AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

THE IMPACT ON U.S. MANUFACTURING: SPOTLIGHT ON THE ENVIRONMENTAL PROTECTION AGENCY

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY AFFAIRS

OF THE

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

SEPTEMBER 28, 2005

Serial No. 109–191

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

30–593 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON GOVERNMENT REFORM

TOM DAVIS, Virginia, *Chairman*

CHRISTOPHER SHAYS, Connecticut
DAN BURTON, Indiana
ILEANA ROS-LEHTINEN, Florida
JOHN M. MCHUGH, New York
JOHN L. MICA, Florida
GIL GUTKNECHT, Minnesota
MARK E. SOUDER, Indiana
STEVEN C. LATOURETTE, Ohio
TODD RUSSELL PLATTS, Pennsylvania
CHRIS CANNON, Utah
JOHN J. DUNCAN, JR., Tennessee
CANDICE S. MILLER, Michigan
MICHAEL R. TURNER, Ohio
DARRELL E. ISSA, California
GINNY BROWN-WAITE, Florida
JON C. PORTER, Nevada
KENNY MARCHANT, Texas
LYNN A. WESTMORELAND, Georgia
PATRICK T. MCHENRY, North Carolina
CHARLES W. DENT, Pennsylvania
VIRGINIA FOXX, North Carolina
JEAN SCMIDT, Ohio

HENRY A. WAXMAN, California
TOM LANTOS, California
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
PAUL E. KANJORSKI, Pennsylvania
CAROLYN B. MALONEY, New York
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
DANNY K. DAVIS, Illinois
WM. LACY CLAY, Missouri
DIANE E. WATSON, California
STEPHEN F. LYNCH, Massachusetts
CHRIS VAN HOLLEN, Maryland
LINDA T. SANCHEZ, California
C.A. DUTCH RUPPERSBERGER, Maryland
BRIAN HIGGINS, New York
ELEANOR HOLMES NORTON, District of Columbia

BERNARD SANDERS, Vermont (Independent)

MELISSA WOJCIAK, *Staff Director*
DAVID MARIN, *Deputy Staff Director/Communications Director*
ROB BORDEN, *Parliamentarian*
TERESA AUSTIN, *Chief Clerk*
PHIL BARNETT, *Minority Chief of Staff/Chief Counsel*

SUBCOMMITTEE ON REGULATORY AFFAIRS

CANDICE S. MILLER, Michigan, *Chairman*

GINNY BROWN-WAITE, Florida
CHRIS CANNON, Utah
MICHAEL R. TURNER, Ohio
LYNN A. WESTMORELAND, Georgia

STEPHEN F. LYNCH, Massachusetts
WM. LACY CLAY, Missouri
CHRIS VAN HOLLEN, Maryland

EX OFFICIO

TOM DAVIS, Virginia

HENRY A. WAXMAN, California

ED SCHROCK, *Staff Director*
ROSARIO PALMIERI, *Deputy Staff Director*
ALEX COOPER, *Clerk*
KRISTA BOYD, *Minority Counsel*

CONTENTS

	Page
Hearing held on September 28, 2005	1
Statement of:	
Mannix, Brian, Associate Administrator, Office of Policy, Economics and Innovation, U.S. Environmental Protection Agency; and Tom Sullivan, Chief Counsel, Office of Advocacy, U.S. Small Business Administration	8
Mannix, Brian	8
Sullivan, Tom	19
Wagener, John D., P.E., corporate director of environmental affairs, Mueller Industries, Inc.; Chris Bagley, regulatory compliance manager, Dan Chem Industries, Inc.; B.J. Mason, president, Mid-Atlantic Finishing Corp.; and Scott Slesinger, vice president for governmental affairs, the Environmental Technology Council	47
Bagley, Chris	56
Mason, B.J.	65
Slesinger, Scott	73
Wagener, John D.	47
Letters, statements, etc., submitted for the record by:	
Bagley, Chris, regulatory compliance manager, Dan Chem Industries, Inc., prepared statement of	58
Mannix, Brian, Associate Administrator, Office of Policy, Economics and Innovation, U.S. Environmental Protection Agency, prepared statement of	11
Mason, B.J., president, Mid-Atlantic Finishing Corp., prepared statement of	67
Miller, Hon. Candice S., a Representative in Congress from the State of Michigan, prepared statement of	3
Slesinger, Scott, vice president for governmental affairs, the Environmental Technology Council, prepared statement of	76
Sullivan, Tom, Chief Counsel, Office of Advocacy, U.S. Small Business Administration, prepared statement of	21
Wagener, John D., P.E., corporate director of environmental affairs, Mueller Industries, Inc., prepared statement of	50

THE IMPACT ON U.S. MANUFACTURING: SPOTLIGHT ON THE ENVIRONMENTAL PROTECTION AGENCY

WEDNESDAY, SEPTEMBER 28, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Candice Miller (chairman of the committee) presiding.

Present: Representatives Miller, Lynch, Westmoreland, Clay, and Van Hollen.

Staff present: Ed Schrock, staff director; Rosario Palmieri, deputy staff director; Erik Glavich, professional staff member; Dena Kozanas, counsel; Joe Santiago, detailee; Alex Cooper, clerk; Krista Boyd, minority counsel; and Cecelia Morton, minority office manager.

Ms. MILLER. Good morning, everyone. I am sorry I am a few minutes late here.

I would like to call the meeting to order. We are here today to discuss the overall progress of the Environmental Protection Agency in responding to the public's reform nominations that were included in the Office of Management and Budget's 2005 Report on Regulatory Reform of the U.S. Manufacturing Sector. This is actually the third in a series of hearings that we have had discussing these regulations and policy areas that do have an impact on domestic manufacturing.

Manufacturing, of course, has widely been acknowledged as a critical component of our economy. Manufacturing creates goods, but it also creates progress, innovation and economic and human prosperity. For many years, hopefully most of us in Government have understood that we do not create jobs; rather, the private sector creates jobs. The role of Government, of course, has been to try to create an environment that attracts business investments and encourages job creation.

The manufacturing industry has come under attack lately, unfortunately by the very Government that once held it together and tried to help it. Manufacturing in the United States provides employment to 14 million people. It provides 13 percent of the GDP. It is responsible for 62 percent of all exports and accounts for 60 percent of all industrial research and development spending. More

than any other sector, manufacturers bear the highest share, the highest burden, of Government regulation.

At $10,175 per employee, domestic manufacturers assume almost twice the average cost for all U.S. industries. Very small manufacturers, categorized as those that have fewer than 20 employees, actually bear a cost of almost $22,000 per employee, which is twice the average for manufacturing overall.

The main factor in these dramatic disparities is due to the high compliance costs of environmental regulations in many cases. Fully three-fourths of the regulatory costs to very small manufacturers come from environmental regulations. These small manufacturers account for 75 percent of all manufacturing firms. Regulatory compliance costs are the equivalent of a 12 percent excise tax on manufacturing. Such domestically imposed costs are harming manufacturing and adding almost 23 percent, 23 points, actually, to the cost of doing business in the United States.

The high cost of regulation, the increase in the cost of health care and the often unwarranted tort litigation have all altered the dynamics of domestic manufacturing. These new dynamics have hindered the international competitiveness of manufacturers and as well have constrained the demand for workers in U.S. facilities.

Now, make no mistake. I believe that I am a defender of regulations that protect worker health and safety. I would like to think I am a defender of regulations that watch over consumers and safeguard our natural resources. In fact, I have spent almost three decades in public service. One of my principal advocacies has always been protecting our environment.

But I do think that the common standard, the common element, always has to be what is actually reasonable. That is the purpose of our hearing today. I am eager to have a dialog about how best to improve Federal regulations for the benefit of all Americans, and in particular, I am hopeful that this hearing will have a positive impact on those regulations highlighted by OMB that are still outstanding.

I am very troubled by the adverse effects that some of these regulations are having on our ability to remain competitive with our key trading partners around the glove. By acting on the 42 nominations from the Environmental Protection Agency, I do believe that we could be one step closer to reducing the costs and burden on domestic manufacturing firms, and the savings created by reducing the regulatory burden on U.S. manufacturers could be redirected into hiring new workers, growing our economy, investing in new equipment, and protecting American jobs.

I do know that by working together, we can do the right thing for workers as well as our environment, at the same time leveling the playing field and improving the competitiveness of American manufacturers.

[The prepared statement of Hon. Candice S. Miller follows:]

Statement of Chairman Candice S. Miller
Chairman
Subcommittee on Regulatory Affairs
Committee on Government Reform
Washington, DC
September 28, 2005

Good morning, ladies and gentlemen.

We are here today to discuss the overall progress of the Environmental Protection Agency in responding to the public's reform nominations that were included in the Office of Management and Budget's 2005 report on *Regulatory Reform of the U.S. Manufacturing Sector*. This is the third in a series of hearings discussing those regulations and policy areas that have an impact on domestic manufacturing.

Manufacturing has been widely acknowledged as a critical component of our economy. Manufacturing creates goods but it also creates progress, innovation, and economic and human prosperity.

And for many years the Government has understood that it does not create jobs; rather the private sector creates jobs. The role of government has been to create an environment that attracts business investments and encourages job creation.

The manufacturing industry has come under attack lately -- by the very Government that it once held together.

Manufacturing in the United States provides employment to 14 million people, produces 13% of GDP, is responsible for 62% of all exports, and accounts for 60% of all industrial research and development spending.

More than any other sector, manufacturers bear the highest share of the cost of regulation. At $10,175 per employee, domestic manufacturers assume almost twice the average cost for all U.S. industries. Very small manufacturers categorized as those with fewer than 20 employees bear a cost of almost $22,000 per employee, twice the average for manufacturing overall. The main factor in these dramatic disparities is due to the high compliance costs of environmental regulation. Fully three-fourths of the regulatory costs to very small manufacturers comes from environmental regulations. These small manufacturers account for 75% of all manufacturing firms.

Regulatory compliance costs are the equivalent of a 12% excise tax on manufacturing. Such domestically imposed costs are harming manufacturing and adding 22.4% to the cost of doing business in the United States.

The high cost of regulation, the increase in costs of health care, and the often unwarranted tort litigation have all altered the dynamics of domestic manufacturing. These new

dynamics have hindered the international competitiveness of manufacturers and have constrained the demand for workers in U.S. facilities.

Make no mistake, I am a defender of regulations that protect worker health and safety. I am a defender of regulations that watch over consumers and safeguard our natural resources. I have spent almost 3 decades in public office as a principal advocate of our environment. But, I think the common standard must always be to do what is reasonable.

That is the purpose of our hearing today. I am eager to have a dialogue about how best to improve federal regulations for the benefit of all Americans. In particular, I am hopeful that this hearing will have a positive impact on those regulations highlighted by OMB that are still outstanding. I am extremely troubled by the adverse affect some of these regulations could have on our ability to remain competitive with our key trading partners.

By acting on the 42 nominations from the Environmental Protection Agency, I believe we will be one step closer to reducing the cost and burden on domestic manufacturing firms. The savings created by reducing the regulatory burden on U.S. manufacturers could be redirected into hiring new workers, investing in new equipment, and protecting American jobs.

I know that working together, we can do the right thing for workers and the environment, while leveling the playing field and improving the competitiveness of American manufacturers.

Ms. MILLER. At this time I recognize the ranking member, Mr. Lynch.

Mr. LYNCH. Thank you, Chairman Miller. I appreciate it.

First of all, no one understands more readily than I do the importance of the manufacturing industry to the economy. I have been employed, prior to coming to Congress, I spent most of my adult life working in the manufacturing industry for General Motors, for General Dynamics, working the Shell Oil facility down in Norco, LA. So I certainly understand the importance of the manufacturing industry to the Nation's health and economy.

I am also very aware that the regulations that are applied to manufacturers are also very important to the health of our citizens and to our environment. It is important for us to keep in mind, as we discuss how environmental regulations affect the manufacturing industry, that the duty of Government to protect the citizens and the workers in those industries is also a noble cause and a primary responsibility.

Today's hearing will look at how EPA is responding to various industry proposals to change environmental regulations. We will hear today much about how these EPA regulations are affecting industry.

I would like to take a minute to talk about why, as a threshold matter, some of those regulations are in place to begin with and why they are so important for industry and for the public. One example is the Toxic Release Inventory Program. The Toxic Release Inventory Program is one of the country's most successful environmental programs. It provides communities with information about toxic chemicals released in their neighborhoods and held at facilities, stored at facilities in their neighborhoods. It holds industry publicly accountable for the toxic pollution that it releases.

The Toxic Release Inventory framework only requires companies to report how much of a certain toxic chemical they are releasing. It does not require them to actually reduce pollution. However, the public notification aspect of this does put, I think, a positive pressure on reducing those amounts. It can lead to voluntary reductions in pollution, based on public scrutiny and the review of these industry practices.

Last week, EPA announced a proposal to only require companies to report their toxic releases every 2 years, rather than every year, as they are currently required to do. EPA also proposed allowing companies to release up to 5,000 pounds of some chemicals, excluding dioxin, thank goodness, without having to make public the amount of those chemicals being released into the environment.

I would be very concerned about any changes to the Toxic Release Inventory program that would reduce the amount of information communities have about toxic releases. The Toxic Release Inventory Program was created by the Emergency Planning and Community Right to Know Act, because communities have the right to know what companies are putting into their air, water and land.

In my own neighborhood and in my own family, when I was a State Senator, we had a persistent problem with one of the oil storage facilities in my neighborhood. It was first owned by White Fuel, which was a subsidiary of Texaco. Later it was purchased by

Coastal Oil. It is a tank farm, which is a subsidiary of El Paso Natural Gas, I believe.

When I was State Senator, we had a rash of cases of lupus in my neighborhood, lupus and scleroderma. One of its victims was my cousin, Sean, 32 years old, who passed away from complications of lupus. We had a study done by the Massachusetts Department of Public Health in which they confirmed, we went door to door to families finding out who had lupus or scleroderma in their families. The report came back that it was a statistically significant number, very high for that population. The number of fatalities and the number of instances of that disease were remarkably high.

The problem is that much of that problem is now being connected, through investigative work, with oil spills in that neighborhood. We have some very old storage facilities. Now the oil has seeped underneath houses for blocks and blocks of densely populated three-deckers in south Boston. It is a growing problem. Now we have detective work that we need to do. If we did not have reporting such as is required under TRI, we wouldn't be able to find out the connection between the toxic releases and the diseases it is now causing.

Additionally, Toxic Release Inventory data can be essential in the event of a disaster such as Hurricane Katrina. Toxic Release Inventory data provides easy to access information about the chemical plants and petroleum refineries that were flooded by the hurricane.

As I said, I worked at the Shell Oil Refinery in Norco, LA. I was onboard the U.S. Iwo Jima last week with the FEMA Director down there. They reported that we had 14 offshore oil rigs destroyed during the storm. Six of them were still pumping oil and gas into the Gulf. This is 18 days after the original disaster.

When I asked how many oil spills on the land-based rigs, they said those were not ascertained, but they were in the hundreds. The exact number was not ascertained. The number of major refineries and oil storage facilities above ground, above ground, these are not in vessels, these are not in tanks, were in the dozens. Now, all those storage facilities are underwater or have been underwater for about 3 weeks. So you see the need for that information.

Some of the suggested changes that are before us here today would allow those storage facilities to not report what they have onsite, or the quantities they have onsite, so that in an event like Katrina or Rita, we would be totally at a loss in determining the amount of toxics released into the environment. That is a situation we do not want to be in.

Hurricane Katrina also highlights the importance of some of the other environmental protections we will hear about today. For example, EPA's spill prevention and counter-measure rule requires certain facilities to prepare and implement plans to prevent and contain oil spills and to prevent the contamination of coastal waterways. EPA has reported at least five major oil spills and upwards of a hundred small oil spills.

By the way, I asked the Admiral down there, how much oil are we talking about here that has been spilled because of Katrina. And he said, well, at that point, on that Sunday afternoon, he said, we have six oil wells still pumping into the Gulf, we have hundreds

of smaller. He said that the amount right now, as of last Sunday morning, was over 10 million gallons. I said, well, quantify that for me in terms of other spills.

He said, the Exxon Valdez was 11 million gallons. He said that we are at 10 million gallons and still pumping, still pumping into the Gulf, still pumping into the coastal waterways of Louisiana and Mississippi. So I think it is fair to assess that that we have a greater spill right now on the Gulf Coast.

Another example is EPA's rules on hazardous waste management under the Resource Conservation and Recovery Act. We will hear from witnesses today how the industry that this individual represents is working with Gulf Coast communities to clean up hazardous waste left behind by Hurricane Katrina.

As we can see from the damage caused by the recent hurricanes, we should not focus on rolling back environmental protections without careful thought. We should look at how environmental protections can protect communities, especially in the event of a disaster, and how we can ensure that people and businesses affected by Hurricanes Katrina and Rita get back on their feet without having to face avoidable public health and environmental problems.

I look forward to hearing from Mr. Mannix about EPA's efforts in that regard. I want to thank all of the panelists here today for helping this subcommittee with its work. I yield back.

Thank you, Chairwoman Miller.

Ms. MILLER. Thank you, Representative Lynch.

Because we are an oversight committee, and we do have subpoena authority, it is our practice to swear in all of our witnesses. So if you will please stand and raise your right hands.

[Witnesses sworn.]

Ms. MILLER. Thank you.

To the witnesses as well, you will see that the little black boxes in front of you, there are various lights on them. When you see a yellow light, you will know about 4 minutes has elapsed, and the red light is for 5 minutes. Although I won't hold you to that exactly, just to give you an idea for purposes of time.

The subcommittee first of all is going to hear from Brian Mannix. He is the Associate Administrator for Policy, Economics and Innovation at the Environmental Protection Agency. Mr. Mannix has nearly 30 years of scientific and policy experience, including most recently a position as a senior research fellow in regulatory studies at the George Mason University.

Previously, he was also the Director of Science and Technology Studies at the Manufacturers Alliance for Productivity and Innovation. Mr. Mannix has come full circle and returned to the EPA where he began his career in 1977 at their Office of Policy and Management. Mr. Mannix, we appreciate your appearing today before the hearing, and we look forward to your testimony, sir.

STATEMENTS OF BRIAN MANNIX, ASSOCIATE ADMINISTRATOR, OFFICE OF POLICY, ECONOMICS AND INNOVATION, U.S. ENVIRONMENTAL PROTECTION AGENCY; AND TOM SULLIVAN, CHIEF COUNSEL, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

STATEMENT OF BRIAN MANNIX

Mr. MANNIX. Thank you, Madam Chairman and members of the subcommittee.

I appreciate the opportunity to appear before you today to discuss EPA's regulatory reform efforts included in OMB's 2005 Report on Regulatory Reform in the Manufacturing Sector. I believe the subcommittee will be pleased to hear about the significant progress the Agency has made in meeting our commitments.

I noted until recently you were expecting the EPA witness at this hearing to be our Deputy Administrator, Marcus Peacock. Although he was scheduled to be here, he is leading the Agency's response to Hurricanes Katrina and Rita. As you can imagine, this is an all-consuming effort. I would like to thank the subcommittee for allowing me to be here in his place, and for all the earlier work to accommodate Mr. Peacock's schedule.

If it would please the subcommittee, Madam Chairman, I would like to summarize my statement today and request that the full written statement be included in the hearing record.

Ms. MILLER. Without objection, so ordered.

Mr. MANNIX. Thank you.

EPA shares the President's appreciation and the subcommittee's appreciation for the key role played by the manufacturing sector in sustaining the health of our national economy. The Agency is actively pursuing a variety of reforms to our regulations that were suggested by the OMB report. The manufacturing initiative offers an opportunity for EPA to reduce unnecessary and burdensome requirements on our Nation's vital manufacturing sector, while accelerating the pace of environmental progress.

As you know, each spring OMB publishes a draft report to Congress on the costs and benefits of Federal regulations and solicits public comments on the contents of the report and on any regulatory actions or guidance documents the public believes should be nominated for reform. This year, OMB focused the report on regulatory reforms of most interest to the manufacturing sector; 189 responses were submitted to OMB from 41 different commenters, most of which pertained to actions being taken by EPA and the Department of Labor. OMB referred 90 proposed reforms to EPA in December 2004 for our review and consideration.

EPA evaluated the merits of each of the reform nominations, considering a variety of factors on a case by case basis. Among these factors were: one, whether the action is based on sound science; two, whether the action is the most effective way to manage for environmental results; and three, whether the same or an even better environmental outcome could be achieved through a cooperative partnership, rather than command and control regulations.

After considering these and other factors, in January 2005, the Agency submitted its reform recommendations to OMB. Ultimately,

42 EPA reforms covering a wide range of issues were included in OMB's final report.

Two recently completed actions illustrate the principles supporting our selection of reform candidates. Today, EPA is announcing a rule streamlining the general pre-treatment regulations that establish requirements for local publicly owned treatment works [POTWs]. The changes give POTWs greater flexibility to oversee the dischargers whose effluent they treat, but preserves EPA's backstop authority to ensure that the pre-treatment program continues to protect both the POTW and the environment. The result will be less paperwork for POTWs and the manufacturing sources, since local regulators can now eliminate burdensome paperwork requirements without running afoul of EPA rules.

The reforms underway related to the Toxic Release Inventory Program also demonstrate the application of the Agency's principles. Many people have expressed a concern that TRI reporting is unnecessarily burdensome and that the usefulness of the resulting data is not commensurate with its costs. Last week, EPA announced a proposed rule that will reduce the TRI burden by allowing thousands of reporters to use a streamlined form.

In addition, the Agency has notified Congress that it intends to initiate a rulemaking to modify required reporting frequency from annual to biennial reporting. This would not only substantially reduce the burden but also enable EPA and the States to use their saved resources to improve the TRI data base and conduct additional analyses that would enhance the value of the data to the public.

I would also like to highlight for the subcommittee a few important reform actions we expect to complete by the end of this year. For instance, the Agency currently plans to issue new guidance and propose a rulemaking concerning the Spill Prevention, Control and Countermeasures rule. The guidance document will provide clarification and compliance assistance to facilities subject to that rule.

It will also propose compliance flexibility for facilities that store small amounts of oil while continuing to prevent potential discharges. Also by the end of the year, the agency intends to issue a proposed rule to promote additional recycling in the electroplating industry. I will refer the subcommittee to the manufacturing initiative report attached to my testimony for additional details and for additional actions that we have underway and progress made to date.

In conclusion, under this administration, EPA has taken significant steps to improve the quality and credibility of our regulations and guidance documents. The reforms that are included in the manufacturing initiative are an important part of that improvement process. EPA is committed to implementing and completing the reforms outlined in OMB's manufacturing initiative. This effort affords us the opportunity to evaluate and act on the reforms that promote stewardship and innovation and that produce environmental results.

I expect that the Agency will be totally successful in responding to the 2005 manufacturing sector reform initiative. Thank you for the opportunity to testify today. I would be happy to answer any questions the committee might have.

[The prepared statement of Mr. Mannix follows:]

Testimony of Brian Mannix,
Associate Administrator, Office of Policy, Economics and Innovation
U.S. Environmental Protection Agency,
before the
Subcommittee on Regulatory Affairs,
U.S. House of Representatives

September 28, 2005

I. Introduction

Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the Environmental Protection Agency's (EPA) regulatory reform efforts included in the Office of Management and Budget's (OMB) 2005 report entitled Regulatory Reform of the United States Manufacturing Sector. I believe that the subcommittee will be pleased to hear about the significant progress the Agency is making in meeting our commitments.

The President appreciates the key role played by the manufacturing sector in sustaining the health of our national economy. I understand how important, yet often overlooked, the sector is to the country. To that end, EPA is actively pursuing a variety of reforms to our regulations that were suggested in the OMB report. These reforms will help accelerate the pace of environmental protection in a manner that is less burdensome to manufacturers. EPA has made commitments covering a wide range of issues, many of which will reduce the burden of monitoring and reporting requirements while still protecting human health and the environment. In fact, these changes will allow environmental compliance officers at manufacturing facilities to focus on higher priority environmental issues.

II. Manufacturing Sector Report

Each year OMB submits a report to Congress that estimates the total annual costs, benefits, and impacts of federal rules and paperwork. To initiate this process, OMB publishes a draft report each spring and solicits public comments on the content of the report and on any regulatory actions or guidance documents the public believes should be nominated for reform. This year, OMB focused the report on regulatory reforms of most interest to the manufacturing sector.

In February of 2004, OMB requested public nominations of specific regulations, guidance documents, and paperwork requirements that, if carefully modified, could result in lower costs, increased effectiveness, enhanced competitiveness, and increased flexibility. One hundred and eighty nine responses were submitted to OMB from 41 different commenters. Most of these pertained to regulation promulgated by EPA and the Department of Labor. In December 2004, OMB referred ninety proposed reforms to EPA for our review and consideration. EPA evaluated the merits of each of the reform nominations and, in January, 2005, submitted its reform recommendations to OMB. Forty two EPA reforms were included in OMB's final report.

When selecting these reforms, EPA applied the same criteria that it applied to its environmental policy over the past four years:

- Is the rule based on sound science?
- Is the implementation of the rule the most effective way to manage for environmental results?
- Could the same (or better) environmental outcome be achieved through a cooperative partnership rather than command and control regulation?

Two recent actions illustrate how these principles were applied. EPA streamlined its General Pretreatment Regulations that establish requirements for local publicly owned treatment works (POTWs) to target resources where they will produce the greatest environmental benefit. EPA regulations generally require local manufacturers to "pretreat" their discharges before they reach the POTW for further treatment. In administering these standards, POTWs impose requirements to ensure that the manufacturers will not damage the treatment systems of the POTWs or cause the POTW to violate its National Pollutant Discharge and Elimination System permit. EPA's regulations also govern the specific steps POTWs must take in overseeing the dischargers whose effluents they treat. The change we recently promulgated gives POTWs greater flexibility to conduct this oversight, but preserves EPA's backstop authority to ensure that the pretreatment program continues to protect both the POTW and the environment. The result will be less paperwork for POTWs and manufacturing sources since local regulators can now eliminate burdensome paperwork requirements without running afoul of EPA rules. Providing POTWs greater flexibility to target oversight resources where they will do the most good produces a more effective POTW-EPA partnership that manages for environmental results.

The reforms underway related to the Toxics Release Inventory (TRI) Program also demonstrate the Agency's application of our principles such as using sound science. Many people have expressed concern that TRI reporting is unnecessarily burdensome and that the usefulness of the resulting data is inconsistent with its costs. EPA is moving forward to reduce TRI burden with a proposed rule that would allow thousands of TRI reporters to use a much simpler "Form A" in lieu of the more complex "Form R". This proposal would provide burden relief to about one third of all TRI reporting facilities while continuing to ensure that communities are provided with the same high level of information about facilities' chemical handling activities. The Agency has also notified Congress that it intends

to initiate a rulemaking within 12 to 24 months to modify required reporting frequency from annual to biennial reporting. This would not only reduce burden, but also enable EPA and states to use the saved resources from the non-reporting years to improve the TRI data base and conduct additional analyses that would enhance the value of the data to the public.

The same evaluation criteria used for these two rules is being consistently applied to the wide array of Agency actions. One example stands out: in May of last year the Administration announced one of the most dramatic advancements in clean air protection since passage of the Clean Air Act Amendments of 1990. EPA's Clean Air Nonroad Diesel Rule requires stringent pollution controls on diesel engines used in industries such as construction, agriculture and mining, and it will slash sulfur content of diesel fuel. The rule will be a major help to areas nationwide in their effort to reach clean air goals and improve public health. This rule is the latest in a series of Clean Diesel actions based on sound science designed to reduce emissions from nearly every type of diesel vehicle and equipment. This nonroad diesel program combines cleaner engine technologies with cleaner fuel -- similar to the on-highway diesel program -- with an end result of dramatic environmental and public health benefits.

III. Agency Process to Respond to Regulatory Reform Nominations

While 42 reforms were ultimately selected for action by the Agency, EPA carefully examined each and every reform suggested by the public. The list of nominations referred to EPA was sent to each of our program offices to review and provide a response, including information on what the final product, goal or objective would be along with any associated milestones. While the Agency was guided by the principles I mentioned above, there were some cases where the Agency had already taken the action recommended by the commenter or had work already underway to address their concern. In more than one instance, the Agency

contacted the commenter directly to clarify the nature and intent of the nomination.

Once the program offices completed their review, their recommendations, accompanied by a detailed rationale, were forwarded to the Office of Policy, Economics and Innovation, the Agency's lead Office responsible for coordinating responses and ensuring that the Agency meets its commitments.

After evaluating the merits of each of the reform nominations, EPA submitted its reform recommendations to OMB, meeting the January 24, 2005. During this time, the Agency commenced work to address the 42 comments. Throughout this process, EPA sometimes provides feedback on specific proposals, as well as periodic updates to OMB on the Agency's progress toward meeting action milestones. To continually monitor our progress in meeting milestones, OPEI developed and maintains a database to track the Agency's progress. Our review of the nominations has helped to either confirm the Agency's initial approach or recognize the need for revision or clarification. Also, it highlights opportunities for us to accelerate the pace of environmental protection through cooperative partnership and stewardship.

IV. Progress on Specific Regulatory Reform Nominations: Completed Actions

Thanks to this reform initiative, we have already made significant progress in the effort to reduce unnecessary burdens while accelerating the pace of environmental protection. For example, in response to comment No. 52: Reporting and Paperwork Burden in the Toxics Release Inventory (TRI) Program, the Agency proposed to reduced the burden on the reporting community by allowing use of simpler reporting forms and notified Congress that it intends to initiate a rulemaking within 12 to 24 months to reduce the frequency of reporting.

Several other actions that have already been completed are worthy of highlighting:

OMB Tracking Number	Reform Title	Action Taken
47, 117	Issuance of the Final Pretreatment Streamlining Rule Under the Clean Water Act; Categorical Wastewater Sampling and Testing	The Agency finalized a rule that will promote conservation and innovation, provide greater flexibility to Publicly Owned Treatment Works (POTWs), reduced overall administrative burden to industries, state regulatory agencies and POTWs.
101	Sulfur and Nitrogen Monitoring at Stationary Gas-Fired Turbines	The Agency promulgated a rule that provides more flexibility to turbine owners by removing unnecessary requirements and revising monitoring, record keeping and reporting requirements.
44	Maximum Achievable Control Technology (MACT) Standards for Chromium Emissions	The Agency finalized chromium electroplating amendments that promote innovation by providing more flexibility for new sources of chromium emissions from metal finishing operations, more flexibility in the legal treatment of technical violations, and more compliance flexibility in the use of alternative technologies.
35	Enforcement and Compliance History Online (ECHO) Website	The Agency improved the data quality of an important source of publicly available data.
61	Annual Reporting of Pesticide Information	The Agency streamlined reporting forms and modified the website to clarify and simplify the process for annually reporting pesticides.

V. Progress on Specific Regulatory Reform Nominations: 2005 Outlook

While the EPA has already achieved a number of important milestones in meeting our commitments under the Manufacturing Initiative, I would also like to highlight for the Subcommittee important reform actions we are finalizing and expect to complete by the end of this year. In December, we plan to issue a proposed rule to promote additional recycling in the electroplating industry. Currently, metal precipitate sludge is considered a listed hazardous waste. This determination discourages reuse, recycling and reclamation of these wastes. This rule would exempt recycled electroplating sludge containing a high percentage of recoverable metals from hazardous waste management requirements, thereby reducing the costs of recycling. The proposed rule is one example of the Agency managing for results; the result being increased recycling of valuable metals and reduced reliance on virgin materials and the environmental impact associated with processing these materials.

By the end of the year, the Agency currently plans to issue new guidance and propose a rulemaking concerning the Spill Prevention, Control, and Countermeasure (SPCC) rule (OMB tracking numbers 54-58). The guidance document will provide clarification and compliance assistance to facilities subject to SPCC. The rule will propose compliance flexibility for facilities that store small amounts of petroleum, while continuing to prevent potential discharges to navigable waters of the United States or adjoining shorelines.

I refer the Subcommittee to the Manufacturing Initiatives Report for additional actions that we have underway.

VII. Conclusion

Under this Administration, EPA has taken significant steps towards improving the quality and credibility of our regulations and guidance documents using sound science as a foundation. The reforms we have outlined in the Manufacturing Initiative are an important part of that improvement process. We are committed to implementing and completing the reforms outlined in OMB's Manufacturing Initiative. All of these initiatives are being tracked in the Agency's regulatory tracking system, which keeps the Administrator informed of both progress and upcoming milestones. This process affords us the opportunity to evaluate and act on reforms that promote stewardship and innovation and produce environmental results. I expect the Agency will be totally successful in responding to the 2005 Manufacturing Sector Reform Initiative.

Thank you for the opportunity to testify today. I would be happy to answer any questions that you may have.

Ms. MILLER. Thank you very much.

Our next witness is the Honorable Tom Sullivan. Mr. Sullivan is the U.S. Small Business Administration's fifth Chief Counsel of Advocacy. Upon his confirmation in January 2002, Mr. Sullivan began opening up channels for small business concerns to be heard at the highest levels of Government.

Prior to his joining the U.S. SBA, Mr. Sullivan had established his dedication to small business concerns with the NFIB, where he promoted a pro-small business agenda in the Nation's courts. In the year 2000, Mr. Sullivan was named by Fortune Small Business Magazine as one of the Power 30 most influential folks in Washington.

We certainly thank you, Mr. Sullivan, for joining us today and we look forward to your testimony, sir.

STATEMENT OF TOM SULLIVAN

Mr. SULLIVAN. Thank you, Chairwoman Miller and members of the subcommittee. Good morning. It is an honor to appear before you today.

Congress established my office, the Office of Advocacy, to advocate the views of small business before agencies in Congress. My office is an independent entity within the Small Business Administration. The views expressed here and in my written statement do not necessarily reflect the position of the administration or the SBA.

My testimony was not circulated for clearance with OMB, but upon its submission to this subcommittee, I did share it with OMB and EPA as a courtesy. With the Chair's permission, I would like to summarize my written statement and ask that it be completely entered into the record.

Ms. MILLER. Without objection, so ordered.

Mr. SULLIVAN. In 2004, OMB and agencies undertook the process designed to reduce the regulatory burden on U.S. manufacturers through 76 targeted regulatory reforms. More than half of these reforms involved rules issued by the EPA.

A study released by my office a week ago Monday, done by Professor Mark Crain, called the Impact of Regulatory Costs on Small Firms, found that in general, small business are disproportionately impacted by the total Federal regulatory burden. It is a compliment to my office that the Chair cited these figures in her opening statement.

Those figures are revealing in that the overall regulatory burden was estimated to exceed $1.1 trillion in 2004. For manufacturing firms employing fewer than 20 employees, the annual regulatory burden was estimated to be $21,919 per employee.

Looking specifically at environmental costs, the difference between small and large manufacturing firms is even more dramatic than the overall 45 percent disproportionality. Small manufacturing firms, as the Chair noted in the opening statement, spend four and a half times more per employee for environmental compliance than large businesses do.

With regard to the manufacturing reform, regulatory reform initiative, my office has worked particularly closely with EPA on three of their reforms: reporting and paperwork burden in the Toxics Re-

lease Inventory program; spill prevention, control and countermeasure rule, and lead reporting burdens under the Toxics Release Inventory.

EPA's proposed revision to the TRI rule to encourage greater use of the simpler form, the equivalent in the tax world of the 1040-EZ, was announced last week. That proposal will allow Form A to be used for the first time by business that handle PBTs but that release none of them to the environment. The proposal also allows facilities that use 5,000 pounds or less of non-PBT materials in a year to use the short or simplified form.

In total, it is estimated that the proposal would provide a measure of regulatory relief for about 33 percent of all TRI reporters and is anticipated to save about 165,000 hours of filing burden each year. At the same time, the proposal ensures that the toxic materials management activities of concern to the public will continue to be reported through Form R. If implemented as proposed, EPA's reform would provide paperwork relief to some 8,000 businesses, most of whom are small.

The TRI reforms have a long history. I am happy to answer questions about that history with regard to public comment, in particular, small business comment. Most of it is up on my office's Web site, that details public input to OMB and EPA for over a decade. So we are pleased that EPA is moving forward with these reforms.

These reforms announced last week and some that lay ahead are perfect examples of what happens when small businesses engage in a constructive dialog with EPA, so that rules can be finalized that are sensitive to their economic impact without compromising the mission of EPA to protect human health and the environment.

When planned rules are evaluated by my office under the Regulatory Flexibility Act, we look for ways to reduce small business burdens without compromising the regulatory objectives intended by agencies. We believe that EPA's regulatory reform efforts can achieve the same result, and they will be extremely beneficial for small manufacturing firms.

Thank you for allowing me to present these views, and I would be happy to answer any questions.

[The prepared statement of Mr. Sullivan follows:]

SBA
Office of Advocacy
A Voice for Small Business

409 3rd Street, SW ⁂ MC 3114 ⁂ Washington, DC 20416 ⁂ 202/205-6533 ph. ⁂ 202/205-6928 fax ⁂
www.sba.gov/advo

Testimony of
Thomas M. Sullivan
Chief Counsel for Advocacy
U.S. Small Business Administration

U.S. House of Representatives
Committee on Government Reform
Subcommittee on Regulatory Affairs

Date:	September 28, 2005
Time:	10:00 A.M.
Location:	Room 2154 Rayburn House Office Building Washington, D.C.
Topic:	"The Impact of Regulation on U.S. Manufacturing: Spotlight on the Environmental Protection Agency"

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates. For more information about the Office of Advocacy, visit http://www.sba.gov/advo, *or call (202) 205-6533.*

Chairman Miller and Members of the Subcommittee, good morning and thank you for giving me the opportunity to appear before you today. My name is Thomas M. Sullivan and I am the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA). Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small business before Federal agencies and Congress. Because Advocacy is an independent entity within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.

In 2004, the Office of Management and Budget (OMB) and Federal agencies undertook a process designed to reduce the regulatory burden on U.S. manufacturers through 76 targeted regulatory reforms, including several reforms recommended by the Office of Advocacy (*see* Attachment A for a list of the proposed reforms). More than half of these reforms involved rules issued by the U.S. Environmental Protection Agency (EPA).[1]

The Subcommittee has requested Advocacy's view of the overall progress made by the EPA in reforming these regulations. Based on our experience in working with EPA to implement three of the specific reforms we recommended, we believe EPA is making good progress in some areas, but I would be remiss if I did not point out the frustration of small business at the length of time associated with meaningful relief. If all of the recommended reforms are implemented by EPA, they will yield reduced regulatory burden without sacrificing environmental protection.

How Important Is the Relationship Between Small Business and Manufacturing?

Small businesses are important to U.S. manufacturing. Economic data from 2002 indicate that nearly 99 percent (98.6%) of all manufacturing firms are small businesses.[2] Put another way, these small businesses employ over 42% of the more than 14 million Americans who are manufacturing employees.[3] Additionally, small firms tend to

---

[1] The 2004 initiative to improve manufacturing rules is the most recent in a series of regulatory reform efforts initiated by this Administration since 2001. OMB called for public nominations of rule reforms in the May 2001 and March 2002 Draft Reports to Congress. OMB received 71 and 316 nominations from the public, respectively. OMB did not issue a public call for nominations in 2003.
[2] See Office of Advocacy economic statistics, available at http://www.sba.gov/advo/stats/us_tot_mi_n.pdf.
[3] *Id.*

innovate more than large ones do, producing 13 to 14 times more patents per employee than larger firms do.[4] Small firm patents are more likely to be driven by leading edge technology than large firm patents.[5] Finally, small manufacturing firms are more likely than large companies to produce specialty goods and custom-demand items. For these reasons, small business manufacturing is very important to the U.S. economy.

How Important Are the Costs of Environmental Regulation to Small Manufacturers?

The 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*,[6] found that, in general, small businesses are disproportionately impacted by the total Federal regulatory burden. This overall regulatory burden was estimated by Crain to exceed $1.1 trillion in 2004. For manufacturing firms employing fewer than 20 employees, the annual regulatory burden in 2004 was estimated to be $21,919 per employee – nearly 2½ times greater than the $8,748 burden estimated for firms with 500 or more employees.[7] Looking specifically at environmental costs, the difference between small and large manufacturing firms is even more dramatic. Small manufacturing firms spend 4½ times more per employee for environmental compliance than large businesses do. Environmental regulations comprise the largest share of small manufacturers' regulatory burden, adding up to 72% of their total regulatory costs.[8] This large discrepancy between large and small manufacturers for environmental costs is largely attributable to the fact that many environmental rules require significant fixed capital investments (e.g., pollution control equipment) and other costs that small firms cannot spread over high-volume operations in the way that large firms can.

The 2005 Crain study is the most timely and comprehensive measure of the total cost of regulations on the U.S. economy, reflecting the state of the economy in 2004 and covering virtually every category of regulations impacting small business. The report

---

[4] *Small Serial Innovators: The Small Firm Contribution to Technical Change* (February 2003) available at http://www.sba.gov/advo/research/rs225tot.pdf.
[5] *Id.*
[6] *The Impact of Regulatory Costs on Small Firms* (September 2005) available at http://www.sba.gov/advo/research/rs264tot.pdf.
[7] *Id.* at page 55, Table 18.
[8] Environmental regulations account for about 40% of large manufacturers' (500 or more employees) regulatory costs. The distribution of environmental compliance costs across industries and firm sizes in the Crain study is derived directly from firm-level data from the Pollution Abatement Control Expenditures (PACE) survey from 1994, the last year for which data were available when the Crain study was written.

uses data gathered from numerous sources, including the Office of Management and Budget (OMB), the Organization for Economic Cooperation and Development (OECD), the Council of Economic Advisors, the Census Bureau, and various resource organizations.

The 2005 Crain report improves upon the earlier Crain-Hopkins study[9] in several ways. First, the report estimates the cost of economic regulation with a new methodology that accounts more accurately for current economic conditions. Second, the report contains a more in-depth discussion of the methodology and data underlying the cost estimates than its predecessor did. Finally, the Crain report was updated to conform to the Office of Management and Budget's 2004 Final Information Quality Guidelines.[10] Accordingly, the 2005 Crain study has been peer-reviewed by external experts in the field of regulatory analysis.[11]

The Crain study's findings are important because they underscore the significance of small business to manufacturing and the overall American economy. Despite the disproportionate regulatory burdens borne by small firms, the small business sector is the primary engine of job creation, growth and innovation.[12]

What Progress Has the EPA Made In Reducing Regulatory Burdens On Small Manufacturers?

At present, EPA is pursuing some 42 suggestions for reform of environmental rules affecting manufacturers (*see* Attachment A). Advocacy has worked particularly closely with EPA on three of these reforms: "Reporting and Paperwork Burden in the Toxic Release Inventory Program," "Spill Prevention Control and Countermeasure (SPCC) Rule," and "Lead Reporting Burdens under the Toxic Release Inventory

---

[9] W. Mark Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms* (October 2001) available at http://www.sba.gov/advo/research/rs207tot.pdf.
[10] See Office of Management and Budget, Final Information Quality Guidelines (October 1, 2002), available at http://whitehouse.gov/omb/inforeg/iqg-Oct2002.pdf.
[11] Peer review was performed under the Office of Management and Budget's directive for peer review, available at http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf.
[12] See Office of Advocacy, *Small Business Frequently Asked Questions* available at http://www.sba.gov/advo/stats/sbfaq.pdf and *Small Serial Innovators: The Small Firm Contribution to Technical Change* (February 2003) available at http://www.sba.gov/advo/research/rs225tot.pdf.

Program." We believe our experience with these three EPA reforms illustrates the overall situation with EPA's manufacturing reform efforts.

- ***Reporting and Paperwork Burden in the Toxic Release Inventory Program***

On September 21, 2005, EPA proposed revisions to the Toxic Release Inventory (TRI) program to allow additional TRI reporters to use the "short" Form A instead of the longer Form R.[13] Advocacy originally became involved in this issue in August 1991, when we submitted a rulemaking petition to EPA to reduce unnecessary TRI reporting burdens on small business. We got involved because the cost for small businesses to calculate often tiny amounts of chemicals in their raw materials/products and prepare lengthy Form R reports is often substantial, yet produces very little real environmental benefit, since these chemicals are not actually released into the environment. Accordingly, based on comments from Advocacy and other small business representatives, EPA developed the original Form A in 1994 as a less burdensome way to report insignificant annual chemical management activities. Unfortunately, many of the businesses that would benefit the most from Form A were later declared ineligible by EPA to use the short form. For example, Form A was not available to facilities that used "persistent, bioaccumulative, and toxic" materials (PBTs) in their operations, or those that used more than 500 pounds of a non-PBT material in a year.

EPA's proposed revision to the TRI rule addresses this problem. The proposal would allow Form A to be used for the first time by businesses that handle PBTs, but that release no PBTs to the environment. The proposal also allows facilities that use 5,000 pounds or less of non-PBT materials in a year to use Form A. In total, it is estimated that the proposal would provide a measure of regulatory relief for about 33% of all TRI reporters, and is anticipated to save about 165,000 hours of filing burden each year. At the same time, the proposal ensures that the toxic materials management activities of concern to the public will continue to be reported through Form R.[14] If implemented as proposed, EPA's reform would provide paperwork relief to some 8,000 businesses, most of whom are small. This is an example of a regulatory reform that brings meaningful

[13] The formal proposal is expected to appear in the *Federal Register* within a few days.
[14] EPA estimates that over 99% of toxic materials handling at facilities will be reported through Form Rs.

burden reduction to small business, while maintaining the same degree of community information and environmental protection.

- ***Spill Prevention Control and Countermeasure (SPCC) Rule***

Advocacy has worked with EPA for several years to implement improvements to the Spill Prevention, Control and Countermeasure (SPCC) program, which protects our waters against oil spills from industrial facilities. At present, because of the complexity and cost of the current SPCC program, Advocacy believes that many small businesses are unable to comply fully with the new requirements adopted in 2002. For example, facilities are currently required to prepare spill prevention plans that are certified by a professional engineer. This is a costly and unnecessary expense for firms with a small-capacity storage tank. Small volume tanks do not generally pose the same environmental risks that larger volume tanks do.[15]

Advocacy suggested reforms to the SPCC requirements in June 2004, including allowing facilities with an oil storage capacity below a certain threshold to use streamlined, less expensive requirements. We believe that overall SPCC compliance will improve with a simpler, less expensive program that is tailored to small facilities. EPA's objective of environmental protection will be met, and in some cases enhanced, while many small manufacturers will not be required to incur needless cost. On September 17, 2004, EPA issued a Notice of Data Availability requesting public comments on Advocacy's suggested approach for facilities that handle oil below a certain threshold amount.[16] We anticipate an EPA proposal to provide relief to small facilities and other regulatory improvements in the near future, with a final rule scheduled for February 2006. Again, this reform would bring substantial burden relief to small businesses while maintaining the current high level of environmental protection.

- ***Lead Reporting Burdens Under the Toxic Release Inventory Program***

---

[15] According to a 1995 EPA survey, facilities with total storage capacities of 5,000 gallons or less account for an estimated 48 percent of all facilities, but only 0.2 percent of oil discharged. In its own analysis of the 1995 survey, EPA noted that "facilities with larger storage capacity are likely to have a greater number of oil spills, larger volumes of oil spilled, and greater cleanup costs." U.S. EPA, *Analysis of the Relationship Between Facility Characteristics and Oil Spill Risk* (1996).

[16] *See* 69 Fed. Reg. 56,182 (September 17, 2004).

As much as the TRI reporting and paperwork burden reform effort appears likely to be a success story for EPA, parallel efforts to reform EPA's 2001 TRI lead reporting rule have not shown as much promise. EPA imposed substantial new TRI paperwork burdens on small business in early 2001, when it lowered the TRI reporting threshold for lead to 100 pounds from the previous 10,000/25,000 pound threshold.[17] As a result of EPA's action, over four times as many companies had to file lead TRI reports.[18] The first-time recordkeeping burden of filing these reports was estimated to exceed 100 hours per firm, and Advocacy estimates that as much as 500,000 staff hours were required to create these reports in 2001.[19] The data from the 2001 reporting revealed that the majority of the filers had zero or near zero onsite releases of lead. Specifically, 38% of all reports documented zero releases to the environment, while an additional 25% of all reports were for 10 pounds or less released to the environment. Thus, some 63% of all TRI reports for lead and lead compounds likely would have no discernable effect on the environment. Moreover, while the burden of complying with TRI reporting for lead falls most heavily on manufacturing firms – comprising 84% of all such reports in 2001 – most manufacturers contribute little or no lead to the environment.[20]

It is worth noting that small businesses informed EPA that the lowered lead reporting threshold would impose significant new reporting burdens with little or no corresponding benefit to the environment. The Office of Advocacy also argued strongly that EPA should convene a small business review panel under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[21] No such review panel was convened. Despite assurances beginning as early as 2001 that the TRI lead reporting rule would be reformed to address unnecessary filing requirements on small businesses, these small businesses are frustrated that seemingly little has been done to implement reform.[22]

---

[17] *See* 66 Fed. Reg. 4,500 (January 17, 2001).
[18] 8,560 lead and lead compound TRI reports were filed in 2001, 2,025 were filed in 2000.
[19] 66 Fed. Reg. 4,538 (January 17, 2001).
[20] In 2001, the primary metals industry accounted for 83% of all manufacturing releases of lead.
[21] Letter from Jere Glover, Chief Counsel for Advocacy, Office of Advocacy, to John Spotila, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (October 5, 2000), available at http://www.sba.gov/advo/laws/comments/omb00_1005.html.
[22] EPA's scientific review of the metals framework which allows lead to be categorized as a PBT chemical was scheduled to be completed more than two years ago. The review has still not been completed.

Advocacy is Committed to Achieving Regulatory Reforms

The Office of Advocacy has worked closely with EPA and other entities to implement needed regulatory reforms. Advocacy activities have included holding public outreach meetings to receive suggestions on needed reforms, working with small business representatives to hear their views, and helping OMB prioritize the regulatory reforms of particular concern to small entities. Advocacy is committed to the regulatory reform process because the process can really only work if the interests of small business are included. Congress realized the importance of small business when the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA)[23] were enacted into law. When planned rules are evaluated by Advocacy under the RFA and SBREFA, we look for ways to reduce small business burdens without compromising the regulatory objectives intended by the regulating agency. We believe that EPA's regulatory reform efforts can achieve the same result, which will be extremely beneficial for small manufacturing firms.

Thank you for allowing me to present these views. I would be happy to answer any questions.

ATTACHMENT A

Summary of 76 Regulatory Reform Nominations
(Office of Advocacy Reform Nominees Indicated in Bold)

[23] Codified at 5 U.S.C. §§ 601-612.

OMB No(s).	Rule Nominated for Reform	Agency
4	Coastal Zone Management Act Federal Consistency	National Oceanic and Atmospheric Admin.
6	NAFTA Certificates of Origin	Dept. of Homeland Security
7	Maritime Security	Dept. of Homeland Security
12	Motor Vehicle Brakes	Dept. of Transportation/ FMCSA
14	**Hours of Service**	**Dept. of Transportation/ FMCSA**
16	Lighting and Reflective Devices	Dept. of Transportation/ NHTSA
18	Occupant Ejection Safety Standard	Dept. of Transportation/ NHTSA
22	Vehicle Compatibility Standard	Dept. of Transportation/ NHTSA
26	Employer Information Report (EEO-1)	Equal Employment Opportunity Commission
28	"Coke Production" Emission Factors (AP-42)	EPA
30	Document AP-42: Science and Site-Specific Conditions	EPA
33	Clean Up Standards for Polychlorinated Biphenyls	EPA
34	Common Company ID Number in EPA Databases	EPA
35	Enforcement and Compliance History Online (ECHO) Website	EPA
36	Electronic Formats for Agency Forms	EPA
38	Expand Comparable Fuels Exclusion under RCRA	EPA
39	Export Notification Requirements	EPA
42	**Hazardous Waste Rules Should Be Amended to Encourage Recycling**	**EPA**
43	**Lead Reporting Burdens Under the Toxic Release Inventory Program**	**EPA**
44	Maximum Achievable Control Technology Standard for Chromium	EPA
45	Polychlorinated Biphenyl Remediation Wastes	EPA
46	Permit Use of New Technology to Monitor Leaks of Volatile Air Pollutants	EPA
47	**Water Pretreatment Streamlining Rule**	**EPA**
48	**Provide More Flexibility In Managing F006 Wastewater Sludge to Encourage Recycling**	**EPA**
51	Remove Disincentives to Recycling Spent Hydrotreating and Hydrorefining Catalysts	EPA
52	**Reporting and Paperwork Burden in the Toxic**	**EPA**

	Release Inventory Program	
54,55 56,57 58	**Spill Prevention Control and Countermeasure (SPCC) Rule**	**EPA**
59	Water Permit Rules	EPA
61	Annual Reporting of Pesticide Information	EPA
68	Cooling Water Intake Structures, Phase III	EPA
75	Electronic Filing by Manufacturing Firms	EPA
83	Leak-Detection and Repair Programs	EPA
86	**Method of Detection Limit/Minimum Level Procedure under the Clean Water Act**	**EPA**
87	Operating Permits under the Clean Air Act	EPA
88	Potential to Emit Test	EPA
90	Prohibit Use of Mercury in Auto Manufacturing	EPA
92	Reduce Inspection Frequency from Weekly to Monthly for Selected RCRA Facilities	EPA
97	**Reportable Quantity Threshold for NOx at Combustion Sources**	**EPA**
101	Sulfur and Nitrogen Monitoring at Gas Turbines	EPA
103	Program for Developing and Validating Analytic Methods	EPA
108	**Deferral of Duplicative Federal Permitting**	**EPA**
110	Superfund Amendments and Reauthorization Act	EPA
112	Vapor Recovery at Gasoline Stations	EPA
116	Publicly Owned Treatment Works removal credits	EPA
117	Categorical Wastewater Sampling and Testing	EPA
118	Definition of Volatile Organic Compound	EPA
119	Thermal Treatment of Hazardous Waste Guidance	EPA
121	**"Do Not Fax" Rule**	**Federal Communications Commission**
122	Broadband	Federal Communications Commission
125	**Health Insurance Portability and Accountability Act of 1996**	**Department of Health and Human Services**
134-137 141-144	**Reform of Family and Medical Leave Act (FMLA)**	**Department of Labor, Employment Standards Administration**
139	Reform of FMLA	Dept. of Labor/ESA
145	Permanent Labor Certification	Dept. of Labor
151	Annual Training for Separate Standards	Dept. of Labor/OSHA
152	Coke Oven Emissions	Dept. of Labor/OSHA
153	Flammable Liquids	Dept. of Labor/OSHA
155	Hazard Communication Training	Dept. of Labor/OSHA
156	Hazard Communication/Material Safety Data	Dept. of Labor/OSHA

	Sheets (MSDS)	
157	**Hexavalent Chromium**	**Dept. of Labor/OSHA**
159	**Sling Standard**	**Dept. of Labor/OSHA**
160	Guardrails Around Stacks of Steel	Dept. of Labor/OSHA
169	Walking and Working Surfaces	Dept. of Labor/OSHA
175	Duty Drawback	Dept. of the Treasury/Dept. of Homeland Security
178	**Election to Expense Certain Depreciable Business Assets**	**Dept. of the Treasury/ Internal Revenue Service**
188	**Ready to Eat Meat Establishments to Control for *Listeria Monocytogenes***	**Dept. of Agriculture/Food Safety and Inspection Service**

Ms. MILLER. Thank you very much, both of you. I think I will just pick right up on what Mr. Sullivan was speaking about, the TRI. Mr. Mannix, you mentioned that as well.

It was part of one of our previous hearings, we did talk about that particular rule in depth, had some testimony about it. So I was particularly pleased, last week, actually, to get a phone call from Ms. Nelson saying that you were going to be announcing that. She sort of led me through what your announcement was going to be.

One of the options of that particular rule that I think small businesses had testified to us previously that they had quite a bit of consternation about was restoration of the de minimis exemption for the PBT reporters. Could you expand a bit on that? Do you have any knowledge of why that was not part of the final rule?

Would you like me to come back to that?

Mr. MANNIX. I would have to get back to you on that, talk to Ms. Nelson and get back to the committee on the details of that. Because I am not prepared to testify on that. There was a substitution of the short form for the long form, there are some changing thresholds and then there is the proposed, the separate notification to Congress of a future rulemaking action to go biennial. But I will get back to you.

Ms. MILLER. If you could, we would appreciate that. The de minimis exemption wa something that was talked about, as I say, at this committee, and I know we have had quite a bit of conversation about it as well. So I would appreciate an answer at a later time on that, if you could.

Also, Mr. Sullivan was mentioning about the SBA study on the cost of regulation, the new study that you released there. I guess I would ask Mr. Mannix whether or not you are familiar with that study, if you have had an opportunity to evaluate it. I am taking some notes here, as Mr. Sullivan was explaining, an estimate of over $1 trillion in costs, of annual regulatory costs. And $22,000 per employee for small businesses, which is unbelievably startling, quite frankly.

I am just wondering whether or not you have had an opportunity to evaluate that study, if you agree with the findings of it and if you could expand a little bit on what your agency might be prepared to do to decrease that $22,000 number down.

Mr. MANNIX. Yes, Madam Chairman. I have been at EPA 8 days now, so I have not had time to review this new study. But as you know, I was at the Mercatus Center at George Mason. Professor Crain was a colleague. I have seen previous studies, and one of the earlier studies came from the Mercatus Center on the cost of labor regulation.

So I am familiar with the series of studies. And I am looking forward to seeing this one. Yes, I can assure you that at EPA, we will be paying attention to these costs and these SBA studies.

Ms. MILLER. I might ask Mr. Sullivan, then, as a follow-up to that question, at the beginning of this year, I sort of had in my mind that the cost of the regulatory burden for small businesses was a little less than $10,000. People talked about $7,000 to $8,000. Now we are hearing this number of $22,000 per employe, again, unbelievably startling.

Could you flesh out a bit how the construct of that number came about in your study?

Mr. SULLIVAN. Certainly. I should explain to the subcommittee that it is through this committee's deliberations that has improved this study in three successive iterations. This is the latest of three, and at each time it is published, it gets better from an economic perspective. The last time this study was released, this committee actually was critical that it was not peer reviewed. For the first time, this past year the study released last week was in fact peer reviewed. It is a better study, the methodology is better off for it.

As far as comparing the past costs of regulation, which was roughly about $6,975 per employee, with the current, it is a little bit of apples and oranges. Because again, the methodology is better. And when I say better, it is a little bit different.

I think the easiest way to characterize the growing cumulative regulatory burden is a good news/bad news. The good news is that there is likely to be a more level playing field when you compare the costs borne by small versus large. The bad news is that playing field is at a higher altitude, because the cumulative regulatory burden is growing.

Ms. MILLER. Perhaps I could ask you both to talk a little bit, and Mr. Mannix in particular, even though you are newly back to the EPA, about how the EPA in their decisionmaking actually does the cost benefit analysis as you are looking at some of these rules and regulations of keeping those competitive. We have heard studies that have said that the structural costs of American manufactured goods are 22, 23 points higher than any of our foreign competitors, even Canada, not just China and Mexico, and much of it due to the regulatory burden. How does that impact the decisionmaking as the EPA is looking at some of these regulations?

Mr. MANNIX. The EPA uses benefit cost analysis in accordance with OMB guidelines in support of its regulatory decisions. On major regulations, we do regulatory impact analyses. We also comply with the regulatory Flexibility Act and SBREFA, Small Business Regulatory Enforcement and Fairness Act, to look at impacts on small businesses.

But beyond that, as you mentioned, there is a concern about the cumulative burden of regulations on American manufacturing. That is what prompted the manufacturing initiative, the focus of the OMB report this past year and the activities we are talking about today.

There are other changes going on at the Commerce Department. The staff has been retasked with looking at regulations affecting manufacturing and also services. I expect to be working with the economists at the Commerce Department to see what we can do about ensuring the competitiveness of U.S. industry.

Ms. MILLER. Mr. Sullivan, do you have any comment on that?

Mr. SULLIVAN. I think Brian Mannix actually summed it up very well.

Ms. MILLER. Very well. I would like to recognize the ranking member, Representative Lynch.

Mr. LYNCH. Thank you, Madam Chair.

I have to say right at the outset, Mr. Mannix, I am a little surprised. Some of the questions that you were unable to answer are

pretty central to the inquiry here. If you have only been there 8 days, perhaps we should have had someone else testify. That is all I am suggesting. We have been preparing this for a while.

The very study that some of these recommendations are based upon should be known by someone on your staff. Maybe you could refer to other people. But to come up here and say, I have only been here 8 days, I can't answer the questions, I will get back to you, that is not really the level of cooperation that we are expecting.

I sympathize with your position and I have an utmost respect for the Mercatus Center at George Mason, and no doubt you are a wonderful reflection of that institution. No question. But just in terms of efficiency and being able to help the committee with its work, it would have been helpful if we had somebody who could really answer some of these questions, with all due respect.

Mr. MANNIX. I did check with my staff in the interim. I will give you a partial response now, to the best of my ability, to the question I was asked. The reason the de minimis exemption was not included in the TRI rule is that after looking at it and comparing it to the proposal that they have also made to shift to biennial reporting, they determined that it would be far more effective in terms of lowering the burden and yet maintaining the data quality to go with biennial reporting.

So they left out de minimis from the proposed rule that was just published in favor of the biennial reporting, which is a year away. The law requires a notification to Congress before changing the period of reporting.

So the plan is over the next year to have outreach events, to talk to stakeholders, talk to communities, explain what the thinking is behind that proposal, and also, since the law requires notification to Congress, we expect to hear from congressional committees what their views are. So that rulemaking will be a year away. We do expect it to be more effective than the de minimis proposal that has been discussed.

Mr. LYNCH. Fair enough. One of the proposed changes to the Toxic Release Inventory Program announced last week would allow companies to use the shorter form, the A form. I have the A form and the R form up here. The A form is two pages and the R form is five pages. If form A was allowed in those cases, companies would be allowed, approximately, according to the National Environmental Trust, this would mean that approximately 4,400 facilities across the country would no longer have to report at least 25 percent of their toxic chemicals that they are releasing into the environment.

You realize, currently under the annual reporting, it goes by reporting year. So if I am a company and I am releasing 4,500 pounds just underneath the 5,000 pound limit, I can do that yearly without telling people what I have on my site in terms of quantity, whether I am treating it or not, where I am shipping it, for what purposes, any recycling efforts, any treatment efforts, all of that is omitted on Form R.

So we are really hiding the ball here for a lot of people. We are actually allowing a significant amount of companies to conceal what they are actually releasing into the environment on an an-

nual basis. It can be, over 1 year it is not a significant amount. But if it is an annual accumulation, it can be disastrous in some cases where you have companies in operation for 10, 20, 30 years.

So I would just like your response to that. Why would that not be a danger? Why would it be necessary to conceal that from the public?

Mr. MANNIX. There is no intent to conceal anything from the public. There are requirements that a company must meet before it is allowed to use Form A in place of Form R.

Mr. LYNCH. What would those be?

Mr. MANNIX. For toxic chemicals, PBT chemicals, persistent biocumulative and toxic chemicals, those reporters may use Form A but only if they have no releases to the environment. They must not exceed a million pounds of manufacture, processing or otherwise use for the chemical, and must not exceed 500 pounds of recycling, energy recovery or treatment of the chemical.

Those are thresholds that the agency feels will be protective while relieving the burden. They have looked at the Form Rs that they have been getting from these companies and decided that for those categories, the information, the extra information they get on Form R is not useful. So that is the basis of the proposal that they have come out with.

Mr. LYNCH. It would also allow expanded use of Form A for non-PBTs by changing the maximum annual reportable amount from less than 500 pounds to less than 5,000. So we are going from a 500 pound limit to a 5,000 pound limit, though.

Mr. MANNIX. That is correct. For chemicals that are not persistent, biocumulative and toxic, they are raising the threshold for reporting.

Mr. LYNCH. In cases like what we are going through with Katrina and we want to know what is on the site and how much of it is on the site, all of that has escaped. I mean, I have Form R here. It is fairly detailed with respect to the amounts, how it is stored, how much is actually contaminating onsite property. It has a lot of useful information.

The Form A that you are suggesting that these companies now be able to use just says, tell us what the substances are on your site.

Mr. MANNIX. The Agency is learning a lot from Katrina and Rita. I am sure there will be cases where we think we need to collect more information in advance of a disaster so we know what is going to happen.

We have also found a lot of cases where our regulations have been getting in the way of the recovery efforts. I am sure you are aware of some of those. But those lessons will be incorporated into our future decisions.

Mr. LYNCH. OK. Mr. Sullivan, you expressed a fondness for the Crain study. I know that the last one you mentioned, it was roundly criticized, and I think rightly so. The Crain study before, we could not get them to replicate their results, they would not release their methodology, how they came up with the numbers that they came up with before. It was a total mystery. And they couldn't explain it or defend it.

They refused to quantify the benefit of regulations when lives were saved or when people were not exposed to dangerous chemicals. That benefit got a zero, zero. There was no value to a regulation that prevented toxic substances from coming into contact with the citizenry. It got zero in their study.

The methodology this time, did we talk about the benefit to the, is that factored in, the benefit to the environment and to the people in the area? Is that at all considered in this study?

Mr. SULLIVAN. Congressman, Dr. Crain, who at first worked with Professor Hopkins on this study, did not actually flesh out the benefits. This is a cost impact study. The benefits that you are referring to are categorized by law once a year by OMB's Office of Information and Regulatory Affairs in an annual report on the costs and benefits of regulations.

The Crain study that my office pays for is very narrow. It has its blinders on specific to the regulatory burden. We do not estimate costs. When I talk about its constructive criticism, Dr. Crain has committed not only to laying out the methodology in greater detail in the report, but also certainly would be willing to discuss the methodology with this committee and anyone else. We had him down here actually last week for that specific purpose.

He is anxious not only in showing folks how the methodology is stronger in this study, but he also wants to know how it can be even better 4 years from now. I think this committee deserves credit for looking into what are some of the glitches in the methodology of the report. Because of that in part, the report gets better every time. I think one acknowledgement that the committee made last time we met was, it may not be the best study, but it is the only study that documents the impact, the disproportionate impact on small versus large. It is because of that has gotten as much attention as it has.

Mr. LYNCH. But the——

Ms. MILLER. Excuse me. The gentleman's time has expired. We will come back for a second round of questioning.

I would like to recognize Mr. Westmoreland.

Mr. WESTMORELAND. Thank you, Madam Chairman.

Mr. Mannix, I apologize for you only being here 8 days. Are you the only Associate Administrator at the EPA?

Mr. MANNIX. No, I am not. Several people bear that title. I am the Associate Administrator for Policy, Economics and Innovation.

Mr. WESTMORELAND. I agree with Mr. Lynch, I think it is a shame that you had to come here, only being on the job for 8 days.

Let me ask you a question. In your testimony, you talk about the diesel requirements for off-road and the stringent fuel requirements. As I have been questioned about high fuel prices and regulations and stuff, I think that the one Government agency I point my finger to the most for the high price of fuel is the EPA. If people ask me about the high cost of manufacturing, I point my finger to the EPA.

Because I think the EPA is an agency that took legislative intent of the Clean Air Act and wrote rules and regulations that have put a burden on this country that we are continually trying to dig out of when it comes to competing with manufacturers across this globe. When it comes to burning all the different types of fuels that

we have to burn, our refineries, and of course, you know, our infrastructure system was never set up to carry 50, 60, 70, 80 different types of fuels that we make.

And now we are going to come up with something different for the construction business, off-road use of diesel. What part sulfur content is in off-road diesel compared to on-road diesel now, and will this off-road diesel go to the on-road diesel content?

Mr. MANNIX. That is a question I don't know the answer to.

Mr. WESTMORELAND. Well, it is in your statement about how good it is.

Mr. MANNIX. I will have to get back to you with details on the specific content level in diesel regulations. Your general point about the variety of fuels is one that the EPA is very sensitive to and has been particularly sensitive to in the wake of the hurricanes and the constraint on our fuel supply. We have put in place several waivers to allow fuels to reach the public and reach where they are needed without damaging catalytic converters and causing public health problems.

We are in the process of taking a serious look at the effect of EPA's regulations on fuel supply in the short run and the long run. At the same time, we have to move forward with the regulations and programs that we are charged to pursue to protect public health and the environment and help the States achieve the National Ambient Air Quality Standards. But we are sensitive to that variety of fuels question.

Mr. WESTMORELAND. I would like to give you a list of questions you can come back with some answers. One of them would be, what would you say the total cost has been on the oil companies, refineries or whatever, automobile manufacturers and others, power plants, the total cost of cleaning the air to the point it is now? And how many lives do you think it has saved up to this point?

And the next question is this: How clean is clean? Right now, we have a lot of people that have to use oxygen. They can't breathe. The way we are going, right now if you hook yourself up to a hose in your car, it kills you, carbon monoxide poisoning. Pretty soon we will have people that will just be able to hook up to their exhaust pipe and breathe it rather than oxygen. Because it is going to be cleaner.

So I think we need to understand how clean we want to get, not only for our air but for our water, and at what cost we are willing to get to that point and really, how many lives are we saving and what is it doing, and would that money be better spent scanning everybody for cancer, giving everybody an MRI, testing everybody, all women for breast cancer, men for prostate, colon cancer, all these other things?

So I think those are some answers, some real world answers that the EPA needs to look at, rather than coming up with political answers to real problems.

Thank you, ma'am.

Ms. MILLER. Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Madam Chairman.

Let me thank both of you for your testimony. I have some questions related to the proposed changes to the RCRA rules on the transport of handling of hazardous waste, particularly with respect

to hazardous waste when it is headed to a recycling facility. Are you familiar with that rule proposal, Mr. Mannix?

Mr. MANNIX. Only superficially, I am afraid.

Mr. VAN HOLLEN. OK, well, let me ask you this. Do you know, under the proposed rule, how much hazardous waste that is currently subject to the reporting and tracking requirements under RCRA and the manifest rules that apply, in order to protect the public health from hazardous materials, how much of that hazardous waste, under your proposal, would no longer be subject to that regulation?

Mr. MANNIX. I will have to submit an answer for the record, Mr. Van Hollen.

Mr. VAN HOLLEN. All right. My understanding is it is about 3 billion pounds of hazardous waste. But I would be interested in your information for the record on that.

Do you know with respect to, do you know the general scheme of this proposal that has been made, in other words, what it is designed to do?

Mr. MANNIX. In this report, we have a couple of regulations in the hazardous waste area. I am not sure which one you are referring to.

Mr. VAN HOLLEN. This is a proposal that has been described in 68 Federal Register, pages 61562, actually I think beginning 61560. And the notice says, "Today's proposal is deregulatory in nature, in that certain recyclable materials that have heretofore been subject to hazardous waste regulations would no longer be regulated under the Hazardous Waste Regulatory System." You go on to change the definition of hazardous waste, essentially exempt hazardous wastes that are intended to be recycled, as I understand it, from many of the RCRA regulations with respect to reporting and training of the personnel involved in the transport of those kinds of materials in order to——

Mr. MANNIX. Yes, I am familiar with that one, and the intent is to encourage recycling, so that the waste is not disposed of in the environment. Those wastes are generally, for example, if they meet a certain threshold, if they have valuable metals content above a certain threshold, and if they lack contaminants that we would be concerned about, we would want to encourage those metals to be recycled, rather than disposed of as waste.

The regulations were getting in the way, and I think we will get a better environmental outcome by modifying the definition.

Mr. VAN HOLLEN. There is no doubt that we want to encourage recycling. I am not sure why you need to change the definition to do that. Can you tell me why it will encourage more recycling to eliminate the protections that are currently in place regarding the training of personnel, requirements for handling of hazardous waste, the information you are supposed to keep on the transport of hazardous waste from the generator to, in this case, the recycler?

Those protections are in place to make sure the companies are doing and disposing of it as they say they are. Can you tell me why that is in the public interest, to eliminate those requirements?

Mr. MANNIX. Because those, by discouraging recycling, we are encouraging, inadvertently, the regulations are encouraging the production of more hazardous waste.

Mr. VAN HOLLEN. How does it discourage recycling to require someone to report where they are transporting the hazardous waste and how it is being disposed of in some detail? Doesn't that in fact ensure that it is going to the recycler as opposed to going somewhere else?

Mr. MANNIX. Well, it may well be recycled onsite. It may not be transported. The point is that to treat it as hazardous waste raises the cost of both disposing of it as waste and recycling it. The recycling process is not, cannot always economically be done and comply with all the requirements that you are treating, what is essentially a product in process. By treating it as a hazardous waste you raise the cost and it makes it no longer worthwhile to try to recover those metals.

We think we will get a better environmental outcome by allowing recycling and that we are not reducing protection.

Mr. VAN HOLLEN. Let me ask you this, I see my time is almost up. I can understand making an exemption for recycling onsite. I understand, and there is a court case to that effect. But we are talking about, as I understand your rule, it is wide open. You can be transporting the hazardous waste cross-country, to any other facility.

Are you aware of the fact that many of the current Superfund sites are in fact recycling sites?

Mr. MANNIX. Yes.

Mr. VAN HOLLEN. Why wouldn't we therefore want to make sure that the hazardous wastes that are generated and disposed of at those sites, that we know what is in that waste and we know that it is being properly regulated, so we don't create more Superfund sites?

Mr. MANNIX. We certainly don't want to create more Superfund sites. I believe the rule has protections in it that are appropriate for recycled materials, and when hazardous wastes are generated and disposed of, the hazardous waste definitions and regulations still apply. As I said, our expectation is that this will encourage recycling and reduce the amount of metals that are being disposed of in the environment. So that is the better environmental outcome we are seeking.

Mr. VAN HOLLEN. Madam Chairman, if I could, is it appropriate to request that EPA provide us with a list of those recycling sites which are now also Superfund sites?

Ms. MILLER. Certainly. We will ask that you respond to the committee with that.

Mr. VAN HOLLEN. Thank you.

Ms. MILLER. I just have one other question, Mr. Mannix, in regard to a follow-up to Mr. Van Hollen about recycling. Some of the recommendations actually said to change the definition of some of the different types, like changing the definition of solid waste to make it easier to try to recycle that waste.

Do you have any comment? Are you knowledgeable about how the EPA might be trying to make it easier to recycle waste from electroplating operations?

Mr. MANNIX. We did get a request from the electroplating industry. We have, and I can't tell you what this stands for, but F006 wastewater treatment sludges, which we are trying to encourage

recycling for. That is one of the major waste streams that I was discussing with Mr. Van Hollen. This is part of a much larger effort within the agency to look at where our regulations are discouraging recycling. It is a theme we have heard in many contexts. We are looking at all our programs to see where that might be the case and where we can encourage materials to go to their highest and best use when that is not to be disposed of in the environment.

Ms. MILLER. If you could, perhaps you could get back to me with a more specific answer on that. I do have a number of electroplating operations in my district. I know they have been trying to comply with EPA regulations. In our particular area, they are all customers of the Detroit water and sewer system, and I know they have been spending tens of thousands of dollars to try and comply with EPA regulations about that.

So if you could get back to me with a more specific answer on that, I would be interested.

Mr. MANNIX. I will. And the POTW regulations that are announced today will also affect those facilities that are connected to publicly owned treatment works.

Ms. MILLER. Thank you.

Mr. Sullivan.

Mr. SULLIVAN. Madam Chair, I think one thing that certainly deserves attention here is that EPA's regulatory relief is done under the acknowledgement that some of these definitions are out of date. The definition of recycling and the definition of hazardous waste is out of date. From a small business owner's perspective, there is a small company in Connecticut. I had the pleasure of meeting with them a few years ago. Here is a small company that is taking in computers from all over the United States, and trying to do the right thing, trying to make sure that metals and other potentially dangerous materials do not end up in landfills.

They were telling me that the laws, the definitions, treat them as a polluter. And all of the rules and regulations, the RCRA Subtitle C definition that bumps you into the hazardous realm, are out of date to discourage those types of companies from actually doing the right thing, and quite frankly, turning a profit. Because it is less expensive in redoing a circuit board, wiping out all of the confidential information and then putting that computer back into use. It is much more environmentally sound to do that than to just throw them all out in a landfill and then start all over again.

So I think this committee, to put things in a little bit of perspective, from the small business owners' perspective that come to me all the time, they are frustrated that some of these legal terms are out of date and do not reflect the current industry practice, nor do they incentivize these companies to do the right thing. From an electroplating sludge perspective, here is the metals industry that wants to do the right thing, but the laws get in the way, because they don't encourage the onsite recycling and other technological advances that make their processes more environmentally safe.

Ms. MILLER. Thank you. Mr. Lynch.

Mr. LYNCH. Thank you.

Mr. Sullivan, I want to get right back to the Crain study. You understand that, at least in my State, I will give you a good example, W.R. Grace, a chemical company in our State. I believe that

it might have been compliant with the regulations at that time, but they released a lot of cancer-causing agents into the groundwater about Woburn, MA. We had dozens of kids die of, it was near a playground, and we had dozens of kids die of cancer as a result of their negligence.

Now, that was a huge, what in economists terms is called an externality. In other words, it was cheaper for W.R. Grace to dump their chemicals as a business. But the cost of their production was borne by those families and by those kids.

Now, what you are telling me is that the Crain study doesn't take into any costs borne by the families, by those kids. You are saying that they put the blinders on. Well, you are feeding this information to Congress, and we cannot put the blinders on, nor should we.

So when you say the study is better than it was before, it was because there was tremendous room for improvement. But until a study is presented here that shows us the costs that are shifted from the manufacturing industry onto regular families just trying to raise their kids in a clean environment, until you quantify that, and it is quantifiable, give us an estimate rather than just say, we are not going to consider any of it.

Any proposal that suggested they are informing Congress should consider all the costs, a cost benefit analysis that is so important to this committee. We want to see the costs to everyone, not just costs that are being shifted out of the industry that you represent, but the costs that are also now being shifted to innocent families because of the relaxation of some of these regulations.

So in fairness, we want the whole picture. We can't put the blinders on. You have that luxury, we do not.

Second——

Mr. SULLIVAN. May I respond to that, please?

Mr. LYNCH. Certainly, yes, sir.

Mr. SULLIVAN. First of all, your State is also my State. I am very happy to have grown up in the Commonwealth of Massachusetts. I couldn't agree with you more about taking the blinders off. That is why the annual report on the costs and benefits coming from the Office of Management and Budget provides us with so much value.

The criticisms of the Crain study ironically, from a methodology perspective, weren't on what are characterized by economists as social regulation. The criticism was on the economic regulation, which is a different part of the report. We haven't talked much about it. That methodology was tightened by using the OECD survey and information.

So the criticism of methodology that has come up in the past really was not on environmental regulations. To respond to the W.R. Grace situation, which is terrible, and also the communities affected by spills and other situations, are terrible. That is one of the problems about us having our blinders on the terms that we are using today. It is the toxics release inventory.

I hear release, I think of Chernobyl. But that is not the case. Release, as it is defined legally, within TRI, is about the company's own management in-house of their chemicals. And also encouraging them to do the right thing, to send them to a licensed recycling facility. Small businesses get very frustrated about trying to do the

right thing, and largely doing the right thing, but then be criticized as being polluters because they have to fill out all these forms that say, I am a polluter, when in fact they are not. They are effectively managing their waste.

So the terminology I think that we get caught in as fellow attorneys I think does deserve to have the blinders kind of released a little bit and put in the proper context. Because the TRI reforms that EPA is showing leadership on will not cover up spills. What it will do is encourage more folks to effectively manage the waste they have in-house so that they become even better corporate citizens.

Mr. LYNCH. Thank you. I do want to say, in the first part, the Crain study, if you read the criticisms that I read, it was very broadly based about what the Crain Hopkins study considered, what they didn't consider, what methodology applied, their reluctance to publish the methodology, and also the inability of any other scientist to be able to replicate the results, an objective one. So there were round criticisms of that study.

Make no mistake, though, we have to agree that by going to Form A versus Form R, less information, less information is available to the public. That is the plain and simple result of this. This is a reduction in reporting, a raising of the thresholds in some cases where you had to report 500 pounds before, now it's 5,000, you are raising the bar a little bit so they don't have to report as quickly. The other thing I want to talk about, RCRA, you are entirely right when you say the definitions are outdated. Definitions are outdated.

But the industry proposal that you have put here is not about refining definitions. The industry proposal that you have supported by OMB is to eliminate, to do away with RCRA protections for any hazardous material. It is a blanket wipeout. So you are not saying, let's fine-tune this, let's fine-tune this, let's change this, OK, we have computers here, it is not that. It would wipe out any hazardous material that is being recycled.

Now, a company could say, we have targeted this group of substances or this amount of property, I am sorry, amount of substance on our property for recycling use, and that would take it out from under RCRA regulations. Now, they may be legitimate in their intent to do so, but again, it provides less information about what is going on on their site, and we frankly think that more information to the public is beneficial.

We understand that the byproduct of manufacturing is in some cases this pollution. We just want information to be able to guide the opinions and the actions of local communities in dealing with manufacturing facilities in their midst. That's it.

Mr. SULLIVAN. I think that the community leaders certainly all over the country who many times are small businesses find common ground in wanting to be rewarded for doing the right thing, and that is to encourage recycling, to encourage bringing hazardous materials and substances to licensed recycling facilities and so forth.

I am pleased that we do have common ground in acknowledging that many of the terms and laws are out of date. I would be happy to work with this committee to make sure that the Crain study is

even better. We have no, we are not hiding the methodology at all, I can assure the Congressman that there is nothing to hide in the methodology.

I can give this committee assurances that while we will be focusing still on the cost aspect of it and leave it up to our colleagues within individual agencies and OMB to flesh out the benefits, we would like the methodology to be even better 4 years from now.

Ms. MILLER. Mr. Westmoreland.

Mr. WESTMORELAND. Thank you.

Mr. Sullivan, isn't it true that sometimes a lot of these forms that small businesses or businesses in general are required to fill out are just kept in a file, may not ever be looked at and are really used for ammunition for lawsuits?

Mr. SULLIVAN. I don't know whether or not they are just ammunition for lawsuits. I think that the information that is provided in forms, if it is used by EPA to gauge where hot spots are, where they can better utilize their enforcement resources, then that is one thing.

But to fill out a form that is either duplicative of other information already provided to the Federal Government or information that has no contextual value to the State, Federal agency or the community, I think is a waste of that business's time. That is what we hear more and more.

I think EPA's reforms saying, let's let more businesses use the simple form, in conjunction with saying to all of the American public, maybe this information can be better contextualized by really stepping back and not just pushing out data, but in fact examining that data on a biennial manner and see whether or not the communities will have more useful information than they currently do.

I will analogize it to the census. The census, the long forms come out every 10 years, the short forms every 5 years. Many of you have probably heard from your constituents when they get the long form. There is a letter that says, under penalty of law, fill this out. It is a tremendous burden.

But the information used to set your congressional districts, to designate educational resources and others is valuable. But it is valuable because the Census Bureau steps back after assessing those forms and does tremendous things with the data. That same type of attention and focus on the contextual information needs to be borne in environmental reports, which is part of what EPA is setting out to do now.

Mr. WESTMORELAND. So basically, the simpler the form in reality, it may be a safer form in that it makes the agency look closer at the information that is on that form?

Mr. SULLIVAN. The simpler form, combined with making sure that form for certain filers is filed every other year, so the agency has a year and a half to really assess the data and contextualize it. Yes, it would likely provide better community information.

Mr. WESTMORELAND. Thank you.

Mr. Mannix, let's talk about hazardous waste for a minute. When a company has hazardous waste and disposing of it is done in different manners, I am assuming some people have a jobber that comes by and actually may pick up a 55 gallon barrel or a vat or such into another compartment or whatever, once that jobber

leaves the site, how do you have a record of what he does with that hazardous waste?

Mr. MANNIX. I believe we have a manifest system in place that allows the agency to track shipments and to determine the source and determine the fate.

Mr. WESTMORELAND. So you have a manifest system that, the jobber comes in, picks it up from XYZ coating facility, and he tells them he is going to take this material to a certain location or a certain disposal site and dump it. Let's say that guy just takes it and stores it in a warehouse. Would responsibility fall on the manufacturer or on the jobber or on the guy that had the warehouse?

Mr. MANNIX. I am not sure I can answer questions about liability in a hypothetical situation. But the manifest system allows the agency to find out whether the waste reached its destination. The handlers are required to have permits, the path can be tracked. There are financial assurance requirements to make sure that someone doesn't just walk away from it and go bankrupt with no ability to remediate it.

Mr. WESTMORELAND. So if the jobber would report to you where it was disposed of, and to the place where he picked it up, and if he didn't do that, then he would be in trouble, correct?

Mr. MANNIX. Yes.

Mr. WESTMORELAND. OK. And exactly, and Mr. Sullivan, do you all do a cost benefit analysis also? Does EPA, do both of you do them independently of each other?

Mr. SULLIVAN. Actually, our office relies initially on the assessments by EPA. We bring small businesses to the table to find out whether or not the cost assessments played themselves out in Main Street small business from an accuracy perspective. But we rely very much on the analysis done by every agency, including EPA.

Mr. WESTMORELAND. OK. Mr. Mannix, is that cost benefit analysis, is it made public and is your methodology, is it pretty much listed out into how you do this?

Mr. MANNIX. We run a transparent process. We do benefit cost analyses as appropriate for individual regulations. We also periodically do studies of the benefits and costs of say, the air programs, to try to get a more global perspective on those programs. I am not 100 percent certain to state this categorically, but I believe we always include both the benefits and the costs.

Mr. WESTMORELAND. OK. One last question. Do you have one on the off-road diesel initiative?

Mr. MANNIX. If we don't, we will. [Laughter.]

Mr. WESTMORELAND. Could I get a copy of it?

Mr. MANNIX. Yes.

Mr. WESTMORELAND. Thank you.

Ms. MILLER. Mr. Van Hollen, do you have a second round of questions?

Mr. VAN HOLLEN. I do, thank you, Madam Chairman.

First of all, Mr. Sullivan, you made the point about the computers. I think that is a good one, and I think that to the extent the definitions need to be updated to make sure we don't have unintended consequences, I think you are going to find agreement on that.

I don't think that is what this EPA or OMB proposal, I think it is much more broad than the issue you suggested we need to address. It is not a narrowly tailored solution. I would just pick up on my colleague, Mr. Westmoreland, what he was saying with respect to the manifest.

Mr. Mannix, I assume you think that is a good idea, to have a manifest so that we can track hazardous waste, would you agree it is a good system to have?

Mr. MANNIX. Yes.

Mr. VAN HOLLEN. OK. My understanding is that this new proposal with respect to hazardous waste that is being transported to a recycling facility would no longer be governed by that manifest system, is that your understanding?

Mr. MANNIX. It would not be covered by the same manifest system. However, there will be requirements to ensure that the material really is being recycled.

Mr. VAN HOLLEN. Let me ask you this. Why would you put a less protective system in place for the transport of the materials to make sure that the materials arrived at the destination they said they were going to arrive in, the recycling place, as opposed to going somewhere else? Mr. Westmoreland described, and you responded to his question, said, we have this great manifest system. Why do you want to throw that out with respect to 3 billion pounds of hazardous waste annually being transported to recycling facilities?

Mr. MANNIX. I will give you the economist's answer. With the situation Mr. Westmoreland described, where you have someone transporting waste that has a negative value, you do have to worry quite a lot that waste is going to disappear, and that he is going to try to shed the liability associated with handling that waste. That is why we have such a strict manifest system for waste.

When you are talking about a product that is being recycled that has positive value, you still have to worry about whether it gets to its destination and it is being recycled. But there is much less concern that someone is going to take this product that has value and just dump it into a ditch on the side of the highway.

Mr. VAN HOLLEN. Well, let me just say, and I look forward to getting the figures with respect to the recycling facilities that are also Superfund sites. But my understanding is that of the first 60 filings under RCRA's imminent and substantial endangerment authority, of those 60, 20 of them were recycling facilities.

So the suggestion that the recycling facilities always somehow do the job of 100 percent transforming the incoming hazardous waste into recyclable products, I think is wrong. I think there is a significant amount of non-recyclable and in some cases hazardous waste that remains. There is an incentive, I think, to dump some of this stuff.

It just seems to me that the current system that has been in place with respect to the manifest is something that has worked overall well for the protection of the public. While I think we can certainly look at ways to improve and modernize the system, that seems to me to open up a loophole that is not necessary to open up.

Thank you, Madam Chairman.

Ms. MILLER. Thank you very much.

We are going to excuse this panel and empanel our next group of witnesses. We want to thank both of you gentlemen for your time, and Mr. Mannix in particular. You have only been back to the Agency for the last 8 days, so it is a sort of baptism by fire, I think.

We are sorry Mr. Peacock was not able to come, but we certainly do understand and appreciate his service in the horrific hurricane attacks that are happening in the Gulf Coast region at this time. Again, thank you very much.

We will take a quick recess while we get the next panel empaneled. Thank you.

[Recess.]

Ms. MILLER. The committee will come to order.

If I could ask the witnesses to stand and raise your right hands.

[Witnesses sworn.]

Ms. MILLER. Thank you very much.

Our first witness the subcommittee will hear from today is Mr. John Wagener. Mr. Wagener is the corporate director of environmental affairs with Mueller Industries. His manufacturing experience is clearly extensive, with involvement in chemicals, oil field production, automotive and hot metal industries. Mr. Wagener has served on several environmental committees, is presently the chairman of the Copper and Brass Fabricators Council's environmental committee.

He is also a professional engineer, registered in five States. He is a certified safety professional and is a registered environmental manager. He actually comes from the city of Port Huron, which is in my congressional district, so we appreciate your transiting today to our Nation's Capital and look forward to your testimony, Mr. Wagener.

STATEMENTS OF JOHN D. WAGENER, P.E., CORPORATE DIRECTOR OF ENVIRONMENTAL AFFAIRS, MUELLER INDUSTRIES, INC.; CHRIS BAGLEY, REGULATORY COMPLIANCE MANAGER, DAN CHEM INDUSTRIES, INC.; B.J. MASON, PRESIDENT, MID-ATLANTIC FINISHING CORP.; AND SCOTT SLESINGER, VICE PRESIDENT FOR GOVERNMENTAL AFFAIRS, THE ENVIRONMENTAL TECHNOLOGY COUNCIL

STATEMENT OF JOHN D. WAGENER

Mr. WAGENER. Good morning, Madam Chairman and members of the committee. I am John Wagener, corporate director of environmental affairs for Mueller Industries.

Mueller is headquartered in Memphis, TN and operates 24 manufacturing and distribution facilities in the United States. We employ 3,400 Americans and produce copper, brass and aluminum products. One of our major facilities is Mueller Brass, located in Port Huron, MI, which is in the 10th Congressional District, where I grew up and still reside to this day and maintain my office. Our Port Huron plant employs over 500 people.

I am also the chairman of the environmental committee of the Copper and Brass Fabricators Council. Thank you for inviting us to appear before the committee today. Mueller and the Council ap-

preciate the committee's review of the Office of Management and Budget's Information and Regulatory Affairs initiative on unnecessary regulation burdening manufacturers. The Regulatory Right to Know Act of 2001 allowed OMB to solicit nominations for reform. We submitted and currently have seven nominations under consideration. I am here today to briefly review just three of them, due to time constraints this morning. I have selected these three because they are heavily loaded with common sense recommendations, and you have copies of the full text discussion.

I would like to note the improvements in the handling of the nominations from the first year in 2002 to more recently in 2004. In 2002, the nominating party had no opportunity to interact with OMB or the agencies. In contrast, for the 2004 nominations, both the OMB and the agencies have actively sought input from us on three of our nominations to clarify what was being suggested as a regulatory change and to give us an opportunity to work with the agency to resolve any obstacles to making the change.

The first issue I have chosen to talk about is the definition of VOCs. That appears in the Clean Air Act, VOC stands for volatile organic compounds. Yet the definition EPA promulgates has no aspect whatsoever of volatility.

It does require that the chemical be photochemically reactive, and then they go on to define it by exemption. They list those chemicals that are exempted. There are 50 chemicals and families of chemicals listed as not being a VOC for an air contaminant. Presumably, every other organic compound is a VOC.

To illustrate, I have here a bar of Ivory soap. It is not on the exempted list. There was a VOC emitted to the atmosphere, a VOC. If you are strong enough, you can do that with bowling balls and sawdust, all of which meet the definition EPA has promulgated for VOCs.

I think a VOC ought to have an element of volatility in it when they define it. Manufacturers need a definition that contains a vapor pressure limit, just as Michigan did until a year ago, when EPA forced Michigan to remove the vapor pressure limit in Michigan rules. This would both clarify and eliminate uncertainty when manufacturers apply for permits. Uncertainty is a killer for manufacturing.

The second issue I would like to discuss is the lead toxic release reporting. The TRI is widely looked upon as the mother of all environmental reports. A growing expense to manufacturers, we have a chart over here that shows some of the growing costs of the TRI report. I want to focus on in 2001, EPA incorrectly classified lead as a PBT. We have talked a lot about TRI and PBT, persistent biocumulative and toxic materials.

This lowered the reporting threshold from the previous 10,000 pounds processed, not released, processed, to 100 pounds. Worse yet, it eliminated the de minimis concentration threshold of 1 percent. So now, any concentration whatsoever has to be considered.

Lead is ubiquitous. It is a chemical that is found in low concentrations everywhere in our environments. It is in this drinking water, it is in the ink in the paintings on the wall. It is in the brass that is in front of you.

Let me just show you how ridiculous, pencil, pencil sharpener. See that? Now, don't focus on the lead that was in that pencil, it is graphite, it is not lead. It is wood. EPA has published guidance that shows that wood has a naturally occurring lead content of 20 parts per million. What does that do? That means we have to track our pencil sharpenings. That is ridiculous.

Let me be clear: it is not the form that is the eight pages we are talking about. It is the burden of recordkeeping, weighing, measuring and so on that, all due to no de minimis. It could have been 20, it is 20, it could have been 1, it could have been 1 part per trillion, 1 part per quadrillion. There is no relief when there is no de minimis. Everything needs a floor. We ask that EPA restore the de minimis concentration and remove lead from the PBT consideration.

The last item of concern is thermal treatment of hazardous waste. EPA allows generators currently to treat their hazardous waste to reduce volume or toxicity. However, they exclude generators from treating it thermally. Where that applies to combustion and incineration, there is some logic there.

Unfortunately, they lump into this the simple evaporation of water into this category. That isn't exactly true, because EPA does allow the evaporation of water from certain wastewater treatment sludges. We feel that manufacturers should be allowed to remove the excess water out of extremely dilute hazardous waste materials, to give you an example, something that contains 20 parts per million lead, the rest all being water is treated as hazardous waste. I think we need to allow them to reduce the amount of water and it will still be shipped as hazardous waste.

We have met with the agency and they have been talking to us on that issue. But we feel a proposal is a long way off.

[The prepared statement of Mr. Wagener follows:]

U.S. House of Representatives
Before the Committee on Government Reform
Subcommittee on Regulatory Affairs
The Impact of Regulation on U.S. Manufacturing: Spotlight on the Environmental Protection Agency
(September 28, 2005)

Statement of John D. Wagener, P.E.
Corporate Director of Environmental Affairs
Mueller Industries, Inc.

Good morning, Madam Chairman and members of the committee. I am John Wagner, Corporate Director of Environmental Affairs for Mueller Industries, Inc. Mueller is headquartered in Memphis, Tennessee, and operates 24manufacturing and distribution facilities in the United States, employing 3400 Americans and producing copper, brass, and aluminum products. One of our major facilities is Mueller Brass located in Port Huron, Michigan, in the 10th congressional district, where I grew up and still reside to this day, and maintain my office. Our Port Huron plant employs over 500 people. I am also the Chairman of the Environmental Committee of the Copper and Brass Fabricators Council ("Council"). The Council's twenty member companies are listed in Attachment 1. Thank you for inviting us to appear before the Committee today. Mueller and the Council appreciate the Committee's review of the Office of Management and Budget's Office of Information and Regulatory Affairs' (OIRA) initiative on unnecessary regulations burdening manufacturers.

The Council's member companies collectively account for between 80 percent and 85 percent of the total U.S. production of all copper and copper-alloy products, including plate, sheet, strip, foil, rod, bar, pipe, and tube. Examples of the wide range of important uses to which our semi-fabricated products are put to use include the production of electrical connectors for automobiles and computers, ammunition components, marine hardware, forgings and machined parts of all kinds, tubes for piping systems, bushings, bearings, gears, building hardware, copper plumbing tube and fittings, plumbing, heating, air-conditioning and refrigeration components, aircraft parts, valve bodies and components, rivets and bolts, heat exchanger and power utility condenser tubing, communications systems, welding rod, optical goods, keys and locks, and lead frames for semiconductor devices and the US military.

The costs of regulatory compliance on manufacturers in the U.S. are, by any reasonable estimate, an enormous burden. Specifically, in a 2003 study of the costs of regulatory compliance on manufacturing prepared for the Manufacturing Institute of the National Association of Manufacturers (NAM), The Manufacturing Alliance (Alliance) estimated that the total burden of environmental, economic, workplace, and tax compliance on the economy is in the order of $850 billion with $160 billion falling on

manufacturing alone.[1] The Alliance estimated that this burden was the equivalent of a 12 percent excise tax on manufacturing production, and that it had increased in real terms by 15% over the previous five years. At the same time, a qualitative review of international regulatory reform efforts revealed that most of the United States' trading partners had undertaken aggressive regulatory reform efforts focusing partly on general regulatory streamlining. The net result is, as the Manufacturing Alliance artfully stated, "[c]ompliance costs for regulations can be regarded as the 'silent killer' of manufacturing competitiveness." With our trading partners aggressively pursuing regulatory reforms, the anti-competitive effects of regulations on manufacturing could only worsen without an equally aggressive look at our own regulatory burden.

Against this backdrop, Mueller and the Council supported and welcomed the passage into law the Regulatory Right-to-Know Act in 2001 (RRKA). In March of 2002, the Office of Management and Budget, responding to RRKA requirements, published in the Federal Register its first "Draft Report to Congress on the Costs and Benefits of Federal Regulations." As required, the OMB called for public nominations of "...regulatory reforms to specific regulations that, if adopted, would increase overall net benefits to the public...." Mueller and the Council enthusiastically responded to this call for nominations by submitting a list of seven regulations that it deemed to be costly with little or no benefit. All seven regulations were either environmental or workplace safety measures. The Council provided specific recommendations for changes that would reduce the burden or increase the benefit of the regulations with no loss of environmental protection or worker safety.

In its 2003 report to Congress, the OMB reviewed its procedure for handling the nominations that had been received in response to its 2002 request. From 1700 nominating entities, OMB received a total of 316 distinct reform nominations. The OMB vetted the nominations and arrived at a list of 161 rules or guidance documents to submit to the agencies for review. The Council was heartened that five of its seven nominations were apparently referred to agencies (EPA and OSHA) for review. The agencies were required to respond to the nominations in one of four ways: 1. Regulations already under review or already revised. 2. New regulations that the agency will work on. 3. New regulations on which the agency is undecided. 4. New regulations that the agency deems low priority or unnecessary. Of the five Council nominations referred to agencies by the OMB, one was deemed by the agency (EPA) to be worthy of action, and two were cast into the undecided category requiring further study. The remaining two were "reforms that the agency decided not to pursue." The Council appreciates the time and consideration that OMB and the agencies devoted to its nominations. Further, the Council was encouraged that three of the nominations were targeted for reform or additional study. However, we are disappointed that none of the regulations, even those deemed worthy of action, have been changed in any way.

---

[1] The National Association of Manufacturers and the Manufacturers Alliance, "How Structural costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness," by Jeremy A. Leonard, December, 2003.

In a review of the reform process before Chairman Manzullo's House Small Business Committee last year, the Council expressed its opinion on the shortcomings of the process. We noted that the method used by OMB and it's Office of Information and Regulatory Affairs (OIRA) during the initial screening process was unknown, and there was no opportunity for input and clarification during this process.

- Once referred to agencies, there was no opportunity for the nominating entity to answer questions that may arise, or to clarify misunderstandings about the proposed reforms.
- There was no explanation for the agency decisions, especially when the decision is NOT to pursue.
- The agencies appear to be able to make any decision regarding referred regulations without justifying that decision, or even explaining how they arrived at it.

We asked for greater transparency in the screening process, some explanations by the agencies in support of their decisions, and a requirement that agencies justify a decision not to consider a proposed reform. Further, we asked for better communications between the nominating entity, OIRA and the agency after the regulation is referred to the agency. I am taking the time to review the procedures used to respond to the 2002 nominations and various recommendations to improve the process because I think the agencies and OMB/OIRA made major improvements in the second round of nominations in 2004 that are the subject of this hearing.

Even though we didn't get any changes as a result of the 2002 nominations, we continued to believe the process had the potential for illuminating regulatory provisions that create burdens with little or no gains, especially those that are inefficient in their requirements, or those that are no longer necessary. We therefore welcomed the February 20, 2004, Federal Register notice that OMB would once again seek public nominations of regulations in need of reform to fulfill the requirements of the RRKA. The Council especially appreciated that the OMB sought nominations of regulations affecting manufacturing in particular, and we submitted eight regulations for consideration. These nominations included six regulations from 2002 that were re-submitted, and two new regulations.

In March of 2005, in its report "Regulatory Reform of the U.S. Manufacturing Sector," OIRA announced that they had received 189 distinct reform nominations from 41 commenters. Following review by the agencies and discussion with OMB/OIRA, it was agreed that 76 of the 189 nominations had potential merit and justified further action. Seven of our nominations made this final cut to 76. All of these recommendations are awaiting action by the EPA (6) or Labor/OSHA (1). We are happy to report, Madam Chairman, that the communication among the agencies, OMB/OIRA, and the nominating parties have been vastly improved during this second nominating process. We have had direct or indirect communications and substantive meetings with the EPA on three of our recommendations. These include:

- **Definition of Volatile Organic Compounds**. The current EPA definition contains no 'volatility' element and thus disregards whether the chemical is volatile at all. All the definition currently requires is that the chemical be photochemically reactive. Rather than list those chemicals, EPA has chosen to specifically liste those not photochemically reactive. This approach presumes all other organic compounds are reactive. Thus, bowling balls, ivory soap, and sawdust if emitted into the air meet this backwards definition until listed for exemption. We asked that a vapor pressure component be added to the definition. This seems like common sense and in fact the State of Michigan had such a definition until last year when EPA made them remove it to be in line with the Federal rule. The practical effect of this would be to clarify what emission will be treated as a VOC and what is not. Thus allowing manufacturing to more accurately plan for the costs of control equipment or not. Uncertainty is a killer for manufacturing and this would remove the uncertainty.. We have had indirect contact with the agency through OIRA with suggested solutions. The EPA committed to publishing an Advanced Notice of Proposed Rulemaking by May of 2005. They did not meet this date. However, we have had messages from OMB indicating that they are considering means to achieve our objective. At least we can say that our position is being given consideration by those who have the authority to make changes.

- **POTW Removal Credits** –Council and member companies have had two meetings with the EPA and a POTW to explain the problem. EPA has provisions to grant Removal Credits to industrial dischargers when the local POTW has the capability of removing the same pollutant. Thus allowing their industrial customers to discontinue unnecessary and redundant treatment. Without Removal Credits effectively available this is an unnecessary duplication; the water gets treated twice to remove the same pollutants. The EPA committed to developing an internal issue paper on options to facilitate use of removal credits by March 2005. Again they missed the deadline, but we have recently received communications from your committee staff that EPA has a proposal forthcoming.

- **Thermal Treatment of Hazardous Waste**: Currently, generators are allowed to treat their hazardous waste to reduce the toxicity or render it non-hazardous. However, EPA excludes thermal treatment by the generator and perhaps rightly so as it pertains to combustion and incineration. However, simple evaporation of water by the use of heat of a dilute hazardous waste, commonly a wastewater, is considered thermal treatment and thus prohibited. If simple evaporation of water were allowed under conditions that would not release hazardous pollutants it could eliminate as much as 95% of the volume of such a waste stream with significant savings in transportation and treatment costs. The reduced shipping would also reduce risk to the environment. EPA has had

a positive response to this nomination and we have had one in-person meeting and two phone conferences with agency personnel in the Office of Solid Waste. Oddly enough, agency personnel pointed out that under a rather convoluted, obscure and narrow set of regulatory circumstances this could be done now. By removing these obstacles the environmental impact would remain unchanged yet allow generating manufacturers the opportunity to reduce cost from hauling gallons of water off-site. At EPA's request we have surveyed our small industry and determined that this change would result in a minimum of $140,000 savings. But much larger savings would result if a general exemption were permitted so that hundreds or thousands of other facilities could utilize this environment and cost saving procedure. We have found one printed circuit board company who estimates a savings of $40,000 per year just from one facility. We are continuing to work with the EPA on this regulation.

For the other three EPA nominations, we are disappointed that the agency has not responded to our suggestions and has not communicated with us. The EPA has committed to specific steps to address our recommendations, but in each case the dates that the EPA set to respond has passed without any action.

- **Lead Toxic Release Reporting (TRI).** In 2001 the EPA lowered the lead reporting threshold from 10,000 pounds to 100 pounds use per year under the mistaken premise that lead is a PBT, i.e. Persistent, Biocumulative and Toxic material. This swept a large number of small businesses into the TRI reporting regime, even though a large number of these had zero releases. You must report whether you have any releases or not. Mueller and other Council member companies were already reporters. However, the lowered threshold also included the elimination of the concentration *de minimis* reporting exemption. Under de minimis concentration reporting, a facility can disregard very small concentrations of lead (less than 1%) that may be contained in mixtures and other products used by the facility. The practical effect of eliminating this exemption was that we must now track extremely small concentrations and amounts of lead in miscellaneous production materials such as the wood in pallets. EPA has published an extensive listing of concentrations of lead in various materials, which lists wood containing naturally occurring lead concentrations of 20 ppm. This huge additional cost results in no environmental benefit. The EPA has delayed any action for relief until the agency's Metal Risk Assessment Plan is completed. However, we note that the Metal Risk Assessment Framework proposed by the EPA's very own Risk Assessment Forum has concluded, in preliminary documents that the PBT regime developed for classification of organic chemicals is unsuitable for assessing the risks of metals. One can only conclude that it is inappropriate to classify any metal, including lead, as a PBT. This voids EPA's original justification for lowering the reporting threshold for lead and eliminating the de minimis exemption. Yet the EPA's TRI office has

refused to take any measures to correct this mistake, and we have had no response from the agency on our nomination. One analysis of TRI reporting costs to industry, based on EPA data, estimates that from 1988 to 2001 these costs have increased from $143 million to $581 million in constant 1995 dollars. We can be sure that the misclassification of lead as a PBT, with the resultant dramatic lowering of the reporting threshold and loss of de minimis reporting, has made a significant contribution to this increased cost, with no corresponding increase in benefit.

- **Categorical Wastewater Sampling and Testing**. Current regulations require water dischargers to sample and test for certain categorical pollutants, even if they don't use those pollutant materials in their operations and there is no possibility that the pollutants are in the discharge. This obviously results in unnecessary sampling and testing. The EPA committed to proposing a final rule by June 2005. While they have also missed this deadline, we understand through your committee staff that they will shortly propose the rule change. We look forward to this proposal.

- **Spill Prevention Plans – Threshold Quantity Too Low.** This complex regulation was designed to reduce the risk of oil spills into navigable waters of the United States, a commendable goal. However, the requirements of the regulation are very burdensome, and apply to any facility that handles at least 1320 gallons (24 drums) of oil of any kind, e.g. vegetable oils and even machining coolants consisting of 5% oil content. The risks from these small facilities is very minor as compared to those processing and storing oil in large 30,000 gallon tanks or larger. The cost burden from this regulation could be reduced greatly by increasing the threshold for developing spill prevention plans to 5,000 gallons. The agency is working on many aspects of the plan, but has not committed to increasing the excessively low threshold.

In conclusion, we appreciate the Committee's attention to inefficient and unnecessary regulations that are the "silent killers" of manufacturing competitiveness. The RRKA regulatory reform nomination process initiated by OMB and OIRA during 2002 was an excellent beginning for bringing some visibility to those regulations that cost much but benefit little, and the much improved 2004 procedure and reaction from the agencies shows solid progress, but with a long path ahead if we are to achieve any regulatory reform. Although we are pleased with the dialogue that has been opened on three of our nomination, we are disappointed that the other three remain basically unexplored, with no communication with the EPA.

On behalf of Mueller Industries and the member companies of the Council, thank you for this opportunity to appear before you today.

Ms. MILLER. The subcommittee will now hear from Chris Bagley. Mr. Bagley is the EH&S manager for DanChem Technologies. His experience includes projects supporting many different clients in both industry and Government, including the EPA. His primary focus has been on multimedia, including air emission permitting, wastewater characterization and process studies and contaminated site investigations.

I will ask the witnesses again to please, in the interest of time, pay attention to the lights there. Again, when you see the yellow light, you know you have about a minute left, and the red is your full 5 minutes. We can always enter testimony into the record.

Mr. Bagley.

STATEMENT OF CHRIS BAGLEY

Mr. BAGLEY. Good morning, Madam Chair and members of the subcommittee. Thank you for the invitation to testify on some of the regulations highlighted in the recent OMB report to Congress on the impact of regulation on U.S. manufacturers.

My testimony today will focus on the Toxic Release Inventory Program, the Oil Spill Prevention, Control and Countermeasures regulations and the definition of solid waste regulations. My name is Chris Bagley and I am the regulatory compliance manager for DanChem Technologies in south central Virginia.

I am testifying on behalf of the Synthetic Organic Chemical Manufacturers Association [SOCMA], a trade association representing the interests of custom and chemical specialty manufacturers, 89 percent of whom are small businesses. I have been involved with SOCMA for over 8 years, including a term as chair of the environment committee.

SOCMA has been working with the EPA on resolving each of these rulemaking initiatives for at least a decade, with the goals of reducing regulatory burden, clarifying uncertainties, and most importantly, providing opportunities to recycle hazardous waste. While I am encouraged by EPA's recent efforts on all three issues, I am here today in the hope that this committee will motivate EPA to work quickly toward a final resolution. The decade of work by SOCMA and others on each of these issues represents countless hours and dollars lost to inefficiency and irresolute bureaucracy.

My testimony today addressing Toxic Release Inventory reporting requirements has been amended based upon recently received good news from EPA. I believe that the proposed change to increase the availability of the simpler Form A report is a good one, but EPA's intention to explore alternate year reporting has the greatest potential for burden reduction. To achieve this, I request the distinguished members of this committee to assist EPA wherever possible in implementing alternate year reporting to help improve TRI information products.

SOCMA has also worked with EPA to revise the Oil Spill Prevention, Control and Countermeasure regulations. It is critical that EPA clarify the remaining SPCC issues highlighted in our written submission by the end of this October. Alternatively, EPA must grant a compliance extension well before companies are forced to squander resources in an effort to comply with uncertain and unclear requirements. Efforts by a regulated entity to revise and cer-

tify SPCC plans are neither trivial nor inexpensive, on average costing approximately $10,000 per facility.

The definition of solid waste under the Resource Conservation and Recovery Act [RCRA], defines what materials are hazardous waste. Additional regulations under RCRA strictly control all aspects of hazardous waste management, including activities such as recycling and recovery. There are a number of instances where existing regulations prevent the recycling and recovery of valuable materials from waste, one of the very activities that RCRA was established to promote.

The fact that so many stakeholders nominated this regulation for the OMB report to Congress reflects the range of industries impacted by this rule. It also suggests the volume of lost opportunities for resource conservation that could be covered by revising the definition of solid waste. To those of us in the chemical industry, resource conservation is about more than protecting the environment. It is also sound business practice.

Under the EPA's proposed approach, specialty batch chemical sites would be severely limited in their hazardous waste recycling options, because the proposal restricts recycling to the very narrowly defined generating industry. Not surprisingly, waste materials from one pharmaceutical plant are often considered waste materials by other pharmaceutical plants. Thus, no recycling opportunities are provided.

However, waste materials at a pharmaceutical plant might be considered as valuable materials to a pesticide plant, a resin plant or an adhesives plant. Our testimony details examples of some of the cost savings that can be achieved.

To facilitate recycling by our chemical manufacturers, SOCMA has proposed an industry sector based system in which recycling could occur provided certain conditions are present. Some example of the conditions we have proposed are, notifications to the EPA detailing where the recycled material was generated and where it will be re-used, limiting the allowable storage time prior to recycling, documentation that the material is stored, shipped and managed in a manner to prevent a release to the environment and records proving that the material was ultimately recycled.

In conclusion, after working for up to a decade with the EPA on these three regulations, we have yet to reach the finish line, our many years of efforts facing an uncertain future. SOCMA believes that the scrutiny of OMB and the Congress is vital to speeding up the work on resolving these issues. We must all work together to create regulations that allow sustainable business development and protect the environment.

Madam Chair, I welcome any questions that you or other members of the subcommittee may have.

[The prepared statement of Mr. Bagley follows:]

Written Statement of

The Synthetic Organic Chemical Manufacturers Association

Before the

Committee on Government Reform

United States House of Representatives

The Impact of Regulation on U.S. Manufacturers: Spotlight on

the Environmental Protection Agency

September 28, 2005

Introduction

The Synthetic Organic Chemical Manufacturers Association (SOCMA) is pleased to offer comments on the White House Office of Management and Budget report to Congress entitled "***The Impact of Regulation on U.S. Manufacturers.***" SOCMA appreciated the opportunity to present testimony to the Subcommittee on Regulatory Affairs at the September 28, 2005 hearing and would like to supplement that testimony with the following discussion.

SOCMA is the leading trade organization representing batch manufacturers of specialty and custom chemicals, including many of the key ingredients found in pharmaceuticals, soaps, cosmetics, plastics, and many other industrial and construction products. SOCMA has approximately 300 member companies, which represent 400 batch processing facilities in the U.S., producing a vast array of chemicals with an estimated annual value of $60 billion. Over 89% of SOCMA's active members are small businesses

SOCMA's members are affected by a number of the environmental regulations highlighted in the OMB report, including Toxic Release Inventory (TRI), Spill Prevention, Control, and Countermeasures (SPCC), and the Definition of Solid Waste (DSW). We have also included a brief discussion on TSCA Section 12(b) for your consideration. These comments will focus primarily on the Definition of Solid Waste under the Resource Conservation and Recovery Act (RCRA It is appropriate OMB and Congress scrutinize the impact of EPA programs on the regulated community and the

success of EPA efforts to reduce the burden of these programs on U.S. manufacturing. There are important burden reduction opportunities in the TRI program, clarity is needed in the SPCC program and lost business opportunities can be recovered by revising the definition of solid waste. Unfortunately, these three regulations have also been languishing in limbo and in need of repair for quite some time -- in some cases up to a decade. Even more unfortunate is that for all three of these regulations this is not the first round of burden reductions, clarifications, and revisions. The problems with these regulations have not changed, nor has their importance to stakeholders, yet the EPA has been slow to substantially review and revise these regulations.

We urge Congress to push EPA to make the changes needed to improve the effectiveness of these regulatory programs without hindering the ability of small businesses to function as profitable enterprises.

Eliminate Unnecessary Reporting Under TSCA Section 12(b).

Section 12(b) of the Toxic Substances Control Act (TSCA) requires exporters of certain regulated chemicals to notify EPA of their intent to export. Typically, EPA then notifies the importing country that they will be receiving a chemical that is subject to risk management regulations or chemical testing requirements under TSCA. Congress's intent under the statute was to ensure that countries were notified that a chemical coming from the U.S. could pose certain risks under particular conditions. However, when EPA wrote implementing regulations, the agency chose to disregard exemptions for very minute amounts, such as by-products, which includes a number of instances where there would not be any risk posed by the importation.

This goes against the intent of TSCA as a risk-based statute, and industry has repeatedly asked EPA to modify the regulations to incorporate a *de minimis* exemption, but the agency has thus far refused to act. SOCMA requests that this Committee urge EPA to exempt *de minimis* amounts from TSCA Section 12(b) regulations. A *de minimis* exemption could be enacted in such a manner as to not pose unreasonable risks to human health or the environment and it would further the free flow of goods internationally.

Improve Data Quality and Reduce Burden Under the Toxic Release Inventory Program.

The Toxic Release Inventory reporting regulations under the Emergency Planning and Community Right to Know Act (EPCRA) have been a major focus of EPA's burden reduction efforts over the past several years and SOCMA has been an active advocate on this important effort. As SOCMA has testified to this Committee in the past, there are meaningful burden reduction opportunities in this program, however, these simple changes have taken years to accomplish. The most recent round of TRI burden reduction discussion began in October 2002 when EPA had an online dialogue with stakeholders on suggested changes to the program. They held another online dialogue in February 2004. EPA held a stakeholder meeting in October 2004 and had a TRI National Conference in February 2005. On June 14, 2005 SOCMA's testimony to this Committee focused on the

TRI regulations. SOCMA applauds the outreach and discussions that EPA has had with stakeholders on the TRI Burden Reduction issue, however, outreach is only valuable when it is coupled with results.

The effort has finally borne some positive developments, such as changes to the reporting form, proposals to expand the use of the simplified reporting form (Form A), and exploration of alternate year reporting. These changes should reduce the reporting burdens of SOCMA's members and improve the quality of the data available to communities, but it is worth noting that the Form A changes were initially suggested to EPA in a 1991 petition. The regulated community's frustration, which SOCMA shares, stems from the fact that it took 14 years to propose relatively straightforward changes.. SOCMA requests that Congress assist EPA wherever possible in implementing alternate year reporting to help improve TRI information products and services.

Clarify Requirements Under the Oil Spill Prevention Control and Countermeasures Regulations.

The Spill Prevention, Control and Countermeasure regulations under the Oil Pollution Act are yet another set of regulations that have long needed fixing because of confusing requirements for secondary containment, integrity testing, loading racks, oil in process and electrical equipment, oil in mobile containers, etc.. In 2002, EPA finalized SPCC amendments that were intended to clarify many issues that have lingered since the inception of the program in 1980. However, these regulations were not clear enough, litigation ensued and compliance deadlines have been extended twice. Now the regulated community is waiting for an Inspection Guide and Notice of Data Availability (NODA) to clarify these issues.

SOCMA has been engaged in the SPCC issue since 2002 because virtually every chemical manufacturing site stores or uses oil. EPA has met with SOCMA and other stakeholders frequently and it truly has been a collaborative process. But again, SOCMA members are frustrated because it has taken three years for EPA to develop an Inspectors Guide—a guide that will still leave some issues unclear. Having these issues clarified in a rulemaking as opposed to guidance would be the most appropriate, however, with compliance dates looming, we are forced to accept guidance as the best alternative at this time.

Revising and certifying SPCC plans is neither trivial nor inexpensive . On average, this costs approximately $10,000 per facility, so it can be costly for both small and large companies. It is critical that EPA clarify the remaining SPCC issues in a timely manner before companies spend additional resources to be in compliance. If not, an extension must be granted by October 2005 so that companies will have time to comply with the new amendments. Compliance extensions for SPCC requirements have in the recent past been published on the day before the compliance date, despite the fact that the need for an extension was obvious in the weeks prior. As a result, affected facilities

needlessly spent resources in an attempt to comply with uncertain rules, and frustration over the lack of final rules mounted.

Allow Increased Recycling Opportunities by Revising the Definition of Solid Waste.

The Definition of Solid Waste (DSW) under the Resource Conservation and Recovery Act, known as RCRA, defines what materials are hazardous wastes. Additional regulations under RCRA strictly control all aspects of hazardous waste management, including activities such as recycling and recovery. The fact that that so many stakeholders nominated this regulation for the OMB Report to Congress reflects the range of industries impacted by this rule. It also suggests the volume of lost opportunities for resource conservation that could be recovered by revising the definition of solid waste.

DSW is a confusing, complex and overly-conservative section of RCRA that impedes legitimate recycling efforts rather that fostering recycling. There are a number of instances where existing regulations prevent the recycling and recovery of valuable materials from wastes, one of the very activities that RCRA was established to promote. Currently, it is almost always cheaper to dispose of hazardous waste than to recycle it. In a world of *limited resources* this wastefulness makes little sense and needs to be remedied. While attempts have been made to change the definition of solid waste systematically to make it more practical, efficient and economical, the rule has yet to be revised.

Since 1980, EPA has defined solid waste to mean "materials destined for final, permanent placement in disposal units, as well as some materials that are destined for recycling" (66 FR 61558). It is the second clause of this phrase that has resulted in confusion about the extent of EPA's authority. Several notable court cases have addressed the definition of solid waste and which materials EPA may or may not regulate. In the 1987 case of the *American Mining Congress* v. EPA, (AMC) the D.C. Circuit Court ruled that EPA overstepped its authority "in seeking to bring materials that are not discarded or otherwise disposed of within the compass of 'waste'" (66 FR 61558). Based on this case and others, EPA promulgated a rule in 1998 that exempted the mineral processing industry from regulations on materials destined for reclamation. While this was a clear win for the mining industry, EPA's resulting rule was too narrow to allow similar recycling in other industries even though comparable exemptions certainly could have been allowed and in fact appear to be envisioned by the court.

In the 2000 court case of the Association of Battery Recyclers (ABR) v. EPA, the D.C. Circuit Court repeated elements of its earlier AMC decision. The opinion of the court stated, "...Congress unambiguously expressed its intent that 'solid waste' (and therefore EPA's regulatory authority) be limited to materials that are 'discarded' by virtue of being disposed of, abandoned, or thrown away" (66 FR 61558). Subsequently, EPA issued a proposal in 2003 excluding from the definition of "discarded" "any material generated and reclaimed within the same industry," improperly basing this

language on the ABR court's description of the particular circumstance before it. (66 FR 61558). While this represents a positive step towards expanding the criteria for what materials may be recycled, EPA's most recent proposal is still far too limiting to achieve the resource conservation originally outlined in RCRA.

SOCMA has suggested alternatives to the current definition, submitted comments on various proposals pertaining to DSW, and met with EPA staff to voice member concerns. In October 2003, EPA published a proposal on redefining solid waste. SOCMA was pleased that EPA took this first step and submitted comments to EPA in February 2004 ***(see attached).***

The main thrust of the proposed rule was to allow recycling only between facilities with the same NAICS (North American Industry Classification System) code, and it presented a range of recycling options for comment. SOCMA and its members have determined that the proposed rule, when implemented with a three-digit NAICS code, will provide substantial relief to its members and effectively promote increased recycling for the specialty batch chemical manufacturing sector. By contrast, if implemented with a four-digit NAICS code, the proposed rule would fail to provide any significant regulatory relief, as the four-digit NAICS codes fail to reflect the diversity of specialty chemical products manufactured by the specialty batch chemical manufacturing industry.

SOCMA's review of the proposed rule has confirmed that the use of a four-digit NAICS code would not provide significant relief, as the four-digit codes fragment the specialty batch chemical manufacturing sector into multiple subcategories and fail to encompass the range of manufacturing operations conducted within the industry. In fact, the narrow four-digit NAICS codes often fail to reflect the diversity of operations conducted even at the individual facility level, thereby raising facility classification difficulties due to the fluctuating product lines typical of specialty batch chemical manufacturing operations. EPA correctly anticipated many of these concerns of the specialty batch chemical manufacturing sector in its preamble discussion, but its proposal failed to suggest appropriate changes to overcome these hurdles.

Accordingly, if EPA pursues the four-digit NAICS code approach, SOCMA asks that EPA also issue a conditional exemption from the four-digit approach to promote recycling in the specialty batch chemical manufacturing sector. The exemption could be conditioned on: notifications to the EPA detailing where the recycled material was generated and where it will be reused; limiting the allowable storage time prior to recycling; documentation that the material is stored, shipped and managed in a manner to prevent a release to the environment; and records proving that the material was ultimately recycled.

SOCMA also supports EPA's pursuit of a broader exclusion from the definition of solid waste beyond the "same generating industry," given the additional legitimate recycling opportunities that could be pursued under this approach. The broader exclusion would identify additional categories of inter-industry recycling activity that do not involve discarding waste materials and hence would appropriately be exempt from the

definition of solid waste. SOCMA supports this further action, but considers it critical that this be undertaken as a supplemental and complimentary effort to the options more fully developed and set out in the proposed rule.

SOCMA recognizes that, conceptually, further pursuit of this broad exemption could be viewed as obviating the need for separate action on the NAICS-based exemption proposed by SOCMA and the on-site recycling exemptions set out in the proposed rule. However, SOCMA urged EPA to pursue these options on separate tracks and not delay final action on the two more focused exemptions. SOCMA believes that EPA can and should issue a final rule establishing further focused exemptions from the definition of solid waste, while also developing the broader exclusion.

This regulation is very important as it has constrained current business opportunities for many industry sectors. Our attached testimony includes several examples of how the current definition restricts our members' ability to recycle valuable secondary (waste) materials.

As an example, one SOCMA member company makes an active intermediate chemical that is used in pharmaceutical production. That process generates approximately 2 million pounds per year of waste, 25% of which is tetrahydrofuran, a valuable material that is sold for about 90 cents per pound. The tetrahydrofuran cannot be used again in pharmaceutical production, but would be considered a valuable material for adhesive manufacturing. Whereas pharmaceuticals and adhesives manufacturing are both considered "chemical manufacturing" by the Department of Commerce, EPA's proposal using the more narrow industry sector definitions precludes this recycling opportunity. Compliance with both current regulations and the EPA proposal requires incineration of this waste stream at an annual cost of anywhere between $573,000 to $758,000. If the company were allowed to recycle the tetrahydrofuran, not only would over 600,000 pounds per year of the material be reused rather than incinerated, but sales of the recovered material would also generate an approximate profit of $270,000 per year as well.

In the OMB Report to Congress, EPA has a schedule of December 2006 for a final rule. This date is three years after it was originally proposed and at least five years if not more since EPA had begun discussions with stakeholders on revising the regulation. SOCMA has met with EPA numerous times—both with the Policy Office and the Office of Solid Waste. SOCMA has also met with State officials and OMB to prod EPA to move quicker. Others within government are also interested, including the Department of Commerce and the U.S. House of Representatives Small Business Committee.

EPA has proven recently that they are capable of granting facility specific exclusions in a much faster manner than in the past. These individual exclusions were granted in less than a year with conditions—the same concept could apply across industry sectors. Similarly, SOCMA believes that a conditional exclusion for specialty batch chemical manufacturers based on the three-digit NAICS code would be the best way for

EPA to revise the definition of solid waste to allow for greater recycling of potentially valuable materials.

EPA has delayed revisions to the rule far too long now, affecting not only SOCMA members, but also an array of different industries. However, EPA has shown that they are indeed capable of producing timely results. SOCMA has made a compelling case to EPA for over ten years and yet the agency has not progressed beyond strategic discussions to revise the definition of solid waste regulations.

Conclusion

Focusing congressional attention on the slow pace of change to these EPA regulations gives hope to industry stakeholders. We have pushed for changes to the TRI, SPCC, TSCA 12(b), and DSW regulations for over a decade, but have seen few concrete results. The regulations as currently constructed have had a significant adverse effect on the small business community. The changes we have been recommending to EPA would help alleviate some of this burden without sacrificing environmental protection.

To summarize, we are asking EPA to:

- Clarify the requirements of the SPCC rules,
- Improve data quality and reduce burden in the TRI program,
- Eliminate unnecessary TSCA Section 12(b) reporting requirements, and
- Allow companies to realize recycling opportunities lost under the current definition of solid waste.

The OMB Report to Congress has helped get the agency moving on some of these long-awaited changes. Considering the length of time that these issues have been of importance to SOCMA and other stakeholders, however, it is disappointing that it is taking EPA so long to move to finality on any of them. We are hopeful that the combined efforts of EPA, OMB, Congress, and the regulated community will finally provide the momentum needed to get these critical changes enacted.

Ms. MILLER. Thank you. We appreciate that.

Our next witness is B.J. Mason. He is the president and founder of the Mid-Atlantic Finishing Corp. Mr. Mason founded the company in 1976 and it has become a premier national service finishing company, providing services to industries nationwide.

Mr. Mason is also a past president of the American Electroplaters and Surface Finishing Society. Since Mid-Atlantic Finishing opened its facility, it has provided its perspective to a number of governmental agencies. We certainly look forward to your testimony, sir, at this time, Mr. Mason.

STATEMENT OF B.J. MASON

Mr. MASON. You have introduced me, I thank you for being here. I would just like to go to my real topic and summarize my talk. You have a copy of my speech.

I want to talk to you today about what was previously mentioned with the first panel, and that is RCRA's F006. We in the metal finishing industry, particularly electroplaters, we produce a by-product of the Clean Water Act called F006. Exactly what that is is the removing of metals from our waste stream to comply with the Clean Water Act, i.e., metal hydroxide.

When F006 was first characterized, it was full of many, many products, such as heavy metals, probably some cadmium, some lead and some cyanide. Since the Clean Water Act and since many in the metal finishing industry have complied with this act and cleaned up our wastewater and our processes that we currently do, this product has since changed drastically. We did a study, along with EPA in the early 1990's, that showed most of the F006 that would be characterized previous to the early 1990's. Looking at it today, it is quite different. If it was characterized today, it would not be a hazardous waste.

We have asked EPA back even before and during the common sense initiative, which I was a part of, to reevaluate F006 and classify it as a non-haz, which means that it was classified as a non-hazardous waste, we could encourage people to recycle. It is estimated that the average metal finishing plant disposes of about $50,000 a year in metals through F006. Most of that today, and I am going to tell you my experience in knowing the industry as I know it is, some 80 percent of that goes to a hazardous waste landfill, which is encapsulized in concrete and put in the ground. Thereby, as Mr. Van Hollen is saying, a potential site to clean up to get metals out.

We all buy metals today. We all pay a lot more than we have previously. I use a lot of silver in my facility, and the cost of silver in the last year has increased about 40 percent. So has nickel, chromium, all those metals that we currently are putting into the ground. I have to go out the week after I send them out for disposal, go buy some more to do it all over again.

What we have asked for is permission to recycle as a non-hazardous waste, which would allow recycling facilities today that will not take hazardous wastes to be more prone to take those, and encourage the other metal finishers who currently are going to a landfill to go to recycling because there would be a cost savings.

The reason today that I feel, and a lot of our industry feels that a lot of people go to the landfill is geographically, location and expense. It is a lot more expensive to ship a hazardous waste and dispose of it than it would be a non-haz. Inasmuch as we have showed by characteristic that F006 is not hazardous, we have asked for this some 15 years ago and are still waiting for EPA to make a decision on this particular product.

It would be very beneficial to a company like mine that spends $50,000 to dispose of metals we have to buy again to take that money and put it back into a company like mine in the form of health insurance for the employees or maybe even just a raise that some of my employees haven't had in the last 6 or 7 years.

In conclusion, Madam Chair, I strongly encourage this committee to look at this regulation and to know that this industry is not against regulating and tracking this product. All we want to do is recover the metals that are in there that are becoming very valuable and very scarce. Thank you very much.

[The prepared statement of Mr. Mason follows:]

TESTIMONY
House Government Reform
Subcommittee on Regulatory Affairs

September 28, 2005

B. J. Mason
President, Mid-Atlantic Finishing Corp.
Capitol Heights, Maryland

On Behalf of
Surface Finishing Industry Council

Good morning Chairwoman Miller and members of the Subcommittee. Thank you for inviting me today to testify on the impact of regulation on U.S. manufacturing.

I am B. J. Mason, President of Mid-Atlantic Finishing Corp. We are a metal finishing "job shop" located in Capitol Heights, Maryland and have 45 employees. I started the company in 1976 and we provide silver, copper, nickel, electroless nickel, gold, tin and conversion coating finishes for a range of industries, including defense, telecommunications, aerospace, machine tool and medical.

I am testifying today on behalf of the Surface Finishing Industry Council, which includes the American Electroplaters and Surface Finishers Society (AESF), the Metal Finishing Suppliers' Association (MFSA), and the National Association of Metal Finishers (NAMF). Together, these trade

associations represent the management, technical, professional and supplier communities in the metal finishing industry.

Like numerous other industries, metal finishing plays a significant value-added role in the manufacturing supply chain. Virtually all metal products in commerce, and an increasing number of plastic products, require the services of my industry. Whether in the form of a simple light-oil film to a complex series of metal coatings, metal finishing is vital to the needs of the nation.

We make most of the things that Americans come into contact with every day work better, look better and last longer. The metal finishing industry's role in corrosion protection alone provides what some have estimated to be a $200 billion annual economic benefit to the nation.

The focus of my testimony today is on the listed hazardous waste, F006 – a metals byproduct that we in the metal finishing industry generate from treating metals in our effluent under the Clean Water Act. In treating our process wastewater, we generate this metals-laden material that generally goes to local hazardous waste landfills. Under the Resource Conservation and Recovery Act (RCRA), the existing regulatory framework for managing the nation's industrial wastes, we are literally throwing valuable metals away.

The average metal finishing firm "throws away" an estimated $50,000 annually in metals based on current pricing trends. Two of the primary metals involved, among others, are nickel and chromium, both strategic materials for defense and for which the U.S. has no reserves. Appropriate changes to the current regulatory systems are needed to encourage the recovery of these critical metal resources.

What makes F006 sludge "hazardous" in the eyes of EPA is the very metal that makes it valuable when it is recovered. In short, it is only "hazardous" if it is not recycled. The vast majority of F006 sludge is *NOT* recycled, in part, because of the high costs associated with managing it as a hazardous waste. Under RCRA and the so-called "mixture and derived from" rule, any residue from the treatment or recycling of a listed hazardous waste like F006 must be managed as a hazardous waste. Because of this, recycling facilities either refuse to accept F006 or impose high costs to process F006. In most instances it is simply cheaper to send F006 materials to local hazardous waste landfills where it is treated by encapsulating it in cement, thereby doubling or tripling the volume of the material prior to disposal.

Dating back several years to the metal finishing industry's involvement with the Common Sense Initiative under the previous

Administration, EPA has been considering a rule specifically to address recycling of my industry's metal byproduct. This rulemaking effort is separate from EPA's project to make revisions to the overall definition of solid waste under RCRA.

Based on recent discussions with EPA staff, the Agency expects to propose a regulation by the end of the year. While we support the efforts of EPA to take a more sensible approach to the recovery of metals from F006 materials, we are troubled by two things: 1) the delayed timing for this much needed rule, and 2) that the substance of the rule may not effectively remove the current legal impediments that discourage beneficial recycling. In short, F006 materials that are recycled for metals recovery would not be regulated as a hazardous waste.

A rule that will provide appropriate regulatory incentives to recover metal resources from F006 materials is needed now more than ever. First, the historically high metal prices, together with the worldwide shortage of scrap metal supplies, are sharply increasing the costs of metal raw materials and plating solutions for metal finishing companies. For example, in my case, the cost of silver is 40% higher today than it was a year ago. Other metals such as nickel have seen equal or even higher increases in that time period. These added costs are potentially devastating because the industry is

already experiencing unprecedented operating costs with rising energy, health insurance, general liability insurance, workers compensation and regulatory costs.

Second, as responsible stewards of our environment, we need to recover valuable resources from metal-laden materials like F006 and to limit the use of our landfill space for truly waste-like materials that have little or no value. It simply does not make sense for a metal finishing firm to throw away thousands of dollars of metals each year.

Third, the rule would reduce the average metal finishing facility's operating costs by over $50,000 each year in reduced transportation costs and waste management fees. These savings would allow facility owners to continue employing workers that support families, reinvest in other cost-containment and revenue generating strategies for the company, and remain viable in the "cost-price squeeze" facing U.S. manufacturing and key supplier industries like metal finishing in highly competitive global markets.

U.S. manufacturing is good for the nation's economy. Recycling makes sense. New regulations that remove existing regulatory barriers, encourage the recovery and beneficial reuse of valuable resources like metals and promote U.S. manufacturing are needed -- and needed now. EPA, after working on this regulation for over a decade, needs to finalize

this rule to provide the appropriate incentives for the recovery of metals from my industry.

Chairwoman Miller, thank you again for the opportunity to appear before you today.

Ms. MILLER. Thank you. And our final witness is Scott Slesinger. He is the vice president for governmental affairs with the Environmental Technology Council. He is a veteran of Capitol Hill, where he served most recently as a minority counsel for environment and energy with the Senate Budget Committee. He previously worked as the environmental counsel for Senator Lautenberg and negotiated proposals on such topics as the Superfund and the RCRA Reform, which included recycled battery legislation, and he played a major staff role in the successful House-Senate conference of the Safe Drinking Water Act.

I will say that I did not realize Mr. Van Hollen was here, I was going to let Mr. Van Hollen introduce. You may add any remarks that you have at this time, Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you very much, Madam Chairman. I am sorry I had to step out for something else briefly. Let me just welcome Scott Slesinger, who is a constituent and somebody who is, I think you can see from his resume, very well versed in these issues. I want to thank him for being here and for his contributions to our discussions. Thank you very much.

Ms. MILLER. Thank you. The floor is yours, sir.

STATEMENT OF SCOTT SLESINGER

Mr. SLESINGER. I want to thank the committee for the invitation to appear.

The ETC represents environmental service companies that recycle, treat and dispose of industrial and hazardous waste. Many of our companies are working with their Gulf Coast customers to clean up the hazardous wastes left behind by Hurricane Katrina.

However, the vast majority of services we provide are for the normal processing of chemicals, pharmaceuticals and other wastes from American industrial processes. Our facilities are stringently regulated under RCRA and TSCA, among other environmental health and safety laws.

Because our expertise is with RCRA and TSCA, I will limit my comments to those OMB-endorsed proposals that affect our activities. First is the definition of solid waste. OMB states that EPA should clarify that a material that is being sent for recycling is not subject to regulation as a hazardous waste because it is not being discarded.

OMB is correct that hazardous waste, when recycled, is subject to RCRA management standards. This is exactly what Congress intended. In 1985, EPA promulgated the regulations that applied to the recycling of hazardous waste and the courts have upheld those.

A broad exemption of all hazardous materials that are recycled from even the minimum standards for tracking financial assurance in safe management would create future Superfund sites and fail to adequately protect public health. RCRA has established a comprehensive program for managing hazardous wastes. A manifest system tracks the shipment of waste from cradle to grave, rules and procedures for handling and storing waste, recordkeeping, employee training, waste characterization and accident prevention plans are required. Facilities that treat, store and dispose of waste must obtain State or Federal permits and they must provide finan-

cial assurance so as not to saddle taxpayers with the cleanup burden if they close or have accidents.

Under the industry-recommended and OMB-endorsed proposal, none of these RCRA safeguards described above would apply to recycled hazardous waste. Without tracking to ensure materials reached the recycler, coupled with the fact that the generators will probably still be paying the recyclers to take their waste, the economic incentive to dump the waste along the road will return for the first time since 1976. This is the reason most States who have commented on the EPA proposed rule rejected it.

OMB argues that this proposal's goal is to encourage recycling rather than disposal. However, our review of the economic analysis of the original EPA proposal showed only a minuscule increase in recycling. The fact is, recycling, if it makes sense, occurs today, removing some costs of regulations that will have a marginal increase in recycling but a large increase in risk.

This is really a proposal to encourage unregulated recycling of toxic materials rather than recycling carried out properly by regulated facilities. EPA's and States' own files show numerous sites where recyclers have caused significant taxpayer cleanup.

Why is this proposal so uniformly supported by so many waste generators? We believe that the major economic benefit is diverting Superfund liabilities from waste generators to State and Federal taxpayers. Under current law, if a generator sends a waste to a recycling facility that subsequently becomes a Superfund site, the Government can seek to recover cleanup from both the recycling facility and the waste generators. With the industry-endorsed proposed rule, the generators would be able to escape liability because the hazardous materials being recycled would be considered a commodity instead of a waste.

All that being said, there certainly are ways that EPA can provide exclusions from the full RCRA standards for certain types of waste materials that are recycled with conditions that are adequately protective. We are certainly interested in working with EPA and OMB and generators on this type of reasonable regulatory reform.

The electroplating proposal, F006, is really a subset of the definition of solid waste. This sludge typically contains levels of cadmium, chromium, cyanide and lead. The industry's argument is that if the cost of recycling were lower by deregulating the handling, shipping and storing, that there would be less landfilling and more recycling.

A survey of our members demonstrates the recyclable levels of F006 are not being landfilled, as the electroplating industry has argued, but are already being recycled. If someone sends us sludges with recyclable levels of lead, our companies will reclaim the metals. Removing this dangerous waste stream from regulation for a minuscule or zero increase in recycling is offering an economic benefit for one industry which transfers the risk to the taxpayer if something goes awry.

I do not mean by my testimony to discourage reasonable efforts to lower regulatory burdens. For instance, we are working with our customers, EPA, States and Chairman Davis to replace the RCRA paper waste tracking manifest system mentioned above with an

electronic system. The paper manifest tracking hazardous wastes from cradle to grave is the largest continuing paperwork burden that EPA places on industry. We want to move forward with electronic manifests that would save industry and States over $100 million a year. We would appreciate OMB's assistance in combatting the bureaucratic obstacles that are delaying this worthwhile project.

Thank you for hearing our views, and I look forward to your questions.

[The prepared statement of Mr. Slesinger follows:]

Environmental Technology Council
734 15th Street, N.W. • Suite 720 • Washington, DC 20005 • (202) 783-0870

TESTIMONY

OF

SCOTT SLESINGER

VICE PRESIDENT FOR GOVERNMENTAL AFFAIRS

THE ENVIRONMENTAL TECHNOLOGY COUNCIL

Committee on Government Reform

Subcommittee on Regulatory Affairs

U.S. House of Representatives

Hearing on

Response to the Report "Regulatory Reform of the U.S. Manufacturing Sector"

September 28, 2005

My name is Scott Slesinger. I am Vice-President for Governmental Affairs at the Environmental Technology Council. I want to thank the Committee for requesting our views on OMB's list of environmental protection regulations targeted for reform. The ETC represents environmental service companies, many of them small businesses, that recycle, treat and dispose of industrial and hazardous wastes. Many of our companies are working with their Gulf Coast customers to clean up the hazardous waste left behind by Hurricane Katrina. However, the vast majority of services we provide are for the normal processing of chemicals, pharmaceuticals, and other waste streams from American industrial processes. Our facilities are stringently regulated under the Resource Conservation and Recovery Act and the Toxic Substances Control Act, among other environmental, health and safety laws.

Because our expertise is with RCRA and TSCA, I will limit my comments to those regulations that affect our activities. Those proposals are:

1) The definition of solid waste
2) Deregulating electroplating sludge
3) Disposal of PCBs into municipal landfills

Let me begin with the first proposal, which would radically change the RCRA program and potentially exclude billions of pounds of hazardous wastes from current safeguards.

The Definition of Solid Waste

 # 42 "Under current rules under the Resource Conservation and Recovery Act (RCRA), certain waste streams are regulated as hazardous wastes, even when they are being recycled. The agency should clarify that a material that is being sent for recycling is not subject to regulation as a hazardous waste because it is not being 'discarded'. This reform would increase recycling rates while reducing the costs of managing hazardous wastes." ***Regulatory Reform of the U.S. Manufacturing Sector, 2005.***

OMB is correct that hazardous waste, when recycled, is subject to RCRA management standards. This is exactly what Congress intended. The RCRA statute defines "hazardous waste management" to include the "recovery" of "material or energy" from hazardous wastes. The House bill that became the 1984 Amendments to RCRA included a section 8, which made clear that: "The Administrator shall, promulgate such regulations as may be necessary to protect human health and environment ***ensuring that the use, reuse, recycling, and reclamation of hazardous wastes*** identified or listed under this section is conducted in a manner consistent with such protection." The Conference Committee omitted this provision from the final amendments because EPA already had this statutory authority. Indeed, a year later in 1985 EPA promulgated the regulations that apply to the recycling of hazardous wastes, and the courts have upheld these regulations.

So OMB is simply wrong when it broadly says in its report that hazardous wastes sent for recycling should not be subject to RCRA regulation because they are not

discarded. Many materials that are recyclable, such as spent solvents, electroplating sludges, and steel furnace dusts, are discarded materials and should be properly managed as hazardous wastes when sent to recycling facilities. A broad exemption of all hazardous materials that are recycled from even the minimum standards for tracking, financial assurance, and safe management would create future Superfund sites and fail to adequately protect the public health.

Extensive Safeguards Protect the Public and the Environment from Hazardous Wastes

The Resource Conservation and Recovery Act has established a comprehensive program for managing hazardous waste. A manifest system is a paper system that tracks the shipment of waste from waste generation to ultimate disposal or destruction, commonly called "cradle to grave" tracking. Rules set procedures for handling and storing waste. Record keeping, employee training, waste characterization and accident prevention plans are required. Facilities that treat, store and dispose of waste must obtain state or federal permits, and they must provide financial assurance so as not to saddle taxpayers with the cleanup burden if they close or have accidents. This protective law has been successful in leading U.S. companies to better manage and reduce their use of hazardous materials and has lead to fewer Superfund sites and a marked decrease in midnight dumping. Many countries have used RCRA as a template.

Under the industry recommended and OMB endorsed proposal, none of the RCRA safeguards described above would apply to recycled hazardous wastes. There would be no tracking or recordkeeping system to ensure the material reaches the recycler, no employee training, no accident prevention, and no financial assurance to ensure proper closure and cleanup of the recycling facility. Under the economics that govern hazardous waste recycling, recyclers are usually paid to take the waste. Without tracking, there is often an economic incentive to dump the waste along the road side. That is the reason most states who commented on the EPA proposed rule, rejected it.

In the EPA economic analysis of the narrower proposed rule[1], the major cost savings were in the avoided costs for the safeguards listed above. Ironically, in violation of Executive Order 12866, EPA failed to analyze the increased likelihood of spills and increase in Superfund sites if these safeguards were removed and unregulated entities with untrained employees were handling these hazardous wastes.[2] Our comments pointed out more than 50 cases from EPA and state files of recycling sites that had caused serious environmental releases. *ETC Damage Case Attachment to the ETC Comments on the Proposed Rule on the Definition*

[1] On October 28, 2003, EPA proposed to redefine "solid waste" so that hazardous waste recycled within the same industry would not be subject to RCRA. The OMB endorsed proposal would expand the universe of excluded waste to hazardous waste recycled by anyone. The change does not impact the EPA economic assessment. The economic analysis placed no weight on what entity would do the recycling.

[2] "The Agency notes that there is the potential for hazardous wastes to be released over time from land based units (that may or may not result in a risk to human health or the environment). EPA also notes that there is potential risk from extracting natural resources and processing them into goods for public consumption. It is difficult to assess the net effects of this proposal on the probability of releases of toxic constituents to the environment. The Agency solicits comment on this question. *Economic Assessment of the Association of Battery Recyclers Proposed Rule, EPA, June 27, 2003 RCRA-2002-0031-0002.pdf.* At pages 7-4

of Solid Waste, http://www.etc.org/ETC_Damage_Cases.pdf We understand that since the end of the comment period on EPA's proposal, EPA has identified over 200 hazardous waste recycling facilities requiring remediation work.

Proposed Rule's Potential Environmental and Economic Effects

Recycling hazardous waste rather than disposing of it is a laudable goal. The EPA argues that this proposal's goal is to encourage recycling rather than disposal. However, our review of the economic analysis of the original EPA proposal showed only a miniscule increase in recycling. *ETC Comments on the Definition of Solid Waste, pages 45-51*, http://www.etc.org/ETC_Detailed_Comments.pdf. The fact is that recycling, if it makes economic sense, occurs today. Removing some costs of regulation will have a marginal increase in recycling, but at a large increase in risk. This is really a proposal to encourage *unregulated* recycling of toxic materials rather than recycling carried out properly by *regulated* facilities.

The major benefit to generators of waste is not increased recycling or even less expensive handling of hazardous waste. The major economic benefit is diverting Superfund liabilities from waste generators to state and federal governments. Under current law, if a generator sends a *waste* to a recycling facility that subsequently becomes a Superfund site, the government can seek to recover cleanup costs from both the recycling facility (who is usually insolvent once a catastrophe occurs) and the waste generators. But under EPA's proposed rule, the generator will be able to escape liability because the hazardous material being recycled would be considered a *commodity* instead of a *waste*. This leaves the taxpayers on the hook for potentially many millions of dollars in cleanup costs.

The Agency has also failed to consider the financial impact on taxpayers who will have to pay the bill for closure of failed or bankrupt recyclers. Eliminating the tracking and training requirements makes mismanagement and spills more likely. At this same time, eliminating the financial assurance mechanism leaves communities with the cost of the next generation of Superfund sites.

As we recently learned after Katrina, sometimes an ounce of prevention is worth a pound of cure.

All that being said, there certainly are ways that EPA can provide exclusions from the full RCRA standards for certain types of waste materials that are recycled with conditions that are adequately protective. For example, EPA could by regulation allow an exclusion, provided basic conditions are met such as tracking to the recycling facility to ensure the material is delivered and not dumped; training of employees on the hazards posed by the recyclable material; and financial assurance to ensure cleanup in the event of a release or closure. We are certainly interested in working with EPA and OMB on this type of reasonable regulatory reform.

Electroplating Sludge

#48 "Under the Resource Conservation and Recovery Act (RCRA), metal precipitate sludge is considered an F006 listed hazardous waste when a manufacturing facility ships it off site for metals recovery. This determination discourages reuse, recycling and reclamation by increasing the cost of recycling these valuable materials. The agency should exempt recycled electroplating sludge from hazardous waste management requirements to reduce management costs while protecting the environment." ***Regulatory Reform of the U.S. Manufacturing Sector, 2005.***

OMB's proposal would deregulate recycling of electroplating sludge, one of the most toxic wastes in America. This sludge typically contains dangerous levels of cadmium, chromium, cyanides, and lead. The electroplating industry has made major strides over the years in decreasing the risks in its operations and increasing their recycling. However, their argument is similar to the one on the definition of solid waste; if the cost or recycling were lower, by deregulating the handling, shipping, and storing, there would be less landfilling and more recycling. A survey of our members demonstrates that recyclable levels of F006 are not being landfilled as the electroplating industry has argued, but are already being recycled. If someone sends us sludges with recyclable levels of metals, our companies will reclaim the metals. Removing this dangerous waste stream from regulation for a miniscule or zero increase in recycling is offering an economic benefit for one industry which transfers the risk to the taxpayer if something goes awry.

This proposal is really a subset of the Definition of Solid Waste proposal. For the reasons listed above, the benefits, if any, of the proposal are greatly offset by the increased environmental risk and taxpayer burden.

PCBs in Municipal Landfills

#45 "The agency should clarify that all PCB remediation waste containing small amounts of PCBs can be disposed, on its as-found concentration, in a municipal solid waste landfill. This clarification will reduce the costs of disposal without causing environmental harm." ***Regulatory Reform of the U.S. Manufacturing Sector, 2005.***

Most PCBs must be chemically treated or incinerated. However, PCBs that are spilled in soils can often be disposed in TSCA hazardous waste landfills, and EPA allows cleanup wastes with PCBs below 50 ppm to be disposed in sanitary municipal landfills under protective requirements. These requirements, called the self-implementing option, include: public notice, sampling plans, preparation of a cleanup plan that must be signed and certified, specific verification sampling every 1.5 meters, and the possibility that the regulators will require additional cleanup requirements. One of the benefits of going through this oversight and planning under the self-implementing option is that low levels of PCBs could be disposed at very low cost in municipal landfills. However, because of the protective requirements, the number of responsible parties that take advantage of the self-implementing option are few, the spills affected are small, and the total PCBs going into municipal landfills is limited.

PCB cleanups that do not utilize the self-implementing option occur without the knowledge or oversight of EPA, state or emergency responders. OMB is suggesting that these unsupervised cleanups be given the benefits of the self-implementing option with none of the protective conditions. It is the same as arguing if some teenagers who take driver's training qualify to pay less for insurance, then all teenagers should pay less.

Making the proposed change would give companies going through a non-public cleanup an unsafe economic incentive to dilute the PCBs so that the contaminated soils could be disposed in a municipal landfill. EPA calls this "intentional or fortuitous dilution."

The major concern with this OMB directive is that there is no evidence that significantly increasing the volumes of PCBs disposed in municipal landfills is safe. It is just common sense that a narrow exception for a small volume of PCBs does not mean it is safe to expand the exemption to thousands of tons of PCBs then will then be disposed in sanitary municipal landfills. There is no science that is consistent with this proposal.

A Reform That Lowers Industry Cost While Not Increasing Risk

I do not mean by my testimony to discourage reasonable efforts to lower regulatory burdens. For instance, we are working with our customers, EPA, states, and Chairman Davis to replace the RCRA paper waste tracking system mentioned above with an electronic system. The paper manifest tracks hazardous waste from cradle to grave and is the largest continuing paperwork burden that EPA places on industry. We want to move forward with an electronic manifest that would save industry and states over $100 million a year. We would appreciate OMB's assistance in combating the bureaucratic obstacles that are delaying this worthwhile project.

Thank you for hearing our views. I look forward to your questions.

Ms. MILLER. Thank you very much.

I might start with Mr. Mason. I thought it was interesting when you were talking about some of the various metals that your industry deals with and the unbelievable increase in costs. I was taking some notes here, you said silver actually had gone up 40 percent, and the chromium, I guess you said, some of the other different types of elements that you use in your industry.

Can you talk a little bit about why that has happened in a year? How do you get a 40 percent increase in silver in 1 year?

Mr. MASON. Why I think this is happening is with the tremendous growth in the Far East, in China, where they are consuming huge amounts of all the metals, they are buying our metals, they are buying our scrap. I think it is the fact that it is not as plentiful as it was, and there is a whole big, new market to sell it in, this gets this to go up, and of course, the general economy, everything has gone up.

So I think that is the biggest reason that the metals have increased like that. The silver probably isn't a particularly good example, because the silver market and the gold market are tied to people who set the number for them, if somebody understood that they would be a lot richer than probably anybody in this room. That market is very volatile, and I think it depends a lot on the currency of the United States versus the foreign currency and all that.

But nickel metal, we do a lot of electronickel plating. We have seen that cost go up every bit as much as that. I think it is because of the use offshore.

Ms. MILLER. That is interesting, coming from Michigan obviously we use a ton of steel, a lot of steel in our State. It is the exact analogy with the cost of steel as what you were just saying, because of what is happening with the consumption in China.

Mr. MASON. There was a March article, March 2004, in National Geographic, about China. I would encourage anybody to look at that article on China's growing pains. It just really tells everybody how unlevel the playing field is. It is a tremendous article for anybody to look at. You can see that kind of growth and how we are all suffering from it.

Ms. MILLER. That is again the purpose of this hearing and others that we have had, is how we can actually level the playing field from some of the regulatory burdens that we have that your industry and others are certainly sharing.

Mr. Wagener, if I could, you mentioned, I think you called it the mother of all reporting for the TRI. And of course, announced last week by the EPA is a burden reduction rule. Could you talk about how you think that might impact, if you are familiar with the rule that they issued last week and whether that would assist or not your particular business, your industry?

Mr. WAGENER. It certainly would, and improve the perspective. Let me take an opportunity here to correct what I think is a misconception that Mr. Lynch referred to in regard to the 5,000 pounds. That is not 5,000 pounds released. That is 5,000 pounds processed. So you could take copper wire, for instance, and change its diameter and that would be processing it. You could have zero releases, but you would still have to report. So it is not 5,000

pounds of releases that will go unreported. It will be reported. It is the processing amount.

To give you some idea of what I spent last year, filing a report, I put in over 200 hours. I had six additional people feeding information to me; 200 hours is 10 percent of the year. We are tracking all kinds of issues, the PBT issues. Mueller is a significant user of lead, brass is typically 2½ percent lead. It is the magic that allows it to be machined cleanly. So we process a lot of copper and a lot of lead and of course zinc.

There is something else that I could speak to there, in terms of the value of the TRI to the public. I have a very parochial view, it is only what happens to me. But in my period with Mueller Brass, we have received one phone call from the public in regard to our TRI report. So I don't know if that is a reflection of how much the public is reading these things, but it was from an environmental group in New Jersey.

A young lady told me that they put these reports out to their membership and that she had been reviewing our TRI report and saw that we had recorded, she used the term "released to the environment" of so many million pounds of copper. Well, those are skimmings off our melt pot which are recycled. They were not released to the environment. But the distinction in the report is very vague.

Then her question to me, remember, brass is 66 percent copper, here is her question. She said, we want to know what you are doing to get copper out of your product. Bizarre. So I went on to explain to her that it is our product. [Laughter.]

And that the faucet that she gets her drinking water from is brass, chrome plated, and if she goes to her basement and looks at the plumbing, she will see all these copper tubings through which her water flows, a very important product.

So I am not sure how many of the public environmental groups seem to look at it. I had the one phone call. But we put a lot of money into producing this report. I hope I have addressed your issue a little bit.

Ms. MILLER. Yes, you have, thank you very much.

Mr. Lynch.

Mr. LYNCH. Thank you.

Mr. Slesinger, I just have a quick question for you. As I understand it, the EPA's proposed change to the definition of solid waste under RCRA would allow a company to recycle hazardous materials without having to comply with some of the current safety requirements, such as tracking the hazardous material that has been targeted as being recycled.

I am curious, under your reading, would this mean that the company would, well, let me put it the other way, could a company in the process of recycling ship their stuff out of State or out of their industry or out of their company for that matter, without being tracked?

Mr. SLESINGER. The way the OMB and industry suggested proposal reads is that these things would be considered a commodity. So if they were sent, for instance, to a RCRA facility for disposal, they would be required to be manifest. But if it goes to a recycler, unregulated, next door to us, even if we are shipping it across the

country, it would not need a manifest, because it wouldn't be shipping hazardous waste and it would therefore be exempt.

Mr. LYNCH. Same material?

Mr. SLESINGER. Exact same material.

Mr. LYNCH. OK. So we are talking about in some cases drums of chemicals that would have been classified earlier as hazardous waste, but now because they are targeted for recycling, they are totally off the screen now.

Mr. SLESINGER. That is the way the proposal reads, yes.

Mr. LYNCH. OK. Can you give some examples of the kinds of materials that the EPA and OMB proposals cover, and examples of some of the dangers that might be presented in rolling back the current tracking requirements and protections that we have right now for properly handling waste?

Mr. SLESINGER. Hazardous waste is hazardous because it includes chemicals that are those that show up on the Superfund chemicals of concern. We are talking about the benzenes, the lead, the mercury. These are either contaminants or in some cases part of the product. In certain situations, of course, lead is a valuable product. If it gets into the air and is heated up, it can be a major pollutant.

So it is all those chemicals that are regulated. But if they are, again, sent for recycling under this proposal they would not be regulated.

Mr. LYNCH. OK. I did get notice that we have a vote pretty soon, so I have one last quick question. That is, you mentioned, I didn't mention PCBs before in my remarks, but you brought it up in your testimony. You talked about a proposal that would increase the amount of PCBs that are allowed to be put in landfills.

In your opinion, what are the safety concerns around that change?

Mr. SLESINGER. Right now, EPA lets very small amounts of PCBs go into municipal landfills, generally from households that may have a little bit left over in the paint they may be getting rid of, or under very strict cleanups that I talk about in my testimony.

Under the proposal that OMB has endorsed, all cleanups allow levels of 50 parts per million of PCBs into municipal landfills. In fact, when EPA had a hearing on this, people representing the Superfund sites on the Hudson River and Fox River suggested that the sediment from those cleanups also be put into municipal landfills if they were under 50 parts per million.

EPA has never done a study to show that putting 50 parts per million is safe in a landfill. Arguably, if you spread a little bit of PCBs over hundreds of landfills, it is probably not an issue. But if we are talking about thousands or tons of PCBs going into these landfills, there is no science to say that is safe in a regular, municipal landfill with the regular garbage we throw out, versus a TSCA regulated landfill that is built specifically to hold chemicals such as PCBs.

Mr. LYNCH. OK, thank you. Madam Chair, I yield back.

Ms. MILLER. Thank you. Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Madam Chairman.

Just to followup a little bit, Mr. Slesinger, with respect to some of the issues that you have raised, have you had an opportunity to

discuss these directly with officials at the EPA, and if so, what has their response been?

Mr. SLESINGER. We, as I mentioned, are very willing to compromise and find some common ground. However, working with the agency has been somewhat difficult. I think they see a hearing like this, they see that the people working on this were called over to the Commerce Department to show how they were working on this.

When we go over to talk to EPA on this, whenever we offer anything, they won't even admit that this OMB proposal is the leading one on the table. Everything we suggest, their response is, "everything is on the table." You know, what time is it, "everything is on the table." It has really been hard to get them to start a dialog. Hopefully, we would urge Members on both sides to urge them to do that. I think there is common ground.

We agree with Mr. Mason, F006 in many cases is different than it was when it was originally listed. There are ways that we could lower some of the burdens on some of these things without hurting the environment. But at this point, we have been running into a solid wall at EPA and at OMB.

Mr. VAN HOLLEN. Thank you. Now, when you say that under the new definition that you would be able to ship what is currently hazardous waste to a recycling facility that is an unregulated facility, what do you mean by that? Would there be anything, any rules governing the recycling facility?

Mr. SLESINGER. The recycling facility, if when it does its recycling leaves a hazardous waste residue, it will be regulated to handle that waste properly. However, the generator will now no longer be responsible for any of that where he is today, and it is a safeguard to make sure the generator finds an appropriate recycler who is going to do the right thing, because if he doesn't, the generator would then be liable. That would go away.

We think there are ways that we can have these recyclers do some things, such as at least financial assurance, to make sure that the taxpayers don't get caught with the bill if they fail. Training their employees to us seems like a good idea that we hope would occur. But when EPA did its economic assessment of this proposal, those were the savings. You wouldn't have to waste money training your employees or having financial assurance or providing a spill protection plan. Maybe some of these things you might want to do anyway, but when there is going to be price competition, we are afraid there is going to be a race to the bottom with no regulatory protection.

Mr. VAN HOLLEN. All right. Mr. Bagley, as I understand the current rules, we are talking about the same material as has been testified to, if it is transferred right now to a disposal site, it would have to go through all the manifest requirements, and under this provision, if it is transferred to a recycling facility, it wouldn't have to go through all those manifest requirements, is that right? Is that your understanding?

Mr. BAGLEY. No. Let me see if I can address the misconception this way.

I respectfully disagree with the suggestion that industry supports deregulating this material through creation of a recycling loophole. The concern over creating new Superfund sites is certainly a con-

cern that all of us share. However, those Superfund sites were created originally, back in the early days of RCRA, as Mr. Slesinger alluded to in his testimony. EPA subsequently closed that loophole through additional regulations that are still in place today.

Industry is not looking for a blanket wipeout or for a rollback of those regulations. As I presented in my testimony today, lost recycling opportunities can be saved by revising the definition of solid waste, not by eliminating it, and still provide for full documentation of where that material came from, where it is going to, what was the final disposition of the recycled material and any other material generated as a result of that recycling activity.

Mr. VAN HOLLEN. If I could, just because the light is about to move to red, with respect to the manifest information, the transfer of the hazardous waste material and all the safeguards that are currently in place to make sure that material is handled properly and gets to the right destination, which it seems to me if we are dealing with the same material for the transport of that material, if it going to a recycling site or a disposal site, that information should be the same for the protection of the public.

Do you have any objection to keeping the current requirements and safeguards for the manifests in place with respect to reporting and the transfer of the material to the final destination?

Mr. BAGLEY. That is a potential option. But under DOT regulations, just as if you are shipping, say, virgin MEK instead of methyethylketone for recycling, you still have to have a bill of lading. So it may be that you can accomplish the same thing through other existing regulations. The primary purpose or one of the primary purposes of the waste manifest being not just verifying that the waste reached its destination and was received and disposed of, but also to maintain compliance with DOT regulations.

So there may be some overlap there. I don't think we are necessarily objectionable to what you are suggesting, but it may turn out that there are other existing regulations that will also do the job.

Mr. VAN HOLLEN. All right. I thank you, Madam Chair.

Ms. MILLER. All right, thank you very much. I certainly want to extend our appreciation on behalf of the committee to all of the witnesses, the panelists that we have had today. Your testimony has been very enlightening. Certainly I think it has given us a lot of ideas and insight, suggestions on how we might approach the EPA as we spotlight them in this particular hearing and the impact that they are having on U.S. manufacturing.

Thank you very much. We will adjourn the hearing.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

○