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METAL THEFT: PUBLIC HAZARD, LAW ENFORCEMENT CHALLENGE

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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METAL THEFT: PUBLIC HAZARD, LAW ENFORCEMENT CHALLENGE

WEDNESDAY, JULY 22, 2009

U.S. SENATE,
SUBCOMMITTEE ON CRIME AND DRUGS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:34 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Amy Klobuchar, presiding.

Present: Senators Klobuchar and Hatch.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. All right. We are going to call this hearing to order. Good afternoon, everyone, and thank you for being here. Today's hearing will examine the problem of metal theft in our country, the public hazards that this crime creates, and the challenges facing law enforcement as they attempt to combat this crime.

I am pleased to be here with my colleague Senator Hatch, and I want to thank Senator Specter, who chairs the Crime and Drug Subcommittee, for allowing me to chair this Subcommittee hearing today.

I also want to thank—there are a number of Minnesotans here that you will hear from. I think someone even brought their family, I heard, so we are making this into a family affair. But I want to thank them for coming as well.

I am going to let Senator Hatch start with opening remarks, and then I have a few myself.

Senator Hatch.

Senator HATCH. You go ahead, Madam Chair.

Senator KLOBUCHAR. OK, Senator Hatch. I always defer to the senior Senator here.

Today we have a hearing with three goals: The first is to review the scale and scope of the metal theft problem as a criminal problem; we want to assess the threat that it poses to public safety and our critical infrastructure; and we want to consider possible legislative solutions to the problem and hear new recommendations and suggestions, especially from the law enforcement community.

Over the past decade, the price of so-called secondary metals, especially copper, has risen dramatically. Between July 1999 and July 2008, the price of copper increased five-fold, and some began calling copper "the red gold." The price increases were largely due

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to increased global demand, especially from China and India, combined with speculation that demand would grow.

As a result, ever enterprising thieves discovered a new opportunity for crime. They would steal copper and, through a process that might be called "criminal alchemy," converted it into instant cash by reselling to scrap metal dealers who were hungry to meet the market demand for copper. Some of these thieves are drug addicts desperate to feed their addiction, but some are much more sophisticated and operate in organized groups.

As a prosecutor, I learned never to underestimate the ingenuity and adaptability of these criminals. Copper thieves have targeted construction sites, electrical substations, and transformers, power and phone lines, warehouses, retail stores like Home Depot, and vacant houses and buildings.

Although copper is often the metal of choice, aluminum siding, stainless steel sinks, and even catalytic converters on cars have also become common targets. Copper prices have declined somewhat in the past year due to the economy, but they are still 3 times higher than a decade ago. And having discovered an easy opportunity, copper thieves are unlikely to just go away, especially when the long-range outlook is for metal prices to rise as the world economy rebounds.

Copper theft knows no borders or boundaries. It happens in cities and suburbs and in rural areas. It happens across county, State, and even national lines. The common denominator is the threat that it poses to public safety and to our infrastructure.

In some instances, the theft of copper pipes has led to house fires and explosions. This, in fact, has happened several times in Minneapolis in recent years. Last September, I stood on a vacant lot on a street corner in Minneapolis where only days earlier there had been a four-plex. It was not there anymore because it had blown up, literally. Someone had stolen the copper pipes, causing a natural gas leak. Fortunately, nobody was in the building at the time that it blew up.

Two years ago, in Ohio, thieves removed 300 feet of copper wire from a Federal Aviation Administration tower which threatened to interrupt communications between in-flight aircraft and air traffic controllers.

Last year, in Jackson, Mississippi, five emergency warning sirens were unable to warn residents of an approaching tornado because thieves had stripped the sirens of the copper wiring.

As with many property crimes, a perpetrator can sometimes be an insider. For example, just a few months ago, a Minnesota man was charged with stealing more than $300,000 worth of copper wire from his employer, Xcel Energy. Over the course of 3 years, this truck driver would secretly take copper wire from a warehouse in Maple Grove—where Chief Dohman is the police chief—a Minneapolis suburb, and then sell it to a recycling company in Grand Rapids, about 3 hours north of the Twin Cities.

There are stories like these from all over the country. Last year, the FBI prepared an intelligence assessment on copper theft and the threat to critical infrastructure. It concluded that copper thieves are threatening U.S. critical infrastructure by targeting electrical substations, cellular towers, telephone land lines, rail-

roads, water wells, construction sites, and vacant homes for lucrative profits. The FBI further concluded that the theft of copper from these targets disrupts the flow of electricity, telecommunications, transportation, water supply, heating, and security and emergency service, and presents a risk to both public safety and national security.

The Electrical Safety Foundation International conducted a survey last year of power utilities. The utilities reported that during the previous 12-month period, more than 50,000 copper thefts had occurred. In addition to the tens of millions of dollars in lost property, the utilities reported that copper thefts caused power outages totaling more than 450,000 minutes. The incidences, according to this report, also resulted in 52 injuries and 35 deaths nationwide.

Industry officials have taken various countermeasures to address the growing metal theft problem. These include security systems on perimeter fences, clearing foliage away from fences, increasing security lighting, and installing video.

In recent years, a number of States have also taken action, passing legislation to impose tougher penalties and to regulate the scrap metal industry with increased recordkeeping and other requirements. My own State of Minnesota has passed one of the strictest laws in the country, calling on scrap metal dealers—many of whom we know are very good business people simply doing their jobs. But we have called on them to register with the State, to video-record all purchase transactions, and to pay sellers by check rather than by cash.

I commend these State efforts. However, the reality is that copper theft is a national problem and, as such, we need to be thinking about national solutions.

Senator Hatch and I have introduced a bill that would place modest but important recordkeeping requirements on metal dealers in order to deter copper thefts by making it more difficult for thieves to sell the stolen property. Among other things, this bill would require scrap metal dealers to keep records for 2 years of transactions involving wire or cables commonly used by communications and electrical utilities, as well as copper, aluminum, or other metal that is valuable for recycling or re-use as raw material. It would also require dealers to pay sellers by check for any transactions above $75. Finally, it would establish a Do Not Buy list that prohibits scrap metal dealers from purchasing certain types of material unless the seller can establish that the seller is the rightful owner. This includes things like metal marked with the name of a city or marked with a name logo or initials of a railroad, utility, or telephone company. These requirements are important both to deter metal thieves and to apprehend them.

As I mentioned, the vast majority of scrap metal dealers are perfectly legitimate and law-abiding. We are glad that their association is here to testify. They do not want to buy stolen property or damage infrastructure in their communities. But given the scale of the problem, voluntary efforts just are not sufficient to deter or to prevent this crime. If they were, we would not be here today.

To effectively attack the problem, we also need national, State, and local officials, law enforcement authorities, and industry to work together to assess the tools they need to more effectively com-

bat these crimes. Sometimes a theft may seem small and the owner does not report it as a crime, even though the individual theft may well be just the tip of a much larger criminal iceberg. Even when copper thefts are reported, they may not get adequate attention from law enforcement agencies because they are focused on violent crimes. When someone is actually caught selling what is suspected to be stolen copper, it can be very difficult to work up a prosecutable case unless the source of the metal can be determined.

Finally, another complicating factor is that thieves do not care about jurisdictional boundaries so they cross city, county, and State lines with impunity to do their business of stealing and selling.

In this situation, it is very difficult for individual law enforcement agencies to get a handle on a pattern of thieves. It is a situation that cries out for multijurisdictional law enforcement efforts. These challenges underscore the need for law enforcement to have a central role in preventing, investigating, and prosecuting these crimes. After all, metal theft is a crime. It is a crime that has been on the rise and promises to get even bigger. And it has become a serious nationwide problem with potentially dangerous and far-reaching consequences.

If copper has become the red gold, then copper theft has turned into a kind of "red gold rush." So it is essential that law enforcement is able to keep up and not get left behind in the dust. An effective strategy to combat these crimes will require cooperation that involves scrap and recycling dealers, affected industries like telecom, railroads, and electric utilities, and local law enforcement, State law enforcement, and Federal law enforcement.

I look forward to hearing from our witnesses and working together to develop and implement a nationwide metal theft prevention strategy. Thank you very much, and I will turn this over to Senator Hatch.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Chairperson Klobuchar. I have enjoyed working with you on this legislation designed to combat metal theft. I applaud your leadership and tenacity on this important issue, because it is important. And, of course, today's hearing is an excellent opportunity to hear from the experts on the growing problem of metal theft in our country.

Unfortunately, over the past couple of years, metal has become a favorite target for crooks. It is truly a perfect storm for people looking to make a quick buck, primarily for drugs, because it is easy to steal and resell these materials. The scrap metal industry is no longer confined to aluminum cans. It has become a major industry, with all types of metal being bought and sold.

On the surface, stealing metal appears to be a relatively small theft. However, metal thieves compromise U.S. critical infrastructure by targeting electrical substations, cellular towers, light fixtures, telephone land lines, railroads, water wells, construction sites, and even vacant homes.

We simply must ensure that our Nation's businesses, homes, and infrastructure are no longer viewed as a treasure trove by des-

perate metal thieves who destroy property while taking the opportunity to turn stolen property into a profit.

Metal theft is costing Americans millions of dollars in theft, damages, and threats to safety. In Utah, metal theft is a major problem that is growing without a foreseeable end in sight. We have experienced a wide variety of thefts, including stolen copper wire, catalytic converters, manhole covers, and other metals. Last fall, a baseball field in Kearns, Utah, was the target. A thief cut into several light poles, yanked the copper wire down, sliced it, and hauled it off. This senseless act resulted in costly infrastructure damage, leaving taxpayers to foot the bill for repairs. Furthermore, the city's 20-team baseball league could not continue to play night games on the field without lights.

Earlier this year, thieves stolen copper wiring from the Vista Park light poles in Taylorsville, Utah. Salt Lake County cannot afford the $10,000 to rewire the complex. Fortunately, some very generous donors rewired and reconnected the complex so that the local Little League team could enjoy playing ball under the night lights.

One of Utah's city park operators informs me that, in addition to light fixtures, metal thieves are damaging restroom pipe chases and stealing aluminum bleachers at local basketball fields—or baseball fields, I guess it would be. He believes the ease with which stolen metals can be exchanged for cash is the main reason for this crime wave.

Now, several months ago, in Ogden, Utah, thieves stole a 1,700-pound load of copper from the metal yard, apparently using the metal company's own Caterpillar excavator to load it onto their truck. I am aware of another occurrence in Utah County, where a man was arrested for repeatedly stealing copper wiring nearly every week from a construction company. The thief would load his truck with the wire, then sell it for anywhere between $800 and $1,200. The actual value of the wire, however, was more than $18,000.

Unfortunately, the list is long for metal thefts in my home State. We can and must do more to eliminate the incentives that fuel such blatant criminal activity, and I believe the proposed legislation goes a long way in accomplishing this goal, but we look forward to hearing your testimonies today to just see what we can do to improve this or change it.

I commend them for their efforts and hope that police, prosecutors, and members of the metal recycling industry continue to communicate and work together to combat metal theft. However, I do believe more has to be done. Some argue that there is no need for this legislation because metal is currently being traded at low prices. I disagree. As we know, the market shifts and prices will eventually increase as demand surges, and law enforcement officials say that they expect thefts will start up again as prices rebound.

Many States already have metal theft laws in place. Utah is one of them. In fact, metal theft was such a problem in my home State that laws were passed imposing a strict requirement on scrap metal dealers for buying secondary metal. Yet on the Federal level, we need a uniform standard to fill the gaps where State law falls

short or where there is no applicable State law. This is important because States without metal theft laws become havens for trafficking in stolen metal.

So I look forward to our hearing today, and I look forward to listening to our witness panel on ways we can protect our country and, of course, perfect our legislation. Particularly, what other steps are needed to help law enforcement combat the pervasive spread of metal theft? And how should we change this bill to make it better and more workable? As you can see, both Senator Klobuchar and I take this issue very seriously.

So I want to thank you, Madam Chairperson, and I am just grateful that you are willing to lead out on this issue.

Senator KLOBUCHAR. Thank you very much, Senator Hatch, and it is always good to do things on a bipartisan basis around here, and I am glad we are doing that.

I just wanted to quickly introduce the witnesses, and then they can each speak up to 5 minutes, and then we will have questions.

First is Chief Mona Dohman, whom I worked with extensively when I was the county attorney for Hennepin County. She is here today in two capacities: first, as Chief of Police for Maple Grove, Minnesota, which is a sizable suburb in the Twin Cities area, and also as President of the Minnesota Chiefs Association.

Second, Frank Coffey. Frank serves as Director of Critical Infrastructure for Qwest Communications. Before joining Qwest, Mr. Coffey worked for the FBI for over 25 years.

We also have Sheriff Aaron Kennard, who is the Executive Director of the National Sheriffs' Association, and is the former sheriff of Salt Lake City, Utah.

David Sparby, who is the President and Chief Executive Officer of the Northern States Power Company of Minnesota, which is an Xcel Energy company. Mr. Sparby joins us today both on behalf of Xcel as well as on behalf of Edison Electric Institute, the trade son of U.S. shareholder-owned electric companies.

Finally, Mark Lewon, Vice President for Operations of Utah Metal Works in Salt Lake City, a family-owned business started by Mr. Lewon's grandfather in 1955.

Thank you all for joining us, and we will start with Chief Dohman.

STATEMENT OF MONA DOHMAN, CHIEF OF POLICE, CITY OF MAPLE GROVE, MINNESOTA

Chief DOHMAN. Good afternoon, Senator Klobuchar and Senator Hatch. I am honored and pleased to be here this afternoon to testify on the need for Federal legislation to fight the continued growing problem of metal theft in Minnesota and across the country. My name is Mona Dohman, and I am the Chief of Police for the city of Maple Grove in Maple Grove, Minnesota. We are a third-ring suburb of Minneapolis with approximately 62,000 residents. I am also the President of the Minnesota Chiefs of Police Association, a State association with a mission to enhance the professionalism of policing throughout our State. I am here to speak on behalf of metal theft crimes in our and across the State. In particular, my testimony is from a local law enforcement perspective.

In each of my roles, I have seen firsthand and read about the negative and devastating impact that metal theft has had in our community and in the infrastructure around the country. I would like to share just a few examples of the results of metal thefts in our communities.

In Minnesota, we are, as Senator Klobuchar alluded to, fortunate that we have tighter restrictions and regulations on scrap metal dealers. However, metal thieves do not have to travel very far to cross State borders in order to sell stolen metals and in order to get quick cash to support the habits that they have, whether it be drug addiction or perhaps a gambling addiction.

The Minnesota Chiefs of Police Association supported tougher laws and restrictions on scrap metal dealers and were instrumental in helping pass laws that provided for the same. We support similar Federal legislation.

In 2008, again, as alluded to by Senator Klobuchar, the Grand Rapids, Minnesota, Police Department investigated a case in which a 46-year-old truck driver was stealing copper from the Xcel Energy Center in Maple Grove. The suspect in the case stole copper and then sold it to a metal recycler in Grand Rapids over a period of 3 years. The suspect's full-time job was to deliver copper wire to various sites around the State. He was able to steal the copper wiring in smaller amounts and obtain quick cash at a metal recycling center. He had developed a relationship with the owner of the business. It is suspected that the man was supporting a gambling addiction, and over the course of a 3-year period, he stole over $300,000 in copper wiring. Because the thefts occurred in smaller amounts and over a long period of time, they went unreported and unnoticed for a while.

In June of 2008, detectives at my police department investigated a report of over $10,000 worth of stolen copper wiring and various metal pieces from a hotel construction site. In further investigating our case, we were able to identify a suspect who was described by acquaintances as being "hard core," "big into copper theft," and "big into meth use." We were informed that he never worked alone and would pay others to make his copper deposits for him. He had essentially developed an organized crime ring on a smaller level in the State. We know that he committed his crimes across our State from as far north as Two Harbors, Minnesota, in the far northeastern corner of our State, all the way south to Farmington, Minnesota, in the southern part of our State.

In September 2008, a vacant North Minneapolis four-plex exploded after thieves took copper pipes out of the home. The threat to public safety in cases like this is of great concern.

We know that in Jackson, Mississippi, five tornado warning sirens did not warn residents of an approaching tornado because of copper thieves. They had stripped the sirens of copper wiring.

And in March of 2008, nearly 4,000 residents in Polk County, Florida, were left without power after copper wire was stripped from an active transformer at an electric company. And we know from FBI reports that farmers in Pinal County, Arizona, were the victims of copper thefts from their irrigation systems, resulting in the loss of crops and high-dollar cost to replace the equipment. The

infrastructure loss in that case and in that county due to copper thefts was estimated at $10 million.

We know that there is typically a common thread in most cases of scrap metal. We believe that drug addiction, gambling addictions, or the like are the common themes. Trading in scrap metals for quick cash at metal recycling centers is the reason that this is a lucrative business.

Investigation and prosecution can be very time-consuming due to the lack of evidence and very few leads, thus absorbing sometimes scarce resources of officer time and money from the jurisdictions responsible for investigating the case.

We know from our case in Maple Grove and many cases around the country that the thieves do not work alone. Identifying all parties involved can be very difficult. As recently as April of 2008, we know that highly organized theft rings specializing in copper theft from houses and warehouses were operating in Minneapolis, Minnesota. It is reported that these rings or gangs hit several homes per day, yielding more than $20,000 per month. Their target was foreclosed homes. As recent as 2007, the St. Paul, Minnesota, Police Department reported that 60 percent of all burglaries were for scrap metal. Burglaries overall are down currently in St. Paul, but it is reported that almost 40 percent of their burglaries in 2008 were from scrap metal.

I have shared some of the larger-dollar-loss cases from around the country. However, I believe it is important to mention that many times these cases can be difficult to investigate and ultimately prosecute because the thefts can occur in small amounts, thus victims either do not realize their victimization or because of such small amounts they do not feel it is necessary or important to file a police report. And it is difficult to prosecute a case when there is no victim.

If we pass laws on the Federal level to help, then we are recognizing the negative impact that these crimes have in our communities and the infrastructures within. These crimes are frequently viewed as low priority when we think about how they measure up to crimes such as murder, robbery, and rape, for example. I can tell you, though, in over 27 years in law enforcement I have seen that these sorts of crimes all overlap. Certain crime can be and is a gateway to farther reaching and more severe crime, having devastating impacts within our communities.

We know that once the thieves steal the metal, it does them no good if they cannot sell it. The Klobuchar-Hatch bill puts recordkeeping requirements on scrap yards and metal dealers, and I believe it is an effective step in deterring this crime.

I believe that if drug users, gang members, and/or the middleman must give certain basic information like a driver's license or a Government ID to a scrap metal dealer, it will deter these criminals from this avenue of access to quick cash. Trading in scrap metal for quick cash is the reason these criminals commit this crime. If we take away their access by regulating the process in which they cash in on their crime and by regulating the amount of cash they get on the spot, their crime becomes less attractive and certainly less lucrative.

I know and we know that the recordkeeping and retention requirements in the Klobuchar-Hatch bill will not end all metal theft across the country, but it is a positive, proactive step to helping law enforcement as we strive to reduce victimization across the board in our communities.

In conclusion, we in Minnesota have been fortunate with tough State laws and regulations to address metal theft, and we have witnessed firsthand how they have assisted law enforcement in investigating and prosecuting metal theft crimes. However, to effectively stem metal theft across the country, Congress must act to ensure that these crimes do not find their way into other States. Minimum Federal requirements as identified in the proposed bill must be implemented to assist in our law enforcement efforts.

Thank you.

[The prepared statement of Chief Dohman appears as a submission for the record.]

Senator KLOBUCHAR. Thank you.

Mr. Coffey.

STATEMENT OF FRANK COFFEY, DIRECTOR, CRITICAL INFRASTRUCTURE, QWEST COMMUNICATIONS, DENVER, COLORADO

Mr. COFFEY. Senator Klobuchar, Senator Hatch, and members of the Subcommittee, my name is Frank Coffey, and I am the Director of Critical Infrastructure for Qwest Communications. I appreciate the opportunity to talk about the issue of metal theft and to share Qwest's views on your proposed legislation addressing the problem.

Qwest provides voice, data, Internet, and video services nationwide and globally. We provide local telephone service and broadband service in 14 Midwestern and Western States. Like other companies, Qwest has been plagued by the theft of metal, particularly copper, during the past few years. In some cases, thieves literally cut down or dig up our telephone lines and then attempt to sell the copper.

A 2007 Department of Energy study identified several factors contributing to the increase in copper theft, including historically high prices for copper, ease of theft, small likelihood of being arrested, and relatively low penalties for the few who are convicted.

The impact of stolen cable to Qwest and its customers goes well beyond just the cost of the stolen cable. Most importantly, community safety is compromised when deployed lines are cut, causing outages that impact a citizen's ability to contact emergency services, as well as to make other phone calls and use the Internet.

While the copper theft problem occurs throughout the Qwest region and the country, I thought it would be useful to provide you with a few specific examples of the problem and its consequences.

In May 2008, thieves in Duluth, Minnesota, stole 1,400 feet of aerial copper cable, disrupting service to many customers. Service was restored, and 10 days later, thieves stole the same span of cable, disrupting service for a second time to the same customers.

Another example: In January 2008, cable thieves in Longview, Washington, cut and stole aerial cable, impacting emergency 911 and other services in the area. The thieves transported the stolen copper cable to Oregon to sell to secondary metal recycling agents,

as Oregon laws regulating metal recyclers at that time were weak or non-existent. Notably, the thieves burned the insulation off of the cable before selling it. Despite the suspicious circumstances, neither federal nor state law prohibited the metal recyclers from purchasing the significant quantities of cable with the insulation burned off or required them to report the transactions.

Also, in Washington, in two instances, thieves cut fiber-optic cable, believing it was copper cable, which disrupted service to approximately 20,000 customers for several hours each time.

A final example. In December 2007, Qwest experienced several thefts of copper cable from one of our facilities in Prescott, Arizona, and through investigation discovered that three employees of a road construction crew were removing and selling Qwest cable that was inactive but left in place for future use. The thieves were prosecuted in state court for stealing 23,000 pounds of Qwest copper cable.

In light of such incidents, Qwest has developed a copper theft strategy which includes working with law enforcement agencies, employing security firms to conduct patrols in high-theft areas, developing relationships with metal recyclers, participating in law enforcement metal theft task forces, and supporting enhanced metal theft legislation.

Many states, including Minnesota and Utah, have enacted laws addressing the metal theft problem, but not all states have such laws. Federal legislation would provide uniform requirements applicable in all states.

Law enforcement intervention has been helpful as we have sought to address this problem. Unfortunately, many local law enforcement agencies do not have the resources available to adequately investigate these thefts. Qwest believes the proposed legislation will deter thieves by diminishing the marketability of stolen copper and helping to track down and prosecute sellers of stolen metal.

To strengthen the law further and to serve as an additional deterrent, we recommend an additional provision requiring that check payments be mailed to the seller, which would further limit the ability of thieves to provide fictitious data to the metal recycler. We also recommend the addition of criminal penalties for those attempting to sell stolen metal to a metal recycler.

Congress has an important opportunity to deter the theft of metal and reduce its impact on businesses across the nation and the communities they serve.

Again, thank you for your attention to this problem and for the opportunity to testify today on this important issue. I look forward to your questions.

[The prepared statement of Mr. Coffey appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much.

Sheriff Kennard.

STATEMENT OF AARON D. KENNARD, EXECUTIVE DIRECTOR, NATIONAL SHERIFFS' ASSOCIATION, ALEXANDRIA, VIRGINIA

Mr. KENNARD. Thank you. Good afternoon, Chairman Senator Klobuchar and Senator. My name is Sheriff Aaron Kennard, and

I currently serve as the Executive Director of the National Sheriffs' Association. Immediately prior to joining NSA, I served as the Sheriff of Salt Lake County for 16 years and as a police officer for Salt Lake City Police Department for 20 years, including as interim Police Chief of the Salt Lake International Airport in the mid–1980's when I experienced a major metal theft.

I am pleased to have this opportunity to appear before you today to highlight the need for Federal legislation to combat metal theft, namely, S. 418, the Secondary Metal Theft Prevention Act of 2009, and to provide a law enforcement perspective on this costly and hazardous crime.

Metal theft has become a serious public safety issue not just in Utah but across the country as thieves become more and more reckless in the materials they go after. This costly crime has plagued both urban and rural communities in recent years. Metal thieves compromise U.S. critical infrastructure by targeting electrical substations, cellular towers, telephone land lines, railroads, water wells, construction sites, and vacant homes—all for quick cash.

Throughout the country, law enforcement officers have witnessed thefts in which culprits steal metal, everything from old grave markers to parts of air conditioning units or vehicles, to resell as scrap. Furthermore, these crimes and criminals are oftentimes associated with other violent crimes, illicit activities and drug abuse.

I have experienced firsthand that, when it comes to metal theft, officers have little to go on unless they catch a metal thief in the act. We strongly believe that the requirements of this act would greatly enhance law enforcement's ability to investigate and prosecute metal theft by creating a paper trail.

The requirement of checks and recordkeeping is a valuable tool for law enforcement in our investigations of metal theft as it helps close the loop in enabling criminals to "take the money and run" without creating a paper trail, thereby making it extremely difficult for law enforcement to identify and apprehend those responsible for the theft.

A simple thumbprint on a check can help investigators crack a case identifying a suspect with a prior record. And the mere fact that those reporting requirements exist we believe would prove to be a valuable anti-metal theft tool.

In addition to the requirements provided in Senate 418, we would like to make additional recommendations for the Committee for its consideration that we believe would be of tremendous assistance to law enforcement in combating metal theft. These recommendations include the following:

A law enforcement officer would have the ability to routinely inspect all records related to metal sale transactions without a court order;

Require anyone convicted of metal theft to pay restitution for the materials stolen and for any collateral damage caused by the theft;

Metal dealers who break the law face suspension or revocation of their business license and increased fines and jail time;

Require metal dealers to obtain a thumbprint, photo, or a video and/or a copy of a valid Government-issued ID of the seller;

And impose increased criminal penalty for metal theft relative to the amount of damage rather than the amount stolen.

With only some States with metal theft laws, sellers are opting for neighboring States so they can get paid immediately. Similarly, the thieves are going out of State, too, which undermines the intent of the law in the States that have responded by enacting a strong State metal theft law. A Federal law is needed to prevent criminals from stealing metal and transporting it for sale in nearby States. Moreover, scrap metal prices will climb again 1 day, and metal theft will rise with them unless Congress acts.

Thieves have caught on: There is metal everywhere and much of it is, understandably, unguarded. Copper cable thefts can cause electric and telephone service outages for entire neighborhoods, impacting hundreds or even thousands of homes. Power outages can knock out traffic signals, posing a serious traffic safety threat. And in the event of an emergency, affected telephone customers are not able to call 911 for assistance.

As you can imagine, stealing telephone and electric service cables presents an incredibly hazardous situation for residents and our communities. This issue goes beyond being just a simple property crime because of the impact it has on our neighborhoods, businesses, and homeland security. Not only are these crimes destroying property and causing millions of dollars in damages, they are endangering lives.

Moreover, metal theft has become a serious crime that is often related to other crimes like illicit drug activity, especially methamphetamine with addicts who are looking for fast cash to maintain their drug addictions. Of course, not all meth addicts are metal thieves and, likewise, not all metal thefts track back to meth addicts, but we believe that there is a distinct connection.

We would also like to note that many scrap metal businesses already follow the rules and cooperate with law enforcement, especially in Utah, watching for unusual loads of metal brought in by customers. We emphasize that these businesses serve a legitimate need in the marketplace, and we do not intend to suggest that all scrap metal businesses engage in fraudulent transactions. Yet it has become apparent that the absence of regulation created an atmosphere conducive to facilitating such unlawful activity, which is extremely difficult for us in law enforcement to detect and control.

Accordingly, we believe that Federal law will help get other States and companies that might not be where they need to be keep better track of who brings in metal and what they are offering as scrap. We simply cannot continue to accept "business as usual" given the seriousness of metal theft and its impact on public safety. With cooperation and assistance from businesses, our citizens, and law enforcement, we can be proactive in preventing a potential public safety disaster in our communities.

This legislation gives valuable tools to law enforcement to combat metal theft, a crime that is not only costly to the taxpayers but also seriously compromises public safety, homeland security, and endangers people's lives. The Secondary Metal Theft Prevention Act of 2009 is a necessary step forward in keeping our neighborhoods safe across the Nation.

I would like to thank both of the Senators for their leadership on this issue and for the opportunity to present our views before the Subcommittee today. Thank you very much.

[The prepared statement of Mr. Kennard appears as a submission for the record.]

Senator KLOBUCHAR. Thank you.

Mr. Sparby.

STATEMENT OF DAVID M. SPARBY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NORTHERN STATES POWER-MINNESOTA, ON BEHALF OF XCEL ENERGY AND EDISON ELECTRIC INSTITUTE, MINNEAPOLIS, MINNESOTA

Mr. SPARBY. Thank you, Senators Klobuchar and Hatch. We appreciate the opportunity to testify today on this important issue—important to both preserving electric reliability as well as public safety. The failure to address this issue would leave a significant gap in our effort to protect our infrastructure. I am Dave Sparby, President and Chief Executive Officer of Northern States Power. We serve about 1.5 million electric customers in Minnesota and North and South Dakota. Xcel Energy, our parent company, has operations in eight Midwest and Western States. I am also appearing today on behalf of Edison Electric Institute.

Madam Chair, as you noted, over the last several years metal theft from electric utilities has been on the rise. And although the cost to the utilities of the loss of the metal has been significant, it is not the most important reason to pass some of the legislation being proposed. While the cost of the metal is high, the threat to public safety, the impact on our infrastructure, the cost of replacing the damaged property is hundreds of times greater than the metal lost. In Minneapolis, for example, thieves broke into an underground feeder vault near the university. After cutting through an energized feeder, they caused an explosion in the vault. Both men were severely burned. The feeder line went to the university substation, causing the substation to fail and creating an outage at the University of Minnesota Hospital where eventually patients needed to be evacuated. Now, although I do not know the total cost of the metal taken, the cumulative damage to the hospital, the patients, the substation, the vault, and the victims is many times that amount.

In a similar case, another copper thief broke into an underground feeder vault with a portable metal saw. When he began to cut into the feeder, a similar explosion resulted, creating a systemwide failure. This outage caused the city of Minneapolis' water treatment plant, among other entities, to shut down for several minutes until another alternative power source was identified. Once again, the impact on the community was far disproportionate to the metal taken.

Now, the current economy, the price of the metal, and the lack of regulation have led to an increase in metal theft in other areas as well. As you noted, Madam Chair, vacant homes in the Midwest have been condemned and even destroyed as a result of the copper wiring and natural gas pipes being cut out. Recently, our fire chief testified that citizens as well as firefighters are constantly endangered by the conditions of these houses.

Now, although I have talked about events in Minneapolis as well as the Midwest this afternoon, the consequences of metal theft have been experienced by other utilities across the country. Federal legislation is needed. The theft of metals for cash is a national issue, and it is not confined to an individual utility or State. State laws vary significantly. Some of the States we serve have laws, while others do not. The only effective way to address this nationwide problem is through Federal legislation.

Now, Senate bill 418 would make it possible for law enforcement officials to effectively investigate incidences of metal theft. Today, many recyclers do not have to keep meaningful records in some of the States we serve. This legislation would also allow State attorneys general to bring actions to enforce this act, another significant advantage. We believe the elevation of this crime to a Federal level would also heighten its significance to local law enforcement.

Finally, we understand that there may be additional approaches to addressing this problem, including language that would increase penalties, establish a nationwide data base, and require the mandatory reporting of these crimes. Regardless of how many of these additional approaches are taken, the objective should be to provide law enforcement with as many tools as possible to combat this crime. Let us not make the effort to protect our infrastructure from cyber attacks and from terrorism and fail to remove the incentive to steal a few feet of copper that will do the same amount of harm.

Thank you.

[The prepared statement of Mr. Sparby appears as a submission for the record]

Senator KLOBUCHAR. Thank you very much.

Mr. Lewon.

STATEMENT OF MARK LEWON, VICE PRESIDENT FOR OPERATIONS, UTAH METAL WORKS, SALT LAKE CITY, UTAH, ON BEHALF OF UTAH METAL WORKS AND THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.

Mr. LEWON. Thank you and good afternoon, Senator Klobuchar, Senator Hatch. My name is Mark Lewon, and I am the Vice President of Utah Metal Works in Salt Lake City. We specialize in processing non-ferrous cable, wire, and other materials. Thank you for the opportunity to testify today. I am representing the more than 1,500 member companies of the Institute of Scrap Recycling Industries, or ISRI, the trade association that represents processors, brokers, and consumers of recyclable paper, glass, plastic, metals, rubber, textiles, and electronics. Last year, our industry shipped more than $86 billion worth of scrap commodities.

I would like to start by sharing with you a true story of an exchange that happened just 2 weeks ago at a scrap yard in the Midwest. It helps illustrate the effort our industry is making to address the problem of metals theft and the critical role that communications and cooperation play in the problem's solution.

A truck full of scrap entered the yard and proceeded to the scale. The load was weighed and inspected. Certain information was documented. When it was safe, the scale operator called the police. "I may have found some metal that has been reported stolen."

"Why do you think it is stolen?" asked the officer.

"I saw something on ScrapTheftAlert.com that came in."

"You are kidding," said the officer. "You got this from a scrap theft alert?"

"Right."

"Can you identify the guy?"

"I have his license plate number and a copy of his driver's license."

"Can you hold the material for me so I can take a look at it?"

"We have already set it aside."

"You have done my job for me. Thanks," the officer responded.

Senators, our system works. The ScrapTheftAlert.com system, developed by ISRI in 2006, alerts scrap yards and law enforcement in a 250-mile radius of a theft, listing the characteristics of the metal, providing photos, and more. The system is currently used by more than 700 law enforcement officers throughout the country. There is no charge for police and victims to access the system and report thefts. Law enforcement officers who use ScrapTheftAlert.com have only praise for it.

But ISRI's theft alert system is not the only thing the scrap industry is doing to fight metals theft. In 2006, ISRI developed recommended practices which guide our members on how to identify stolen property, document their purchases, validate a seller's identity, install cameras in the scrap yard, and catch thieves.

ISRI pioneered the use of local or regional collaborative coalitions of victims, law enforcement, prosecutors, and recyclers to help prevent metal theft and catch criminals. No technique works better. I work closely with the coalition in Salt Lake City and County. Crime is down, and we catch and prosecute metal thieves. ISRI has also established a coalition of stakeholder associations to share ideas and intelligence.

ISRI members recognize their key role in addressing metal theft. There are no easy solutions, but our expertise has taught us that the best way to approach the crime of metal theft is through ongoing communication—between recycles, law enforcement, victims, and prosecutors. In fact, last year, ISRI hired a former metals theft detective to help coordinate our work with law enforcement nationwide. He now spends his time reaching out to law enforcement in communities throughout the country, discussing collaboration and techniques and tactics that work.

Federal legislation to address metal theft must deal with prevention, including strong penalties for thieves. Senators, it is also important to note that metal theft will not cease simply by banning the customary use of cash. Thieves will just find an underground way to move their stolen metals.

Much as we would like to believe it so, simply enacting a new law will not cause resource-strapped law enforcement agencies to suddenly make metal theft a priority. Nor will it cause prosecutors to go after the thieves. Nor will it stop thieves from crossing State lines, unless you include a preemption provision in a bill that takes away their incentive to do so.

Senator Hatch, Senator Klobuchar, I ask you to work with me and my colleagues. Let us get into a room with law enforcement, including people like Fred Burmester, Salt Lake County's Assistant

District Attorney, and others who have worked the front lines with us. And let us draft a bill that will work to solve this problem.

We look forward to working with you to help stem this problem that is plaguing communities in Utah, in Minnesota, and throughout the country. Thank you.

[The prepared statement of Mr. Lewon appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much.

Senator Hatch.

Senator HATCH. Well, thank you, Madam Chairman. I appreciate the testimony of every one of you here today, and we will look forward to having your ideas to see if we can improve this bill. But I am very concerned about these matters.

I have to leave, but I wanted to hear all your testimony, and any suggestions you have for us on this bill, we will pay attention to your testimony, but we would love to have any suggestions we can get. This is a serious problem throughout the country, and not all scrap dealers are as good as you are. And that is one of the problems, to be honest with you.

This has been a very, very good panel, and I am very appreciative. We are in the middle of a bunch of things, and I have total confidence in Senator Klobuchar. She has added a great deal to the Judiciary Committee and I think a great deal to the U.S. Senate. So I am sure she is going to work you all over very, very well.

[Laughter.]

Senator HATCH. But if you will forgive me, I think I am going to have to go. Thank you all. I really appreciate your being here.

Senator KLOBUCHAR. Thank you very much, Senator Hatch. I appreciate it.

All right. Well, thank you all for your testimony. It was very interesting. I actually had not heard some of those stories, especially yours, Mr. Sparby, of just how theft of just a little bit of copper can cause such a breakdown in some of our infrastructure. So I appreciated that.

I guess I would start with you, Chief Dohman. We have talked about the bill that Senator Hatch and I have, and similar to some of the State laws that you see. Do you see a need to do this nationally and not just on a State-by-State basis?

Chief DOHMAN. Thank you, Senator Klobuchar. I really do. I believe that we have enjoyed the—"enjoyed" probably is not the best word, but we have benefited from the tougher restrictions on scrap metal dealers in the State of Minnesota. But as I testified to, we know that scrap metal thieves or the people that work for them can go to the next border, because many States do not have the tight regulations and restrictions that the State of Minnesota does. And so I think it highlights that it is a significant issue around the country, and not just in our State. And I do believe that it would be a deterrent if it was on the Federal level and that all States could use it in the event that they do not have a State law themselves.

Senator KLOBUCHAR. Thank you.

Sheriff Kennard, would you agree with the same thing?

Mr. KENNARD. Yes, I do indeed, and I also want to compliment Mr. Lewon for his comments, because we in law enforcement stand

ready to work with you and him, and I hope that you take advantage of us in the National Sheriffs' Association. We represent all 3,088 sheriffs in the country, and they are the chief law enforcement officers in each county representing the counties, and with the Major City Chiefs and Major County Sheriffs, you have got just about every law enforcement group in the country that you can be dealing with. So I very much so believe that it needs to go on a national level.

Senator KLOBUCHAR. How about the idea—I was struck by Mr. Sparby's testimony and Mr. Coffey's testimony of just some of the ramifications of this when it happens. How about the idea of some kind of increased criminal penalties for this kind of activity?

Mr. KENNARD. Well, I spoke about that because most criminal penalties, especially dealing with property crimes, are dealt with around the value of the crime itself, the property stolen or the amount of money stolen. And if we take into consideration the amount of damage done on infrastructure, this could be just something that should really deter some people if they understand what is going on.

But now, having said that, there are some of these criminals that are not going to understand anything in this. They are after the next quick fix, and it is going to take one or two hammers before they get the message.

Senator KLOBUCHAR. Chief Dohman, the idea of the increased criminal penalties.

Chief DOHMAN. You know, I believe that the increased criminal penalties for all people involved, I think one of the gentlemen testified here to penalties for not only the thief but also the seller, and I think that any increased penalties for anybody involved in this certainly would be a deterrent.

Senator KLOBUCHAR. All right. Very good.

I think about when we have task forces and things how we could better improve working across State lines on these kinds of issues. Do you get help out there when you are trying to solve some of these cases? Which it sounds like your cases were specifically in Minnesota for the most part.

Chief DOHMAN. Yes, our cases were specifically in Minnesota. I think that any legislation that can enhance the ability for law enforcement to be able to communicate with each other, to be able to not only collect records but retain information, and then to be able to share it, you know, many times data privacy issues prohibit us from being able to share across borders, across counties, across cities even. And so any legislation that can enhance the ability to be able to share that information.

We are lucky enough in Minnesota to have the Minnesota Crime Alert Network, that we are able to post data and share it across—but not all agencies. As we know, if you go to rural Minnesota or rural areas in many States around the country, they do not have either the technology or the ability to access those pieces of information. So anything that would help all agencies, whether it is a sheriff's office or whether it is a local police department, to be able to have the access to the information that is legally stored, the data stores, would benefit law enforcement.

Senator KLOBUCHAR. Thank you.

Mr. Lewon, I also appreciated your words that you wanted to work with us on these bills, but one of the questions I have is you have these guidelines that you suggest, and some of them are actually things that are in our bill. And so that is why I do not quite understand—we would love to have you supporting our bill and with us there. I think it would go a long way. And so I do not understand why you would want some of these things to be voluntary but then not mandated.

Mr. LEWON. Some of the things that we see that we really like in your bill, as you mentioned, are on page 3 of my written testimony, and we do talk about records retention. We do not have any qualms about doing that. That is exactly the right thing to do, a camera or whatever we can do video-wise to photograph sellers of material.

But the biggest problem we see with the bill as it is written—and we can work it out, but we would like to see the penalties enhanced against the thieves, who are the ones causing the problems, not the recyclers.

Senator KLOBUCHAR. Both Senator Hatch and I have made statements that we do not see it that way. We just see that these—and we would certainly look at the criminal penalties, but we think these measures would help us to catch them. That is all we are trying to do, is to catch them, including the check requirement. Again, easier to catch them, especially when you have a repeat person that is going back and back and back, probably pretending they are someone else. I would think that would be helpful.

So I just want to make that clear, that we are not trying to accuse the scrap metal dealers of any crimes here. We are simply trying to get the information that we can get so that we can help law enforcement to solve them.

Mr. LEWON. Well, I think if you have the repeat customers, what we can do is this is a communication issue, where, OK, we have got the suspect here, come and get him.

Senator KLOBUCHAR. You may not always know. It maybe—well, maybe you want to answer that. I am putting my law enforcement hat on instead of letting the law enforcement experts answer this question. Chief Dohman, do you want to respond to that?

Chief DOHMAN. Senator Klobuchar, in my testimony, I talked about the Grand Rapids case, and you alluded to it in your opening statements, and that is that the thief had established a relationship with the scrap metal dealer, had come there very often over a 3-year period of time, to the tune of over $300,000 worth of scrap metal theft, and that scrap metal dealer did not report, did not—participated, actually, in the criminal activity, we believe, rather than report the thief. And so in a perfect situation in a perfect world, that might work just absolutely fine, but not in all cases will that work.

Senator KLOBUCHAR. Sheriff Kennard, do you want to respond to that?

Mr. KENNARD. Well, he is right on if it is a major situation, and if we have manpower available to respond, needless to say we want to put somebody behind bars and catch a crook as fast as anybody. And we will and do respond if at all possible—but if somebody has made a call and said, "We have got a young man here that has got

$200 worth of stolen property," there may be a major situation that is preventing somebody from getting there as fast as they want.

We surely encourage and want to participate and work with those dealers.

Senator KLOBUCHAR. Thank you.

Mr. Coffey, you mentioned that Qwest has developed a copper theft strategy that includes liaison with law enforcement agencies in support of investigations, particularly in high-theft areas. Can you tell me more about the partnerships? And where are the high-theft areas? Are they in urban areas, or where do they tend to be?

Mr. COFFEY. Unfortunately, Senator, the high-theft areas will shift from time to time. When law enforcement intervention is successful, generally the problem, at least for a period of time, dissipates, and it will shift to another area. We do see more of a problem in rural areas from our perspective.

The partnerships that we have developed with law enforcement have been successful, and I think that the Longview, Washington, case exemplifies that. In that instance, we worked with the Kelso Police Department in Washington, the Cowlitz County Sheriff's Department in Washington, and the FBI to seek both Federal and State prosecution of those responsible for stealing significant amounts of copper cable.

Senator KLOBUCHAR. And do you think it would be helpful to have some increased penalties and the other thing we are looking at—I would look at it two ways. One is the penalties, but the other is to try to stop them from basically selling their wares in the first place.

Mr. COFFEY. I agree, Senator. I think that the mandatory compliance is very important, and the criminal penalties associated with the failure to comply or to violate the law will certainly be a stern deterrent.

Senator KLOBUCHAR. I was thinking of this, Sheriff and Chief Dohman, as when I am thinking about the meth labs that we had for a while. They were rampant in our State, and, yes, we did increase penalties. But the other thing we did is we put some limits on where the ingredients could come from and Sudafed and the rules about where you could put things out. And at first, the pharmacies, some of the industry groups objected. They felt in a similar way that they were somehow being blamed for this. But we saw a dramatic decline—maybe you want to talk about it, Chief—after we did that.

I will never forget testifying at the legislature about this, and we actually had a case I was able to show, because Iowa had enacted stronger laws, and we had these kids that were picked up buying a bunch of ingredients for meth labs. And they said, "Well, yeah, we are from Iowa, but we knew we could get in trouble down there, so we did it up in Minnesota." And it was another example where going at it at its root cause, certainly not blaming pharmacies across the country but putting some limits on it, made a major difference. Do you want to talk about that, Chief?

Chief DOHMAN. Senator Klobuchar, yes, that is a perfect example or analogy of going to the root of the problem. I believe that law enforcement has developed much greater efforts in working with the industry on many different issues, and that is one of the things

that we did with when we were experiencing meth labs, not only in rural Minnesota but also in the metropolitan area. And certainly the law that was passed reduced the number of meth labs that we are seeing. The sellers and the users are finding other places to purchase it now, but it is not being manufactured. And so the risk to public safety has been significantly reduced.

I think that forcing or mandatorily forcing some restrictions on the scrap metal dealers is a good thing, but it does not mean that law enforcement will not continue to work with the industry to build the relationships and to work within those means of the tighter regulations.

I would just like to offer—I think someone testified here about the ability for law enforcement to view records at the scrap metal dealerships without court order or without a search warrant. We have that ability in Minnesota, and that is another avenue that we can use to develop relationships with scrap metal dealers in our communities and in the rural areas.

Senator KLOBUCHAR. Do you want to respond, Mr. Lewon?

Mr. LEWON. Yes, there are a couple points. I think the point about viewing records is really a non-issue with us because that is part of Utah State law, and frankly we prefer that you do not come and bust down our doors to come view the records, because it is a non-issue.

Senator KLOBUCHAR. As a sheriff, I would not want him at my door.

[Laughter.]

Mr. LEWON. If he was not such a good guy.

A couple of points that I think are important, where I do not want the law to go and catch people who are unintentionally buying material that is stolen, because, unfortunately that happens. But if there are people that are knowingly and intentionally buying scrap metal, throw the screws to them. We do not have a problem with that. But when you write the laws so tightly that you start to affect people particularly with cash provisions—there are 10 million people that are citizens of the United States—I am not talking about non-citizens—that do not even have a bank account. Why restrict them on the amount of cash? That is their bargain or their method of exchange. And they are out there. So that is something that needs to be understood.

We have talked about crossing State lines, and this is really, I think, one of our big issues, that people are figuring out that maybe the laws in one State are less stringent than in another, and this is why we do not ask for a lot of—or you do not see a lot of people asking for preemption in a lot of places, and I think that Congress is reluctant to give it. But I think in this instance, you really need to take a look at it because I think that it would go a long way in solving a problem.

Senator KLOBUCHAR. Mr. Coffey, do you think there is sufficient evidence out there, information about the crime of metal theft? I was thinking for me, then having this hearing and having worked on this bill, some of this was new to me.

Mr. COFFEY. That is true, Senator. I think that it goes in spurts. When the problem is a big problem for a particular community, you tend to see a lot more light shed on the topic. When it shifts to an-

other community, then the original community shifts to other areas that are more important to them.

I would like to emphasize one thing, though. When we look at federal legislation regarding this crime problem, and we talk about going from state to state, I think it is also important to consider that these crimes, as you have heard this afternoon, they do impact the critical infrastructure of the United States, and they do have some effect or disruption on instrumentalities of interstate commerce. And so it is not only when a thief goes interstate with stolen metal. I think that just that level of disruption should be considered in this federal legislation.

Senator KLOBUCHAR. One thing I was curious about, Mr. Coffey. How did this usually get reported to you, by technicians, you know, when houses have not blown up, but they find out things are wrong?

Mr. COFFEY. Right. There are two ways that we generally get notified that there is a disruption: either a customer will somehow get word to us, usually not over the cut telephone line, obviously; but the second instance is some of our lines are monitored so that we can determine in our network operations center when a line signal has been disrupted.

Senator KLOBUCHAR. Thanks.

Mr. Sparby, how is it usually reported to you when it is not an employee stealing it from you?

Mr. SPARBY. We have it reported by field personnel, but oftentimes it goes unnoticed for a considerable length of time with examples like when ground wires are taken from transformers in rural areas and, you know, they are later struck by lightning maybe 1 or 2 months, and because the ground wires which conduct the lightning away from the transformer are missing, you know, the transformer will be destroyed. And in those kind of cases, we find out about it literally days, weeks, or months after the crime itself.

Senator KLOBUCHAR. I discussed with Mr. Coffey some of the statistics, and you had some pretty staggering statistics in your written testimony: the fact that 95.1 percent of utility companies had experienced copper theft in the past year; that 86.6 percent of utility companies had a process in place to track incidents of copper theft; and yet there were more than 50,000 incidences, that we know of, of copper theft in the last year.

Could you talk a little bit about how you get these—how does your utility company track copper theft? And with such a high percentage of companies tracking incidences, how come so much metal theft is still occurring?

Mr. SPARBY. Chair Klobuchar, we have a very difficult infrastructure to protect. Xcel Energy alone has more than 300,000 conductor miles of electric line that stretch from Minnesota all the way down to new Mexico, more than 1,100 substations also spread throughout those eight States. So we have done a lot to incorporate electric and physical security, but to be sure, it must be coupled with legislation like we have here today in order to truly combat that problem.

And in terms of the statistics, we work very hard as a utility to share information with operating companies, with sister utilities like Qwest. But truly there is a need for information to be shared

on a multiregional basis, and that might best be done by an agency like the FTC or the FBI.

Senator KLOBUCHAR. You mentioned you have been giving rewards out sometimes to catch people. Has that been helpful?

Mr. SPARBY. Well, our experience is that that has not been——

Senator KLOBUCHAR. Or some electric—I do not know if you have.

Mr. SPARBY. That has not been particularly helpful for us. Our best efforts have been to work with the local sheriff's office or other law enforcement agencies.

Senator KLOBUCHAR. Oaky. You also mentioned that thieves are more likely to target utilities that are located in cities or suburbs rather than rural areas. Is that correct?

Mr. SPARBY. Yes, it is, and that is not to suggest that it does not impact our rural facilities. It is just different facilities. In rural areas, they tend to hit us more at our construction sites at the end of the system where we are building the system. In the cities, it is more substations and warehousing facilities. But it is definitely a problem in both areas.

Senator KLOBUCHAR. Thank you. Do you want to end just by saying why you think this Federal legislation is so important?

Mr. SPARBY. This legislation really works to prevent an impact that is often hidden from the members of this panel and the Committee, and that is the tremendous impact on our customers and the grid that the utility and the city and county officials often have to respond to whose cost is never really tallied and included in the cost of this theft.

Senator KLOBUCHAR. Oaky. Thank you.

Does anyone else have anything they want to add? Mr. Lewon.

Mr. LEWON. Thank you. Just one other thing, and that is, scrap metal recyclers like ourselves are victims of metal theft, too.

Senator KLOBUCHAR. That is right.

Mr. LEWON. Because they do cut our fences and come in and take stuff. And so I do not want you guys to think that we are not impacted by it. We are. But we stand ready to come and work with you and put together a bill that will affect it and help.

Senator KLOBUCHAR. I am very glad about that, and I think this has been really helpful. We will have some good testimony and stories that we can tell and the staff can talk to our colleagues about so that we will be ready to go to get a bill done. So we are looking forward to working with all of you. Thank you. Welcome to your family, Chief Dohman. Who is here from your family? You can get it on the record.

Chief DOHMAN. My daughter, who just graduated from high school, Kelly.

Senator KLOBUCHAR. She just graduated from high school?

Chief DOHMAN. She just graduated from high school, and she has kind of the summer off before leaving for college, and she joined me today.

Senator KLOBUCHAR. What is her name?

Chief DOHMAN. Kelly Dohman.

Senator KLOBUCHAR. Where are you, Kelly? There she is back there. Oh, I can see you look like your mother.

[Laughter.]

Chief DOHMAN. She hears that a lot. That is good some days, and some days not.

Senator KLOBUCHAR. It must be a little hard growing up as the police chief's daughter, huh?

Chief DOHMAN. We have heard those two things.

Senator KLOBUCHAR. Very well. Thank you, everyone. I want to particularly thank my staff, Jonathan Becker, my counsel, who has worked on this extensively. Maybe he is ready to go into scrap metal dealing when he is done. And also Paige Herwig. So thank you to them and thank you to all of you. We look forward to working with you.

The hearing is adjourned.

[Whereupon, at 3:40 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions follow.]

SUBMISSIONS FOR THE RECORD

Coalition Against Copper Theft
Bryan Jacobs · Executive Director
101 Constitution Avenue, NW · Washington, D.C. 20001
202-742-4461 (phone) · 202-772-2496 (fax)
www.coppercoalition.com

The Coalition Against Copper Theft is a Washington, D.C.-based alliance, founded in 2006, comprised of America's leading trade associations concerned with the widespread outbreak of copper theft.

The Coalition applauds Senator Amy Klobuchar (D-MN) and Senator Orrin Hatch (R-UT) for their leadership in holding this hearing and in introducing legislation to help stop the scourge of metal theft in our country.

The Coalition Against Copper Theft stands ready to support Congressional passage of federal legislation that curbs the rising tide of this crime that jeopardizes our nation's critical infrastructure. Copper theft is a pervasive, opportunistic crime targeting transportation, communication and electricity networks.

By the end of 2007 and into 2008, commodity prices for copper had more than doubled from their historic averages, which led to the persistent theft of copper from telephone lines, electrical substations, highway infrastructure, residential homes and commercial property. A conservative estimate by the Department of Energy indicates copper wire theft costs this nation almost $1 billion per year – this estimate occurred well before metal prices topped out in June 2008 and includes only copper wire.

Every state in the country has been affected by metal theft but with a handful of states (seventeen as of December 2008) yet to enact laws to reduce the threat, federal action is needed. Some states that have enacted legislation elevate the crime to a felony or put requirements on scrap yard dealers to document the transaction between buyer and seller – but more needs to be done. As such, it is important that Congress take up this important cause to protect the American people and our critical infrastructure.

The Senate Judiciary Committee is ideally poised to attack this problem by adding federal criminal and civil penalties for those who engage in this crime. Metal thieves who make interstate utility and transportation systems inoperable by their actions and end up costing taxpayers billions of dollars should be bound by federal laws and significant penalties. Scrap yards that purchase stolen metal should also be bound by those same penalties. Increasing criminal and civil penalties will go a long way in discouraging this criminal activity.

Discouraging metal theft through increased penalties is part of the solution, reducing the thefts by regulating the focal point of stolen metal transactions – scrap metal yards – is another essential part of the solution. That is why the Coalition is very pleased that Senators Klobuchar and Hatch have legislation pending in the Senate Commerce

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Committee that addresses the documentation component of the problem. Law enforcement officials have testified at the state level that by requiring identifying information the thieves will think twice about wanting to sell their stolen goods and scrap yards will be more diligent in looking for stolen materials. The documentation component is also a critical investigation tool for them to follow up on reported thefts and follow the trail of the stolen material. Most importantly, the documentation provisions will change the behavior of some unscrupulous scrap yard dealers who subscribe to the "no-questions-asked" mentality when purchasing any and all scrap metal with no regard to its origins or how it was obtained. Basic requirements that pawn shops abide by in every state are much more stringent and have proven to be an effective tool for discouraging the business from receiving stolen property.

There is another side to this issue as well and it's oftentimes pushed aside: the human cost of this crime is dramatic, with a clear and definitive link between stealing copper and illegal drug use, primarily methamphetamines. Heart wrenching news articles over the past four years poignantly reflect on the loss of life, health and income from this egregious crime: homes explode due to exposed gas lines in Minneapolis; San Diego cancer treatment center closed when thieves looted the center's plumbing system; church eaves ripped off causing thousands of dollars in damage in Vermont; Alabama railroads left at a standstill; foreclosed Wisconsin homes stripped of their plumbing and their value; newly constructed homes in Dingman townships in Delaware robbed of thousands of dollars of copper tubing and pipes; 1,000 feet of copper wire stolen from Utah Transit Authority; metal hog feeders and irrigation systems stolen on Iowa farms; power outages in Oklahoma City leave seniors vulnerable during August heat wave; Maryland man died trying to cut a high-voltage line; copper plumbing stolen at a Scottsdale, Pennsylvania elementary school; and Charleston, South Carolina manhole covers and storm water grates stolen leaving children exposed to significant dangers.

The Coalition commends Senators Klobuchar and Hatch, as well as local law enforcement from around the country, in addressing the important nature of this problem. Local law enforcement has spent an inordinate amount of time and resources fighting this problem. Congress should reflect on remedies to ensure their work is purposeful by considering designating metal theft as a federal crime and imposing significant criminal and civil penalties on those who perpetuate metal theft.

Thank you for your continued commitment to combating metal theft and protecting our critical infrastructure and the American people.

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BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON CRIME AND DRUGS

HEARING ON
THE SECONDARY METAL THEFT PREVENTION ACT OF 2009

July 22, 2009

TESTIMONY OF FRANK COFFEY

DIRECTOR OF CRITICAL INFRASTRUCTURE
QWEST COMMUNICATIONS

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Senator Klobuchar, Senator Hatch, and Members of the Sub-Committee, my name is Frank Coffey, and I am the Director of Critical Infrastructure for Qwest Communications. I am testifying today on behalf of Qwest Corporation, which operates as an incumbent local exchange carrier (ILEC) in fourteen mid-western and western states. I appreciate the opportunity to talk about the issue of metal theft and to share Qwest's views on proposed legislation addressing the problem.

I. ABOUT QWEST

Before I address the metal theft issue directly, I'd like to tell you a bit about Qwest and why we care so much about this proposed legislation. Qwest provides voice, data, Internet and video services nationwide and globally, and Qwest provides local telephone service and broadband service in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. As of March 31, 2009, Qwest provided 11.2 million voice-grade access lines and serves 2.9 million broadband subscribers in our territory, and currently has broadband available to 86 percent of our customer base.

Qwest's local service territory is diverse. It includes urban areas like Denver, Salt Lake City, Seattle, Minneapolis and Phoenix. But it also includes many smaller cities and towns, and many rural communities and areas of low household density.

II. THE PROBLEM

Qwest, along with other telecommunications companies, public utilities, as well as the transportation, construction and other industries, have been plagued by the theft of metal, particularly copper, during the past few years. Thefts of Qwest materials range from scrap cable in recycle bins, reels of cable in garages and other facilities, to live

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deployed copper cable. Thieves literally cut down or dig up and cut our telephone lines, and then attempt to sell the copper.

A 2007 Department of Energy study determined that rising demand in world markets is primarily responsible for the increase in the cost of copper – and thus, the increase in copper theft - over the past several years. Copper producing companies have been unable to meet the increased demand which pushed prices higher. The demand for recycled copper has grown as well, making copper theft a lucrative endeavor for individuals looking to make easy cash. The study also identified several other factors which contributed to the increase in copper theft including the amount paid by secondary metal recycling agents for copper, ease with which copper can be stolen, likelihood that perpetrators will not be arrested, and the relatively low fines and short prison stays for the few who are convicted.[1]

The spot price for copper reached historical highs throughout much of 2007 and 2008.[2] Despite the fact that copper prices have dropped from the recent highs, the copper theft problem persists.

III. OPERATIONAL AND SAFETY IMPACT OF METAL THEFT

The impact of stolen cable to Qwest and its customers goes well beyond just the cost of the stolen cable. The effort to restore service and replace stolen cable reduces the availability of technicians to address legitimate issues not caused by intentional criminal activity. However, the impact to Qwest's customers and the wider community is the greater problem. Community safety is compromised when deployed lines are cut,

[1] An Assessment of Copper Wire Thefts from Electric Utilities, Infrastructure Security and Energy Restoration, by the Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, April 2007.

[2] http://www.kitcometals.com/charts/copper_historical_large.html#5years.

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causing outages that impact a citizen's ability to contact emergency services, as well as to make other phone calls and use the Internet.

In 2008, Qwest responded to 220 reported incidents of cable cuts or cable theft with approximately 73,690 customers impacted and losses of approximately $858,633.

IV. CASE STUDIES

While the copper theft problem occurs throughout the Qwest region, and the country, I thought it would be useful to provide you with a few specific examples of the problem and its consequences.

1. Duluth, Minnesota

On May 1, 2008, thieves in Duluth, Minnesota stole approximately 1400 feet of aerial copper cable, which disrupted service to 50 customers. Service was restored and on May 11, 2008, thieves cut the same span of cable disrupting service for the second time to the same customers.

2. Longview, Washington

Beginning in January 2008, cable thieves operating in south-western Washington and northern Oregon cut and stole aerial cable impacting local and long-distance telephone service, including the ability of customers to contact emergency 911 service. Additionally, in two separate instances thieves cut fiber-optic cable, believing it was copper cable, thus disrupting telephone and DSL service to approximately 20,000 customers for several hours each time.

Investigation determined that the thieves transported the stolen copper cable to Oregon to sell to secondary metal recycling agents, as state laws regulating secondary metal recycling agents in Oregon at that time were weak or non-existent. Notably, the

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thieves burned the insulation off the cable before selling it. Due to the interstate nature of these thefts, as well as the significant community impact, the Federal Bureau of Investigation (FBI) and the Cowlitz County, WA Sheriff's Office investigated this matter. Three defendants were federally prosecuted in the Western District of Washington, and others were prosecuted in state court. Despite the suspicious circumstances, neither federal nor state law prohibited the secondary metal recycling agents from purchasing the significant quantities of cable with insulation burned off, or required them to report the transactions.

The proposed legislation includes a provision making it unlawful for a secondary metal recycling agent to purchase any secondary metal where the sheathing has been burned off.

3. Prescott, Arizona

In December of 2007, Qwest experienced several thefts of copper cable from one of our facilities in Prescott, Arizona. Qwest employees visited area secondary metal recyclers attempting to locate the market for the cable because local police indicated they did not have jurisdiction over secondary metal recycling facilities located outside the city limits. While visiting one of the secondary metal recycling agents, a Qwest manager discovered thousands of feet of Qwest copper cable. The recycler revealed that three employees of a road construction crew were bringing in the copper.

Investigation determined that the three individuals were removing Qwest retired cable[3] as they performed road construction projects in Prescott, Arizona. The construction company should have notified Qwest, as they had been doing previously, that the cable had been located so that a determination could be made as to whether

[3] Qwest retired cable is cable owned by Qwest which is inactive, but left in place for possible future use.

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Qwest should move the cable or recover it. The three thieves were responsible for stealing 23,000 pounds of Qwest copper cable and were prosecuted in state court for the thefts.

4. Valencia and Bernalillo Counties, New Mexico

In mid to late 2008, Qwest experienced 25 thefts of aerial cable in rural Valencia County and Bernalillo County, NM, several of which involved theft of the same spans of cable after they were replaced. In at least one case, a line was cut and stolen and within a few days of the repair, the same line was cut and stolen again, replaced, and then stolen a third time. During this time frame, Qwest network personnel answered a repair call at a secondary metal recycling facility and while there identified Qwest cable at the facility; however, at the time New Mexico did not have a law requiring secondary metal recyclers to keep records of purchased material. Thus, there was no way to trace the thieves.

During the first quarter of 2009, Qwest was the victim of cable theft eight additional times in these counties. Most of these thefts occurred along state highways in rural areas where the thieves had little chance of being spotted.

In order to resolve the theft problem in New Mexico, Qwest hosted a conference attended by representatives of city, county and federal law enforcement agencies. During that conference, a representative from the U.S. Department of Homeland Security described another instance of copper theft in New Mexico in which thieves stole approximately six miles of copper telecommunications cable along railroad tracks which enables the railroad dispatch center to communicate with trains. This theft disrupted railroad transportation as trains had to be slowed down due to the lack of communication

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capability. The thieves responsible for stealing the cable along the railroad tracks were subsequently apprehended.

V. QWEST'S RESPONSE TO METAL THEFT

Qwest has developed a copper theft strategy which includes liaison with law enforcement agencies to support full investigations, especially in high theft areas; employment of security firms to conduct patrols in high theft areas; development of relationships with secondary metal recycling agents by encouraging our network employees to visit recycling facilities after thefts occur in an attempt to locate our cable and to alert recycling agents to the theft; participation in law enforcement metal theft task forces and conferences to raise awareness of the problem; and, support of enhanced metal theft legislation.

Many states have enacted laws addressing the metal theft problem, and several states have recently proposed legislation; but not all states have such laws. Most of the state laws are directed at secondary metal recycling agents, placing more stringent record-keeping requirements on the metals they purchase. Within Qwest's 14-state region, the 11 states that do have laws in effect generally require the secondary metal recycler to keep specific transaction records detailing purchase transactions. Such records are required to include a description of the metal purchased, date and place of purchase, name and address and identification of the seller and the amount paid to the seller. These laws require that secondary metal recycling agent records be made available to law enforcement, on demand, during normal business hours. Some of the states require recycling agents to record information about the vehicle used to deliver the metal, including vehicle description and license plate number. A few states require a

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photograph of the seller, fingerprints of the seller, or that payments over a threshold amount be made by check or electronic transfer. The non-uniformity of these state laws makes some more effective than others. Federal legislation would provide uniform requirements applicable in all states.

Law enforcement intervention has been helpful as we at Qwest have sought to address this problem. In 2008, 29 individuals were arrested in connection with the theft of copper from Qwest. It has been our experience that the arrest and prosecution of copper thieves alleviates the theft problem in an area at least for a period of time. Unfortunately, many local law enforcement agencies do not have the resources available to adequately investigate these thefts. Law enforcement is more likely to become involved if the theft involves live cable, as the threat to the community and emergency services is increased. Increased involvement from law enforcement generally occurs if they can be provided with good information to follow up on. As I will detail below, S. 418 is expected to provide law enforcement with logical leads to pursue copper thieves.

VI. COMMENTS CONCERNING S. 418

The proposed legislation is intended to regulate the activity of secondary metal recycling agents, which Qwest believes will deter thieves by diminishing the marketability of stolen copper cable, as well as other metals. The primary provisions contained in the legislation that serve this purpose include a limit on the amount a seller can receive in cash, with amounts exceeding that threshold paid by check or electronic transfer; inclusion of the "Do Not Buy" list, which prohibits purchase of marked and altered telephone company cable; and, requirements for secondary metal recycling agents

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to keep accurate records, including seller identification and vehicle information. The requirements pertaining to the seller's identity and payment by check or electronic transfer for larger transactions should prove effective aids to law enforcement in tracking down and prosecuting sellers of stolen metal.

In order to strengthen the law further and to serve as an additional deterrent, we recommend an additional provision requiring that check payments be mailed to the seller. This requirement would further limit the ability of thieves to provide fictitious data to the secondary metal recycling agent and possibly deter use of nominee sellers.

A further enhancement would be the addition of criminal penalties for non-compliance by secondary metal recycling agents or by those knowingly attempting to sell stolen metal to a secondary metal recycler.

The legislation prohibits secondary metal recycling agents from disclosing the identity of the seller to third parties, limiting a victim's ability to pursue civil remedy. For this reason, strong enforcement of the legislation is necessary in order for it to serve the desired purpose.

VII. CONCLUSION

Congress has an important opportunity to deter the theft of metal and reduce its impact on businesses across the nation and the communities they serve.

Again, thank you for your attention to this problem and for the opportunity to testify today on this important issue. I look forward to your questions.

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Testimony before the U.S. Senate Committee on the Judiciary

Subcommittee on Crime and Drugs

Hearing on "Metal Theft: Public Hazard, Law Enforcement Challenge"

Mona Dohman
Chief of Police, City of Maple Grove, MN
President – Minnesota Chiefs of Police Association

July 22, 2009

Good afternoon Chair Klobuchar, Ranking Member Hatch, and members of the Subcommittee:

I am honored and pleased to be here this afternoon, to testify on the need for federal legislation to fight the continued growing problem of metal theft in Minnesota, and all across the country.

My name is Mona Dohman and I am the Chief of Police for the City of Maple Grove, in Maple Grove, MN. We are a growing third ring suburb of Minneapolis, MN, with a current population of approximately 62,000 residents. I am also the President of the Minnesota Chiefs of Police Association – a state association with a mission to enhance the professionalism of policing throughout our state. I am here to speak on behalf of metal theft crimes in our community and across our state. In particular my testimony is from a local law enforcement perspective.

In each of my roles I have seen firsthand and read about the negative and devastating impact that metal theft has had in our community and the infrastructure around the country. I'd like to share just a few examples of the results of metal thefts in our communities:

In Minnesota, we are fortunate that we have tighter restrictions and regulations on scrap metal dealers. However, metal thieves do not have to travel very far to cross our state borders in order to sell stolen metals, and in order to get quick cash to support the habits they have, whether it be drug addiction or perhaps gambling addictions. The Minnesota Chiefs of Police Association supported tougher laws and restrictions on scrap metal dealers and were instrumental in helping pass laws that provided for the same. We support similar federal laws as well.

In 2008 the Grand Rapids, MN Police Department investigated a case in which a 46 year old truck driver was stealing copper from the Xcel Energy Center in Maple Grove. The suspect in the case stole copper and then sold it to a metal recycler in Grand Rapids, MN, over a period of three years.

The suspect's full-time job was to deliver copper wire to various sites in MN. The suspect was able to steal the copper wiring in smaller amounts and obtain quick cash at a metal recycling center in Grand Rapids, MN. He had developed a relationship with the owner of the business. It is suspected that the man was supporting a gambling

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addiction and over the course of a three-year period he stole over $300,000 in copper wiring. Because the thefts occurred in smaller amounts and over a long period of time, the crime went unnoticed and thus unreported.

In June of 2008 detectives at the Maple Grove Police Department investigated a report of over $10,000 worth of stolen copper wiring and various metal pieces from a hotel construction site. In further investigating our case, we were able to identify a suspect who was described by acquaintances as being "hard core, big into copper theft and big into meth use." We were informed that he never worked alone, and would pay others to make his copper deposits for him. He had essentially developed an organized crime ring on a smaller level in the state. We know that he committed his crimes across our state, from as far north as Two Harbors, MN in the far northeastern corner of our state, all the way south to Farmington, MN in the southern part of our state.

In September 2008, a vacant north Minneapolis four-plex exploded after thieves took copper pipes out of the home, which lead to a natural gas leak. The threat to public safety is of great concern in cases like this.

We know that in April 2008, five tornado warning sirens in the Jackson, Mississippi area did not warn residents of an approaching tornado because copper thieves had stripped the sirens of copper wiring. In March 2008, nearly 4000 residents in Polk County, Florida were left without power after copper wire was stripped from an active transformer at an electric company. And we know from FBI reports that farmers in Pinal County, Arizona were the victims of copper thefts from their irrigation systems, resulting in the loss of crops and high dollar costs to replace the equipment. The infrastructure loss in that county due to copper thefts was estimated at $10 million.

We know that there is typically a common thread in most cases of scrap metal theft. We believe that drug addiction, gambling addictions, or the like are common themes. Trading in scrap metals for quick cash at metal recycling centers is the reason that this is a lucrative business for some.

Investigation and prosecution can be very time consuming, due to the lack of evidence and very few leads, thus absorbing sometimes scarce resources of officer time and money from the jurisdictions responsible for investigating the case. We know from our case in Maple Grove and many cases around the country, that the thieves do not work alone. Indentifying all parties involved can be very difficult. As recently as April 2008, we know that highly organized theft rings specializing in copper theft from houses and warehouses were operating in Minneapolis, MN. It is reported that these rings or gangs hit several houses per day, yielding more than $20,000 in profits per month. Their target was foreclosed homes. As recent as 2007, the St. Paul Police Department reported that 60% of all burglaries were for scrap metal. Burglaries, overall, are down in St. Paul, but it is reported that almost 40% of their burglaries in 2008 were for scrap metal.

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I have shared some of the larger dollar loss cases from around the country. However, I believe it is important to mention that many times these cases can be difficult to investigate and ultimately prosecute because the thefts can occur in small amounts; thus, victims either do not realize their victimization or because of such small amounts, they may not feel that it is necessary to file a police report. It is difficult to prosecute a case when there is "no victim."

If we pass laws on the federal level to help, then we are recognizing the negative impact that these crimes have in our communities and the infrastructures within. These crimes are frequently viewed as low priority when we think about how they measure up to crimes such as murder, robbery and rape, for example. I can tell you though, in over 27 years in law enforcement, I have seen that these sorts of crimes all overlap. Certain crime can be and is a gateway to farther reaching and more severe crime, having devastating impacts within our communities.

So, what does this all mean?

We know that once the thieves steal the metal, it does them no good if they cannot sell it. The Klobuchar-Hatch bill puts record keeping requirements on scrap yards and metal dealers and I believe it is an effective step in deterring this crime.

I believe that if drug users, gang members, and/or the middle man must give certain basic information, like a driver's license or a government ID to a scrap metal dealer – it will deter these criminals from this avenue of access to quick cash. Trading in scrap metal for quick cash is the reason these criminals commit this crime. If we take away their access to quick cash – by regulating the process in which they "cash in on their crime," and by regulating the amount of cash they can get on the spot – their crime becomes less attractive and certainly less lucrative.

I know, and we know that the record keeping and retention requirements in the Klobuchar-Hatch bill will not end all metal theft across the country, but it is a positive, proactive step to helping law enforcement as we strive to reduce victimization, across the board, in our communities.

In conclusion, we in Minnesota have been fortunate with tough state laws and regulations to address metal theft, and we have witnessed firsthand how they have assisted law enforcement in investigating and prosecuting metal theft crimes. However, to effectively stem metal theft across the country, Congress must act to ensure that these crimes do not find their way into other states. Minimum federal requirements, as identified in the proposed bill, S. 418, must be implemented to assist in our law enforcement efforts.

Thank you very much.

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Testimony before the U.S. Senate Committee on the Judiciary
Subcommittee on Crime and Drugs

Hearing on "Metal Theft: Public Hazard, Law Enforcement Challenge"

Aaron D. Kennard
Executive Director, National Sheriffs' Association

July 22, 2009

Good afternoon Chairwoman Klobuchar, Ranking Member Hatch, and Members of the Subcommittee. My name is Aaron Kennard and I currently serve as the Executive Director of the National Sheriffs' Association and immediately prior to joining NSA, I served as the Sheriff of Salt Lake County, Utah for 16 years. Established in 1940, the National Sheriffs' Association's core membership consists of over 3,000 elected sheriffs nationwide who generally serve as the chief law enforcement of their respective counties.

I am pleased to have this opportunity to appear before you today to highlight the need for a federal legislation to combat metal theft, S. 418, the *Secondary Metal Theft Prevention Act of 2009*, and to provide recommendations to the Committee from a law enforcement perspective to further address this costly and hazardous crime.

Metal theft has become a serious public safety issue not just in Utah but across the country as thieves become more and more reckless in the materials they go after. This costly crime has plagued both urban and rural communities in recent years. Metal thieves compromise U.S. critical infrastructure by targeting electrical sub-stations, cellular towers, telephone land lines, railroads, water wells, construction sites, and vacant homes—all for quick cash.

Throughout the country, law enforcement officers have witnessed thefts in which culprits steal metal, everything from old grave markers to parts of air conditioning units or vehicles, to

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resell as scrap. Furthermore, these crimes and criminals are oftentimes associated with other violent crimes, illicit activities and drug abuse.

When it comes to metal theft, officers have little to go on unless they catch a metal thief in the act, as property crimes are extremely difficult to solve due to lack of evidence and few leads. We strongly believe that the requirements of the *Secondary Metal Theft Prevention Act* would greatly enhance law enforcement's ability to investigate metal theft by creating a paper trail. And we know that in states that enacted their own metal theft laws similar to S. 418, these states have witnessed a notable decrease in metal theft.

The requirement of checks and record-keeping is a valuable tool for law enforcement in our investigations of metal theft as it helps close the loop-hole in enabling criminals to "take the money and run" without creating a paper trail, thereby making it extremely difficult for law enforcement to identify and apprehend those responsible for theft.

A simple thumb print on a check can help investigators crack a case identifying a suspect with a prior record. And the mere fact that these reporting requirements exist we believe would prove to be a valuable anti-metal theft tool.

The provisions in the bill would provide law enforcement with the necessary tools to investigate and prosecute metal theft. Under the *Secondary Metal Theft Prevention Act of 2009*, the secondary metal dealers would:

- be required to keep records of secondary metal purchases, including the name and address of the seller, the transaction date, the amount and description of the metal purchased, and the number from the seller's driver's license or other government-issued ID card;

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- maintain these records for a minimum of two years and make them available to law enforcement agencies to assist them in tracking down and prosecuting metal thieves;
- perform transactions of more than $75 by check instead of cash; and,
- not pay cash to the same seller within a 48-hour period to dissuade sellers from trying to circumvent the check payment requirement.

In addition to the requirements provided in S. 418, we would like to make additional recommendations for the Committee for its consideration that we believe would be of tremendous assistance for law enforcement in combating metal theft. These recommendations include the following:

- law enforcement officer would have the ability to routinely inspect all records related to metal sale transactions without a court order;
- require anyone convicted of metal theft to pay restitution for the materials stolen and for any collateral damage caused during the theft;
- metal dealers who break the law face suspension or revocation of their business license and increased fines and jail time;
- require metal dealers to obtain a thumbprint, photo or a video and/or a copy of a valid government issued ID of the seller; and,
- impose increased criminal penalty for metal theft relative to the amount of damage rather than amount stolen.

Some may contend that a federal law to address metal theft is unnecessary because of the drop in commodity prices. It's true that we have witnessed a decrease in metal thefts partly due to the lower value for metals. It is certainly not as lucrative as it was to bring a pickup load of highway guardrails, irrigation pipe, utility wire or cemetery urns to the scrap yard. New state

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laws aimed at combating metal theft with requirements similar to the provisions in S. 418 have also played an integral role in decrease in metal theft.

However, with only some states with similar metal theft laws, sellers are opting for neighboring states so they can get paid immediately. Similarly, the thieves are going out of state too, which undermines the intent of the law in the states that have responded by enacting a strong state metal theft law. A federal law is needed to prevent criminals from stealing metal and transporting it for sale in nearby states. Moreover, scrap metal prices will climb again one day, and metal theft will rise with them unless Congress acts.

Thieves have caught on: There is metal everywhere and much of it is, understandably, unguarded. Aluminum guardrails. Brass fittings. Bronze plaques. Aluminum siding. Sprinkler fittings. Catalytic converters on church vans. Bronze urns. Storm drain grates. Street signs. Copper downspouts. The nozzles on fire trucks' hoses. They have all been reported stolen.

Copper cable thefts can cause electric and telephone service outages for entire neighborhoods, impacting hundreds or even thousands of homes. Power outages can knock out traffic signals, posing a serious traffic safety threat. And in the event of an emergency, affected telephone customers are not able to call 911 for assistance.

As you can imagine, stealing telephone and electric service cables presents an incredibly hazardous situation for residents and our communities. This issue goes beyond being just a simple property crime because of the impact it has on our neighborhoods, businesses and homeland security. Not only are these crimes destroying property and causing millions of dollars in damages, they are endangering lives.

Moreover, metal theft has become a serious crime that is often related to other crimes like illicit drug activity, especially methamphetamine abuse with addicts who are looking for fast

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cash to maintain their drug addictions. When addicts stop using crystal meth, they are left with depression, fatigue and a craving so intense that they will take extreme measures—climbing utility poles carrying deadly amounts of live electricity—to get more. Thieves are risking their lives for metal. They pull down live copper power lines and remove grounding wires from electrical substations, rail lines and wind farms. They snatch wire and plumbing from new housing and business park construction sites, or sometimes from existing houses.

Of course, not all meth addicts are metal thieves and, likewise, not all metal thefts track back to meth addicts, but we believe that there is a distinct connection. Oftentimes, when sheriffs have seen copper thefts, we see meth problems. One goes with the other. The link between addicts and metal theft also explains the irrationality behind some of the riskiest metal thefts and their consequences. A thief interested in making money isn't likely to break into a substation, because the risk of death is so high for a reward of only a few hundred dollars' worth of copper. And yet, substations are getting broken into constantly, live wires are being cut, and utility poles being climbed.

In many states, recycling businesses that pay for scrap metal legally could only collect or are required to keep limited information from people bringing in the metal, making it harder for officers to track down those linked to possible thefts. However, it is important to note that many scrap metal businesses already follow the rules and cooperate with law enforcement, watching for unusual loads of metal brought in by customers.

We emphasize that these businesses serve a legitimate need in the marketplace, and we do not intend to suggest that all scrap metal businesses engage in fraudulent transactions. Yet, we have seen specific instances where absence of regulation created an atmosphere conducive to

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facilitating such unlawful activity, which is extremely difficult for law enforcement to detect and control.

Accordingly, we believe that federal law will help get other states and companies that might not be where they need to be, keep better track of who brings in metal and what they are offering as scrap. We simply cannot continue to accept "business as usual" given the seriousness of metal theft and its impact on public safety. With cooperation and assistance from businesses, our citizens, and law enforcement we can be proactive in preventing a potential public safety disaster in our communities.

This legislation gives valuable tools to law enforcement to combat metal theft, a crime that is not only costly to the taxpayers but also seriously compromises public safety, homeland security and endangers people's lives. The *Secondary Metal Theft Prevention Act of 2009* is a necessary step forward in keeping our neighborhoods safe across the nation.

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STATEMENT OF MARK LEWON

VICE PRESIDENT FOR OPERATIONS

UTAH METAL WORKS, INC.

SALT LAKE CITY, UTAH

JULY 22, 2009

2:30 PM

UNITED STATES SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON CRIME AND DRUGS

Introduction

Good afternoon Madame Chairman, Senator Hatch and Members of the Subcommittee. My name is Mark Lewon. I am Vice President for Operations of Utah Metal Works, a scrap recycling business located in Salt Lake City, Utah. Our business, which has been run by my family since my grandfather bought it in1955, purchases and processes non-ferrous metal scrap. Copper is the primary focus of our company.

Thank you for the opportunity to testify before you today. I am here representing the more than 1,550 member companies of the Institute of Scrap Recycling Industries (ISRI) that process and industrially consume scrap paper, glass, plastic, ferrous and non-ferrous metals, textiles, rubber and electronics. Scrap is literally the first link in the global manufacturing supply chain. It is estimated that scrap commodities are responsible for satisfying 40% of the world's raw material needs each year. The scrap recycling industry in the United States is an $86 billion per year industry that employs over 85,000 workers. Last year, scrap recyclers in this country processed over 360 million pounds of copper, and more than 1.1 billion pounds of scrap aluminum into specification grade raw materials consumed by industrial manufacturers in the United States and around the world. In fact, the United States exported more than 44 million metric tons of scrap commodities worth more than $28 billion to steel mills, copper refiners, foundries, paper mills, and other industrial consumers in over 150 nations throughout the world, creating in the process a positive balance of trade in recyclable commodities for our nation.

We are an industry comprised of companies ranging in size from primarily small to medium sized, family owned facilities, like mine, to a growing number of large, multi-national companies that are publicly traded. Our products also achieve impressive Green House Gas (GHG) emission avoidances

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that are equivalent to 4% of the total GHGs that our nation produces, annually. That is because when manufacturers choose to use recyclable materials in their products rather than virgin materials, significant amounts of energy are saved and natural resources are conserved.

Madame Chairman and Senator Hatch, the scrap recycling industry appreciates your leadership in trying to develop an effective national metal theft law. We fully recognize the difficult problem of metal theft and the toll it takes on its victims. It is for this reason that we – and I do mean both the industry as a whole and my own company - have been actively working to be part of the solution to this problem since we recognized the global spike in metal theft which paralleled the global increase in commodity prices that began more than four years ago.

Our experience has led us to the conclusion that the most effective way federal legislation can address the problem of metal theft is through a comprehensive strategy focusing first on efforts to prevent metal theft to the maximum extent practicable and second on assisting law enforcement and prosecutors in their efforts to catch, prosecute, and penalize those who perpetrate these thefts to the extent necessary to dissuade their colleagues from a similar path. Rather than simply restating state laws that have been enacted over the past few years and which have not proven to be effective[1], we support efforts to craft legislation that builds on successful strategies including cooperation and communication amongst all stakeholders. Ultimately focusing efforts on preventing the crime will serve victims and communities far better.

As scrap recyclers, our practical, everyday knowledge can assist you as you work to solve the metal theft problem. We want this problem addressed effectively as much as anyone else. You see, we are victims too. Fifty-six percent of ISRI's members have been victims of metals theft in the last year whereby metals from our own facilities have been stolen, and more than half of those members have been victims multiple times. Tragically, we have even had employees in our industry shot and killed during the commission of these crimes. Despite this, and despite our industry's aggressive efforts at trying to address the problem of metal theft, we are very often the focus of negative news stories about metal theft.

Unfortunately, every industry has its share of bad actors, but that is not a reason to penalize the entire industry. We accept our role and responsibility in this fight and do not shrink away from it. That is why we support a federal solution that will raise the bar for all recyclers-- requiring everyone to adhere to a basic set of standards-- and which will eliminate the ability of thieves to take advantage of different state laws that create forum shopping opportunities, allowing those thieves to look for the path of least resistance to resell their purloined goods.

The Scrap Recycling Industry is on the Metal Theft Front Lines

As the industry on the front lines combating metal theft, we appreciate this opportunity to describe what scrap recycling facilities, nationwide, have been doing on a daily basis to address the metal theft problem.

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[1] Much of the decrease in the incidents of metals theft over the last 10 months is attributable to the dramatic decline in scrap commodity prices that began in September 2008. There is a proven correlation between metal prices and the number of metals thefts. In fact, the whole issue of metals theft is not a new one. It is a problem tied to the cyclical nature of commodity prices. The last time this problem arose was in the period 1994 - 1996 when prices were also high relative to previous market values.

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The impact of metal theft on the scrap recycling industry is significant. Recyclers have become both the victims of theft and the target for well intentioned, but ineffective legislative efforts to solve the theft problem. ISRI, the nation's trade association for the scrap recycling industry, is actively working to help solve the problem of metal theft and, as part of this effort, provides scrap recyclers and community leaders with helpful resources that they can use when confronting this issue.

With nearly 90%, by volume, of the scrap processed annually in the United States being handled by ISRI's members, we are and have been a crucial part of the solution to the metal theft problem. There is no better proof of the commitment of ISRI members to vigorously address metal theft than the numerous proactive initiatives we have undertaken to successfully address the matter, including:

- ***Recommended Practices***: In 2006, ISRI developed, and distributed to its members, recommended practices to help recyclers identify and recover stolen property, to assist law enforcement by documenting all of their scrap purchases, and by actively assisting in catching thieves. These practices include:
    - Requiring photo identification for every retail transaction and recording the license plate of the vehicle the seller is driving;
    - Maintaining transaction records so useful information can be provided regarding metals purchases should police suspect certain metals may have been stolen;
    - Keeping a list of suspicious materials and consistently questioning the ownership of these materials if they are brought to a scrap recycling facility;
    - Requiring the seller's signature on a receipt for each transaction when paying cash, and including a certification on the receipt that the seller is the owner or the authorized seller of the materials;
    - Utilizing video systems with time stamps to help track transactions;
    - Requiring a contract or letter of authorization for the purchase of certain items such as new production scrap, manhole covers, guardrails, historical markers, certain types of electrical cables used only in high voltage transmission lines, etc.; and
    - Training of employees on how to identify suspicious materials.

- ***Metal Theft Alert Information System***: Over twenty years ago, ISRI developed a system we called "FaxNet," to alert recyclers of stolen materials reported to police. At the outset, fax machines were such new technology that in some areas recyclers actually purchased fax machines for law enforcement agencies so that they could take advantage of the new program. When ISRI received a report, an alert was faxed to member recyclers in the community. This methodology was a useful tool in helping to catch metals thieves for nearly two decades. In 2006, as thefts began to increase along with the rising prices for scrap metals, ISRI revamped the FaxNet system to take advantage of email; we created an email alert system that sent reports to members in the state where the theft occurred, as well as all surrounding states. We expanded the distribution area because it became evident that thieves were sometimes traveling as far as 250 miles to sell their metals. The system required human intervention for each and every alert that was transmitted. This resulted in a strain on ISRI staff resources as the incidence of metal theft grew and sometimes also meant a loss of precious time in distributing the alert. In 2008, ISRI invested a significant sum of money in the development of an expanded program that relies

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upon a Web-based interface called ScrapTheftAlert.com, which allows law enforcement officers who subscribe to the system to post alerts on the web and to send the email alert to all subscribers within a 250 mile radius of the theft, regardless of membership status with ISRI. This system, which no longer requires ISRI staff intervention, is maintained by ISRI free-of-charge to law enforcement and recyclers. The theft alerts contain a description of the property and any other information provided by the investigating officer that may help lead to its recovery.

Not only has the system effectively helped to locate stolen property, it has also given ISRI members the opportunity to provide an effective tool for police, state troopers, sheriffs, prosecutors, etc. Today, over 700 law enforcement officers are registered with ScrapTheftAlert.com, and more are registering each day. This effort has lead to cooperative efforts between law enforcement and recyclers, a better understanding within law enforcement of recyclers' operations and recordkeeping procedures, and demonstrated how law enforcement and recyclers can work together to mitigate metals theft. [For examples of some of these efforts see the attached Appendices]. The theft alert system has been praised by police departments around the country. In one region alone (Macon, Georgia) ISRI's cooperative efforts with law enforcement has resulted in a drop in metal theft from approximately 80 reports in December of 2006 to under 10 reported thefts per month, today.

Recyclers have also used ScrapTheftAlert.com, local media, and other methods to provide information in reverse when they have been offered materials that, while not reported as stolen, raise questions as to why such material would be offered as scrap material. For example, not long ago, a scrap yard in Ohio was offered a 12-ton slab of aluminum that clearly was intended for a rolling mill. This type of material would never be destined for a scrap yard. The scrap yard reported it to the local police but the local authorities had no record of a theft, However, after two weeks of investigative work by the recycler and ISRI staff, it was determined that the material had been stolen while in transit to a mill in West Virginia.

In another instance, a scrapyard in Texas was offered several hundred pounds of precision stainless steel valves and pipe. Workers at the scale recognized that this material was likely stolen and contacted police and the local media. A story on the local television news that night helped recyclers locate the victim. The material was returned, saving the victim tens of thousands of dollars. (The video can be viewed at http://www.click2houston.com/video/17115083/index.html?taf=hou)

- ***Creating Local/Regional Collaborative Coalitions:*** Recyclers working with law enforcement and victims have found that open communication is the only effective solution to metal theft. Collaborative efforts around the nation are realizing success in combating crime, recovering property and catching thieves. These local/regional collaborative coalitions deliver meaningful results, bringing the criminals, the thieves who steal the material, to justice. More and more, scrap recyclers, local law enforcement agencies, public officials, legislators, victims and other stakeholders are forming local coalitions to successfully combat metal thefts in their own communities. Collaborative coalitions like these have emerged around the country and are reporting significant success in combating metal theft. These collaborative efforts exist in places like Salt Lake City/County, UT; Ocala, FL; Macon, GA; Augusta, GA; Phoenix, AZ; and, others.

    - ***Salt Lake City and County, Utah.*** As part of the collaborative effort in which my company participates, the West Jordan Police Department has assigned an employee to receive information about stolen materials in our region and distribute that information

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as alerts to the scrap yards and to law enforcement in our area. Employees, who are our first line of defense, those who are at the scales or at other points of entrance, are trained to study the alerts and to inspect incoming loads of scrap for contraband material. However, the Salt Lake system only works if everyone cooperates. As an example, two thieves tried to sell stolen copper to Utah Metal Works. Upon inspection, the material was suspected of having recently been stolen from a nearby Home Depot. The police arrived and arrested the suspected thieves. The Home Depot was contacted. Unfortunately, a decision was made at Home Depot not to press charges. Had the suspected thieves not been wanted on other charges, they would have walked away without penalty.

The lesson of this story is simple. *All* stakeholders have a role to play. If there is a weak link anywhere in the chain, progress cannot be made to solve the problem. Thus, potential victims must assess their risks and appropriately secure their property and, when theft occurs and the thieves are caught, victims must be prepared to prosecute. Police agencies must be prepared to enforce the law. If police agencies insist that state and local government(s)- or the Federal Government – enact metal theft laws, then police agencies have a responsibility to enforce those laws. Similarly, prosecutors have to be willing to prosecute these crimes to the fullest extent of the law. Fortunately, in Salt Lake, law enforcement and prosecutors are doing their job, as are recyclers. Unfortunately, in too many jurisdictions, prosecutors claim to be so overwhelmed by other crimes that they do not have the time or inclination to prosecute metal theft crimes. As a result, thieves often act without concern for prosecution.

- ***Macon, Georgia.*** Created in September 2006, the Macon/Middle Georgia Metal Theft Committee was initiated by a local family-owned scrap recycling company and now includes more than 36 local organizations representing local law enforcement and public agencies, utilities, homebuilders, public officials, and local scrap recyclers. With regularly scheduled meetings and regular email updates to share information, training, and coordinating strategies, this coalition has made a significant impact on the metal theft problem in their region. Within months of the committee's formation metal thefts in Macon, Georgia dropped from approximately 80 reports in the month of December 2006 to just 21 in March of 2007. Since then, thefts have continued to buck the national trend, with fewer than 10 reported thefts at the peak of the copper market last year (see graph in Appendix).

- ***Ocala, Florida.*** Ocala Recycling, with two sites and more than 100 employees, is the largest scrap recycler in the Ocala (Marion County), Florida area. Mike Bianculli, co-owner of Ocala Recycling, developed the company's "Team BOLO (Be On the Look Out)" with a group of 17 employees trained specifically to look for suspicious transactions or individuals, as a way of being a good corporate citizen. This initiative, working closely with the Ocala Police Department and the Marion County Sheriff's Office, has achieved significant results…more than 80 individuals arrested for materials theft and the recovery of stolen materials.

See the Appendices for discussion of other successful efforts, including those at Lake Village, Arkansas; Jackson, Mississippi; Winston-Salem, North Carolina; Jackson, Michigan; Indianapolis, Indiana; Sedalia, Missouri; Los Angeles, California; Worcester, Massachusetts.

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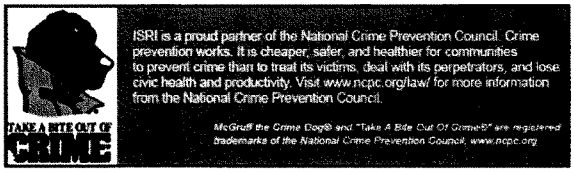
- ***Law Enforcement Outreach and Training on the National Level.*** On a national front, ISRI is leading the way by providing numerous innovative approaches designed to train law enforcement. In addition, ISRI is working with contractors, farmers, utilities and other victims of property theft to assist in materials theft prevention efforts and helping to better identify stolen materials. ISRI has also attempted to reach out to the National Sheriff's Association (NSA) and the International Association of Chiefs of Police to work collaboratively on metal theft at the national level, but thus far to no avail. ISRI recently participated in the NSA convention, but was told that the issue of metals theft was not an NSA priority. We hope to work cooperatively with both of these associations in the coming months and would welcome support of these efforts.



In the meantime, ISRI has not stood still in its attempts to reach out to the law enforcement community and more aggressively push for proven successful strategies. The Ocala, Florida collaborative effort was highly successful because law enforcement, including the Marion County Sheriff's Office and the Ocala Police Department, worked closely not only with Ocala Recycling but with other scrap recyclers in the region. As ISRI considered how best to communicate to law enforcement agencies throughout the nation the techniques that worked to prevent crime or catch thieves, we quickly realized that someone from the law enforcement community, who could speak with fellow law enforcement officers in a language they both understood, would be the most effective method. After searching for a candidate for some time, ISRI realized Detective Bush of the Marion County Sheriff's Office was well known in the industry for catching metal thieves. Detective Bush stood out because of his willingness to communicate with, and learn from, recyclers, and at the same time teach recyclers things we needed to know about evidence and apprehending thieves.

Presented with the opportunity to share his successful experience in working collaboratively, and his more than 32 years of law enforcement experience, Gary retired from the force and became an ISRI employee last October. His primary job function is to communicate with law enforcement throughout the nation about the need for the recycling industry and law enforcement to work together to address the plague of metals theft and to make sure that law enforcement was aware of the range of resources the industry has available to use in tackling this crime, including ScrapTheftAlert.com. Since coming aboard, Gary has logged many miles in the air and many hours on the phone, talking with law enforcement agencies around the country about the success he enjoyed through collaborative efforts. He has participated in law enforcement metal theft conferences around the nation, including those in Utah and Minnesota.

ISRI has learned from Gary Bush that many in law enforcement are skeptical about scrap recyclers, essentially viewing them as part of the problem, rather than part of the solution. His belief is that those officers who voice this viewpoint are more often those who do not know, and have not made an effort to get to know, the recyclers in their community. He thinks that those who have become familiar with the recyclers are generally more likely to accept them as good citizens and work with them on metal theft issues in a collaborative mode. Gary Bush recently

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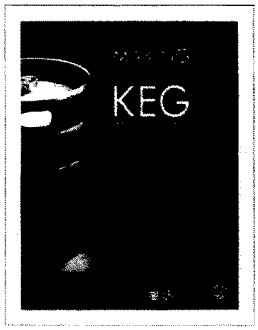
submitted an article for an August 2009 publication in Sheriff's Magazine specifically addressing the effectiveness of stakeholder coalitions as the most effective tool to combat metal theft

ISRI is also well aware that many law enforcement agencies are underfunded. This seems to be especially true in rural areas where crimes against farmers and their equipment occur. No Federal, state or local law alone will defeat metal theft. Legislators must come to realize that the enemy is the thief, not the recycler. Where recyclers, law enforcement and prosecutors have teamed up, we have seen good things happen--thieves get caught and crime goes down. A law need not, indeed should not, mandate collaborative coalitions. But, it must encourage such efforts with something more than words. A small amount of funding, perhaps on a "pay go" basis (for instance, forfeiture of a thief's property, which is then sold to pay for coalitions where they are most needed), is an option worthy of the Congress' consideration.

- ***Outreach to Other Affected Industries.*** Over the last several years, our industry has reached out to a broad range of industries affected by metals theft to develop joint efforts at stemming this crime.

  - ***Beer Industry***. ISRI has worked with the Beer Industry to address the problem of keg theft. The scrap value of stainless steel kegs at one point far exceeded the deposit that people pay to get the keg. As a result, kegs were increasingly finding their way to scrap yards. Beer kegs belong to the brewers, not to the wholesalers who distribute the beer, to the retailers who sell the beer, or to the customer who rents the keg. Until two years ago, ISRI was not aware of the ownership situation. However, once the beer industry contacted ISRI, we worked jointly with the Beer Institute, and the Brewers Association on an education campaign aimed at educating members of the recycling industry not to accept kegs unless they were being sold by the rightful owner of those kegs. We worked together to send out educational information to all ISRI members, including a decal that you see in blue, above. This effort has been very successful, significantly reducing the number of kegs that end up in the recycling stream.



  - ***Dairies/Bakeries.*** Last year, ISRI began working with the dairy and bakery industries on an education campaign focused on plastic milk crates and bread trays.
  - ***Utilities*** – electric, water, telephone and cable. Our efforts with these groups have focused on reciprocal educational activities with the hope that scrap recyclers will be more likely to recognize utility materials that may be brought in by unauthorized parties and that utilities might consider improved security measures to protect their valuable materials. Additionally, there have been discussions relating to the

identification of new technologies that can be useful in helping scrap processors to recognize utility materials.

More than a year ago, in an attempt to further address the problem through a broader industry approach, ISRI created a coalition of trade associations to share intelligence regarding metal theft problems and to develop well reasoned ideas to combat the crime. The initial meeting of this associations group included representatives from electric and telecommunications utilities, the construction industry, and law enforcement as well as representatives from the National Crime Prevention Council and the U.S. Department of Justice. The group developed the following consensus mission statement:

> *"The Associations Task Force on Material Theft was created to address at the national level the problem of theft of commodity materials, including ferrous and nonferrous metals, plastics, and paper, that has become a serious problem for communities, businesses and individuals across the country. The Task Force provides a network for information sharing on theft prevention and enforcement activities, and a resource for connecting local stakeholders building community networks with a goal of strengthening prevention efforts."*

The Scrap Recycling Industry Supports an Effective Federal Solution

ISRI supports legislation that incorporates specific concepts proven to effectively deal with the issues surrounding materials theft. Our experience with this issue clearly demonstrates that collaborative efforts and open communications between scrap processors, local law enforcement, and victims of metals theft is ***the*** single most effective approach to reducing these crimes and prosecuting the thieves that commit them. Laws requiring recordkeeping while ignoring prevention have been largely ineffective in fighting materials theft. In the end, partnerships are far more effective than mandates.

ISRI supports a national solution that relies on proven strategies to effectively combat metal theft. Based upon ISRI's experience in dealing with metal theft, the following are what we believe should be key considerations in any federal metal theft legislation:

- ***The source of the problem, metal thieves, must be addressed:*** Legislation must specifically address the role of thieves in metal theft. Thieves must be held accountable for their actions. Federal penalties for metal thieves are imperative and the penalty must not be only for the value of the metal, but also for the repair of the damage caused during the theft.

- ***Incentives for local law enforcement training:*** Providing incentives for voluntary law enforcement training to combat metal theft would help increase awareness of the issue by the law enforcement community, train officers to identify and prosecute metals thieves and allow law enforcement the opportunity to work with scrap recyclers to reduce metal theft.

- ***Incentives for collaborative efforts:*** The demonstrated best way to decrease the incidents of metal theft is through a collaborative approach incorporating scrap recyclers, law enforcement, prosecutors, local governments and victims in the process.

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- ***Pay-Go Provision:*** So as not to burden the Federal taxpayer, funding for law enforcement training and creation of collaborative coalitions could be paid for by fines or forfeiture provisions imposed on metal thieves.

- ***Exemptions for Recycler-to-Recycler Purchases:*** There is no need to require documentation for metal purchase after the initial "retail" transaction. Thus, wholesale transactions between scrap processors should be exempt from regulation.

- ***Check Writing Requirements:*** First and foremost, ISRI is unaware of any other commercial transaction in which the payment by cash for the purchase of tangible goods is prohibited. ISRI recognizes that certain reporting requirements exist when cash in excess of $10,000.00 is involved, but we are unaware of thresholds below that amount. Notwithstanding the foregoing, the concept that forbidding the use of cash in the purchase of scrap metals will lead to an end to metal theft is a fallacy. Indeed, the net effect of such a prohibition may well be a greater harm to legitimate recycling than any positive results it may have in stopping metal theft. Scrap recyclers engage daily in a tremendous number of small-scale transactions with peddlers. The overwhelming majority of these transactions are with legitimate sellers of scrap metals. A requirement for payment by check may also drive thieves into an underground market for stolen scrap materials. Furthermore, requiring scrap recyclers to write checks in lieu of paying cash is burdensome, very costly, and unnecessary. Indeed, one medium size recycler in Minneapolis, MN pays on average, $84,000 per year in bank transaction fees alone for scrap purchases (MN requires ALL purchase transactions to be paid by check)!!

- ***Rational Regulatory and Enforcement Authority:*** Any grant of rulemaking authority should avoid "boilerplate" language and clearly set the scope of authority so that it is limited to the scope of the Act. Similarly, penalties and enforcement authority should be rationally related to the nature of the offense. Unintentional or unknowing acts should not be penalized in the same manner as knowing or intentional actions. "Bad actors" deserve to be punished appropriately, but those who are merely culpable of an oversight should not be treated in a similar manner

- ***Definitions:*** Only metals ***of concern*** should be subject to the provisions of the bill. It makes little sense to regulate materials that are not typically the focus of theft thereby creating unnecessary burdens upon lawful businesses.

- ***Preemption:*** In the final analysis, federal legislation seeking to address the issue of metal theft requires preemption of state or local laws or regulations on metal theft. Currently, 46 states and an extremely large number of local governments have enacted laws to address metal theft, resulting in an unwieldy patchwork of statutes – most of which are not really designed to deter theft. Furthermore, since thieves can simply travel across jurisdictional lines to sell stolen property under more lenient regulations, this patchwork only serves to complicate law enforcement's efforts to capture thieves. The only effective means of fully addressing this issue is federal preemption. Preemption would create a uniform standard throughout the nation, giving law enforcement a useful tool that does not unduly burden recyclers who operate multiple facilities in various jurisdictions, while also punishing thieves in a consistent manner. Indeed, states such as California and Ohio have included preemption provisions in their state laws to avoid these problems within their states..

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Conclusion

We will utilize the expertise of our industry in working with you to address metal theft issue. We ask you to encourage all stakeholders to work collaboratively to solve this problem. I speak on behalf of ISRI and the scrap recycling industry in saying that we look forward to working with the Committee and all stakeholders in a manner of mutual trust and respect to develop an effective national solution towards combating metal theft. Please, look at the scrap industry as part of the solution.

Thank you.

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WASHINGTON GOVERNMENT
AFFAIRS OFFICE
1990 M Street, N.W.
Washington, D.C. 20038
202-223-6222

UNITED STATES SENATE
SENATE JUDICIARY SUBCOMMITTEE ON CRIME & DRUGS

"Metal Theft: Public Hazard, Law Enforcement Challenge"

July 22, 2009

Statement of Joe Poehling, Chairman, First Supply LLC
And President of the American Supply Association

The American Supply Association (ASA) looks forward to working with the Subcommittee to enact the Secondary Metal Theft Prevention Act of 2009 (S. 418).

ASA is the national organization representing wholesale distributors, manufacturers and their representatives in the plumbing heating, cooling and industrial pipe, valves and fittings industries. Members of ASA are distributors, manufacturers, service vendors and independent manufacturer's representatives who are very concerned over the issue of metal theft and specific to our industry, copper theft.

Copper theft is a pervasive, opportunistic crime targeting the Plumbing, Heating, Cooling and Piping and Industrial PVF (PHCP/PVF) industries and their construction sites.

Wholesale distributors across the country have been targeted, sometimes by their customers and employees. In two incidences, one month apart, at a Midwestern supply house, $31,000 of new product was stolen and taken to a local scrap yard and fenced with no questions asked by the buyer. Fortunately the five individuals involved were prosecuted and found guilty due to the diligent effort of the owner who investigated the theft along with local law enforcement. Two of the accused admitted that it was easy to steal and fence the product to support their drug habits. There are thousands of distributors across our country who are being hard hit by this crime.

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Copper theft is a growing epidemic, whether it is in piping, wiring, air conditioning condensers or other areas. Thieves steal it and resell it to copper recyclers who take it in virtually every form. A conservative estimate by the Department of Energy indicates that copper wire theft alone costs this nation nearly $1billion per year. Factor in the theft of copper piping and air conditioning condensers from the construction trades and you quickly realize that this issue is in need of federal legislation to curb the rising tide this crime has on society.

Additionally, theft of copper in vacant houses contributes significantly to urban blight. Metals stripped from one home in less than an hour can bring hundreds of dollars through a scrap dealer and the cost to repair the damages left behind can run into the thousands. Especially in struggling neighborhoods, when homes are stripped of their metals, they are also stripped of any value after thieves tear up floors and punch man-sized holes into walls to gain access to copper pipes.

Stolen plumbing often causes severe water and flood damage, and the theft of electrical wiring increases the risk of fire. In fact, metal-stripped properties often end up with negative value because demolition costs can range from $5,000 to $10,000, depending on the market and the size and condition of the property. Many property owners simply abandon these homes, leaving neighbors and cities to deal with the resulting nuisance and eyesore.

More important is the human cost with a clear and definitive link between stealing copper and illegal drug use, primarily methamphetamines.

The Secondary Metal Theft Prevention Act of 2009 (S. 418) requires copper recyclers to document the transactions of those selling copper and imposes a civil penalty against scrap yard dealers for failure to document the transactions.

Every state in the country is impacted by this activity, but only a handful of states have enacted laws to reduce the threat. States that have enacted legislation simply put requirements on scrap yard dealers to document the transaction – but more needs to be done. As such, it is important that Congress enact legislation to put an end to copper theft.

Thank you for your consideration of these comments.

American Supply Association
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TESTIMONY OF DAVID M. SPARBY
PRESIDENT AND CHIEF EXECUTIVE OFFICER
NORTHERN STATES POWER-MINNESOTA

BEFORE THE SUBCOMMITTEE ON CRIME AND DRUGS
JUDICIARY COMMITTEE
UNITED STATES SENATE

HEARING ON
METAL THEFT: PUBLIC HAZARD, LAW ENFORCEMENT CHALLENGE

JULY 22, 2009

Introduction

Senator Klobuchar and members of the Subcommittee, thank you for the opportunity to testify today on the issue of metal theft. This is an important issue that has widespread ramifications for public safety and infrastructure reliability. It is also a problem that is likely to continue to grow.

I am David Sparby, President and Chief Executive Officer of Northern States Power Company-Minnesota. NSP-Minnesota serves more than 1.5 million electric customers and 500,000 natural gas customers in Minnesota, North Dakota and South Dakota. Xcel Energy, our parent company, is a major U.S. electricity and natural gas company with operations in 8 Western and Midwestern states. Based in Minneapolis, Xcel Energy provides energy-related products and services to 3.4 million electricity customers and 1.9 million natural gas customers through its regulated operating companies.

I also am appearing today on behalf of the Edison Electric Institute (EEI), of which Xcel Energy is a member. EEI is the trade association of U.S. shareholder-owned electric companies and has international affiliate and industry associate members worldwide. EEI's U.S. members serve 95% of the ultimate customers in the shareholder-owned segment of the industry and represent about 70% of the U.S. electric power industry.

Before I turn to the subject of this hearing, I would like to highlight Xcel Energy's record on environmental leadership, which I know is of interest to many of you. For example:

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- Xcel Energy is the leading provider of wind power in the nation, and this summer we were named "Utility of the Year" by the American Wind Energy Association.

- We are ranked fifth among U.S. utilities in solar power capacity and are involved in several efforts to advance emerging technologies, including a demonstration that integrates solar technologies with an existing coal plant.

- We are converting our remaining coal-fired unit in Wisconsin to biomass gasification, making it the largest biomass plant in the Midwest.

- We partner with the Department of Energy's (DOE) National Renewable Energy Laboratory (NREL) on efforts designed to advance renewable energy technologies—including battery, compressed air and hydrogen conversion storage applications, plug-in hybrid electric vehicles (PHEV), and improved wind forecasting.

- We are completing a $1 billion voluntary Minnesota Metro Emissions Reductions Project, called MERP, focused on reducing emissions in three urban plants in the Minneapolis/St. Paul area.

- Finally, our SmartGridCity pilot project in Boulder, Colorado, is the nation's first comprehensive demonstration and test of smart grid technologies, which aim to provide greater energy efficiency and conservation, increased use of renewable energy resources, and support for PHEVs and intelligent home appliances.

Metal Theft is an Increasingly Serious Public Safety Issue

Over the past several years, no doubt driven in large part by rising metals prices through mid-2008, and the weakening economy after that, there have been increasing reports of thefts of metals from electric and natural gas utilities, telecommunications providers, homes and businesses. These stolen metals are sold to metal recyclers, who in turn sell them to be processed into other products.

Thieves tend to go where the money is, and rising copper prices, which peaked at more than $4 a pound in June of last year, seemed to coincide with increasing thefts not only on our system but across the U.S. A National

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Insurance Crime Bureau report issued in February of this year found, not surprisingly, an almost perfect correlation between increased metal prices and reported thefts. What has been somewhat surprising is that thefts have not significantly dropped along with metal prices over the last year, probably because of the severity of the economic downturn in many parts of the country. Thefts have remained rampant. It also should be noted that prices have begun to increase again in recent months as a result of continued economic growth in China and India and anticipated recovery from the recession in the U.S. and Europe. As the economy recovers and metal prices increase, we can expect that thefts will increase as well.

The theft of copper is a particular problem because of the role it plays in critical infrastructure. In September 2007, the Federal Bureau of Investigation (FBI) issued an Intelligence Assessment finding that

> Copper thieves are threatening U.S. critical infrastructure by targeting electric sub-stations, cellular towers, telephone land lines, railroads, water wells, construction sites, and vacant homes for lucrative profits. The theft of copper from these targets disrupts the flow of electricity, telecommunications, transportation, water supply, heating, and security and emergency services and presents a risk to both public safety and national security.[1]

In mid-2006, the National Association of Regulatory Utility Commissioners notified the Department of Energy that theft of copper wire from utilities was becoming a concern. In response, in 2007 the Department of Energy's Office of Electricity Delivery and Energy Reliability (OE) issued an Assessment of Copper Wire Thefts from Electric Utilities (OE Assessment) in order to call the problem to

[1] The Intelligence Assessment is available at: http://www.fbi.gov/hq/majorthefts/coppertheft_120308b.htm.

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the attention of stakeholders and policy-makers.[2] The OE Assessment found that the problem is nationwide, and that there was a "strong correlation between crystal methamphetamine drug abuse and reported metal thefts."[3] Copper wire thieves also appear more likely to target utilities that are located in cities or suburbs, where scrap dealers are more likely to be located nearby, than in rural areas.[4] The OE Assessment identified the primary utility facility targets for copper wire theft as substations and associated transformers, followed by utility lines and associated transformers, and spools of wire located in utility trucks, at construction sites, or in storage yards.[5]

The Electrical Safety Foundation, in cooperation with the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association, last year developed a survey to measure how metal theft was affecting major utility stakeholders across the country.

Among the results of that survey:

- 95.1 percent of utility companies had experienced copper theft in the past year;
- 86.6 percent had a process in place to track incidences of copper theft;
- Over the previous 12-month period, an estimated 50,193 incidences of copper theft occurred;
- 7,919 of those incidences involved energized equipment;
- The value of copper material stolen in the 12-month period was an estimated $20,167,738 (including the value of copper material, the

[2] The study is available at: http://www.oe.netl.doe.gov/docs/copper042707.pdf.
[3] OE Assessment at p. 7.
[4] *Id.*
[5] *Id.* at page 8.

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impact of the copper thefts from utilities nationwide cost $60,397,818);

- The number of outages due to copper theft was an estimated 456,210 minutes; and
- Thefts were responsible for 52 injuries nationwide and 35 deaths.[6]

Xcel Energy has not been immune from the trends occurring elsewhere, although we have not experienced the same level of thefts experienced by other utilities, such as DTE, based in Detroit.[7] We have noted an increase in substation intrusions for the purpose of illegal removal of metals such as copper and aluminum and the theft of copper grounding wires from poles and other infrastructure. In Minneapolis last year, Xcel Energy faced multiple thefts targeting the copper ground wires attached to each electric pole. Ground wires are necessary to direct electricity from lightning strikes safely into the ground. When a ground wire is removed, the pole absorbs the electricity from a lightning strike, and equipment attached to the pole is damaged or destroyed. In order to reduce the incentive to steal these ground wires, Xcel Energy is now using copper-clad wires instead of all copper wires. These wires have little or no value to recyclers. Other utilities are also adopting specific countermeasures and protective measures to cut down on copper wire thefts.[8]

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[6] *See* report of this survey and other instances of metals theft at: http://www.thetelegraph.com/news/copper-27590-thefts-infrastructure.html.

[7] In a 2007 press release, DTE reported nearly 250 incidents of thieves taking copper from Detroit Edison power lines and equipment. See "AT&T, Detroit Edison Urge Customers to Help Stop Copper Cable Thefts" (http://dteenergy.mediaroom.com/index.php?s=43&item=202.)

[8] The OE Assessment lists several of these countermeasures and protective measures on pp. 13-14.

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In several incidents, thieves have broken into Xcel Energy substations to steal copper from transformers and other equipment. These substations are an important part of our system because they perform switching, voltage regulation, surge protection and other functions critical to reliable and safe operation of the electric system.

In September 2005, copper thieves broke into an underground feeder vault near the University of Minnesota campus. They apparently thought that the copper cable they were cutting into was not live. They were wrong. After beginning to cut through the energized feeder cable, they caused an explosion in the vault. Both men were burned severely and the feeder lines going to the University's substation were damaged, causing the substation to fail. The incident resulted in a two-hour power outage at the University of Minnesota Hospitals and Clinics. One of the hospital's emergency generators failed, causing the evacuation of several patient care floors.

In another case, in September 2006, a copper thief broke into an underground feeder vault in Minneapolis. He brought with him a hoist that he set up above the manhole cover leading into the vault and a portable metal saw with many spare batteries and blades. He apparently meant to take a lot of copper from the live feeder vault. He used a small home voltage tester that had given him a false reading that the feeder lines were dead. They were not. When he began to saw into one of the feeders, he caused a substantial explosion, which resulted in a system failure. This failure caused the City of Minneapolis water

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treatment plant to shut down for several minutes until an alternate power source was identified.

In another example, we discovered in June that for three years, copper wire had been routinely stolen from our facility in the Twin Cities suburb of Maple Grove for resale to a recycler in the northern Minnesota community of Grand Rapids. The value of the copper taken in this case exceeded $300,000.

The current economy also seems to have led to an increase in metal thefts. In the City of Minneapolis, there has been a rash of vacant homes being condemned as a result of the copper wiring and natural gas pipes being cut out by thieves. The individuals and banks that owned these properties lost millions of dollars of home values as a result of significant damage. Many of these homes were in such bad shape that they were later torn down. In addition, some homes exploded after the live natural gas lines were cut. These homes filled with gas and were so volatile that they later exploded. The Minneapolis fire chief testified to the Minnesota State Legislature in 2007 that citizens as well as his firefighters were constantly endangered by the conditions of these houses.

Many other utilities have been similarly victimized. In June 2008, thieves stole 300 feet of copper grounding wire from a Southern California Edison substation, forcing workers to shut down the facility and cut power to more than 19,000 customers. In March 2008, nearly 4,000 residents in Polk County, Florida, were left without power after copper wire was stripped from an active transformer at a Tampa Electric Company (TECO) power facility. Monetary losses to TECO were approximately $500,000. In April 2008, five tornado warning sirens in the

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Jackson, Mississippi, area did not warn residents of an approaching tornado because thieves had stripped the sirens of copper wiring, rendering them inoperable.[9]

Unauthorized entry and tampering with or stealing equipment in utility systems is extremely dangerous. Thieves are not the only ones at risk. These thefts also put our employees and customers at risk of death or serious injury. They also threaten the reliability of our system.

Because of this growing problem, Xcel Energy now requires extra vigilance from our employees to look for intrusions and other indications of unauthorized entry at substations and other facilities to ensure that safety has not been compromised. The OE Assessment cited a number of other efforts undertaken by electric utilities to prevent thefts, ranging from appeals to the public for information and rewards for information about thefts[10] to education programs aimed at assisting scrap dealers to identify metal stolen from utility facilities.[11]

Federal Legislation is Needed

The theft of metals for quick cash is a national issue and is one not confined to the utility industry. Abandoned and foreclosed homes, the construction industry and other businesses also are targets. In addition, state and local laws addressing this issue vary in their scope and remedies, thus

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[9] *See, http://www.networkworld.com/community/node/35946.*

[10] For example, In September 2008 Detroit Edison announced that it would increase from$1,000 to $2,500 the amount it would pay for information leading to the arrest of persons stealing copper and from $2,500 to $5,000 the amount for information leading to the arrest of persons buying stolen copper. *See* "Detroit Edison Boosts Rewards for Copper Theft Info" (http://dteenergy.mediaroom.com/index.php?s=43&item=345).

[11] OE Assessment at p. 11.

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undercutting the effort of any individual jurisdiction. The only effective way to address this nationwide problem is through a uniform federal response.

S. 418, the Metal Theft Prevention Act, would make it easier for law enforcement officials to investigate incidences of metal theft by requiring metal dealers to document their transactions and prohibiting any cash transaction in excess of $75. The legislation also would allow state attorneys general to bring actions to enforce this Act, in either federal district courts or other courts of appropriate jurisdiction. As a backstop to this authority, the Federal Trade Commission (FTC) would have the ability to enforce this Act. The federal/state partnership envisioned by this legislation pursuant to the FTC Act has worked well over many years in the consumer protection area and we think it represents an appropriate framework for addressing this pressing issue. While a number of states have or are considering legislation to address this problem, we believe that a uniform federal standard would be useful and is called for given the pervasive nature of these thefts. Finally, and importantly, the legislation preserves state and local laws, thus giving law enforcement professionals a variety of tools to address this problem.

We understand that there may be other approaches to this problem, including legislation that would increase penalties for metal theft, establishing a nationwide data base, mandatory reporting of crimes to the FBI and other similar approaches. Regardless of the approach taken, we believe the objective should be to provide law enforcement with as many tools as possible to combat this crime.

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I would be happy to answer any questions you might have.

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