by mining); U.S. v W.R. Grace and Co.-Conn., 280 F.Supp. 2d 1149 (D. Mont. 2003) (exemption held not to apply to releases of asbestos and asbestos-contaminated vermiculite that was a by-product of vermiculite processing).
[50] Department of Justice, News Release, *Nation's Second Largest Hog Producer Reaches Settlement with U.S. and Citizen's Group* (Nov. 20, 2001).
[51] Id., see also EPA, *Notice of Violation* issued to Premium Standard Farms (April 2000); EPA, *Clarification of Notice of Violation* (September 2000).
[52] Id., see also EPA, *Finding of Violation* issued to Premium Standard Farms (May 2000).
[53] Memo from Mario Jorquera to Scott Clardy (December 2, 2002).
[54] Premium Standard Farms, *Air Emissions Monitoring Completion Report* (Nov. 17, 2004).
[55] Sierra Club v. Seaboard Farms, 387 F. 3d 167 (10th Cir. 2004).
[56] Sierra Club v. Tyson Foods, et al, 299 F. Supp. 2d 693 (W.D.Ky. 2003).
[57] City of Tulsa v. Tyson Food Inc., et. al., 258 F. Supp. 2d 1263 (N.D. Okla. 2003).
[58] Id. at1272.
[59] Id. at 1285. Although the Court's ruling was vacated as part of a settlement agreement, the Court's reasoning may still be persuasive to other Courts.
[60] City of Tulsa, Comment on EPA's proposed NPDES CAFO Reporting Rule Docket ID No. EPA-HG-OW-2-11-0188. Oct. 24, 2011.
[61] City of Waco v. Dennis Schouten et. al., Civil Action No. W-04-CA-118 (W.D. Texas), First Amended Complaint (May 27, 2004).
[62] City of Waco v. Dennis Schouten et. al., Civil Action No. W-04-CA-118 (W.D. Texas), Memorandum Opinion and Order at 8 (March 29, 2005).
[63] Id. at 9.
[64] Letter from Larry Groth, Waco City Manager to Senators Inhofe and Jeffords, June 2, 2006.
[65] State of Oklahoma v. Tysons Foods, Inc. et.al., Civil Action No. 05CV0329 JOE-SAJ (N.D. Okla.), Complaint (June 18, 2005).
[66] Oklahoma Attorney General's Office, News Release, *AG Sues Poultry Industry for Polluting Oklahoma Waters* (June 13, 2005).
[67] Id.
[68] Complaint at ¶ 76.

[69] Complaint at ¶ 89

[70] Southern Association of State Departments of Agriculture, *Clarifying CERCLA and EPCRA Do Not Apply to Animal Agriculture.*

[71] 42 U.S.C. § 9607 (f)(1).

[72] See 42 U.S.C. § 9607.

[73] 42 U.S.C. § 9607 (a)(4)(B).

[74] National Academy of Sciences, Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs (2003).

[75] GAO at 23.

[76] Letter to Cheryl Newton (EPA) and Gaylen Reetz (MN Pollution Control Agency) from Department of Health and Human Services and Minnesota Department of Public Health, September 19, 2008.

Mr. SHIMKUS. Thank you, Mr. Hopkins. Let me go first to you.

Does the Clean Water Act Section 311(f) authorize recovery of costs incurred pursuant to hazardous substance mitigation requirements under Section 311(c) of the Clean Water Act?

Mr. HOPKINS. Not to my knowledge, sir.

Mr. SHIMKUS. I think it does. And the question would be does 2997 change those authorities?

Mr. HOPKINS. The bill doesn't amend the Clean Water Act.

Mr. SHIMKUS. So if I am correct and the Clean Water does allow recovery, then this bill would not affect the recovery of those costs. I mean if we were just following the basic—well, obviously, we will have to get you to look at whether the Clean Water Act authorizes the recovery of cost, which you don't know the answer to. We think it does.

Mr. HOPKINS. My understanding, sir, is that the reason that the city of Waco and that Tulsa sued using CERCLA was because that was the statute that best provided them the——

Mr. SHIMKUS. Yes. Reclaiming my time——

Mr. HOPKINS [continuing]. Possibility of getting——

Mr. SHIMKUS. They also sued under the Clean Water Act, and that was settled out of court. So it was a settlement between the two parties so it never went to full litigation.

Let me ask the same question on the Solid Waste Disposal Act, which authorizes EPA to obtain information or inspect facilities where hazardous wastes have been generated, stored, disposed of, or transported. Would H.R. 2997 change any of these authorities?

Mr. HOPKINS. Well, manure is not a hazardous waste, so it wouldn't be covered by——

Mr. SHIMKUS. But this is under the Solid Waste Disposal Act.

Mr. HOPKINS. Yes, and that is regulating hazardous waste. That is what the Solid Waste Disposal Act is. And——

Mr. SHIMKUS. But if the hazardous waste is a solid waste——

Mr. HOPKINS. Um-hum.

Mr. SHIMKUS [continuing]. Then Section 3007 of the Solid Waste Disposal Act authorizes the EPA to obtain information and inspect facilities. So the question is, in the proposed bill, would that change that authority?

Mr. HOPKINS. No, the proposed bill would not change any authority——

Mr. SHIMKUS. Thank you.

Mr. HOPKINS [continuing]. Under that law.

Mr. SHIMKUS. And then Section 7002 of the Solid Waste Disposal Act authorizes citizen suits against any person of the Federal Government to enforce the solid and hazardous waste laws. Would H.R. 2997 change these authorities?

Mr. HOPKINS. No, it doesn't.

Mr. SHIMKUS. Again, Section 7003 of the Solid Waste Disposal Act gives EPA authority to address imminent hazards and issues orders necessary to protect the environment. In fact EPA has used this authority before in pursuing a livestock operation. Would H.R. 2997 change these authorities?

Mr. HOPKINS. No, sir.

Mr. SHIMKUS. Section 112 of the Clean Air Act requires air emissions reporting on hazardous air pollutants. Does H.R. 2997 change these authorities?

Mr. HOPKINS. No, it doesn't amend the Clean Air Act.

Mr. SHIMKUS. Thank you. Let me ask, you know, Mr. Stanislaus who testified for the EPA, kind of seemed all over the board. In one comment, the comment was, "manure is not hazardous waste," but then he went down and then flipped and said, well, the component parts of the manure are hazardous. And I found his testimony quite confusing to the point that I just decided to let him finish and move forward.

Let me go back to Mr. Hopkins. Are you all a party of the suit to the EPA which caused the reevaluation and their filing under the Federal Register of October 21, 2011? Mr. Stanislaus talked about suits filed. Was Sierra Club part of filing a suit in this case that helped encourage the EPA to relook at their position?

Mr. HOPKINS. You know, Mr. Chairman, I am sorry I don't know the answer to that but I would be happy to provide that for the record.

Mr. SHIMKUS. That would be helpful.

So finally, Ms. Hildebrand and Mr. Bradley, you did hear the EPA, Mr. Stanislaus and his testimony. I will give you each 20, 25 seconds to anything you heard that you think that we might want to raise our concerns.

Ms. HILDEBRAND. Well, I am not sure if Mr. Stanislaus is not as familiar with the Clean Air Act or the Clean Water Act and that is why he answered as he did, but it seemed that he thought that there was nothing that the Federal Government could do to compel immediate action if there were a lagoon overflow or something to that effect. And my information indicates that the Federal Water Pollution Control Act Section 504 is the piece that the EPA administrator could use to seek immediate action. And Section 303 of the Clean Air Act allows EPA to bring action for relief as well.

Mr. SHIMKUS. And it is your job as a commission member to ensure the environmental quality of the citizens of the State of Texas, is that correct?

Ms. HILDEBRAND. Certainly. That role is very important to our agency.

Mr. SHIMKUS. Thank you very much.

And Mr. Bradley, just in response.

Mr. BRADLEY. I agree with what was just stated and I was a little concerned about his wishy-washiness on phosphorous, et cetera, which clearly all science says that animal-procured phosphorous and phosphates are not the hazardous waste that the chemically manmade-produced are. They are totally different and I think he got confused there which kind of bothered me.

Mr. SHIMKUS. Well, I thank you for your time.

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

Mr. GREEN. Thank you, Mr. Chairman.

And I think, you know, we are talking about the difference in size. You know, my average dairy farmer in Texas is really not that large compared to some other farms. And, in fact, let me ask my question of Ms. Hildebrand. One, I appreciate you being here. And

having served many years in the State legislature, I appreciate the diligence of our Texas Commission on Environmental Quality or whatever we call it now. I know that is the current name.

Has the State of Texas ever used either Clean Water or Clean Air actions against, for example, you know, a huge facility whether it be for a large dairy facility or even a—I know up around Amarillo and parts of Texas we have huge stockyards that are really just factories for our beef. And we like it but we also know because the size of those facilities it may not be, you know, farmers running or ranchers running, you know, a few cattle on their hundred acres, which is not the issue. In fact, they probably recycle theirs as compared to a larger operation. Has the State ever used a Clean Air or Clean Water action on those?

Ms. HILDEBRAND. Well, I know of a couple examples and I can give those to you in a written response.

Mr. GREEN. OK. I would appreciate that.

Ms. HILDEBRAND. But in general I would say that typically we have the authority under the Clean Air Act, both the Texas Clean Air Act and under the Federal and if, for example, there was a nuisance condition that occurred as a result of a large facility, we would go out and investigate because if a nuisance occurred as a result of something like that, we would expect there to be a permit issue. And so we would look for permit violations whether that is under the TPDS or under the Clean Air Act permit that they received, authorization.

Mr. GREEN. OK. What if they don't have a permit?

Ms. HILDEBRAND. So those emissions that would come from the manure for air are authorized under permit-by-rule, so they may not have an explicit permit that they received from the State but they are authorized. Or they are operating under air emission allowances that are provided for in the water permit.

Mr. GREEN. OK. Mr. Hopkins, I know there was a 2003 National Academy of Sciences issued a report on pollution from animal feeding operations. The Academy found that multiple operations emitted multiple pollutants including ammonia, hydrogen sulfide, particulate matter, and greenhouse gases. In 2011, EPA estimated 80 percent of the U.S. ammonia emissions were from agricultural operations. What are the potential health impacts from large-scale ammonia emissions?

Mr. HOPKINS. Well, ammonia emissions can cause a host of respiratory problems, eye, ear, nose, and throat problems. It is also a precursor to fine particular matter. Somewhere between 9 and 11 percent of the Nation's fin particulate matter has its origin in ammonia, so that is a very serious health problem as you know and that can, again, cause all kinds of respiratory and cardiovascular problems.

Mr. GREEN. I only have a couple minutes left. We heard earlier today that other environmental laws and just now that address the risks and the liability and reporting requirements under Superfund are redundant and unnecessary. Are there provisions under other environmental laws that would require cleanup of contamination from manure and ensure that responsible parties will pay for that cleanup?

Mr. BRADLEY. I will take a shot at that——

Mr. GREEN. OK.

Mr. BRADLEY [continuing]. Congressman Green. In the State of New Mexico, part of an answer to your earlier question, you know, the State of New Mexico took action on a spill into the Rio Grande River by a dairy. That dairy was sued; that dairy was ordered to clean up and to change their structure. They were in violation of their permit so they paid a fine, they paid their money, and the State of New Mexico does have a Superfund that they have created for spills because a lot of these people don't have any money. We take all we got and then we go from there.

Mr. GREEN. OK. So New Mexico has a State Superfund I guess for this so it is not under——

Mr. BRADLEY. But we also use the Clean Water Act, which is in coordination with our Surface Water Ground Bureau.

Mr. GREEN. Ms. Hildebrand, is that similar to what we have in Texas? You know, I am under a disadvantage. I have a very urban area and, believe me, I have refineries and chemical plants fence-to-fence, so I am real familiar with that. But, you know, my ag area is just a little bit different so I am learning.

Ms. HILDEBRAND. Certainly, as I understand it, the Texas Health and Safety Code and the Texas Water Codes allow for us to pursue relief from those facilities if there were an environmental issue that was resulting from their actions.

Mr. GREEN. Including assigning responsibility to the party and making them pay?

Ms. HILDEBRAND. I believe so.

Mr. GREEN. OK. Mr. Hopkins?

Mr. HOPKINS. Well, I would say it is not just a question of whether State regulatory agencies have the authority to do that but whether other parties like cities have the authority to do it. And I think that is an important facet that CERCLA provides that maybe these State laws don't.

Mr. GREEN. The example—and I only have a few seconds left—I know Waco and Waco had to sue. I assume they were suing under not only State law but also city ordinances in Waco, Texas? Because I think in Houston, you know, we have ordinances for public nuisances that could be applied maybe unless they are exempted by State law.

Ms. HILDEBRAND. I think that the crux of their lawsuit—and again it was settled so it never went—the majority of their issue was violations associated with the Clean Water Act. Certainly CERCLA entered into it and there was a question about the phosphorous that I think Mr. Bradley talked about, but at the heart of the issue I think it was a Clean Water Act question.

Mr. GREEN. OK. Mr. Hopkins, let me give you final if you have any—well, I am out of time—but just so you could respond. The current law is not available even to municipalities if they have an ordinance?

Mr. HOPKINS. Yes, I think that the reason Waco used CERCLA was because they didn't want their ratepayers to foot the bill for the pollution that they were having to clean up.

Mr. GREEN. Yes. Well, and obviously I know about my Superfund sites and thank the Texas Environmental Quality, EPA on light

speed to put a facility—and we are still working on that by the way. The encapsulation I understand is not working.

But anyway, thank you, Mr. Chairman, for the time.

Mr. SHIMKUS. The gentleman is quite welcome.

And we would like to thank the panel for being here and answering our questions. I think one thing to consider on CAFOs is the location. You know, most CAFOs are going to be in rural America addresses the ammonia debate. Concentration is a concern on air emissions but when you have got a CAFO that is in rural America, rural Illinois, and it is 20 miles from the nearest community, the ammonia issue and the intensity is not—I mean I think we have still got Clean Water Act issues, compounding issues, those are still in the debate. We think those are kind of covered.

But having said this, Mr. Bradley?

Mr. BRADLEY. I just wanted to make a quick clarification if I might about the Waco because I hear a lot about Waco in here today and there is a lot of bad information floating around. I think a little more research ought to be done——

Mr. SHIMKUS. Well, if the gentleman would yield, we are going to ask for the final judgment to be filed as part of this record because it addresses some of the questions that were raised I think especially on phosphorous that you had raised and the difference——

Mr. BRADLEY. Right.

Mr. SHIMKUS [continuing]. On that so——

Mr. BRADLEY. OK.

Mr. SHIMKUS [continuing]. A brief——

Mr. GREEN. Mr. Chairman, I know I am familiar also with the problem in rural areas, but what we are having in Houston—because I had a lot of dairy farmers up in Tomball, Texas, some good families, but because of the suburbanization of it, you know, the city has moved out there and it has made some conflicts that folks, when they moved there, they didn't realize there was a dairy farm down the road. We have that same problem in other areas, too. But it can happen particularly in the suburbs growing out the rural——

Mr. SHIMKUS. Those city slickers coming out to rural America, they ought to——

Mr. GREEN. Yes.

Mr. SHIMKUS [continuing]. Make sure they know what they are buying.

So we have three submissions we would ask unanimous consent for. The first one is a letter from the National Association for PET Container Resources.

[The information follows:]

NAPCOR

June 25, 2012

The Honorable John Shimkus
Chairman, Subcommittee on Environment and the Economy
U.S. House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shimkus:

The National Association for PET Container Resources (NAPCOR) is pleased to support the Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012.

The bill correctly points out that using recycled materials in manufacturing conserves energy, thereby reducing operating costs and making American manufacturing more competitive. Recycling also creates jobs—and not just the guys on the back of a collection truck. Every 1,000 tons of PET recycled supports between 22 and 30 jobs in collection, sorting, processing and manufacturing. At least 10 of those jobs are skilled positions in manufacturing and processing. Furthermore, recycling can reduce local government waste disposal costs – ever more critical as our communities struggle through difficult economic times.

As the saying goes, "You can't manage what you don't measure!" The bill would facilitate the collection of critical information on community recycling programs and the recycling industry that can help the industry grow and prosper. This will help the recycling industry to realize its full job creation, energy conservation and economic potential. Ultimately, it will help the United States' manufacturing base remain competitive into the future.

Thank you for your consideration. NAPCOR looks forward to working with you to move forward on this critical issue.

Sincerely,

Dennis Sabourin
Executive Director

National Association for PET Container Resources (NAPCOR), PO Box 1327, Sonoma, CA 95476
tel: 707/996-4207 fax: 707/935-1998 www.napcor.com

Mr. SHIMKUS. The other one we will keep the record open for 10 days and make sure we are able to see the letter that you had asked to be submitted, which is from the National Association of SARA Title III Program Officials.

[The information follows:]

National Association of SARA Title III Program Officials

Concerned with the Emergency Planning and Community Right-to-Know Act

July 3, 2012 *Electronically Submitted*

United States House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Opposition to HR 2997

Dear Chairman Upton, Ranking Member Waxman and all other Members:

The National Association of SARA Title III Program Officials (NASTTPO) is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), various federal agencies, and private industry. Members include state, tribal, or local government employees as well as private sector representatives with Emergency Planning and Community Right to Know (EPCRA) program responsibilities, such as health, occupational safety, first response, environmental, and emergency management. The membership is dedicated to working together to prepare for possible emergencies and disasters involving hazardous materials, whether they are accidental releases or a result of terrorist attacks.

As an organization, NASTTPO is not taking a position on the environmental compliance record of confined animal feeding operations or farms. Rather, NASTTPO is commenting because we believe the proposed legislation threatens the integrity of the accidental release reporting system and, put bluntly, endangers the lives of rural first responders.

The 911 call that comes in from a member of the public in the dark of night reporting a foul or chemical odor rarely contains information on the source. Ammonia odors may come from a variety of sources and "manure" is most certainly one of the likely choices. Unfortunately, that information will not be known to the first responders. Perhaps the source is a truck accident. It can also be someone opening an anhydrous ammonia nurse tank to steal that product for a drug lab. These scenarios threaten the

lives of first responders and it is unreasonable to force them to guess at the source in the middle of the night.

Release reporting by facilities under EPCRA provides crucial information to those responders. Without such information responders are forced to blindly drive through an area not knowing what they are looking for with a very great risk that they will drive into an anhydrous ammonia plume. If the facility has reported a release under EPCRA then the first responders can correlate that information as they plan their response. Without the release report they must assume the worst case and respond accordingly, or, most troubling, respond assuming it's the animal feeding operation and be wrong with deadly consequences.

It's simply inappropriate to deny first responders a release report. The burden on the industry is trivial. The consequences are potentially deadly. Congress should not adopt HR 2997 in its current form.

Thank you.

Timothy R Gablehouse
Director, Government Relations
Immediate Past-President
410 17th St, Ste 1375
Denver CO 80202
(303) 572-0050

Mr. SHIMKUS. And then the last one, which I need to just be corrected on, it is a brief on the Waco case. So without objection——

Mr. GREEN. Whose brief is it?

Mr. SHIMKUS. Well, we have already run it by the——

Mr. GREEN. Oh, have you? OK. Mr. Chairman, let me just look at it and see to see, you know——

Mr. SHIMKUS. OK. We will——

Mr. GREEN. Having done briefs, if my client wanted me to do one, I would do it.

Mr. SHIMKUS. Well, we will do the same thing. We will do 10 days, you guys have time to either accept or reject on that.

Mr. GREEN. OK.

Mr. SHIMKUS. And appreciate your time and effort and again thank you for coming.

And this hearing is adjourned.

[Whereupon, at 12:55 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

AMERICAN FARM BUREAU FEDERATION®
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June 26, 2012

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Energy and Commerce Committee
United States House of Representatives
2452 Rayburn House Office Building
Washington, DC 20515

The Honorable Gene Green
Ranking Member
Subcommittee on Environment and the Economy
Energy and Commerce Committee
United States House of Representatives
2470 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Green:

The American Farm Bureau Federation (Farm Bureau) supports passage of H.R. 2997, the *Superfund Common Sense Act*, and commends you for considering legislation to clarify that manure is not a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Emergency Planning and Community Right-to-Know Act (EPCRA). The bill would make clear the original intent of these statutes, in addition to preventing unnecessary and burdensome monitoring and reporting requirements. This would bring livestock producers certainty and assurance relating to any potential Superfund liability.

When originally passed by Congress, CERLCA was a response to the situations that arose in Love Canal and Times Beach, where responsibility for cleanup was unclear. Later, EPCRA was adopted in the wake of the Union Carbide disaster in Bhopal, India. In the last few years, some have sought to extend application of these laws to livestock operators by seeking to have manure and its different elements considered "hazardous substances" under CERCLA and EPCRA. H.R. 2997 would make clear that manure was never intended to be covered by these environmental laws.

Superfund was designed to mandate cleanup of compounds that are very harmful even in small amounts. Further, animal manure utilization in agriculture was not contemplated as a problem at the time Superfund was enacted. Most farms with animals could be exposed to severe liabilities and penalties as a result of being brought under the Superfund laws.

Superfund already has a legacy of bankrupting small businesses caught in its path. If manure is determined to be a hazardous substance, the cost of technical monitoring and compliance will drastically affect small- and medium-sized farmers the most, while large producers with far greater financial resources would be better able to absorb the compliance and cleanup costs.

Farm Bureau supports passage of this CERCLA/EPCRA legislation and thanks you for your leadership on this important issue.

Sincerely,

Bob Stallman
President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT - 2 2012

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus, Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Shimkus:

Thank you for your letter of August 10, 2012, requesting responses to Questions for the Record following the June 27, 2012, hearing before the Subcommittee on Environment and the Economy entitled, "the Increasing Manufacturing Competitiveness Through Improved Recycling Act and H.R. 2997, the Superfund Common Sense Act."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions, please contact me or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,

Laura Vaught

Laura Vaught
Deputy Associate Administrator
for Congressional Affairs

Enclosure

cc: The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy

Enclosure

Questions for the Record
House Subcommittee on Environment and the Economy
June 27, 2012 Hearing on the Increasing Manufacturing Competitiveness Through Improved Recycling Act and H.R. 2997, the Superfund Common Sense Act

Questions for the Honorable Mathy Stanislaus, Assistant Administrator of the EPA

Representative Henry Waxman

Four years ago, the Energy and Commerce Committee held a hearing on hazardous substances in manure, focused on a proposed administrative exemption from reporting requirements under CERCLA and EPCRA. At that time, we heard testimony from the Government Accountability Office that the EPA did not have sufficient data to understand emissions from farms and support such an exemption. The agency has responded to that criticism by collecting data and beginning analysis, seeking comments from the Scientific Advisory Board and the public. These are positive developments, and precisely the kind of action the Committee supported in 2008.

1. **Was the 2008 exemption developed based on the results of the Air Compliance Agreement?**

   Response: No, the EPA developed the 2008 final rule, "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms," independently of the EPA's Air Compliance Agreement (with animal feeding operations). However, in the preamble of the 2008 final rule the EPA indicated that after completion of the National Air Emissions Monitoring Study (which is part of the Air Compliance Agreement) and the development and publication of emission estimating methodologies, the agency intends to review the monitoring study's results and consider if the thresholds for the EPCRA reporting exemption are appropriate.

2. **Is the EPA considering revising the 2008 exemption, and would that revision take into account the results of the Air Compliance Agreement?**

   Response: Yes, the EPA filed a motion asking the U.S. Court of Appeals for the D.C. Circuit to remand the 2008 final rule back to the agency for reconsideration after industry and environmental groups sued the agency over the rule. The court granted the EPA's motion in October 2010. The agency is now reconsidering the 2008 final rule, during which we will take into consideration the results of the National Air Emissions Monitoring Study as well as comments and concerns expressed by the industry and environmental groups.

3. **Will the concerns from the agricultural community that led to adoption of the 2008 exemption be addressed by any potential revisions to the exemption?**

   Response: The EPA intends to examine all relevant information as we move forward. Stakeholder input is an important part of developing any future policy.

4. **Will any revisions be promulgated through a transparent public process?**

   Response: Yes, the EPA intends to promulgate any revisions to the 2008 final rule through a notice and comment rulemaking process.

5. **If H.R. 2997 were enacted, what impact would the legislation have on the agency's ability to complete the transparent public revision process, and the agency's ability to utilize the data produced under the Air Compliance Agreement?**

   Response: While enactment of H.R. 2997 would not impact the EPA's ability to complete a transparent, public rulemaking process, it would impact potential agency substantive revisions to the 2008 final rule, including whether the EPA could utilize the emissions data gathered from the National Air Emissions Monitoring Study.

6. **Regarding the discussion draft on information gathering on recycling and recovery, testimony focused on the costs of implementing the legislation and the effectiveness of a voluntary data collection. You testified that implementation would cost $800,000 per year, and would take longer than provided in the legislation. How much would it cost the agency, in total, to implement the legislation, and what would be a more reasonable timeline for development of a useful report?**

   Response: As you noted, the EPA believes data collection and associated activities would cost the agency approximately $800,000 per year. The EPA also estimates that it would take approximately four years for the EPA to develop and issue the data request and collect and analyze the submitted data.

During the fourth panel of the hearing, questions were raised about the requirements of section 311(f) of the Clean Water Act, a statute that is outside of the Committee's jurisdiction. The suggestion was made that section 311(f) allows for cleanup cost recovery, rendering the requirements of CERCLA redundant.

7. **Section 311 applies to releases of oil and substances designated as hazardous under the Clean Water Act, which designation is limited to substances whose release into navigable waters may affect natural resources. Would all substances designated as hazardous under Superfund be covered by the provisions of Section 311?**

   Response: No, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) defines hazardous substances as those either designated through regulation or designated under other environmental statutes. One such statute is the Clean Water Act (CWA). However, there are other statutes that have substances that may or may not be identified as CWA hazardous substances. For example, biphenyl is a Clean Air Act (CAA) hazardous air pollutant and CERCLA hazardous substance, but not a CWA hazardous substance.

8. **Section 311 applies to discharges into navigable waters. Would contamination of drinking water sources that are not navigable be covered?**

   Response: No, section 311 covers only those discharges or substantial threats of discharges into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the

waters of the contiguous zone, or in connection with activities of the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. It does not cover other discharges, even if they affect drinking water sources.

9. **The Supreme Court has recently interpreted the Clean Water Act to significantly reduce the geographic areas historically covered by the Clean Water Act. Would the Supreme Court's interpretation also significantly limit the geographic area for which relief under section 311 could be sought?**

   Response: Generally, yes. Relief under section 311 is limited to the discharges identified in section 311. The Supreme Court's interpretation of the term "navigable waters" under section 502 of the Clean Water Act is controlling.

10. **Is it correct that recovery under section 311 is limited to the costs of containment and removal of the oil or hazardous substance from "the water and shorelines"? Does the same limitation apply to cost recovery under Superfund?**

    Response: Liability for cost recovery under section 311(f) is for removal of a discharge of hazardous substances within the scope of, and in violation of, section 311(b)(3). By contrast, liability under CERCLA extends to all releases and threatened releases of CERCLA hazardous substances to the environment.

11. **Is it correct that section 311(f) does not allow cost recovery against owners or operators if a discharge resulted from an act of a third party? Does the same limitation apply to cost recovery under Superfund?**

    Response: A person is not liable under either CERCLA or section 311(f) for pollution caused solely by a third party's act or omission. Both CERCLA and section 311 provide subrogation rights for parties to assert contribution claims against a third party for pollution caused by that third party's act or omission.

12. **Is it correct that while section 311(f) allows the Federal government to recover cleanup costs, it does not provide the same ability to municipalities or private parties conducting cleanups?**

    Response: Yes, section 311 provides for liability for cost recovery only to the United States.

13. **Is it correct that liability under section 311(f) is capped unless the United States can show that the discharge resulted from willful negligence or willful misconduct?**

    Response: Yes.

14. **Given these limitations, is Superfund redundant to section 311(f) of the Clean Water Act?**

    Response: No. CERCLA generally covers releases of more substances, and into more environmental media than section 311(f) of the CWA.

Questions also arose during the fourth panel about the potential overlap between the requirements of Superfund and EPCRA and other environmental statutes.

15. **One question concerned section 3007 of the Solid Waste Disposal Act, a provision within subtitle C of RCRA. Would the provisions of subtitle C of RCRA apply to manure, and if so, are those requirements redundant to the requirements of Superfund?**

    Response: In general, RCRA section 3007 would not be a provision which applies to the storage of manure and therefore would not be considered redundant to the emissions reporting requirements under CERCLA (Superfund).

16. **In general, do the requirements of subtitle C of RCRA complement or replicate the requirements of Superfund?**

    Response: The provisions of Subtitle C of RCRA can complement CERCLA requirements. RCRA Subtitle C regulations govern the generation, transportation, and treatment, storage, or disposal of hazardous waste. RCRA Subtitle C regulations help ensure that hazardous waste is properly disposed of and help ensure that releases are prevented, thus making Superfund response unnecessary.

17. **Do sections 7002 and 7003 of RCRA duplicate the requirements of EPCRA or Superfund?**

    Response: RCRA sections 7002 and 7003 are not duplicative of EPCRA and CERCLA (Superfund) emissions reporting requirements.

18. **Does section 112 of the Clean Air Act duplicate the requirements of EPCRA or Superfund?**

    Response: No. In broad terms, Clean Air Act (CAA) section 112 does not include the response authorities of Superfund and the community-based information and emergency planning provisions of EPCRA. The "NESHAP" emission standard requirements and the accidental release rules under CAA section 112 do not apply to several of the hazardous substances regulated under CERCLA and EPCRA. Neither the NESHAP emission standard requirements nor the accidental release regulations under CAA section 112 require immediate notification of releases that exceed a CERCLA or EPCRA reportable quantity.

In 2003, the National Academy of Sciences issued a report on air pollution from animal feeding operations. The Academy found that these operations emitted multiple pollutants including ammonia, hydrogen sulfide, particulate matter, and greenhouse gases. In 2011, the EPA estimated that over 80% of U.S. ammonia emissions were from agricultural operations.

19. **What are the potential health impacts of ammonia emissions?**

    Response: The EPA is currently developing air emission estimating methodologies based on the National Air Emissions Monitoring Study for various types of animal feeding operations. The potential for health impacts depends entirely on the concentrations of ammonia that are emitted from these facilities. At sufficient concentrations, ammonia is known to cause irritation and burning to eyes, mouth, and lungs. Ammonia is also a precursor to ammonium nitrate and

ammonium sulfate, components of fine particulate matter. Fine particulate matter can cause serious health problems such as aggravated asthma, decreased lung function, and premature death in persons with heart or lung disease. When released, ammonia can contribute to acidification of waterways and forests and add to nitrogen over-enrichment of sensitive ecosystems.

20. **Are there other air emissions from manure that pose a public health threat?**

    Response: Known emissions from animal feeding operations in addition to ammonia, include hydrogen sulfide, particulate matter, volatile organic compounds, and greenhouse gases such as nitrous oxide. These air pollutants each have the potential for human health impacts when emitted in sufficient concentrations. The EPA Science Advisory Board is currently reviewing the emission estimating methodologies, developed from the National Air Emissions Monitoring Study. These methodologies will allow the EPA to more accurately estimate the emissions of various substances and determine whether they pose significant risk at current levels.

21. **What are the risks to human health and the environment from releases into soil and water?**

    Response: Please see the responses to questions 19 and 20. Further health impact information can be obtained from the Agency for Toxic Substances and Disease Registry (ATSDR) with information associated with ammonia exposure at:
    http://www.atsdr.cdc.gov/substances/toxsubstance.asp?toxid=2

    ATSDR also has information about the health impacts associated with hydrogen sulfide exposure at: http://www.atsdr.cdc.gov/substances/toxsubstance.asp?toxid=67

Representative John Dingell

1. **Has any public agency determined that a public health hazard existed based on the release of hydrogen sulfide at a dairy farm or other animal feeding operation?**

   Response: Yes, in 2009, the Minnesota Department of Health and the federal agency for Toxic Substances and Disease Registry (ATSDR) found that elevated emissions of hydrogen sulfide related to manure disposal at a dairy operation (Excel Dairy) posed a public health hazard.

2. **What size city would generate waste approximately equal to the amount of animal waste generated by a CAFO, such as a large animal feeding operation or hog farm?**

   Response: In a 2004 CAFO related Risk Management Evaluation, the EPA estimated that a dairy operation with 2,500 cows could produce as much waste as a city of 411,000 residents.

August 24, 2012

The Honorable John Shimkus
Chairman, U.S. House Subcommittee on Environment and the Economy
U.S. House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

RE: Glass Packaging Institute (GPI) – Responses to Questions from Energy and Commerce Committee Ranking Member Henry Waxman – *"The Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012"*

1.) Have GPI's activities at the local, state and federal level to improve the supply chain for recycled materials provided a benefit to the glass industry?

GPI and member companies at the state, local and federal levels continue their work to improve the supply chain of recyclables but there remain longstanding challenges, including lack of reliable data, which needs to be addressed to achieve a significant improvement in collection and recovery rates. For example, with respect to beverage containers alone, approximately 150 billion PET, glass and aluminum beverage containers (with an estimated annual value of $3.6 billion dollars) are needlessly disposed of in landfills each year. Through partnerships with localities, recycling and other processing companies, significant benefit is provided not only to the glass container industry, but also to these and other companies in the supply chain, and the communities in which they operate.

When more recyclables are able to be reused in the manufacturing process, raw materials and other natural resources are conserved, energy consumption and air emissions (including greenhouse gases) are reduced, and burdens on landfills lessened (along with the associated tonnage-based tipping fees). By purchasing more recycled glass and other materials, developed in part through these efforts, all companies in the supply chain are sustaining jobs, contributing to the local, state and national economy and greatly assisting the environment - all of which are valuable economic, energy and environmental public policy objectives that far transcend and are quite independent of any particular benefit to individual companies.

2.) – Would the data and analysis produced under this draft legislation provide a benefit to the glass industry?

The data and analysis in the discussion draft would provide benefits to the glass

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container, and the broad base of other stakeholders including municipalities, manufacturing, processing and recycling based industries. By working to identify the gap between the point of collection and the final end market, the manufacturing companies who purchase recyclable materials for daily use in their manufacturing processes gain a better understanding of their supply chain. As we stated in our testimony, the reduced energy use and associated greenhouse gas emissions levels realized when recyclable materials are used is significant and crucial as our industry works to comply with regulations under the Clean Air Act, state and regional programs and unregulated competition from importers. Glass container manufacturing companies often ship recycled glass significant distances for use in their manufacturing facilities. The discussion draft may assist in reducing the distance recyclables would need to travel and importantly, strengthen and grow recycling programs at the local level. Also helpful at the local level would be a closer examination of commonly utilized recycling programs, as municipalities choose the recycling program that is the best fit for their community.

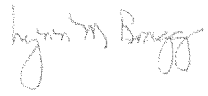
3.) – Would the industry to be willing to contribute to the costs of the data gathering and analysis envisioned in the draft legislation?

GPI membership contributes financial resources across the country (as well as globally) towards efforts, partnerships and organizations that target recycling efforts similar to those outlined in the discussion draft. As you are aware, the EPA already budgets for development of the current Municipal Solid Waste (MSW) Report to collect data on recovery and generation of recyclable materials. We believe the goals of the discussion draft will work within the framework of the existing Report and that the newly envisioned component would merely constitute a modest section of the Report going forward. Manufacturing and recycling industries, as well as municipalities, recognize the EPA MSW Report and the national value it provides across the spectrum of commodities.

Should funding for this, or a similar report be provided by any industry, there will likely be a perception that resulting efforts would demonstrate bias. GPI views the EPA's role in the evolution of the MSW Report as key to ensuring the integrity of the Report for use by the many public and private stakeholders who collectively "own" the recycling issue, along with the challenge of finding a sustainable solution.

Please do not hesitate to contact me if you have any follow-up questions to our responses.

Thank you,



Lynn M. Bragg
President

Responses to Questions Raised by **The Honorable Henry Waxman** at the June 27, 2012 hearing before the Energy and Commerce Committee, Subcommittee on Environment and the Economy

You noted in your testimony that recycling provides valuable raw material to American Industry.

1. **Would the data and analysis produced under this draft legislation provide a benefit to the paper industry?**

Improved data collection could potentially benefit the paper recycling industry, but it isn't as essential as educating the public about the need for increased recycling. The educational component of recycling collection has suffered greatly in the last few years and all commodities would benefit from increased recovery.

2. **Would the industry be willing to contribute to the costs of the data gathering and analysis envisioned in the draft legislation?**

Through the American Forest & Paper Association, the paper industry annually collects and analyses vast quantities of data. In an aggregated form, this information is provided to EPA for their annual report on Municipal Solid Waste in the United States.

Sincerely Yours
Jonathan M Gold
Sr. VP
Jonathan M. Gold
The Newark Group

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

August 10, 2012

Ms. Susana M. Hildebrand
Chief Engineer
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, TX 78753

Dear Ms. Hildebrand:

Thank you for appearing before the Subcommittee on Environment and the Economy on June 27, 2012, to testify at the legislative hearing to consider a discussion draft entitled "The Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012," and H.R. 2997, "The Superfund Common Sense Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Nick.Abraham@mail.house.gov by the close of business on Friday August 24, 2012.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Gene Green, Ranking Member,
Subcommittee on Environment and the Economy

Attachments

The Honorable John Shimkus

1. Is there confusion between the element phosphorus, which EPA lists as a hazardous substance under CERCLA, and the compound phosphate?

    a. Does cow manure contain on and not the other?

    b. Why is this distinction important?

2. Do you have any comments on the attached letter submitted for the record?

    a. The letter presumes that reporting releases from an animal feeding operation under EPCRA would prevent first responders from 'driving into; situations that the letter seems to recognize may actually be perilous, like an anhydrous ammonia plume, -- would that be the case? And if so, how?

National Association of SARA Title III Program Officials

Concerned with the Emergency Planning and Community Right-to-Know Act

July 3, 2012 *Electronically Submitted*

United States House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Opposition to HR 2997

Dear Chairman Upton, Ranking Member Waxman and all other Members:

The National Association of SARA Title III Program Officials (NASTTPO) is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), various federal agencies, and private industry. Members include state, tribal, or local government employees as well as private sector representatives with Emergency Planning and Community Right to Know (EPCRA) program responsibilities, such as health, occupational safety, first response, environmental, and emergency management. The membership is dedicated to working together to prepare for possible emergencies and disasters involving hazardous materials, whether they are accidental releases or a result of terrorist attacks.

As an organization, NASTTPO is not taking a position on the environmental compliance record of confined animal feeding operations or farms. Rather, NASTTPO is commenting because we believe the proposed legislation threatens the integrity of the accidental release reporting system and, put bluntly, endangers the lives of rural first responders.

The 911 call that comes in from a member of the public in the dark of night reporting a foul or chemical odor rarely contains information on the source. Ammonia odors may come from a variety of sources and "manure" is most certainly one of the likely choices. Unfortunately, that information will not be known to the first responders. Perhaps the source is a truck accident. It can also be someone opening an anhydrous ammonia nurse tank to steal that product for a drug lab. These scenarios threaten the

lives of first responders and it is unreasonable to force them to guess at the source in the middle of the night.

Release reporting by facilities under EPCRA provides crucial information to those responders. Without such information responders are forced to blindly drive through an area not knowing what they are looking for with a very great risk that they will drive into an anhydrous ammonia plume. If the facility has reported a release under EPCRA then the first responders can correlate that information as they plan their response. Without the release report they must assume the worst case and respond accordingly, or, most troubling, respond assuming it's the animal feeding operation and be wrong with deadly consequences.

It's simply inappropriate to deny first responders a release report. The burden on the industry is trivial. The consequences are potentially deadly. Congress should not adopt HR 2997 in its current form.

Thank you.

Timothy R Gablehouse
Director, Government Relations
Immediate Past-President
410 17th St, Ste 1375
Denver CO 80202
(303) 572-0050

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 24, 2012

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: Additional questions from legislative hearing before the Subcommittee on Environment and the Economy June 27, 2012.

Dear Mr. Shimkus,

Thank you for the opportunity of appearing before the Subcommittee on Environment and the Economy on June 27, 2012, to testify at the legislative hearing discussion entitled, "The Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012," and H.R. 2997, "The Superfund Common Sense Act."

In response to your letter dated August 10, 2012, I have addressed the additional submitted questions from the hearing in the attached document. I hope you find them informative and helpful for any further discussions.

Please feel free to contact me with any other questions you may have at 512-239-4696 or susana.hildebrand@tceq.texas.gov.

Sincerely,

Susana M. Hildebrand, P.E.
Chief Engineer

Additional questions from the Subcommittee on Environment and the Economy from the June 27th, 2012 legislative hearing entitled "The Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012" and H.R. 2997 "The Superfund Common Sense Act."

The Honorable John Shimkus:

1. **Is there confusion between the element phosphorus, which EPA lists as a hazardous substance under CERCLA and the compound phosphate?**

   Yes, it appears that some have confused these two substances. There is a significant difference between the physical and chemical properties of the element phosphorus and compounds containing phosphates. This is especially true of phosphate compounds in manure. The elemental form of phosphorus that EPA lists as a hazardous substance under CERCLA is highly toxic and extremely reactive in that it will burn spontaneously when exposed to air. The elemental form of phosphorus does not occur naturally; it is produced through industrial processes and used to manufacture munitions, pesticides, fertilizers, and other chemicals. Elemental phosphorus occurs as P_4, i.e., four atoms of phosphorus bonded together.

   Phosphate compounds, as a group, are not listed as hazardous substances under CERCLA. Phosphate compounds consist of one phosphorus atom surrounded by four oxygen atoms, i.e., PO_4. Phosphates are usually used as compounds of phosphate ions in combination with one or more common elements, such as sodium, calcium, potassium, and aluminum. Phosphate compounds and products are a significant part of everyday living. Monocalcium phosphate is used as a leavening agent in baking to make biscuits tender. Dicalcium phosphate is used as a polishing agent in toothpaste, and tricalcium phosphate is the conditioning agent in salt that keeps it flowing freely. In combination with calcium, an ongoing phosphorus supply (in the form of phosphates) is essential to maintaining healthy bones and teeth and proper blood chemistry. Phosphates are also contained in both commercial fertilizers as well as natural fertilizers, such as animal manure, that has been used for centuries as a soil supplement.

   In natural systems, such as soil and water, phosphorus exists as phosphate compounds, rather than its elemental state.

   a. **Does cow manure contain one and not the other?**

      Yes, as stated above, the elemental form of phosphorus does not occur naturally. Cow manure contains various inorganic and organic phosphate compounds and does not contain elemental phosphorus.

   b. **Why is this distinction important?**

      The distinction is important because the phosphate compounds in manure do not exhibit the highly toxic or reactive properties of elemental phosphorus that are the basis for listing elemental phosphorus as a CERCLA hazardous substance. The reporting

Additional questions from the Subcommittee on Environment and the Economy from the June 27th, 2012 legislative hearing entitled "The Increasing Manufacturing Competitiveness Through Improved Recycling Act of 2012" and H.R. 2997 "The Superfund Common Sense Act."

requirements associated with CERCLA and EPCRA are not intended for biological processes that occur in nature on a daily basis. The requirements for reporting should be emergency event driven. The occurrence of phosphates in manure does not constitute an emergency event.

2. **Do you have any comments on the attached letter submitted for the record?**

   a. **The letter presumes that reporting releases from an animal feeding operation under EPCRA would prevent first responders from driving into: situations that the letter seems to recognize may actually be perilous, like an anhydrous ammonia plume, - would that be the case? And if so, how?**

   Emissions from agricultural manure do not create a need for emergency response because they occur at very low levels and disperse rapidly. Emergency responses under CERCLA and EPCRA are designed to provide for rapid response to true health emergencies, such as oil spills or chemical fires. It is not reasonable to require any entity to report a nonhazardous substance release in order to inform first responders that the nature of the release is in fact nonhazardous. What the letter states as a case for reporting animal feeding operations (AFO) emissions under EPCRA is really just the opposite and could result in first responders not being prepared to deal with a truly hazardous release from another source that is occurring at the same time. Passage of H.R. 2997 "The Superfund Common Sense Act" clarifying that cow manure and animal digestive processes are not subject to emergency reporting under EPCRA would prevent the first responders from constantly having to respond to the daily operations of an AFO. We do not call out the fire department just because someone strikes a match to light the birthday candles. If we did, reports of burning buildings would be shrouded by the clutter of reporting every day non-emergency events. First responders need to know that if they are responding to an event that it is truly hazardous NOT just another natural occurrence.

July 20, 2012

The Honorable John Shimkus
Chair, Environment and Economy
Subcommittee
U.S. House of Representatives
Washington, DC 20515

The Honorable Gene Green
Ranking Member, Environment and Economy
Subcommittee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Green:

Thank you for the opportunity to testify concerning H.R. 2997 on June 27. I am writing to respond for the record to questions that Chairman Shimkus asked me.

First, you asked whether Sierra Club was involved in litigation over the December, 2008, final rule that provided reporting exemptions for air releases of hazardous substances from animal waste. Sierra Club was one of many organizations involved in this litigation.

You stated that you thought that Section 311 of the Clean Water Act provided authority for cities to recover damages for contamination of their drinking water supplies by animal feeding operations, as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) does, and asked if Sierra Club agreed. Our view is that Section 311 does *not* empower local authorities to recover monies expended cleaning up hazardous substance releases through cost recovery actions like the ones brought by Waco and Tulsa. Based on the statutory language, it appears that only the federal government can initiate cost recovery actions. 33 U.S.C. § 1321(f)(2) ("The United States may bring an action against the owner or operator . . . to recover [removal] costs.").

You asked whether the bill amends sections of the Solid Waste Disposal Act that provide for citizen suits and authorize the EPA administrator take enforcement actions. The bill does not amend the Solid Waste Act, but the sections of the law you mentioned (42 U.S.C § 7002 and 7003) do not provide cities with the ability to recover costs they incur to treat water contaminated with wastes from livestock and poultry facilities, as CERCLA does. Moreover, the law expressly provides that it does not apply to "any activity or substance" that is already regulated under the Clean Water Act. 42 U.S.C. § 6905(a). Concentrated Animal Feeding Operations are regulated under the Clean Water Act's NPDES program, so they are exempt from regulation under Resource Conservation and Recovery Act.

Finally, you asked whether the bill amends Section 112 of the Clean Air Act. It does not amend the Clean Air Act, but neither ammonia nor hydrogen sulfide, the principal air pollutants generated by animal waste, are regulated as hazardous air pollutants, and this provision of the

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Clean Air Act has never been used to control toxic air emissions from animal waste. In any case, CERCLA requires reporting of releases over a certain threshold; it does not set emissions standards or require pollution controls.

In conclusion, CERCLA provides a critical and unique tool to enable communities whose water supplies have been contaminated with animal waste to seek to recover cleanup costs. While federal and state governments have authority under other statutes to regulate pollution from animal feeding operations, often they fail to take appropriate action. CERCLA provides the authority that communities need to protect themselves and their ratepayers from footing the bill for cleanup costs imposed on them by animal feeding operations that fail to manage their waste properly. For these reasons, we oppose H.R. 2997.

Thank you for the opportunity to testify and to respond to your questions.

Sincerely,

Ed Hopkins

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Director, Environmental Quality Program

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The Honorable Henry A. Waxman

During the hearing, you were asked about the effect of H.R. 2997 on provisions in several environmental laws, without being given an opportunity to offer your view on the applicability of those provisions to address contamination from manure.

1. **You were asked whether H.R. 2997 would affect section 3007 of the Solid Waste Disposal Act, a provision within Subtitle C of RCRA. Would section 3007 of the Solid Waste Disposal Act apply to contamination from manure?**

   Section 3007 of the Solid Waste Disposal Act concerns inspections of facilities that generate, store, treat, transfer, dispose of or otherwise handle hazardous waste. Since manure is not a hazardous waste and animal feeding operations are not regulated as hazardous waste handling facilities under RCRA, Section 3007 would not apply.

2. **In general, do the requirements of Subtitle C of RCRA complement or replicate the requirements of Superfund?**

   Subtitle C of RCRA was intended to complement the Superfund law, not replicate it. RCRA expressly provides that it does not apply to "any activity or substance" that is already regulated under the Clean Water Act. 42 U.S.C. § 6905(a). Concentrated Animal Feeding Operations are regulated under the Clean Water Act's NPDES program, so if these operations have Clean Water Act permits to discharge pollutants, their permitted discharges are exempt from regulation under Resource Conservation and Recovery Act.

3. **You were asked whether H.R. 2997 would affect sections 7002 and 7003 of RCRA. Would sections 7002 and 7003 of RCRA apply to contamination from manure?**

   Animal manure is not a hazardous waste under RCRA. Unless animal feeding operations are treating, storing or disposing of hazardous waste, these provisions of RCRA would not apply.

4. **In general, do the requirements of section 7002 and 7003 of RCRA duplicate the requirements of EPCRA or Superfund?**

   These sections of RCRA do not duplicate the requirements of EPCRA or Superfund. These provisions do not require reporting emissions, as EPCRA and CERCLA do. Nor do these provisions provide communities with the ability to recover costs they incur to treat water contaminated with wastes from livestock and poultry facilities, as Superfund does.

5. **You were asked whether H.R. 2997 would affect section 112 of the Clean Air Act. Would section 112 of the Clean Air Act require reporting of emissions associated with manure?**

   Section 112 of the Clean Air Act does not require reporting of emissions associated with manure.

6. **Does section 112 of the Clean Air Act duplicate the requirements of EPCRA or Superfund?**

Section 112 of the Clean Air Act does not duplicate the requirements of EPCRA or Superfund. As noted above, it does not require reporting of emissions. Nor does it duplicate Superfund's provisions that provide local and state governments with the ability to recover costs they incur for cleaning up waters contaminated with animal waste.

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