

THE EFFECT OF INDUSTRIAL CONTAMINATION ON SMALL BUSINESSES AND SURROUNDING COMMUNITIES - POTENTIAL SOLUTIONS

HEARING BEFORE THE
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ENTREPRENEURSHIP

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

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Monday, December 8, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., at the Skyland Fire Department, 9 Miller Road, Asheville, North Carolina, Hon. Heath Shuler [Chairman of the Subcommittee], presiding.

Present: Representative Shuler.

Chairman SHULER. The hearing will be called to order.

Before we get started, there are a couple of folks I would like to introduce, and certainly someone who has done an outstanding job and worked on this project on the state level, and that is Representative Charles Thomas.

[Applause.]

Chairman SHULER. Charles (Representative Thomas) has done a great job helping the community and being very active and involved.

Also, Jonathan Mitchell with Senator Burr's office.

[Applause.]

Chairman SHULER. The Senator and I have been working together on this issue and others and I commend him for his hard work and Jonathan's outstanding job in the District. I get to see him quite frequently and we all appreciate their efforts.

Today's hearing of the Subcommittee on Rural and Urban Entrepreneurship will examine how the contaminated CTS site in the Skyland area has affected the community. We are going to discuss both what has been done in the past to clean up the site, as well as steps that can be taken in the future.

For most of the 20th Century, lax environmental standards brought short-term benefits to communities through jobs and industrial development. But when factories closed and jobs moved on, the long-term damage remained.

The economy of the Asheville area, especially its small businesses, is dependent on the conditions of the surrounding environment. The Asheville Chamber of Commerce cites the quality of life that Asheville enjoys as one of the greatest reasons for individuals and businesses to relocate. National magazines have ranked Asheville as one of the top places to raise a family, live a healthy life, and start a business. For all these reasons, it is vital that a strong

emphasis is placed on maintaining the environmental quality of the area.

I want to take a brief moment to commend residents of the area surrounding the former CTS site. They have taken the initiative to investigate a situation that threatens the health and the livelihood of families in their community, and they have persistently taken their concerns to government officials. For those members of the community who are here today, I extend a special welcome. I appreciate your determination, and I am grateful to have the opportunity to join you in your efforts to clean up this site. I am determined to do whatever it takes in my power to help these families get the truth about the environmental conditions of their community. I am also determined to ensure that damage is contained, hazards are eliminated, and long-term health effects are addressed.

I also wish to welcome all of our witnesses, including representatives from the United States Environmental Protection Agency and the North Carolina Department of Environment and Natural Resources. These agencies are charged with overseeing the effects of the cleanup of this site and preventing harmful exposures. I thank them for their work to date on the CTS site as well as joining us here today.

Because of budget constraints and we know all about budget constraints at this point--and the large number of hazardous waste sites in America, these agencies are unable to address all sites simultaneously. Systems for prioritizing sites have been created to allow these agencies to work on those requiring immediate attention first. I look forward to hearing more about these systems, how they affect the cleanup process for a site, and how a site that is not listed as a top priority can still be decontaminated.

I would also like to thank the Skyland Fire Department for allowing us to use this space.

Our first witness, Franklin Hill, the Director of the Superfund Division of the United States Environmental Protection Agency in Region 4. Mr. Hill, you have five minutes to give your opening testimony. And I appreciate you and all of our guests for being here today.

STATEMENT OF FRANKLIN HILL DIRECTOR, SUPERFUND DIVISION, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 4, ATLANTA, GEORGIA

Mr. HILL. Thank you, Congressman Shuler and also to the citizens of the Skyland Road community, and Buncombe County. I agree with you Congressman I think they have done an outstanding job of bringing awareness to this community regarding the activities associated with the CTS site.

I am the Division Director of the U.S. Environmental Protection Agency's Region 4 office in Atlanta. The Superfund Division oversees the implementation of the Superfund program in eight states in the southeast.

I want to thank you for this opportunity to discuss the effects of contamination on small business and the surrounding community. I also want to emphasize that EPA and the State of North Carolina have worked extremely hard and very closely on the activities that have been conducted to date at the CTS site.

EPA has employed two Superfund authorities at CTS, which I have been told by my staff is at the heart of the discussions—the emergency removal authority, as well as the remedial authority. Those are two distinct authorities. Removal has the responsibility for short-term cleanup, mainly stabilization of imminent and substantial hazards; and the remedial authority addresses long-term cleanup, investigation, much longer groundwater investigation and remedial action activities.

After operations at the plant ceased in 1985—and I am going to go through a chronology here, just to bring the picture of the site up to date, the preliminary assessment was conducted at this site, which is the first phase of the site assessment and remedial process.

From that investigation, which is also at the heart of discussions in this community, there was a “no further action” designation given to the site following that preliminary investigation, which is mainly just a review of operational records of the site and any releases at the site at the time. So that recommendation was no further action after the preliminary assessment.

In 1989, EPA conducted a re-evaluation of a number of sites in North Carolina, including the CTS site. The re-evaluation recommended an investigation with sampling, which was completed in 1991. This investigation did not identify residential wells, springs, use of potable water. Therefore, there was another “no further action” designation. Again, two “no further action” designations in this community after two phases of the early investigations of this site.

In the summer of 1999, following a citizen’s complaint, the North Carolina DENR confirmed that the spring and one residential well near the site were contaminated and contacted EPA. EPA’s removal program provided bottled water to the affected residents and funded the connection of those residences to public water. EPA performed a more extensive investigation of the CTS property, and discovered that soils beneath the building were contaminated with trichloroethylene.

Based on these findings, EPA negotiated an Administrative Order with the CTS Corporation and Mills Gap Road Associates, as responsible parties, using our removal authority. The AOC requires the CTS and Mills Gap Road Associates group to clean up soils in the unsaturated zone, to test residential wells most likely to be impacted by contamination and to evaluate technologies that can mitigate surface water contamination at the springs located on the Rice property adjacent to the site.

In 2006, CTS completed installation of a Soil Vapor Extraction System to remove contaminants from the unsaturated zone. That system has removed to date over 3900 pounds of contaminants. So we feel like that system has been successful.

What can EPA continue to do? We continue to require the respondents to perform additional work under the AOC that’s consistent with our removal authority. And some of those negotiations are underway at this point. There is an ozonation study proposed at this point that will continue to address contaminants in the surface water bodies.

Because of the continued concerns of the citizens living near the site, EPA and North Carolina DENR, the Buncombe County Health Center personnel conducted drinking water well sampling in November of 2007 at 63 residences. There has been a comprehensive well survey in this neighborhood, which includes two rounds of sampling, 63 residential wells the first time in 2007; and in 2008 there was a follow-up sampling of 72 additional wells. There have been hookups as a result of those well surveys and the analytical results that have been delivered to us.

And I want to thank especially the Buncombe County officials, who have really stepped up and taken an aggressive role to protect the citizens of Buncombe County.

Again, as I said, in 2008, those private wells have been sampled. That data has been provided to the citizens of Buncombe County, and additional hookups have been made as a result of Buncombe County officers' efforts to bring public water to that community.

EPA continues to evaluate the CTS site's eligibility for the National Priorities List. I know this is again another issue in this neighborhood—why is this site not on the NPL. As you said in your opening remarks, how can we address this site off the NPL. Hopefully I can provide some clarity on that issue during the question and answer period.

For the record, the NPL serves as a primary informational tool, identifying for states and the public those sites that are the worse sites in the country, not necessarily guaranteeing that there is a cleanup and not necessarily guaranteeing liability of the responsible party. But again, as a list of sites that will receive funding if they rise to that level of remedial action. CERCLA does not require EPA to list all sites that qualify on the NPL, given the agency's broad discretion, consideration of other factors such as other federal authorities and the states' willingness to undertake site remediation.

In closing, I would like to say that EPA remains committed to keeping you and the community informed as we move forward as a part of our continued outreach. EPA and North Carolina DENR representatives recently met with your staff and other Congressional staff to discuss our site remediation efforts as well as current and planned future activities for this site. At that meeting, EPA and the North Carolina DENR agreed to keep the Congressional offices and other elected officials informed about the ongoing activities at the CTS site through monthly updates that may be distributed to your constituents and community.

I want to thank you for this opportunity, as I said earlier, to provide some clarity to what is going on currently and what is planned in the future for the CTS characterization effort and cleanup. So thank you.

Chairman SHULER. Thank you, Mr. Hill.

[The statement of Mr. Hill is included in the appendix at 25.]

Our next witness is Dexter Matthews, Director of the Division of Waste Management in the North Carolina Department of Environment and Natural Resources.

Mr. Matthews, thank you for being here. You have five minutes for your testimony.

**STATEMENT OF DEXTER MATTHEWS, DIRECTOR, DIVISION OF
WASTE MANAGEMENT, NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES**

Mr. MATTHEWS. Thank you, Mr. Chairman. My name is Dexter Matthews. I am Director of the Division of Waste Management, North Carolina Department of Environment and Natural Resources. The division houses environmental regulatory programs for solid waste, hazardous waste, underground storage tanks, Superfund (both state and federal activities for contaminated site cleanup) and brownfields redevelopment.

I would like to begin by saying that a number of federal, state and local agencies have been working on the CTS site in Asheville, North Carolina where trichloroethylene is the primary contaminant of concern. Although each agency has its own regulatory authority and limits, all have been working together in a cooperative and supportive manner. The state has conducted several sampling events of private wells with the U.S. Environmental Protection Agency and Buncombe County and also conducted surface water and soil testing at the CTS site and in an area within one mile of the facility. A safe drinking water source has been ensured for the public surrounding the CTS site. EPA's Emergency Response and Removal Branch has provided bottled water as needed and the county has done an excellent job of extending water lines in response to needs in the area.

The EPA has been directing the handling of immediate exposure issues from the CTS of Asheville site. CTS Corporation has an agreement with the EPA to conduct certain removal action work. Removal actions are limited in scope. These activities are not a complete cleanup, but consist of abatement of immediate elevated exposure. In addition, the EPA, with the support from the North Carolina Superfund Section of the Division of Waste Management, has been evaluating the site for full cleanup under the Federal Comprehensive Environmental Response, Compensation and Liability Act authority, by listing the site on the National Priorities List. At this time, however, it is questionable whether the CTS site will rank high enough to qualify for NPL status. For this reason and in response to concerns by residents in the area, the state has focused on engaging CTS Corporation in a complete assessment and cleanup of the remainder of the site under state authority.

The state solicited CTS's cooperation in November 2007 in conducting an assessment to define the extent of contamination. The purpose of this study is to determine where the various liquid and solid source materials exist and the resulting groundwater contamination has migrated and to assess all other contaminated media at the site. Determining contaminant migration in groundwater will require an evaluation of the geology and fracture systems at the site and in the surrounding area through subsurface data collection. The first phase of this assessment takes place at the plant, close to the areas of chemical spillage and disposal, and proceeds outward from there. The first phase is presently underway and several phases of work are likely. Planning, sample collection and analysis and reporting for this type of work most often takes at least five or six months, at a minimum, to complete for each work phase. The complete assessment of the site necessary for

an efficient cleanup, therefore, may take approximately a year and a half or longer to complete.

CTS has indicated it is willing to enter into an agreement with the state to conduct the remaining full assessment and cleanup. While an agreement is not yet in place, the assessment work has commenced.

The state's remediation authority for addressing sites contaminated with hazardous substances include the North Carolina Inactive Harardous Sites Response Act and North Carolina water quality standards. At priority sites, the state first solicits the responsible party's cooperation in conducting an assessment of the contamination. Once the nature and extent have been defined, a remedy can be developed. The state then solicits the responsible party's cooperation in conducting the remedial action of the contamination. The state will require an executed agreement prior to development of the cleanup plan.

The cleanup plan will undergo public comment. A public information meeting was held prior to the implementation of the first phase of assessment of the CTS site. Another public meeting will be conducted to receive public comment on the cleanup plan at the time it is developed.

If a responsible party does not agree to conduct an assessment or cleanup at a site determined to be a priority, the state may issue an administrative order, seek an injunction to compel compliance with the order and issue administrative penalties. Penalties for violating state standards governing groundwater contamination and cleanup are up to \$10,000 per day per violation and up to \$25,000 per violation per day for subsequent penalties issued within five years.

The Inactive Hazardous Sites Response Act has a provision whereby a responsible party is not obliged to spend individually more than \$3 million on remedial action conducted voluntarily for a site under an agreement with the state. We will not know the cost of site cleanup until the assessment is completed and a remedial plan action is submitted.

Though CTS operated an electroplating plant at the site for about 27 years and is the primary responsible party, it may not be the only responsible party for this site. Prior to CTS' operation, International Resistance Company operated an electroplating business for about seven years. In addition, Mills Gap Associates may have some responsibilities as an owner with knowledge of the contamination when the property was purchased. If actions by CTS do not complete the necessary remedial action work, the state can evaluate those other potentially responsible parties and others it identifies in addressing the remainder of the remedial action work. Depending on the final cleanup plan for the site, the cleanup could take several years to complete.

I have staff with me today who work in the state Superfund program and have provided me information on the CTS site for my remarks. We will be happy to provide any answers to questions you have regarding state activity at the site.

Thank you, Congressman.

Chairman SHULER. Thank you, Mr. Matthews.

[The statement of Mr. Matthews is included in the appendix at 29.]

Our next witness is Neal Hanks, President of Beverly-Hanks & Associates, Realtors in Asheville.

Mr. Hanks, you will have five minutes for your testimony.

STATEMENT OF NEAL HANKS, PRESIDENT, BEVERLY-HANKS & ASSOCIATES, REALTORS, ASHEVILLE, NORTH CAROLINA

Mr. HANKS. Thank you, Congressman Shuler.

I am Neal Hanks, I am a resident of Buncombe County and President of Beverly-Hanks & Associates, Realtors, a real estate brokerage firm practicing real estate in Buncombe, Henderson and Haywood Counties in North Carolina. I have been in the real estate business since 1987 and served in my present role since 1999. I am appreciative of the opportunity to address the Committee regarding the impact on small business, specifically the real estate sector, of the industrial contamination on the site formerly owned by CTS Corporation, located on Mills Gap Road in Buncombe County.

It is a well-documented fact that the former CTS site contains numerous toxic chemicals and is one of approximately 1500 Superfund sites in the state of North Carolina. Recent off-site investigations have determined the presence of these chemicals in areas of the surrounding community as well, which many believe to have migrated from the former CTS site.

As realtors, we have a professional obligation to disclose to clients the presence of material facts related to the purchase of real estate. The interpretation of facts deemed material is often subjective, but a common interpretation of material facts would be those factors which influence the decision of a potential purchaser to purchase real estate. Given this interpretation, it may seem obvious that potential purchasers of property in the surrounding vicinity of the former CTS site should be notified of the contamination of the site and the possible migration of contaminants to other property. The challenge for those of us in the real estate profession is determining what parcels of property in the vicinity of the CTS site would require such a disclosure. Do we discuss the CTS site with only those prospective purchasers interested in a property adjoining the CTS site? Those within a one mile radius? A five mile radius? A 10 mile radius? Those properties upstream or downstream from the site? It is pretty difficult for those of us in the profession to determine where do we draw a circle around the CTS site to determine those properties that might be potentially impacted.

As a professional realtor, how do we determine which properties in our community might be impacted by contamination of the CTS site. As realtors, we have responsibility to protect the interests of our clients, both buyers and sellers. The presence of industrial contamination in a community creates significant hardship on both buyers and sellers of real estate in analyzing what impact, if any, there may be upon a specific property located in the community. This situation creates a very untenable situation for realtors until such time as the property in question is appropriately cleaned up. The uncertainty of the extent of contamination, the possible migration of contamination to other properties, and the timetable for

cleanup creates unnecessary hardship upon the property owners in the community, the buying public and the real estate community trying to serve the needs of both.

An expedited cleanup of the site is in the best interest of our community and its tax paying citizens and it is my hope that the Committee can assist our community in this effort.

Chairman SHULER. Thank you, Mr. Hanks. Thank you for your testimony.

[The statement of Mr. Hanks is included in the appendix at 32.]

Our next witness is Tate MacQueen, member of the CTS Citizens Monitoring Council. This group consists of seven members appointed by the Buncombe County Board of Commissioners to inform the Board of the cleanup efforts at the CTS site.

Mr. MacQueen, you will be recognized for five minutes.

**STATEMENT OF PETER "TATE" MACQUEEN, MEMBER, CTS
COMMUNITY MONITORING COUNCIL**

Mr. MACQUEEN. Thank you, Congressman. I appreciate the time that you are taking and your staff, Brian Fitzpatrick and Erin Doty in particular, as well as the Senators Byrd and Dole and their staff, John Mitchell and Graham Field.

I am a resident living within one mile of the former CTS plant and I am very concerned over the toxic waste exposure to my community and family. In January 2008, I became involved in the Community Monitoring Group investigating and studying the contamination and the role of CTS Corporation, Mills Gap Road Associates, Biltmore Group and the various government agencies. For almost a year, we have spent numerous hours compiling a definitive history of the CTS Corporation, the actions of local, state and federal agencies. What we have discovered has been alarming and discouraging. This contaminated hazardous waste site could not have been managed more poorly.

The property owners adjacent to the plant were exposed unnecessarily for eight years to highly toxic substances, which include trichloroethylene, an industrial solvent, and vinyl chloride, which is rated as the fourth most dangerous chemical, according to the CDC, for human exposure. We believe, based on the records that we have collected as part of the Community Monitoring Group, that the Southside Village development was built illegally and that the responsible parties may have committed fraud in getting approval for that development.

My experience in interacting with the community and meeting citizens who have lost family members to cancer while living in close proximity to the plant has been disheartening. There is one resident who has lost eight aunts and uncles, including his father, to cancer. All lived within a mile and a half of the CTS plant, they all drank well water and spring water.

This crisis has plagued our area for more than two decades. We depend on our government and its agencies to provide for the safety and wellbeing of our community. Our home values have suffered, which pales in comparison to the health issues many are struggling with and continue to face. We need action to rectify this matter so that our health is taken care of as well as being able to promote a strong area for smart growth, both commercially and residen-

tially. And we would like to submit for the record that history that we have compiled and also at some point would like to address some of the findings on the site with regard to "no further action" status.

Thank you for your time.

[The statement of Mr. MacQueen is included in the appendix at 36.]

Chairman SHULER. Thank you, Mr. MacQueen.

At this time, we will be opening the hearing up for questions. Typically we have five minutes per member. I am the only member here, and that is typical when a member actually has an opportunity to hold a hearing in a district. It is pretty difficult, most of the members of Congress are with their constituents, and rightfully so. That is where they should be, especially during the difficult times that we are facing in our country and our economy and trying to get back in a much better alignment with the world. We have a lot of work ahead of us.

But in saying that, we certainly have a lot of work to do in our district here. One of the most important tasks that we have is to make sure that our families and the children who are being raised in these communities have a great quality of life. Part of that quality of life requires that we have clean air to breathe and water to drink.

RFor Mr. Matthews or Mr. Hill, either of you certainly have the opportunity to respond. Is there any possibility - and I am using the word possibility here - is there any possibility that any of these contaminants has adversely affected a person's life who lives in this community?

Mr. MATTHEWS. Mr. Chairman, I can only answer from the standpoint of information that has been provided to us, and I think to the community as well, to this point, from a study that was done by the Department of Health & Human Services, which is again a separate state agency, but a state agency in North Carolina, the Division of Public Health.

A cancer cluster investigation was performed by them with limited data within a one mile radius. They were specifically looking at cancer and what they had reported to us was that the investigation did not find elevated numbers of types of cancers that could be possibly associated with chemicals related to the CTS site. Now they also have qualified that in that they are doing a more comprehensive study and have been involved with a more comprehensive study and it is being funded by the Agency for Toxic Substances and Disease Registry.

They told us just recently that the report should be completed and submitted to ATSDR in February 2009. That is all the information that I have concerning the work of DHHS.

Chairman SHULER. Mr. Hill, does EPA have any comments?

Mr. HILL. I do not have any further information. I do have the reference that Dexter was just making regarding North Carolina Department of Public Health's statement, which basically says they have not identified a cancer cluster, but follow-on work will be conducted.

So that is all the information that I have at this time.

Chairman SHULER. Thank you.

Mr. Matthews, do you have the status of the first phase of the groundwater testing results that was underway at the CTS site?

Mr. MATTHEWS. Yes, sir, the results came in late last week. The staff has been reviewing the analysis from the first set of data. There were, if I remember right, six locations where wells were installed and approximately 10 wells, both shallow and to bedrock. That information is currently available, it is available to the public as well. That will give us information for the next phase where we will have deep wells installed, to try to get an understanding of the subsurface, any fractures where contaminants might move. There will also be off-site wells eventually that will be installed and may be done concurrently with the on-site additional wells that would be installed.

The levels that were found—one well basically up gradient from the site will be used as a background well. There were no contaminants found in that particular well, so it will serve as a background well. Where the source site is and previously where EPA's investigation was, they found very high levels of contaminants, trichloroethylene. Actually, the levels that we found seem to have come down in that particular area, which is kind of behind the building. Moving over towards the Rice's property, the contaminants in that area where those wells were placed was high, which would lead us off-site again with the investigation. Also going toward Mills Gap Road, again there were wells placed there and contaminants were found there as well that were relatively high. I don't have the specific levels—my staff do—with me, but generally that was what was found at the site.

But we do want a thorough understanding of the geology of the site and certainly going into bedrock and seeing what type of fractures we are dealing with will be paramount in understanding where contaminants have moved or will move and direct our investigation going forward.

Chairman SHULER. Obviously there is cost associated with drilling these wells. When you go off site, will you be able to utilize some of the wells owned by residents, assuming they would like to volunteer? The federal government wastes more money than any group I have ever known. So is there an opportunity for the residents to play an important and vital role, obviously saving the federal government money? I mean the government could utilize that money elsewhere. I have drilled a couple of wells in my day and they can cost five, ten, or fifteen thousand dollars, depending upon the depth of the well. Are there opportunities for people in the community to volunteer their wells?

Mr. MATTHEWS. The drinking water supply wells that exist, under a plan that is currently being or has been developed by EPA, will continue to be monitored. So they actually will be a part of making sure that everyone has a clean water supply. So those wells that are out there will be part of a monitoring plan going forward anyway. But additional monitoring wells will need to be installed at various depths to determine again the extent of contamination and the migration of contaminants off site. So my answer would be a combination.

Chairman SHULER. Mr. Hill, testing completed in 1991 tested only one drinking well and that was one mile away, up hill from

the CTS site. Why didn't they test areas closer to the site where the contamination was found actually in the groundwater?

Mr. HILL. That is a good question, Congressman. I reviewed that report from our contractor, and actually I toured the site this morning. I do not have an answer for why there was not a much further in-depth investigation, other than the fact that they were concerned with source contamination and this was going to be a removal action, a short-term action to basically minimize our threat to surface water, and not looking to a longer term type of investigation. The removal program just does not perform that type of a characterization effort. I think the effort that you are talking about is certainly what is going on right now under the state's leadership.

But as far as why there were not more samples taken, I do not have an answer and the record is not very clear on why they did not. My assumption, based on what I saw this morning down gradient from the site, is that if I had been doing the investigation, I would have gone a bit further.

Chairman SHULER. Thank you, sir.

For the record, Mr. MacQueen, does the Rice family now have good quality drinking water?

Mr. MACQUEEN. They were placed on municipal water in 1999 following tests that yielded results of 21,000 parts per billion of TCE in their spring well, which is their water source. The maximum contaminant level for the state of North Carolina is three parts per billion, the maximum contamination level for the EPA is five parts per billion. The call that was made in 1990 by Dave Ogren is what triggered the action on both agencies' parts, the EPA and NC DENR. And the report that was provided from NUS, which was contracted to do that well sampling, which was again, 4226 feet away from the site, what they said was the highest concentrations of these metals were found in CASB-03, which was collected in an old lagoon pond area. This source was off-site from the nine acre site. It was actually in what is now Southside Village. And they said that high levels of trichloroethylene, vinyl chloride, PAHs and several unidentified organic compounds were also found. These compounds were found in CASW-02, which was collected at the intersection of two streams on the northwest portion of the facility, once again outside the fenced-in area. The surface water pathway is of concern because of its use for fishing, boating and swimming and high concentrations of contaminants were found in the sediment and surface samples. This report also said that the groundwater sample from a private well contained high levels of iron, but was not attributed to the plant operations. Again, it was 4226 feet away. The groundwater pathway is of concern, however, because there are approximately 397 wells within three miles of the facility. The air pathway is of concern because 3887 people live within one mile of the facility and high concentrations of metals and organic compounds were found in the surface soil samples. This was in 1991.

So this was originally done as a result of Dave Ogren's phone call. Unfortunately, because the decision was made by NUS to go so far away, the Rice property, which should have been tested first since it was closer than 350 feet, they were exposed to 21,000 parts per billion of TCE until 1999. They are now on municipal water.

Chairman SHULER. are there any health concerns in the Rice family?

Mr. MACQUEEN. The health concern certainly would be what happens when trichloroethylene anaerobically breaks down and becomes vinyl chloride. And again, CDC rates that as the fourth most dangerous chemical or compound. And, you know, that, similar to radon, can penetrate clay foundations, dirt foundations, which is what Mr. Terry Rice has at his home. And so fortunately, EPA has done a follow-up summa canister test for the air quality. There have been two done I believe in the last year and a half. So the main concern would now be vapor intrusion for the Rice family.

Chairman SHULER. Gentlemen, I think the most important thing is that we look back at what could have happened or should have happened. It is very, very important that we do not make the same mistakes that were made in 1991, that we can proceed forward and try to investigate this issue to the fullest extent. And I know and understand the impact of budget constraints.

If you look on the 1500 contaminated sites in North Carolina, where does the CTS site rank, judging from the information you presently have? I think that is very important to understand. Heaven forbid, the contamination is 10 times worse in the next results that we get back from the testing; but how are we going to be able to put this on a fast track so that we can get it cleaned up, and to what levels of contamination are we going to have see before we move to the top priority? Are we months or weeks from starting process of decontamination?

Mr. HILL. Well, Congressman, first let me back up and just addressed one thing that you mentioned about funding, and I agree with you, there is not enough to go around for everybody. It is hard for me to hang the decisions that have been made on this site on funding.

I think what we have to look at are authorities, distinct authorities of individual programs who came in and actually performed their responsibilities according to their authorities. And then handing off that part of the program to the other program and then looking at the process of who does what once one authority decides to vacate, if you will.

I think what we have here is a site evaluation, a decision, a re-evaluation, a program that was working under limited authority that didn't necessarily go into a full scale type of an investigation. So again, I do not think it is funding, I just want to be clear on that issue. Clearly, process-wise, we could have done a much better job; communications-wise, we could have done a much better job.

Chairman SHULER. So what is the relationship between the EPA and DENR? What is your relationship? How does each one of you feel about this relationship? I am not here to cast stones or lay blame on either of you, but do you have a working relationship? Do you have a relationship in which the information is transparent to one another's agency so that you are able to benefit the community?

Mr. HILL. Yes.

Mr. MATTHEWS. Part of really what makes the relationship work, when I mentioned the Superfund within the Division of Waste Management, I mentioned that there was both federal and state in-

volvement. EPA provides funding to the states, to North Carolina, for staff that interact directly with them and have been interacting directly with them throughout this process.

Now once the removal action is complete, normally if the site is not going to rank on the NPL, then it shifts over to state authority. In this particular case, what we are doing, we are pursuing both now. We are moving forward with state authority to enter into an agreement with CTS, who by the way is responsible for paying for the investigation I talked about a few minutes ago, but we are pursuing them to clean up the site now as a priority site while we are still working with EPA on the possibility of ranking the site. So both are moving forward now.

Chairman SHULER. So when do you expect another ranking? Because if we are at midway, if we are at 750 in our ranking out of the 1500, how long would it take to actually clean the site up?

Mr. MATTHEWS. When I say ranking—actually I think Mr. Hill may need to respond—but when I say ranking, I am talking about the federal ranking for NPL. We have already made the site a priority site under state authority and will continue to pursue that while the ranking package is being looked at by EPA.

Chairman SHULER. Very good.

Mr. HILL. And the 1500 number is a national number, Congressman.

Chairman SHULER. Yes.

Mr. HILL. Actually, in North Carolina, we only have 32 National Priorities List sites, 212 in the region. So just to bring that back to an appropriate perspective as well, there are 32 here in North Carolina.

As far as the ranking and the work that we have done on this site, we have attempted to rank this site at least on three different occasions. As we look at the mathematical method to rank the site, during the early phases, it lacked targets in certain areas even though we have the high concentrations in the spring that are emanating from the source at the facility, which is why we have an ongoing removal action underway right now at the facility. Again, it was to address that immediate threat and release to that surface water body.

I think as you investigate sites and as information becomes available, you find out additional information. And the one thing that was clearly lacking here that I think everyone has basically already acknowledged, is that this site lacks a comprehensive groundwater study to really understand the hydro-geologic conditions of what is going on at the site.

The initial phases of the response, I think, were appropriate to deal with the surface water impact. But it did lack that long-term component. Now, we are at that point and I am happy to hear you ask about where do we go from here from the standpoint of getting the site on track and making sure that citizens of Asheville are protected.

I think the state has done an admirable job of bringing CTS to the table and moving forward in developing a cleanup plan and strategy, or at least a characterization plan and strategy. They are not yet at the cleanup phase. But that is fully underway. The removal action that we continue to operate at the site, and the treat-

ability study that is proposed right now will continue to minimize contaminants in surface water. So we are tackling this from all angles, and right now, we have our removal authority fully engaged, the state is fully engaged as well as our remedial program.

As far as where does the site rank? 28.5 is the trigger for the National Priorities List and, as I said earlier, even if it scores 28.5, a discussion needs to be held as to whether or not that is the appropriate place to place this site from a cleanup perspective. Is it the NPL? Is it under our Superfund alternatives program? Or is it in the appropriate place as a state lead cleanup? The effectiveness of either of those programs are seamless. I mean, the cleanup will be of NPL caliber. So whether or not it goes to the NPL or not is a discussion that I know we will have at some point, but that is no guarantee that you get a better cleanup than a cleanup that is conducted by the state.

Chairman SHULER. Would you talk about the relationship between the CTS Corporation and the EPA?

Mr. HILL. Well, it is my understanding that CTS is performing according to requirements of the Administrative Order. They have agreed to the ozonation study, they have agreed to the vapor intrusion study that was conducted where we found levels that were well within our risk range and not any immediate health hazard associated with that study.

So they are cooperating. It also sends a positive signal to me that they are cooperating, that they have now entered into an agreement with the state to do the further groundwater characterization that is needed.

Chairman SHULER. Do you know of any past history that CTS has had on other sites, that we can look at the history of how they performed in other locations and maybe get an idea of how they may perform on this one?

Mr. HILL. I am aware of one other site, I think it is in Region 9, where they have taken some activity, mainly that included an excavation and cleanup. That site was ranked and was listed on the National Priorities List and they did proceed under an enforcement lead to clean that site up. So we are talking about excavation, where it has not happened in this community, and I would not recommend it in this community until we understand the hydro-geologic conditions of that site.

Chairman SHULER. Speak about the relationship with contaminated wells that have been tested in the past. Some have shown high levels of contaminants and then the next time they are tested the others may not have as high levels as they once did. And I think it goes back to what Mr. Hanks was talking about with the movement of contaminants, it looks like the ground water underneath is moving. How are we able to determine, you know, how far a scope should we be managing on this site? I mean is it, like Mr. Hanks said, is it one mile, five miles, ten miles? Because we are seeing levels elevated at one point and then fall off and then elevate again. Is that based upon the drought that we have or is it based upon—you know, give me an idea of what I should expect as a lay person looking at it. You know, I do not know hydrologically what is happening under the ground to be able to determine these different levels at different times.

Mr. HILL. I think you bring up an excellent point. A number of things contribute to that. Drought is one, whether or not elevations in groundwater are up or down. Clearly there is fractured bedrock here, which we do not really understand where the fractures are and how groundwater is flowing. And hopefully the study that the state is leading and conducting will help us with that. There are a lot of unknowns about what is happening.

Also, I will say to you that this investigation could potentially turn up other sources. That is the thing that no one has talked about in this community, but clearly as you look at the landscape, the site kind of sits in a bowl. And one of the subdivisions that has been impacted is up gradient to a certain degree. It is really difficult to understand that without the associated study, in order to get a good feel for how groundwater is flowing and how those fractures are really impacting groundwater. Whether or not there is another source or a separate source, we are not certain, but we may find one as a result of this investigation.

Chairman SHULER. Very good.

Mr. Hanks, if this site is cleaned up in a relatively quick manner, how will it impact small businesses, I mean based on relocation of businesses or relocation of homes or selling of homes in those particular areas?

Mr. HANKS. Well, I think it would obviously help significantly if the site is cleaned up, from a number of perspectives. I mean, you have got—obviously that property is sitting empty and will be sitting empty until the site is cleaned up and it is an appropriate site for business, for manufacturing. And it is a great site and we are lacking sites in Buncombe County. So simply from the aspect of that site alone, it would make a significant impact, but from an impact upon residential properties in that immediate surrounding area, I think the uncertainty of impact on the surrounding properties is the major concern. And a cleanup would remove uncertainty of the source or potential source of contaminants. So I think it would be a very positive impact on the community, both for small businesses and for the residents in the vicinity of the former CTS site.

Chairman SHULER. Mr. MacQueen, are you aware of any other potential sources, contamination sources?

Mr. MACQUEEN. We have heard different stories of people using degreasing agents for their own personal use, including stripping golf club grips and automobile degreasing. It has been established under the leadership of Dr. James Webster back in 2002, on April 4, when he proposed an emergency action order which was signed off by Mr. Green of EPA, that what he found was that there was an imminent threat of groundwater contamination under the plant based on studies done under Greg Powell from REACT, and the drawing or map that was provided by Map Tech clearly showed that there is a bedrock foundation that forms a bowl if you look only at the east-west cross section. Unfortunately, if you look at the north-south cross section, that bowl then becomes a trough where it is feeding south to north. And coincidentally, that is the direction of Printers Cove which ultimately leads to the Oaks Subdivision.

I have not heard of any other sources of contamination. All I can say is that it was accepted by Dr. Webster in 2002, it was signed

off by Mr. Green, that this rose to the level of—to the serious nature that they thought that it should be immediately remediated and mitigated, because of the numbers of 830,000 parts per billion directly under the slab flooring of the plant. That order still stands and in fact, we have had some great dialogue with the agencies about their interest in perhaps pursuing that action order.

Chairman SHULER. Very good.

Mr. Matthews, you mentioned earlier other potential responsible parties like Mills Gap Road Associates. To what extent have you had contact with them?

Mr. MATTHEWS. We have not. We have talked to CTS about entering into the agreement. We have not done a full potentially responsible party search. That is an option, as I said. There is a three million dollar cap, which I know has been discussed at length, and I wanted to make sure that there was an understanding that other responsible parties would have that cap as well, it would not be \$3 million just for the site and the \$3 million would only count towards remediation, not the assessment part. So the assessment part would have to be funded and then the three million cap would come into play so far as CTS is concerned.

Our attorneys are still in conversation—

Chairman SHULER. Before you go on, if you would, explain that cap, why that cap of three million is in place? Why is the magic number three million? Of course, I know, but there may be someone here that may not understand why there is a cap of three million dollars.

Mr. MATTHEWS. I will speculate why the three million dollar cap is there. The legislation that was passed was passed before I was in this position and I wasn't involved with that particular bill. I assume that the \$3 million was put in place to try to bring more parties to the table to get a cleanup faster. I would guess that is why the \$3 million was put in place.

Chairman SHULER. Do you think it was also there to be able to incentivize businesses to come to an area, that they know that their liability may only be three million dollars?

Mr. MATTHEWS. I am sorry?

Chairman SHULER. Do you think there would be some incentive for potential businesses to actually come if they may only have a liability of cleanup of three million, based on the contaminants that may knowingly be put on a piece of property?

Mr. MATTHEWS. I would be speculating even further to say whether or not that \$3 million has any kind of incentive for somebody to come in and certainly any kind of incentive to pollute. I would certainly hope that it would not be that. On top of that, there are also penalties that can be assessed for violation of groundwater contamination. So it is not that you could just come in and be able to pollute. But I really believe that the three million dollar cap was put there as an incentive to bring parties to the table for a cleanup at the site. But again, that three million only applies to each responsible party. So we could have well more than three million that ultimately could be spent on the site.

I did want to say we have not finalized an agreement with CTS. Our attorneys are meeting with their attorneys I believe the 11th of this month and hopefully that will move things forward. But as

I said earlier in my comments, CTS has moved forward with the assessment outside of the agreement.

Chairman SHULER. Very good.

Let us talk about extractors, Mr. Hill. Explain to us about the extractor that you have on site right now, about what its purpose is, what you expect out of it.

Mr. HILL. The soil vapor extraction system—

Chairman SHULER. Yes, sir.

Mr. HILL. —was designed to address the unsaturated zone in soil. That is the soil that is just above the groundwater table. That system is now operating, and as I said, it has pulled 3900 pounds of TCE off of the saturated zone.

I know there was a lot of discussion about the building coming down and excavation. It was designed basically to do exactly what it is doing. It is performing perfectly, we think it was an excellent design. We think that remedy is performing as built.

Chairman SHULER. Out of the 3900 pounds, what percentage of the overall contamination—how many pounds are there? Did you extract .1 percent or 15 percent?

Mr. HILL. Well, now you want me to speculate.

[Laughter.]

Mr. HILL. To be perfectly honest with you, I have no idea. I do not think anyone does at this point. There was a boring through the floor of the facility that basically identified that there were elevated levels of TCE there. And this was the short-term action to address the impacts to the surface water body and streams. So we think is still working. Is there additional work that needs to be done at the site? I would say that there is.

Chairman SHULER. Mr. Matthews, when can an agreement between CTS and DENR be expected?

Mr. MATTHEWS. I would hope that the meeting that I mentioned a few minutes ago that is supposed to occur the 11th of this month will get us very close, if not to the agreement. But the agreement has to be in place prior to the remediation plan being approved.

Chairman SHULER. Before we close here, I think it is very important that we all realize that we can continue to look back and we know that—I think we can all allude to the mistakes that have been made. I think it is of the utmost importance that this information is readily available to the public, which I know it is, and I would like to be able to put that information on our website so that the members of the community can go to our website to be able to find the updates. It would obviously take a lot of pressure off you and your staff if we can get the information on our website.

It is also very important that we actually now work together. And I know there is probably some animosity between the community and the two different agencies. It is so important that we now say what can we do to help, how can we help this process, in order to move it forward. And I know Mr. MacQueen has done a really great job and the council has done a great job of sparking the interest. I mean, to be quite frank, if it was not for the council, we would not be here today. I mean the times that Mr. MacQueen actually came up to our office, I think our staff would agree that it was probably the longest meeting that we have had in our two years in office. But we have to work with one another.

So, before we close, if you could, just give us a time line of what we should expect in the next month, two months or three months from the testing, the relationships, the contracts between CTS and I know you have obviously answered that. But give us an overall expectation as a community, what should we expect from the two different agencies and how we can proceed and move forward.

Let me just give you one example. We met back in September and I think that the first testing was supposed to take place on September 8. And, for an example, it was supposed to take three weeks for us to get the information back. You tell me we just got the information a few days ago. That is not the type progress that we need. That is not what helps make a community happy. So when we give these time lines, let us make sure that we can give time lines which we can actually meet. The worst thing that can happen is a time line of one month that turns into six months. And the federal government is great at that, they know how to do that very, very well. And the state government does as well. But what we have got to do is we have to be completely honest with our community and our citizens—

[Applause.]

Chairman SHULER. —to ensure that we actually have this information.

So give us an overview. But I want the community to realize, now we have got to work together. Now we have to work together and to make sure that we help support our agencies. I mean if the council is having to do this work on their own, it is very expensive and so we need to work together as one community, as a group, to be able to give the assistance that the agencies need and give them an opportunity to discover the issues and find out more of the information, more of the contaminants, what is to be done, what are the procedures to be followed up with and how can they work together.

If we shout and we drag down the process, it is going to slow the entire system down. They do not have all the staff to answer these questions every single day. But if they will give us a time line, we can put it on our website and then we can get—obviously the relationship that we have with the council, we can get the information back to them. Then we can proceed forward and then we can find out where we rank. Then hopefully we can find the money somewhere in our budget to make sure that EPA and DENR have the money to be able to assist in the cleanup of the site. And most importantly, the burden should not fall on the taxpayers. That is what is so important, so the CTS Corporation has to step up.

[Applause.]

Chairman SHULER. They have to step up to the plate, because if all of our tax dollars are going in it, the next time this happens, we are going to be setting a precedent. And I know that is certainly not what the agencies want. They want to make sure that CTS is held responsible. That is what we as citizens and taxpayers want, as well.

So before we close, if you could, just give us a time line, what we should expect as a community. Mr. Hill, you first.

Mr. HILL. All right. As far as CTS stepping up, it has always been EPA and the state's position that the responsible party pays.

So we have a serious position on holding CTS' feet to the fire from the standpoint of funding this cleanup.

[Applause.]

Mr. HILL. As far as the actions that EPA will be conducting, the ozonation study is in the developmental stages right now, there is a treatability study that will be associated with that. We expect full deployment by the spring of next year. So that is underway. There is also an attribution study underway right now that EPA has undertaken in an effort to continue to try to accomplish a 28.5 score or to have the site listed to the National Priorities List.

As I said, I think we need to have a discussion about that with the real estate community. Number one, I heard their concerns about contamination in this area and how it is impacting the economic values of homes in this area. And I think we need to talk about what an NPL designation means for this community before we go down that path.

So those are the activities that we will continue, as well as quarterly monitoring of private wells in this community. So the ozonation study is underway, an attribution study is underway and quarterly monitoring of private wells will be ongoing.

Chairman SHULER. Very good, thank you, Mr. Hill.

Mr. Matthews.

Mr. MATTHEWS. As I mentioned, we are moving forward with negotiations with CTS to enter into an agreement. We hope certainly to have that moved forward prior to the end of the year. There is a public comment period that is involved with the agreement before it would be finalized. So you are looking sometime after certainly the first of the year before it could be finalized. But we do want to get public comment on that as well.

The second phase of testing on the site that I mentioned earlier that would give us much better indications of the subsurface so far as bedrock and fractures at the site, now that we have the analysis from the first phase, that plan will move forward. However, there also may be some off-site testing as well. Staff are currently working with CTS's consultants to develop that. So once that is developed, a time line will be involved with that and we will certainly share that with you so you would be able to post that on your website as well.

We also will be assisting EPA in the sampling that Mr. Hill mentioned, the plan that has been developed to sample private wells around the site, that will begin next year and I believe the plan calls for quarterly sampling.

Chairman SHULER. Very good.

Mr. Hanks, is there anything else that would help you in the business community, or is this information adequate for you to make some decisions going forward? And I know there is a disclosure statement that you give, but I certainly think it would be helpful to be able to identify that mandatory distance away from the site.

Mr. HANKS. Well, I think your suggestion of placing the information on your website gives us a central point of information for which we can direct citizens to do further investigation, and for our realtors in the community to do further investigation. So I think

that central source of information would be very helpful to all of us.

You know, that is critical to us in the real estate industry, is having proper information to share with the public about the site. It has been very difficult to obtain and to keep up with. So I think your suggestion is a good one if it will give us a central point of information.

Chairman SHULER. Mr. MacQueen, is there anything you would like to add, based upon the community's response?

Mr. MACQUEEN. Yes, Mr. Congressman.

As a history teacher currently at Owen High School, you know, that is what my job is, is to look back. And part of teaching history is to identify and then rectify problems to prevent them from occurring in the future. So I hope that it comes across in the spirit that I am giving it and that is that this is not about vilifying, this is not about casting aspersions, this is simply about finding common ground and an appropriate solution.

I am very grateful to Mr. Hill's work with Camp Lejeune and our soldiers and the groundwater work that you have been doing for the TCE issue down there. I know how hard the folks from DENR have been working.

I do know that—since everybody had an opportunity to speculate, I would just love to be able to speculate about Mills Gap Road Associates and their lack of cooperation. On August 13, 1997, they appeared in front of the Board of Adjustment with Richard Green from Biltmore Group, they said that they had achieved “no further action” status from the State of North Carolina, they were not asked to produce a document. It is our understanding they have never reached a “no further action” status for that site. Because of that interaction and lack of follow-up, we had a development under construction nine days later, that 44 acres came off of the original site.

And one other point is, in terms of going forward, part of EPA's decision to determine it a low priority was, one, based off of the NUS study that sampled one well 4226 feet away, and previously, prior to that was in 1985 when the EPA submitted a hazardous incident worksheet for CTS Corporation to fill out from EPA; long-term employee, Norman Lewis, filled that out. There was no follow up on that. Mr. Lewis—his own mother lived across the street from the plant and it is on the record that he was stating that no one lived within 1500 yards of the plant—five football fields—and the Rices clearly lived within, you know, one football field.

And so we have to look back. We are not doing it to try and not be on the same team. You know, when I make a mistake, I have students call things to my attention. I am grateful for it. And as a coach, I ask my players to be willing to make mistakes because that is how they become better players. But in this case, we are talking about life and death and economic impact and, you know, with Scott Socia from Foot Rx, he wants to recommend foot trails and he is not comfortable recommending that area for his clientele. I know that Pet Supplies Plus has seen a rise in companion animal cancers associated with where they live in proximity to that plant.

We are here to work together. I had a good conversation with Mr. Doring beforehand, I look forward to interacting with him more.

Mr. Hanks, my former employer, I would love to brief you with the information that we have and continue to work with the dialogue that you have facilitated. I know that you were saying me personally, but I am not comfortable with that pronoun, it was not me, it was a collection of individuals with Barry Durand and Dave Ogren and a number of other people that have worked tirelessly and have done a lot of the work for you. We want to work any time, you know, 24/7. And trust me, we have done 24/7, to get this cleaned up. But the NPL status, whether it rises to the criteria, the word that you used was caliber. You could not ask for a better word. One of the things that NPL caliber status would give us would be the ability to have independent data collected, to have a secondary source of data.

[Applause.]

Mr. MACQUEEN. So I just want it to be clear, this is not—there is no acrimony, we are not—we just want to work together. So I appreciate the opportunity you have afforded us.

Chairman SHULER. Well, I think that is clear. Hopefully this hearing will indicate that we have to work together. And I have to commend both of the agencies—the EPA and DENR—for their appearance here. Sometimes these can be very difficult hearings and you guys just better be thankful that the Chairwoman is not here. She is really good.

[Laughter.]

Chairman SHULER. You do not have to put that in the transcript, by the way.

[Laughter.]

Chairman SHULER. She is the best Chair in Congress.

But I want to commend both staffs, everyone in my staff included, for their hard work on this. Let us work together and get the information out. Transparency and oversight are the key, especially when it comes to federal and state agencies.

I know I recognized Charles Thomas for his hard work and dedication on this issue and I know that Representative Jane Whilden is also here and she will be working very diligently on the state level to make sure that we have this oversight and that we have the transparency for our community in order to provide a better quality of life. I mean we are very, very blessed to live in a community like we do. We do not want that cloud to be covering over a community that has been such a wonderful place to live and raise children, as many people have recognized. I mean there are a lot of people here that may not have grown up in Buncombe County or maybe even in this region. They moved here because of the quality of life. But the most important thing is they stay here because of our people. And I think together as a community, we are going to make this—let us make sure that our families have a better quality of life.

And so to the agencies and to Mr. Hill and Mr. Matthews and Mr. Hanks and Mr. MacQueen, thank you for your testimony today.

Let me see, I have one last piece of housekeeping to do. I ask unanimous consent that the record be held open for five days for members to submit their statements. We have DVD copies of a

CTS presentation related to this issue which the Committee will keep in the hearing file for future reference.

Hearing no objection, so ordered.

This hearing is adjourned.

[Applause.]

[Whereupon, at 11:12 a.m., the Subcommittee was adjourned.]

STATEMENT
of the
Honorable Heath Shuler, Chairman
HOUSE COMMITTEE ON SMALL BUSINESS
Subcommittee on Rural and Urban Entrepreneurship
Hearing on “Examining the Effect of Industrial
Contamination on Small Businesses and
Their Surrounding Communities, as Well as Potential Solutions”
10:00 a.m., Monday, December 8, 2008

This hearing will come to order.

Today’s hearing of the Subcommittee on Rural and Urban Entrepreneurship will examine how the contaminated CTS site in the Skyland area has affected this community.

We are going to discuss both what has been done in the past to clean up the site, as well as steps that can be taken in the future.

For most of the 20th Century, lax environmental standards brought short-term benefits to communities through jobs and industrial development.

But when the factories closed and the jobs moved on, the long-term damage remained.

The economy of the Asheville area, especially its small businesses, is dependent on the condition of the surrounding environment.

The Asheville Chamber of Commerce cites the quality of life that Asheville enjoys as one of the greatest reasons for individuals and businesses to relocate here.

National magazines have ranked Asheville as one of the top places to raise a family, live a healthy life, and start a business.

For all of these reasons, it is vital that a strong emphasis is placed on maintaining the environmental quality of the area.

I want to take a brief moment to commend the residents of the area surrounding the former CTS site.

They have taken the initiative to investigate a situation that threatens the health and livelihood of families in their community, and they have persistently taken their concerns to government officials.

For those members of the community who are here with us today, I extend a special welcome.

I appreciate your determination, and I am grateful to have the opportunity to join in the efforts to clean up this site.

I am determined to do everything in my power to help these families get the truth about the environmental condition of their community.

I am also determined to ensure that damage is contained, hazards are eliminated, and long term health effects are addressed.

I also wish to welcome all of our witnesses, including representatives from the U.S. Environmental Protection Agency and the North Carolina Department of Environment and Natural Resources.

These agencies are charged with overseeing efforts to clean-up this site and preventing harmful exposure.

I thank them for their work to date on the CTS site, as well as for joining us here today.

Because of budget constraints and the large number of hazardous waste sites across America, these agencies are unable to address all sites simultaneously.

Systems for prioritizing sites have been created to allow the agencies to work on those requiring immediate attention first.

I look forward to hearing more about these systems, how they affect the cleanup process for a site, and how a site that is not listed as a top priority can still be decontaminated.

I would also like to thank the Skyland Fire Department for allowing us to use this space.

Our first witness is Franklin Hill, Director of the Superfund Division of the U.S. Environmental Protection Agency Region 4

Mr. Hill, you are recognized for 5 minutes

**TESTIMONY OF FRANKLIN E. HILL
DIRECTOR, SUPERFUND DIVISION
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4
BEFORE THE SUBCOMMITTEE ON
RURAL AND URBAN ENTREPRENEURSHIP
UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE
ON SMALL BUSINESS**

DECEMBER 8, 2008

Mr. Chairman and Members of the Subcommittee, I am Franklin Hill, Director of the Superfund Division for the U.S. Environmental Protection Agency Region 4 (EPA). The Superfund Division oversees implementation of the Superfund program in the eight states of the Southeast.

Thank you for the opportunity to testify on the effects of contamination on small business and the surrounding community. I will be providing background on EPA's response to contamination discovered at the former CTS of Asheville (CTS) site, as well as describing the Agency's ongoing efforts to ensure that an appropriate cleanup is completed and that the health of the citizens of Asheville is protected. EPA and the North Carolina Department of Environment and Natural Resources (NC DENR) have closely coordinated efforts at the site and remain committed to working with you and the citizens of Asheville to ensure a complete investigation and clean up.

BACKGROUND

The CTS, or Mills Gap Road site, is located in Asheville, NC near the Skyland Community. CTS Corporation manufactured electronic components at the facility from

1959 to 1985, and prior to that International Resistance Corporation operated there. Land use in the area has evolved from light industrial and rural use to predominantly residential. The original 54-acre property was sold to Mills Gap Road Associates which developed a residential neighborhood, leaving a fenced nine-acre site where the former manufacturing operations occurred. A large, one-story brick building remains on this portion of the property. Access is presently restricted by a barbed wire-topped, chain link fence.

EPA has employed two Superfund authorities at this site: emergency removal authority and remedial authority. Superfund's emergency removal authority responds to immediate threats that are generally short-term responses. Remedial authority addresses threats that generally require extensive investigation and long-term responses, such as groundwater investigation and clean up. As further discussed below, the Remedial Program continues to evaluate the site for inclusion on the Superfund National Priorities List. In general, site actions taken between 1999 and today have occurred through the Removal Program.

In 1983, NC DENR found CTS Corporation to be in compliance with hazardous waste disposal regulations. After operations ceased in 1985, EPA conducted a preliminary assessment (PA), a review of available data on the site, which constitutes the first step in the remedial site assessment process. Evidence of a contaminant release from the operations at the CTS site was not immediately apparent at that time, and EPA concluded that no further remedial action under Superfund was necessary. In anticipation

of a property transaction, CTS Corporation conducted an investigation that was more extensive than the PA. In 1987, CTS sampled soil and groundwater and reported findings of contamination to NC DENR.

As part of a larger effort to reevaluate sites, EPA in 1989 completed the first phase of a screening site inspection, which recommended additional evaluation and sampling. The second phase was completed in 1991, which included sampling of soils, surface water, sediments, and a single potable well. Contamination was not found in the drinking water supply sample taken. While analytical results indicated chlorinated solvents had contaminated some sediments and surface water on site, the study concluded that no further federal action should be taken at the site.

The site was referred to the State for consideration in a state clean up program; and, in 1993, the NC DENR added the CTS site to its Inactive Hazardous Waste Site Priority list for further investigation. It should be noted, however, that the scope of the EPA 1991 screening site inspection did not include sampling of residential wells and springs used as a potable water source near the site, and therefore did not address whether exposures through the drinking water pathway were a threat at the time.

In the summer of 1999, following a citizen complaint, the NC DENR sampled the spring which supplied potable water to the three residences adjacent to the CTS site. After NC DENR identified contamination in the spring and one residential well, the EPA Removal Program, at the state's request, provided bottled water to the affected residents,

and funded the connection of those residences to a public water supply system in 1999. In addition, EPA performed a more extensive investigation of the CTS property, and discovered that soils beneath the building were contaminated with trichloroethene (TCE), trichloroethane (TCA), and petroleum hydrocarbons. EPA conducted extensive investigations into the nature of the contamination and commenced discussions with the potentially responsible parties.

In 2004, EPA entered into an Administrative Order on Consent (AOC) with CTS Corporation and Mills Gap Road Associates. The AOC requires CTS Corporation and Mills Gap Road Associates to clean up contamination in soils across the nine-acre area. Issues concerning potential groundwater contamination were referred to the NC DENR for further action. In response to the AOC, CTS Corporation constructed a Soil Vapor Extraction System which utilizes a series of extraction wells and a vacuum to extract solvents from the soils above the water table. The system, completed in July 2006, has effectively removed more than 3,900 pounds of solvents, which represents a significant reduction in site contamination.

RECENT ACTIONS AND ONGOING ACTIVITIES

On November 27, 2007, the NC DENR wrote CTS Corporation requesting a “site assessment to facilitate the transition in lead regulatory agency [from EPA] and to expedite complete remediation of the contamination” and in December, CTS Corporation agreed to conduct a voluntary site cleanup under the NC DENR’s Inactive Hazardous Sites Program. CTS Corporation has initiated a groundwater investigation under NC DENR oversight, and in September 2008, the CTS Corporation completed the installation of the first phase of monitoring wells on the site.

As a result of the continued concerns of the citizens living near the site, EPA, NC DENR, and Buncombe County Health Center (BCHC) personnel conducted drinking water well sampling in November 2007, at 63 residences. In addition, 13 surface water springs were sampled. Analytical results indicated one well in the Oaks Subdivision was contaminated with TCE and cis-1,2 dichloroethene (DCE). EPA immediately provided this residence with bottled water. As a result of follow-up sampling, EPA connected five nearby residences to alternate water supplies.

EPA initiated efforts in January 2008, to examine the potential for vapor exposure near the CTS site. While levels of TCE were undetectable in living spaces, low levels of TCE vapors were detected in some crawl spaces of homes. All measured values were within an acceptable, health-based risk range currently used by EPA. One outdoor air sample taken at the spring adjacent to the CTS site showed contaminants above the EPA risk range. Although all outdoor air monitoring results were within the acceptable risk

range, one sample taken near a school bus stop on Surrey Run Road registered higher than most of the other samples. In response to community concerns about this detection, EPA conducted additional sampling in August 2008 to complement its January data. The August results were all generally lower than the earlier results. Notably, two samples taken near the bus stop on Surrey Run were undetectable; however, the result from the bus stop on Concord Road showed levels below EPA's risk range.

In the last year, EPA and CTS Corporation have reached an agreement to test an ozone injection system at the on-site spring. This system should reduce surface water contamination and improve ambient air near the CTS site. The investigation to support a final design was recently completed and a six-month trial period will begin in the near future. Full-scale implementation would follow, if the system successfully reduces TCE levels in the spring.

In September 2008, EPA tested 72 private wells, resampling many of the 63 previously sampled wells, and obtained results very similar to the November 2007 work. Buncombe County also completed the connection of 21 homes in the Oaks Subdivision to municipal water supply. EPA, in cooperation with the NC DENR and BCHC, has committed to quarterly sampling of private wells in the area, beginning in January 2009.

CONCLUSION

EPA continues to evaluate the CTS site's eligibility for the National Priorities List as new data are collected. EPA remains committed to keeping you and the community

informed as we move forward. As a part of our continued outreach, EPA and NC DENR representatives recently met with your staff and other congressional staff to discuss our site remediation efforts, as well as current and planned future activities anticipated by both agencies. At that meeting, EPA and the NC DENR agreed to keep the congressional offices and other elected officials informed about the on-going activities at the CTS site. On November 17, we provided an update and we will continue to provide monthly updates that may be distributed to your constituents and the community via websites and other media. We thank you for your continued support in these efforts.

Congressional Hearing: CTS Asheville

December 8, 2008

Mr. Chairman, members of the committee, my name is Dexter Matthews. I am director of the Division of Waste Management (DWM), North Carolina Department of Environment and Natural Resources. The division houses environmental regulatory programs for solid waste, hazardous waste, underground storage tanks, Superfund (both state and federal activities for contaminated site cleanups), and brownfields redevelopment.

I would like to begin by saying that a number of federal, state and local government agencies have been working on the CTS site in Asheville, N. C., where trichloroethylene (TCE) is the primary contaminant of concern. Although each agency has its own regulatory authority and limits, all have been working together in a cooperative and supportive manner. The state has conducted several sampling events of private wells with the U.S. Environmental Protection Agency (EPA) and Buncombe County and also conducted surface water and soil testing at the CTS site and in an area within one mile of the facility. A safe drinking water source has been ensured for the public surrounding the CTS site. EPA's Emergency Response and Removal Branch has provided bottled water as needed, and the county has done an excellent job of extending water lines in response to needs in the area.

The EPA has been directing the handling of immediate exposure issues from the CTS of Asheville site. CTS Corporation has an agreement with the EPA to conduct certain "removal action" work. Removal actions are limited in scope. These activities are not a complete cleanup, but consist of abatement of immediate elevated exposure. In addition, the EPA, with support from the N. C. Superfund Section of DWM, has been evaluating the site for full cleanup under Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) authority by listing the site on the National Priorities List (NPL). At this time, however, it is questionable whether the CTS site will rank high enough to qualify for NPL status. For this reason, and in response to concerns by residents in the area, the state has focused on engaging CTS Corporation in a complete assessment and cleanup of the remainder of the site under state authority.

The state solicited CTS's cooperation in November 2007 in conducting an assessment to define the extent of contamination. The purpose of this study is to determine where the various liquid and solid source materials exist and the resulting groundwater contamination has migrated and to assess all other contaminated media at the site. Determining contaminant migration in groundwater will require an evaluation of the geology and fracture systems at the site and in the surrounding area through subsurface data collection. The first phase of this assessment takes place at the plant, close to the areas of chemical spillage and disposal, and proceeds outward from there. The first phase is presently underway and several phases of work are likely. Planning, sample collection and analysis and reporting for this type of work most often takes at least five or six months, at a minimum, to complete for each work phase. The complete assessment of the

site necessary for an efficient cleanup therefore may take approximately a year and a half or longer to complete.

CTS has indicated it is willing to enter into an agreement with the state to conduct the remaining full assessment and cleanup. While an agreement is not yet in place, the assessment work has commenced. The state's remediation authorities for addressing sites contaminated with hazardous substances include the North Carolina Inactive Hazardous Sites Response Act (N.C.G.S. 310A-310 et seq) and the North Carolina water quality standards at 15A NCAC 2L. At priority sites, the state first solicits the responsible party's cooperation in conducting an assessment of the contamination. Once the nature and extent have been defined, a remedy can be developed. The state then solicits the responsible party's cooperation in conducting the remedial action of the contamination. The state will require an executed agreement prior to development of the cleanup plan. The cleanup plan will undergo a public comment period. A public information meeting was held prior to the implementation of the first phase of assessment of the CTS site. Another public meeting will be conducted to receive public comment on the cleanup plan at the time it is developed. If a responsible party does not agree to conduct an assessment or cleanup at a site determined to be a priority, the state may issue an administrative order, seek an injunction to compel compliance with the order and issue administrative penalties. Penalties for violating state standards governing groundwater contamination and cleanup are up to \$10,000 per violation per day and up to \$25,000 per violation per day for subsequent penalties issued within five years.

The Inactive Hazardous Sites Response Act has a provision whereby a responsible party is not obliged to spend individually more than \$3 million on remedial action conducted voluntarily for a site under an agreement with the state. We will not know the cost of site cleanup until the assessment is completed and a remedial action plan is submitted. Though CTS of Asheville operated an electroplating plant at the site for about 27 years and is the primary responsible party, it may not be the only responsible party for this site. Prior to CTS's operation, International Resistance Company (or IRC) operated an electroplating business for about seven years. In addition, Mills Gap Road Associates may have some responsibility as an owner with knowledge of the contamination when the property was purchased. If actions by CTS do not complete the necessary remedial action work, the state can evaluate these other potentially responsible parties and any others it identifies in addressing the remainder of the remedial action work. Depending on the final plan for cleanup of the site, the cleanup could take several years to complete.

I have staff with me today who work in the state Superfund program and have provided me information on the CTS site for my remarks. We will be happy to provide answers to questions you may have regarding state activity at the site.

Monday, December 08, 2008

Written statement of W. Neal Hanks, Jr., president of Beverly-Hanks & Associates Realtors submitted to United States House of Representatives Committee on Small Business subcommittee on Rural and Urban Entrepreneurship regarding "Examining the Effect of Industrial Contamination on Small Business and the Surrounding Communities.

I, W. Neal Hanks, Jr., am a resident of Buncombe County, North Carolina and President of Beverly-Hanks & Associates, Realtors a real estate brokerage firm practicing real estate in Buncombe, Henderson, and Haywood Counties of North Carolina. I have been in the real estate business since 1987 and served in my present role since 1999. I am appreciative of the opportunity to address the committee regarding the impact on small business, specifically the real estate sector, of the industrial contamination on the site formerly owned by the CTS Corporation located on Mills Gap Road in Buncombe County.

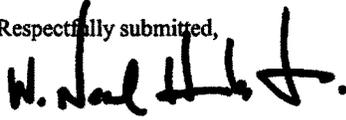
It is a well documented fact that the former CTS site contains numerous toxic chemicals and is one of approximately 1500 Superfund Sites in the state of North Carolina. Recent off-site investigations have determined the presence of these chemicals in areas of the surrounding community as well, which many believe to have migrated from the former CTS site. As Realtors, we have a professional obligation to disclose to clients the presence of "material facts" related to the purchase of real estate. The interpretation of facts deemed material is often subjective but a common interpretation of material facts would be those factors which may influence the decision of a potential purchaser to purchase real estate. Given this interpretation, it may seem obvious that potential purchasers of property in the surrounding vicinity of the former CTS Site should be notified of the contamination of the site and the possible migration of contaminants to other property. The challenge for those of us in the Real Estate Profession is determining what parcels of property in the vicinity of the CTS site would require such a disclosure. Do we discuss the CTS site with only those prospective purchasers interested in property adjoining the CTS site? Those within a one mile radius? A 5 mile radius? A 10 mile radius? Those properties upstream or downstream from the site?

As a professional Realtor how do we determine which properties in our community might be impacted by contamination of the CTS site? As realtors we have a responsibility to protect the interest of our clients; both Buyers and Sellers. The presence of industrial contamination in a community creates significant hardship on both Buyers and Sellers of real estate in analyzing what impact, if any, there may be upon a specific property within the community. This situation creates a virtually untenable situation for Realtors until

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Hanks Statement

such time as the property is appropriately cleaned up. The uncertainty of the extent of contamination, the possible migration of contamination to other properties, and the timetable for clean up creates unnecessary hardship upon property owners in the community, the buying public, and the real estate community trying to serve the needs of both. An expedited clean up of the site is in the best interest of our community and its taxpaying citizens and it is my hope the committee can assist our community in this effort.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. Neal Hanks, Jr.", written in a cursive style.

W. Neal Hanks, Jr.

WNHjr/ss

Tate MacQueen, IV
18 Forest Run Drive
Asheville, NC 208803

I am a resident living within a mile of the former CTS plant and I am very concerned over the toxic waste exposure to my community and family. In January 2008 I became involved in the Community Monitoring Group investigating and studying the contamination and the role of CTS Corporation, Mills Gap Road Associates, Biltmore Group and the various government agencies. For almost a year, we have spent numerous hours compiling a definitive history of CTS Corporation, the actions of the local, state and federal agencies. What we have discovered is alarming and discouraging. This contaminated hazardous waste site could not have been managed more poorly.

The property owners adjacent to the plant were exposed unnecessarily for years to highly toxic substances, which include Trichloroethylene and Vinyl Chloride- the fourth most dangerous chemical according to the CDC for human interaction. We believe based on the records that we have collected, as part of the Community Monitoring Group, the Southside Village development was built illegally and that the responsible parties committed fraud in getting approval for the development.

My experience in interacting within the community and meeting citizens who have lost family members to cancer while living in close proximity to the plant has been disheartening. There is another resident who has lost eight aunts and uncles along with his father to cancer. All lived within a mile and a half of the CTS plant and they all drank well and spring water. Because of the alarming rates of illnesses and cancers within a mile and a half of the plant, some citizens did a preliminary health screening in 2006 –2007 and the numbers of people affected with grave illnesses are at 67 minimum. Recently a government cancer screening was conducted, which was limited in the scope of cancers screened and not geographically consistent with the prior well and spring contaminations. This is as unacceptable as the inadequate actions for clean-up and remediation by NC DENR and the EPA.

This crisis has plagued our area for more than two decades. We depend on our government and its agencies to provide for the safety and well being of our community. Our home values have suffered, which pales in comparison to the health issues many are struggling with and continue to face. We need action to rectify this matter so that our health is taken care of, as well as being able to promote a strong area for smart growth commercially and residentially.

We would like answers to our concerns and effective planning for immediate clean-up. Thank you for the subcommittee's attention.

Sincerely-

Tate MacQueen
CMG
Resident and Buncombe County Educator