EXTENSIONS OF REMARKS

THE LENDER AND FIDUCIARY FAIRNESS IN LIABILITY ACT OF 1995

HON. FRED UPTON

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 4, 1995

Mr. UPTON. Mr. Speaker, in the last Congress, I called attention to some of the unintended effects of the Federal Superfund Program. I pointed out that Superfund's draconian liability provisions were undermining job creation in older manufacturing areas by discouraging the redevelopment of previously used industrial sites.

We came close to fixing this problem in H.R. 3800, the Superfund reauthorization bill cleared by the Committees on Commerce and Public Works last year. It did not become law, however, and the distinguished gentleman from Louisiana, Mr. TAUZIN, and I are introducing ''The Lender and Fiduciary Fairness in Liability Act'' today so that no momentum will be lost in the effort to repair this broken program.

Throughout America there are previously used industrial sites lying fallow because lenders and investors are afraid that owning or renting such sites will make them liable for the costs of cleaning up messes they did not make. Under Superfund, owners and operators of property requiring cleanup are assumed to be responsible for contamination found on or in such properties. In some cases, institutions that loaned money for the acquisition of such properties can be held liable, too.

This shadow of liability hanging over previously used industrial properties often makes it impossible to sell property or to secure financing for acquiring and redeveloping it. Potential investors won't invest and lending institutions won't lend so long as Superfund threatens either liability, the loss of collateral value or both.

The safe alternative in such cases is to avoid the previously used ''brownsites'' in central cities and historic manufacturing areas in favor of virginal ''greensites'' far away. It is simply safer to develop a cornfield on the periphery than to redevelop a downtown site. A Michigan State legislator described the net effect of this process thusly: ''Urban devastation, and jobless workers, are left in the cities. With development forced outward, lots of open space and farmland gets gobbled up. There are tremendous public costs to provide new roads and services. And the old urban sites are not cleaned up—they just sit there!''

Mr. Speaker, I doubt that such results were intended by the authors of Superfund. In fact, I doubt that a single Member of this House or the other body even suspected such results when the statute creating Superfund was enacted in 1980 and extensively amended 6 years later. Nonetheless, more than a decade of court decisions and administrative interpretations have brought us to this point. The program is doing more harm than good in much of the country and we have a responsibility to get it back on track.

The bill my distinguished friend and I are introducing this evening addresses the redevelopment of contaminated sites in two ways. First, it shelters from Superfund liability innocent landowners who acquire property subsequently found to be contaminated. Second, it shelters lenders and lending institutions from Superfund liability unless they actively participate in the management of an organization subsequently found liable.

It is important to recognize that neither of these concepts is new. Superfund law currently exempts innocent landowners from liability and shelters lenders via the ''secured creditor exemption.'' The problem is that the law does not provide the executive and judicial branches with sufficient guidance on its implementation. Whether a given party qualifies for the innocent landowner or secured creditor exemption is virtually impossible to determine at the beginning of the process. One must take his or her chances and hope that EPA or the courts will make the appropriate interpretations later in the process. With Superfund cleanups averaging $30 million per site, this simply presents too much risk for potential redevelopers and those who provide the capital they need.

This bill strengthens the existing by clarifying the specific steps a party must take in acquiring and financing previously developed properties. It lets no polluters off the hook. Those who contaminate will be just as liable after passage of this legislation as they are today.

Similar legislation garnered more than 300 cosponsors in the last Congress and became part of a bill reported unanimously by the Committee on Energy and Commerce. I hope my colleagues on both sides of the aisle will join Mr. TAUZIN and me in this effort.

ON THE INTRODUCTION OF THE COMMUNITY SOLVENCY ACT OF 1995

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 4, 1995

Mr. SMITH of New Jersey. Mr. Speaker, I rise today to introduce the Community Solvency Act of 1995. This bill represents the final product of a year's worth of negotiation and compromise between county and local governments, the waste industry, and the financial community. This legislation, which passed the House in the final hours of the 103d Congress enables communities in financial trouble to continue to treat and dispose of municipal solid waste in an efficient and cost effective manner, while, at the same time, protecting public health and safety and high environmental standards.

While the House was able to take decisive action passing this exact text last year, Senate action was unfortunately obstructed. For this reason, we now revisit this issue and must move swiftly on this bill beginning today.

As my colleagues will recall, local governing bodies nationwide suffered a tremendous blow last May when the Supreme Court ruled in C&A Carbone v Town of Clarkstown, New York that waste flow control authority violates the dormant commerce clause of the Constitution. As Justice Sandra Day O'Connor reminded us in her concurring opinion, Congress has implied that States and localities have this authority, but has never said so explicity.

Communities nationwide have accumulated an outstanding debt of more than $10 billion assuming their ability to use flow control authority, only to have the Court take it away with the Carbone decision. But technologically advanced facilities require more money than many communities can afford. To meet their waste management responsibilities while protecting the environment and public health and safety, communities have turned to bond financing.

These communities have accepted the responsibility of constructing, maintaining, and often operating transfer stations, landfills, waste-to-energy facilities, composting stations, and other solid waste treatment sites. In many cases, these communities have even designed integrated solid waste management plans to meet the full solid waste needs of their residents. We should not punish them for their initiative.

Furthermore, this $10 billion in debt jeopardizes far more than the communities' ability to meet solid waste management responsibilities. In fact, it jeopardizes many of their overall community bond ratings. At least two prominent credit rating agencies—Moody's Investors Service and Duff & Phelps Credit Rating Co.—have already begun the combined reassessment of more than 100 communities' credit standings as a direct result of the Court's decision. Duff & Phelps announced that, ''In its review of this issue, Duff & Phelps Credit Rating Co. found that Congress' inability to take action is triggering greater uncertainty in the solid waste sector and, in the long run, may weaken credit quality of solid waste facilities.''

The debate continues, but the stakes are even higher now. The ultimate consequences of our inability to act decisively will be Orange County-like bankruptcies, higher municipal taxes, and outraged constituents nationwide. It is clearly up to Congress to address and remedy this situation. The Community Solvency Act is precisely the flow control language which the House passed on October 7, 1994. This language was supported by a wide coalition including private sector waste management companies; local government organizations, such as the National Association of Counties, the U.S. Conference of Mayors, and the League of Cities; recycling interests; and Wall Street representatives.

Congress must move a legislative remedy to Carbone swiftly through the committee structure and the floor schedule to ensure financial security to struggling communities in each of our States. I urge my colleagues to take an