

# CLEANING UP THE SUPERFUND PROGRAM

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## HEARING

BEFORE THE

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

COMMITTEE ON GOVERNMENT  
REFORM AND OVERSIGHT  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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MAY 8, 1996

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# CLEANING UP THE SUPERFUND PROGRAM

WEDNESDAY, MAY 8, 1996

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,  
NATIONAL RESOURCES, AND REGULATORY AFFAIRS,  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, McHugh, Gutknecht, Scarborough, Ehrlich, Peterson, Waxman, Slaughter, and Condit.

Ex officio present: Representative Clinger.

Staff present: Mildred Webber, staff director; Charles Griffin, professional staff member; Larisa Dobriansky, senior counsel; David White, clerk; Bruce Gwinn, minority senior policy analyst; and Liza Mientus, minority professional staff member.

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

Today our topic is Superfund and the EPA's efforts in this area. Frankly, today, in Bill Clinton's America, 40 million citizens live just 4 miles from toxic waste sites.

Everyone agrees—environmentalists, small businesses, large businesses, and State and local governments—that the Superfund Program, charged with cleaning up those toxic sites, has been a failure.

The Superfund Program must be reformed. Sadly, there is one person standing in the way, one person saying no to the environmentalists, one person saying no to small and large businesses, one person saying no to the State and local taxpayers. That person is the President of the United States.

President Clinton likes to say that the environment is one of the chief campaign issues this year, but as with many other issues, there exists a great credibility gap between the President's record and his rhetoric.

After 2 years in the White House with a friendly Democratic Congress, he failed to make Superfund reform a priority.

Now he's blocking serious reform efforts in this Congress. By opposing Superfund reform, the President is once again saying anything to get reelected and doing the opposite here in Washington.

This gross neglect toward the environment is shocking. Our witnesses today are the heart-wrenching victims of the President's failed credibility.

They are families who have seen their homes destroyed, small business owners who are losing their family inheritance through no fault of their own and communities who want to rebuild because EPA has failed to get the job done.

Our witnesses will attest the goal of fast, fair, and effective cleanup has been lost. These citizens have become victims of an endless series of disputes over what must be done and who must pay for it.

Why has the President abandoned these American families? The sad fact is that billions of dollars spent on Superfund does not go to clean up these toxic wastesites but goes into the pockets of the trial lawyers, and the trial lawyers have contributed millions of dollars to Bill Clinton's campaign.

We've seen it time and time again. The administration is in the hip pocket of the trial lawyers. We saw it when securities litigation came up before this Congress.

The trial lawyers came in and said, "Mr. Clinton, you must veto this bill," and Mr. Clinton turned to them and said, "I feel your pain," and vetoed that bill.

We saw it when product liability came up in this Congress. Once again the trial lawyers came in and said, "We want this legislation killed," and the President vetoed it.

Now, the President is standing between the American people and reform of Superfund, standing side by side with his buddies in the trial law association.

It's a sad day when these special interests can prevent reform that everyone, from homeowners, environmentalists, mayors, Governors, Democrats, and Republicans and even the President's own economic advisers agree is broken.

Unfortunately, the trial lawyers don't seem to be particularly concerned about the pain that they cause these millions of Americans, because these Americans have to live next to these toxic wastesites.

Now, as you'll note from this first chart over here, as one witness has put it, the Superfund cleanup record is not merely a personal tragedy, it's a national disgrace.

For almost 16 years, the Superfund law has spent \$25 billion, and only a fraction of the sites have been cleaned up, less than 25 percent of these hazardous wastesites.

Now, as you can see on the right-hand side of that chart, 91 sites have actually been removed from the priority list, but of those, two-thirds of the sites were sites where nothing was done, and they decided it did not require cleanup.

Now, Lois Gibbs started the national movement toward Superfund. She gave birth to this movement by talking about the problems of Love Canal, and she said recently, "Superfund is broken. Scientists and lawyers are getting the money while the affected people just sit there and get no relief."

Yes, Lois Gibbs is right. The program's liability scheme is primarily to blame for the cleanup delays. Frankly, the current statutory scheme violates the basic principles of fairness in our legal system.

First, innocent landowners, who did not cause the pollution, are treated as guilty criminals. Second, minor contributors go bankrupt because they have to pay for the whole cost of cleanup.

Parties spend all of their money suing each other and fighting with the EPA which would rather go to court than spend its money on cleaning up these sites.

The 1980 Superfund law has resulted in an endless round of litigation and very few cleanups. In fact, nearly two-thirds of every Superfund dollar spent, 58 percent, according to the Commerce Committee record, is spent on lawyers, litigation, and excessive bureaucratic costs rather than cleaning up these hazardous wastesites.

Ironically, Mr. Elliott Laws, the Assistant Administrator for EPA's Office of Solid Waste and Emergency Response, the man who is responsible for administering the cleanup program, recently stated in a letter to Congressmen Oxley and Bohlert, "I do want to point out that there is no evidence to support your claim that existing liability scheme delays cleanups."

What planet is Mr. Laws living on? It certainly isn't Spaceship Earth. After all, even Mr. Laws' boss recognizes that there is a problem.

Carol Browner testified before the Senate that cleanups are slowed by the overwhelming number of parties, the lawyers, the litigation caused by the current liability system.

It's curious that Mrs. Browner would decide to institute administrative reforms for a faster, fairer, and more effective program if there was no evidence that the existing liability scheme delayed cleanups.

However, cleanups have not only been delayed by legal battles. They've also been beset by significant bureaucratic and unrealistic standards.

Extensive site investigations, data collection, and studies have driven up the cost and resulted in delays. Oftentimes, EPA has sought to impose unrealistic standards and experimental remedies that don't make sense for the site.

They often insist that a dumpsite in an industrial park be cleaned up so that a hypothetical hiker could come there and eat the dirt when all you really need to do is clean it up so you can build a factory over the site.

Finally, as GAO will discuss, EPA has not used its funds to focus on real human health threats as the No. 1 priority.

As you will note from the second chart, EPA's program is a maze of rules and bureaucratic redtape. No wonder there are press reports that even the people who are in charge of administering it, the Federal employees who run this program, are frustrated and angry.

If they're angry, you can imagine what the homeowners who live next to these sites think, when they have to figure out how to work their way through this morass of gobbledygook in order to clean up their communities.

The program described in this chart now takes an average of 12 years to get toxic dumps cleaned up. It's in small print, but at the bottom you can see that only 2½ years is actually spent on cleaning up the waste.

What's more, the costs are skyrocketing. It's now between \$25 and \$30 million per site. Clearly, it's time to fix the Superfund legislation and to have real legislative and administrative reform.

It's time to clean up the environment for the sake of the public's health. It's time to turn Superfund into a responsive, efficient, and fair program in order to restore hazardous dumping grounds into productive lands for the people of these communities.

It's time to end Superfund as a cash cow for the lawyers and the consultants. I am in complete agreement with William J. Roberts of the Environmental Defense Fund when he said, "By failing to enact reform, Congress is likely to cause an already slow program to slow down further, to allow runaway litigation to continue and to betray yet again the hundreds of communities around this country waiting for relief."

While the lawyers and the consultants are cleaning up, millions of Americans are left holding the bag. They continue to live near these contaminated sites filled with chemicals linked to birth defects, spontaneous abortions, and neurologic disorders.

Millions of Americans nationwide don't understand what goes on behind the scenes in Bill Clinton's EPA. They wanted EPA to do a better job.

Today, the witnesses that come before us are demanding that Washington do a better job. They are right. This program is a national disgrace.

Their important stories must be told in the hopes that the President will have compassion not only for his friends in the trial bar but will join in showing compassion for real Americans who want to see Superfund improved. We need to stop suing each other and start cleaning up the environment. I say welcome to all of our witnesses today, look forward to the testimony that will be given and the record that will be developed.

[The prepared statement of Hon. David M. McIntosh follows:]

## **STATEMENT BY CHAIRMAN McINTOSH**

Today in Bill Clinton's America, 40 million citizens live just four miles from toxic waste sites. Everyone agrees -- environmentalists, businesses large and small and state and local governments -- that the Superfund program charged with cleaning up hazardous waste sites has been a failure.

The Superfund program *must* be reformed. But there is *one* person standing in the way. One person saying no to the environmentalists, no to businesses large and small and no to state and local governments.

That person is the president of the United States.

President Clinton likes to say that the environment is one of his chief campaign issues. But, as with many other issues, there exists a great credibility gulf between the president's record and his rhetoric.

After two years in the White House with a friendly Democrat Congress, he failed to make Superfund reform a priority. Now he is blocking serious reform efforts in this Congress. By opposing Superfund reform the President is once again saying anything to the American people to get elected -- and doing the opposite in Washington.

This gross neglect toward the environment is shocking. Our witnesses today are the heart-wrenching victims of the president's failed credibility.

They are families who have seen their homes destroyed, small business owners who see their family businesses lost through no fault of their own and communities who want to re-build because EPA will not get the job done. As our witnesses will attest, the goal of fast, fair, and effective clean-up has been lost.

Instead these citizens have become victims of endless disputes over what should be done and who should pay for it. *Why* has the president *abandoned* these American families?

The sad fact is that billions of dollars spent on Superfund do not go to clean these toxic sites but to line the pockets of fat-cat trial lawyers. And the trial lawyers have contributed *millions of dollars* to Bill Clinton's campaign. We've seen it time and time again. The Administration is in the hip pocket of the trial lawyers. We saw it with securities litigation reform -- the trial lawyers said veto that bill and Mr. Clinton said, "I feel your pain," and vetoed it.

We saw it with product liability reform -- the trial lawyers wanted the legislation killed and once again Mr. Clinton vetoed it. Now, the President is standing side-by-side with his trial lawyer friends in his battle against Superfund reform.

It's a sad day when these *special interests* can prevent reform of a law that everyone -- housewives, environmentalists, Republicans and Democrats mayors and governors, and even the President's own economic advisors agrees is broken. Unfortunately, the trial lawyers don't seem to be particularly concerned with the facts -- and the pain that millions of Americans have to endure because they are forced to live dangerously close to toxic waste sites.

As you will note from this chart, and as one witness here today put it: The Superfund cleanup record "is not merely a personal tragedy, but a national disgrace."

Almost 16 years after the Superfund law was enacted, over \$25 billion dollars have been spent, yet EPA has cleaned up only a fraction -- less than 25% -- of our nation's hazardous waste sites.

Of the 91 sites -- or about 7 percent -- actually deleted from the National Priority List, two-thirds of those sites were one EPA decided did not require any long term cleanup actions.

Lois Gibbs -- the environmental activist who gave birth to Superfund by calling attention to Love Canal -- is right. "Superfund is broken," she said. "Scientists and lawyers are getting the money while the affected people just sit there and get no relief."

The program's liability scheme is primarily to blame for the cleanup delays. Frankly, the current statutory scheme violates the basic principles of fairness in our legal system. Innocent land owners who did not cause the pollution are treated as guilty criminals. Minor contributors to the problem go bankrupt because they have to pay for the whole cost of cleanup. Parties spend all of their money suing each other and defending themselves against the EPA -- which would rather go to court than spend it's taxpayer funds to actually clean up a site.

The 1980 Superfund law has resulted in endless rounds of litigation and very few cleanups. In fact, about nearly two-thirds of every Superfund dollar -- 58% according to the Commerce Committee record -- is spent on lawyers, litigation, and excessive bureaucratic costs rather than actual cleanups.

Ironically, Elliott Laws, Assistant Administrator for EPA's Office of Solid Waste and Emergency Response, recently stated in a letter to Congressmen Oxley and Boehlert on Superfund reform that, "I do want to point out that there is no evidence to support your claim

that the existing liability scheme delays cleanups.” What planet has Mr. Laws been living on? After all, even Elliott Laws’ boss recognizes that there’s a problem.

EPA Administrator Carol Browner testified before the Senate Environment and Public Works Committee that cleanups are slowed by the overwhelming number of parties, lawyers, and litigation caused by the current liability system. Finally, it is curious that Administrator Browner would institute administrative reforms, including enforcement initiatives, for a “faster, fairer, and more effective” program if there is “no evidence” that the existing liability scheme delays cleanups.

However, not only have cleanups been thwarted by legal battles, but the program also has been beset by significant bureaucratic delays and unrealistic standards. Extensive site investigations, data collection, and studies have driven up costs unnecessarily and caused delays.

Moreover, too often, EPA has sought to impose cleanup standards that don’t make sense for the location. For example, They often insist that a dump site in an industrial park be so clean that a hypothetical hiker could eat the dirt -- when *all* you really need to do is clean up the site so another factory can be built over it.

Finally, as GAO will discuss, EPA has not used its funds to focus on real human health threats as the number one priority. As you will note from the chart, EPA’s program is a maze of rules and red tape. No wonder there are press reports that even federal employees trying to get the job done have been frustrated and angered. If they are angry, imagine what the homeowners who live next to these sites think when they try to figure out how to get their neighborhood cleaned-up and are confronted with this type of maze.

The program described in this chart, now takes an average of 12 years to get toxic dumps cleaned up to safe levels. Only 2 ¼ years of this time is actually spent on doing cleanups. What’s more, cleanup costs are skyrocketing -- \$25-\$30 million on average per site.

Clearly, it’s time to fix Superfund through legislative and real administrative reform. It’s time to clean up the environment for the sake of the public’s health.

It’s time to turn Superfund into a responsive, efficient, and fair program in order to restore hazardous waste sites to productive lands for the people of the communities. It’s time to end Superfund as a cash cow for lawyers and consultants.

I am in complete agreement with William J. Roberts of the Environmental Defense Fund, “By failing to enact reform, Congress is likely to cause an already slow program to slow further, allow runaway litigation to continue and betray yet again the hundreds of

communities waiting for relief.”

While lawyers and consultants are *cleaning up*, millions of Americans are left holding the bag. They continue to live near contaminated sites filled with chemicals linked to birth defects, spontaneous abortions, and neurologic disorders.

The millions of people nationwide who live within 4 miles of toxic sites don't understand what goes on behind-the-scenes in Bill Clinton's EPA that thwarts cleanups. Why can't EPA do a better job of cleaning up these sites?

Today, the witnesses that come before this committee are demanding that Washington do a better job. They are right. This program is a national disgrace.

Their important stories *must* be told in the hopes that the President will have compassion not only for his friends in the trial lawyers association, but join us in showing genuine compassion for real Americans who want to reform Superfund.

We need to stop *suing* each other and start cleaning up the environment.

Mr. MCINTOSH. Mr. Waxman, do you have an opening statement?

Mr. WAXMAN. I do. Thank you very much, Mr. Chairman. It's interesting that this hearing has been started off with such a partisan note.

It seems to me, I guess, for everybody to know that this is an election year, but this committee doesn't even have jurisdiction over the Superfund Program. The Commerce Committee has jurisdiction over that program.

We have jurisdiction only for oversight purposes. Oversight ought to be to try to learn the truth, not just to make charges, but the chairman has started off this hearing by making charges, some of which, I think, are rather cheap, when it comes to attacking the President of the United States.

Mr. Chairman, I'm pleased you're holding this hearing, because we ought to get some of this information out, but I regret that you didn't even see fit to invite people from the Environmental Protection Agency that run the program to testify.

Since the EPA knows the most about this program, you would think that they would be invited, and we would hear from them.

Since they haven't been invited, I want to take a few moments to discuss the Superfund cleanup record under the Clinton administration, and I particularly want to do so to correct some unfortunate statements that have been made by Speaker Newt Gingrich and by the chairman of this subcommittee.

First, the Clinton administration has cleaned up far more Superfund sites in the past 3½ years than were cleaned up in all of the other years of the program combined, even during the time of the Bush administration when the chairman of this subcommittee was involved with the Vice President on environmental issues.

From 1983 to 1992, EPA completed 149 Superfund cleanups, an average of fewer than 15 sites per year. From 1993 to 1995, the Clinton EPA completed 197 Superfund cleanups, an average of more than 65 sites per year.

The Clinton EPA also began cleanup at 472 sites on the national priority list and made final cleanup decisions at another 169 sites.

Cleanups under the Clinton administration are 20 percent faster and cost 25 percent less than cleanups under the Reagan and Bush administrations.

I have a chart over on the side measuring the progress of site remediation.

As you can see, on this chart, for 70 percent of the 1,276 sites on the national priority list, final cleanup decisions have been made, construction has begun or construction has been completed.

Under Administrator Carol Browner's leadership, EPA has undertaken numerous administrative reforms to speed the pace of cleanups and to reduce litigation and transaction costs.

EPA has streamlined the process for providing relief to parties responsible for only a small amount of hazardous waste at a site, what are called de minimis parties, and has entered into more than 10,000 early settlements with such parties.

EPA has exempted thousands of others responsible for small amounts of hazardous waste at a site from Superfund liability.

EPA has removed 25,000 sites from the Superfund site data base, nearly two-thirds, removing impediments by lending to banks and the development of these properties.

EPA has created the Brownfields Economic Redevelopment Initiative, a pilot project to allow for the safe reuse of old industrial sites, and EPA has created the National Remedy Review Board to find ways to reduce the cost of response actions.

No matter how effective administrative reforms are, however, they cannot fill a legislative void. President Clinton sent Superfund reform legislation to Congress in 1994, which included many of the reforms that most of us support, such as measures to complete cleanups faster and at a lower cost, to bring needed relief to small parties, to reduce litigation, to assign a fair share allocation plan for responsible parties and to make cleanup contingent on the future use of the site.

The House Energy and Commerce Committee, which has jurisdiction over the Superfund Program, unanimously approved the legislation as it was amended in a vote of 44 to 0.

This was a bipartisan vote, 44 to 0. It was then approved by the Public Works and Transportation Committee and the Ways and Means Committee, but it fell victim to special interests and election year assaults and was not considered on the House floor.

In the Senate, because of the insurance industry objection, the bill did not move forward, and as I understand it, Senator Dole stopped the progress of that legislation.

In spite of the administration's best efforts, funding cuts won by the Republican majority in the 104th Congress halted more than 60 Superfund cleanups and delayed progress at more than 300 other sites.

I'm not sure what this hearing will add up to, and I don't know what it will contribute to the legislative process, especially since legislation is already pending in the Commerce and Transportation and Infrastructure Committees, and negotiations are ongoing at the present time.

But this hearing does give an opportunity to set the record straight on EPA's behalf, and so I thank the chairman for scheduling this hearing.

I hope we'll hear from people who have something to tell us so that we can try to change this program and make it better.

Let's act constructively. Let's act in a way that is bipartisan. Let's deal with real world problems. Let's don't use committees of the Congress of the United States for cheap political points in an election year.

Don't say that the only thing standing in the way of progress is the President of the United States when he asked us to reform the Superfund Program and has tried to push the Congress to legislate.

It's the Congress that has failed, even though, on a unanimous bipartisan basis, the committee that has jurisdiction tried, and I hope this year we will be more successful. I yield back the balance of my time.

[The prepared statement of Hon. Henry A. Waxman follows:]

HENRY A. WAXMAN  
SUPERFUND HEARING  
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND  
REGULATORY AFFAIRS  
May 8, 1996

Mr. Chairman, I want to thank you for holding this hearing today to review the status of the Superfund program. I regret, however, that the subcommittee did not invite any experts from the Environmental Protection Agency (EPA) to testify. Since EPA actually runs the program, I believe its testimony could have been helpful to Members.

Since the EPA has not been invited, I want to take a few moments to discuss the Superfund cleanup record under the Clinton Administration. I particularly want to do so to correct some unfortunate misstatements of fact Speaker Gingrich has made recently.

First, the Clinton Administration has cleaned up more Superfund sites in the past 3 1/2 years than were cleaned up in all of the other years of the program combined.

From 1983-1992, EPA completed 149 Superfund cleanups -- an average of fewer than fifteen sites per year. From 1993-1995, the Clinton EPA completed 197 Superfund cleanups -- an average of more than 65 sites per year.

The Clinton EPA also began cleanup at 472 sites on the

National Priorities List (NPL) and made final cleanup decisions at another 169 sites. Cleanups under the Clinton Administration are twenty percent faster and cost twenty-five percent less than cleanups under the Reagan and Bush Administrations.

Refer to Chart

Measuring the Progress of Site Remediation

As you can see on the progress chart, for seventy percent of the 1276 sites on the National Priorities List (NPL), final cleanup decisions have been made, construction has begun, or construction has been completed.

Under Administrator Carol Browner's leadership, EPA has undertaken numerous administrative reforms to speed the pace of cleanups and to reduce litigation and transaction costs.

\*EPA has streamlined the process for providing relief to parties responsible for only a small amount of hazardous waste at a site ("De Minimus" parties) and has entered into more than 10,000 early settlements with such parties.

\*EPA has exempted thousands of others responsible for small amounts of hazardous waste at a site ("De Micromis" parties) from Superfund liability.

\*EPA has removed 25,000 sites from the Superfund site data base (nearly 2/3), removing impediments to lending by banks and the development of these properties.

\*EPA has created the Brownfields Economic Redevelopment Initiative, a pilot project to allow for the safe reuse of old industrial sites.

\*And, EPA has created the National Remedy Review Board to find ways to reduce the cost of response actions.

No matter how effective administrative reforms are, however, they cannot fill a legislative void.

President Clinton sent Superfund reform legislation to Congress in 1994, which included many of the reforms that most of us support, such as measures to complete cleanups faster and at a lower cost, to bring needed relief to small parties, to reduce litigation, to assign a fair share allocation plan for responsible parties, and to make cleanup contingent on the future use of the site.

The House Energy and Commerce Committee unanimously approved this legislation, amended, in a vote of 44-0. It was approved by the Public Works and Transportation Committee and the Ways and Means Committee, but fell victim to special interests and

election year assaults and was not considered on the House floor.

In spite of the Administration's best efforts, funding cuts won by the Republican majority in the 104th Congress halted more than sixty Superfund cleanups and delayed progress at more than three hundred other sites.

I am not sure what this hearing will add to the legislative process, especially since legislation is already pending in the Commerce and Transportation and Infrastructure Committees and negotiations are ongoing. But it does give me an opportunity to set the record straight on EPA's record, so I again thank the Chairman for scheduling this session.

Mr. MCINTOSH. Let me state for the record that EPA was invited to attend this hearing, and I'm disappointed they aren't here to join us today to hear these witnesses.

Mr. WAXMAN. Mr. Chairman, do you have a letter of invitation to the Environmental Protection Agency? Because they informed me that they weren't invited.

Mr. MCINTOSH. I'll have the staff make that record available.

Mr. WAXMAN. But this is according to the minority staff? What about the majority? You run the committee. Did you invite them or not?

Mr. MCINTOSH. My understanding is that they were invited to the committee, and we'll provide that record for you.

Mr. WAXMAN. Could you provide it to us so that we could see it right now? We'd like to have it as part of the record.

Mr. MCINTOSH. It will be part of the record when the record is complete.

Mr. WAXMAN. And you will provide that to us, Mr. Chairman?

Mr. MCINTOSH. Let me turn now to the chairman of the full committee, Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman. I would like to also commend you on holding this very timely, and, I think, necessary hearing to underscore one more time that the Superfund Program is indeed broken.

Several committees here in the Congress are struggling with trying to reauthorize the Superfund Program. The 103d Congress was unable to do so, and really, without the administration's help and support, it is unlikely that we're going to be able to do it in this Congress, and that would be, I think, very unfortunate.

So we may again be stuck for some period of time with this very expensive and what has clearly turned out to be a very wasteful program not accomplishing the goals for which the program was established.

And I hope this is not going to be the case, but since 1980, EPA has obligated \$15 billion for the Superfund Program with, frankly, not very much to show for it.

Just over 6 percent of the Superfund sites have been cleaned up and actually deleted from the national priorities list in the last 16 years. That is not, in my view, a very commendatory record.

Today's hearing will focus on the desperately needed reforms that have clearly been indicated by this record. Families, small businesses, large businesses, and communities are all suffering because we can't clean up some of the Superfund sites that pose the most serious health and safety threats.

And yet hundreds of parties that may have had nothing to do with polluting the site are left holding the bag financially.

Everyone, obviously, has their own horror stories to tell, and we will hear some more of these stories today. For all of the dollars spent on litigation and cleanup, the irony is that this is not one of the highest environmental risk programs.

We need to set our sights on quicker cleanup, prioritizing but cleaning up the worst sites first—I think this is terribly important—reforming the liability system so that tens of thousands of innocent parties are not brought into the system and that moneys go toward cleanup rather than court costs.

And all the evidence is that way too much money has been going toward court costs. Way too little money has been going toward cleanup.

And finally, ensuring that the remedies we select are appropriate for what the site will be used for in the future. There needs to be a very close match between the purposes and the future of the sites and what we're using to clean it up.

These are all major issues which need to be addressed in the reform legislation and will be discussed here today on a very personal level.

So I thank you again, Mr. Chairman, for your hard work on this hearing and look forward to hearing the testimony of the witnesses.

Mr. MCINTOSH. Thank you, Chairman Clinger. Let me turn now to the ranking member, Mr. Peterson of Minnesota.

Mr. PETERSON. Good morning, and thank you, Mr. Chairman. I want to thank you for holding this hearing and look forward to hearing the testimony of the witnesses.

I do have another committee. It seems like every time we have one of these subcommittees there is two of them going on at the same time.

So, I may have to duck out, but I wanted to especially thank you today for including Chuck Williams, who is the commissioner of the Minnesota Pollution Control Agency from our State, as a witness.

When I was in the Minnesota Senate, I was involved in dealing with the Minnesota Superfund law back in those days, and, I think, that we, in Minnesota, have demonstrated that there are more efficient ways to deal with the Superfund issue.

Minnesota is a State where EPA has authorized what they call Project XL, which the commissioner is going to talk about, and I hope that the Members have an opportunity to hear Mr. Williams, if they would take time to review his testimony.

This is a voluntary State and Federal pilot project where the regulated parties who are willing to undertake new initiatives to achieve environmental performance work together, and they receive increased operational flexibility and actually reduced management costs in our State.

So as a result, we have been able to work, I think, more efficiently and more quickly, and I think we have something that the rest of the country can learn from.

So again, Mr. Chairman, we've worked together well on some other issues. I hope we can provide some positive influence and moving forward the Superfund issue.

Again, I encourage Members, if they don't have a chance to hear Mr. Williams, to take a look at some of his testimony and some of the positive things that we've been able to do in Minnesota with this issue. Thanks.

Mr. MCINTOSH. Thank you very much, Mr. Peterson. Let me turn now to another colleague from Minnesota, freshman Gil Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I'll be very brief. I'd like to talk or start some of my discussions about environmental issues with one of my favorite quotes from John Kennedy.

President Kennedy said, "We all inhabit the same small planet. We all breathe the same air, and we all cherish our children's future."

And I'm a little disappointed with some of the partisan rhetoric we started this meeting with today, because I think we're all on the same boat.

And I think we all share the same goal in terms of cleaning up these Superfund sites. Now, we can have a partisan debate and argument about whether or not we're spending 58 percent of all of this money on lawyers and consultants or whether it's 74 percent, and I understand that two different agencies have given us two different numbers.

But, I think the real answer is that we're spending far too much, and I think what the American people want is for us to work together, to talk together, to listen to each other, to come up with solutions so that we can get these sites cleaned up.

Because I think everyone can agree that it has taken far too long. There has been too much of an adversarial relationship between the various parties and that if we can all work together we can get these sites cleaned up on a much more rapid and less costly basis.

I'm also delighted that we're going to have Mr. Williams here today from the MPCA. I think they've been a good example of how we can work together and find cost-effective solutions to get these sites cleaned up.

And I welcome the testimony of those who are on this panel. I congratulate the chairman and the staff because I think you've put together a very blue ribbon group of people to testify today, and I hope that members will get a chance to listen.

I do apologize to those who are testifying. As my colleague from Minnesota said earlier, many of us have other meetings going on, so we will be in and out.

Don't take that as an insult in any way. It's just this is a very busy place at a very busy time. So Mr. Chairman, I congratulate you for holding this hearing. I look forward to the testimony.

Mr. MCINTOSH. Thank you, Mr. Gutknecht. Next for an opening statement is Mr. Condit from California.

Mr. CONDIT. Thank you, Mr. Chairman. I would just reiterate what was just said. I think we need to reform the Superfund program, and I'm not here to cast blame on anyone.

I just think it's time for us to find a solution that works for the American people. I think it's a testament to the Superfund's ineffectiveness, the fact that nearly every congressional district in the Nation has one or more sites on the list.

But the fact is that in most of our districts we have not been able to clean these sites to the point where we can get them off the list.

I mean, I think there is plenty of evidence that there is ineffectiveness on behalf of the Superfund Program. Too many of us and citizens across this country have had unpleasant experiences dealing with this program.

I think that we ought not to put citizens in an adversarial role when it comes to dealing with the Superfund Program.

I think the citizens of this country deserve better, and I think we ought to take this hearing in the spirit that it's intended, and that is to try to help find a solution that works with the American people and gives us a safe environment at the same time.

So, if I may, I have a statement that I would like to include in the record as well, Mr. Chairman.

Mr. MCINTOSH. Seeing no objection, we'll gladly do that. Thank you, Mr. Condit.

[The prepared statement of Hon. Gary A. Condit follows:]

U.S. HOUSE OF REPRESENTATIVES  
GOVERNMENT REFORM AND OVERSIGHT SUBCOMMITTEE ON  
NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND  
REGULATORY AFFAIRS

SUPERFUND: A BADLY BROKEN PROGRAM IN URGENT NEED OF REPAIR

OPENING STATEMENT  
REPRESENTATIVE GARY A. CONDIT  
18TH CONGRESSIONAL DISTRICT, CALIFORNIA

MAY 8, 1996

Mr. Chairman and Members,

I would like to take this opportunity to thank Chairman McIntosh for holding this very important hearing. Those of us who have been involved in Superfund issues have known for a long time that the Superfund system is in desperate need of reform. I am hopeful that today's hearing will help us to locate bi-partisan solutions to these issues.

We already know that there is broad support for reform on both sides of the aisle. I believe that this is due, in large part, to the fact that virtually every congressional district in the nation has one or more Superfund sites on the U.S. Environmental Protection Agency's Superfund List. Too many of us have had the unpleasant experience of dealing with federal regulators who impose arbitrary and unreasonable requirements upon property owners. Too many of us have had the unpleasant experience of not being able to resolve these issues after years of involvement. Too many of us have seen small business owners be pushed out of business after having their life savings depleted due to a system that produces little benefit for the public.

In my district for example, I have been working with several auto dealers who have been sued by the U.S. Environmental Protection Agency for having deposited oil at a Purity Oil Sales disposal site in Fresno, California between 1930-1970s. Since the oil company's records were burned in a fire sometime in the late 1960s, the only evidence that the EPA has on these auto dealers is the vague recollection of a Purity Oil Sales driver that "thinks" he picked up oil from the auto dealers. We are now six years into the process, 190 defendants have been sued and spent over \$200,000 has been spent for attorneys fees, yet not one ounce of contaminated soil has been cleaned up.

The time is ripe for reform. I believe that if the Congress and the Administration can negotiate in good faith that we have a very unique opportunity to achieve a bi-partisan consensus in a number of areas, such as providing for greater flexibility in the implementation of the Superfund, exempting certain parties from liability, eliminating delays and streamlining the system.

At this juncture, the failure of the Congress and the Administration to reach an agreement would represent either a lack of sensitivity to those involved in cleaning up a Superfund site, or a lack of understanding of the tremendous impact that Superfund law and regulations have had upon these individuals.

All too often, the process ends up costing taxpayers and private individuals and businesses millions of dollars, while producing a minimal beneficial impact for the environment. The only parties that seem to consistently benefit are environmental consultants and attorneys.

The public deserves better. The public deserves to have these sites cleaned up. Those involved in the process deserve the right to go on with their lives, rather than being put through the seemingly never-ending bureaucratic maze.

Again, I thank the Chairman for holding this hearing. I look forward to hearing from the witnesses, and hope the result of this process is that it will assist Congressional leaders and the Administration in coming up with a consensus approach to Superfund reform.

Mr. MCINTOSH. Mr. Ehrlich from Maryland, do you have an opening statement?

Mr. EHRLICH. Just real briefly, Mr. Chairman. As someone who practiced toxic tort defense law in private practice for 12 years and is very familiar with these issues, I congratulate you for having this hearing.

Words escape me when I try to think about the dimensions of the problems that afflict this particular Federal program. I have many innocent people in my district who happen to have insurance coverage or money, and of course, under Superfund present day, that makes you a share in a lawsuit as a defendant and as a share in a settlement.

Issues relative to retroactive liability, joint and several liability, statutes of repose, the crazy mixed up priorities as to the way this program is run need to be addressed by this Congress.

It's one of the most important issues in this country today, if we want to be fair, if we want to clean up our environment, and if we want to do the right thing.

I congratulate you for having this hearing. For us folks here today, you have our empathy. You have our sympathy, and that doesn't buy you much. We understand that.

But if we can get the word out to the American people as to how this program operates and the significant problems it causes, particularly to small business folks in this economy, maybe we can start getting a true dialog in this Congress and maybe, even in Congress, we can get something done. I thank you for your presence here today.

Mr. MCINTOSH. Thank you, Mr. Ehrlich. If I could ask the first panel to please rise.

Mr. WAXMAN. Mr. Chairman, before you do that, these are witnesses, you told us heart-wrenching witnesses. We requested that Mrs. Florence Robinson, who represents a community group that lives near one of these wastesites that feels that they're adversely going to be affected, their health is in danger, she is also representing victims.

I think, if the chairman would permit, we ought to have her on the same panel so we can hear from all the victims.

Mr. MCINTOSH. Mr. Waxman, I think we'll keep the schedule as it was announced and have her testify later on a panel—

Mr. WAXMAN. She is requested by the Democrats. Is she just being put on the last panel because you don't want to step on the message? You want to hear only from business people? There are other victims as well.

Mr. MCINTOSH. We're going to continue with the hearing as planned. Would the witnesses please rise. Mr. Clinger has asked that we swear in all of the witnesses before this subcommittee, and so would you please raise your right hand.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Please let the record show that each of the witnesses answered in the affirmative. To introduce our first witness today, I am pleased to welcome one of my colleagues, a freshman from New Jersey, Mr. Rodney Frelinghuysen. Rodney.

Mr. FRELINGHUYSEN. Welcome. Thank you, Mr. Chairman, Mr. Peterson, members of the subcommittee. Thank you for holding

this hearing, and I especially appreciate your invitation to Hans and Helena Tielmann, whose personal story really puts a human face on the complex issue of Superfund reform, since their house is literally surrounded by a Superfund site.

New Jersey, Mr. Chairman, has the dubious honor of having the most Superfund sites in the country. My district has more sites than any other Member of Congress. So we know of Superfund's failures better than anyone.

There is a baseball diamond in New Jersey in Boonton that kids can't play on. There is an industrial site in Sparta, NJ, that can't be developed because nobody will touch it for fear of a lawsuit.

And there is the Tielmann's farmhouse in Long Hill where Hans and Helena and their three children have had to endure a 13-year nightmare that goes on even today. It has literally been, for them, a living hell.

These are real-life examples, Mr. Chairman, that have people in my district and throughout the State wondering what we're spending all this money on, because these sites are not simply being cleaned up.

Mr. Chairman, Superfund is a microcosm of the larger debate we're having in the Northeast and across the Nation about the direction of environmental protection.

Its failures underscore the need for thorough oversight and accountability for regulatory agencies in charge of enforcing these laws.

That is the real question we're trying to ask. Are these programs working? It's clear that Superfund has not and can be improved, and even Environmental Protection Agency Administrator Carol Browner admits that.

But are there other programs that have similar symptoms? Are there laws where we can learn from our mistakes and improve the way they run and by improving their operation improve the environment?

Mr. Chairman and colleagues, I think the answer is yes; and I applaud you for holding this hearing and would encourage you to look at other programs as well.

I think it is reasonable, responsible, and realistic to once in a while ask if we are achieving what we set out to do, and if we aren't, how affecting people's lives by not changing the law and pushing for change, how that really affects their lives.

With that, Mr. Chairman, it is my pleasure to introduce Hans and Helena Tielmann to tell their story, a tragic story, about their experience with Superfund cleanup. Thank you, Mr. Chairman.

[The prepared statement of Hon. Rodney Frelinghuysen follows:]



## Rodney Frelinghuysen

11th District, New Jersey



May 8, 1996

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(202) 225-5034

FOR IMMEDIATE RELEASE

### ***FRELINGHUYSEN STATEMENT FOR SUPERFUND HEARING***

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That is the real question that we're trying to ask. Are these programs working? It's clear that Superfund has not and can be improved -- even EPA Administrator Carol Browner admits that. But are there other programs that have similar symptoms? Are there other laws where we can learn from our mistakes and improve the way they are run? And by improving their operation improve the environment?

Mr. Chairman and colleagues, I think the answer is yes, and I applaud you for holding this hearing, and would encourage you to look at other programs as well. I think it is reasonable, responsible, and realistic to once in a while ask if we are achieving what we set out to do.

Mr. MCINTOSH. Thank you, Mr. Frelinghuysen. Welcome to this hearing, Mr. and Mrs. Tielmann, and please proceed with your testimony.

**STATEMENTS OF HANS AND HELENA TIELMANN, MEYERSVILLE, NJ; JAMES NERGER, MARISOL, INC.; JEFREY ROSMARIN, RGE, INC.; LEON AND STEVE DIXON, BECKETT BRONZE CO.; AND RICHARD HERRING, GLOUCESTER CO.**

Mrs. TIELMANN. My name is Helena Tielmann, and I'm here today with my husband Hans. We have the distinction of living on a Superfund site with our three children, aged 10, 6, and 2.

For the past 13 years, we have dealt with and been subjected to the Environmental Protection Agency and its implementation of a Superfund investigation and remedy at our property.

This investigation and remedy was performed with Federal funds under the supervision of EPA, utilizing the services of contractors Camp, Dresser & McKee and Geo Con to implement the remedy it selected.

Unfortunately, we have been asked to appear before you today not because our property has been cleaned up and restored by EPA but rather because our property is cited as the example of governmental and contractor mismanagement and the notable failure of the Superfund Program that, in our case, did not remedy problems but created and exacerbated them.

Before Hans bought our property, a portion of it was used as a dumpsite for asbestos shingles. In 1983, EPA advised us that the property was to be investigated, and it was later listed on the national priorities list.

EPA proposed a remedy at our home that was never implemented for asbestos anywhere else in the country—solidification.

The asbestos containing soils were to be excavated, moved to an area on our property and solidified into a mass nearly 5 acres in size.

Although we repeatedly asked to have the asbestos material moved offsite and not solidified, EPA responded by saying that it was not cost-effective to remove all the asbestos and that the solidification and monitoring to the distant future was the appropriate remedy.

When the excavation around our home was backfilled, it took nearly 2,000 truck loads of material to bring our yard back to grade. However, most of the soils brought to our home came from an industrial property that was being cleaned up pursuant to New Jersey's Industrial Site Recovery Act and was not clean fill.

Yes, the soil was contaminated. We told EPA about this when it was taking place. These deleterious materials included metal, rebar, broken glass, wood, concrete, and levels of carcinogenic materials that exceed New Jersey's residential use criteria.

For months, EPA refused to acknowledge that there was a problem. Only after reviewing videotapes and photographs we made did EPA begin to listen to us.

As to the solidified mass of asbestos that has been created, it's in freshwater wetlands and the peat moss in the wetlands has made the mass buckle and bubble. Methane gas is collected under the mass and actually caught fire when the gas was tested.

One last notable point. Asbestos laden swamp mats were flipped in the open air to get the asbestos off before being placed on an open flatbed truck. No precautions were taken, and no protective gear was worn by the individuals that performed this task.

The clouds of asbestos are clearly visible in the photographs we took. Does anyone here consider this activity to be proper or even legal?

Unfortunately, our journey is not yet over. This spring brings us another season with EPA and its contractors, more testing, more studies, more evaluation, and a future proposal to remedy a condition that did not even exist when EPA started all of this.

You might think we believe the Superfund Program is unnecessary and should be eliminated. However, just the opposite is true. Our property represents the type of situation the law was intended to address, and rightfully so. What has gone wrong is the implementation and oversight of the law by EPA and its contractors. In our opinion and experience, which is, unfortunately, extensive, EPA has accountability or responsibility to no one. As a result, situations like ours can and have occurred.

When this happens, scarce funds are wasted, and moneys that should be spent where they are truly needed are not available because they were wasted on ill-conceived pilot projects like ours.

This means other families continue to live with contamination and exposure to chemicals, waiting for their property to be eligible for funding and cleanup.

This is why we believe our story is not merely a personal tragedy but a national disgrace. We no longer are willing to live at or on our property.

Our place of business is there. Our dream home is there, but our home has only been viewed as an experimental project by EPA.

Why should a family be part of an experiment? Why can't EPA be responsive to a family's needs and problems when everyone tells us that Superfund was passed by Congress in large part because of a residential community located in Love Canal, NY?

Can anyone tell us that our property, our neighbors, our community or the environment in general, and in any way, is better now because of what EPA has done? We don't think so.

We think that after spending \$8 million our property is in far worse environmental condition than it was before the remedy was begun, and it's still going to take a lot of money to correct all the mistakes that have been made.

These problems can be addressed by proper management, supervision, and controls, utilizing competent contractors and requiring EPA to be responsive to property owners and the local community.

An appropriate remedy could have been selected for our property and could have been completed in a far more cost-effective manner.

The environmental needs of this country are too great to ignore them, and if you ignore them, you will only create more Tielmanns.

Believe us when we say that after 13 years, 13 years of aggravation, anger, tears, and frustration that no one else deserves to suffer this fate.

[The prepared statement of Mr. and Mrs. Tielmann follows:]

## WRITTEN STATEMENT OF HANS AND HELENA TIELMANN

NEW VERNON ROAD, MEYERSVILLE, NEW JERSEY

My name is Helena Tielmann, and I am here today with my husband Hans. We have the distinction of living on a Superfund site with our three children, aged 10, 6 and 2. For the past 13 years we have dealt with, and been subjected to, the Environmental Protection Agency and its implementation of a Superfund investigation and remedy at our property. Our property has been "cleaned up" with federal funds, under the supervision of EPA, utilizing the services of contractors Camp, Dresser & McKee and Cco Con, to implement the remedy it selected. Unfortunately, we have been asked to appear before you today not because our property has been cleaned up and restored by EPA, but rather because our property is cited as the example of governmental and contractor mismanagement, and the notable failure of the Superfund program that, in our case, did not remedy problems, but created and exacerbated them.

Before Hans bought our property, a portion of it was used as a dumpsite for asbestos shingles. In 1983 EPA advised us that the property was to be investigated and it was later listed on the National Priorities List. EPA proposed a remedy at our home that was never implemented for asbestos anywhere else in the country--solidification. The asbestos containing soils were to be excavated, moved to an area on our property and solidified into a mass nearly five acres in size. Although we repeatedly asked to have the asbestos material removed offsite and not solidified, EPA responded by saying that it was not cost effective to remove all of the asbestos, and that solidification and monitoring into the distant future was the appropriate remedy.

The remedy selected by EPA required that soils around our home be excavated to a depth of up to 12 feet below grade. All of this excavation would have to be backfilled later--an activity that would come back to haunt us. The excavated soils were taken to the rear of our property and mixed with a concrete slurry to create the

"solidified mass" that would remain on our property in perpetuity. And although EPA said it was not acceptable to remove the asbestos from our property, EPA did excavate and remove all of the asbestos from the property adjoining ours--property owned by the U.S. Fish and Wildlife Service. Yes, while we had to "keep" our asbestos, the property owned by the federal government got its asbestos removed. And where was it removed to? Our property. A portion of our property that was previously clean was excavated, and the Fish and Wildlife Service asbestos was solidified and buried there.

When the excavation around our home was backfilled, it took nearly 2000 truckloads of material to bring our "yard" back to grade. However, most of the soils brought to our home came from an industrial property that was being cleaned up pursuant to New Jersey's Industrial Site Recovery Act and was not clean fill. Yes, the soil was contaminated. We told EPA about this when it was taking place, but no one believed us...in fact, when questioned later about it an EPA spokesman accused us of placing the

"deleterious" materials found in the soils. These "deleterious" materials included: metal rebar, broken glass, wood, concrete and contained levels of carcinogenic materials that exceeded New Jersey's residential use criteria. For months, EPA refused to acknowledge that this deleterious material was brought to our property or that it was not acceptable fill. Only after reviewing video tapes and photographs we made, did EPA begin to listen to us.

Oh yes, it's important for you to know that we were videotaping and photographing all of the activities taking place on our property because we had serious questions about what was going on. What was EPA's response to this? It was to repeatedly threaten us with litigation for "interfering" with it's remedial activities. Ironically, if we did not videotape and photograph these activities no one would have believed us and corrective actions would have been taken.

As to the "solidified mass" of asbestos that's been created,

it's in freshwater wetlands and the peat moss in the wetlands has made the "mass" buckle and bubble. Methane gas has collected under the mass and actually caught fire when the gas was tested.

Contaminated fill was used to backfill around the solidified mass as well, although EPA has taken the position that any contaminated fill placed in the area of the solidified mass probably cannot be removed--because of the freshwater wetlands. Apparently, although it was okay to put this material in wetlands in the first place, there are problems removing it from wetlands because it may affect the integrity of the solidified mass.

Not all of the asbestos was solidified. So much of it was found that some of it did have to be taken off-site for disposal. (It was taken to the facility we contacted years before to get price quotes for disposal during the comment period to EPA's proposed remedy.) The balance of the asbestos containing material that was not solidified or removed was stockpiled on our property,

and after our septic system was rebuilt this soil was used for cover over it. Yes, the asbestos containing soil was spread over the surface of our yard--after the remedy was implemented. This asbestos soil was also used to regrade over the soils from the industrial site that settled. The bottom line is that there is now more asbestos on the surface of our yard than there was before EPA implemented its remedy...a remedy costing in excess of \$8 million.

One last notable point. Because the solidified mass was constructed in freshwater wetlands the contractors had to drive over "swamp mats", large logs connected together to make a temporary roadway in the wet areas. With heavy equipment driving over them, the swamp mats became laden with asbestos. Previous to the swamp mats being hauled from our property they were flipped, in the open air, to "get the asbestos off" before being placed on an open, flatbed truck. No precautions were taken and no protective gear was worn by the individuals that performed this task. The clouds of asbestos are clearly visible in the photographs we took.

Does anyone here consider this activity to be proper, or even legal? Our attorney has told us that if we did what EPA and its contractors did, we would be in jail.

There are many other problems and issues that we have faced during the past 13 years and while each and every one has taken a toll on us, we simply do not have the time to share them with you now. However, they all have affected our family in ways we never believed possible.

Unfortunately, our journey is not yet over. This Spring brings us another season with EPA and its contractors--more testing, more studies, more evaluation and a future proposal to remedy a condition that did not even exist when EPA started all of this.

You might think we believe the Superfund program is unnecessary and should be eliminated. However, just the opposite

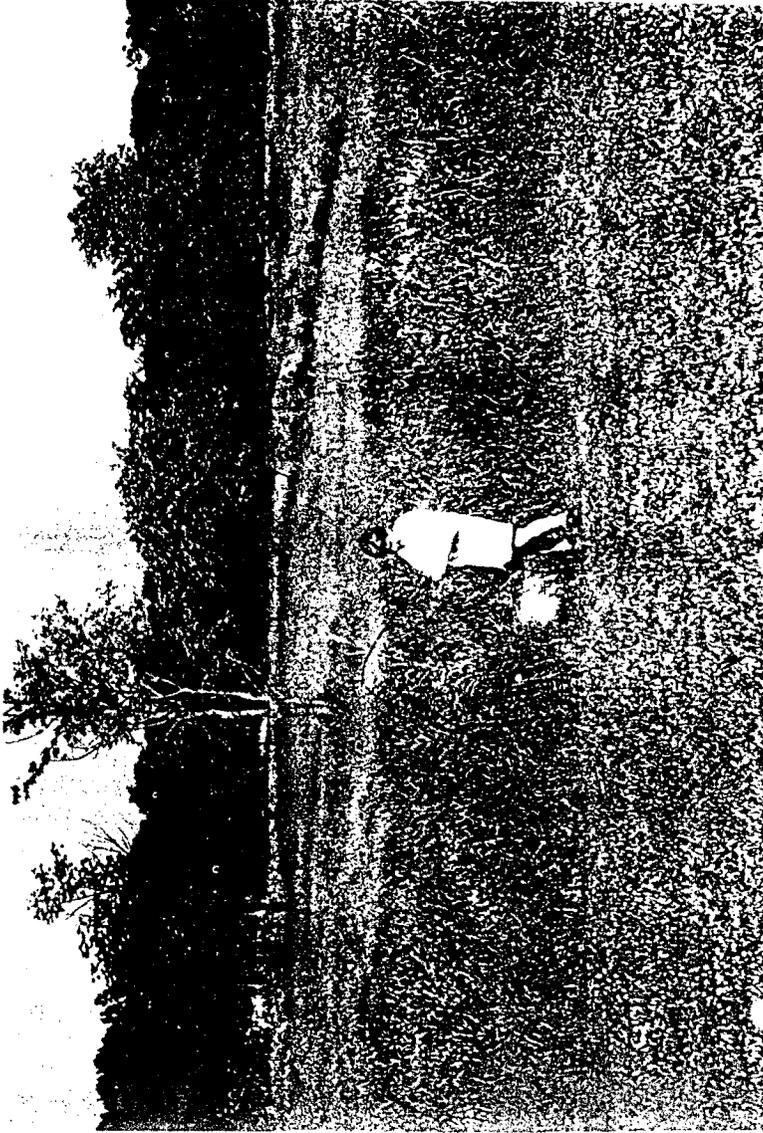
is true. Our property represents the type of situation the law was intended to address--and rightfully so. What has gone wrong is the implementation and oversight of the law by EPA and its contractors. In our opinion and experience (which is unfortunately extensive) EPA has accountability or responsibility to no one. As a result, situations like ours can (and have) occurred. When this happens scarce funds are wasted, and monies that should be spent where they are truly needed are not available because they were wasted on ill conceived, "pilot" projects like ours. This means other families continue to live with contamination and exposure to chemicals, waiting for their property to be eligible for funding and cleanup. This is why we believe our story not merely a personal tragedy but a national disgrace.

We no longer are willing to live at or ~~own~~ our property. Our place of business is there...our dream home is there...our children have known no other home. But our home has only been viewed as an experimental project by EPA. Why should a family be part of an

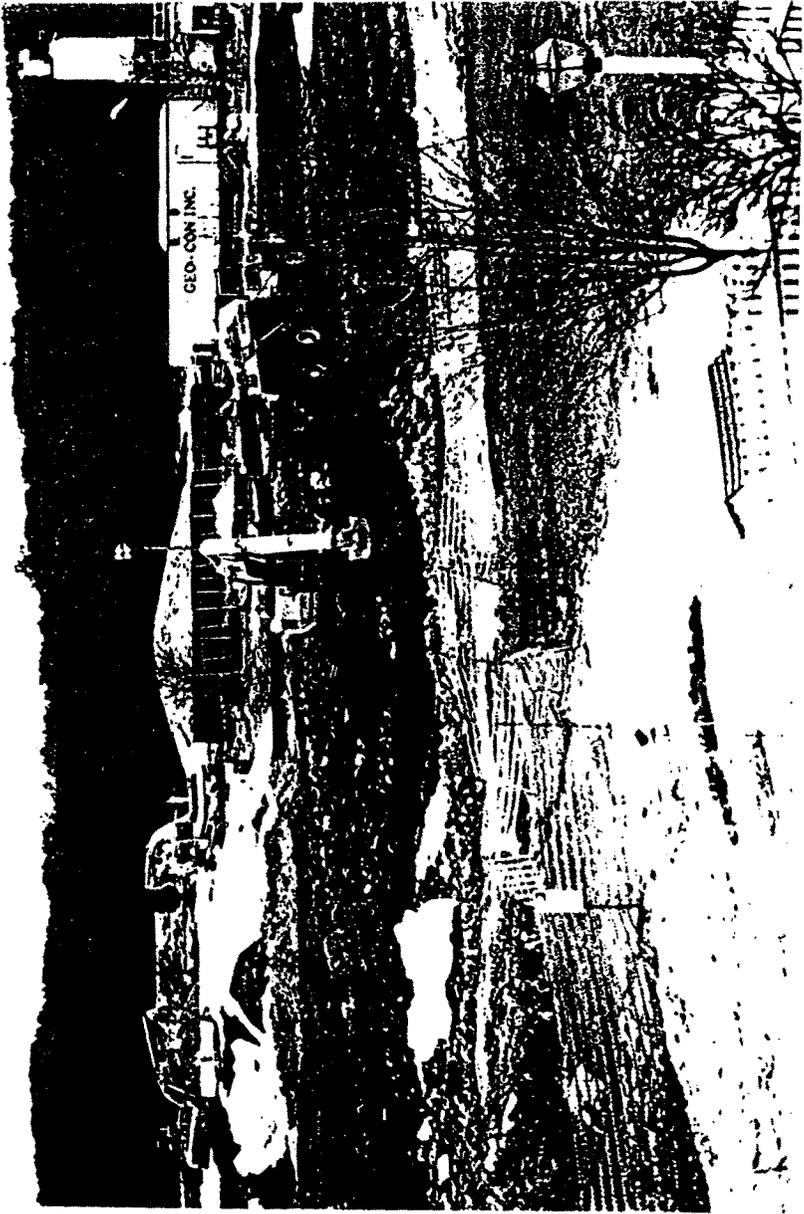
experiment? We want to be able to have our children's friends come to our home and play...but we can't. We want to be able to have birthday parties and friends over at our home...but we can't. Why can't EPA be responsive to a family's needs and problems when everyone tells us that Superfund was passed by Congress, in large part, because of a residential community located in Love Canal, New York. Can anyone tell us that our property, our neighbors, our community or the environment in general--and in any way--is better now because of what EPA has done. We don't think so. We think that after spending \$8 million, our property is in far worse environmental condition than it was before the remedy was begun, and its still going to take a lot of money to correct all of the mistakes that have been made.

These problems can be addressed by proper management, supervision and controls, utilizing competent contractors, and requiring EPA to be responsive to property owners and the local community. An appropriate remedy could have been selected for our

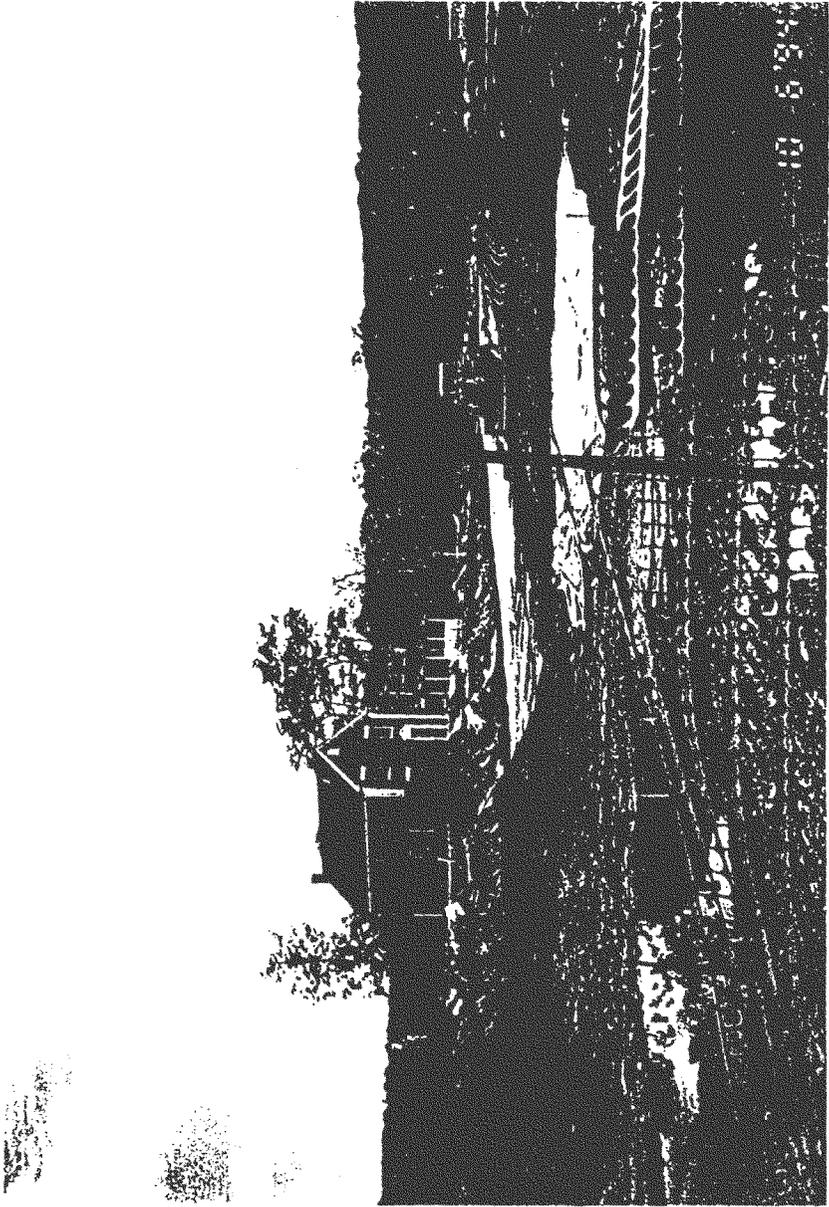
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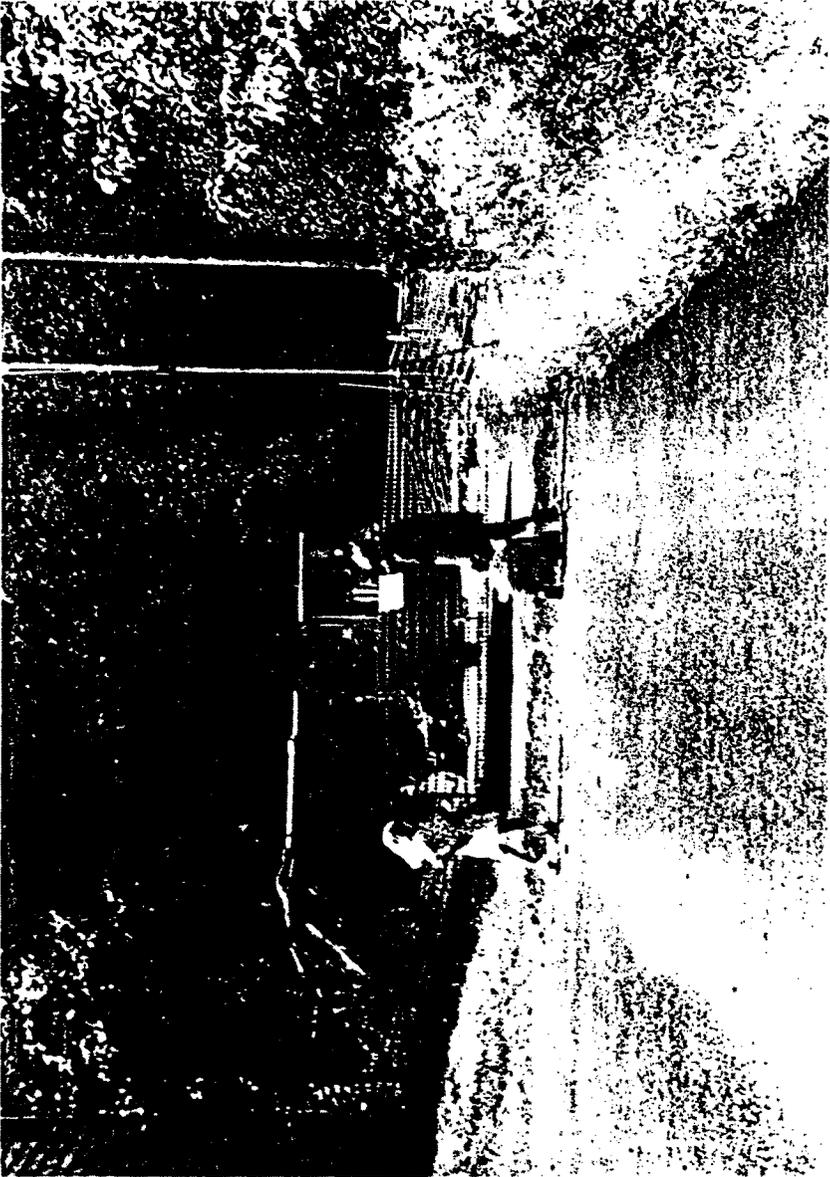


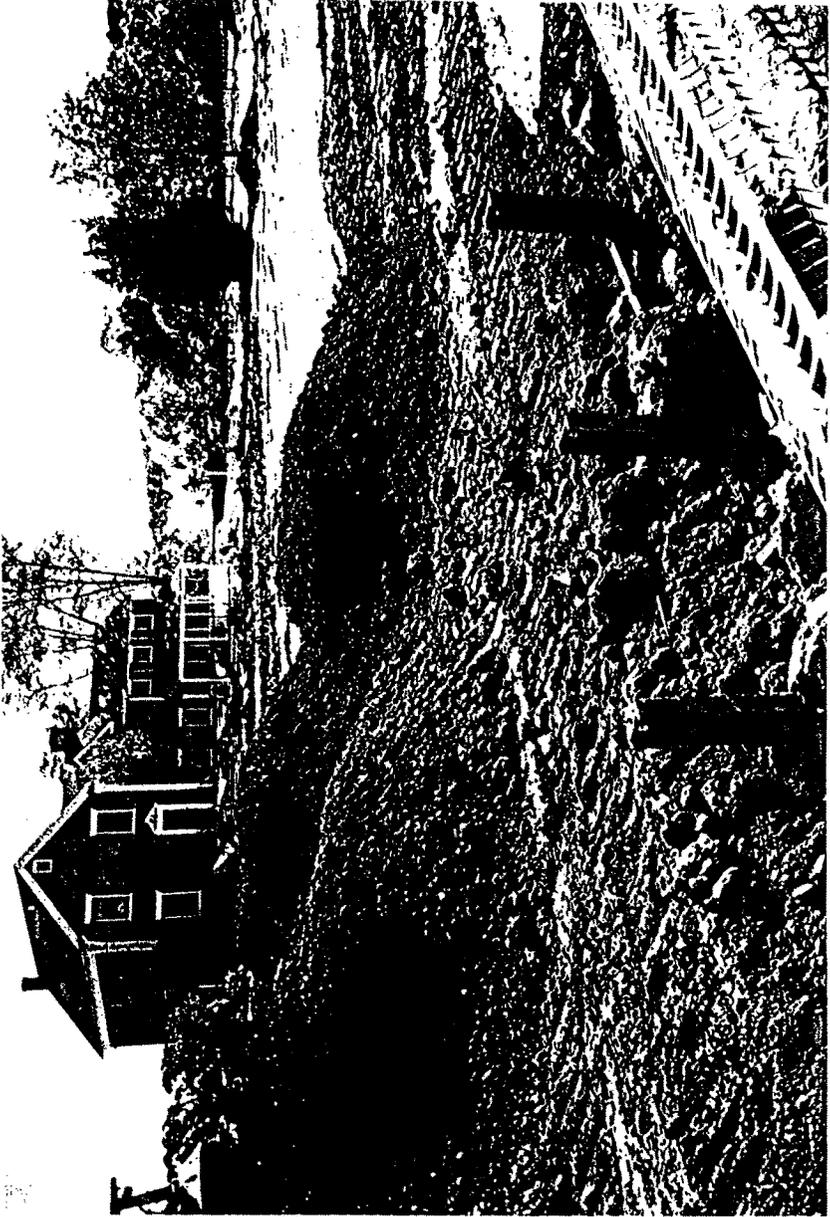
Before work began...

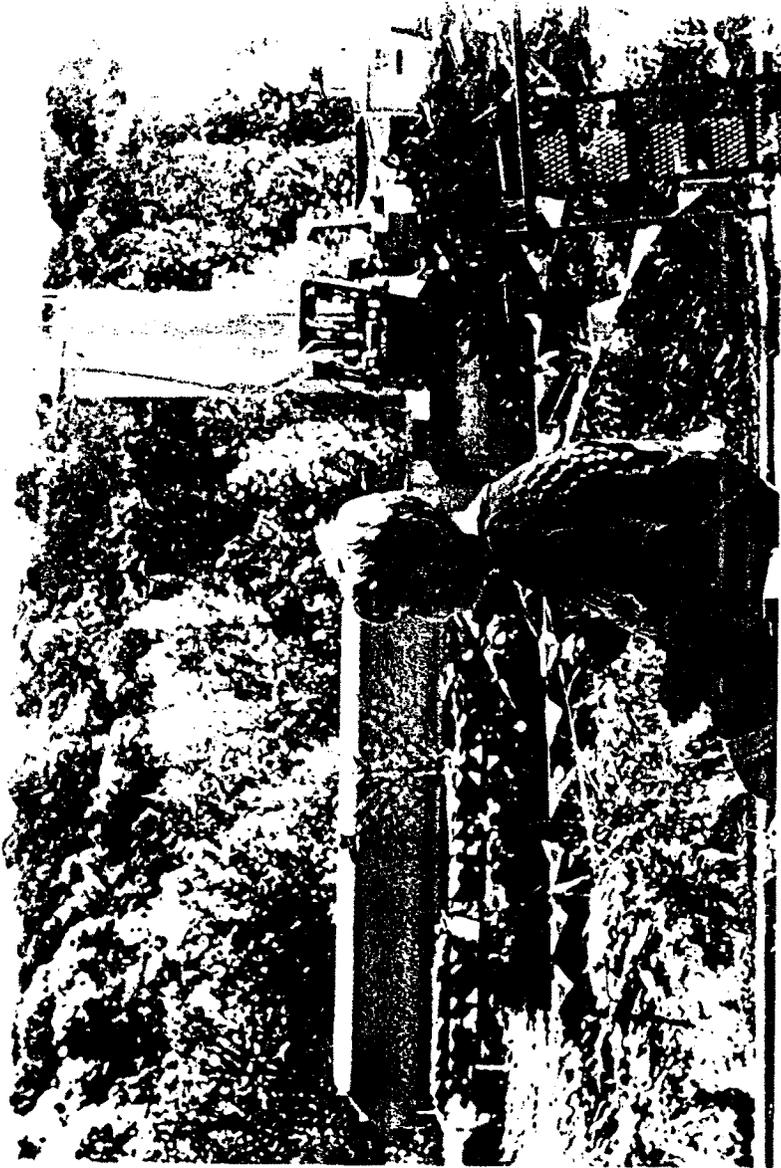


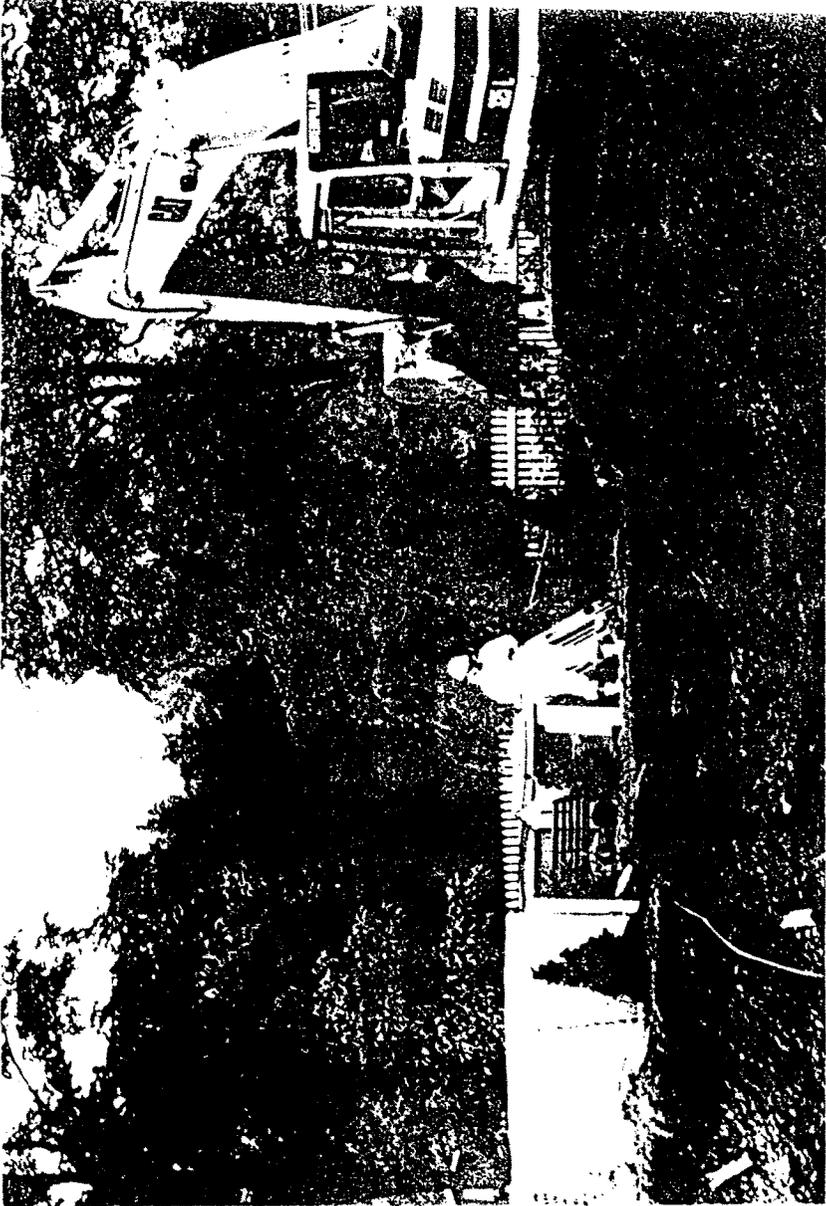
After.















fill source



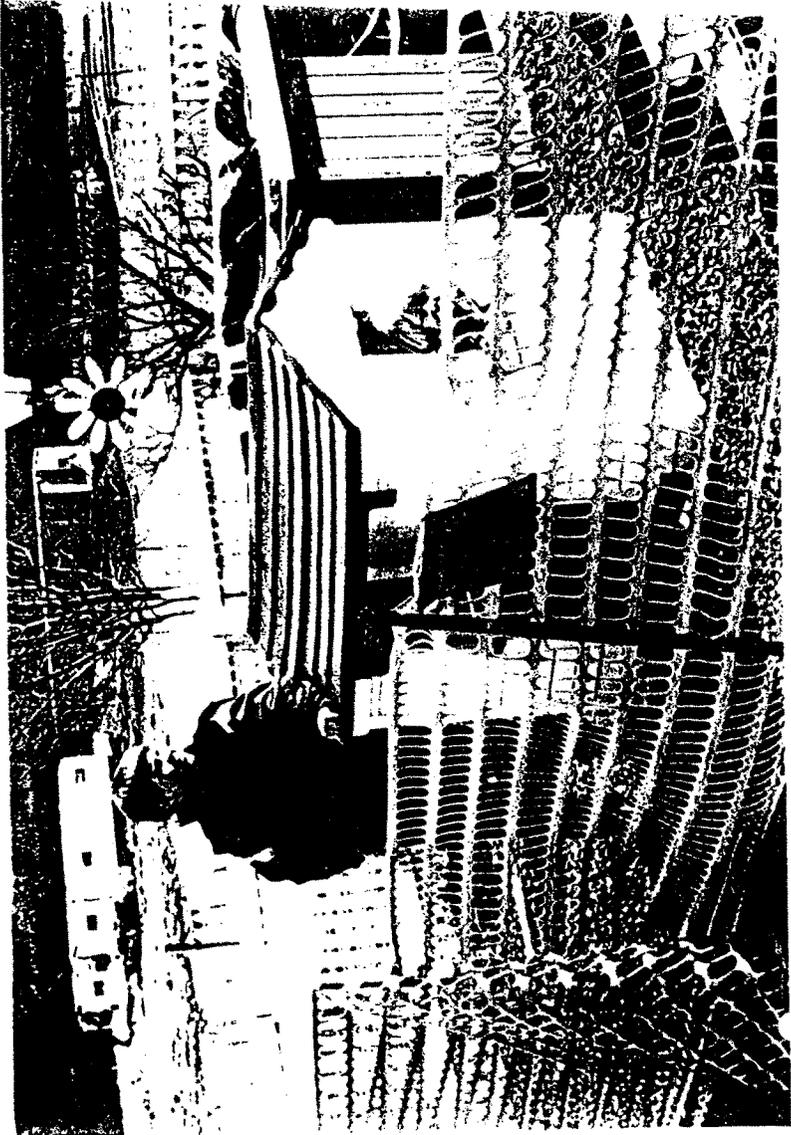
fill source



fill = surce



Asbestos clouds . . . Asbestos laden swamp mats were flipped, in open air.







# TOWNSHIP OF LONG HILL

COUNTY OF MORRIS

GILLETTE, HOMESTEAD PARK, MEYERSVILLE, MILLINGTON, STIRLING

TOWNSHIP OFFICES:  
1401 Long Hill Road  
Millington, NJ 07966  
PH: 610-447-4000  
FAX: 610-447-1100

CONSTRUCTION DEPARTMENT:  
1508 647-1817

PLANNING BOARD/BOARD OF  
ADJUSTMENT:  
1923 647-9948

TOWNSHIP OF LONG HILL

RESOLUTION NO. 95-315

WHEREAS one of the purposes of the Township Committee of the Township of Long Hill is to protect the safety of its residents and preserve public lands within the township; and

WHEREAS the United States Environmental Protection Agency (EPA) has been involved in mitigation of a superfund site on New Vernon Road for asbestos contamination; and

WHEREAS it is the opinion of the Township Committee that the EPA has acted with negligence throughout the process of the superfund mitigation by ignoring recommendations from the homeowners, residents and Township officials regarding the method of the cleanup; and

WHEREAS the EPA ignored the geological and environmental factors within that area; and

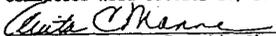
WHEREAS the fill that used by the EPA at this superfund site has been discovered to be contaminated with dangerous chemicals; and

WHEREAS that fill is affecting the residents of the Township and is adjacent to the federally protected Great Swamp National Wildlife Refuge.

NOW THEREFORE BE IT RESOLVED by the Township Committee of the Township of Long Hill that the EPA be directed to remove all contaminated fill on this superfund site in a manner suitable to the homeowners, public and officials within Long Hill Township. This cleanup should be done immediately before the EPA causes any harm to residents within this township and further environmental damage.

BE IT FURTHER RESOLVED that the Township Clerk be directed to send a certified copy of this resolution to the Director of EPA, Director of EPA Superfund Cleanup, the New Jersey Director of EPA, the Director of the NJDEP and Congressman Frelinghuysen.

I, Anita C. Manore, Township Clerk of the Township of Long Hill do hereby certify that this is a true and exact copy of a resolution adopted by the Township Committee of the Township of Long Hill at a regular meeting of the Township Committee held October 18, 1995.

  
Anita C. Manore, Township Clerk



*Gene*      *FYI.*      *John*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II  
26 FEDERAL PLAZA  
NEW YORK, NEW YORK 10278

8 February 1995

Mr. Gordon Bishop, Editorial  
Newark Star-Ledger  
Court & University Avenue  
Newark, NJ 07102

Dear Gordon,

As promised, here are two color shots of the property immediately after the backfill was in place. I certainly don't see the chunks of concrete construction debris, rebar and pieces of aluminum that were allegedly dumped with the fill.

You say that you visited the site before the mulch was laid down. It is interesting to note that when Pam Baxter visited the site last Thursday, the mulch layer was down on top of the fill, and there were bottles (unbroken) and other pieces of trash on top of the mulch. I don't mean to imply that the property owner is deliberately dumping this stuff -- it could be thrown from passing cars -- but material which is laying on top of the mulch clearly did not come onto the site in the fill.

Sincerely,

Richard M. Stapleton

04/12/95

11:38

DEP REGION 2

002



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION II

280 BROADWAY  
NEW YORK, NEW YORK 10007-1866

4/12/95

Mr. Gordon Bishop  
Newark Star-Ledger  
Court & University Avenue  
Newark, NJ 07102

Dear Gordon,

As you know, when we were discussing the Tielmann site, you raised the subject of rocks and debris in the fill. At the time, based on the assurances of our prime contractor, CDM Federal Programs Corporation (CDM), as well as what EPA personnel had seen during regular site visits, we told you that the fill was clean, and had been screened to remove oversize (greater than 3") material.

Shortly after our discussion, EPA obtained from the state DEP a copy of a videotape made by the Tielmanns and given to state and local officials (and, ironically, not to EPA!), which clearly shows foreign debris and oversize material in the fill.

Based on this tape and the questions you raised, we have, pardon the pun, dug deeper. In fact, after surveying the surface for visible debris, we dug three test pits, one as deep as six feet, in the fill areas of the Tielmann's property. We found some unacceptable material at all levels of the fill from the source in question. I am enclosing a copy of the test report.

Although the fill was inspected by CDM as it was placed on the site, debris of the nature and size which later surfaced apparently was not noticeable at that time. It seems winter freeze-thaw conditions caused these materials to surface and further weathering from rain and snow made them visible. Nonetheless, the fill does not meet EPA's requirements and the Agency is in the process of correcting this situation.

Some background: The contract specifications for the Tielmann site calls for common fill, consisting of well-graded soil "free of deleterious or other objectionable materials" with any off-site fill to be brought from clean sources. There are other more specific criteria, including a maximum 3" particle size. I am also enclosing the pertinent paragraph from the specifications.

As a result of our survey findings, we immediately instructed CDM to delay landscaping work, including the placement of top soil over the fill, until we could determine what should be done about the material used to fill the Tielmann's property. We subsequently, on Friday, April 7, sent a letter to the contractor stating that a site inspection clearly indicates a "failure to

04/12/95

11:39

DEP\_REGION 2

003

meet the above contract requirements (which set fill specifications)." The letter concludes by, amongst other things, requiring CDM to "take immediate action to cure the cited deficiencies."

We are also aware that the Tielmann's are concerned about possible toxic contamination. We have taken fill samples which have been sent out for Target Compound List analysis. We expect those results back in four to six weeks. ✓

Gordon, I apologize if we inadvertently misled you. We gave you the best information we had, and we had every reason to believe it was accurate. I hope you will agree that we are acting quickly and in good faith to correct the Tielmann's situation. Be assured that I will keep you advised as we continue to move to remedy this situation.

Sincerely,

*Rich*

Richard M. Stapleton  
Chief, Public Affairs

212-637-3662

"We didn't conduct our own sampling."

Use file. P. 105.

Dot Seppin

Hellena: They landfilled asbestos - humps on landfill - methane gas. They had area loader w/ pest area under landfill w/ asbestos - methane got in - producing methane gas. existing ventilation system on 5-6 acres. This whole experiment. a burst. \$7 on landfill w/ humps on methane gas firing itself up. workers w/ firemen out fit on. let the landfill + asbestos sample rise up. asbestos tiles scattered thru out site. my prop. worse than than before. I felt better w/ the land than now. + del to dealing w/ EPA + DEP for rest of my I had to meet w/ EPA in trailer on my prop. and I had to wear a visitor's badge + check in on my own prop.

EPA Pamela Baxter project mgr. -  
office: 212-637-4418; trailer: 908-903-0711

Archived something underneath the asbestos generating gas. some bubbles + ... bubbles - water + methane cause



# Family surrendering after failed EPA cleanup

By BRIANT MURRAY

After being under government siege for 13 years, Hans and Helena Treimann and their three children are prepared to surrender — if federal officials can get their way.

"We want permanent relocation. We can't trust them anymore," said Mrs. Treimann, referring to the federal Environmental Protection Agency (EPA).

She was sitting in the kitchen of her quaint Long Hill home, a 100-year-old, 10-room, 30-acre farm that has come to resemble the dark side of the moon since it was declared a federal Superfund site in 1983. That is when the Treimanns found they had the dubious honor of being the first family in the country.

But pollution concerns have been overshadowed by botched EPA remedial efforts in what has been called one of the worst bureaucratic foul-ups in the agency's history.

It's that they can't convince us they can clean up this site properly," said Hans Treimann, displaying photo albums and piles of paperwork the family has compiled to document one federal misadventure after another.

"We're entering our third cleanup, and our family is facing a third temporary relocation in a trailer while the work is being done... We want permanent relocation — somewhere around the corner from here, where it is not out there out of this place," said Helena, gazing at what she once called her dream home.

The EPA was not prepared to deal with the Treimanns' demand for a permanent relocation last week, although it was not unexpected.

"We don't really comment on it, but we're aware of it," said Rich Cahill, an EPA spokesman.

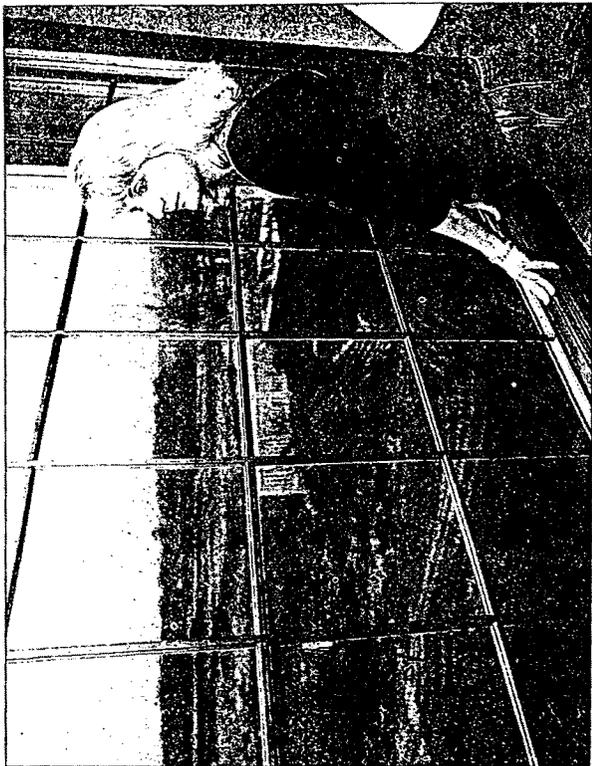
Relocation is not a foreign concept to the EPA, which permanently closed facilities for example, when radon gas creater problems were discovered in the 1980s. But it is a process that also requires approvals from many other federal agencies, and there are no guarantees the Treimanns will get what Hans wants — "Equal for equal."

However, the agency is promising to make the Treimanns' old home more comfortable.

In a letter to Long Hill officials last month, the EPA said there were some "unacceptable" mistakes in the way the agency developed a plan that will make everyone happy.

"The agency hopes it will be able to resolve this situation in a manner that is acceptable to the Treimanns," the letter said.

EPA is committed to addressing this problem properly and in a manner that will restore pub-



Helena Treimann and her family would like to stay on their 30-acre property, but say they have no confidence that the EPA will be able to clean up what has been classified as a federal Superfund site.

the Army Corps of Engineers to attack the asbestos dump that existed on the site long before Hans Treimann purchased it in 1968. The agency would have to dig out the asbestos and solidify the asbestos into a 3-acre concrete monolith and bury it on site, rather than remove it.

The Treimanns contend much asbestos-containing soil was left out of the monolith. They also have

photographs indicating the site where the bulk of it was buried collapsed because hired experts had not anticipated a methane gas buildup would occur on the nearby property.

The Treimanns also say that although matters were made worse a year ago, when the firm discovered that industrially contaminated soil was carted to the property by federal contrac-

Photo by Robert Scherer

Please turn to next page

# Family surrenders after failed cleanup

## From preceding page

tors to cover the farm. EPA officials initially denied the soil was contaminated, but changed their position in April 1995, conceding that a subcompact tractor improperly used 23,000 cubic yards of dirt taken from an East Hanover industrial site that was undergoing its own environmental cleanup. Yet even after top EPA officials toured the Tielmann property last summer, promising in front of an army of media to remedy the troubles, the Tielmanns' nightmare continued.

Shortly after the EPA visit, Hans Tielmann captured federal work crews on videotape creating a new asbestos problem.

"Do you believe that?" asked Hans, as he displayed the tape of a forklift operator creating puffy clouds of suspected asbestos dust by flipping large construction pontoons a few hundred yards from the Tielmann house.

The work was being done in August, when crews were attempting to clean soil build-up from the pontoons before shipping them off the site. At the time, signs remained all over the property warning visitors of the asbestos, and not to create dust.

"If you're going to do a job that way, why do it at all?" asked Helena Tielmann, contending the cleanup has created a worse condition than the EPA set out to remedy.

"This is typical EPA. They're all paperwork-perfect, yet they really don't know what's going on. . . . Are we expected to continue baby-sitting this thing?" Hans added, charging that the agency has continuously failed to supervise the work.

The Tielmanns' main concern now is the industrial dirt shipped in from East Hanover. Armed with the EPA's own plans for removing the industrial dirt, the family contends the contami-

nated soil was spread over more areas than the EPA is willing to recognize.

But EPA officials say they are willing to review their assessment of the situation.

Initially, the agency contended that only 85 percent of the contaminated industrial fill could be excavated from the property, explaining that to remove the remaining 15 percent would involve breaching the asbestos monolith. But the agency, responding to objections from the Tielmanns and township officials last fall, agreed in the letter issued by Callahan last month to investigate alternative remedies.

In the meantime, even the Tielmanns' offer of a white flag will have to wait.

"In the beginning, we endured this unreasonable process because we had hope of reaching an end. . . . We don't see it happening now," Helena Tielmann said, shaking her head.

Mr. MCINTOSH. Thank you very much, Mrs. Tielmann. Obviously, an incredible story, and your testimony goes into, I think, a very clear indication of how the matter seems to have only gotten worse in your lives because of this Government interaction.

Our next witness today is Mr. James Nerger, who is with Marisol, Inc. I hope I pronounced that correctly, Mr. Nerger. Welcome, and please give us your testimony.

Mr. NERGER. Good morning. My name is James Nerger, and I'm the general manager of Marisol, Inc. We're a solvent recycling facility located in Middlesex, NJ.

I wish to thank Chairman McIntosh and the rest of the members of this subcommittee for allowing me the opportunity to share the story of our family company's Superfund nightmare.

In August 1962, my father and mother, my father a chemical engineer, founded Marisol, a solvent recycling company.

In 1962, the concept of recycling was relatively unheard of. Since then, the company has recycled for reuse well over 150 million gallons of industrial and household waste solvents, much of which would have otherwise been disposed of carelessly and harmfully.

Marisol has received spent solvents from over 15,000 generators. These generators have included most Fortune 500 companies, thousands and thousands of small businesses, municipalities, schools, universities, even the Smithsonian across the street and numerous research and development facilities.

Marisol is not a Superfund site, and we have never resisted reasonable environmental regulations. In fact, environmental regulations have enabled us to remain in business.

Today, we recycle 100 percent of all spent materials sent to us. Almost 35 years ago, when we started the business, we could not afford the equipment we have today.

Therefore, when necessary, we utilized other facilities to aid us in our recycling efforts. Most of these locations have since been closed and are now Superfund sites. Because of this, Marisol is labeled a "polluter." To have helped pioneer the recycling industry and be labeled a polluter is an insult.

Thirty years ago what could have been more environmentally sound than to recycle industrial wastes? As an environmental company, a clean environment has always been our aim.

I've personally watched the current Superfund system literally waste millions, if not billions of dollars. The amount of money spent for non-clean-up expenses is a national disgrace.

I believe Superfund is a major reason many businesses have left or have not expanded in the United States, and especially in New Jersey.

This has amounted to lost jobs, and you don't put a man or a woman out of work. You put his or her whole family out of work.

It has become difficult to plan and budget effectively. Administrative and allocation assessments related to Superfund are extremely unpredictable. The unanticipated and untimely imposition of these expenses defy and frustrate managerial control.

Two months ago the President and Vice President visited the Industrial Latex Superfund site in Wallington, NJ. They called it a tragedy that so many live so close to the site.

The true tragedy is that the site has not been cleaned up. The reason is the bureaucratic nightmare known as Superfund.

It was clear that the President planned to use this as a partisan political issue. The "polluter pays," and I quote that, the "polluter pays" system may be politically correct, but it's a semantic joke.

All people are polluters. You may be interested to know that last week in New Jersey public opinion prevented the funding and use of domestic waste incinerator ash as a minor component of road construction.

Instead of using the ash in construction, it's being stockpiled in a landfill at a much greater cost. The National Priorities List for hazardous waste sites now total about 100 for New Jersey alone.

Many of these Superfund sites involve hundreds of PRP's still trying to locate more PRP's and to argue allocation assessments.

I wish that the President would have visited some of these sites. I wish that he would have listened to the PRP's experience and the extended and frustrating deliberations and litigation to achieve some semblance of agreement.

I wish that the President instead would have visited Scientific Chemical Processing, known as SCP, in Carlstadt just 3 miles from the Industrial Latex site that he did.

SCP is so much more typical and representative of the real problem. It seems that the final resolution is still years away at SCP, and a nearby Superfund site has claimed additional contamination from this site.

My small company has already paid over \$310,000 in defense and administrative assessment costs related to SCP, not toward any cleanup.

Because my company processed and recycled so many millions of gallons of solvents for so many generators, we hardly qualify as a de minimis potentially responsible party.

In written testimony, I have provided a greater detail of the corrosive and wasteful aspects of being involved in three other Superfund sites.

Superfund liability provisions are woefully lacking in fairness, logic, and reason. Your review of my written testimony will show how drastically Superfund needs reform and needs it now.

I plead and beg that you weigh all the factors involved and that you reach a viewpoint that is just, equitable, and objective.

I urge you to reform the law this year, for if I am asked to come back to testify a year from now, I fear it may be too late.

Again I ask, 30 years ago what could have been more environmentally sound than to recycle industrial wastes? And since my yellow light hasn't gone on, last night before coming down I was speaking to my 5-year-old and explaining what laws are and why I'm coming and how this was a bad law.

The only way I could explain it was, I said, "If you and your sister messed up the room, I wouldn't want you to spend 3 hours arguing who messed it up. I'd want you just to clean it up."

And our goal is, basically, to get it cleaned up, but with retroactive liability, and the way it's set up now, we are not achieving that.

I'm not being reactionary when I say I fear that we will not be here next year if something is not done soon because of the liabil-

ities—and we are one of the pioneers and one of the most recognized solvent recyclers in the country.

And I thank you very much for all your time and appreciate the opportunity to speak before you.

[The prepared statement of Mr. Nerger follows:]



**Testimony of James R. Nerger,  
General Manager, Marisol, Inc., Middlesex, NJ  
before the House Government Reform and Oversight Subcommittee on  
National Economic Growth, Natural Resources and Regulatory Affairs**

May 8, 1996

**Introduction**

Good morning. My name is James Nerger, and I am the General Manager of Marisol Incorporated, an industrial solvents recycling firm located in Middlesex, New Jersey. I wish to thank Chairman McIntosh and the rest of the members of this subcommittee for allowing me the opportunity to share the story of our family company's Superfund nightmare.

Marisol was founded in 1962, by my parents, Peter and Therese Nerger, and the company was built upon the twin foundations of customer service and regulatory compliance. Today, Marisol employs just over 50 people, and our company's annual sales are around \$12 million. But we stand to lose all of this because we have been labeled, of all things, "polluters."

This designation flies in the face of our environmental record. Again, with no violations last year, Marisol will receive the *E I Digest* Environmental Compliance Award for a fifth consecutive year out of the 5 years of the award's existence – the only company in America to do so. In 1979, my father was one of the founding members of the National Association of Solvent Recyclers, and he served as the association's President in 1992. Our material recovery system is recognized as a form of waste minimization by federal and state regulatory agencies, and we have never broken any environmental laws. All this, and we are still labeled "polluters." Some might consider this ironic – we consider it cynical and cruel.



**Marisol's Business**

As many of the members here today know, the 1950's and 1960's saw a phenomenal growth in industry to fulfill the surging demand for consumer and military products. A few daring companies, like Marisol, saw an opportunity knocking when we determined that various industrial wastes that might otherwise be disposed of carelessly and harmfully, could instead be recycled for reuse. We undertook this form of recycling decades before the current efforts to recycle simple household wastes were underway.

This rather new concept proved greatly beneficial to the national economy early on. During the OPEC oil embargoes of the early 1970's, foreign crude oil supplies diminished drastically, and organic solvents were put on allocation by the major solvent producers. The collection and processing of spent solvents and the development of markets for the recycled solvents produced a new industry, and a new opportunity. By the late 1970's, we were able to develop procedures whereby the residues of recycling were blended and converted to fuels for use in cement kilns, further eliminating reliance on landfills, crude oil and coal. Unfortunately, most of the original spent solvent recyclers are no longer in business, and we are one of only two left in New Jersey.

**Marisol's Involvement**

As a result of the process of solvent recycling, residues often remain, as the base materials cannot be recycled any further. It is because of these residues that Marisol has been named a potentially responsible party, or PRP, at many Superfund sites.

Because of Superfund's use of a strict, joint-and-several, retroactive liability system, our total liability at all sites could reach 10's of millions of dollars. Again, we are a business with just \$12 million in annual revenue; if Superfund is not reformed, and quickly, Marisol could be driven out of business.

It is rumored that President Clinton, on a recent trip to New Jersey, nearly visited one of the Superfund sites at which our company is involved: the Scientific Chemical Processing (SCP) site in Carlstadt. He visited another Superfund site instead. I am truly sorry that the President did not get the chance to visit the SCP site and hear our story. I hope he is listening today.

The SCP site is typical of Superfund's delays and inaction. The site was added to the National Priorities List back in 1983, and it has about 140 PRPs of all sizes, huge companies and smaller companies like our own. Before Marisol acquired distillation equipment in 1974, we occasionally sent some spent industrial solvents to SCP for distillation recovery from May, 1969 to March, 1971. The distilled solvents were shipped back to Marisol for final processing and marketing. SCP ceased operations around 1980. The operators of the site were subsequently jailed for willful negligence, and yet, more than 15 years later, the companies which broke no laws still fight it out to determine our liability. Through this past December we have spent over \$310,000 in assessments and defense costs related to SCP.

It would be hard enough to figure out how a company like mine can survive against Fortune 500s and others throughout this process if SCP were the only site we were involved with, but as I mentioned, it is not.

Marisol is also involved at the Helen Kramer Landfill in Mantua Township, New Jersey. Over two decades ago, Marisol shipped spent solvents to another recycler for specialized recycling, and the recycled solvents were returned to us. The residues of the recycling were allegedly sent to the Helen Kramer site by the second recycler, not by Marisol, during the period of May, 1971 through July, 1973. Marisol became a third party defendant in November of 1990, when the recycler who allegedly sent the residues to the Kramer landfill went out of business.

It is now 1996. Remediation construction at the Helen Kramer site has been completed and it is now on an Operational and Maintenance status. Marisol has so far spent more than \$280,000 on studies and litigation alone at this site. But, because allocations have not yet been established, the total will surely grow, and significantly. Overall costs for the clean-up and oversight at the site are expected to easily exceed \$100,000,000.

As another example, in October, 1973, Marisol hired a transporter to take 23 drums of waste to another permitted New Jersey industrial landfill. These drums contained glass bottles, some empty and some containing non-pourable lab chemicals. Without Marisol's knowledge the transporter deposited these drums in an out-of-state municipal landfill. In 1990 Marisol received a Section 104(e) request for information from the USEPA regarding this out-of-state municipal landfill. Of course, we had no knowledge of this site. In 1992, however, Marisol received notification as a defendant in a suit instituted by the successor to the original transporter. The successor company was a prime PRP responsible for the clean-up of the out-of-state municipal landfill. After intense negotiations and many false starts, Marisol was forced to settle. Legal and settlement costs exceeded \$160,000.

As my last example, in the early 1980s Marisol sold and shipped recycled material as asphalt diluent to a manufacturer of asphalt based products, such as, driveway sealants and roofing compounds. We made more than 100 tank wagon deliveries of the asphalt diluent over a period of three years. During that time the manufacturer redirected eight of these shipments to a facility in a neighboring town for "temporary storage". Each of these shipments was unloaded into the same storage tank. A few years later Marisol received a Section 104(e) request for information from the USEPA; the property on which the storage tank was located had become a Superfund site. Finally, after seven years of negotiations, by providing evidence that the eight shipments represented "product", not "waste" for disposal, and that the original manufacturer did eventually reship Marisol's product from the storage tank back to his own facility, Marisol was released as a PRP by a District Court Order of Dismissal. Overall legal cost to Marisol was approximately \$84,000.

I sometimes wonder what our costs would be if we were out to harm the environment rather than to protect it, but then I look at the essence of Superfund and I realize – the costs would be exactly the same.

And that brings us back to the inherent unfairness of Superfund. While we all applaud, myself included, those who take the time and care to recycle simple household products, through this misdirected law we punish companies like mine who recycle more complicated materials and on a much grander scale. Over the years we have recycled over 150 million gallons of spent solvents from 15,000 different generators. It is hard for me to see the logic in destroying a company in the name of cleaning up the environment, a company whose business has been protecting the environment. 30 years ago, what could have been more environmentally sound than to recycle industrial wastes?

### **Conclusion**

I hope I have successfully conveyed to the members of the subcommittee that Marisol faces extreme costs under this law. The multi-million dollar potential cost to our company does not even take into account the collateral damage done by our Superfund burden. Financial and physical resources that normally would have generated growth and progress have had to be diverted instead to defend and protect our viability. These substantial costs have not only stunted our growth, but they have necessarily been passed on to our customers, and subsequently down to the consumer public.

I ask that the Members of this subcommittee take a renewed interest in passage of a sensible reform package for Superfund's reauthorization, one that would allow sites to be cleaned up quickly, at a reasonable cost, and would not break the backs of environmentally sound and responsible companies like Marisol and thousands of others around the country. I believe that the reform legislation offered by Representatives Mike Oxley and Tom Bliley, which repeals Superfund's liability system before 1987, is the best way to reform Superfund. Their plan would give innocent companies like Marisol relief from an undeserved burden. I hope that everyone here today will support and work for the passage of that bill. I urge you to reform the law this year, for if I am asked to come back to testify a year from now, I fear it may be too late.

I wish to sincerely thank Chairman McIntosh for inviting me to share my experience with you today, and I would be happy to answer any questions you may have.

Mr. MCINTOSH. Thank you very much, Mr. Nerger. Your analogy could even be extended to the point where instead of your daughters having messed up the room it would be more like their parents having tried to clean up the room, and a few days later you come in and say, "It's a mess. Now it's your responsibility," and they spend 3 hours arguing over it.

It sounds to me like you have an incredible story where your family has tried to do what's right for the environment and is now being penalized. I appreciate you coming forward.

Our next witness is Mr. Jefry Rosmarin of RGE, Inc. Mr. Rosmarin, thank you for joining us.

Mr. ROSMARIN. Good morning, ladies and gentlemen. Thank you for giving me the opportunity to testify this morning.

My name is Jefry Rosmarin. I am here today to discuss a problem which started 10 years before I was born and which I have spent nearly 50 percent of my adult life trying to solve. It is a problem I did not cause.

Because of Superfund, my small business has spent over \$1 million due to contamination caused by others. What makes it even worse is the fact that the vast majority of the contamination was caused by agencies of the Federal Government during World War II when they owned and operated the property.

An EPA report confirmed that the contamination that caused the problem ceased in the 1970's before I acquired the property.

How would you describe a law that allows one branch of the Federal Government, EPA, to pursue me to clean up contamination caused by another branch of the Federal Government, the Department of War?

It has always been my understanding that the purpose of Superfund was to ensure that properties were cleaned up for the health and safety of the public and that those responsible for the pollution should pay for cleanups.

In my case, those responsible parties are known and have deep pockets, yet somehow it has become primarily my burden. During World War II, agencies of the Department of War owned and operated the property, installed the manufacturing equipment, leased the property to the manufacturer and played an active role in the production and processing of materials at the facility.

The plating process produced nearly 12,000 pounds of chromic acid wastewater per month that was discharged into unlined basins.

Other industrial companies used the site from 1950 to 1979. According to information contained in an EPA report, their contamination was dramatically less than the Government's.

Attached hereto is some written testimony and a chart which demonstrates the information extrapolated for the volumes for each era.

In 1980, at the time the Federal and State Superfund laws were in their infancy, I was a partner in the company that acquired the 30-acre site in Farmingdale, NY, known as Liberty Site.

When we made this acquisition, we did not conduct what today would be considered due diligence in regard to the contamination which was below the surface and invisible to the naked eye.

In 1980, a study of this kind was virtually unheard of. In 1986, the site was placed on the national priorities list. In 1987, my company spent \$600,000 to remove 2,000 tons of contaminated soils from the site under the supervision of the State agency, the Department of Environmental Conservation, known as the DEC.

At the conclusion of the cleanup, the DEC gave its letter of approval confirming completion of that cleanup. Several months after that removal action, EPA indicated that additional studies were required.

We were working with DEC to accomplish this when, in 1990, EPA stepped in as lead agency because they felt the State had moved too slowly.

Nearly 6 years after taking over the site from the State agency because EPA said the State was moving too slowly, EPA has still not completed a Remedial Investigation Feasibility Study known as an RIFS.

The remedial investigation report for just the western portion of the site was issued in January 1994, but EPA has not yet completed its feasibility study.

EPA has determined that they will do at least one, if not two more, RIFS studies. Based on EPA's current record of activity on the western portion, who knows when the studies will be finished and the cleanup completed.

To this point, EPA has spent nearly \$2 million studying the site. In its RI report, EPA focused on residential land use and did not even consider an industrial land use as a possible future use, although the site has been zoned and used industrially for 80 years.

To provide certainty about future use, the owners have offered to put deed restrictions on the property guaranteeing that the property would never be used residentially.

EPA's failure to consider current land use and current zoning when determining future use has caused significant delays. Future use is a critical issue because, according to one EPA estimate, a residential level cleanup—this is on the western side alone—might cost \$60 million, and a commercial level cleanup might cost \$6 million.

In 1994, my company, along with other PRP's, began a removal action to eliminate what EPA considered the immediate threat to public health.

The primary focus was to remove PCB contaminated soil from two electrical transformer areas. The removal action eliminated 97 percent of the trespasser health risk, according to EPA's RI report.

Let me explain in commonsense terms what drove the risk and cost so much money. EPA stated at a public meeting that siteworkers, children playing at the park next door and neighbors living across the street were not at risk from the soils or the air from the Liberty site.

However, EPA went on to say that there was a risk to the hypothetical trespasser. That trespasser was assumed to be a teenage boy who would enter on the property twice a week, 2 hours per visit, 52 weeks a year for 9 consecutive years, each time coming in contact and ingesting certain soils.

Based on this scenario, the trespasser would have a hypothetical 3 in 10,000 increased risk of getting one type of cancer.

Ironically, these soils were behind locked, fenced areas that covered less than half of 1 percent of the site with signs saying, "High voltage. Keep out."

Yet, when EPA made their determination about risk, they assumed that the teenage trespasser would be in contact with the soils from these isolated high spots containing the highest concentrations every time they walked anywhere on the site.

This, in EPA parlance, is known as pooling the data. Because of all the expenses I have been forced to incur, I have been unable to maintain the mortgage payments. The mortgagee has commenced foreclosure of the mortgage.

Since that foreclosure began and a receiver was appointed, for the first time in 15 years, the property taxes have not been paid, and the future of the property is in question.

One million dollars is a lot of money. However, it is not a true measure of what owning the site and being caught in the web of Superfund liability has cost me.

It is impossible to measure the toll that it has taken on me, my family, and my small business. It has sapped me and my small business of capital, energy, and entrepreneurial spirit. It has taken me from my family and children.

Reform of Superfund is a complex problem. There are a host of complicated issues, including numerous legal matters. My situation, however, is much simpler.

I am an innocent landowner who did not cause the pollution. In fact, the vast majority of the contamination occurred before I was born.

What is most troubling, however, is that the responsible parties are known and have the resources to deal with this problem, yet I am treated as if I were the polluter.

Administrative reform or a simple amendment could easily address this unjust situation. Thank you for your time.

Mr. MCINTOSH. Thank you very much, Mr. Rosmarin, and I appreciate you coming today and testifying before us. Our next witness is a citizen from my district, president of Beckett Bronze, Leon Dixon.

And congratulations, Leon, on your election victory yesterday and being reelected to the school board.

Mr. LEON DIXON. I didn't know that.

Mr. MCINTOSH. Well, I'm glad to bring you that news. As you might imagine, we were following the results closely. Leon is with us here today to talk about his experience in one of the Superfund sites in our district that has now been cleaned up, and there is a debate over who will pay for that. Mr. Dixon, please share with us your testimony.

Mr. LEON DIXON. You guys are all politicians. It is nice to win a victory, but coming here to testify was just so important to us that I didn't really know about this until you told me. So I am sentenced to the school board for another 5 years.

I appreciate the opportunity to come and tell our story to you. It's about a prospective experience, however. Unlike these witnesses, we have this to look forward to.

Why do I think it's so important to come here and talk to you and be on this record? It's because you folks are the only ones that can do anything about it.

The judges can't help us. Lawyers can't help us. Congress is the only people that can help us because it's the law that they have written that is causing the difficulties.

We are constituents of David McIntosh, and we have written letters to him, and maybe that's why we're here. Those letters are in our written submission, and they're very good letters, I think.

They're very much like the letters that you Congressmen get from your constituents, at least I hope. I hope they're that effective.

We're concerned not just about our small foundry of 15 employees and their families, but we're also concerned that our hospital has been put on this list.

Other citizens in Muncie through their sanitary district are at risk to having liens put on their properties through tax rates.

I'm, obviously, concerned about what that does for public education in the school district that I serve, and there are many small companies in Muncie, IN, which is kind of a typical community in that we don't have the resources to hire fleets of lawyers.

We have a family business story, and the highlights of it I'd like to just mention. We have a document from somebody that talks about \$16.15.

We're a family business that has been around since 1913, ex post facto laws act very much to family businesses like bills of attainders used to.

We think that the joint and several liability is unfair, that it's completely out of proportion to whatever took place, and we would like to reiterate that litigation expenses don't clean anything.

I'd like to ask permission to add to the written record and say that the reform is urgent to us for the reasons that we are prospectively looking at a lot of litigation over these allegations.

Now, my brother is the expert for our company on our story. This is my brother, Steve.

Mr. STEVE DIXON. Thank you, gentlemen. Our company was founded, as Leon said, in 1913 by my great-grandfather, who was a union master molder, and his son, who happened to have a high school education, which was kind of unusual in 1913.

In April 1992, EPA sent us a letter stating that we were a potentially responsible party, PRP, and they wanted a lot of information that would have taken a year to answer completely.

But they threatened a \$25,000 a day fine if we didn't give it to them, but anyway, we got through that. We asked them, in July 1992, what they had against us, and the answer was that they had a couple of statements from former garbage men that worked out at that dump who said that we had used other contractors to bring trash out to that dump.

And also, they had some sort of a record for January 1992 that said that there was a transaction of \$16.15. It doesn't say what it was. It might have been trash.

But according to that Superfund law, if you put a wastepaper basket full of your office trash in that Superfund site, you're jointly and severally liable for the whole thing.

We did an extensive investigation of all of our employees who were still around to ask, who happened to still be alive, including my mother who has since deceased.

None of the people that we talked to that had any—or truck drivers had any knowledge of that situation said that we'd ever used that dump. It was 15 miles from our plant. There were plenty other dumps a lot closer, and we hope those don't turn into Superfund sites.

So finally, EPA forced General Motors and the Muncie Sanitary District to clean this thing up because they knew they had those guys pretty well nailed on the thing.

So they went ahead and I think they spent about \$½ million with litigation before they even started cleaning the thing up. Finally, they capped it over with dirt and so forth.

So in turn, then, they decided they needed to get into anybody's pockets they could, and we got a notice from this committee, General Motors being the main outfit, they wanted \$26,000 from us as a downpayment to get the ball rolling.

I'm sitting here thinking, everybody in this room generates trash. I mean, Mr. Waxman does, Mr. McIntosh, and how would you like it if somebody came in and said, "Hey, you put your trash out on the street, and it ended up in a Superfund site, and here is a bill for \$26,000, and have a good day?"

In any event, we went on—we feel pretty defensive about it. We haven't suffered like these people have, but like my brother said, that's what we're looking forward to.

In General Motors' defense, it was legal for them to dump whatever they dumped in that dump at the time. That's what makes this Superfund law such a nightmare, and "nightmare" is a word that we've all used.

We are charged with something that our grandfather allegedly did that was legal. It's even worse than being fined for a real crime done by your grandfather. You're being fined by a legitimate act allegedly done by your grandfather or my great-grandfather, for that matter.

Another analysis or another comparison would be getting fined for speeding in 1960 after they lowered the speed limit to 55 in the 1970's. It's something that you wouldn't even think would happen in America, but it has.

The amount of money being spent on these superfunds is tremendous, and a heck of a lot is going to litigation. A few years ago we went to a trade association meeting with the Nonferrous Foundry Society, and the question was asked of all these businessowners, "What's your biggest problem in business today?"

And unanimously the answer was Federal Government regulation attempting to destroy our businesses. That's how a lot of businessowners look at this thing.

There are probably over 100 people in our company that make a living through Beckett Bronze Co., and over the years I imagine thousands of people have worked there to make a living.

We have always complied with the law, and we know that our parents and grandparents also complied with every law there was. We're not a fly-by-night business. We've been in business for 80

years. I'd like my son to be in this business when he becomes able to take it over from us.

But thanks to Congress, we face a tremendous legal cost and fines based on allegations that we did something legal that is now illegal.

This is unfair, un-American, and we request that you consider rescinding this outrageous injustice. We ask that our more detailed remarks be added to the written record. Thank you for your time.

Mr. MCINTOSH. Thank you very much, Steve and Leon, for joining us here today. I appreciate that. It's a regret that you're being put through that agony by the agency.

Our final witness on this panel is Mr. Dick Herring, who is with the Gloucester Co., and is the region 1 cochair of the White House Conference on Small Business.

Mr. Herring, thank you for joining us. Please give us your testimony.

Mr. HERRING. Good morning. I'd like to thank Chairman McIntosh and the rest of the subcommittee members the opportunity to testify today. I'd ask if it's possible to get my chart. Thanks.

My name is Dick Herring, and I'm general manager of Gloucester Co. in Franklin, MA, a company of 40 employees which manufactures caulks and sealants.

I appear before you today not only as a representative of the Gloucester Co., but also as a regional environmental chair and representative of the over 2,500 delegates to the 1995 White House Conference on Small Business.

In addition, I have served as the past chair of the Environmental Issues Committee of the Small Business Association of New England and currently chair of the Energy and Environment Committee for National Small Business United in Washington, DC.

During the White House Conference on Small Business meeting last June, reform of the Federal Superfund law was voted the fifth highest priority among the conference delegates.

Among other suggested reforms for Superfund, we advocated repealing the program's retroactive liability system for waste disposed of prior to 1987 to help alleviate some of the crushing burden this system has placed on small business in particular.

We are grateful that many Members of Congress from both parties are making serious efforts to reform the law this year. I'd like to take the few minutes I have to share with you our thoughts on the process to reform Superfund thus far and offer our help to continue to work with you to improve this failed law.

We are aware that much criticism has been leveled at Congress this year for taking positions which were labeled antienvironment or considered too harsh on the environment.

However, I would argue that the current Superfund law is, in fact, antienvironment. Superfund's miserable track record speaks for itself.

Fewer than 25 percent of the sites on the NPL have been completely cleaned up, while billions of dollars have been wasted on lawyers and other expenses.

These appalling inefficiencies are a direct result of Superfund's emphasis on finger-pointing, and recent estimates assert that nearly 40 percent of all Superfund moneys go to lawyers.

And it's not just industry or small business pointing out Superfund failures. Virtually every environmental group I know has said that Superfund can be improved.

Even the Washington Post has called Superfund the most deeply fraud of the country's environmental programs. Moreover, it took our country's space program less time to put a man on the moon than it now takes EPA to clean up an average Superfund site.

Sixteen years have gone by, and Superfund still hasn't even come close to achieving its goals. It's time to put politics aside and clean up this statute.

Hundreds, if not thousands, of America's small businesses have waited far too long for Congress to reform this law.

Many small business owners have already been forced to close their doors as a result of their Superfund liability. Their stories and the ones you have heard from my fellow witnesses today are American tragedies.

Family-run business owners and other citizens have been forced to close their companies for having done nothing more than dispose of their waste in a proper, responsible, and, yes, legal manner.

We must have comprehensive Superfund reform this year if we were to prevent further tragedies from scarring our country's landscape. The small business owners and citizens who have been affected by these sites for years deserve nothing less.

As I mentioned, the White House delegates believed that Congress could best reform Superfund by repealing the program's liability system for waste disposed of prior to 1987 and pay for cleanups through existing Superfund taxes.

We believe that doing so would dramatically reduce the wasteful role of lawyers in the Superfund process and begin to refocus EPA's efforts solely on providing the fastest and most cost-effective clean-up.

However, we recognize that congressional leaders on Superfund reform tried to accommodate this wish but failed because of an apparent lack of adequate funding.

Recently, we were encouraged to learn of Commerce Committee Chairman Tom Bliley's draft liability amendment which would repeal the liability system at all multiparty Superfund sites before 1987.

As the attached chart shows, this proposal would remove 83 percent of the innocent parties trapped in Superfund. We strongly endorse this proposal. That would be the green bar in the middle. The blue bar on the left is the White House conference delegates' estimates.

Superfund's focus on litigation is most acutely felt at these multiparty sites, and we must begin to cut through this redtape with comprehensive reforms like those contained in Chairman Bliley's proposal.

Now I'd like to address the polluter-pays myth in the administration's proposal. Critics of Superfund reform have attacked Chairman Bliley's proposal and others like it as solely benefiting corporate polluters. Nothing could be further from the truth.

Given that small business owners overwhelmingly comprise the list of the Nation's PRP's, we are the ones who would be most helped by this proposal.

Small business owners and hard working Americans caught up in this program resent being called corporate polluters. As I have said, for the most part, small businesses are entangled in Superfund liability simply because they dispose of their waste properly, responsibly, and according to the letter of the law at the time.

Those businesses which acted irresponsibly and which may have dumped their waste in a ditch at the side of the road someplace are not the ones being caught in Superfund's liability web. Instead, it is people like us.

As a small business representative who is appointed to the White House conference by President Clinton himself, I must admit that it is disheartening to see and hear the administration's counter proposals and rhetoric surrounding the proposals offered by congressional leaders.

Just last week, in a letter to leaders, EPA Assistant Administrator Elliot Laws even went so far as to say that there is "no evidence to support the claim that Superfund's existing liability scheme delays cleanups."

Apparently, Mr. Laws has not read the EPA's Inspector General report of November 1995 called, "Review of the Barriers of the Superfund Site Cleanups," which cite PARP negotiations as one of the major reasons for cleanup delays. Eliminating thousands of innocent PRP's would obviously help speed up these cleanups.

The administration's liability proposal which, among other things, would exempt small business owners with 25 employees or less and companies with less than \$2 million in revenue attempts to Band-Aid a liability system which is hemorrhaging.

In spite of the limited exemptions contained in this proposal, I find it curious that the administration's officials insist that their proposal maintains the polluters pays principle. This logic doesn't add up.

EPA Administrator Carol Browner likes to refer to businesses with 25 employees or less as "little guy." However, a business of 26 employees or more falls under the category of a corporate polluter.

The administration and others should not be in a business of labeling who is a polluter and who isn't. The bottom line is if a business, individual, or other organization acted legally and responsibly, then they should be absolved of their liability so we can get on with cleaning up sites instead of engaging in years of litigation.

The administration's proposal falls far short of this goal. We firmly believe that Chairman Bliley's draft liability amendment along with H.R. 2500, the Reform of Superfund Act, are the best possibility to help ensure that Superfund meets its goals quick and effective cleanups.

In recent letters provided to the committee, we expand upon our reasons for reaching this conclusion.

I'd like to volunteer my services along with all the White House Conference environmental issue chairs to work with Congress to

ensure fundamental reform is passed this year and signed into law by the President.

I also know of other interested small business individuals who would be willing to work on this issue, if the committee desires additional help.

In closing, again I want to thank the members of this committee for holding this important hearing and would be happy to answer any questions you might have. Thanks.

[The prepared statement of Mr. Herring follows:]

## Introduction

Good morning. I would like to thank the Chairman, David McIntosh, and the rest of the Subcommittee members, for the opportunity to testify today. My name is Dick Herring and I am the General Manager of Gloucester Company, Inc. in Franklin, Massachusetts, a company of 40 employees which manufactures caulks and sealants.

I appear before you today not only as a representative of the Gloucester Company, but also as a Regional Environmental Chair and representative of the over 2,500 delegates to the 1995 White House Conference on Small Business. In addition, I have served as past Chairman of the Environmental Issues Committee of the Smaller Business Association of New England and currently chair the Energy and Environment Committee for National Small Business United in Washington, D.C.

During the White House Conference on Small Business meeting last June, reform of the federal Superfund law was voted the fifth highest priority among the conference delegates. Among other suggested reforms for Superfund, we advocated repealing the program's retroactive liability system for waste disposed of prior to 1987 to help alleviate some of the crushing burden this system has placed on small business in particular.

We are grateful that many members of Congress from both parties are making serious efforts to reform the law this year. I would like to take the few minutes I have to share with you our thoughts on the process to reform Superfund thus far, and offer our help to continue to work with you to improve this failed law.

## Why Congressional "Reform" is Not Anti-Environment

We are aware that much criticism has been leveled at Congress this year for taking positions which were labeled anti-environment, or considered too harsh on the environment. However, I would argue that the current Superfund law is, in fact, "anti-environment." Superfund's miserable track record speaks for itself; fewer than 20% of the sites on the NPL have been completely cleaned up while billions of dollars have been wasted on lawyers and other expenses. These appalling inefficiencies are a direct result of Superfund's emphasis on finger-pointing, and recent estimates assert that nearly 40% of all Superfund monies go to lawyers.

And it's not just industry or small businesses pointing out Superfund's failures. Virtually every environmental group I know has said that Superfund can be improved. Even the Washington Post has called Superfund "the most deeply flawed of the country's environmental programs."

Moreover, it took our country's space program less time to put a man on the moon than it now takes EPA to clean an average Superfund site. Sixteen years

have gone by, and Superfund still hasn't even come close to achieving its goals. It's time to put politics aside and clean up this statute.

#### The Urgent Need For Reform This Year

Hundreds, if not thousands, of America's small businesses have waited far too long for Congress to reform this law. Many small business owners have already been forced to close their doors as a result of their Superfund liability.

Their stories, and the ones you have heard from my fellow witnesses today, are American tragedies. Family-run business owners and other citizens have been forced to close their companies for having done nothing more than dispose of their waste in a proper, responsible, and yes, legal manner.

We must have comprehensive Superfund reform this year if we are to prevent further tragedies from scarring our country's landscape. The small business owners and citizens who have been affected by these sites for years deserve nothing less.

#### Comprehensive Liability Reform Is Needed

As I mentioned, the White House delegates believed that Congress could best reform Superfund by repealing the program's liability system for waste disposed of prior to 1987 and pay for cleanups through existing Superfund taxes. We believed that doing so would dramatically reduce the wasteful role of lawyers in the Superfund process and begin to refocus EPA's efforts solely on providing the fastest and most cost-effective cleanup.

However, we recognize that Congressional leaders on Superfund reform tried to accommodate this wish but failed because of an apparent lack of adequate funding. Recently, we were encouraged to learn of Commerce Committee Chairman Tom Bliley's draft liability amendment which would repeal the liability system at all multi-party Superfund sites before 1987. As the attached chart shows, this proposal would remove 83% of the innocent parties trapped in Superfund. We strongly endorse this proposal.

**Superfund's focus on litigation is most acutely felt at these multi-party sites, and we must begin to cut through this red tape with comprehensive reforms like those contained in Chairman Bliley's proposal.**

#### "Polluter Pays" Myth

Critics of Superfund reform have attacked Chairman Bliley's proposal, and others like it, as solely benefiting "corporate polluters." Nothing could be further

from the truth. Given that small businesses overwhelmingly comprise the list of the nation's PRPs, we are the ones who would be most helped by this proposal.

Small business owners and other hard-working Americans caught up in this program resent being called "corporate polluters." As I've said, for the most part, small businesses are entangled in Superfund liability simply because they disposed of their waste properly, responsibly, and according to the letter of the law at the time. Those businesses which acted irresponsibly, and which may have dumped their waste in a ditch on the side of a road someplace, are not the ones being caught in Superfund's liability web -- instead it is people like us.

#### The Administration's Reform Proposal

As a small business representative who was appointed to the White House Conference by President Clinton himself, I must admit it is disheartening to see and hear the Administration's counterproposals and the rhetoric surrounding those proposals offered by Congressional leaders. The Administration's liability proposal, which among other things would exempt small business owners with 25 employees or less and companies with less than \$2 million in annual revenue, attempts to band-aid a liability system which is hemorrhaging. In spite of the limited exemptions contained in this proposal, I find it curious that Administration officials insist that their proposal maintains the "polluter pays" principle.

This logic doesn't add-up. EPA Administrator Carol Browner likes to refer to businesses with 25 employees or less as a quote "little guy." However, if a business has 26 employees or more, it falls under the category of a "corporate polluter."

The Administration and others should not be in the business of labeling who is a polluter and who isn't. The bottom-line is if a business, individual or other organization acted legally and responsibly, than they should be absolved of their liability so we can get on with cleaning the sites up instead of engaging in years of litigation. The Administration's proposal falls far short of this goal.

#### Conclusion

We firmly believe that Chairman Bliley's draft liability amendment, along with H.R. 2500, The Reform of Superfund Act, offer the best possibility to help ensure that Superfund meets its goals of quick and effective cleanups. In recent letters provided to the Committee, we expand upon our reasons for reaching this conclusion.

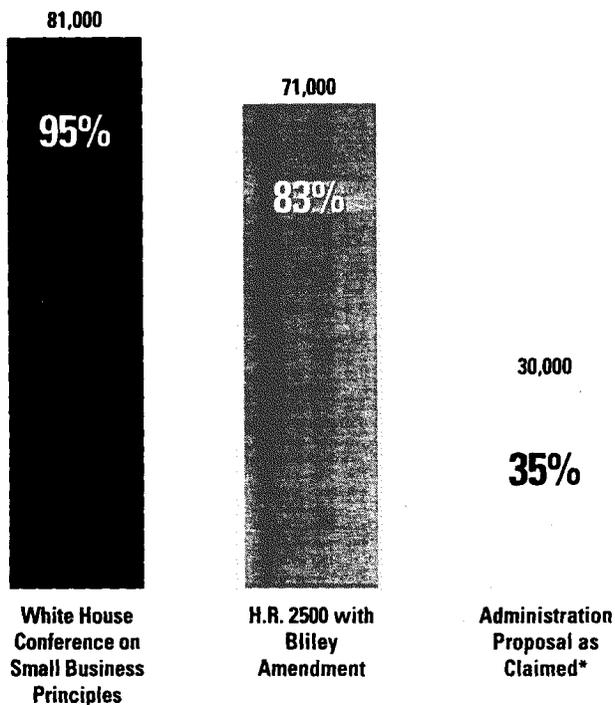
I would like to volunteer my services, along with all the White House Conference environmental issue chairs, to work with the Congress to ensure fundamental reform is passed this year and signed into law by the President. I

also know of other interested small business individuals who would be willing to work on this issue, if the Committee desires additional help.

In closing, I again want to thank the members of the this Committee for holding this important hearing and would be happy to answer any questions you might have. Thank you.

## Good Compromise — Innocent Parties Relieved from Liability Under the Bliley Amendment

(Based on 85,500 PRPs)



\* EPA estimate of parties exempted under the Administration plan not yet confirmed by outside sources.

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March 27, 1996

The Honorable William Jefferson Clinton  
The President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President:

On behalf of the 2,500 delegates to your White House Conference on Small Business (WHCSB), we, the Regional Environmental Issue Chairs, want to take this opportunity to remind you of the importance America's small businesses place on reforming the badly broken Superfund hazardous waste cleanup law this year.

As you may recall, last June, WHCSB delegates voted to make Superfund reform our fifth highest legislative priority and urged Congress to fix the flawed program by year's end. While Congress did not deliver reform in 1995, our resolve and commitment to true reform have not waned. We simply must secure such reform with your help here in 1996.

Unfortunately, we are concerned that your recent statements about efforts to reform Superfund in Congress may impede the reauthorization process this year. At your recent visit to a Superfund site in Wallingford, New Jersey, you mentioned that Republican-led efforts to reform Superfund in Congress will solely benefit "corporate polluters." However, the new language in Chairman Tom Bliley's draft liability amendment to H.R. 2500 specifically retains liability for corporate wrongdoers. Thus, the principle of "polluter pays" is preserved. Most importantly, the new Bliley proposal eliminates about 85-90% of the over 40,000 parties who were complying with all applicable environmental laws. Therefore, we hope that the Administration can endorse the new liability language or other similar provisions that conform to the "polluter pays" principle, while releasing tens of thousands of innocent parties from unnecessary and burdensome Superfund litigation.

In addition, we disagree with your statements which indicate that current reform efforts will shift cleanup costs onto individual taxpayers. Chairman Bliley's liability amendment would not pass costs onto taxpayers. The amendment sees to it that Superfund reform is funded by current taxes on businesses. Similarly, as Senator Chafee recently pointed out in a statement on the Senate floor, "there is no talk about letting polluters off the hook and making taxpayers pay" in Senate efforts to reform Superfund. We take the Senator at his word on this.

We believe that H.R. 2500, along with Chairman Bliley's draft liability amendment, is the best way to truly reform Superfund. Chairman Bliley's amendment, which repeals retroactive liability for arrangers, generators and transporters of waste at Superfund sites before 1987, will eliminate most of the lawyers from the Superfund process while re-energizing stalled cleanup efforts and redirecting money towards actual cleanup. We much prefer this kind of comprehensive change to

other piecemeal reforms which seek to carve-out small businesses, municipalities or others from the Superfund process. These carve-out efforts have proven to be unworkable and ineffective.

In our WHCSB recommendation on Superfund (see attached), we sought full repeal of retroactive liability for waste disposal prior to 1987. While we recognize that funding constraints make full repeal difficult, we urge you to support legislation -- such as Chairman Bliley's draft liability amendment -- designed to get as many parties completely out of Superfund's unfair and inefficient liability system as can be afforded.

Unlike other environmental programs such as the Clean Air Act or Clean Water Act, Superfund has been a failure since its inception. You yourself once said, "Superfund is a disaster". We couldn't agree more. Piecemeal efforts, including focusing solely on redeveloping urban brownfields, will not cure this program's major ills. If Superfund reform is not enacted this year, thousands of small businesses and innocent parties will have to endure yet another year without badly needed relief.

Your Administration came to Washington to "reinvent government." We hope you will continue this goal by fundamentally fixing one of its most broken programs. Please keep our concerns in mind as you consider Superfund legislation this year. We strongly encourage you to work with Congress to make Superfund reform a reality in 1996.

Sincerely,

**WHITE HOUSE CONFERENCE ON SMALL BUSINESS  
REGIONAL ENVIRONMENTAL CHAIRS**

**Richard Herring**

Gloucester Co., Inc.  
Franklin, MA

**Don Morgan**

Morgan Properties, Inc.  
Cullman, AL

**Kamal "Doc" Yadav**

CHEMCO Industries, Inc.  
St. Louis, MO

**Robert Fowler**

Hampden Papers, Inc.  
Holyoke, MA

**Harold Igdaloff**

Sungro Chemicals  
Los Angeles, CA

**Rob Wheeler**

Wheeler Manufacturing Co., Inc.  
Lemmon, SD

**Kathryn A. O'Donnell**

Botanicus Interior Landscaping  
Tonawanda, NY

**Janet Kerley**

Lead-Rite  
Albuquerque, NM

**Susanne Woosley, CPM**

SW Asset Management Group  
San Diego, CA

**Jesse Flynn**

Flynn Brothers Contracting Inc.  
Louisville, KY

**Ramon Billeaud**

K. Ray Properties, Inc.  
Metairie, LA

**Helen Anderson**

Rayvern Lighting Supply, Inc.  
Paramount, CA

**Mary Malotke**

Tencon, Inc.  
Milford, OH

**Corrie Player**

Tahoma Companies  
Cedar City, UT

## 1995 WHITE HOUSE CONFERENCE ON SMALL BUSINESS

## Recommendation #63

Congress should enact reformation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to apply prospectively as well as retroactively to clean up sites in progress.

1. Eliminate retroactive and strict liability prior to January 1, 1987 to prohibit liability for conduct that was not negligent, illegal or in violation of regulations or permits at the time.
2. Require sound science and realistic risk assessments and cost/benefit analysis in assessing health and environmental hazards at waste sites.
3. Require sound science and realistic risk assessments and cost/benefit analysis in establishing cleanup standards. This would include realistic consideration of future uses of the site and actual environmental and health risks associated with such use.
4. Eliminate "re-openers"-disallowing the reopening of the remediation process at a site or a company's contribution to the cleanup, after it has been closed.
5. Offer alternative funding strategies for cleanups.
6. Make greater use of de minimis and de micromis exemptions, requiring USEPA to identify all contributions to a site within a reasonable time period and making de minimis settlements available prior to litigation or enforcement actions.
7. Eliminate liability of fiduciaries and lending institutions who hold indicia of ownership primarily to protect security interest in property which is subject to the Act.
8. Eliminate joint and several liability for contamination.
9. Require potentially responsible parties (PRPs) to inform non-PRPs (parties not named by the USEPA) in contribution actions of availability of de minimis and/or de micromis settlements within a reasonable time period.



March 6, 1996

The Honorable Thomas J. Bliley Jr.  
United States House of Representatives  
2241 Rayburn House Office Bldg.  
Washington, DC 20515

Dear Representative Bliley:

On behalf of the 2,500 delegates to the White House Conference on Small Business (WHCSB), we, the Regional Environmental Issue Chairs, want to take this opportunity to remind you of the importance America's small businesses place on reforming the badly broken Superfund hazardous waste cleanup law this year.

As you may recall, last June, WHCSB delegates voted to make Superfund reform our fifth highest legislative priority and urged Congress to fix the flawed program by year's end. While Congress did not deliver reform in 1995, our resolve and commitment to true reform has not waned. We simply must secure such reform here in 1996.

Unfortunately, the effort to reform Superfund has been severely mischaracterized by those intent on maintaining the wasteful and unproductive status quo. Contrary to some critics' belief, true Superfund reform will not solely benefit "corporate polluters" -- but rather, and more significantly, it will primarily help the thousands of innocent small business owners and other individuals who overwhelmingly comprise the nation's list of 25,000 "potentially responsible parties" (PRPs). By and large, these small parties did not do anything wrong and are unfairly portrayed as "polluters." We deserve to be liberated from Superfund now.

In addition, those who say that the nation's taxpayers will be left "holding the bag" following Superfund's reform are flat wrong. Superfund has always been, and will continue to be, paid for by taxes and contributions from the business community.

In the WHCSB recommendation (see attached), we sought full repeal of retroactive liability for waste disposal prior to 1987. While we recognize that funding constraints make full repeal difficult, we urge you to support amendments designed to get as many parties completely out of Superfund's unfair and inefficient liability system as can be afforded.

The central reform bills, H.R. 2500 and S. 1285, both take the initial steps towards that goal. We understand that additional changes to the liability provisions are being made to provide the relief to small businesses that is so desperately needed.

If Superfund reform is not enacted this year, thousands of small businesses and innocent parties will have to endure yet another year without badly needed relief. We hope that you keep this in mind as you consider Superfund legislation. Please don't let 1996 go by without completing action on this issue, there is simply too much at stake.

Sincerely,

**WHITE HOUSE CONFERENCE ON SMALL BUSINESS  
REGIONAL ENVIRONMENTAL CHAIRS**

Richard Herring  
Gloucester Co., Inc.  
Franklin, MA

Robert Fowier  
Hampden Papers, Inc.  
Holyoke, MA

Kathryn A. O'Donnell  
Botanicus-Interior Landscaping  
Tonawanda, NY

Victor N. Tucci, M.D.  
Three Rivers Health & Safety, Inc.  
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Jesse Flynn  
Flynn Brothers Contracting Inc.  
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Fort Wayne, IN

Mary Malotke  
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Janet Kerley  
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Kamal "Doc" Yadav  
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Corrie Player  
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Helen Anderson  
Rayvern Lighting Supply, Inc.  
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Kristy Olaveson  
POPULUS, Inc.  
Boise, ID

Chuck Achberger  
Westland Associates  
Juneau, AK

Mr. MCINTOSH. Thank you very much, Mr. Herring. I appreciate in particular your offer with the White House Small Business Conference to assist in trying to get this body and the Senate and the President to pass that legislation. It's something we'll take you up on.

I think it may take getting beyond Washington in order to get the job done, and so I appreciate that offer of assistance.

I have a couple of questions for different panelists. We'll see how much time they take, and I'll reserve the right to come back after the other Members.

The first question is for the Tielmanns. I want to bring out a couple points that I think were in your written testimony.

How was the asbestos that was found on your farm located? Was that something that was brought to your attention by the EPA, or how did you become aware that there was a problem?

Mrs. TIELMANN. Well, the asbestos siding that is on our property was commonly used in our township for people in lieu of blue stone. They used it for driveways or to fill in low spots, and it was used in the driveway area.

The extent of the contamination wasn't known to us until the PRP, in this case the company that manufactured it, finger-pointed where they took a large amount of their broken shingles and landfilled it.

So it really wasn't aware to us how extensive the filling was until recently.

Mr. MCINTOSH. And then a company brought it to your attention, and EPA's as well, and then they started the process?

Mrs. TIELMANN. The company didn't bring it to our attention. The company, I guess, was in negotiations with—it was the DEP, State level at that point in time.

We purchased the property prior to Superfund, so there was no Superfund Program. So the DEP, I guess it was in that stage. We're really not quite clear on all the details. We were just notified we were on the NPL list. A lot of information was actually kept from us throughout the years. We had a 6-year gap where we didn't hear much of anything.

Mr. MCINTOSH. And then, when you were notified, then the nightmare sounds like it began. If I understand correctly from your testimony, you started without where they discovered there was asbestos buried under the ground, generally not exposed to the air, and therefore not likely to be a grave hazard to humans but a concern as a Superfund site that was listed.

But then, in the process, the asbestos was dug up, brought onto the surface. At one point you had a slide where it showed that there was a cloud of asbestos dust exposed to people working on the site.

And then, the asbestos was mixed with concrete to create this Chernobyl like tomb that seems to be buried now on your property in what used to be a wetland. It's environmentally sensitive areas that we're trying to protect under other parts of our environmental laws.

And then they came in and covered it with industrial topsoil so that today, rather than having asbestos buried on your ground,

you've got asbestos mixed in with your topsoil along with new industrial waste that has been brought onto the property.

To me, this is incredible. It sounds like a "Nightmare on Elm Street." You might have fared better if Freddie Kruger had come knocking rather than the EPA.

I think we need to ask ourselves what did EPA do when you brought it to their attention the way the contractors were trying to clean up this site?

Were they cooperative? Did they try to help you get it done better? What was the agency response?

Mrs. TIELMANN. Well, you'd have to take the time to understand how we were treated. We were limited as far as where we could walk on our property.

We were told to speak to just one EPA official. We were told not to converse with the contractors or else we'd be held in violation of the access order.

And we did notify our one communicator and told her several times. She told us there is no problem with the fill, and we had to go through great lengths to prove to higher authority that there was a problem.

It was a very frightening time for us. We were up against the Government, two little people with no resources whatsoever.

Mr. MCINTOSH. Did EPA do anything to try to correct the behavior of the contractors?

Mrs. TIELMANN. Nothing has been done. In our opinion, the contractors have control over the EPA. I don't see the EPA having very much control whatsoever over the contractors to date in our situation.

Mr. MCINTOSH. And I understand now you feel that it's unsafe for your family to live there, and you're having to abandon what was at one point your dream house?

Mrs. TIELMANN. Absolutely. You'd have to hear the full picture. I mean, not only did you see the pontoon flipping with the smoke, but throughout the cleanup there was sloppy procedure.

They used sloppy procedure. They decontaminated outside the decontamination zone. They comingled soils. Whether it was intentional or accidental, we don't know. Comingling of soils.

Soils were scraped around our home, and the comingled soils were brought back. It was one big disastrous mess and still is.

Mr. MCINTOSH. After the Government has spent several millions of dollars on this, do you feel the site is now safer for human habitation?

Mrs. TIELMANN. Absolutely not. We have dirt on our property that is suitable for an industrial zone, may prove to be unsuitable for an industrial zone. We don't know.

It has been nearly 2 years, and we still haven't gotten all the answers. I do not trust the dirt that was brought to my property illegally. I do not trust it at all.

I knew what I had before. All the years of investigations and all the research we had done we knew what we had. We knew that we had home siding buried under the ground. I don't know what I have now, and it frightens me.

We can no longer trust the system. We worked along with the system in good faith for many years because they were the experts.

Certainly, when the EPA says there is a problem, you intend to go along with it and hope they will fix it to their standard. We tried to do that, and it didn't work. It was a total, complete failure.

Mr. MCINTOSH. One last question for you. If we were to find a better way of dealing with these problems, what would you recommend to us as ways to change the EPA's practices in these types of cleanups?

Mrs. TIELMANN. Well, for one thing, I think EPA should carefully consider the views of the property owners because no one has a better interest to have the property cleaned up in a way that's protective of human health and the environment. No one has a better interest than me, the mother of three small children.

We were strongly opposed to the choices they made because they were not foolproof remedies. There was no indication to believe we'd ever be free from this ever again or feel secure living on the property.

Mr. MCINTOSH. Thank you very much, Mrs. Tielmann. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. I'd just like to point out this family has, in many ways, done this without the benefit of a whole battery of lawyers.

They, obviously, have limited means, but they have documented in a way that very few families could ever really do everything that has occurred over the last 13 months.

So whenever the Environmental Protection Agency raises an issue, this family has visual and other documents to support their case, and it is to their credit that they've been able to sustain and have this type of stamina, given the power of this Federal agency.

I really think they deserve to be commended and recognized.

Mr. MCINTOSH. I couldn't agree with you more. I think it's commendable you're willing to go public, come forward to this committee and have invested your time and effort so that this type of tragedy does not continue to occur to other American families. Thank you very much for coming.

Mr. Waxman, do you have any questions for this panel?

Mr. WAXMAN. Yes; I do. Thank you very much, Mr. Chairman. I want to thank all the witnesses for coming forward with your complaints so that we can learn from it.

We've been trying to change the legislation. I'm hopeful that we'll be able to accomplish that goal. Mr. Dixon, as I understand your problem, the proposal that the last Congress approved out of the Commerce Committee would have resolved it.

In fact, the proposal that the Commerce Committee recommended, which had unanimous support, was supported by the National Federation of Independent Businesses and all the organizations because it exempted small businesses.

It tried to recognize the fact that some of these small businesses can't deal with the cost. There are other issues that we're trying to resolve in the Superfund legislation, but the problem that we have this year is that the newly majority Republicans want to go much beyond what the Commerce Committee had in 1994.

And we fear that they want to go so far that we'll end up with no legislation. The same as we've done on the budget. We had a chance to get a balanced budget in 7 years CBO scored, and Repub-

licans said it's got to be their way or no way, and we have no way on that issue as well.

Mr. and Mrs. Tielmann, you've given us your horrible experience, and I'm very sympathetic to you. Your problem at the home was not created by the Government.

It was a problem that was there, but it sounds like it wasn't a problem with the law. It was a problem with the EPA hiring a subcontractor that did a terrible job. Isn't that accurate?

Mrs. TIELMANN. Well, EPA's Government contractor was in charge of oversight, and ultimately, EPA is responsible for these jobs.

Mr. WAXMAN. I agree with you. What year was this?

Mrs. TIELMANN. For what, sir?

Mr. WAXMAN. When they had this subcontractor working on your property.

Mrs. TIELMANN. Well, we've had more than one cleanup. The most recent cleanup started, I believe, in 1994, and they pulled onto our property. They moved in with us. We had 24-hour security.

Mr. WAXMAN. That's the most recent. How about the one before that?

Mrs. TIELMANN. That was in 1990, when we had some temporary work done. Our most recent cleanup is the responsibility of the EPA because it was done under their cleanup plan.

Mr. WAXMAN. You make an excellent case. It is a problem with the EPA, but it sounds like it was a problem with the EPA over a long period of time while Republicans were in office and while the Democrats were in office.

It really doesn't make that much difference if the job is not being done appropriately. It just seems to me that we shouldn't be partisan in saying, well, Clinton this and Bush that.

It looks like you have enough reason to blame both parties if you want to look at it on a partisan basis.

Mrs. TIELMANN. I would just like to say that when you live under the conditions we're living at, we don't care about Republicans or Democrats.

Mr. WAXMAN. That's right.

Mrs. TIELMANN. Anyone that's willing to help me I don't care if you're a Republican or Democrat. I reached out to Democrats and Republicans.

Mr. WAXMAN. I appreciate that, and you're absolutely right. I think that's the right approach. What do you want to do now? What remedy are you seeking?

Mrs. TIELMANN. Yes. I'd be happy to share. The remedy we're seeking is permanent relocation, and we're working along with the agency on that at this point in time.

Mr. WAXMAN. To do what?

Mrs. TIELMANN. We want out. We want to leave.

Mr. WAXMAN. You're asking them to buy your property at fair market value?

Mrs. TIELMANN. We are discussing the details of that at the current time. We're waiting a response from the agency.

Mr. WAXMAN. OK. Mr. Rosmarin, Liberty industrial site is a source of highly contaminated groundwater that threatens Long Is-

land's sole source aquifer, and it's a source of surface contamination in a number of areas.

You testified that you've been singled out by the EPA for cleanup of this site, but you're aware that the Administrator also went after removal action from 15 potentially responsible parties, including the Department of Defense, aren't you?

Mr. ROSMARIN. The EPA did not focus their efforts on the enforcement level against the Defense Department, even though it was brought to their attention, for approximately 4 or 5 years.

Just to tell you anecdotally, in a room with EPA one time, when they were going around the room and asking for a comment in response and focusing on a very short time period, and they insisted that they had to have an answer within a certain period of time the representatives from the U.S. Government on the other side said, "The only thing we can guarantee is we can answer within a certain timeframe."

Mr. WAXMAN. They're asking others to clean up as well, aren't they? Because you said you were singled out.

Mr. ROSMARIN. I believe I've been singled out as the primary focus of their enforcement muscle, and I believe that if you saw the administrative order on consent that was signed you would see that special and favorable treatment was given to the Government as a defendant.

For example, they were not subject to joint and several liability. Many changes in the document were made on their behalf.

Mr. WAXMAN. One of the changes we're trying to accomplish in reach of the legislation is to make sure that not only do we exempt small businesses but that we make sure that people only pay their fair share of the costs.

You presented to us that you're an innocent landowner who knew nothing about the contamination of the site you bought in 1980, but I have an advertisement that you had where you indicate that the site would be an industrial park available in its entirety, and you'll divide it to suit your potential tenants.

But you also claim that it's a good place because it has leaching pools. I've always thought of leaching pools as a place to store hazardous waste.

What did you have in mind when you advertised to tenants, potential tenants, to come and rent your place because you had leaching pools available to them?

Mr. ROSMARIN. If you want to give me a second to look through the document?

Mr. WAXMAN. Sure. Sure. It's on that third page.

Mr. ROSMARIN. It was a document prepared to go out to the business community. We, basically, copied an existing document that had been prepared by prior owners of the site.

In terms of leaching pools, at the time most of Nassau County was not hooked up to a sanitation system. So you would have needed leaching both for sanitary and for industrial purposes, and many industrial sites on Long Island would have had leaching pools.

But I think we're a little off target. The focus is what the Government did back in the 1940's, and that when I bought the site, you could not see the plating that was done in the 1940's because

it had ceased prior to our acquisition, and you could not see the contamination from it because it was below the surface.

I'm happy to answer your questions. I just think it ignores the fact of who caused what there. If someone did something on my watch and used those leaching pools, I guess I should be responsible for that, and I have been responsible and paid mightily.

Mr. WAXMAN. Well, leaching pools are the source of groundwater contamination, and I think that's a real concern. My time has expired. Maybe we'll come back. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Waxman. I'd ask unanimous consent that we submit that document into the record.

Let me turn now to Mr. Ehrlich. Do you have any questions for this panel?

Mr. EHRLICH. One observation. We know it does not do any good for us to sit here and agree with you all day. You have brought up horrific stories.

I have, Mr. Chairman, I'd like to submit for the record, the legal fees, one hauler in my district, Harford Sanitation Services, Inc., in Harford County, MD, has compiled just for the last couple years, \$100,000 in legal fees, same situation that you all have described, an innocent hauler comporting with all applicable laws when he hauled in the mid-1980's for a short period of time, and now he's a share in a lawsuit.

I just want to make one point. I think what the newer folks in Congress, and you have a great one sitting right here in front of you, are trying to do is make words have meanings even in Capitol Hill.

Everybody will tell you they support small business. Everybody will show great empathy and sympathy to you. The President is great at it. This administration is great at it.

But that does not translate into 30-second sound bites. You have to embarrass this administration into signing a real bill, and you all know it, because if this administration signs a real bill, this administration is not going to be able to send 30-second sound bites about how ugly the Republicans are with respect to the environment.

So I would just suggest that when someone gives you a lot of sympathy about your situation, and ma'am, your situation is horrific, and you're a small business person, and you talk about your willingness and your interest in passing your business on to your kids, and everything that you have suffered as a result of this program, ask that person how they stand on small business exemption.

Ask that person how they stand on exempting certain classes of small business. Ask that person how they stand on the issue of joint and several liability.

Ask that person how they stand on the issue of strict liability. Ask that person how they stand on the issue of retroactive liability. Ask that person how they stand on the issue of the statute of repose.

Ask that person how they stand on the issue of cost-benefit analysis to be used by the EPA, then draw your own conclusions as to how real their words are, because if they give you lip service and

continue to give you lip service with respect to real issues, draw your own conclusions.

I don't care what party they're from, ma'am. You're absolutely right. But the fact is we're not dealing with words here.

We're dealing with real life experiences. We're dealing with a statute that right now is hurting you all and lots of people that we all represent.

And what this new group in Congress is all about is putting real meaning into words. Rhetoric is eloquent, but rhetoric is cheap, and to get a real bill through this Congress, it's going to take a lot of work.

And we ask your help as you go home and you talk to your colleagues and your employees and your folks at home to write and call your Senators and Congressmen and this administration and embarrass this administration into signing a real bill that's going to provide real relief to you. I thank you for your time.

Mr. MCINTOSH. Thank you, Mr. Ehrlich, for your comments. Could I now see if Mr. Gutknecht, do you have any questions for this panel?

Mr. GUTKNECHT. Thank you, Mr. Chairman. I have several questions and a couple of comments. First of all, let me thank Congressman Frelinghuysen for bringing the Tielmanns here today.

I think their story, unfortunately, I think, is symptomatic of the problem we have probably not only with this agency but with a number of Federal agencies as well.

I would like to ask Mr. Rosmarin a couple of questions. First of all, how long did it take you to do the first investigation, whatever you call it, RI?

Mr. ROSMARIN. The RI, that was done under the State direction and also with the EPA involved, but the State agency, the DEC, was the lead agency was accomplished in, I believe, about a year.

Mr. GUTKNECHT. And approximately what was the cost on that?

Mr. ROSMARIN. The cost of that, my recollection, was less than \$100,000.

Mr. GUTKNECHT. And what year was that?

Mr. ROSMARIN. That would have been 1985, 1986; 1986 is when the consent decree was signed with the DEC, and 1987 was when the removal action was done.

Mr. GUTKNECHT. OK. This is 1996.

Mr. ROSMARIN. Yes, sir.

Mr. GUTKNECHT. How long did it take us to win World War II?

Mr. ROSMARIN. Not being a historian—

Mr. GUTKNECHT. A lot less time, right? And you said that it's being redone because it didn't take industrial use into account. Where do things stand now?

Mr. ROSMARIN. EPA has goals of when they hope to complete the FS and do the records of decision. I don't want to comment on whether or not they will or will not meet their goals because one of my charts I think demonstrates their experience of when they thought they'd accomplish certain tasks and when they actually—well, they haven't accomplished any of the tasks on the chart.

Mr. GUTKNECHT. I'm sorry. I missed part of the testimony, but do your numbers square with theirs in terms of total cost that the EPA has put into this? What do you estimate the total cost?

Mr. ROSMARIN. Oh, no. I think there is a strong disagreement. For instance, recently, the next phase of the investigation which would be the eastern soils and supplemental groundwater investigation was estimated by EPA to be at a cost of \$2 million.

The PRP group made an offer to do that. EPA said that we could not do that, although they said that we could do the eastern soils, but we did bid out the cost of that investigation as EPA proposed it, and it was approximately \$700,000.

Mr. GUTKNECHT. Just for the study?

Mr. ROSMARIN. For the study; yes.

Mr. GUTKNECHT. How much is left to be done?

Mr. ROSMARIN. In terms of studies?

Mr. GUTKNECHT. OK. Let's start with studies first, and then let's talk about the work.

Mr. ROSMARIN. Well, understanding EPA's process, they would have to complete an FS for the western soils. They would then have to do, I guess, a remedial design plan or remedial plan.

They would do a ROD, which is called a Record of Decision, and then they would have to model the cleanup, which at times, EPA said at public meetings might take 1 to 2 years just to model a cleanup once you got past the ROD.

Then, also considering doing an additional RIFS for the eastern portion and also for the supplemental groundwater investigation, and those would go through all the steps of remedial investigation, feasibility study, remedial design, Record of Decision, designing a cleanup and then, of course, doing the cleanup.

Mr. GUTKNECHT. So in English, are we talking another 3½, 4 years minimum?

Mr. ROSMARIN. Oh, my estimation it would be much more than that.

Mr. GUTKNECHT. Much more than 3½ or 4 years?

Mr. ROSMARIN. For the whole process, absolutely. That would be my guess.

Mr. GUTKNECHT. So at bare minimum we will have worked on this project from 1985 until at least the year 2000, 15 years?

Mr. ROSMARIN. That's correct. I would point out that two removal actions were done mostly funded by my company, one in 1987 and the recent one in 1994, 1995.

Mr. GUTKNECHT. In your opinion, does this run counter to other cleanup efforts? It just strikes us as being unbelievably complicated and wrong when you've got families and you've got people in the communities and when you look at what we're able to do in other areas that we can get to a solution much more quickly.

We're not here really, at least, I'm not here, to cast aspersions, but it just strikes us as that is totally unacceptable to take 15 years.

In fact, frankly, I think the staff put a note in front of me it actually started in 1983. I guess when we're talking about decades, a year or two doesn't make much difference.

But these are real people out there, and it just strikes us that this is not an acceptable way to deal with this, and we've got to come up with better solutions.

Ultimately, the folks on this side of the desk are the ones who are responsible for that.

Mr. ROSMARIN. To that end, we've been trying to work collaboratively with the EPA toward making sensible reform. I was invited and I attended a seminar.

For example, I testified before the New York State Environmental Hazardous—I forget the exact title, but there was a commission on involuntary cleanups similar to Brownfields that are in other States.

And I also attended an EPA seminar on Brownfields to try and lend to them some of my experiences on what are the barriers to Brownfields, what are the barriers to quicker cleanups, and how the process can be moved forward.

I've tried to make it a collaborative process by meeting both with Democrats and Republicans in Congress, and everyone talks about reform. I guess I would echo Mrs. Tielmann's comments. We just want to work toward reform.

I don't want to take sides. I just think that there is a better way to do it, and I think that there are a lot of smart people in this room and in Congress, and I think we can figure out a way to do it.

Mr. GUTKNECHT. There must be a better way. I mean, there is just no question about that. So in the end, though, what do you estimate the total cost of this project to clean up with the studies and everything?

Mr. ROSMARIN. There is complete confusion on my part. EPA has estimates for the western soils ranking from \$6 to \$56 million.

If an industrial level cleanup was done with multilayer impermeable cap, the PRP group has estimated the cost to be less than \$2 million.

So the numbers are, kind of, all over the place. It really would be hard to estimate. And then, as Congressman Waxman pointed out, there is the issue about groundwater and whether or not that will be remediated ultimately.

Just for the record, groundwater is 50 to 70 or 90 feet below the surface, and drinking water is 500 to 800 feet below the surface, and this groundwater has been leaching for 50 years to get to that 70 to 90 feet.

So I just would ask that you not confuse groundwater with drinking water, because it's a large concern of mine, a large concern of the community.

And I would state that I, with my family, owns a number of buildings on Long Island. We have the biggest stake in clean air and clean water on Long Island.

We would never encourage anything less than that because our lives, our children are there, and our businesses would suffer.

Mr. GUTKNECHT. So just in conclusion, then, we're talking, at least, another 4 years and a minimum of another \$2 million, as much as \$56?

Mr. ROSMARIN. The \$2 million would just be for EPA's continued study of the site. That would not include the remediation and did not include the \$2 million that the EPA has already spent studying the site that they will look to the PRP's to recover.

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

Mr. MCINTOSH. Thank you very much, Mr. Gutknecht. Now, Mr. Scarborough, do you have any questions for this panel?

Mr. SCARBOROUGH. Yes, I do, Mr. Chairman, a statement and a couple of questions. I'd like to start by thanking you for holding this very important and informative hearing.

I'd also like to thank the Tielmanns for coming. As a father of two boys, I certainly can understand the crisis that you all have been in and can empathize with you.

I also would like to thank Congressman Frelinghuysen for caring so much and for bringing you all here and being with you and bring your story before us.

I do have to make some comments just for the record, and I apologize, because I've got to say I find the politicizing of this hearing and this process incredibly depressing.

There are a couple of statements that were made that I cannot allow to go unanswered in the record, when we have the ranking minority member here.

First of all, starting out as a recent convert to balancing the budget and blaming the Republicans for not balancing the budget, I'm still trying to figure out what that incredibly misleading statement has to do with the EPA, but he made the statement.

I've got to say for the record that's off count and wrong. Second, he appears to be either a recent convert to regulatory reform or is trying to take the approach that this is everybody's fault.

I understand in these politically correct days we don't like to place blame on anybody, but unfortunately, facts are very stubborn things.

And the fact of the matter is this very committee has fought for a year and a half for regulatory reform, for a regulatory moratorium, for a cost benefit analysis, for even sunseting some of these regulations that have created the type of burdens on small businesses, on families that have made organizations like the EPA impossible to deal with.

And it was the Democrats on this committee and on the floor that fought violently, fought violently against every single attempt to lessen the regulatory burden on ordinary Americans. That's what this fight is about.

I've got to tell you, in my own district, we do have an EPA Superfund site. You talk about politicizing a process, the residents in my district had been experiencing many of the same delays that others had been experiencing over years and years.

And the EPA's statement for blaming the years of delay simply was that the Federal shutdown is what caused the delay. And of course, that was about a 2-week Federal shutdown, and yet that caused the 2 years of delay. It was absolutely outrageous.

I do want to tell you all this, though, and make this comment for the record. It does appear, at least in my district, that some efforts are being made to correct some of the errors of the past, some of the mistakes of the past.

I read in your written testimony and heard you all say that you do believe that you are supporters of the Superfund, and that actually it does have a legitimate function in our Government. Is that your contention, that the actual Superfund Program is a necessary program?

Mrs. TIELMANN. Are you speaking to me, sir?

Mr. SCARBOROUGH. Yes. I'm sorry.

Mrs. TIELMANN. Yes, I believe so.

Mr. SCARBOROUGH. You just think it needs to be refined and made more user friendly?

Mrs. TIELMANN. Certainly, because inefficiency helps no one, and it's inefficient the way it is right now.

Mr. SCARBOROUGH. OK. Let me ask you all this. You're like I was before I came up to Congress a year or two ago, middle-class family.

You're raising your kids. You're worried about getting them to school. You're worried about them doing well. Did you have any idea before you came here today that 40 percent of the money that supposedly goes to clean up areas like your areas actually goes to attorney's fees?

Mrs. TIELMANN. I had a general idea of that. I know it's not going toward the cleanup because it's not being done.

Mr. SCARBOROUGH. Right. Would you all, as people that have been affected by that, would you all support attempts to limit the amount of fees that attorneys could get from the Superfund accounts, as middle-class Americans?

I'm not asking you your legal opinion on tort reform or anything, but does it make good sense to you?

Mrs. TIELMANN. It's something I'd have to consider. I wasn't prepared to answer that today. I'm here to share with you what we've gone through to better help you understand the process and the delays. So it's something I could consider.

Mr. SCARBOROUGH. OK. Let me ask you, Mr. Herring. You had used that number 40 percent, that 40 percent was used for attorneys fees.

Can you explain to me exactly what account that comes from? Is that specifically all from the general Superfund account?

Mr. HERRING. To be honest with you, I don't know the answer to that question. I think the numbers that I'm using, if you look at the \$1.9 billion in taxes, of that, \$1.4 billion gets to Superfund, and then about \$800,000 of that gets to actual cleanups.

One thing that I wanted to take this opportunity to make clear is that National Small Business United did not support the last Congress' proposal for reform of Superfund and specifically for this reason, that it would continue to add fees to legal, legal fees and other costs to small businesses that would be required to prove de minimis or micro de minimis participation.

Mr. SCARBOROUGH. Sure. And of course, nobody wants to get this message out when we're talking about cleaning up, but the fact of the matter is that many on the other side have also opposed every single attempt that this Congress has tried to do to pass tort reform.

And unfortunately, not only is that beating up Americans and consumers and small businesses in the marketplace, it's also, unfortunately, hit them at home, as we find out now, that unfortunately, money is being squandered that should go to clean up middle-class families' homes so their children can live and just exist on property that is cleaned up without toxic pollutants.

Mr. Chairman, I thank you again for holding this hearing, and certainly I thank the Tielmanns for coming and enlightening all of us.

Mr. MCINTOSH. Thank you very much, Mr. Scarborough. I have a couple of additional questions and would like to ask them, and any of the other Members who have additional questions will be welcome to as well.

Mr. Dixon, both Leon and Steve, I wanted to make sure I understood the exact factual nature of your case that the dump outside of Muncie in Albany has already been cleaned up, and the cost of that was paid for by the city of Muncie and General Motors who were identified as some of the lead causes of the pollution in that dump. Is that correct?

Mr. LEON DIXON. That's mostly correct, Congressman. I believe that they are now addressing a groundwater issue having to do with trichloroethylene, which is de novo.

We do not know where that is leading, but that may be coming to us from the Indiana Department of Environmental Management.

I think they capped this particular dump, and that should be substantially completed and now they're arguing about who pays for it and the allocation of those resources.

Mr. MCINTOSH. Do you know offhand how much was spent on the remedies so far?

Mr. LEON DIXON. No; we don't because we did not join that committee, it being our belief that there wasn't a molecule of our stuff in that dump.

Mr. MCINTOSH. That was the second question I wanted to ask you about. It sounds to me like you've been having to prove a negative, that your family and former and current employees don't recall ever sending anything to that dump.

Is there any indication that there might have been something sent there?

Mr. LEON DIXON. The only evidence that we have been able to discover is a piece of paper for this \$16.15, but it's not clear whether they were buying or selling.

But the way your law is written, it doesn't really make a lot of difference. This is the law that guides the EPA, and the EPA follows the laws that Congress has put in.

It doesn't make any difference whether they use poor science or bad science or political science. There is no peer review to this, David, and we cannot prove a negative. That's a logical impossibility.

Mr. MCINTOSH. So you're being brought into this system for receipt for \$16.15 that may have been you paying to the dump or may have been the dump paying to you?

Mr. LEON DIXON. It wasn't exactly a dump. There was a transfer station that operated on behalf of the city of Muncie, and it was a good idea.

The garbage trucks in town would come and dump their load there, and then they would go back and pick more garbage.

The previous system had the garbage trucks driving 15 miles out and dumping and driving 15 miles back. This private industry, Muncie Salvage, or something like that, tried an early form of recycling.

They would pull out cardboard, and they would pull out wood. They would pull out metal and then try to make a living that way, and it was an early effort. I think it was pretty good. I am sure

they purchased our clean cardboard. I just know that because I was there.

Mr. MCINTOSH. Thank you. Mr. Neger, it sounds to me like you're another example of where your family had started out in the recycling effort really before the Government got involved in promoting that and trying to reduce the amount of industrial waste that is released into the atmosphere and into the lakes and into our environment, and now you're being punished for some of those efforts.

What I was wondering is, could you give us an estimate of how much the liability scheme, the fact that people who are third party defendants, as you are in one of the cases or being brought into the process, how much has that liability system delayed the cleanup at either the SCP site or any of the others that you had mentioned in your testimony?

Mr. NERGER. We're involved in a number of them. It would be hard to give an exact number, but in response to what they have to look forward to, whether you're guilty, not guilty, have ever even been to the site, is really irrelevant.

In the written testimony, I go into a number of examples. In one of them we were selling a product to a customer, and they were using it. They had a little backlog.

They stored it at another facility, and then they took it back from that facility, and then that other facility became a Superfund site.

We were given one of those section 104(e) letters which says you're guilty until we prove you're guilty, and then we fought for 7 years while no cleanup was being done, and we spent \$84,000 on legal expenses.

And then EPA did agree that we truly weren't responsible, and we were let off the hook with having spent \$84,000.

Mr. MCINTOSH. Meanwhile no cleanup.

Mr. NERGER. Meanwhile no cleanup was being done. I could go on and on with examples. I only mentioned four. They were asking about the percent that's being spent on legal.

I believe that's the number, when you're looking at those numbers, is how much is spent by EPA on legal and how much is spent on actual cleanup.

But you have to realize we're a \$12 million a year company. Over 50 percent, or approximately 50 percent, of every dollar we've spent has been for our own legal defense.

So we've spent in the millions of dollars, over \$5 million in 10 years. So we've spent \$5 million. Over half of that has gone for our legal defense.

You say, boy, that's a lot of money for legal. Well, the option is that, or we're out of business, because the amount of money that they come after you for—I mean, one site is way beyond our entire sales for a year, not profit, probably beyond our profit for the last 20 years. So it's a matter of survival for a lot of businesses.

Mr. MCINTOSH. In that case where you were able to convince EPA that you were not responsible, did they offer to reimburse you for any of the legal fees?

Mr. NERGER. Oh, no. Never.

Mr. MCINTOSH. So you're on the hook for proving you're innocent, and the Government, who has a deep pocket, can go and go and go.

Mr. NERGER. All you need is the \$16.50 receipt or some driver who happens to have picked up material at your place to remember your company name and you're in.

Mr. MCINTOSH. Let me ask you another question. If you were presented today with a new opportunity to go out and recycle industrial waste that currently is being disposed of in our Nation's landfills, would you start a new business and go into that area?

Mr. NERGER. Well, my father, who passed away last November, I asked him that exact question about 6 months ago. I said, "Dad, why in the world did you ever go into this business?"

His response was that in the 1960's the only people doing recycling were like the Boy Scouts doing newspaper drives. So we went out and told people don't landfill this. You don't do this. We'll take it. We'll recycle it into a usable product.

People loved our company during the oil crisis in the 1970's because we were displacing the use of coal and other natural resources.

You think EPA is bad. Coming from New Jersey, we have the DEP. We're inspected every week unannounced and billed \$1,000 per inspection.

We have to be fingerprinted like criminals even though there has been nothing. The regulatory reform is a nightmare.

So when I asked him the exact question you're asking me, he basically said he would never have gone into this business knowing that the biggest competitor he would ever have would be the Government.

Mr. LEON DIXON. Can I make a point on that same item?

Mr. MCINTOSH. Yes, Mr. Dixon.

Mr. LEON DIXON. Another constituent in your district by the name of Sam Dobrow ran a trash business, a garbage scrap yard. He told me this story that's very pertinent.

He said it bothered him that people would throw batteries in the ditches, and as a scrap dealer, he would offer a pittance for people to bring that in.

When he accumulated a truckload of these, he would sell them to a battery breaker in Dayton. This battery breaker later became a Superfund site. He went bankrupt or something.

And they came back on Mr. Dobrow, and Mr. Dobrow knew full well what he was really doing was a public service to the community.

He may have made a dollar or something on this, but that was not his aim. His aim was to keep batteries and battery acids out of the ditches. He was not repaid for his efforts.

Mr. MCINTOSH. It strikes me as a nightmare when we start punishing people who try to help the environment. Mr. Waxman, do you have any questions, further questions?

Mr. WAXMAN. Thank you, Mr. Chairman. I wanted to correct the record on the amount of money in the Superfund Program that goes to lawyers fees.

I have a chart over here. Seventy percent of the Government money goes to clean up, and only 9 percent goes for enforcement, which would include lawyers fees.

Now, that's not to say that lawyers aren't paid by parties who are fighting with their own insurance companies or third parties as to who may be liable, but in terms of Government funds, Government funds are primarily used for cleanup.

We're trying to change the law. Everyone agrees we ought to change the law. We're learning from the experiences we've had.

In the last Congress, we had a bill that everybody supported. I have a list on this chart of all the organizations, all the business groups that supported that reform.

It would have solved a lot of the problems that have been brought before us today. For example, it would have cut back on litigation expenses because it would have said each party would pay only his fair share.

That would mean you wouldn't have all these people suing each other to try to make people pay for more than their fair share.

The legislation also would have exempted small businesses, and I'm convinced that, Mr. Dixon, your situation would have been corrected, as it should have been, by that legislation.

Now we're faced politically with a real question whether any law will get through because the Republican majority on the Commerce Committee has a bill that goes much beyond this one.

It not only exempts small businesses. They want to exempt all the Fortune 500 companies as well. We can have differences about it, but from our point of view, it's more extreme, and it's likely to lead to no legislation passed.

The point I made earlier, and Mr. Scarborough missed it, was when you try to hold out for everything you want and you come to Washington and say I'm not going to compromise, the chances are you get nothing.

I don't know how you'd feel about the law not being changed when it could and should be changed to deal with some of these real problems.

I do want to point out to the Tielmanns that the bill that came out of the subcommittee in Commerce on a partisan basis with a Republican majority would not only not have helped you; it would have hurt you.

And you should be aware of it because that legislation would have said that EPA can only go to a containment of the problem.

They wouldn't allow, as I read their legislation, EPA to pay for relocation costs. It seems to me what you're saying that's important to you is that you ought to be relocated, be able to walk away from the nightmare that you've described to us.

And by the way, last year's bill directed that remedies be reasonable, reasonably anticipated for the future use of the land. So last year's bill would have allowed the remedy that you're seeking.

Mr. Rosmarin, this bill that is coming out of the Commerce Committee would not change your responsibilities as an owner or operator. That would still be intact, and you would still be dealing with the problem; the problem you now have.

This bill wouldn't either solve your problem, but neither bills are going to solve your problem. And I'm sorry to say that, but you

raised a problem, and I don't know that anybody here has a solution to it no matter all the rhetoric they want to give you to the contrary.

Facts. Deal with realities, what is possible. One of my colleagues on the Republican side said, "Well, let's ask people." The gentleman over there from Maryland said, "Let's ask people where they are in the small business. Let's ask them where they are on joint and several liability and fair share of responsibility."

Well, all of these groups said they were for a bill that would have dealt specifically with those issues, and there's a bill that we can get passed into law.

It may not be the bill that everybody would want, but if you don't get anything passed, that certainly is not constructive or a useful result.

I regret that any of this should be made partisan. It shouldn't be partisan. We should be working on a bipartisan way to resolve these issues.

The reason this issue became partisan is that the chairman started it off with an attack on Clinton, attack on the Clinton administration. That's the way we started this hearing.

Second, EPA wasn't even invited to testify, and they run the program. Third, you're all presented as victims. What we suggested, if you want a victim, we have someone who has complaints about how they were affected as part of the community near a toxic wastesite.

Rather than have that person at the table with you, that person is put off to maybe sometime in the afternoon. I get a feeling that what we're seeing is not a constructive way to deal with the problems you're raising but a partisan show for the election.

And the election is a long way off. Right now we ought to solve these problems and work together on a bipartisan basis.

I regret, Mr. Chairman, at least I have come to this conclusion. I wished it weren't true and I hope it's still not, but I don't see the purpose of this hearing except as I look at it as a way to make points.

And I don't know that anybody at this table or who will later testify will want the Congress of the United States to leave at the end of this session having just made debating points and not solving the real world problems. I yield back the balance of my time.

Mr. MCINTOSH. Mr. Waxman, would you like additional time to ask the witnesses if they think the Oxley-Bliley bill would help them?

Mr. WAXMAN. Well, I could ask them that, and maybe they would like to have it, but the fact of the matter is it's not going to be law.

I'd like to ask the Tielmanns, Do you think that the Oxley-Bliley bill would be helpful to you? It requires the lowest cost remedy which ordinarily would be a containment of the problem only. Would that be a bill that would be helpful to you?

Mrs. TIELMANN. It's something that has to be considered in each situation. I couldn't give you a general answer to that question.

Mr. WAXMAN. I agree with you. We ought to consider the situation, but that bill doesn't allow the consideration of other options. It says this is the option we take, containment.

Mrs. TIELMANN. We weren't given other options either.

Mr. WAXMAN. Well, right now you're negotiating with EPA for an option that you'd like. Are they forthcoming?

Mrs. TIELMANN. Unfortunately, we're not quite sure if that option is there or not either, because it has never been done before.

Mr. WAXMAN. Well, I think you're going to continue to negotiate with EPA, and I think what you're suggesting may be the right result, but the Republican bill would prevent that result. You wouldn't want that to happen, would you?

Mrs. TIELMANN. Like I said, right now we're in such bad shape that I couldn't comment on it right now.

Mr. MCINTOSH. Thank you very much.

Mr. WAXMAN. Mr. Chairman, could we hear from the others? Maybe Mr. Rosmarin would like to tell us whether he thinks the Bliley-Oxley bill is something he wants. Because it doesn't address his problem.

Mr. ROSMARIN. You're talking about legislative language, which is very difficult for a layperson to follow, and I can't comment on all the aspects of the bill both in terms of remedy selection or risk assessment.

What I have read from the liability section, and as I said it's very difficult because it amends some language from the original act, and it's hard to put them together in principle, to have a fair share allocation, which I think Democrats support, to have people who are responsible actually pay for it and pay their fair share, if that's one of the principles, I certainly support it.

To talk about trying to create a fast-track allocation system to get some people out of the liability mix as soon as possible when the facts support it, I would support that.

But to ask me to comment on the whole bill, which I have tried to read but is rather turgid is difficult.

Mr. WAXMAN. I understand. We are on agreement on those points, and we ought to, at least, pass those into law.

Mr. HERRING. Could I answer that question? Because I think it's important to understand 2,500 small business people came to Washington last year and voted in favor of recommendations to support something that's very similar to the Bliley amendment.

I think the list over there represents special interests. These were real small businesses that polled 50,000 small businesses to come up with their recommendations.

Those 2,500 delegates voted for a recommendation which mirrors the Bliley amendment.

Mr. MCINTOSH. Thank you, Mr. Herring. Mr. Nerger.

Mr. NERGER. Just a few comments on Mr. Waxman's comments. Prior to his display that showed cleanup to 70 percent, I didn't have time to read all of it, but at least half of what I read in that 70 percent had nothing to do with cleanup.

It was more investigation, and it was not what I would consider cleanup. In other words, cleanup would not be, to them, another study.

Mr. MCINTOSH. And let me say, if Mr. Waxman would like, we will include that chart and the documents in the record, but I'd also like the staff to include the administration's budget request, which I understand indicate that the Justice Department and EPA have asked for a much greater percentage of the money to be spent

on attorneys. So we'll let the facts stand for themselves in the record.

Mr. WAXMAN. I ask unanimous consent that all those documents be in the record. I also want to point out to Mr. Herring that the Small Business Legislative Council supported the bill that passed 44 to nothing in the last Congress, and I just want you to know, when you're talking about special interests, small business is one.

[The information referred to follows:]

ENVIRONMENTAL PROTECTION AGENCY

1997 BUDGET ESTIMATE

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## HAZARDOUS SUBSTANCE SUPERFUND

The Agency requests a total of \$1,394,245,200 and 3,730.7 workyears to meet the environmental goals of this program. Of this amount, \$42,508,000 and 131.8 workyears are transferred to the Science and Technology account for research and development efforts, and \$11,450,500 and 106.0 workyears are transferred to the Inspector General account for audit activities. The remaining \$1,340,286,700 and 3,492.9 workyears are provided to meet the response and enforcement needs of the Superfund program.

Improper disposal of hazardous waste at some sites has resulted in soil that is unsafe to live, work and play on, water that is unfit to drink, and air that is dangerous to breathe. Contamination from sites often migrates to groundwater and nearby lakes and streams, further damaging valuable public and private resources. These hazardous waste sites put public health and sensitive ecosystems at risk.

In response to public concerns about health and environmental risks posed by abandoned and uncontrolled hazardous waste sites, Congress established the Superfund program in 1980. Since then, over 40,000 hazardous waste sites of potential concern have been reported to the Agency. Over 35,000 sites in this inventory have been assessed to determine the need for further cleanup action. The Agency recently removed from the list more than 24,000 sites that had been assessed and found not to require any further action. Of the remaining sites, over 1,300 have been placed on the National Priorities List (NPL). Today, one in four Americans lives within four miles of a NPL site -- the Nation's worst sites.

Since the problem of contaminated sites in the United States is so large and varied, no one solution can be applied everywhere, and decisions about cleanup must be made with community, public health, and environmental concerns in mind. In determining the appropriate remedy, the Agency considers protection of public health and environment to be the paramount concern, then accounts for, among other things, future land use plans and cost of cleanup.

The Superfund program also responds to emergency releases, such as the recent Wisconsin trail derailment where several cars containing propane and liquid petroleum gas and a nearby building holding ammonia caught fire. The burning cars and building exposed nearby residents to toxic emissions and a threat of explosion, requiring an evacuation of the town and over 200 residents to seek medical attention. In incidents such as these, Agency on-scene coordinators are on the site immediately to work with and provide technical assistance to the responsible parties and state and local officials.

In cases of long-term cleanup and early actions, the Agency works with those responsible for the contamination to ensure that they conduct or fund appropriate cleanup action. If no responsible party can be found, or they cannot perform or pay for the cleanup work, the Agency cleans up the site using the Superfund Trust Fund. Responsible parties are then pursued to reimburse the fund if they can be identified and are financially viable. This "polluter pays" approach ensures that limited trust fund dollars are used for emergencies and abandoned sites.

The Agency's Superfund program endeavors to protect human health and the environment through timely and cost-effective cleanup of contaminated sites, to respond quickly to emergency hazardous waste releases, and to maximize responsible party and community group participation in cleanup efforts. In meeting this purpose, the Agency has established several measures of program progress. With funding at the levels requested in the 1997 Budget, the Agency will complete cleanup of 650 NPL sites by the year 2000, thereby reducing or eliminating public health risks posed by these sites. The Agency will complete early cleanup actions, which are designed to prevent further contamination. And

finally, the Agency will continue to support the cleanup of contaminated Federal installations currently on the NPL, which tend to be more complicated cleanups with some containing radioactive wastes.

The President's Budget addresses several high priorities for 1997. The Agency will expand the program to redevelop contaminated urban and industrial properties, thereby providing communities with increased tax bases, jobs and improved urban environments. The Agency will support state and tribal hazardous waste response programs and strengthen their roles, along with community groups, at Superfund sites. The President's Budget also includes 148 workyears, funded by the Department of Defense, for environmental assistance to expedite base closures as part of the Base Realignment and Closure Act (BRAC). The Agency will continue to strengthen Superfund enforcement fairness initiatives by implementing various Superfund Reforms such as: expedited settlements to facilitate early de minimis settlements, settlements with parties with limited ability to pay, and a more effective and widespread use of alternative dispute resolution.

## HAZARDOUS SUBSTANCE RESPONSE

OVERVIEW

The Agency requests a total of \$903,334,600 and 1,694.8 workyears for the response program.

This request reflects the Agency's commitment to increasing the efficiency and effectiveness of the Superfund program, while strengthening the role of communities, states and tribal governments. These priorities will make the Agency's responses to release of hazardous substances that pose a risk to public health or the environment faster and more cost effective in 1997.

The response program's priorities for 1997 include implementing the Agency's Administrative Reforms, promoting economic redevelopment of current and former hazardous waste sites, empowering state and tribal hazardous waste response programs, facilitating early and meaningful community involvement, and completing cleanup construction and deleting National Priority List sites. These priority initiatives will enhance the efficiency and effectiveness of hazardous waste responses in 1997 and result in a faster, fairer, and cheaper Superfund program.

The Agency's 1997 request supports implementation of the Superfund Administrative Reforms. The Agency's Administrative Reforms promote smarter cleanup choices that protect public health at less cost, reduce litigation by achieving common ground instead of conflict, and ensure that states, tribal governments and communities have active and meaningful involvement in cleanup decisions.

The response program is participating as a pilot under the Government Performance and Results Act (GPRA) in 1996. The pilot will test performance-based reporting on four measures: site screening and assessment decisions, early and/or long-term action starts, construction completions supplemented with environmental indicators, and an evaluation of community involvement. The results of this pilot will be applied in 1997 as reporting environmental results is further integrated into the Agency-wide response to GPRA.

PROGRAM and ACTIVITY HIGHLIGHTSBROWNFIELDS INITIATIVE

The Brownfields Initiative empowers our partners -- states, tribal governments, and communities -- to assess, cleanup, and reuse former contaminated sites. A "brownfield" is a site that has actual or perceived contamination and potential for redevelopment or reuse. The Agency will encourage voluntary cleanup of sites by clarifying liability and cleanup issues, providing funding for demonstration pilot projects, initiating partnerships with key stakeholders, and implementing job development and training programs.

In 1997, the Agency will provide an additional \$25 million for new Brownfields pilot grants, cleanup grants, and state programs. The Agency will award an additional 25 grants to states, local governments, or Federally recognized tribal governments for up to \$200,000 each, bringing to 75 the total number of communities under the Agency's pilot program. These grants provide incentives and seed money for environmental assessment of properties. This one-time Federal funding for site assessment spurs community efforts to clean up, redevelop, and reuse these sites. The Agency will also initiate follow-up cleanup grants of up to \$350,000 each to capitalize revolving loan funds for 29 pilot recipients who completed the initial brownfield pilot stage. The 1997 request also includes additional funds for the Agency to help address cleanup and to develop state voluntary cleanup programs. An expanding number of states

have created and operated voluntary cleanup programs for Brownfield sites, and these programs have been very responsive to the unique needs of these sites.

The Agency will also work closely with all stakeholders involved in the program through outreach, technical assistance, and information sharing. The Agency will support the National Environmental Justice Advisory Counsel Waste and Facility Siting Subcommittee which provides recommendations from multiple stakeholder groups into the process of economic redevelopment. The Agency will work with other Federal agencies to leverage available resources so that communities and stakeholders are best served. These efforts are important components of the Agency's overall goal of developing creative solutions among all parties to address Brownfield sites.

Investment in pilots demonstrate that economic redevelopment of contaminated property is a viable way to clean up sites, address liability issues, improve public health and stimulate local economies. Cleanups are conducted voluntarily by responsible parties or prospective developers saving Federal and local hazardous waste cleanup resources for other sites. Since many of the communities that hazardous waste problems have impacted are also minority, low-income, or socially disadvantaged, the partnership has a strong potential to help stimulate economic redevelopment in these areas.

#### STATE AND TRIBAL PROGRAM SUPPORT

The Agency requests a total of \$24,488,954 and 24.4 total workyears to build state and tribal government programs. These activities strengthen state and tribal hazardous waste programs and improve the efficiency and effectiveness of the Nation's overall hazardous waste response capability. The Agency will continue its commitment to provide core financial support and award Core Program cooperative agreements to at least 47 states and 55 tribes. These funds will help our partners develop legal authorities and regulations, hire and train staff, and implement hazardous waste cleanup programs.

Funding provided to states and tribal governments through cooperative agreements is used to assess and clean up hazardous waste sites in their jurisdictions. These activities work to leverage state and tribal programs and are consistent with government reinvention initiatives and Agency efforts to move cleanup programs closer to the affected citizens. As part of these efforts, the Agency will support states that enter into agreements to conduct remedy selection at certain National Priority List (NPL) sites. Remedy selection is a critical issue affecting cost, duration and protectiveness of Superfund cleanups. This funding will give states significantly more control over site cleanup decision making.

#### COMMUNITY INVOLVEMENT

A total of \$19,658,466 and 38.6 total workyears is also being requested for community involvement, environmental justice and outreach activities. These activities enable citizens to become active and informed participants in Superfund activities that affect their community. In 1997, the Agency will appoint 10 Regional ombudsmen to assist the public as part of the Agency's administrative reform effort; award 30 Technical Assistance Grants to local community groups to enhance understanding of complex technical issues; facilitate 5 STEP UP pilots in economically distressed communities, in cooperation with the Department of Labor; support 10 local Community Action Groups to help local citizens have meaningful involvement in site decisions; hold at least 150 public meetings at Superfund sites; and facilitate reaching consensus on remedy selections among stakeholders with a special emphasis on local citizen participation. Early and effective citizen involvement improves Agency decision making; increases community acceptance; enhances fairness; and, reduces conflict, grievances and litigation.

#### EARLY ACTIONS

The Agency requests a total of \$250,377,376 and 274.0 total workyears for Superfund early action activities. These activities may include stabilization, containment and cleanup of hazardous materials on-sites, and when necessary, evacuation of at-risk populations. The resources will support an estimated 209 emergency responses and removals at both NPL and non-NPL sites and 10 Superfund Accelerated Cleanup Model early actions at NPL sites. The Agency's request supports both fund-lead and enforcement-lead removal activities as well as the Environmental Response Team that responds to environmental disasters and provides direct on-site technical advice and training to cleanup personnel nationwide.

Investments in early actions will provide significant environmental and public health benefits while increasing the efficiency and effectiveness of the overall Superfund program. Emergency response and time-critical removals help safeguard the environment and the well-being of citizens living and working near dangerous hazardous waste sites. Emergency response teams across the country stand ready to mobilize to respond to an emergency 24 hours a day. These immediate actions typically save time and money in the overall long-term cleanup efforts at these sites.

The Agency's priority early actions in 1997 will be emergencies involving incidents where response is necessary within a matter of hours (e.g., threats of fire or explosion), time-critical removals at sites on the NPL to make these sites safe from immediate threats while they await remedial action, and time-critical removals at non-NPL sites posing major health and environmental threats, which cannot be addressed by other authorities. In addition to emergencies and time-critical actions, the Agency will conduct Early Actions consistent with the Superfund Accelerated Cleanup Model. These activities occur at NPL sites where the cleanup strategy, otherwise consistent with the remedial process, lends itself to an accelerated, removal type process. The Agency emphasizes early risk reduction and this type of site response achieves that goal.

#### SITE ASSESSMENT AND SCREENING

The Agency requests a total of \$105,040,631 and 225.9 workyears for site assessment and screening activities. The Agency conducts site assessments to investigate and document the relative risks posed by uncontrolled releases of hazardous materials as reported to the Agency by states and local governments, Indian tribes and citizens. In 1997, the Agency will conduct approximately 1,273 preliminary assessments, 617 site inspections and 28 accelerated remedial investigations. Also included will be analyses of environmental samples collected.

Site assessment and screening activities assess whether a site poses public health or environmental risks that warrant Federal actions as well as the best course of action for each site. Approximately ten percent of these investigations in 1997 will lead to Federal removal or remedial cleanup actions to reduce or eliminate risks. Sites which pose less risk will be screened out from the inventory of sites of Federal concern. Site assessment cooperative agreements with states and tribes have been significant springboards for developing strong state and tribal programs, which are taking on a growing proportion of the site assessment work. In 1997, the Agency will continue to increase the role of state and tribal governments by entering into 48 site assessment cooperative agreements to address hundreds of hazardous waste sites across the country.

In order to maximize risk reduction in 1997, sites known to pose the greatest potential risk to public health and the environment will receive priority. The Superfund Accelerated Cleanup Model will streamline and integrate the discrete site assessment activities to most efficiently use resources and maximize the number of sites addressed. The Agency will follow recently

announced Administrative Reforms to ensure that prior response actions that reduce site risk are considered when listing sites on the NPL in 1997.

#### LONG-TERM ACTIONS

The Agency requests \$356,846,302 and 552.6 workyears for 1997 long-term action activities. Long-term actions are taken at sites on the NPL. The initial stage of long-term action is site characterization which includes remedial investigations and feasibility studies; these determine the full nature of the problem and the full range of options to address the site conditions. The next phase is remedy selection which seeks protective and economical solutions to the site conditions. The final phase is site cleanup which includes remedial design and remedial action and results in eventual deleting from the NPL. Fund-lead activities in 1997 will include approximately eight feasibility studies; 80 Records of Decision; 18 new, 10 subsequent and 125 ongoing remedial designs; and, eight new, 13 subsequent and 100 ongoing remedial actions. Potentially responsible parties (PRP) oversight actions will be included at approximately 51 new, 39 subsequent and 205 ongoing remedial designs; and 55 new, 35 subsequent and 250 ongoing remedial actions.

Support from the United States Army Corps of Engineers and the Bureau of Reclamation also contributes to the direct cleanup at many sites. These Federal partners implement most high-cost Fund-financed remedial actions, provide on-site technical expertise, and ensure that project management is consistent between Fund and PRP financed projects.

The Agency plans to complete cleanup at 65 construction sites in 1997, thereby addressing public health risks posed by these sites. Cleaning up and deleting sites from the NPL also energizes the community by reducing or eliminating potential liability issues and allowing for economic redevelopment. The Agency will prioritize long-term action work in 1997 to address worst sites first, and to maximize progress toward reaching the Agency's goal of 650 NPL construction completions by the year 2000. To this end, the Agency will support a priority setting panel which will make risk based funding decisions regarding the pace and timing of cleanup efforts nationwide. The Agency will continue to aggressively pursue PRP participation in conducting Superfund long-term actions in 1997. Effective use of negotiated settlements and unilateral administrative orders will assist in maximizing Federal resources and promoting stakeholder involvement. However, the Superfund Trust Fund will promptly assume responsibility for all projects where PRP response is not achieved.

To help achieve more cost effective site cleanups, the Agency will bring innovative management strategies, technology and experience to bear for long-term cleanup actions. Implementation of several administrative reforms, designed to improve the remedial site cleanup process, will continue in 1997. These include developing and selecting presumptive remedies to reduce costs while speeding cleanup, maintaining a Remedy Review Board to promote high quality low cost cleanup decisions, reviewing and updating Records of Decisions where appropriate, and deleting parcels of certain NPL sites where appropriate.

#### FEDERAL FACILITIES

The Agency requests a total of \$22,125,458 and 121.6 total workyears for 1997 Federal facility response activities. The Agency's principal activities in 1997 will include oversight of other Federal agencies' cleanup efforts, and technical assistance to support efficient and effective hazardous waste cleanup. The Agency will also implement the Final Report on improving Federal facilities clean up by the Federal Facilities Restoration Dialogue Committee. The report's goal is to ensure Federal facility cleanup decisions protect human health and the environment for current and future generations, are cost effective, and reflect the values of affected communities.

## PREVENTION &amp; PREPAREDNESS

A total of \$4,836,047 and 9.9 total work years is requested for chemical emergency preparedness and prevention activities. The Agency helps states and local communities prevent and prepare for chemical accidents, consult with stakeholders, and build a shared consensus on prevention of accidents. This effort includes sharing strategies on inspection methodologies, hazard assessment techniques, and communication tools. Attention is also focused on coordinating response to major pollution incidents on a national level.

## CLEANUP CONTRACTS

The Agency requests \$6,390,072 and 78 workyears for management support of cleanup contracts and of the Region's role in awarding the next generation of Superfund contracts. The Agency utilizes more than 80 Regional contracts to support site assessment and cleanup activities at Fund-lead sites and oversight at enforcement sites. Funds for work to be performed through these contracts are included in the site assessment, early action, and long-term action highlights.

## HAZARDOUS SUBSTANCE ENFORCEMENT

OVERVIEW

The Agency requests a total of \$171,194,200 and 1,224.2 total workyears for the Superfund enforcement program.

The enforcement-lead program will in 1997 adhere to the following principles in conducting its work: pursue violators and responsible parties to maximize potentially responsible parties (PRP) participation in site restoration; and promote enforcement fairness, especially for small contributors to sites. Additional Agency principles guiding the enforcement program include reducing third parties' transaction costs, recovering the government's costs for site cleanup, targeting risk-based site restoration by compelling cleanups at the worst sites first, and encouraging economic redevelopment by bringing contaminated sites into productive use. The enforcement program will seek to ensure environmental justice and promote partnerships with states and industry.

PROGRAM and ACTIVITY HIGHLIGHTS

## PRP PARTICIPATION

In 1997, the Agency requests \$24,863,200 and 523.8 workyears to encourage PRP responses. The Agency will continue its efforts to obtain PRP response actions through settlement negotiations. Where negotiations fail, the Agency will either take unilateral enforcement actions requiring PRP cleanup or use Trust Fund dollars to remediate sites. Where settlement negotiations and previous enforcement actions have failed to achieve PRP response and Trust Fund dollars are used to remediate sites, cost recovery actions will be taken against PRPs to recover expenditures. After conducting PRP searches to identify contributors to site contamination, the Agency will negotiate with or issue orders to over 200 PRPs to obtain response actions. It is estimated that the Agency will issue 100 administrative orders for remedial investigations/feasibility studies (RI/FS) and removals. Also, the Agency will refer or issue 60 consent decrees and unilateral administrative orders for remedial action.

The Agency's emphasis in 1997 on early establishment of liability will result in accelerated risk reduction at sites and will reduce transaction costs to the PRPs. Regional legal enforcement resources will be used to negotiate PRP removals and site access agreements. For NPL sites or sites where long-term action may be required, the Agency will take efforts to get responsible parties to perform studies and to conduct the long-term response actions under a consent decree or a unilateral administrative order.

Criminal investigators will continue to pursue investigative leads, develop information to support grand jury inquiries and decisions, refer leads and cases to other enforcement agencies or pursue joint investigations as warranted. The National Enforcement Investigation Center (NEIC) will provide specialized forensic support for CERCLA criminal and civil enforcement actions, case preparation, settlement negotiations and cost recovery. The National Enforcement Training Institute (NETI) and the Federal Enforcement Training Center will provide Superfund training to Federal, state, local and tribal law enforcement officials.

## ENFORCEMENT FAIRNESS

The Agency requests \$29,056,000 and 157.6 workyears for Enforcement Fairness. The Agency has piloted and is now implementing various Superfund Reforms to increase fairness, reduce transaction costs, and promote economic redevelopment. These reforms include, but are not limited to: early PRP searches, expedited settlements to facilitate early de minimis settlements as well as with parties with limited ability to pay, more effective and widespread

Based on other Federal agencies' estimates, there are potentially more than 60,000 contaminated sites at more than 2,000 Federal installations, 160 of which are on the Superfund National Priorities List. Work is ongoing at more than 700 projects. Hazardous waste sites at Federal installations include abandoned mines, landfills, underground tanks, and soils, groundwater and surface water contaminated by radioactive waste, toxic explosive compounds, fuels, unexploded ordnance, solvents, metals, organics and other carcinogens. In 1997, new and ongoing Federal facilities oversight activities will include approximately 410 remedial investigation/feasibility studies, 118 remedial designs, 121 remedial actions and 150 Records of Decision.

The Agency will assist other Federal agencies in setting priorities and reducing the cost of projects in 1997 through a, ~~risk~~ risk plus other factors process to assess and reassess cleanup activities. This process includes engaging in budget consultations, setting milestones, and developing and implementing cost-savings measures. In addition, the Agency will focus on limiting the study phase and reducing costs through the application of innovative technologies. Finally, the Agency will play a critical role in building and maintaining effective community involvement, especially at nearby low-income communities.

The Agency will also continue site characterization, remediation, removal, and enforcement activities at radioactively contaminated Superfund sites. The Agency is creating in 1997 partnerships with other Federal agencies, states and local governments to continue and improve its support in remedial technology demonstrations, selection of appropriate technologies and developing soil screening levels for radionuclides. The Agency will also continue study of fate and transport modeling of radioactive contaminants, particularly in groundwater.

#### BASE CLOSURES

The Agency requests a total of 148 work years in 1997 for military base closure and realignment activities. Funding for these workyears is provided through a Memorandum of Understanding (MOU) with the Department of Defense (DOD) and negotiated annually. The Agency will assist the DOD with closure and realignment of environmentally contaminated military installations designated as Fast Track Cleanup Bases. The Agency will assist DOD to quickly identify clean parcels for early reuse, select appropriate leasing parcels where clean up is underway, and hasten overall cleanup.

This program benefits local communities by reducing risk posed by the 108 military installations which have hazardous waste sites (32 of which are on the Superfund National Priorities List). In 1997, the Agency will devote extra attention to the "privatization" efforts at the Naval Weapons Center in Louisville, Kelly Air Force Base and McClellan Air Force Base to ensure their success from an environmental standpoint. A joint Agency and DOD review identified that during the first two years of using the fast track approach, more than \$100 million in costs were avoided and more than 90 years of project time was saved. DOD estimates that about 60 percent of the base property, closed or scheduled for closure, is already available for transfer.

#### TECHNOLOGY & INFORMATION

The Agency requests a total of \$5,779,969 and 8.3 total workyears for technology innovation activities. These resources provide the scientific and technical information necessary to resolve technical problems which affect the cost, duration, and protectiveness of early actions and long-term actions at Superfund sites. The Agency will emphasize development of innovative treatment technologies for cleanup actions under the Superfund Innovative Technology Evaluation program. Site-specific technical support for risk assessment, site characterization, and selection of remedial alternatives will also be provided.

use of alternative dispute resolution (including allocations of responsibility), removal of liability barriers to economic redevelopment through prospective purchaser agreements, and projects for meaningful community participation. The Agency anticipates in 1997 participating in 20 Alternative Dispute Resolution (ADR) civil actions and in supporting PRP allocation settlement efforts at approximately 30 sites.

Over the past six years, the Agency has given certainty regarding CERCLA liability to 11,000 small parties in over 200 de minimis settlements. In 1997, the program will continue to pursue these initiatives by working with up to 1,800 small parties to enhance enforcement fairness, improve efficiency in achieving settlements with responsible parties, facilitate economic redevelopment, and increase public participation in the Superfund enforcement process. By doing this, the Agency anticipates significantly decreasing the third party litigation that has historically caused the large private party transaction costs associated with this program.

The Agency will continue to use such tools as ADR and third party allocators to minimize transaction costs and to promote fairness. The program will continue to support the Agency's initiative through prospective purchaser agreements which provide specified exemptions from CERCLA liability thereby encouraging prospective developers to bring contaminated sites back to productive use.

#### COST RECOVERY

In 1997, the Agency requests \$10,611,500 and 279.9 workyears for cost recovery. In 1997, the Agency will address 92 cost recovery statute of limitation cases. Regional legal enforcement activities for cost recovery include case development and preparation, referral and post filing actions. The Agency will provide case and cost documentation support for the docket of cases currently being worked on by DOJ. In addition, case assistance from Headquarters will continue to be provided to help the Regions meet cost recovery statute of limitation deadlines.

#### FEDERAL FACILITIES

The Agency requests a total of \$7,799,500 and 92.1 workyears for Federal facilities enforcement. The Agency will negotiate interagency agreements (IAGs) and Federal Facility Agreements (FFA) for any Federal Facility site that is listed on the NPL as well as the 30 sites which currently lack agreements. In addition, a number of IAGs/FFAs will require renegotiation. Agency staff will continue to consult with the Departments of Energy and Defense and other Federal agencies on evolving issues, as IAGs may be amended due to funding shortfalls, state actions, or other reasons.

Data as of September 30, 1995

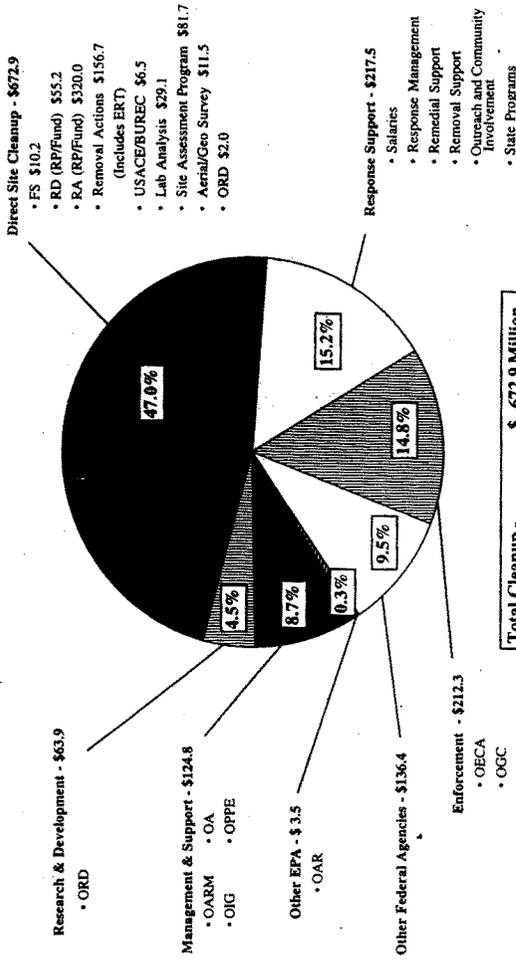
**End-of-Year FY95  
Superfund Historical  
Performance**

Print Date: 11/27/95

EPA

Environmental Protection Agency

# 5.1 FY 95 Superfund Budget



Total Cleanup -	\$ 672.9 Million
Total Enforcement -	\$ 212.3 Million
Total Support -	\$ 546.1 Million
<b>TOTAL BUDGET -</b>	<b>\$1,431.3 Million</b>

Note: Budget Figures Across Pages in Millions.  
Source: FY95 Operating Plan - EFR  
4TH QTR PPT

**BUDGET**  
  
 Full Date: 102895  
 Print Date: 11/2/95  
**DATA**

Mr. HERRING. I understand that. I just wanted to make clear before that National Small Business United, which I chair their environmental committee, did not support that. That's all my point was, and that the Small Business White House Conference delegates did not.

Mr. MCINTOSH. Either Mr. Dixon, do you have an opinion on the Oxley-Bliley bill?

Mr. LEON DIXON. I think to answer would be to say several things. We are not the experts. We are not following these bills. We are small business. That's one reason we're small is that we can't solve big problems.

We do know of Congressman Oxley, however, and he is one of our heroes. From a different point of view, he has recognized that there is bad science out there particularly with asbestos in the schools.

I have written him letters about that and also Mr. Clinger for that purpose. I guess the other thing I would want to say is that your emphasis on being nonpartisan is well directed.

I don't know about the rest of this panel, but I've been a lifelong Democrat. My brother is a lifelong Democrat. My father was the chairman Delaware County Democrat. This is a problem.

It is not a political problem to us. This is a prospective disaster, and we would just as soon throw you guys all in a dark room and make you stay there until you came out with something to fix what you first made.

Mr. MCINTOSH. We hope that you would like it at the end of it.

Mr. WAXMAN. Mr. Chairman, I just want to point out that Mr. Dobrow's problem which you raised would have been resolved by this legislation that all these groups did support.

These are groups that follow the legislation. They all endorse that bill that had a unanimous bill, and that we at least ought to pass into law.

Mr. MCINTOSH. Let me turn now and ask my colleague, Mr. Ehrlich, do you have any additional questions?

Mr. EHRLICH. Just real briefly. You have four freshmen sitting here. It's just fascinating to listen to. The President was elected in 1992. Democrats controlled both Houses of Congress. All these groups supported the bill.

We all agree there is a problem, in a bipartisan way. We all agree with respect to the issues I brought up earlier, the specific issues.

Yet one is left to wonder why wasn't that bill signed? And one is equally left to wonder, with respect to this bill, Mr. Waxman just said the Bliley bill will not be signed.

Now, if we all agree, my question is and I guess the question I'd ask from my colleagues, and I direct it to the chairman or whomever, why won't that bill be signed, if we all agree? I don't get it.

Mr. WAXMAN. Would the gentleman yield?

Mr. EHRLICH. Absolutely.

Mr. WAXMAN. The bill that I referred to in the last Congress that passed 44 to nothing out of committee wouldn't get considered on the Senate floor.

The Senate has filibuster rules and Senator Dole said at a certain point he wasn't going to consider any more legislation so it fell by the wayside.

Whether he was against this bill or just didn't want to have anything more accomplished is the question. The Bliley-Oxley bill is so now along partisan lines because it goes so much beyond the compromise that it's unlikely it's going to be law.

It's not even going to get to the President, and that means we'll all go home with nothing. That's my concern.

Mr. EHRlich. One final statement. My friend on the other side of the isle made an earlier statement that you can't get everything you want, that you should learn to compromise, and we understand that. I came from a legislature for 8 years.

But sometimes you have to fight for things that are right, and I suspect that for the folks sitting in front of me, if you read that Bliley-Oxley bill, you would agree with most folks here in Congress that that's the right thing to do. I yield back the remainder of my time.

Mr. MCINTOSH. Thank you, Mr. Ehrlich. Mr. Gutknecht, do you have any further questions?

Mr. GUTKNECHT. No, Mr. Chairman. This panel has been an extremely valuable resource for this committee, and I'd like to thank them for coming. They've been extremely patient with us.

I would just hope that if they have additional comments or letters that they would like inserted in the record that they would get them to us. Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Gutknecht. Let me wholeheartedly second that and thank all the members of this panel for coming here and participating today.

The information you've provided will be enormously helpful, and we will see to it that it's widely disseminated among our colleagues. Thank you all very, very much for coming.

At this point we are scheduled to go to panel 2, which is several of our colleagues. Let me check with the staff. Are any of them available? Mr. Mica. Great. I understand Mr. Zeff is chairing another hearing and won't be available and that Ms. Lincoln is not well today but would like her statement to be made part of the record, which, if there is no objection, we will gladly do.

Mr. Mica, thank you for joining us today. In the previous Congress, you worked quite a bit on this issue from the Government Reform Subcommittee on which you were a member.

I do appreciate you taking the time to come share with us your experiences in this area.

#### **STATEMENT OF HON. JOHN L. MICA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. MICA. Mr. Chairman, and members of the committee, first of all, I want to thank you and commend you for holding this hearing to review the effectiveness of our Superfund Program.

As the panelists leave here, I recommend to the committee and people on both sides of the aisle and the audience to take a good look at these folks, because you're looking at an endangered species.

You see and you heard in their testimony what's happening out there to American business, industry, small, medium, and large, and how it's being destroyed by ineffective costly bureaucratic regulation.

Some of the freshmen I heard ask, "Well, they had control of the House of Representatives for 2 years, and why wasn't anything done."

Maybe one of the reasons that nothing was done is because they did control the House of Representatives, but when I was a freshman Member 36 years ago, I looked at what was happening.

I sat on a panel, the oversight panel of the Environmental Protection Agency, served under Mr. Synar, God rest his soul, who did a tremendous job looking at these agencies and was concerned about how we're paying more and getting less for our environmental dollar, sat with Mr. Waxman and others.

And I thought, boy, there has to be a better way, because this sure isn't working. And I borrowed the concept of cost benefit analysis and risk assessment, a simple concept that says look at the cost, look at the benefit, look at the risk, and introduced it, and all hell broke loose.

We introduced it on the EPA elevation to cabinet level status legislation, and that agency is not a cabinet level position today because of that, because people wanted to build bureaucracies.

They wanted to spend more money. People had an investment in the ineffective way in which we were conducting our Superfund Program. So that's why we're here today.

I want to talk today about Superfund. Superfund was a great idea. It was a fabulous idea, and it was an idea whose time had come in 1980, that polluters should, in fact, pay, and that we should act to clean up hazardous waste sites that posed threats to human health and safety.

Now, you heard from those folks just a few minutes ago that I say are part of this endangered species in business and industry and commercial activity, and you'll hear from other folks in panels about how their human life and health safety is affected.

Unfortunately, the fine purpose and dream of Superfund has turned into a costly ineffective and bureaucratic nightmare by any standards.

By any measures, Superfund is a failure. We have to ask ourselves some questions. Have we cleaned up sites? The answer, and you've seen it and heard it, is no, only a handful.

In fact, of the original 115 Superfund sites listed with the EPA in 1983, only 19, 19 today have been cleaned up. And while EPA will say that work is either underway or completed in 98 percent of the 1,290 sites on the national priorities list, a closer inspection will show that actual activity is taking place at only one-third of these sites. It's a disgraceful record.

As an example, let me give you one hazardous waste site in my State, in north Florida, which was placed on the national priorities list in 1984.

Nothing was done at this site for a decade. EPA had six different project managers. I met with someone very familiar with the site, and he told me that the only thing they did is come in and change project managers.

They monitored the site. They retained more people to study the site, and they retained people to contemplate the situation, and nothing was done.

So this is one example of a good program gone bad, and it could be repeated over and over. Let me point out that there are 2,000 people who live within a half-mile radius of this site, and there are 11 schools within a 1-mile radius of this site, if we're talking, as Mr. Waxman had, had cleaning up sites that pose a risk to human health, safety, and welfare.

Have we cleaned up sites that pose risks to human health, safety, and welfare? The answer is absolutely no. You know, I feel a little bit like the character in the movie the "Groundhog Day."

I don't know if you saw that movie but, sort of, been there and done that. And I sat on this panel. This is a 1994 GAO study.

It says EPA does not use risks to set priorities. You all should see this. I come in here, been here, done that. Here is today's GAO report.

EPA does not use risk assessment, risk to set priorities. So we've been here, and we've done that. This report also says that one of EPA's key policy objectives is to address the worst sites first.

Risk plays relatively little role in the Agency's determination of priorities. Again, they said this before. They're saying it again today.

EPA still leaves the headquarters a task of setting priorities to the regions, yet the regions don't rest those sites by risk. Again, been there, done that.

Have we required polluters to pay? Let me share with you an Associated Press report, "EPA Lets Polluters Off The Hook."

This report says that EPA recovered only \$843 million or less than a fifth of the \$4.3 billion in cleanup costs that could be recovered from polluters under current law.

This is an article from Environmental Week in 1993. They don't even go back. They let polluters off the hook, and in addition, they're letting the statute of limitations expire so they can't go after these folks.

So the program, obviously, does not work as it was intended. Have we expended taxpayer and Superfund dollars wisely? I submit no.

And you've seen the statistic. Lawyers and consultants wind up with the money. You know what is particularly offensive? When I sat on this committee, we had another report, I think from the Center of Integrity, one of the watchdog groups, most of the consultants—now, you see, most of the money goes for studies, and a lot goes for attorneys fees.

Most of the consultants in this game are former EPA employees. It's an incestuous relationship. It's absolutely unbelievable. It's a national scandal. So the Superfund costs the Government and private sector billions each year; \$1.73 billion is spent for attorneys fees and studies. These aren't my figures. They're CRS. And EPA's budget for 1996 Superfund was \$1.6 billion.

I would like to go more into some of the reports about how they misuse money, but I will submit that for the record. I'm already at the end of my time here.

Mr. Chairman and members of the committee, people who really care about our environment, who really care about the risks to human health, safety, and welfare, who truly care about our children and their risks should be outraged.

People who call themselves environmentalists should be demanding reform in the Superfund Program, and I submit to you we must reform this program in a positive fashion, and we must do it as soon as possible.

We must use risk assessment and cost benefit analysis in the process. We must stop this litigation, the just studying, and we should start a cleanup approach rather than, again, just studying and just litigation.

We must also use a sensible remedy selection. You heard that from the other panel. And we must dismantle some of the Federal EPA bureaucracy and its concomitant bevy of consultants, again, this incestuous relationship.

And we must aid State and local governments and private parties in a partnership to conduct effective cleanups. Those things, in fact, should be our goals.

Since EPA was created under the Republicans in 1972, 47 States have complete EPA operations, and counties have them and cities have them and special districts have them.

And you heard the gentleman here from New Jersey say he has them in spades. So we have people conducting some of these things, and we have this huge bureaucracy.

If you look at the size of the bureaucracy, as I do as chairman of the House Civil Service Committee, we have 18,000 EPA employees full-time.

We have thousands and thousands of these consultants. We have 6,000 EPA administrators and regulators in Washington, DC, which is more than we had 12 years ago in the entire program. Today in this city we have that many people.

So we must stop paying more and getting less. I salute you on holding this hearing. It's long overdue. The public and the Congress needs the information to proceed and to demand some changes in this program that should and could be effective and should definitely be reformed.

So I thank you, and I'm available for questions. You can't tell I get excited about this.

[The prepared statements of Hon. John L. Mica and Hon. Blanche L. Lincoln follow:]

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7th DISTRICT, FLORIDA  
COMMITTEE ON GOVERNMENT REFORM  
AND OVERSIGHT  
CHAIRMAN, SUBCOMMITTEE ON CIVIL SERVICE  
SUBCOMMITTEE ON NATIONAL SECURITY,  
NATIONAL AFFAIRS AND CRIMINAL JUSTICE  
COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE  
SUBCOMMITTEE ON SURFACE TRANSPORTATION  
SUBCOMMITTEE ON RAILROADS

**Congress of the United States**  
**House of Representatives**  
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**Statement by Congressman John L. Mica**  
Before the Subcommittee on National Economic Growth,  
Natural Resources and Regulatory Affairs

May 7, 1996

Mr. Chairman and members of the Subcommittee, I commend you for holding this hearing to review the effectiveness of our Superfund program. Thank you for this opportunity to testify.

Superfund was a great idea -- that polluters should pay and that we should act to clean up hazardous waste sites that pose threats to human health and safety. Unfortunately, that dream and fine purpose has been turned into a costly, ineffective and bureaucratic nightmare.

By any measure, Superfund is a failure.

**Have we cleaned up all our hazardous waste sites?** No -- only a handful. In fact, of the original 115 Superfund sites listed with the EPA in 1983, only 19 have been cleaned up! And while EPA will say that work is either under way or completed at 98 percent of the 1,290 sites on the National Priorities List, a closer inspection will show that actual activity is only taking place at one-third of these sites.

As an example, I wanted to mention one hazardous waste site in North Florida which was placed on the National Priorities List in 1984. Nothing was done at this site for a decade. EPA has had six different project managers whose roles have been limited to monitoring the site and retaining more people only to study and contemplate the situation. Let me point out that there are approximately 2,000 people who live within a half-mile radius of this site, and there are 11 schools within a 1-mile radius.

Testimony of Rep. John L. Mica  
May 7, 1996  
Page 2

**Have we cleaned up sites that pose the greatest risk to human health and safety?** No. A 1994 GAO study reviewed the role that risk plays in the Superfund program, both in setting priorities and in determining cleanup remedies. This report states, "EPA DOES NOT USE RISK TO SET PRIORITIES!"

This report also says that "Although one of EPA's key policy objectives is to address the 'worst sites first,' relative risk plays little role in the agency's determination of priorities. EPA headquarters leaves the task of setting priorities to the regions, yet the regions do not rank sites by risk."

**Have we required polluters to pay?** No. Let me share with you an Associated Press report from June 21, 1993. EPA only recovered \$843 million -- or less than a fifth - of the \$4.3 billion in cleanup costs that could be recovered from polluters under current law. At this time, \$829 million was tied up in litigation or bankruptcy court, and \$270 million was simply written off!

**Have we expended taxpayer and Superfund dollars wisely?** No. Lawyers wind up with most of the money allocated to clean up toxic sites. Superfund costs the government and private sector billions each year, and \$1.73 billion is spent annually on lawyer fees and studies. EPA's budget for FY 1996 alone \$1.6 billion for Superfund.

Furthermore, let me share with you what the Center For Public Integrity reported in 1993: "A 1991 congressional investigation found that EPA internal auditors failed to pursue potential waste and fraud in consulting contracts worth some \$8.6 billion. One contractor billed Superfund for \$5 million in unallowable -- but unquestioned -- costs, including a rent-a-clown."

Mr. Chairman, members of the Subcommittee, people who truly care about our environment should be outraged. People who call themselves environmentalists should be demanding reform in the Superfund program.

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AND MANUFACTURING MATERIALS

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0401**

STATEMENT OF THE HONORABLE BLANCHE L. LINCOLN  
BEFORE THE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,  
NATURAL RESOURCES, AND REGULATORY AFFAIRS  
ON SUPERFUND REFORM  
MAY 8, 1996

Mr. Chairman, thank you very much for inviting me to testify before your subcommittee today. I appreciate the chance to address the problems with Superfund and suggest possible improvements.

The arguments flying around Superfund reform are based in large part on fairness. One question is whether it's fair to saddle individuals and corporations with expensive liability for actions completed years before Superfund was enacted. However, this is not the only question on fairness we need to consider. If we repeal retroactive liability, what do we do with those parties that settled their liability with EPA, spending millions of dollars for Superfund cleanup? Is it fair that we punish those that stepped up to the plate and settled their liability? Also, if we repeal retroactive liability, will we be able to afford the costs levied upon the federal government? The trust fund, into which corporations have paid taxes over the years, will cover some of it, and general revenues may be appropriated. However, what happens if we don't have enough money to cover Superfund cleanups? Will the financial burden fall on the states? Or worse, will these sites go unremediated, thus leaving the local residents with a toxic legacy? Is this fair? We must keep all levels of fairness in mind when reforming the Superfund law.

Reforming Superfund is not a luxury, it is a necessity. The program has not worked as intended. Small businesses and charitable organizations such as the Girl Scouts have been hauled into court; large corporations who have contributed only a small amount of hazardous waste have been liable for the lion's share of the cleanup because of their deep pockets; banks have been held liable only because they have mortgages on the land; and municipalities have been forced into hiring lawyers where their limited resources could be better used to upgrade essential citizen services. A pet peeve of mine is that scrap recyclers -- those people who own third and fourth generation businesses -- have been held liable for sending scrap metal and other scrap items to reprocessors. These people are the original recyclers and they are being penalized for collecting scrap and selling these items in commercial transactions. Lastly, as we all know, far too much money has gone into litigation instead of into actual cleanups.

First of all, we need to examine liability. I believe that we need to eliminate strict, joint and several liability. People should only be responsible for the amount of contamination they added to the site. The retroactive nature of the liability is a thornier issue. Philosophically, if we repeal retroactive liability, the cutoff date should be 1980, when Superfund was originally enacted. However, the real concern underlying repeal is whether we can afford it. Going back to the fairness issue -- it would not be fair to those individuals living around the contaminated site to leave sites unremedied because we did not have enough money to clean it up properly.

I believe we need to eliminate the liability burden on small businesses, municipalities, recyclers, and small "de minimis" contributors. Additionally, we must adopt a fair share allocation system for the remaining responsible parties. There is a proposal to eliminate codisposal sites (those sites that contain both municipal solid waste and hazardous waste) from Superfund liability. This is a tempting idea because it would absolve many small businesses of liability and eliminate incredible amounts of litigation as these sites are known to have hundreds of parties. I have not seen a cost estimate for this proposal, so I would have to withhold my support until I am convinced that we can afford such an approach. As we move forward, we must always keep in mind that any changes we make must reduce significantly the amount of litigation.

Secondly, we must focus on the question of how clean is clean. Sites that are located in industrial areas should not meet soil eating standards that are required for land used for day care centers. The cleanup standards should be determined by the use or anticipated use of the land and should always be protective of human health and the environment. Residential areas should meet more stringent environmental standards while industrial areas should utilize less stringent cleanup standards that are still protective of human health and the environment. However, when selecting a remedy for a site, we need to put in place mechanisms to protect groundwater that is anticipated to be used for various purposes. Currently, there are proposals to protect groundwater that is used only for drinking water. However, in Arkansas, groundwater is utilized in many ways, including irrigation, livestock watering and industry purposes. While groundwater does not need to meet drinking water standards for irrigation uses, it should meet a standard that protects human health and the environment. As I mentioned earlier, the cleanup standard should always depend on the type of resource use.

In selecting clean up standards, we must also consider the role of the states in determining how clean is clean. Most states have their own laws addressing the state of the environment. For example, in Arkansas, groundwater is very valuable and used for many activities. It is also very vulnerable to the quick spread of contamination because of its

limestone Karst underground formation through which water moves quickly. However, in more arid states, groundwater may be more scarce and slow moving. As a result, the treatment of groundwater may be different between states based on their environmental makeups. Congress is starting to recognize the fact that one size does not fit all, and this is true in terms of cleanup remedies as well. The state is closer to the unique environmental needs and should have the flexibility to apply its own laws to cleanup efforts.

As we move forward, we cannot forget the whole purpose behind the statute -- to protect people who live near and are affected by Superfund sites. They should be involved in the selection of the cleanup remedy and any review of existing remedies. Ultimately, these people are the ones who have to live with the contamination day-in and day-out. It is their health and their property values that are affected by the contamination.

Superfund's original goal was and is honorable -- to clean up contaminated sites. However, this statute has fallen far short of its expectations. I believe that the desire to correct this badly flawed statute crosses political lines. However, the methods to correct the problems remain the controversial issues. While the Administration is currently negotiating with both the democrats and the republicans to work out a bipartisan bill, negotiations are moving very slowly. Because we only have a few more months to consider legislative business, it looks less and less likely that we can come up with a comprehensive Superfund reform bill before Congress adjourns.

However, if negotiations on a comprehensive bill fail, there should still be efforts to move a more limited bill to address the less controversial items that have huge bipartisan support, such as: brownfields redevelopment, lender liability relief, scrap recycling relief, prospective purchaser relief and other similar provisions. In considering a less comprehensive bill, we could also consider adopting limited liability and remedy selection fixes. In this way, we can address some of the more egregious problems without getting bogged down in controversial matters.

As a member of the Commerce Committee, I have been very active in the Superfund debate. In this position, I have been very vocal in moving a Superfund reform bill. I look forward to working with the Chairman or anyone willing to work with me to get a Superfund bill through this Congress. We should not let this opportunity pass us by.

Mr. MCINTOSH. Thank you so much for participating in today's hearing and for continuing your good work in this area.

You should know that one of our later witnesses is a gentleman from the General Accounting Office who is going to report that they do find that EPA could be more cost effective in their cleanups by basing their priorities for funding on the principle of risk reduction, and realistic land uses are also important in using Superfund resources.

So the independent watchdog that has looked over this program in the past continues to agree that more should be done in order to be more effective.

You mention one source of a conflict of interest that many of the consultants are former EPA employees and that they have a sweet-heart deal and expending much of the resources.

Another one that was brought out earlier in the testimony is the fact that the lawyers involved have an interest in increasing their fees rather than settling the disputes and going on with the clean-up.

Even under the chart that my colleague from California showed where 9 percent of the Government funds were paid for legal fees, if you figure out that it's about \$16 billion spent during the life of that program by the Government, that's about a billion and a half in legal fees all of which was not used, clearly, to help clean up any site but wasted.

And that is by far the lowest estimate that I've seen and is contradicted by many of the administration's own budget requests which seek a much higher percentage of the funds to be spent on legal resources.

And certainly, in the private sector, the numbers are much greater than that, much more inflated, and the citizenry is not served when those funds are used to pay for lawyers rather than to actually clean up the environment.

Again, thank you for coming today. Your testimony will be enormously helpful. Do you have any reflection on this conflict of interest that is created by the lawyers who are involved in this Superfund?

Mr. MICA. Mr. Chairman, I think that that should be a subject of congressional oversight and congressional investigation.

EPA has balked at requests for information in identifying who is doing what in that Agency with these programs. EPA has failed to give us adequate background information and the relationship of some of these consultants.

I think that several committees, I think the Commerce Committee, I think there the Investigations and Oversight Subcommittee should probe further into this.

I plan, as chairman of the House Civil Service Committee, to find out where the bodies are and what they're doing and why they aren't being utilized more effectively.

I think this does demand some answers. And then, when you see the distribution of personnel, when you see 6,000 in Washington, DC, if you think that EPA is out in the State working to help you, wrong.

You'll find that there are 10 regional offices, and you have anywhere from 1,000 to 1,300 in those offices. So very little of them are out there.

They go out there to hire some other individual to get their hands dirty, and that individual doesn't really get their hands dirty.

They conduct studies or drag the thing out in their own best interests, and most of them are former EPA employees.

Again, this is an incestuous, self-perpetuating relationship and a huge bureaucracy that has been built up. And then you heard the gentleman from New Jersey. He's contending with the State. He's contending with the county governments, the city governments, the special district governments all of which have EPA, Environmental Protection Agencies in spades that have been created.

So people are getting ripped off in this process. And then the ultimate insult to this whole thing is that the sites that endanger our children, that endanger our communities that are within blocks of schools, what do they do? Not a damn thing.

And I think it has gotten to the point where we need to take some action to shake this bureaucracy up and to get some results both in cleaning up these sites, hazardous waste that endangers our population, protecting the environment and utilize our taxpayers' limited resources, their dollars that they're busting their buns for in a more effective manner. Have I made myself clear?

Mr. MCINTOSH. Abundantly clear. And I commend you in your effort and urge you to continue looking into it in your Subcommittee on Civil Service. I think that would be enormously helpful to this Congress.

Mr. Gutknecht, did you have any questions for our colleague?

Mr. GUTKNECHT. Just briefly. Congressman Mica, I want to thank you for coming forward. You have been a very outspoken and eloquent advocate of this position on the House floor and other places.

I think you've raised an issue here that I hope either your subcommittee or this one will pursue with the General Accounting Office, and that is this revolving door relationship which seems to be going on between the EPA and the consultants.

It does appear, and we've heard other evidence of this in the past, that the answer to every question is we need to do another study.

We heard it earlier where just the studies alone may cost \$56 million to finally resolve this issue in New Jersey.

So I would hope that either this subcommittee or your subcommittee or both would at least pursue a study with the General Accounting Office to get to the bottom of whether or not the fact that some of these people are friends and former colleagues within the agency does not, in some respects, affect the seemingly unended need for additional studies. So I think that's a good recommendation, one we should definitely pursue.

Mr. MICA. Well, just for example, the site in north Florida that I said had six project managers since 1984, each left after 2 to 3 years to become a consultant.

Again, something is wrong in this, and then after a decade not to show any progress in a site that does pose risk to human health, safety, and the welfare of our children.

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

Mr. MICA. Thank you. And thank you again for your leadership on this.

Mr. MCINTOSH. Let me now call forward our third panel, Mr. Stanley Czerwinski of the General Accounting Office and the Honorable John Martin, Inspector General at the U.S. Environmental Protection Agency.

If the witnesses would please raise their hands.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you very much. Let the record show that each of the witnesses answered in the affirmative. Our first witness on this panel is Mr. Czerwinski, who is going to report to us on the General Accounting Office's review of the Superfund Program which has been a long-standing project there.

Mr. Czerwinski, please share with us your testimony.

**STATEMENTS OF STANLEY CZERWINSKI, ASSOCIATE DIRECTOR, ENVIRONMENTAL PROTECTION ISSUES, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JAMES DONAGHY, ASSISTANT DIRECTOR, SUPERFUND, GENERAL ACCOUNTING OFFICE; AND JOHN C. MARTIN, INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY**

Mr. CZERWINSKI. Thank you, Mr. Chairman. Before I begin today, I'd like to introduce Mr. James Donaghy, who is accompanying me today. Jim is our assistant director responsible for GAO's Superfund work.

Mr. Chairman and members of the subcommittee, we are pleased to present our views on improving the effectiveness of the Superfund Program.

You may have already heard from a lot of witnesses today. So in the interest of time, what I'd like to do is be brief and request that my full statement be summarized for the record.

Mr. MCINTOSH. Without objection, the full statement will be included in the record.

Mr. CZERWINSKI. Thank you, sir. As the chart to your right indicates, the size of the Superfund Program has vastly exceeded original expectations and is continuing to grow.

In addition, the cost of Superfund, by our estimates, may be eventually as high as about \$75 billion. With such staggering costs, we believe it is imperative that the Superfund Program be managed to reduce human health and environmental risk as efficiently as possible.

My testimony today will focus on three critical areas where we believe Superfund could be better targeted. One, prioritizing sites for inclusion on EPA's cleanup list on the basis of risk; two, determining which sites on the list to clean up first; and three, accelerating the cleanup of those sites.

And to its credit, EPA is beginning to make progress in each of these three areas. We conducted a review that Mr. Mica referred to, and found that since 1989 EPA has had a policy of addressing the worst Superfund sites first.

However, we also found that when it came to implementing that policy, EPA's regional offices often set priorities using factors other than risk.

This is not to say that EPA's regions have been doing anything improper. They are merely responding to their immediate demands.

For example, a site may have been around for a long time, so EPA might give it priority, or a responsible party may be willing to settle.

However, we believe that risk should be given the greatest priority, and this is especially important if you consider the amount of work that we face, as the chart that we have indicates.

There is a tremendous amount of sites out there that still need to be cleaned up. It's very important that we start with the worst first.

We also, in that same vein, did a review of EPA and found that its cleanup list is really driven by a lot of factors, but really the biggest single deciding factor in our mind is how a site will be used in the future.

We looked at 225 sites and found that over half of the sites did not pose serious enough current health risks to warrant cleanup.

Rather, these sites on EPA's cleanup list posed health risks because EPA assumed the land would be used differently than it is today, and projecting how land is going to be used in the future is at best an imprecise science.

Once you've decided to clean up the sites and which ones to clean up first, the goal, then, is to clean them up as quickly and as cheaply as possible.

We found that there is a vehicle out there that EPA can be making greater use of, and that is called nontime critical removals.

In short, nontime critical removals require less study and design. I think you can see from the first panel's discussion that the amount of time that is spent studying and designing cleanups in proportion to the amount that is spent actually cleaning up is a problem.

We found that removals could be used at virtually all Superfund sites and for all contaminants. We estimate that using nontime critical removals could reduce cleanup time by about 2 years and about \$½ million each time they're used.

Mr. Chairman, I think you may be aware of one of the sites that we looked at, and that is a landfill in Cedar Rapids, IA. I believe you earlier had a field hearing out there.

Mr. MCINTOSH. That's correct, about a month ago.

Mr. CZERWINSKI. The way we heard about this is that it was, sort of, a depressing story about problems, but there was one shining spot, and it was this site.

That site in particular is run by Rockwell International. They estimated that a cleanup there, using a nontime critical removal, cut both cleanup time and cost in about half.

In their case, they're talking about 4 to 8 years quicker, and they saved about \$2 million.

The price of doing this was to protect human health and the environment even better than if we had gone through the remedial process, because the situation there was that they had ground water that was seeping deeper.

They got to it quicker, stopped it from getting into the bedrock, which would have been a greater damage to the environment, more risk to populations from drinking the ground water and a greater cost to clean up. So it was a win, win, win on all sides.

We project that for the program as a whole, if EPA were to use nontime critical removals on pretty much a widespread basis, we could be seeing a projected savings of about \$1.5 billion over the life of the Superfund Program.

Of this \$1.5 billion, we estimate that the private parties responsible for cleanups would save about \$1 billion, and the remaining \$½ billion would be a savings to the Federal Government.

Before I go on, I want to make sure that we acknowledge what EPA has done in the three areas that we've laid out. The first thing we talked about was worst sites first.

Recently, EPA has established a system to rank the sites on the risk and other factors that they pose. So we think they're making some progress there.

That also is true on current health risks. We brought that to EPA's attention last year. In our mind, we think that they're beginning to be responsive and are starting to look at what current health risks sites pose when prioritizing.

The third factor I mentioned was nontime critical removals. Once again, EPA is making some organizational changes to make greater use of this tool.

However, the caution that we want to throw out is that this is all very recent, and it's really too early to tell whether this will result in improvements. So we'll just have to watch how EPA does.

So to summarize, because I know time is short, we believe that the Superfund Program could really benefit from focusing on reducing risk to human health and the environment and also more cost-effective cleanups.

The three solutions that we're talking about are prioritizing site selection based on the risks they pose, within those sites emphasizing those that pose current risks, and finally, using nontime critical removals to reduce cleanup time and costs.

That concludes my statement, and I'll be glad to respond to any questions you may have.

[The prepared statement of Mr. Czerwinski follows:]

Statement of Stanley J. Czerwinski,  
Associate Director, Environmental Protection Issues,  
Resources, Community, and Economic  
Development Division

Mr. Chairman and Members of the Subcommittee,

We are pleased to present our views on improving the effectiveness of the Superfund program. The size and cost of the program have expanded significantly over the years. Today, there are almost 1,300 Superfund sites, and by some estimates, as many as 3,200 more sites could enter the program in the future. The estimated cost of cleaning up the nation's hazardous waste problem has also grown—to \$75 billion for nonfederal sites and up to \$400 billion for federal facilities. In the face of such staggering costs and increasingly constrained governmental resources, the Congress faces a major challenge in finding a way to improve the Superfund program's cost-effectiveness while protecting public health and the environment. A key to meeting this challenge is managing the Superfund program to reduce human health and environmental risks to the greatest possible extent within the available resources. Much of our recent work has focused on how the program has dealt with risk reduction issues.

In summary, our work has shown that the cost-effective reduction of risks has not received adequate emphasis in several aspects of the program, including the following:

- The selection of sites for cleanup and the order established for their cleanup have not been driven sufficiently by the risks at sites. Even though EPA has a policy of addressing the "worst sites first," its regional offices set priorities using other factors, such as the amount of work required to clean up a site.

- EPA's decisions on whether and how much to clean up a site are affected by the agency's forecasts of how the site will be used in the future. EPA has been criticized for assuming too often that sites will be used for residential purposes, thereby driving up the costs of cleanup unnecessarily. Our work has shown how important land-use assumptions are. EPA judged that half of the sites in a group we reviewed needed cleanup only because the agency assumed the sites' uses would change, increasing human exposure to contaminants in the future.
  
- EPA can reduce the risks at sites more quickly and economically by using its accelerated cleanup procedures, where appropriate, instead of its more expensive and time-consuming traditional techniques. If the accelerated techniques were used more consistently, we estimate that the federal government's and private sector's Superfund costs could be reduced by as much as \$1.7 billion over the life of the program.

In 1995, EPA began to address these concerns. For example, EPA (1) created a system to establish national cleanup priorities based on the risks at sites and other factors; (2) instructed its Superfund project managers to gather more data and meet with local officials and other interested parties when predicting future land uses; and (3) made organizational changes to facilitate the use of accelerated cleanup procedures. It is too early to tell whether these procedural and organizational changes will result in permanent

improvements to the program. Our past reviews have shown that without management follow-through, initiatives like these can be short-lived.

## BACKGROUND

The Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, in 1980 authorizing EPA to clean up hazardous waste sites that pose a threat to human health and the environment and to order responsible parties to clean up these sites. The act created a \$1.6 billion trust fund, financed primarily by taxes on crude oil and certain chemicals, for EPA to implement the program and pay for cleanups. Also, EPA can hold the parties responsible for the contamination liable for cleanup costs. The program was extended twice, in 1986 and 1990, and its spending authority now totals \$15.2 billion.

EPA maintains an inventory of hazardous waste sites awaiting evaluation for possible inclusion on the National Priorities List (NPL), the list of the most highly contaminated sites. After a site is placed on the NPL, EPA conducts an investigation to determine more fully the nature and extent of the contamination and the appropriate way to clean it up. One component of this investigation is a baseline risk assessment that evaluates the health risks the site would pose if no cleanup occurred. At each site, EPA assesses the risk of cancer and other adverse health effects posed by the contaminants in different

media (e.g. groundwater, soil, air) to determine if these risks warrant cleanup.<sup>1</sup> EPA evaluates these health risks under both current and alternate future land-use conditions to account for possible changes in the site's use.

EPA responds to hazardous contamination at Superfund sites through "removal" and "remedial" actions. Removal actions are generally shorter-term (less than 1 year), lower-cost (under \$2 million) measures intended to address actual or potential releases of hazardous substances that pose a threat to human health or the environment.<sup>2</sup> By contrast, remedial actions are longer-term and generally more expensive measures to implement final cleanup plans at sites. Removals derive many of their advantages, in terms of both time and cost, from their abbreviated planning and design phases.

As of April 1996, EPA had placed 1,284 sites on the NPL and removed 98 sites that no longer threaten human health and the environment. In addition, cleanup remedies, such as groundwater pumps, are in place and operating at 346 sites.

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<sup>1</sup>In general, EPA decides to clean up a site if the risk of cancer is greater than 1 in 10,000, if the site poses a risk of other serious forms of illness, or if there is some environmental risk, such as a threat to wetlands.

<sup>2</sup>EPA classifies its removals as (1) "emergency removals" for threats requiring immediate action, (2) "time-critical removals" for threats requiring action within 6 months, and (3) "non-time-critical removals" for threats where action can be delayed for at least 6 months in order to adequately plan for cleanup.

Now I would like to discuss in more detail some problems affecting EPA's treatment of risk issues in the Superfund program.

#### EPA HAS NOT EMPHASIZED RISK IN SETTING PRIORITIES

The risks posed by sites have not played a large enough role in the selection of sites for the Superfund program or in the scheduling of their cleanups after they have been selected. Although EPA's policy since 1989 has called for addressing the "worst sites first," the agency's regional offices have not implemented this policy in a way that emphasizes the risks at sites.

First, factors other than risk primarily determine which sites EPA's regions evaluate first for placement on the NPL. We found that the regions typically evaluate the sites they have known about the longest or the sites for which they have the most complete information. EPA regional officials told us that they do not have the resources necessary to perform detailed studies to determine which sites being evaluated for inclusion on the NPL pose the greatest risks.

In addition, the risks that NPL sites pose relative to each other play little role in determining which of them are cleaned up first. According to a study conducted by the Center for Technology, Policy, and Industrial Development at the Massachusetts Institute

of Technology,<sup>3</sup> evaluations of sites' risks are given little attention when setting priorities. For example, officials from one EPA region told us that they generally discuss with the states in the region which sites should be cleaned up first and attempt to fund equal numbers of sites in each state.

In October 1995, EPA announced a set of administrative reforms that includes setting national risk-based priorities for funding cleanups at sites in accordance with the principle of cleaning up the worst sites first. Under the new procedures, a panel of EPA officials meets to identify the worst sites by applying five criteria: (1) risks to humans, (2) ecological risks, (3) the stability of contaminants, (4) the characteristics of contaminants, and (5) economic, social, and program management considerations. According to an EPA official, the panel has met and is emphasizing current risks and, to a lesser extent, potential risks in deciding which projects to fund.

#### FUTURE LAND-USE ASSUMPTIONS ARE KEY TO CLEANUP DECISIONS

Our work has demonstrated the importance to cleanup decisions of assumptions about future land uses and the need to make these decisions in the most informed way possible. Forecasts of future land use are crucial in estimating the potential for human exposure to the contaminants at sites. Formerly, EPA often assumed in its risk

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<sup>3</sup>Breaking the Backlog: Improving Superfund Priority Setting (Cambridge, Mass.: Feb. 1992).

assessments that land would be used in the future for residential rather than industrial purposes. Such assumptions led to calculations of greater exposure to contaminants in the future than in the present. EPA then selected a more stringent and costly cleanup method in accordance with this calculation of future risk.

We recently reported that about one-third (71) of the sites included in an EPA database of 225 nonfederal Superfund sites<sup>4</sup> posed health risks serious enough to justify their cleanup under the current land-use assumptions.<sup>5</sup> About one-half (119) of the sites in this database did not pose such health risks under the current land-use assumptions, but EPA estimated that they could pose such risks if they were used for alternative purposes in the future. For example, a site used exclusively for industrial purposes might not pose a threat to human health under its current classification but might be considered as posing a threat if EPA assumed the land would be used for residential purposes in the future.<sup>6</sup>

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<sup>4</sup>These sites were contained in an EPA database on health risks from Superfund sites—the most comprehensive automated information available as of early 1995, when we did our work. These sites constitute most of the sites where EPA made cleanup decisions between 1991 and mid-1993.

<sup>5</sup>EPA usually took action, such as removing contaminants that presented an immediate threat to human health, at these sites.

<sup>6</sup>The remaining sites did not have a current or future human health risk high enough to justify cleanup on the basis of the risk assessment. However, these sites could be slated for cleanup to comply with other federal or state standards or to eliminate a threat to the environment, such as contamination endangering wetlands.

EPA's risk assessment guidance recommends that personnel performing risk assessments assume that a site's future use will be residential even if no one lives at the site now. Parties responsible for cleanups have complained that this policy results in unnecessarily expensive cleanups.

In addition, we found some apparent inconsistencies in the risk assessments' forecasts of future use. For example, our review of the risk assessments for three landfill sites demonstrates the potential for inconsistent judgments about future land uses. All three sites had similar conditions, including inadequate covering over the landfill. Although landfills seem unlikely sites for residential development, the risk assessments for the Hercules 009 Landfill in Georgia and the Woodstock Landfill in Illinois concluded that people would build homes on the sites in the future and the residents would, then, be exposed to contaminated soil and water. In contrast, the risk assessment for the Strasburg Landfill in Pennsylvania concluded that the site would not be developed but that occasional trespassers would come in contact with contamination at the site. While the risk assessments for the Hercules 009 and Woodstock landfills indicated a need for cleanup, the risk assessment at the Strasburg site did not.

In response to charges that its land-use assumptions were unrealistic, EPA in May 1995 instructed its risk assessment teams to consult with local communities on such issues as zoning and the use of adjacent land in making early determinations of future

land uses. We have not assessed the effect of this new guidance on the selection of cleanup remedies.

EPA'S REMOVAL AUTHORITY CAN BE USED  
FOR FASTER, MORE ECONOMICAL RISK REDUCTION

A cleanup method must reduce site risks to assure overall protection of human health and the environment. When choosing among methods that meet this goal, EPA balances several factors, including long-term effectiveness and cost, in arriving at a decision. In response to criticism that cleanups were too costly and too time-consuming, EPA in 1992 announced a program to streamline its Superfund procedures. One initiative was to make greater use of removal techniques to accomplish cleanups. Because removals require less extensive study and design, they can accomplish cleanups more quickly and less expensively than remedial actions. Traditionally, EPA used removal techniques to respond to emergency conditions. The 1992 initiative encouraged the use of removals at sites where cleanup problems can be managed through removals and circumstances permit EPA to spend at least 6 months planning the cleanups. These latter removals are called "non-time-critical" removals.

EPA could use non-time-critical removals at appropriate segments of virtually all the 1,000 sites currently on the NPL awaiting cleanup as well as at sites that could be added in the future. Often at these site segments, EPA can readily determine the types of contamination present and decide on the appropriate cleanup methods without

conducting extensive studies and designs. EPA estimates that the non-time-critical removals conducted to date have reduced the cleanup time from 2 years to 4 years, on average. In addition, they have saved approximately \$500,000 from an average total cleanup cost of \$4 million per site. For example, at a former industrial landfill in Cedar Rapids, Iowa, Rockwell International, the site owner, estimated that using a non-time-critical removal reduced cleanup costs by at least half (over \$2 million) while preventing groundwater contamination.

We believe that using non-time-critical removals rather than remedial actions could save the federal government and private parties from \$1.2 billion to \$1.7 billion over the life of the Superfund program. In addition, using both removals and remediation at entire sites can stop the spread of contamination more quickly than using remediation alone. The potential disadvantages of removals—that they can require more oversight from EPA and decrease the proportion of the cleanup costs states are required to cover—do not appear to outweigh the benefits.

However, limitations in CERCLA on the cost and time allowed for removal actions and inflexible funding arrangements are limiting EPA's use of non-time-critical removals. In addition, EPA's regions have varied widely in the extent to which they have used these actions. Some have used removals only once or twice. We will further discuss EPA's use of non-time-critical removals in a report to be issued later this year.

CONCLUSIONS

Mr. Chairman, on the basis of our work over the past few years, we believe the Superfund program could benefit from an increased emphasis on reducing the risks to human health and the environment more quickly and cost-effectively. In this time of fiscal constraint, we believe that EPA could achieve more cost-effective cleanups by basing its priorities for funding cleanups on the principle of risk reduction. Realistic land-use assumptions are also important for using Superfund resources to maximize the protection of public health and the environment. In addition, we believe that the increased use of EPA's removal authority could result in quicker, more cost-effective, and more focused actions at hazardous waste sites while better protecting human health and the environment. We applaud EPA's recent efforts to set priorities for the use of Superfund resources by emphasizing the health risks at sites and to develop realistic forecasts of sites' future uses. Sustained management attention and follow-through are needed to ensure that EPA's initiatives produce lasting changes.

That concludes my statement, Mr. Chairman. I will be glad to respond to any questions.

Mr. MCINTOSH. Great. I appreciate that. Thank you. Let us hear from Mr. Martin, and then I'll have questions for both of you after that. Mr. Martin, welcome, and appreciate you coming forward today. Would you please share with us your prepared testimony.

Mr. MARTIN. Thank you, Mr. Chairman. If I might, if I can submit it for the record and just briefly summarize.

Mr. MCINTOSH. Certainly.

Mr. MARTIN. The testimony, essentially, lays out what we conceive of is three different levels of issues that we think that you and the Congress must deal with.

At a very high policy level you're dealing with the issues of Superfund liability and with remedy selection that we think really deserve close attention on your part.

Obviously, from the negotiations that have been going on for an extended period of time, that is, in fact, occurring, and our research documents that that is the essence of what, at a policy level, you should be focusing on.

You then move down to an implementation level which EPA is responsible for. Unfortunately, as sometimes frustrated as Congressmen may be, there is little that they can do to actually run a program.

I know Mr. Mica has physically come to EPA once or twice to see us and talk to us about our operations, but even he can't run the program.

So as our office has looked at EPA over the years, we've issued many reports that detail the activities of EPA as far as actually implementing the program, and that is at two different levels, first, the EPA responsibility to perform an oversight role of cleanups that are ongoing, and second, the actual activities that EPA itself does.

We find EPA has a lot of problems implementing this program. We've documented them. Much of them are related in our testimony.

They do make improvements. In fairness to EPA, over the last several years, they have initiated a number of improvements to the program, and much like GAO's comment just made, it's very early in the process for us to tell whether those improvements are going to be successful.

Once again, it's a difference between a policy and actually implementing the policy. So with that, I invite your questions.

[The prepared statement of Mr. Martin follows:]

STATEMENT OF JOHN C. MARTIN  
INSPECTOR GENERAL  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE  
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,  
NATURAL RESOURCES AND REGULATORY AFFAIRS  
OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT  
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 8, 1996

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE. THE ROLE OF THE OFFICE OF INSPECTOR GENERAL IS TO PROVIDE INDEPENDENT AUDITS AND INVESTIGATIONS OF EPA ACTIVITIES. OUR AUDIT FOCUS IS TO EVALUATE HOW EFFECTIVELY AND EFFICIENTLY THE AGENCY IS CARRYING OUT ITS RESPONSIBILITIES. TODAY, I WILL DISCUSS THE RESULTS OF OUR AUDIT WORK REGARDING THE SUPERFUND PROGRAM.

- FIRST, I WILL PRESENT THE RESULTS OF A REPORT WE ISSUED IN NOVEMBER 1995 THAT TOOK A BROAD LOOK AT THE PROGRAM THROUGH CASE STUDIES OF THREE SITES. IN THESE STUDIES, WE IDENTIFIED BARRIERS TO TIMELY AND COST-EFFECTIVE CLEANUP.
- SECOND, I WILL PRESENT THE RESULTS OF SEVERAL RECENT AUDITS THAT IDENTIFIED PROBLEMS WITH EPA'S OVERSIGHT OF OUTSIDE PARTIES WHO PERFORM CLEANUP OF SUPERFUND SITES.
- AND LAST, I WILL DISCUSS SOME OTHER WORK THE OIG HAS UNDERTAKEN TO HELP IMPROVE SUPERFUND MANAGEMENT.

MR. CHAIRMAN, THE SUPERFUND PROGRAM IS VERY COMPLEX, WITH MANY ASPECTS TO EXAMINE. IN ADDITION, EPA MUST RESOLVE CONFLICTS RESULTING FROM THE DIVERSE INTERESTS OF THE MANY STAKEHOLDERS IN THE PROGRAM. FOR EXAMPLE:

- LOCAL RESIDENTS PRIMARY INTEREST IS THE REMOVAL OF THE CONTAMINATION. THIS MAY MEAN MOVING IT TO ANOTHER COMMUNITY WHERE THERE IS A LANDFILL OR TREATMENT FACILITY. THE LARGER COMMUNITY AROUND A SITE, SUCH AS THE COUNTY OR VARIOUS BUSINESS AND SPECIAL INTEREST GROUPS, MAY ALSO HAVE AN INTEREST IN THE SITE. THEIR CONCERN WOULD BE SUCH THINGS AS PROTECTING SOURCES OF EMPLOYMENT, REAL ESTATE VALUES, AND THE REPUTATION OF THE COMMUNITY.
  
- THE STATES SHARE MANY INTERESTS OF THE RESIDENTS AND THE LARGER COMMUNITY, BUT MAY HAVE ADDITIONAL INTERESTS IN CONSERVING STATE FINANCIAL RESOURCES AND ENSURING CONSISTENCY WITH STATE STATUTES, REGULATIONS AND POLICIES.
  
- POTENTIALLY RESPONSIBLE PARTIES, WHO MAY HAVE TO FINANCE AND CONDUCT THE SITE CLEANUP, ARE INTERESTED IN MINIMIZING THEIR FINANCIAL LIABILITY. THEY MAY ALSO HAVE OTHER CONCERNS REGARDING THEIR REPUTATION OR THEIR ABILITY TO CONTINUE BUSINESS.

-- OUTSIDE PUBLIC INTEREST GROUPS WANT TO INFLUENCE THE PROCESS TO PROTECT THEIR PARTICULAR SELF-INTEREST.

EPA MUST BALANCE THESE DISPARATE INTERESTS DURING ITS EFFORTS TO CLEAN UP SITES. IT MUST ALSO FUNCTION UNDER A MANDATED AND RIGID PROCESS ESTABLISHED BY LAWS AND REGULATIONS WHICH DO NOT ALWAYS PROVIDE THE FLEXIBILITY TO EASILY ADDRESS THE WIDE VARIETY OF CIRCUMSTANCES ENCOUNTERED AT SUPERFUND SITES. AS YOU KNOW, THERE ARE NO EASY SOLUTIONS TO THE MANY ISSUES THAT ARE CURRENTLY BEING DEBATED ABOUT THE PROGRAM.

#### **BARRIERS TO TIMELY CLEANUPS**

OUR MANDATE IS TO HELP ENSURE THE EFFECTIVE AND EFFICIENT OPERATIONS OF EPA'S PROGRAMS. CONSISTENT WITH THAT MANDATE, WE PERFORMED THREE SUPERFUND SITE CASE STUDIES TO PROVIDE AN IN DEPTH CHRONOLOGY OF THE HISTORY OF THESE SITES. WE SELECTED THESE SITES BASED ON RECOMMENDATIONS FROM EPA, THE STAGE OF CLEANUP, GEOGRAPHIC LOCATION, AND THE EXISTENCE OF SIGNIFICANT DELAYS IN THE CLEANUP. WE PROVIDED NO RECOMMENDATIONS IN THIS REPORT. OUR PURPOSE WAS TO ESTABLISH A BASIS THAT WE WOULD USE IN CONJUNCTION WITH OUR OTHER WORK TO DEVELOP A LONG-TERM AUDIT PLAN AND TO GIVE EPA BETTER INSIGHT INTO PROBLEMS THAT DEVELOP AT MAJOR SITES.

WE ARE DISCUSSING IT TODAY TO ASSIST IN YOUR DELIBERATION OVER THE VERY COMPLICATED AND CONTROVERSIAL POLICY ISSUES FACING THE SUPERFUND PROGRAM. FROM OUR WORK WE NOTED THAT A GREAT DEAL OF TIME IS SPENT IN NEGOTIATIONS WITH VARIOUS STAKEHOLDERS OVER LIABILITY ISSUES AND THE REMEDY SELECTION PROCESS.

THE LIABILITY ISSUE IS, WITHOUT DOUBT, ONE OF THE MAJOR POLICY ISSUES FACING THE CONGRESS TODAY. THE CURRENT SUPERFUND LEGISLATION MADE THOSE WHO CONTAMINATED A SITE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH THE CLEANUP. BECAUSE THE LIABILITY IS STRICT AND RETROACTIVE, COMPANIES CAN BE HELD LIABLE FOR SITE CLEANUP EVEN IF THERE WAS NO LAW PROHIBITING THE ACTIONS AT THE TIME OF DISPOSAL. LIABILITY IS ALSO JOINT AND SEVERAL, MEANING THAT EACH COMPANY ASSOCIATED WITH DISPOSAL AT THE SITE MAY BE HELD LIABLE FOR THE ENTIRE COST OF THE CLEANUP.

WITHIN THE GUIDELINES OF THE LAW, THERE ARE BASICALLY TWO WAYS IN WHICH EPA CAN FUND A CLEANUP: (1) IT CAN USE THE SUPERFUND TRUST FUND TO FINANCE THE CLEANUP, AND THEN SEEK RECOVERY OF CLEANUP COSTS FROM THE RESPONSIBLE PARTIES; OR (2) IT CAN PURSUE COMPANIES RESPONSIBLE FOR THE POLLUTION AND FORCE THEM TO FINANCE AND CONDUCT THE CLEANUPS. IN THE EARLY YEARS OF THE PROGRAM, EPA USED THE TRUST FUND TO FINANCE CLEANUPS TO A MUCH GREATER EXTENT THEN IT DOES TODAY. DIFFICULTIES IN COST RECOVERY FROM RESPONSIBLE PARTIES AND A CONCERN OVER THE PACE OF THE CLEANUPS RESULTED IN A CHANGE IN POLICY. IN 1989, EPA INSTITUTED

THE ENFORCEMENT FIRST APPROACH WHICH ENCOURAGES RESPONSIBLE PARTIES TO FINANCE AND CONDUCT THE CLEANUPS.

TO IMPLEMENT THIS APPROACH, THE AGENCY ENTERS INTO NEGOTIATIONS WITH RESPONSIBLE PARTIES TO OBTAIN THEIR COMMITMENTS TO DEVELOP A PLAN FOR THE CLEANUP AND THEN IMPLEMENT THE PLAN. HOWEVER, THIS APPROACH IS NOT WITHOUT CRITICISM. RESPONSIBLE PARTIES CONTEND THAT THE PRESENT LIABILITY DESIGN IS INHERENTLY UNFAIR BECAUSE IT IMPOSES CLEANUP COSTS WHICH MAY EXCEED WHAT THEY CONSIDER TO BE THEIR "FAIR SHARE." AS A RESULT, CLEANUP COULD BE DELAYED WHILE RESPONSIBLE PARTIES AND EPA NEGOTIATE THE EXTENT OF THE TOTAL LIABILITY AND THE ALLOCATION OF LIABILITY AMONG THE RESPONSIBLE PARTIES.

DURING OUR REVIEW WE SAW EXAMPLES WHERE EXTENDED NEGOTIATIONS OCCURRED OVER THE LIABILITY ISSUE.

-- AT A SITE IN PENNSYLVANIA, THE STATE NEGOTIATED WITH RESPONSIBLE PARTIES FOR OVER 21 MONTHS. HOWEVER, THESE NEGOTIATIONS PROVED UNSUCCESSFUL. EPA THEN TOOK OVER MANAGEMENT OF THE SITE, AND SPENT 8 ADDITIONAL MONTHS NEGOTIATING WITH RESPONSIBLE PARTIES. IN TOTAL, ALMOST TWO AND ONE HALF YEARS WERE SPENT CONDUCTING NEGOTIATIONS. THIS OCCURRED AT A SITE WHERE SAMPLING INDICATED EXTREMELY HIGH CONCENTRATIONS OF ARSENIC IN THE SOIL, GROUND WATER, AND SURFACE WATER.

-- AT A SITE IN UTAH, EPA AND THE STATE SPENT 16 MONTHS DECIDING WHICH WOULD TAKE THE LEAD IN CONDUCTING NEGOTIATIONS. ONCE DECIDED, THE STATE SPENT 12 ADDITIONAL MONTHS NEGOTIATING WITH THE RESPONSIBLE PARTIES. AGAIN, A TOTAL OF TWO AND ONE HALF YEARS PASSED WITH NO ACTIONS TO CLEAN UP THE SITE. THIS SITE WAS CONTAMINATED WITH TOXIC CHEMICALS.

ON A SITE BY SITE BASIS, IT IS CLEAR THAT LIABILITY NEGOTIATIONS CONSUME A LOT OF TIME AND DELAY COMPLETION OF THE SITE. HOWEVER, ON A NATIONAL BASIS, THE ENFORCEMENT APPROACH HAS BEEN HIGHLY SUCCESSFUL AS IT HAS RESULTED IN GETTING WORK STARTED ON SUBSTANTIALLY MORE SITES THAN IF THE TRUST FUND HAD BEEN USED EXTENSIVELY. THIS IS EXEMPLIFIED BY THE LARGE NUMBER OF COMPANIES WHO HAVE ACCEPTED THEIR RESPONSIBILITY AND COMMITTED OVER \$10 BILLION TO CLEANING UP SITES.

THE REMEDY SELECTION PROCESS IS SIMILARLY CONTROVERSIAL. CONFLICTING STAKEHOLDER INTERESTS HAVE DELAYED REMEDY SELECTIONS AND CLEANUP BY YEARS IN SOME CASES. LOCAL RESIDENTS AND STATE OFFICIALS WANT A SAFE, YET TIMELY, REMEDY AND THEY DON'T WANT THE WASTE TO REMAIN IN THEIR BACKYARD. RESPONSIBLE PARTIES USUALLY WANT THE LEAST COSTLY REMEDY. EPA'S GOAL TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT IS OFTEN COMPROMISED BECAUSE OF DELAYS RESULTING FROM ITS EFFORT TO RESOLVE THESE CONFLICTS.

HERE ARE SOME EXAMPLES TO DEMONSTRATE OUR POINT:

- AT A MARYLAND SITE, CLEANUP CAME TO A STOP BECAUSE LOCAL RESIDENTS AND CONGRESSIONAL REPRESENTATIVES OBJECTED TO EPA'S PLAN TO USE ON-SITE INCINERATION. ABOUT 7 YEARS PASSED WHILE EPA LOOKED FOR AN ALTERNATIVE REMEDY FOR CLEANING UP THIS SITE. WHILE THE ESTIMATED COST FOR THE NEW REMEDIAL ACTION IS LESS THAN THE ORIGINAL, THIS PROCESS SIGNIFICANTLY DELAYED THE OVERALL CLEANUP PROCESS.
  
- AT THE PENNSYLVANIA SITE, OBJECTIONS TO THE PROPOSED REMEDY DELAYED SITE CLEANUP. AGAIN THE PROPOSED REMEDY WAS ON-SITE INCINERATION. OBJECTIONS FROM RESPONSIBLE PARTIES, CONGRESSIONAL REPRESENTATIVES, STATE OFFICIALS, AND LOCAL RESIDENTS STOPPED THIS PORTION OF THE CLEANUP. EPA AND RESPONSIBLE PARTIES SPENT THE NEXT 2 YEARS SEARCHING FOR AN AVAILABLE OFF-SITE INCINERATOR THAT COULD HANDLE THE SITE WASTE.
  
- AT THE SAME SITE, THE INSTALLATION OF A POTABLE WATER LINE FOR RESIDENTS WITH ARSENIC CONTAMINATED WELLS WAS DELAYED APPROXIMATELY THREE YEARS. THE DELAY WAS CAUSED BY DISAGREEMENTS BETWEEN EPA AND THE LOCAL WATER AUTHORITY. THE LOCAL WATER AUTHORITY WANTED TO BUILD FOR FUTURE GROWTH; HOWEVER, EPA IS PROHIBITED FROM FUNDING COMMUNITY EXPANSIONS.

EPA MANAGEMENT HAS FOCUSED CONSIDERABLE ATTENTION ON THE ISSUE OF REMEDY SELECTION. BASED ON KNOWLEDGE DEVELOPED AT PREVIOUS SITES, GUIDANCE ON PRESUMPTIVE REMEDIES HAS BEEN ISSUED FOCUSING ATTENTION ON CLEANUP TECHNOLOGIES WHICH WORK. ADDITIONALLY, GUIDELINES HAVE BEEN DRAFTED FOR USE IN ESTABLISHING CLEANUP LEVELS FOCUSED ON FUTURE LAND USE. THESE STEPS ARE CLEARLY IN THE RIGHT DIRECTION. IN OUR OPINION, REMEDY SELECTION IS OR SHOULD BE A QUESTION RESOLVED ON BALANCE. CLEARLY THERE IS NEED TO PROTECT THE POPULATION AND ENVIRONMENT. BUT ALSO THE REMEDY NEEDS TO BE COST EFFECTIVE. NO STAKEHOLDERS INTEREST SHOULD BE IGNORED IN THIS PROCESS.

ON AN OVERALL BASIS WE BELIEVE THAT BOTH THE LIABILITY DESIGN AND REMEDY SELECTION PROCESS ARE THE KEY POLICY ISSUES FACING SUPERFUND. WE ARE AWARE THAT YOU ARE CONSIDERING A VARIETY OF ALTERNATIVE APPROACHES TO REINVENTING THE SUPERFUND PROGRAM. WE DO NOT HAVE ANY SPECIFIC RECOMMENDATIONS TO ASSIST YOU IN THE PROCESS BUT URGE CAREFUL CONSIDERATION OF THEIR IMPACT AS THEY WILL HAVE SIGNIFICANT AFFECTS ON ALL ASPECTS OF COMMUNITY LIFE NEAR THE SITES.

#### **EPA'S OVERSIGHT OF CLEANUPS**

CLEANUPS OF SUPERFUND SITES MAY BE CONDUCTED BY MANY PARTIES INCLUDING FEDERAL AGENCIES, STATE AND LOCAL GOVERNMENTS, AND PRIVATE COMPANIES WHO HAVE BEEN IDENTIFIED AS RESPONSIBLE

PARTIES. REGARDLESS OF WHO CLEANS UP THE SITE, EPA IS RESPONSIBLE FOR OVERSEEING THE ADEQUACY OF CLEANUP. IN THE LAST YEAR, WE HAVE ISSUED THREE REPORTS IDENTIFYING IMPROVEMENTS NEEDED IN EPA'S OVERSIGHT ACTIVITIES.

-- IN SEPTEMBER 1995, WE REPORTED THAT EPA'S POOR OVERSIGHT CONTRIBUTED TO SERIOUS PROBLEMS WITH THE QUALITY OF LABORATORY DATA ON DEPARTMENT OF DEFENSE CLEANUPS IN REGION 9. THESE PROBLEMS EVENTUALLY CAUSED REJECTION OF \$5.5 MILLION OF DATA AND CLEANUP DELAYS OF UP TO TWO AND A HALF YEARS FOR THE FIVE SITES REVIEWED.

-- IN JANUARY 1996, WE REPORTED THAT WHILE EPA AND THE BUREAU OF RECLAMATION HAD SIGNIFICANTLY REDUCED HAZARDOUS WASTE RISKS, THEY HAD NOT ADEQUATELY CONTROLLED COST AND ENSURED EFFICIENT CLEANUP IMPLEMENTATION. SPECIFICALLY THEY HAD NOT SHIFTED FROM MORE EXPENSIVE EMERGENCY TIME AND MATERIAL CLEANUP CONTRACTS TO MORE EFFICIENT FIXED PRICE CONTRACTS, WHEN PRACTICABLE. ADDITIONALLY, EPA AND THE BUREAU CREATED AN EXTRA LAYER OF GENERAL AND ADMINISTRATIVE EXPENSES AND EXCESS PROFIT BY ALLOWING THE UNNECESSARY USE OF SUBCONTRACTORS AND EPA APPROVED PAYMENTS WITHOUT REVIEWING ALLOWABILITY AND REASONABILITY OF COSTS. THIS RESULTED IN THE REGION UNKNOWINGLY REIMBURSING AN INELIGIBLE FINANCING FEE WHICH WAS INCLUDED IN A SINGLE LUMP SUM REQUEST.

-- IN MARCH 1996, WE REPORTED THAT EPA HAD NOT MONITORED THE QUALITY OF LABORATORY DATA AT A RESPONSIBLE PARTY CLEANUP SITE WHERE MORE THAN \$100 MILLION HAD BEEN SPENT ON STUDIES AND CLEANUP. AS A RESULT, DATA WAS OF UNKNOWN QUALITY. THE QUALITY OF DATA IS SIGNIFICANT SINCE IT WILL BE USED IN THE PROCESS OF MAKING PUBLIC HEALTH RISK ASSESSMENTS, DEVELOPING CLEANUP ALTERNATIVES AND REMEDIAL DESIGN.

IN THESE CASES, THE AGENCY HAS AGREED TO TAKE APPROPRIATE CORRECTIVE ACTION TO STRENGTHEN PROCEDURES.

#### **MANAGEMENT OF SUPERFUND PROGRAM**

OTHER RECENT AUDITS HAVE IDENTIFIED AREAS WHERE THE MANAGEMENT OF THE PROGRAM COULD BE IMPROVED. FOR EXAMPLE:

-- THE SUPERFUND PROGRAM HAS OVER 1,250 SITES ON THE NATIONAL PRIORITIES LIST. SUPERFUND PROVIDES A TECHNICAL ASSISTANCE GRANT PROGRAM TO ENCOURAGE COMMUNITY INVOLVEMENT IN THE SUPERFUND DECISION MAKING PROCESS. THROUGH SUCH GRANTS COMMUNITIES OBTAIN EXPERT ADVICE ON SITE EVALUATIONS AND CLEANUP ALTERNATIVES. OUR MARCH 1996, REPORT SHOWED, HOWEVER, THAT EPA HAD AWARDED ONLY 151 SUCH GRANTS SINCE 1988. THIS WAS DUE PRIMARILY BECAUSE OF INCONSISTENT IMPLEMENTATION AND PUBLICATION OF THE PROGRAM. AGENCY

OFFICIALS AGREED IN PRINCIPLE WITH MANY OF THE RECOMMENDATIONS CONTAINED IN THE REPORT.

-- IN INSTANCES WHERE POLLUTANTS WERE CONTAINED OR TREATED ON SITE, EPA IS REQUIRED TO REVIEW THE SITE EVERY 5 YEARS TO ASSURE THAT THE REMEDY CONTINUES TO BE EFFECTIVE. OUR MARCH 1995, REPORT ON THIS PROGRAM SHOWED THAT THE AGENCY DID NOT ALWAYS PERFORM THESE REVIEWS. IN THOSE CASES, EPA HAS NO ASSURANCE THAT THE REMEDIES REMAIN PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT. AT SOME SITES WHERE THE 5 YEAR REVIEW WAS PERFORMED, EPA IDENTIFIED SIGNIFICANT PROBLEMS THAT REQUIRED CORRECTIVE ACTION. IN RESPONDING TO THE REPORT, AGENCY OFFICIALS AGREED TO GIVE INCREASED ATTENTION TO THIS PROGRAM AND INDICATED STRENGTHENED GUIDANCE WOULD BE ISSUED TO IMPROVE ITS IMPLEMENTATION.

THE OFFICE OF INSPECTOR GENERAL HAS WORKED IN OTHER WAYS TO IMPROVE SUPERFUND OPERATIONS. IN 1993, EPA DEVELOPED 17 INITIATIVES TO IMPROVE THE PACE, COST AND FAIRNESS OF THE SUPERFUND PROGRAM WITHIN THE CONSTRAINTS OF THE CURRENT LAW. TO TEST THE INITIATIVES, THE AGENCY CONDUCTED OVER 100 PILOT PROJECTS.

WE WORKED WITH EPA IN REVIEWING THE IMPLEMENTATION OF THESE PILOTS, AND WE ISSUED 15 REPORTS EVALUATING THEIR EFFECTIVENESS.

OVERALL THE PILOT PROJECTS WERE GENERALLY SUCCESSFUL. SEVERAL PILOTS WE REVIEWED SIGNIFICANTLY REDUCED TIME OF THE CLEANUP AND ONE PILOT REDUCED THE COST BY \$250,000. WE WERE CONCERNED, HOWEVER, THAT SOME OF THE PILOTS APPEARED TO BE HAND-PICKED TO SUCCEED, AND VAGUE PERFORMANCE MEASURES ALLOWED FOR EASY ACCOMPLISHMENT. IN ADDITION, THE RESULTS FROM THE PILOTS WERE NOT ADEQUATELY COMMUNICATED TO ALL USERS. CURRENTLY, THE AGENCY IS IMPLEMENTING NEW SUPERFUND REFORMS WHICH INCORPORATE THE LESSONS LEARNED FROM THE 1993 INITIATIVES.

#### CONCLUSION

THERE IS NO QUESTION IN OUR MIND THAT THE SUPERFUND PROGRAM IS COMPLEX, HAS INHERIT BARRIERS, AND MANY MANAGEMENT PROBLEMS. AT THE SAME TIME, HOWEVER, CONTAMINATED SITES EXIST AND NEED TO BE CLEANED UP TO PROTECT OUR POPULATION AND OUR ENVIRONMENT. AS YOU CONSIDER THE FUTURE DIRECTION OF THE PROGRAM, CAREFULLY WEIGH THE BENEFITS AND CONSEQUENCES OF VARYING ALTERNATIVES. YOUR DECISIONS WILL HAVE GREAT IMPORT TO THE MANY STAKEHOLDERS LIVING AND WORKING THROUGHOUT THE COUNTRY.

THAT CONCLUDES MY TESTIMONY AND I AM AVAILABLE TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. MCINTOSH. Great. Thank you, Mr. Martin. I thank both of you for coming forward. I am fearful that the American public in general and certainly people like we had at the earlier panel will want us to do even more than wait and see how things go.

But, I think it's important that whatever we do here in Congress, we try to address the problems creatively and constructively and work with the agencies to do that.

Mr. CZERWINSKI, I wanted to ask you real quickly, you mentioned that EPA has a new policy of targeting its cleanups to the sites with the greatest risks to human health.

Does that apply to all of the sites that are on the list or only the new ones that they would be adding to the list?

Mr. CZERWINSKI. They're talking about the new sites that are basic cleanups. So it's not going back to the old sites where decisions have already been made.

Mr. MCINTOSH. Now, would it be worth the effort to go back and revisit those earlier decisions applying that criteria?

Mr. CZERWINSKI. There are a lot of sites that have already gone very far down the process, and they represent a substantial investment of time and money.

Our suggestion, when we were looking at this originally, was not to go back to those old sites because it's a commitment that they're already into, but from here on out let's at the very least start with adding the worth sites first.

Mr. MCINTOSH. They might be able to prioritize the additional activity.

Mr. CZERWINSKI. Yes. Absolutely, sir. And there is some qualitative ways they may be able to do that.

Mr. MCINTOSH. The second question I had for you was you had mentioned, I think, in your prepared statement, that only a third of the Superfund sites you reviewed posed current health risks.

Should we read into that the implication or the statement that the other two-thirds of the sites don't have a discernable human risk at this point?

Mr. CZERWINSKI. Sites fall into three categories, those that are current at risk, and absolutely, you have to work on those first.

Then, there are those that pose a risk in the future, and that's not to say that those that pose a risk in the future are going to be in all cases less risky than those currently, because if you let something slip, sometimes it could be worse. But generally, we ought to start with the current ones first.

Mr. MCINTOSH. And you mentioned there was a third category.

Mr. CZERWINSKI. Yes. The third one that under the site specific risk assessments are not required to be cleaned up. However, there are Federal and State standards that the sites have to meet, and they'll be cleaned up for those reasons.

Mr. MCINTOSH. Say that again so that I follow you.

Mr. CZERWINSKI. There are two factors that drive decisions on whether to clean up sites. One is the site specific assessment of risk. The second is the existence of standards that are global for cleaning up sites.

And the law requires that sites must meet the national and State standards in being cleaned up.

Mr. MCINTOSH. So even if there is no risk or potential future risk, once they're listed, they need to meet these global standards and be cleaned up?

Mr. CZERWINSKI. It's not a matter of no risk. It's a matter of level of risk.

Mr. MCINTOSH. OK. So there is always some risk or some potential risk in the future in all sites?

Mr. CZERWINSKI. That is correct.

Mr. MCINTOSH. OK. Thank you very much. Mr. Martin, I had a couple questions for you. Administrator Browner and other officials have recently testified over in the Senate that the Superfund Program did get off to a slow start, but now they're doing better in the administration.

I was wondering if you could share with us, I guess, what the basis of that claim is and whether you think that's an accurate reflection of the current level of decisions being made at all stages of the Superfund Program.

Mr. MARTIN. Mr. Chairman, I would not be in a position to be able to support the agency in its general statements like you're quoting the Administrator.

From things that we have looked at, as I said earlier, I think it's fair to say that this administration has introduced a number of reforms in the program, but some of them have only been introduced, well, certainly within the last year.

And it's very difficult to determine the extent to which those reforms will actually be effective. The other problem that the agency has, a more traditional one, is the extent to which its various regional offices actually implement any reforms that are developed at the national level.

So that's a matter that we constantly look at in the Inspector General's office as to the extent at which regional offices are moving ahead with the general plan that's announced in Washington.

So that's really all I can say about it so far because so many of the reforms are so new.

Mr. MCINTOSH. Was this chart supplied by your office?

Mr. MARTIN. No.

Mr. MCINTOSH. I guess it's one the committee staff has prepared. We have a necessity in this committee to make things clear about that.

Apparently, it demonstrates where the different new items are that have been initiated each year, how many sites have been cleaned up.

I noticed in the initial stages of listing a Superfund site and having a cleanup plan developed that there seems to be a dropoff in recent years in the number of initial sites, although there is an increase in the number, it's, kind of, a steady high number, of completions.

Is that because there are fewer sites out there or that the priorities have been shifted to completing them rather than identifying new sites?

Mr. MARTIN. Mr. Chairman, I'm just not familiar with the chart, and I cannot answer for the agency or any of their statistics. So if this came from them, I am just unfamiliar with it. I'm sorry.

Mr. MCINTOSH. Let me ask you another question, and that is we had heard from the Tielmanns at an earlier panel today, and are you familiar with EPA's operations there, and has your office done any inquiries into the management of the contractors in that situation, and if so, what is the status of your inquiry?

Mr. MARTIN. We are aware of the situation. We have been conducting an investigation of the activities at the site focusing on the activities that the Tielmanns described as the work done by the contractors who brought material to the site and dumped it on the site, as opposed to the cleanup of the site itself and the contractor's contractual responsibilities to EPA.

We're doing that investigation in cooperation with the U.S. attorney for the District of New Jersey. That is an active investigation right now, and I can't comment on it any further.

Mr. MCINTOSH. So the investigation remains in your office, or have you referred it to any other agencies?

Mr. MARTIN. No. It is our responsibility to investigate matters of that kind which is, essentially, a contractor—perhaps a fraudulent activity on the part of a contractor in dealing with the agency.

That is our responsibility. We are investigating it along with the U.S. attorney for the District of New Jersey.

Mr. MCINTOSH. Thank you. At the appropriate time I would appreciate it if you would make your report, when you do that to the appropriate officials in the administration, available to this subcommittee.

Mr. MARTIN. We'd be most happy to share with you the results of that.

Mr. MCINTOSH. I have no further questions for this panel, and I see all the other members are not here. I thank the panel members, and the subcommittee will stand in recess for 15 minutes for the completion of this and one more vote.

[Recess.]

Mr. MCINTOSH. The subcommittee will reconvene, and we will move forward with the fourth panel of witnesses. Is Mr. Charles Williams here? OK. If he arrives before we've concluded, we can add him to the panel. Is Ms. Florence Robinson available? Great. Thank you, Ms. Robinson, who is the cofounder of the Communities At Risk Network.

I appreciate you joining with us and also appreciate you staying with us through the previous parts of the hearing to testify today. Before we begin, would you please rise and please raise your right hand.

[Witness sworn.]

Mr. MCINTOSH. Thank you very much. Let the record reflect that the witness answered in the affirmative. Ms. Robinson, if you would please share with us your testimony.

**STATEMENTS OF FLORENCE ROBINSON, COFOUNDER, COMMUNITIES AT RISK NETWORK; AND CHARLES WILLIAMS, COMMISSIONER, MINNESOTA POLLUTION CONTROL AGENCY**

Ms. ROBINSON. Chairman David McIntosh and members of the subcommittee, thank you very much for allowing me to address this committee.

I'm a representative of the Communities At Risk Network, a national coalition of communities impacted by toxic waste sites.

I appreciate this opportunity to bring to the committee's attention some concerns of the major Superfund constituents.

Who are we? We are loyal, hard-working tax-paying American citizens who, through not fault of our own, find ourselves living on top of, adjacent to, or downwind or downstream from horrible contaminated sites.

We did not invite the dumpers into our communities, and we gain no benefit from the activities of the facilities that led to the contamination of our communities.

However, we have unjustly been placed as unnecessary risks and have paid and continue to pay the terrible costs of decline in property values, quality of life, and ultimate health and loss of life.

We have tried to work with Government in the past at great personal expense and sacrifice, but still we do not see any of our concerns addressed.

Instead, wealthy corporations have managed to convince Congress that Superfund is broken. Superfund may need some fixing, but it is not broken. It is working. Sites are being cleaned up.

Let's note that initially 39,086 sites were discovered and that 94 percent of these sites have received preliminary assessments.

Now, I'm not going to go into all the statistics of everything else that has been done and how many sites have been cleaned up, but a lot of questions have been raised at the fact that a lot of sites still are not cleaned up.

Let's note the nature of the sites. When groundwater becomes contaminated, you're not going to clean that up in 1 or 2 years. That takes a long time, and to be honest about it, the technology really isn't there to do a good job. So you can't expect those sites to be delisted as long as that groundwater is contaminated and is threatening important aquifers.

There is also concern about the studies. Well, I have concerns also about studies to do studies, but I will note that the Petro Processor site that one of the reasons that remedial action had to come to a screeching halt in 1987 was because of inadequate studies so that as they began excavating the waste, they released volatile chemicals into the air that made nearby workers sick.

Superfund is working, but it is hampered by a lack of money, political will of Government, and the immoral greed and lack of responsibility of corporations.

The current bill, H.R. 2500, makes a mockery of the Superfund concept and will be utterly devastating to millions of American citizens.

We citizens affirm that clean air, water, and land are inherent human rights. The Superfund process must follow its mandate to protect human health and environment at every step of the process, and citizens must have meaningful involvement throughout the process.

Our major concern is health. The present Superfund is already inadequate to address this problem, and H.R. 2500 camouflages it in obscure meaningless terms of risk instead of being driven by a policy of prudence that would truly protect human health and environment.

Citizens should be temporarily relocated when remedial actions will further expose them and permanently relocated when their sites cannot be cleaned up.

We do not believe in containment. Contained sites leak, and we do not wish to live with the specter of once again being gassed, drinking poison, or having waste flow through our streets.

Institutional controls do not work. There are already far too many subdivisions, such as the agriculture street landfill in New Orleans, where children cannot play in their own yards because of contamination.

Further, we do not want our communities to be permanent sacrificed zones. Our health problems have not been addressed. Contaminated people need to be given as much attention as contaminated soil and water.

Another major concern of citizens is the proposed capping of the NPL. This is absolutely insane. As long as waste sites exist they must be cleaned up. The longer they are ignored, the more expensive the cleanup becomes.

Unclean waste sites increase illness in the society. Senator D'Amato speaks of budget busters of the future. Wastesites that are not properly addressed are the real budget busters of America's future.

Why doesn't Superfund provide these protections and services? Because of lack of adequate funding. H.R. 2500 would reduce this already existing deficiency of funds even further.

The industries argue that they are being punished for something that was legal when it was done. The harmful effects of chemicals both organic and mineral have been known since antiquity.

These chemists were very careful to prevent exposure to themselves when they worked with these chemicals, then they allowed these same chemicals to be dumped in open pits, creeks, and ravines in our communities.

Here they volatilized into the air, ran off into the surface waters and leached into the soil and groundwater, thus exposing innocent people through the air they breathe, the water they drank and bathed in, and the food they ate.

Under no circumstances can these industries be considered innocent. To say that Superfund has failed because these people have spent a lot of time and money suing each other in an effort not to be held accountable is clearly ludicrous.

To drop liability because of this is tantamount to the criminal justice system dropping all charges against murders and rapists because of the time and money that must be spent bringing them to justice.

Two years ago there was a very sincere effort by all of the factions impacted by Superfund; that is, large corporations, small business, waste haulers, insurance groups, bankers, municipalities, environmental groups and Superfund communities who attempted to formulate a Superfund law that would meet everyone's needs not just the polluters'. The bills that are out now are disgusting to the people that have been damaged by the past and continuous callous acts of industry and Government.

We are dismayed at the opportunistic corporations who sat with us and agreed to basic principles and signed on to the passage of

this law but who, in 1995-96, have totally abandoned those principles.

What is even more distressing are you, elected Representatives of the people who endorse this bill. By doing so, you are turning your back on 11 million citizens who live on top of, adjacent to, or in the direct line of impact of this Nation's wastesites and the 74 million other Americans who live within 5 miles of toxic wastesites.

I do not believe that Congress will pass such a bad bill that is so deleterious to our citizens, and we will work to defeat the pretentious disparities inherent in this bill.

You can't stand on the high ground and muck around in the swamps at the same time. Unlike the people of Ruby Ridge, Waco, and the Montana Freemen, we have not isolated ourselves from America.

We very much consider ourselves citizens and expect the protection and services the Government should provide its citizens.

Rather, it is the Government that has isolated us from the society. It is the Government that has said through its actions or lack of them that we do not count as citizens, that through its actions perpetuates discrimination against more than 11 million Americans by deliberately and systematically denying us the right to as clean an environment as other Americans.

Thus, we have been condemned to a lower quality of life, increased health risks, brain damage to our children, and death. We citizens, in spite of these insults, are still willing to work with you toward a better future for our Nation.

Please heed us and work with us before all trust is destroyed. Let us all heed the native American saying, "Man did not weave the web of life. He is but a strand in it. Whatever he does to the web he does to himself." Thank you.

[The prepared statement of Ms. Robinson follows:]

## “REFORM OF SUPERFUND ACT OF 1995”

TESTIMONY BY:  
FLORENCE T. ROBINSON

Chairman David McIntosh, and Members of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs.

Thank you for allowing me to address this committee. I am a representative of: (1) The North Baton Rouge Environmental Association, a community-based group in Alsen, Louisiana, just north of Baton Rouge. I serve as the Secretary and Environmental advisor for this group. We are impacted by the Petro Processors Superfund Sites, and Devil's Swamp, which is contaminated and needs to be a Superfund Site. (2) The Louisiana Environmental Action Network, a state-wide umbrella organization composed of over sixty-five member groups. I am Vice-Chairman of the Board. (3) The Mississippi River Basin Alliance, a coalition of groups from the ten states bordering the Mississippi River, who are concerned about the quality or lack of it, of this historical and important National Resource. I serve on the Board of Directors. (4) The Communities At Risk Network, a National Coalition of communities impacted by toxic waste sites, representing over 33 states from Florida to Alaska. I am a co-founder of this group.

I have previously testified approximately seven times on Superfund before House and Senate Committees between October, 1993, and November, 1995. My position on the issues has changed little. Therefore, in the interest of brevity, I encourage you to look at my previous testimony which is now in the records of both the House and Senate.

I appreciate this opportunity to bring to the committee's attention some of the concerns of the **MAJOR** Superfund Constituents. Who are we? We are loyal, hard-working, tax-paying American citizens who through no fault of our own, find ourselves living on top of, adjacent to, or down-wind or down-stream from horrible, contaminated sites. We did not invite the dumpers into our communities, and, for the most part, we gained no **BENEFIT** from the activities of the facilities that led to the contamination of our communities. However, we have paid and continue to pay the terrible **COST** of decline in property values, decline in quality of life, and ultimately, the decline in health and loss of life.

We citizens have demanded a voice in those decisions that so intimately affect our lives. At great personal expense and sacrifice, we have paid our own way for this privilege. We have testified, written letters, sat on commissions, worked with EPA and Congress, and still we do not see any of our concerns addressed. Wealthy corporations have managed to convince Congress that Superfund is broken. Superfund is not broken. It is working. Sites are being and have been cleaned up.

Superfund is hampered by a lack of money, political will of government, and immoral greed and lack of responsibility of corporations. The current bill, H.R. 2500, makes a mockery of the Superfund Concept, and will be utterly devastating to millions of American citizens.

Our major concern is health. The present Superfund is already inadequate to address this problem, and so camouflages it in obscure meaningless terms of "risk." For example, the citizens of Pensacola directly impacted by the Escambia Wood Treating Site and the Agrico Site have been working on relocation. They have been and continue to be exposed to dioxin, dieldrin, benzyl pyrene, and arsenic, all of which are potent toxins, as well as many other toxins. EPA has agreed to relocate 66 families in Rosewood Terrace. However, it will not relocate the communities of Oak Park (33 households), Golding (57 households), and Escambia Arms Apartments (200 units). These communities are also adjacent to or between the two Superfund sites, have soil levels of the mentioned compounds above the acceptable levels set by EPA, and have and continue to be exposed to fumes from one or both of the sites. Why would EPA not relocate these communities as well as the many other communities that are exposed at unacceptable levels? **MONEY !**

Government has failed these citizens, who through no fault of their own have been horribly exposed. These citizens, and millions like them, need not to be just relocated, but given medical assistance (monitoring, diagnose, and treatment) to help improve their outcome. The location of many waste sites is in low income areas where people have no insurance, or very limited insurance. Because they are low income (the working poor) they do not go to the doctor for regular checkups and treatment. Consequently, by the time they realize they are sick, too often their illness has progressed beyond the easily treatable stage. The consequences are unnecessary suffering and all too often death of the exposed person. The cost, however, is spread to the entire society in the form of taxes to take care of those who can not take care of themselves, to provide for the children of victims, to educational systems for special education, and by increased insurance costs for everyone. Unclean waste sites increase illness in the society. Sick people are not productive citizens. Sick people become a tax burden to the society. Children who are sick do not learn in school. Children who are brain damaged from the many neurotoxins at waste sites do not learn in schools. Children who do not learn tend to drop out of school. School dropouts almost always become burdens to the entire society. Senator D'Amato speaks of "Budget Busters of the Future." Waste sites that are not properly addressed are the real "budget busters of the future."

Another major concern of citizens is the proposed capping of the NPL. This is absolutely insane. As long as waste sites exist, they must be cleaned up. The longer they are ignored, the more expensive the cleanup becomes. For example, Petro Processors, Inc. Superfund Site which is perched on the edge of a bayou and a swamp, was estimated to cost \$200 million dollars and 200 years in cleanup. It has extensive groundwater contamination, and sits atop a major aquifer that provides water for eleven

parishes (counties). Petro Processors is a pre-1987 site. The bayou that meanders through the Petro Site, and the swamp adjacent to it has become contaminated from Petro Processors and other industries in the area. Seven square miles of swamp waters, sediments, and biota are contaminated. The degree of groundwater contamination at this time is not known. What will be the cost of cleaning up this very productive swamp. People earn their livelihoods from fishing (crawfish, catfish, others) in this swamp. Others lessen the cost of living on their meager incomes by hunting and fishing in this swamp. What will be the costs of cleaning up this site, and who will pay the bill if (1) industry is removed from liability for pre-1987 sites, and get rebates on whatever cleanups they do, and (2) a cap is placed on the NPL.?

Can the citizens depend on their states cleaning up the sites? Consider that in the last fiscal legislative session in Louisiana (1994), legislators defeated a bill that would have placed a tax on hazardous waste. The tax collected was to be placed in a state Superfund Program for cleaning up the states more than 1000 hazardous waste sites.

Consider the case of Broussard Chemical Co., in Vermilion Parish, LA. In March of 1996, EPA estimated the costs of an emergency removal at \$1,000,000. Since then, as a result of numerous anonymous tips, waste from Broussard Chemicals has been turning up all over town in tanks, drums and warehouses. This includes many huge storage tanks of Agent Orange, barrels of solvents, highly acidic wastes, DDT, and styrene, among other things. Some of these wastes have been vented into the atmosphere, and some was being vented into Vermilion Bayou, which empties into Vermilion Bay, affecting major crab, oyster beds, and other fishing resources. What will be the cost if those fishermen who earn their living fishing Vermilion Bay are banned from fishing because of contamination? Downstream from the dumping the bayou is used to irrigate rice fields which also provide crawfish in the off season. Groundwater in the area of the site is contaminated and families living in the area are already being provided with drinking water. Who is paying this cost? Unfortunately, these families had already been exposed. What will be the ultimate costs of their exposure? Incidentally, Broussard Chemical is bankrupt.

And what of state government? The Louisiana Department of Environmental Quality knew of the ground water contamination, and the deplorable condition of the site. In spite of that, they recently issued a new permit to John Broussard, the owner of Broussard Chemicals, to operate an alleged ethylene glycol recycling facility called Anti-freeze Inc. This same LADEQ has also continued to issue operating permits to Rollins Environmental Services in spite of their contamination of PCBs in Devil's Swamp, and in spite of extensive ground water contamination that has migrated off-site from this facility. Is it no wonder that citizens take a very dim view of States being designated in charge of Superfund?

Despite our limited resources, we citizens have found opportunity to come together, discuss Superfund, and formulate a broad set of principles on which we agree. This **"Citizens Platform For Superfund Reauthorization"** has been previously submitted

in Superfund Testimony. I will briefly summarize the main tenets of this broad set of principles and indicate its relationship to HR2500.

### **PREAMBLE**

**Clean air, water, and land are inherent human rights. The Superfund Process must follow its mandate to protect human health and environment at every step of the process. Citizens must have meaningful involvement throughout the process, and all sites must be cleaned up in a timely, equitable and just manner**

### **PART I: FUNDING AND LIABILITY**

There are currently more than 32,000 recognized CERCLIS sites and 1,300 Superfund sites. Many of the sites are in communities that are impacted by more than one CERCLIS or Superfund site, and/or numerous RCRA facilities. We residents of the Superfund Communities have two major concerns: (1) That the existing sites be cleaned up speedily and effectively, which demands the availability of adequate funds, and (2) That **NO MORE SUPERFUND SITES BE CREATED IN OUR COMMUNITIES.** We recognize that strong liability laws must be retained as a deterrent to corporate irresponsibility. Consequently, we strongly advocate the retention of the "site-specific polluter pays principle and the existing Superfund Law of "Strict, Joint and Several, and Retroactive Liability." We feel that only this will provide enough funds to continue cleanups at the current level. Clearly, the HR2500 proposal that drops liability for pre-1987 sites and reimburses polluters for future funds spent on cleanups is contrary to this principle and our goals of a clean America. Instead of dropping financial responsibility, that financial responsibility needs to be increased to provide the level of cleanups necessary, and the health services to citizens that are needed.

### **PART II: CLEAN UP STANDARDS AND REMEDY SELECTION**

The ultimate goal for any cleanup should be to restore the environment to the way it was prior to the contamination, while continuing to protect the community from further exposure. Many communities with contaminated sites are concerned that their communities will continue to be national sacrifice zones that are either not cleaned up at all or not thoroughly cleaned up. There also is considerable justified concern that inequities exist between poor and People of Color communities and wealthier White communities, relative to the speed, effectiveness, and choice of permanence of clean up. Also, the cleanup process itself has the potential to be hazardous to the community. Therefore, we advocate that a national standard for all Superfund site cleanups should be set, and that standard should be background. Communities must not be sacrificed during remediation, and polluters must be liable for natural resource damage.

H.R. 2500 purports to be a health-based bill and it places great emphasis on "objective and unbiased" risk assessment in establishing cleanup standards. This concept is seriously flawed. Risk assessments are suppose to provide "scientifically objective and unbiased estimates and characterization which neither minimize nor exaggerate the nature and magnitude of risks to human health and the environment." Where is the science that can do this? Where are the scientific studies necessary to provide truly objective and unbiased estimates? They simple do not exist. These risk assessments will determine how many excess cancers will be produced in a group. The standard stated in H.R. 2500 is a range of  $10^{-4}$  to  $10^{-6}$ . This means that the exposure of a population at a certain concentration can be expected to result in 1 out of 10,000 to 1 in a million people in the exposed population getting cancer from this chemical.

In the first place, what human has the right to determine that any number of "excess" deaths is acceptable? Secondly, other more immediate health effects are not even considered. Mr. Boehlart, addressing previous testimony by me says that these concerns are addressed, but I do not see them. It must be stated in very clear language that total health protection is afforded. Thirdly, such studies are based on laboratory studies which do not even begin to approach the reality of exposures in a Superfund Community.

### **PART III: CITIZEN INVOLVEMENT**

The major stakeholder in the Superfund process has been denied meaningful participation and input in the decision making process of Superfund. This stakeholder is the resident who lives or works near the Superfund site, is impacted by it, and must live with the results of the process. Human life and dignity have been devalued. This problem of the lack of participation by the affected community must be corrected. Public participation needs to come earlier, resources need to be provided to the community to effectively participate and communities need to be given access to and decision making power regarding their sites. **THE ENTIRE PROCESS, FROM BEGINNING TO END, MUST INCLUDE COMMUNITY PARTICIPATION.** One of the clearest challenges has been getting information out to communities about contaminated sites in their area and devising a meaningful role for and involvement of communities in the decision making process. We therefore advocate that a method must be devised that will provide for adequate education of citizens relative to their sites. Tag grants are a beginning, but they require an already educated community to get them. Residents must be given the legally enforceable right, from beginning to end, to participate and to intervene in the decision making of the Superfund site in their area, including the right to block settlement between EPA and PRPs and the Record of Decision. Site specific advisory boards composed of affected people that live or work in the zone of highest exposure should be established. The members of this board will be elected by the citizens in the zone of highest exposure by the democratic process. When citizens must be permanently relocated they should receive replacement value for their homes and the costs of relocation, rather than just the "fair market value."

H.R. 2500 establishes a Community Assistance Board. The community assistance groups described in H.R. 2500 are little more than public relations boards. Further, the composition of the board will result in the truly affected citizens input being too diluted. We especially have problems with the inclusion of local government on this board. These are the same bureaucrats who rezoned our rural and residential communities "industrial." Who allowed some land developer to build subdivisions on contaminated land. Who built schools and playgrounds and nursing homes on contaminated land. Who constantly cut deals with the polluters in the name of economic development that allow them to continue poisoning our communities. They don't live in our communities, they don't know or understand the conditions that truly exist, and they don't care about our people. In short, H.R. 2500 gives only lip service to Community Participation.

#### **PART IV: HEALTH**

The paramount goal and overarching concern of the entire Superfund process is the protection of Human health and environment. We citizens, who live near Superfund sites, also feel that health is the most often neglected or ignored goal of Superfund. "Cost-effectiveness," and "technologically feasible" seem to take precedence over health. Decisions (risk assessments) are made about potential health effects in the absence of adequate data. The health agency, ATSDR, created to examine the issues of toxic poisoning of communities from Superfund sites, has been insensitive to the concerns of the communities, has not met their needs, and has conducted studies that were scientifically flawed and "inconclusive by design." Citizens continue to pay the cost of Superfund with loss of property values, degradation of their quality of life, and most costly of all, loss of their health, and loss of beloved friends, neighbors, and family members. Further, in many of the communities most affected by Superfund sites, there is inadequate or no access to proper medical attention, proper housing, good nutrition, and other social and educational factors, all of which exacerbate the exposure to toxic chemicals. Consequently, we advocate the establishment of specifically designated medical units for each Superfund Community that will monitor, diagnose, and treat the citizens of that community in the hopes of achieving better health outcomes. A coordinated interagency offensive against ancillary factors must be launched in Superfund communities that will mitigate the effects of the contamination on the community. Also, because of the huge data gaps and the lack of science in risk assessments and risk management, comparative risk studies and risk assessments are to be eliminated.

#### **PART V: HAZARD RANKING SYSTEM AND SITE PRIORITIZATION**

**All sites that endanger present or future public health and the environment must be cleaned up.** To understand the full impact of pollution of people, their communities, and their environment, we must address the ecological integrity of ecosystems. By this process we advance the issues of Environmental Justice in national strategies. Many sites should be on the NPL but are not. Some factors responsible for this are lack of federal and state resources, unresponsiveness of agencies to citizen's complaints, inadequate testing of the site to actually determine

the extent of the contamination and racism and classism. While the majority of contaminated sites are located in communities of color, these are not the sites which appear on the National Priorities List for cleanup. The current structure of the hazard ranking system does not take into account the true exposure of the community or the potential health effects and allows for a level of discretion which privileges sites with forceful and enfranchised communities. Furthermore, once sites get on the NPL, the sites in communities of color are not the sites which actually get the services they need or get cleaned up.

The current hazard ranking system does not account for either the variety of contaminants to which people in the community are being exposed nor does it account for the history of their exposure or the factors that exacerbate their exposure. Therefore, we advocate that all sites that impact the same population will have their individual scores added together for a ranking for the entire area. All pathways and sources of exposure and factors that exacerbate those exposures must be considered. The threat of exposure and potential negative health and environmental effects should be the primary factor in determining the rank for a site, not the number of people that comprise the affected community nor the lack of PRPs. Finally, there must be **no maximum cap on the number of sites to be listed on the NPL. As long as waste sites exist, there must be a program to address these site.**

H.R. 2500 again relies on "risk," a very unscientific and flawed concept, and convenience to polluters by putting a cap on the number of sites that can become NPL. This is the "Maybe if we ignore it, it will go away bill." But these toxic sites will not go away, and citizens can not rely on their states to pick up the slack.

#### **PART VI: THE ROLE OF TRIBAL AND STATE GOVERNMENTS**

The major concern of citizens is that states and tribal governments lack the resources and the political will (states) to adequately handle Superfund. We advocate that no state be allowed to take over Superfund without clearly demonstrated adequate resources and know-how. If a state takes over Superfund, it may not weaken national standards or lessen public participation, and citizens must always have recourse to appeal to the Federal Government for oversight. The Federal Government should enter into cooperative agreements with Tribal Governments and assist them in development and operation of a Superfund Process.

#### **VII. GREENFIELDS**

Citizens strongly feel that their communities should not be made **PERMANENT SACRIFICE ZONES** by the cleanup of Superfund sites to a lesser standard, and their redevelopment to industrial sites. We therefore insist that all sites be cleaned up to background level, thus increasing that communities options for land use. Any decision to redevelop a Superfund site to an industrial site must have the full consensus of the community.

H.R. 2500 talks of "least cost" measures and economic redevelopment. These will only lead to permanent BROWNFIELDS (i.e., capped sites), and more unwelcome industry in our communities.

#### VIII. FEDERAL FACILITIES

All of the above provisions shall apply to Federal Facilities.

Two years ago there was a very sincere effort by industry, bankers, insurance groups, National environmental groups and citizens who are impacted by Superfund, to formulate a Superfund Law that would meet everyone's needs, not just the polluters. The bills that are out now are disgusting to the people who have been damaged by the past and continuing callous acts of industry and government. We are dismayed at the "opportunistic" corporations who sat with us, and agreed to basic principles, and "signed on" to the passage of this law, but who in 1995-96, have totally abandoned those principles. These corporations clearly do not have the "good of the country" in mind, but only the maximization of their own profits at the expense of the American people. What is even more distressing are you elected representatives of the people, who endorse this bill. By doing so, you are turning your back on the eleven million citizens who live on top of, adjacent to, or in the direct line of impact of this nation's waste sites, and the seventy-four million other Americans who live within five miles of a toxic waste site. By supporting this bill, you are turning your back on fiscal responsibility and balancing the budget, economic development, on decency, ethics and morality. In short, you are turning your backs on America's future. I do not believe that Congress will pass such a bad bill that is so deleterious to our citizens, and we will work to defeat the pretentious disparities inherent in this bill. You can't stand on the high ground and muck around in the swamp at the same time.

Unlike the people of Ruby Ridge, Waco, and the Montana Free Men, we have not isolated ourselves from America. We very much consider ourselves citizens and expect the protection and services a government should provide its citizens. Rather, it is the government that has isolated us from the society. It is the government that has said through its actions or lack of them, that we do not count as citizens. That through its actions, perpetuates discrimination against more than eleven million Americans, by deliberately and systematically denying us the right to as clean an environment as other Americans. Thus we have been condemned to a lower quality of life, increased health risks, brain damage to our children, and death.

We citizens, in spite of these insults, are still willing to work with you toward a better future for our nation. Please heed us, and work with us, before all trust is destroyed.

Mr. McINTOSH. Thank you very much for joining us today. Our second witness on this panel has arrived, Mr. Charles Williams. Would you please rise?

[Witness sworn.]

Mr. McINTOSH. Thank you very much. Let the record show the gentleman answered in the affirmative. Mr. Williams is the commissioner of the Minnesota Pollution Control Agency. I appreciate you traveling today to be with us, and would you please share your testimony with the committee today.

Mr. WILLIAMS. Thank you, Mr. Chairman, and I am honored to be asked to testify. We, in Minnesota, have a very aggressive Superfund program and a program that has a record of aggressive cleanup.

I have submitted written testimony, so I'm not going to go through that in detail. I do want to establish my background a little bit because it will preface some comments that I'll make later as I testify.

In 1991, Governor Carlson appointed me to head the agency basically that's responsible for the environmental policy and regulations on air, water, solid and hazardous waste, and contaminated site cleanup.

Previous to that, I served 4½ years at the Western Lake Superior Sanitary District in Duluth at the western end of Lake Superior that's responsible for wastewater treatment and solid waste management for a 500-square-mile area at that end of Lake Superior, and I served as the executive director.

Previous to that I spent 20 years in the private sector, most of that working for a reserve mining company at the mining site up in Babbitt, MN, and that's, kind of, where the blacktop ends close by the BWCA, which I think you probably are all aware of where that is lately.

I have been on both sides of this regulatory envelope for much of my career, the last 10 years being in the public sector.

So my perspective on regulation and the process of how these regulations are applied probably is a little bit different than others, and I'm more than happy to share that perspective with you. Since working for Governor Carlson, we've had an opportunity to put some of the reforms into place.

But there is only four points that I want to reiterate that I submitted in my written testimony as suggestions to the committee as it considers and deliberates what to do with the Federal Superfund.

Our first suggestion, and we feel very strongly, that the Sates need to run the programs. The State has never been able to get the delegation or the authority to run Superfund from the Federal Government, and we have a history of running the program better than the Federal agencies do in Minnesota.

We have taken the authority for all of the Federal programs that the EPA will allow us to take, but Superfund is one of the programs that we have not been able to get control of and run as a State program.

There are a couple of others, and I'll save those for a later date, but we think it's important because, especially with a State like Minnesota, we just have a better track record.

Eighty percent of our cleanup dollars go to cleanup in Minnesota and not to attorneys, and I think that's a significant and a positive step in the right direction, and we've had a historical record with that.

We also believe that as you deliberate the reauthorization of Superfund that State applicable standards need to apply.

And it's important that a State like Minnesota, who has such a rich resource in water with the reputation for 10,000 lakes, there is actually 15,000, with the Mississippi River, the Minnesota River are major watersheds in our State, and we work hard and the citizens charge us and expect us to be protective of the groundwater and the surface water in our State.

So in some cases, the Federal standards would be much lower or much more relaxed than what the State standards would be, and we do not want to lose that ability to custom make, because every State has their own priorities.

We also think that it's important to think carefully about allowing preenforcement review or challenge before a cleanup activity actually takes place.

We think that just adds or will have another segway to add to delay in getting cleanups in the Superfund Program.

The last suggestion we have is we have a strong commitment to joint and several liability, the polluter pays principle.

We feel, and as I've talked about this with my staff and asked them what is the single reason—if you were asked a question, what's the single reason for the success of the Minnesota program, it is that piece of it that has enabled us to bring parties to the table and sit down and try to work with them to work out a cleanup plan for those folks that contributed.

But the second position we take if we're not successful is that we're going to do the cleanup. We'll get the cleanup done to protect the environment in the State of Minnesota, and then we'll come to the table and decide what your share of that cleanup cost is going to be. And that's a significant statement relative to that program.

Now, I'll conclude my remarks, my formal remarks. I'll be happy to stand for questions, Mr. Chairman.

[The prepared statement of Mr. Williams follows:]

**Testimony of Charles W. Williams  
Commissioner  
Minnesota Pollution Control Agency**

**Before the House Subcommittee on  
National Economic Growth, Natural Resources and Regulatory Affairs**

**Topic: Superfund Reform  
May 8, 1996**

**INTRODUCTION**

Good afternoon, Mister Chair and Members of the Subcommittee. I am Charles Williams, Commissioner of the Minnesota Pollution Control Agency (MPCA) and I am honored to come before you today to talk about the Superfund Program.

Since Minnesota's Governor, Arne H. Carlson, appointed me to this position in February 1991, I have lead the MPCA in its efforts at the state level to administer environmental policy and regulations on air, water, solid and hazardous waste and contamination site cleanup. I previously served as executive director of the Western Lake Superior Sanitary District and as a Mechanical Superintendent for Reserve Mining Company, where I worked for 20 years.

Today, in the short time I have before your subcommittee, I would like to touch on a number of areas related to Superfund which we have experienced in Minnesota. These include our successful record on handling cleanups, innovative approaches we have developed and implemented and some recommendations related to the reform of the federal Superfund program.

**BACKGROUND**

With respect to federal Superfund sites, Minnesota has worked, or is working today with the U.S. Environmental Protection Agency (EPA) on enforcement and fund-financed activities at 44 sites listed on the National Priorities List (NPL). The MPCA is the lead agency for most of the investigation and cleanups at the federal Superfund sites in our state. Of the 44 NPL Sites, 25 have completed remedial actions, four are being addressed under our state's landfill cleanup program and the remaining 15 sites are in process with clean-up actions underway at all of these sites.

In addition to the sites addressed under the federal program, Minnesota has completed, or is working on, an additional 145 sites under the state's traditional Superfund program. Some of these sites would have scored high enough to be placed on the NPL but as a

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result of the effectiveness of our state program, we have taken full responsibility for these sites and completed the required work.

I hope that what we have learned in Minnesota related to the cleanup of contaminated sites can be helpful for you in your reform efforts. Our experiences have taught us a lot and driven us to find innovative solutions to some of the more difficult and persistent problems.

### **INNOVATIVE PROGRAMS**

I would like to highlight some of these innovative programs. Last fall I had the honor to participate in a kick-off event for the XL Project at the White House. The XL Project, which stands for Excellence in Environmental Leadership, supports regulated parties that demonstrate excellence and leadership in protecting the environment and who are willing to undertake new initiatives that go beyond the existing requirements of state and federal law. In exchange for their superior environmental performance, these parties will receive increased operational flexibility and reduced environmental management costs. Minnesota is one of just eight states with XL Pilot Projects in various areas of environmental responsibility, and we are proud to be the only state approved to manage these projects at the state level. We are currently looking at bringing some Superfund issues into the process with one company that the MPCA is working with.

Another area of innovation was Minnesota's early entrance into the area of voluntary investigation and clean-up activities. The MPCA has assisted voluntary parties at 650 sites since our state legislature created the Land Recycling Act in 1988. Our VIC program, which stands for Voluntary Investigation and Cleanup, provides liability releases for voluntary parties. These releases are provided upon completing clean-up activities at a site or conducting sufficient investigation to demonstrate that the activities that they propose for the site will not associate them with the release of contaminants that have occurred or interfere with future clean-up activities at the site. The program has been very successful in returning "brownfield sites" back to productive use and enhanced Minnesota's redevelopment efforts. We continue to work on improving the program and are working actively with all the different players in the process to continue to move the program forward. Amendments to Superfund which provide states with additional support in the voluntary investigation and cleanup arena are greatly appreciated.

A third area of innovation that Minnesota has undertaken has removed closed permitted sanitary landfills from the Superfund program. Minnesota made history in June 1994 by becoming the first state to create a clean-up program for old, leaking landfills. The

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Landfill Cleanup Program places closed landfills under the responsibility of the state for all postclosure maintenance requirements. We identified that the Superfund “polluter pays” concept did not work well for most sanitary landfills. At these landfills, contributors of industrial waste looked for ways to spread their liability and Superfund clean-up costs to other responsible parties. Some of these industrial-waste contributors threatened to file third-party lawsuits against municipalities and small businesses. The program had broad-based support by local Chambers of Commerce and other stakeholders. The costs of the program are covered by higher solid waste fees on commercial solid waste, state bonding and use of existing funds designated for addressing landfill issues.

### **FEDERAL RECOMMENDATIONS**

That is a summary of some of our accomplishments and our efforts to find innovative approaches to addressing problems and more effectively protect the environment. Based on that experience, I would like to leave with you four recommendations relative to Superfund reform which I know would help Minnesota in completing its work to cleanup the remaining contaminated sites in the state.

First, authorize states to implement their state programs in lieu of the federal program. Authorization should be granted to states that demonstrate their ability to carry out the objectives of the federal program through the implementation of the state program. Minnesota has had the privilege to participate in a Deferral Pilot with EPA Region 5, where this concept is being tested. Under the pilot, Minnesota has full responsibility for all decisions at 13 NPL sites without oversight by EPA. The state is being evaluated on whether we meet milestone dates, the quality of the remedies we select and the level of community involvement in the decision-making process. So far both Minnesota and EPA Region 5 are pleased with the results of the pilot. We have recently completed a Record of Decision for one site where a Community Work Group actively participated in the process to address the cleanup of soils at the site and is now working on the next phase involving sediment contamination in the river that borders the site. The presence of a single regulatory authority at the site has simplified the process for all parties involved and has enabled EPA Region 5 to focus their efforts on other sites, thereby increasing the number of sites being moved forward at any given time. We believe that authorization, where states implement their own laws in lieu of the federal law, will ensure continuing innovations to improve the clean-up effort.

Second, allow use of state applicable standards at federal Superfund sites. All states are not identical and because of this diversity, state standards have been developed that

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reflect a particular state's circumstances. Minnesota, the Land of 10,000 Lakes, places a high value on this resource. We have a tourist industry that thrives around this resource, which we work hard to protect. The effort to protect our lakes is supported by the citizens of the state through their participation in the standards-setting process. These standards are applied consistently across the state, and we see no justification for holding NPL sites to a lower standard.

Third, do not change the prohibition on pre-enforcement review in the law, thereby allowing clean-up decisions to be challenged in court. A major focus of Superfund reform is to implement an effective process for making clean-up decisions. Success in this effort will preclude the need for pre-enforcement review. Allowing pre-enforcement review presumes that the process is flawed and we need the courts to correct the problem. Two complaints about the Superfund Program is that it is too slow and it has high transactional costs. Allowing pre-enforcement review will delay cleanups and increase transactional costs. When the public health and degradation of the environment are at stake, we need to use approaches that are more effective in resolving disputes than turning to the judicial system. The preemption of pre-enforcement review is an effective tool in encouraging all parties to come to the table to develop a clean-up plan that addresses all concerns in an equitable manner. It is this approach that is one of the reasons for Minnesota's success.

Fourth, do not remove the requirement that the parties who contributed to a contaminated site need to participate in the cleanup. This has been a key element of Minnesota's program and another reason for our success. In Minnesota, approximately 80 percent of the cost for remediating traditional Superfund sites has come from responsible parties. This does not include clean-up activities by voluntary parties which would significantly increase this percentage. The use of retroactive liability has been characterized as unfair...but how fair would it be to now reward those who did not step forward to address their contamination problems when many good corporate citizens have already taken action to address contaminated sites at a significant cost. This does not mean going after Boy Scout Troops and senior citizens that may have disposed of materials at a Superfund site.

We need to apply common sense and good processes to appropriately allocate costs and address orphan shares. As Superfund reform in this area is developed, please remain cognizant of any costs that would be passed on to the states. State resources for these activities are limited and unfunded mandates are difficult for states to address. In Minnesota, retroactive liability also encourages voluntary cleanups because of the option for voluntary parties to recover some of their costs after the site is cleaned up. We do not

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have evidence that this type of recovery action has taken place, but we hear it presented as a consideration when voluntary parties discuss entering the program.

### **CONCLUSION**

Again, thank you for inviting me to share with you the lessons we have learned in Minnesota. Reauthorization of Superfund is very important to Minnesota and all states in general. I look forward to working with the subcommittee and our own Minnesota delegation as you work to complete this reform effort. Thank you; and I would be happy to answer any questions you may have.



## OVERVIEW: The Minnesota Landfill Cleanup Program



Minnesota Pollution  
Control Agency

January 1996

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**M**innesota made history in June 1994 by becoming the first state to create a clean-up program for old, leaking landfills. This fact sheet, prepared by the Minnesota Pollution Control Agency, gives a brief overview of the history of solid-waste (garbage) management in Minnesota and the development and features of the Landfill Cleanup Program.

**Why does Minnesota need a clean-up program for landfills?**

Past garbage disposal practices, in Minnesota and elsewhere, have created environmental and public health threats. Today, these threats include contaminated ground water, uncontrolled landfill gas and general degradation of the environment.

Ground water in the soil and rock beneath the earth's surface is often tapped for drinking-water wells. In Minnesota, 75 percent of the people use ground water for drinking and cooking. At a landfill, ground water can become contaminated when rain and melted snow trickle through the garbage, mixing with the waste and carrying chemicals down to the ground water.

Decomposition of garbage also creates gases. One of these gases, methane, can be explosive in confined spaces. Methane from a landfill

can create a threat to public safety, for example, by moving out of the landfill and into the basements of nearby homes.

**What is the history of garbage disposal in Minnesota?**

Until the late 1960s, most Minnesota garbage was disposed of in some nearby dump along a river bank, or in a wetland or abandoned quarry. Periodically, these dumps were burned.

The first solid-waste rules, regulating the management of household and business garbage, were developed in the early 1970s, based on the environmental wisdom of the times. Management in those days focused on location, controlling blowing litter and applying daily cover over the waste. The effects of garbage disposal on the environment were not well understood at the time.

In 1980, the MPCA began sampling the ground water under 61 permitted landfills. The agency was checking for volatile organic compounds (chemicals found in solvents and other products) in monitoring wells at these landfills. The MPCA discovered that the ground water at 60 of the 61 sites had detectable levels of some of these manufactured chemicals.

### History of Garbage Management in Minnesota

- Pre-1969** Open dumping, typically on environmentally sensitive land.
- Early 1970s** First solid-waste rules focus on aesthetics (litter, open burning ban, daily cover), location and operations.
- 1980** Ground-water monitoring program sampled for volatile organic compounds.
- 1983** Superfund program created to clean up contaminated sites.
- 1988** Rules adopted to require garbage disposal in lined containment areas.
- 1991** MPCA proposed landfill cleanup program.
- 1994** Landfill cleanup legislation enacted.



In 1983, the Minnesota Legislature created the state Superfund program to clean up contaminated sites, and 62 landfills with documented contamination were placed on the new Superfund list.

Minnesota's Superfund Program is a useful clean-up tool for industrial sites and for those landfills containing mostly industrial hazardous waste. However, the Superfund "polluter pays" concept did not work well for most landfills, where a large portion of the waste came from small businesses and households.

At these landfills, contributors of industrial waste looked for ways to spread their liability and Superfund clean-up costs to other "responsible" groups. Some of these industrial-waste contributors threatened to file third-party lawsuits against Minnesota municipalities and small businesses. Facing potential bankruptcy, many of these smaller parties appealed to the governor and their legislators for relief. In 1994, Governor Arne Carlson proposed a funding mechanism for a clean-up program, supported by local Chambers of Commerce and other stakeholders, and the legislature enacted the 1994 Landfill Cleanup Act.

#### How does the Landfill Cleanup Program work?

Under the Landfill Cleanup Act, the MPCA is authorized to take over responsibility for proper closure, containment and long-term monitoring. The MPCA is also authorized to reimburse eligible people for their past clean-up costs at landfills that have entered the program.

For a landfill to enter the program, the owners, operators and other responsible persons must meet requirements set by

the Landfill Cleanup Act. A landfill must have been permitted by the state and must have closed (stopped accepting waste) by certain dates. Next, the responsible people must sign a Binding Agreement with the MPCA that describes the requirements for entry into the program. Then the landfill must receive a Notice of Compliance from the MPCA that documents that the responsible people have met the requirements for closure of the landfill and entry into the program.

Once a landfill enters the program, the state assumes responsibility for care of the landfill. Initial care at a landfill can include design and construction of a landfill cover, a landfill-gas extraction system and/or a ground-water monitoring system. Long-term care of a landfill usually includes monitoring of the gas-extraction and ground-water monitoring systems and inspection, mowing and maintenance of the landfill cover.

The Landfill Cleanup Program is also reimbursing owners, operators and other people who incurred eligible environmental clean-up costs at these landfills. (They are not eligible for reimbursement of legal or administrative costs associated with their clean-up activities.) In December 1995, the first reimbursement, \$3.5 million, was distributed to eleven businesses and municipalities at seven landfills.

#### Which landfills are in the Minnesota Landfill Cleanup Program?

As of January 1996, 106 landfills have qualified to enter the program (see the list of qualified landfills on page 3 and state map, page 4). Qualification means that the landfills were permitted facilities that closed by the required dates.

Based on potential health and environmental threat, the MPCA has developed a priority list and has already begun design or construction work at the top priority landfills. The MPCA plans design and construction at an additional 10 landfills during the 1996 construction season.

#### How will the state pay for the Landfill Cleanup Program?

Currently, funding for the program comes from two primary sources: garbage fees charged to businesses and \$90 million in general obligation bonds. The original garbage fee, established in 1993, was set at 12 cents per cubic yard of uncompacted waste for businesses and \$2 a year for households. The Landfill Cleanup Act expanded the number of businesses required to pay the fee and increased the amount of the business fee to 60 cents per cubic yard of waste.

#### Other questions about Minnesota's Landfill Cleanup Program?

For more information about the program or about specific landfills in the program, please contact Emmy Reppe (612/296-6706) or Dave Erickson (612/296-6605) of the MPCA's Public Information Office.

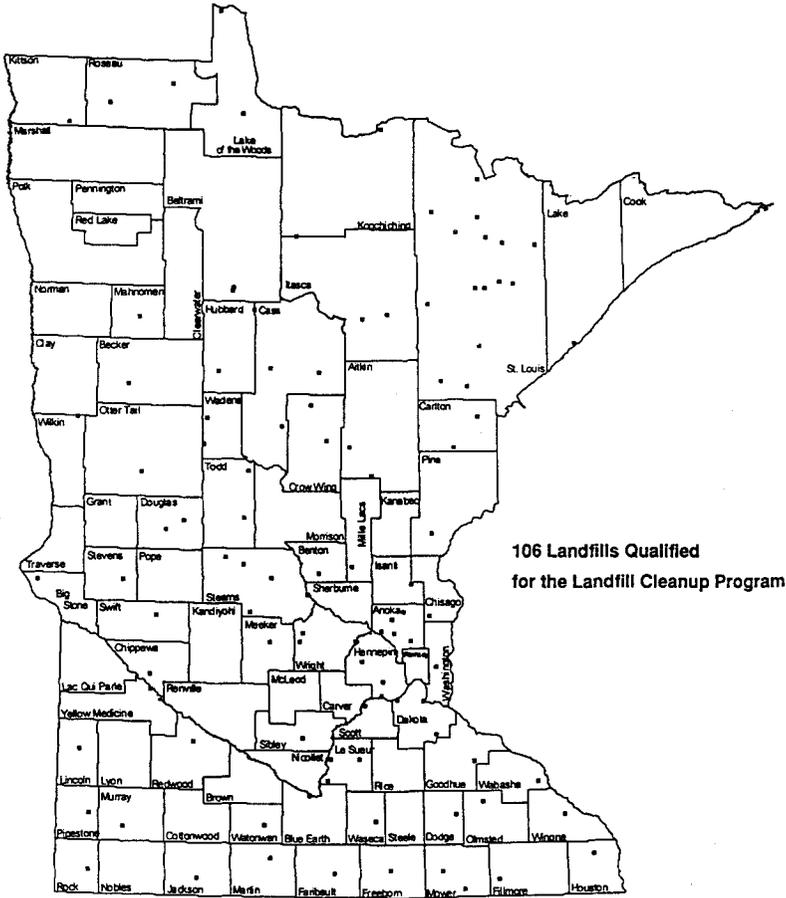



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**List of Landfills Qualified to Enter the Minnesota Landfill Cleanup Program**

Adams (Mower County)	Klurver (Douglas County)
Aitkin Area (Aitkin County)	Koochiching County
Albert Lea (Freeborn County)	Korf Brothers (Pine County)
Anderson Sebeka (Wadena County)	Kummer (Beltrami County)
Anoka Municipal (WMI-Ramsey; Anoka County)	La Grand (Douglas County)
Barnesville (Wilkin County)	Lake County
Battle Lake (Otter Tail County)	Lake of the Woods (Lake of the Woods County)
Becker County	Landfill Investors, Inc. (Benton County)
Benson (Swift County)	Leech Lake (Hubbard County)
Big Stone County	Lincoln County
Brookston Area (St. Louis County)	Lindala (Wright County)
Bueckers #1 (Stearns County)	Lindenfelser (Wright County)
Bueckers #2 (Stearns County)	Long Prairie (Todd County)
Carlton County #2	Louisville (Scott County)
Carlton County South	Mahnomon County
Cass County (Longville-Remer)	Mankato (Blue Earth County)
Cass County (Walker-Hackensack)	Maple (Cass County)
Chippewa County	McKinley (St. Louis County)
Cook Area (St. Louis County)	Meeker County
Cotton Area (St. Louis County)	Mille Lacs County
Crosby (Crow Wing County)	Minnesota Sanitation Services (Le Sueur County)
Crosby American (Dakota County)	Murray County
Dakhue (Dakota County)	Northome (Koochiching County)
Dodge County	Northwest Angle Inlet (Lake of the Woods County)
East Bethel (Anoka County)	Northwoods (St. Louis County)
East Mesaba (St. Louis County)	Oak Grove (Anoka County)
Eighty Acre (Beltrami County)	Olmsted County
Faribault County	Orr (St. Louis County)
Fifty Lakes Modified (Crow Wing County)	Paynesville (Stearns County)
Floodwood (St. Louis County)	Pickett (Hubbard County)
Flying Cloud (Hennepin County)	Pine Lane (Chisago County)
Freeway (Dakota County)	Pipestone County
French Lake (Wright County)	Portage Modified (St. Louis County)
Geisler's (Winona County)	Red Rock (Mower County)
Gofer (Martin County)	Redwood County
Goodhue Cooperative (Goodhue County)	Rock County
Grand Rapids Area (Itasca County)	Salol (Roseau County)
Greenbush (Roseau County)	Sauk Centre (Stearns County)
Hansen (Blue Earth County)	Sibley County
Hibbing (St. Louis County)	St. Augusta (Stearns County)
Hickory Grove (Aitkin County)	Stevens County
Highway 77 (St. Louis County)	Sunprairie (Le Sueur County)
Hopkins (Hennepin County)	Tellijohn (Le Sueur County)
Houston County	Vermilion Dam (St. Louis County)
Hoyt Lakes (St. Louis County)	Vermilion Modified (St. Louis County)
Hudson (St. Louis County)	Wabasha County
Iron Range (Itasca County)	Wadena (Wadena County)
Ironwood (Fillmore County)	Waseca County
Isanti-Chisago (Isanti County)	Washington County
Jackson County	Waste Disposal Engineering (Anoka County)
Johnson Brothers (Anoka County)	Watsonwan County
Karlstad (Kittson County)	Woodlake (Hennepin County)
Kilian (Todd County)	Yellow Medicine County

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# Minnesota Pollution Control Agency Voluntary Investigation and Cleanup

## Information Sheet #1

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### Introduction to the Voluntary Investigation and Cleanup Program

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#### 1.0 Introduction

Minnesota was the first state to address, through statutes, both the liability and technical issues associated with buying, selling or developing property contaminated by hazardous substances. Because of the potential for liability as an owner of property contaminated with hazardous substances, property owners and other participants in property transactions (buyers, developers and their financial institutions) frequently need to determine if the subject property is contaminated. For this reason, participants in property transactions often wish to seek the Minnesota Pollution Control Agency's (MPCA's) assessment of technical issues that are part of the investigation and cleanup of property.

When contamination is discovered, participants in property transactions also wish to know MPCA's authority to take enforcement actions or to recover cleanup costs. Under the Land Recycling Act of 1992, persons not otherwise responsible for the contamination at the property are eligible for future liability protection when they voluntarily undertake and complete response actions approved by the MPCA Commissioner.

Property owners not currently interested in selling or developing property may also voluntarily investigate and clean up property with assistance from the MPCA. Property owners may request assistance from the MPCA in anticipation of future property transactions, to obtain financing or simply to avoid the high transaction costs associated with investigating and cleaning up property under the Superfund enforcement process. Under the Land Recycling Act, future liability protection is available to eligible parties (lenders and purchasers of property) when response actions approved by the MPCA Commissioner are conducted by property owners who may be responsible persons as defined by the Minnesota Superfund law.

#### 2.0 Background

In response to the growing need for MPCA review and oversight of voluntary investigations and response actions, primarily involving property transactions, the Property Transfer Program was established in 1988, pursuant to Minn. Stat. § 115B.17, subd. 14 (1988). The specific language of this statute, as well as a summary of other relevant laws, is provided in Guidance Document #3.

The Property Transfer Program consists of two distinct components. The first component is known as the File Evaluation Program and is part of the Program Development Section of the Ground Water and Solid Waste Division. (Attachment #1 is an MPCA organizational chart.) The File Evaluation Program staff assists parties by providing MPCA file and data base information which

may help determine if the property of interest or surrounding properties within a one-mile radius have been the site of a release or threatened release of hazardous substances. Additional information regarding the File Evaluation Program is provided in Guidance Document #2.

The second component, originally referred to as the Property Transfer/Technical Assistance Program, is the Voluntary Investigation and Cleanup (VIC) Program. The VIC Program is part of the Site Response Section of the Ground Water and Solid Waste Division. Attachment #2 to this guidance document is an organizational chart for the Site Response Section including the VIC Program staff.

### 3.0 Questions and Answers

#### What are the requirements of the VIC Program?

The key functions of the VIC Program are to set standards for a site investigation, to provide MPCA review of the adequacy and completeness of such investigation and to approve cleanup plans (response action plans) to address identified contamination. By obtaining MPCA approval of investigation and response action plans, landowners, lenders and potential developers can be reasonably confident that they know the extent of any environmental problems on the property, can determine the most appropriate cleanup action and can calculate the cost of cleanup measures needed to satisfy statutory requirements. The voluntary investigation and cleanup process provides the kind of information needed to make sensible financial decisions about developing or transferring contaminated or potentially contaminated property.

Implicit in the voluntary nature of the VIC Program is the recognition that voluntary parties have a choice to participate or not participate in the VIC Program. Thus, a voluntary party can terminate their participation at any point by written notification to the appropriate VIC Program staff.

If a voluntary party decides to terminate their participation in the VIC Program and the voluntary party is not otherwise a responsible party, as defined by the Superfund law, the MPCA staff would not take further administrative action to mandate future investigation or cleanup by the voluntary party. However, if the voluntary party is the owner of the property, they will be required to cooperate with the MPCA or the responsible party(ies) so that the MPCA or responsible party(ies) can complete additional investigation and response actions. Such cooperation includes granting access to the property. In addition, activities conducted on the property by the voluntary party that decides to discontinue participation in the VIC Program may be limited until all the response actions are determined by the MPCA staff to be completed. Such limitations may be needed to ensure that the voluntary party does not aggravate or contribute to the releases, or does not interfere with or substantially increase the costs of the necessary response actions.

The VIC Program guidance documents have been developed to provide a phased approach by which parties that voluntarily conduct an approved investigation or cleanup can obtain various written MPCA assurances. These written assurances can be provided in the form of a technical approval letter; a letter commonly referred to as a "No Action" letter; or an agreement signed by the MPCA Commissioner and the voluntary party. If the voluntary party is eligible for protection

## Page Three Voluntary Investigation and Cleanup Program

under the Land Recycling Act, the written assurances could be incorporated in a Certificate of Completion issued by the MPCA Commissioner. The VIC Program also provides a process by which voluntary parties can obtain liability assurances with respect to properties affected by confirmed contamination originating from off-site. For more information about the liability protection that may be provided to eligible parties under applicable laws, see Guidance Document #3. For more information about the written assurances related to the VIC Program, see Guidance Document #4.

The voluntary nature of the VIC Program benefits owners, real estate sellers, real estate purchasers, lending institutions and developers. At the same time, the voluntary nature of the VIC Program benefits the environment and the public interest by the resulting identification and cleanup of contaminated property.

### What is expected of the voluntary party?

Parties seeking assistance under the VIC Program are expected to cooperate and adhere to certain standards in the investigation of the extent and nature of contamination, the evaluation and recommendation of response actions, and the level of cleanup attained. In addition, the parties requesting MPCA staff review and oversight are required by statute to reimburse the MPCA's costs of providing assistance.

To help meet these expectations and provide useful direction to voluntary parties, the MPCA staff has developed various guidance documents. The guidance documents provide information about the VIC Program and describe the phased approach for conducting an investigation and any necessary response actions. The guidance documents include:

Introduction to VIC Program	(# 1)
File Evaluation Program	(# 2)
Summary of Applicable Laws	(# 3)
Types of Written Assurances	(# 4)
VIC Program Interaction with Other Regulatory Agencies	(# 5)
Selecting a Consultant	(# 6)
Scheduling Phases of Investigations and Response Actions	(# 7)
Phase I Investigation	(# 8)
IGWIS Reporting Requirements	(# 9)
Site Safety and Contingency Plan	(#10)
Phase II Investigation Work Plan	(#11)
Phase II Investigation Report	(#12)
Procedures for Establishing Soil Cleanup Levels	(#13)
Approach to Ground Water Cleanup	(#14)

Remedy Selection Treatment Technology	(#15)
Focused Feasibility Study	(#16)
Design and Reporting Requirements (Vapor Extraction and Air Sparging)	(#17)
Response Action Plan, Implementation and Reporting	(#18)
Approach to Investigating and Remediating Abandoned Dumps	(#19)

The data generated during each phase will assist the voluntary party in determining the types of information needed during the next phase. Following the procedures outlined in the guidance documents will expedite MPCA staff review and provide the necessary information to determine whether response actions at the property are required. In addition, the guidance documents will provide the necessary information to determine the nature and extent of contamination, select cleanup levels and prepare for approval the response action plan for the Site. Selecting a consultant who is familiar with the technical procedures of the VIC Program is recommended. Parties seeking assistance are expected to actively participate in conducting the necessary work and follow the schedules identified in Guidance Document #7.

A number of investigation and cleanup activities may not be eligible for the VIC Program because they are more appropriately regulated by other MPCA programs. Other programs which may more appropriately provide assistance, review or oversight of these activities are identified below.

*MPCA Ground Water and Solid Waste Division, Site Response Section*

Properties already listed on the Permanent List of Priorities (state Superfund list) are typically not eligible unless deemed a low priority for further action by the MPCA staff in this section. Further information regarding the state Superfund list can be obtained by calling (612) 296-7450.

*MPCA Hazardous Waste Division, Tanks and Spills Section*

Properties involving spills or releases of petroleum-only products from a storage tank are handled by the MPCA staff in this section at (612) 297-8569.

*MPCA Ground Water and Solid Waste Division, Program Development Section*

Properties already listed on or proposed to be listed on the U.S. Environmental Protection Agency (EPA) Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) are handled by staff in this section. Additionally, the section also handles properties where a party or parties have been given an opportunity to enter the VIC Program but have either chosen not to, or have withdrawn from voluntary participation. Further information regarding these properties referred by the VIC Program and CERCLIS can be obtained by calling (612) 296-6139.

*MPCA Ground Water and Solid Waste Division, Solid Waste Section*

Properties involving permitted sanitary landfills are handled by the MPCA staff in this section at (612) 296-7927.

*MPCA Hazardous Waste Division, Regulatory Compliance Section*

Properties involving a hazardous waste release documented to have taken place since the enactment of the Resource Conservation and Recovery Act (RCRA) on November 8, 1980, are addressed by the MPCA staff in this section at (612) 297-8511.

*MPCA Water Quality Division, Industrial Section*

Facilities involved in discharging waste water to surface waters and wetlands that require permits are handled by the MPCA staff in this section at (612) 296-7716.

*MPCA Air Quality Division, Regulatory Compliance Section*

Asbestos concerns are addressed by the MPCA staff in this section at (612) 297-8685.

*MPCA Environmental Analysis Office*

Inquiries related to radioactive waste concerns can be directed to the MPCA staff in this office at (612) 296-7798.

*Minnesota Department of Health*

Radon concerns are handled by the Minnesota Department of Health at (612) 627-5012 or 1-800-798-9050.

*Minnesota Department of Agriculture*

Agricultural chemical release concerns including wood preserving facility releases are handled by the Minnesota Department of Agriculture at (612) 297-1975.

*MPCA Central Switchboard*

To reach the central switchboard at the MPCA use: 1800-657-3864 (out-of-state or out-state, voice/TTY), (612) 282-5332 (TTY).

**Are there other eligibility requirements?**

If the MPCA staff determines that a property has been contaminated by a hazardous substance with demonstrated characteristics that make the site a high priority for protection of public health or the environment, assistance under the VIC Program will be denied or terminated and the situation will be referred to the MPCA Site Assessment Unit which represents the initial phases of the Superfund enforcement process. For example, if there is ground water contamination exceeding relevant health criteria and the contamination has entered a drinking water supply, the MPCA staff will refer the property to the Site Assessment Unit.

Referral to the Site Assessment Unit would also take place if the voluntary party no longer chooses to participate in the VIC Program and the property is the site of a release or potential release of a hazardous substance that needs further investigation or cleanup. Finally, referral to the Site Assessment Unit would take place if it becomes evident that the voluntary party is unable to continue or demonstrates a lack of cooperation in dealing with the MPCA staff or is not completing the necessary investigative activities and response actions in a timely manner. Parties will be given only one opportunity to demonstrate their cooperation by volunteering to conduct the necessary investigation and response actions.

#### What happens if I find contamination at the site?

Any person who has knowledge of the discharge of any substance or material under that person's control which, if not recovered, may cause pollution of any water, has a legal duty to immediately notify the MPCA of the discharge under Minn. Stat. § 115.061 (1990). The person responsible for the discharge also has the duty under this statute to recover the substance or material and to abate any water pollution caused by the discharge.

When contamination is discovered during an investigation, the property owner or other person in control of the property is expected to immediately inform the MPCA by calling the 24-hour Division of Emergency Management Duty Officer at (612) 649-5451 (Metro Counties) or 1-800-422-0798 (Greater Minnesota). If the person wishes to conduct a voluntary investigation or response action under the VIC Program, the MPCA staff will inquire about the nature of the release and help the voluntary party to determine if they are eligible to participate in the VIC Program.

Whether or not a voluntary party participates in the VIC Program, it is expected that the party discovering the contamination will follow up the telephone call with a written submittal to the MPCA staff, providing all the data related to the nature and extent of the contamination.

#### Do I have to follow the guidance exactly?

Participation in the VIC Program and adherence to the guidance documents is strictly voluntary. However, substantial adherence with the guidance documents is advised in completing an investigation, a report, a response action or other action if the voluntary party is seeking VIC Program staff approval. In order to obtain liability protections provided by statute, owners and other parties must obtain VIC Program staff approval of the actions. It is important to point out that VIC Program approval is required before the actions are taken for certain activities to ensure eligibility to receive liability protection under the Land Recycling Act.

#### Are public meetings required?

Public meetings are not required. However, community involvement is an essential component of the VIC Program. The MPCA staff works with the MPCA Public Information Officer to identify and notify the appropriate local residents, community groups, and governmental representatives to request their input. This notification will generally occur when the Phase II

## Page Seven Voluntary Investigation and Cleanup Program

Investigation Report has been submitted and the review has been completed by the MPCA staff. In addition to public meetings, public involvement may involve news releases, presentations at a city council meeting or simply contacting the local governmental representatives by telephone. When response actions are necessary the voluntary parties are encouraged to take an active role in informing the public of their plans and actions.

In the VIC Program, local officials and local government officials, along with the voluntary parties, are often asked to take the lead for community relations.

Health concerns are the dominant motivation for the public to become involved, but they may also be interested in issues such as the scope of the proposed development activity or impacts on their property values.

**Will strictly following these guidelines prove that I have exercised due diligence before acquiring property?**

The process outlined in the guidance documents is not necessarily the same as the inquiry that may be necessary for a person to satisfy the legal definition of due diligence. However, by following the guidelines and conducting the field investigations in accordance with VIC Program approved work plans, a voluntary party can show intent to take all actions deemed reasonable by the MPCA staff to investigate potential environmental problems associated with a property.

**How much time does the voluntary process take?**

The amount of time required to review a document by the MPCA staff will vary depending upon MPCA staff workload, the scope and quality of the document and the volume and complexity of the information the document contains. Given the various types of documents that may be submitted and the range of circumstances encountered at different properties, it is not possible to provide a specific turnaround time for requested services. However, as described in Guidance Document #7, the MPCA staff will make every effort to review and respond to documents within 30 to 60 days following submittal.

**How much does it cost to receive assistance from the VIC Program?**

Because the amount of time required to provide oversight by the MPCA staff will vary for the reasons described above, it is not possible to provide a specific total cost figure. Historically, the cost has averaged from \$65.00 to \$85.00 per hour. VIC Program staff has developed a fact sheet that may be useful in projecting oversight costs for various types of investigative activities.

**How do I pay for assistance received from the VIC Program staff?**

The voluntary party will receive a reimbursement invoice on a quarterly basis. No application fee is required. Upon receipt of the invoice, the voluntary party has thirty (30) days to reimburse the MPCA. When necessary, the MPCA staff will refer non-payment situations to a collection agency and the staff of the Office of the Attorney General. Non-payment situations will result in the termination of MPCA staff assistance. In addition, other services from the MPCA Ground Water and Solid Waste Division staff, such as File Evaluation Assistance, will be terminated.

**What is the role of the EPA?**

The VIC Program is strictly administered under the authority of the Minnesota Superfund law. In Minnesota, EPA's site specific involvement is limited to enforcement actions at federal Superfund sites (sites of the National Priorities List [NPL]) and certain emergency response activities. NPL sites are ineligible for the VIC Program.

Under an agreement with the EPA, the MPCA is designated the lead agency for all VIC Program sites. EPA has no role in the VIC Program in terms of review, oversight or approval of investigation activities and response actions, though MPCA staff in the VIC Program use EPA technical guidance and regulations in determining the adequacy of investigations and response actions and receive funding to conduct an EPA-sponsored Voluntary Cleanup Pilot Project.

It is important to note that the technical, administrative and liability assurances written under the VIC Program are based solely on MPCA and state authority and do not represent EPA or federal positions. However, voluntary parties can be assured that successful participation and completion of response actions under the VIC Program will not be of interest to the EPA.

**How do I apply for the VIC Program?**

To obtain assistance from the VIC Program, it is first necessary to complete and submit a Request for Assistance Form. It is important that an appropriate person sign the Request for Assistance Form. It is also important that the voluntary party accurately and clearly specify the type of assistance being requested. Questions should be directed to the MPCA staff in the VIC Program by calling (612) 296-7291.

Attachment


**Facts about Project XL Minnesota**
**What is Project XL?**

Project XL is a voluntary state and federal pilot program. It supports regulated parties that demonstrate excellence and leadership (XL) in protecting the environment and who are willing to undertake new initiatives that go beyond the existing requirements of state and federal law. In exchange for their superior environmental performance, these parties will receive increased operational flexibility and reduced environmental-management costs.

At this date, Minnesota is the only state authorized by the U.S. Environmental Protection Agency to undertake Project XL pilot projects.

A Project XL pilot can focus on a single facility, an industrial sector, a regulated governmental unit or a community. These projects will extend to protect environmental media including air, water, and land. XL documents will take the place of individual permits participating facilities might hold.

Participating facilities will work

**Why is the MPCA taking the lead on XL?**

We believe that XL is a win-win situation. If successful, Project XL will result in:

- environmental benefits beyond those that can be achieved under state and federal regulations,
- operational flexibility for regulated parties and time savings for both these parties and the MPCA,
- a permanent cooperative relationship between the facilities and their local communities.

with the MPCA to develop the XL agreements, which might take about six months. Pilot projects will undertake additional recordkeeping for several years so that it will be possible to gauge the program's effectiveness. However, facility operators should expect to save both time and money as a result of their participation.

**How will the Minnesota Pollution Control Agency implement Project XL?**

Three activities are planned in order to implement Project XL.

First, the MPCA is developing state legislation for the 1996 Legislative session that will authorize the Project XL pilots and provide for the development of other environmental regulatory innovations.

Second, Minnesota has requested that the U.S. Environmental Protection Agency delegate the Project XL lead to the MPCA. On November 3, 1995, the EPA approved our delegation request, and we are currently working with EPA Region V staff on a Memorandum of Understanding for this delegation. Third, the MPCA will develop three to five XL pilot projects.

**What criteria will be used to select an XL pilot project?**

We will use the following eight criteria in selecting an XL pilot:

1. XL project proposer's commitment to superior environmental performance.



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**Page Two**


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2. The project will result in cost savings and paper work reductions.

3. The proposal provides for public participation and stakeholder support.

4. The proposal provides for innovative, multimedia and pollution-prevention approaches.

5. The project has a high likelihood of being transferable to other regulated parties or sectors.

6. The project is feasible; it can be implemented.

7. The proposal provides for monitoring, reporting and evaluation, both to demonstrate compliance and to measure the success of the pilot.

8. The project does not simply shift the risk burden to a different environmental medium or a different population.

**How will the MPCA ensure public participation in the development and implementation of Project XL pilots?**

Project XL permits or agreements will be placed on

public notice for review and comment, as usual. In addition, an independent, multi-stakeholder group organized by the Pollution Prevention Dialogue of the University of Minnesota will act as advisors on Project XL.

This group will review and comment on the design, implementation and evaluation of each XL pilot project. The multi-stakeholder group consists of representatives from industry, government, public interest and academia.

**What experience has led the MPCA to undertake Project XL?**

The MPCA's belief that XL will be a success is founded on a project that the MPCA and 3M undertook in 1992 and 1993. This project resulted in an innovative air quality permit. It provides precedent-setting operational flexibility by preauthorizing facility modifications as long as air emissions remain below a cap set at 50 percent less than was actually emitted in 1991.

Not only has significant environmental benefit resulted from this permit, but also 3M and MPCA costs have been reduced.

Between March 1993 and January 1995, 3M made 21 changes that would have required permit modifications. This resulted in two important benefits for the 3M. The company saved 1,530 hours that would have been spent on permit applications and other administrative time, and 3M was able to get its products to market more quickly.

The MPCA also saved time, an estimated 700 hours of staff time that would have been expended in preparing and processing seven major permit modifications.

**More questions?**

Lisa Thorvig, formerly the manager of the MPCA's Air Quality Division, has accepted a temporary assignment to the Commissioner's office to lead the Project XL effort, with the support of Andy Ronchak, of the Air Quality Division. For more information on the program, you may contact Lisa Thorvig at (612) 296-7331, or contact Andy Ronchak at (612) 296-3107.

This information can be provided in other formats, including Braille, large type and audio tape. TTY users, call (612) 282-5332.

Mr. MCINTOSH. Thank you very much, Mr. Williams. An impressive record if you're able to direct 87 percent of the funds toward environmental cleanup, almost reverse of what the numbers are in the program nationally.

I understand also that you've actually succeeded in cleaning up more sites in Minnesota than we have in the rest of the Nation during that same time period. Is that accurate?

Mr. WILLIAMS. Yes, and we're proud of that. And the EPA, I think because of our record has—you know, I've done a lot of complaining about not being able to get my hands on the Superfund Program, the Federal program.

And I think they got tired of me nagging, so they gave us 13 sites as a pilot project and turned them over to the State.

We just marched into those with the same resolve we marched into the rest of our sites, and EPA has been pretty pleased. We're doing that out in our regional office in Chicago.

Mr. MCINTOSH. Wonderful. Is that part of the XL Program?

Mr. WILLIAMS. No. But I think it's important that you mention XL, because we think that the next step for us is to take the principles embodied in XL and start to apply those to the Superfund process.

We are the only State in the country that during this legislative session passed what is called now the XL bill that empowers us to use the principles embodied in XL to apply across our regulated community.

Mr. MCINTOSH. I think that makes a lot of sense. Now, I understand that Minnesota decided it was ineffective to pursue the potential responsible parties at municipal codisposal sites and eliminated retroactive joint and several liability for those sites, and it seems to be working well in the program.

Would you say that that would be a good reform for us to take national in that area?

Mr. WILLIAMS. Mr. Chairman, I managed a landfill in Duluth when I was at the sanitary district, and that had the potential to be on the State Superfund list.

It just seemed to me, as I worked with the PCA, because, you know, we would focus on the three hospitals in Duluth, the schools and the city, and it just didn't make sense to me to deal with it that way because that was a permitted facility.

And gradually over time, the PCA, working with other operators of landfills came to the conclusion and recommended to Governor Carlson that we do a no fault landfill cleanup bill, and that's really what it is.

And the State has said that it was permitted facility. Everybody was operating under good faith that this was the latest in the technology at the time those facilities were permitted, and that it now is a societal problem.

We developed a funding mechanism, and the State has taken over the cleanup and the care in perpetuity of the monitoring of those sites.

Mr. MCINTOSH. So you adopted that no fault approach in those areas. I was going to ask you, then, what would be the difference that would cause you not to want to apply that to a private facility where industry had been the source of the pollution in the previous

decades in the 1950's and the 1960's to try to expedite the cleanup of those sites as well.

Mr. WILLIAMS. Well, I don't think the principle applies to a single-use facility where it was used as an industrial site.

I think in those cases, we would apply our methodology and work with that entity, and if they want to resist the cleanup, we'll go ahead and do the cleanup.

Mr. MCINTOSH. How about a multiple-user site where there just doesn't happen to be a municipality?

Mr. WILLIAMS. Well, I think that our bill should be a model for the Federal Superfund legislation in those instances where there might be multiple parties or orphan shares of that.

You have to allow the flexibility so you can make good judgments on which might apply, and, hopefully, the new Superfund law will provide that ability for the States to do that.

Mr. MCINTOSH. One last question for you. Any statistics that have been compiled in the State of Minnesota about the number of lawyers who practice in Superfund practice compared to other States?

Mr. WILLIAMS. Well, I can tell you a story, and Congressman Gutknecht I hope will ask me the question about the Arrowhead Refinery site, because that site had 100 attorneys.

And my staff would come back with their eyes as big as dinner plates because it was like watching sharks feed is the way it was characterized to me.

That was a Federal site, and I happened to be a contributor to that site when I worked for Reserve Mining Co. because we used oil there for many years.

That was a catastrophic failure of the Superfund Program, as far as I'm concerned. I can tell you from personal experience because I know some of the people that were involved with the third ring of lawsuits that went on at that site.

And that was a site that was—I think it's about 8 acres. So in terms of massiveness, it's not much. If you'll bear with me, I'll give you the background of that site from my eyes, because we thought we were doing the right thing back in the good old days in the 1970's.

Recycling our waste oil seemed like a good reuse of it. As a matter of fact, I used to contract on the side, and I used to buy that re-refined oil, because it was low cost, but it was good oil.

When I went to the sanitary district, that site was right in the middle of my territory. So I went up there to look at that site.

I called EPA, and I said, "I just came from a company that moved 50 million tons of material every year." We were experts at material handling. That's what we did.

And I said, "What are you going to do with this Arrowhead Refinery site? This thing has been bubbling and boiling, and there is a lot of attorneys already getting involved."

This is in 1988, 1987, in that timeframe. And they told me, "We're going to spend \$70 million there," and this was out of the regional office in Duluth.

And I said, "Well, I'll tell you what," I said, "you give me \$10 million. You put your incinerator down here next to mine," because I ran an incinerator at the sanitary district, two of them, as a matter

of fact, "and I'll move that material out of there in 6 months, have the site cleaned up, and then I'll convert that incinerator into a medical waste incinerator, and the community will have something for the future."

We never did that because I think that they thought that this, you know, this savage from the northeastern part of the State. But we were experts, and that was a small site, and we could have done something similar to that.

And I would have made a profit for the district even at \$10 million. Well, later in this process, I suggested that we needed to expand our interceptor system for wastewater into an area of my territory that needed sewer service.

So what I proposed is that we'll run our pipeline by that Arrowhead Refinery site. You pay for the piece of the pipeline that comes from where our interceptor terminates now up to the site, and then we'll pay for it the rest of the way up to this area. It was one of our lakes that needed protection.

I, kind of, got stonewalled for a long time. Well, then, when I was in this job now about 2 years ago, they decided it wasn't a bad idea at all, and they put the pipeline in.

But I have a friend that I boat with that was a very successful car dealer. He got ready to retire, and he got sucked into this third party lawsuit, and the pain that I watched him go through and the threat to his retirement was astounding.

And the man talked to me every weekend that I went to Duluth to boat on the weekend. He always came over for a cup of coffee and asked for advice. "What can I do? I don't know what it's going to cost, but it's going to wipe me out for sure."

That went on for 2 years. Finally, we got moving forward, and those issues were settled, but it still cost him close to \$100,000.

Now, the man was successful, but \$100,000 is a lot of money for anybody to pay, and the only evidence that they had on him when he got sued is a record of a driver's note on a log that said he stopped at the dealership.

There was no evidence or no record that he actually isn't oil up there. I looked at that, and I thought to myself the system is wrong. It needs to be fixed.

Mr. MCINTOSH. And none of that \$100,000 went toward actually cleaning up that site. My time has expired, but let me say, Ms. Robinson, I do appreciate you coming, and I think we share many of the same goals, which is to fix this program so that it actually is responsive to people's needs rather than some bureaucratic needs in Washington or the interest of a group of lawyers who seem to be making a lot of money on the program without it actually helping the real people who, as you point out, live on top of the site.

So I appreciate you coming forward today and testifying. Let me now turn to my colleagues, Mr. Gutknecht, from Minnesota. Do you have any questions for this panel?

Mr. GUTKNECHT. Well, thank you, Mr. Chairman. First of all, let me welcome Mr. Williams especially on behalf of this subcommittee to testify here in Washington.

I think, Mr. Chairman, his remarks and attitude is representative not only of the work that's going on in Minnesota, but I sus-

pect most States now have similar agencies that are following, hopefully, our lead or the lead of others in this area.

And I think the key word that comes from his testimony is the word "attitude." I think the States, and particularly Minnesota, we're taking the attitude let's get these sites cleaned up, and we'll fight about who may be liable and where to collect for some of the costs after that.

The other thing I think that's important here, and it's probably especially, perhaps, interesting if not painful to the Tielmanns behind him that here is some examples where, in Minnesota, we got these sites cleaned up quickly, efficiently, far more efficiently than the Federal Government.

And the answer wasn't just more studies, and I loved your analogy of the sharks in the water with the Arrowhead example.

I think there is some very good advice for this committee and to the Federal Government that if we will allow a little bit more flexibility, the States are really becoming more and more capable at dealing with these problems quickly, efficiently, on the most cost-effective basis and, most important, for the benefit of the people who live around these sites, getting the sites actually cleaned up and back into a condition so that other industries or other things can move back on that property.

I did want to ask you though, specifically, Mr. Williams, what assistance do the States need from the EPA? What can we do to help you do a better job?

Mr. WILLIAMS. Well, Mr. Gutknecht, Mr. Chairman, I think that we feel strongly that EPA needs to be permitted, and I think it will take legislation, to give the authority to the States.

I think that's the No. 1 thing. I have been pretty vocal about saying I don't really want the EPA in my State running the programs.

We know our citizens better. We have a better interface with the communities. That's not EPA's job, and that's not what they're really good at. They do some other things well. That's not one of them.

I think the other thing that is important is to support us relative to protecting the joint and several liability, because that is really the key behind our success.

I think to soften that or weaken it today will be grossly unfair to the companies that we deal with, and we have a good working relationship with those companies that stepped up to the mark, did the cleanups back in the late 1970's and 1980's under the joint and several liabilities clause and that then were the example for other companies to come forward because they had confidence in our program.

I'll make the analogy. Minnesota spent \$200 million separating its sewers in Minneapolis-St. Paul. Now I rather rumors that other communities are going to lower the standards.

Other communities in the East Coast and so on, big cities aren't going to have to do that. Well, I have a problem with that. We were responsible and did that work because we wanted to protect the Mississippi River.

So to soften laws that caused our programs to be outstanding and models for the rest of the Nation, I don't know if that's the right model we should follow.

Mr. GUTKNECHT. Mr. Williams, I do want to somehow get on the record if you have any comparisons between what the cost of some of the cleanups of those sites—and I love your story where the EPA wanted to spend \$80 million plus, and that was for openers, and you thought it could be done for \$10 million.

Do you have any other cost comparisons between what it has cost you to clean up some of these sites versus the EPA?

Mr. WILLIAMS. Mr. Chairman, Mr. Gutknecht, my understanding is that the national average on Federal Superfund sites, the national average cost for cleanup is \$31 million per site. Our site, our cost for 22 sites in our State the average cost is \$3 million total.

Mr. GUTKNECHT. And they're done?

Mr. WILLIAMS. And they're done. They're off the books. The lowest would be \$100,000, and the highest was \$16 million.

Mr. GUTKNECHT. Well, Mr. Chairman, I just again thank all the witnesses for testifying today because I think, as I said earlier, there is a can do attitude out there.

As I started this whole hearing with a quote from John Kennedy, and for your benefit, Mr. Williams, he said that, "We all inhabit the same small planet. We all breathe the same air, and we all cherish our children's future."

And I would add parenthetically we're all environmentalists, and I think in Minnesota we take the environment extremely seriously.

We're the land of 10,000 lakes, and we want clean lakes, but I think we've also demonstrated that these sites can be cleaned up in short order at much more reasonable costs if somehow the Federal Government will either lead, follow, or just simply get out of the way.

And I think that's the area we have to continue to pursue, and with the advice and help of people like Mr. Williams, I think we can get the job done.

So again, thank you for holding this hearing. I thank all the witnesses for being here to testify today.

Mr. MCINTOSH. Thank you very much, Mr. Gutknecht. Let me add thanks to all the witnesses coming today, Mr. Williams, Mrs. Robinson, the Tielmanns.

I appreciate everybody who came and participated. This record will be very important as we move forward in this area. We've got to get beyond the politics and say how do we change this program so we can get a better success record nationally the way they have in Minnesota.

Thank you all, and the committee will stand adjourned.

[Whereupon, at 1:45 p.m., the subcommittee was adjourned.]