

13 bills were signed by the President. But we find ourselves today needing this continuing resolution until the 6th day of October in order to make certain of the smooth continuity of our Federal Government.

□ 1630

So just let me ask the Members to support this continuing resolution. And then we will get back to the bargaining tables, negotiate, and find the solutions that are acceptable to the House, to the Senate, and to the President and then get on about the business of the Congress.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). All time for debate is expired.

The joint resolution is considered as having been read for amendment.

Pursuant to House Resolution 591, the previous question is ordered.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time and was read the third time.

The SPEAKER pro tempore. The question is on passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OBEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 415, nays 2, not voting 16, as follows:

[Roll No. 493]

YEAS—415

Abercrombie Blagojevich Chabot
Ackerman Bliley Chambliss
Aderholt Blumenauer Chenoweth-Hage
Allen Blunt Clayton
Andrews Boehlert Clement
Archer Boehner Clyburn
Armey Bonilla Coble
Baca Bonior Coburn
Bachus Bono Collins
Baird Borski Combest
Baker Boswell Condit
Baldacci Boucher Conyers
Baldwin Boyd Cook
Ballenger Brady (PA) Cooksey
Barcia Brady (TX) Costello
Barr Brown (FL) Cox
Barrett (NE) Brown (OH) Coyne
Barrett (WI) Bryant Cramer
Bartlett Burr Crane
Barton Burton Crowley
Bass Buyer Cubin
Becerra Callahan Cummings
Bentsen Calvert Cunningham
Bereuter Camp Danner
Berkley Canady Davis (FL)
Berman Cannon Davis (IL)
Berry Capps Davis (VA)
Biggett Capuano Deal
Bilbray Cardin DeGette
Bilirakis Carson Delahunt
Bishop Castle DeLauro

DeLay Johnson, E.B.
DeMint Johnson, Sam
Deutsch Jones (NC)
Diaz-Balart Kanjorski
Dickey Kaptur
Dicks Kasich
Dingell Kelly
Dixon Kennedy
Doggett Kildee
Dooley Kilpatrick
Doolittle Kind (WI)
Doyle King (NY)
Dreier Kingston
Duncan Kleczka
Dunn Knollenberg
Edwards Kolbe
Ehlers Kucinich
Ehrlich Kuykendall
Emerson LaFalce
Engel LaHood
English Lampson
Eshoo Lantos
Etheridge Largent
Evans Larson
Everett Latham
Ewing LaTourette
Farr Leach
Fattah Lee
Filner Levin
Fletcher Lewis (CA)
Foley Lewis (GA)
Forbes Lewis (KY)
Ford Linder
Fossella Lipinski
Fowler LoBiondo
Frank (MA) Lofgren
Frelinghuysen Lowey
Frost Lucas (KY)
Gallegly Lucas (OK)
Ganske Luther
Gejdenson Maloney (CT)
Gekas Maloney (NY)
Gephardt Manzullo
Gibbons Markey
Gilchrest Martinez
Gilman Mascara
Gonzalez Matsui
Goode McCarthy (MO)
Goodlatte McCarthy (NY)
Goodling McCrery
Gordon McDermott
Goss McGovern
Graham McHugh
Granger McInnis
Green (TX) McIntyre
Green (WI) McKeon
Greenwood McKinney
Gutknecht McNulty
Hall (OH) Meehan
Hall (TX) Meek (FL)
Hansen Meeks (NY)
Hastings (FL) Menendez
Hastings (WA) Metcalf
Hayes Mica
Hayworth Millender-
Hefley McDonald
Herger Miller (FL)
Hill (IN) Miller, Gary
Hill (MT) Miller, George
Hilleary Minge
Hilliary Mink
Hinchev Moakley
Hinojosa Mollohan
Hobson Moore
Hoeffel Moran (KS)
Hoekstra Moran (VA)
Holden Morella
Holt Murtha
Hooley Myrick
Hostettler Nadler
Houghton Napolitano
Hoyer Neal
Hulshof Nethercutt
Hunter Ney
Hutchinson Northrup
Hyde Norwood
Inslee Nussle
Isakson Oberstar
Istook Obey
Jackson (IL) Olver
Jackson-Lee Ortiz
(TX) Ose
Jefferson Owens
Jenkins Oxley
John Packard
Johnson (CT) Pallone

Pascarell Thurman Vitter Wexler
Pastor Tiahrt Walden Weygand
Payne Tierney Walsh Whitfield
Pease Toomey Wamp Wicker
Pelosi Towns Waters Wilson
Peterson (MN) Trafficant Watt (NC) Wise
Peterson (PA) Turner Watts (OK) Wolf
Petri Udall (CO) Waxman Woolsey
Phelps Udall (NM) Weiner Wu
Pickering Upton Weldon (FL) Wynn
Pickett Velazquez Weldon (PA) Young (AK)
Pitts Visclosky Weller Young (FL)

NAYS—2

DeFazio Stark
Campbell Jones (OH) Rogan
Clay Klink Smith (MI)
Franks (NJ) Lazio Vento
Gillmor McCollum Watkins
Gutierrez McIntosh
Horn Paul

□ 1652

Mr. KANJORSKI and Mr. CAPUANO changed their vote from “nay” to “yea.”

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

SMALL BUSINESS LIABILITY RELIEF ACT

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5175) to provide relief to small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

The Clerk read as follows:

H.R. 5175

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Liability Relief Act”.

SEC. 2. SMALL BUSINESS LIABILITY RELIEF.

(a) LIABILITY EXEMPTIONS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

“(o) SMALL BUSINESS DE MICROMIS EXEMPTION.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a person (including a parent, subsidiary, or affiliate of the person) that, during its 3 taxable years preceding the date on which the person first receives or received written notification from the President of its potential liability under this section, (A) employed on average not more than 100 full-time individuals (notwithstanding fluctuations resulting from seasonal employment) or the equivalent thereof, and (B) had, on average, annual revenues of \$3,000,000 or less, as reported to the Internal Revenue Service, shall be liable under paragraph (3) or (4) of subsection (a) to the United States or any other person (including liability for contribution) for any response costs incurred with respect to a facility only if the total of material containing a hazardous substance that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility, was greater than 110

gallons of liquid material or greater than 200 pounds of solid material.

“(2) EXCEPTION.—Paragraph (1) shall not apply if the President determines that—

“(A) the material containing a hazardous substance referred to in paragraph (1) contributed or could contribute significantly, individually or in the aggregate, to the cost of the response action with respect to the facility; or

“(B) the person has failed to comply with an administrative subpoena, has failed to comply with an order to compel compliance with any request for information issued by the President under this Act (or is the subject of a civil action to compel such compliance), or has impeded or is impeding the performance of a response action with respect to the facility.

“(3) TIME PERIOD COVERED.—Paragraph (1) shall only apply to material that a person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at a facility before the date of the enactment of the Small Business Liability Relief Act.

“(4) AFFILIATE DEFINED.—For purposes of this subsection and subsection (p), the term ‘affiliate’ has the meaning of that term provided in the definition of ‘small business concern’ in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

“(p) MUNICIPAL SOLID WASTE EXEMPTION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a person may be liable for response costs under paragraph (3) or (4) of subsection (a) for municipal solid waste at a facility only if the person is not—

“(A) an owner, operator, or lessee of residential property from which all of the person’s municipal solid waste was generated with respect to the facility;

“(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that—

“(i) during its 3 taxable years preceding the date on which the business entity first receives or received written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals (notwithstanding significant fluctuations resulting from seasonal employment), or the equivalent thereof; and

“(ii) generated all of its municipal solid waste with respect to the facility; or

“(C) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code that, during its taxable year preceding the date on which the organization first receives or received written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

“(2) EXCEPTION.—Notwithstanding paragraph (1), a person may be liable under this section if the President determines that the person has failed to comply with an administrative subpoena, has failed to comply with an order to compel compliance with any request for information issued by the President under this Act (or is the subject of a civil action to compel such compliance), or has impeded or is impeding the performance of a response action with respect to the facility.

“(3) DEFINITION OF MUNICIPAL SOLID WASTE.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘municipal solid waste’ means waste material—

“(i) generated by a household (including a single or multifamily residence); and

“(ii) generated by a commercial, institutional, or industrial source, to the extent that the waste material—

“(I) is essentially the same as waste normally generated by a household; or

“(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services and, with respect to each facility from which the waste material is collected, qualifies for a small business de minimis exemption under subsection (o).

“(B) EXAMPLES.—Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

“(C) EXCLUSIONS.—The term ‘municipal solid waste’ does not include—

“(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

“(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

“(4) COSTS AND FEES.—A person that commences a contribution action under section 113 shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney’s fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o).”

(b) EXPEDITED SETTLEMENT FOR DE MINIMIS CONTRIBUTIONS AND LIMITED ABILITY TO PAY.—

(1) PARTIES ELIGIBLE.—Section 122(g) of such Act (42 U.S.C. 9622(g)) is amended—

(A) in paragraph (1) by redesignating subparagraph (B) as subparagraph (E);

(B) by striking “(g)” and all that follows through the period at the end of paragraph (1)(A) and inserting the following:

“(g) EXPEDITED FINAL SETTLEMENT.—

“(1) PARTIES ELIGIBLE.—

“(A) IN GENERAL.—Whenever practicable and in the public interest, the President shall, as expeditiously as practicable, notify of eligibility for a settlement, and offer to reach a final administrative or judicial settlement with, each potentially responsible party that, in the judgment of the President, meets 1 or more of the conditions set forth in subparagraphs (B), (C), and (E).

“(B) DE MINIMIS CONTRIBUTION.—The condition for settlement under this subparagraph is that the liability of the potentially responsible party is for response costs based on paragraph (3) or (4) of subsection (a) of section 107 and the potentially responsible party’s contribution of hazardous substances at a facility is de minimis. For the purposes of this subparagraph, a potentially responsible party’s contribution shall be considered to be de minimis only if the President determines that each of the following criteria are met:

“(i) The quantity of material containing a hazardous substance contributed by the potentially responsible party to the facility is minimal relative to the total quantity of material containing hazardous substances at the facility. The quantity of a potentially responsible party’s contribution shall be pre-

sumed to be minimal if the quantity is 1 percent or less of the total quantity of material containing hazardous substances at the facility, unless the Administrator establishes a different threshold based on site-specific factors.

“(ii) The material containing a hazardous substance contributed by the potentially responsible party does not present toxic or other hazardous effects that are significantly greater than the toxic or other hazardous effects of other material containing hazardous substances at the facility.

“(C) REDUCTION IN SETTLEMENT AMOUNT BASED ON LIMITED ABILITY TO PAY.—

“(i) IN GENERAL.—The condition for settlement under this subparagraph is that the potentially responsible party is a natural person or a small business and demonstrates to the President an inability or a limited ability to pay response costs.

“(ii) CONSIDERATIONS.—In determining whether or not a demonstration is made under clause (i) by a small business, the President shall take into consideration the ability of the small business to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the small business and demonstrable constraints on the ability of the small business to raise revenues.

“(iii) INFORMATION.—A small business requesting settlement under this subparagraph shall promptly provide the President with all relevant information needed to determine the ability of the small business to pay response costs.

“(iv) ALTERNATIVE PAYMENT METHODS.—If the President determines that a small business is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

“(D) ADDITIONAL CONDITIONS FOR EXPEDITED SETTLEMENTS.—

“(i) WAIVER OF CLAIMS.—The President shall require, as a condition for settlement under this paragraph, that a potentially responsible party waive all of the claims (including a claim for contribution under section 113) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

“(ii) FAILURE TO COMPLY.—The President may decline to offer a settlement to a potentially responsible party under this paragraph if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this Act or has impeded or is impeding the performance of a response action with respect to the facility.

“(iii) RESPONSIBILITY TO PROVIDE INFORMATION AND ACCESS.—A potentially responsible party that enters into a settlement under this paragraph shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) or section 104(e).”

(C) in subparagraph (E) of paragraph (1) (as redesignated by subparagraph (A))—

(i) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and by moving such subclauses and the matter following subclause (III) (as so redesignated) 2 ems to the right;

(ii) by striking “(E) The potentially responsible party” and inserting the following:

“(E) OWNERS OF REAL PROPERTY.—

“(i) IN GENERAL.—The condition for settlement this subparagraph is that the potentially responsible party”; and

(iii) by striking “This subparagraph (B)” and inserting the following:

“(ii) APPLICABILITY.—Clause (i)”; and

(D) by adding at the end the following:

“(F) BASIS OF DETERMINATION.—If the President determines that a potentially responsible party is not eligible for settlement under this paragraph, the President shall provide the reasons for the determination in writing to any potentially responsible party that requests a settlement under this paragraph.

“(G) NO JUDICIAL REVIEW.—A determination by the President under this paragraph shall not be subject to judicial review.

“(H) DEFINITION OF SMALL BUSINESS.—In this paragraph, the term ‘small business’ means a business entity that, during its 3 taxable years preceding the date on which the business entity first receives or received written notification from the President of its potential liability under section 107, employed on average not more than 100 full-time individuals (notwithstanding fluctuations resulting from seasonal employment) or the equivalent thereof.”.

(2) SETTLEMENT OFFERS.—Such section 122(g) is further amended—

(A) by redesignating paragraph (6) as paragraph (9); and

(B) by inserting after paragraph (5) the following:

“(6) SETTLEMENT OFFERS.—

“(A) NOTIFICATION AND OFFER.—As soon as practicable after receipt of sufficient information to make a determination, the President shall—

“(i) notify any person that the President determines is eligible under paragraph (1) of the person’s eligibility for an expedited settlement; and

“(ii) submit a written settlement offer to such person.

“(B) INFORMATION.—At the time at which the President submits an offer under this subsection, the President shall make available, at the request of the recipient of the offer, to the recipient any information available under section 552 of title 5, United States Code, on which the President bases the settlement offer, and if the settlement offer is based in whole or in part on information not available under that section, so inform the recipient.

“(7) LITIGATION MORATORIUM.—

“(A) IN GENERAL.—No person that has received notification from the President under paragraph (6) that the person is eligible for an expedited settlement with respect to a facility under paragraph (1) shall be named as a defendant in any action under this Act for recovery of response costs (including an action for contribution) with respect to the facility during the period—

“(i) beginning on the date on which the person receives from the President written notice of the person’s potential liability and notice that the person is a party that may qualify for an expedited settlement with respect to the facility; and

“(ii) ending on the earlier of—

“(I) the date that is 90 days after the date on which the President tenders a written settlement offer to the person with respect to the facility; or

“(II) the date that is 1 year after receipt of notice from the President that the person may qualify for an expedited settlement with respect to the facility.

“(B) SUSPENSION OF PERIOD OF LIMITATION.—The period of limitation under section

113(g) applicable to a claim against a person described in subparagraph (A) for response costs, natural resource damages, or contribution shall be suspended during the period described in subparagraph (A).

“(8) NOTICE OF SETTLEMENT.—After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.”.

SEC. 3. EFFECT ON CONCLUDED ACTIONS.

The amendments made by this Act shall not be a basis for challenging the enforceability of any settlement lodged in, or judgment issued by, a United States District Court before the date of the enactment of this Act against a person who is a party to the settlement or against whom the judgment has been issued.

The SPEAKER pro tempore (Mr. ISAKSON). Pursuant to the rule, the gentleman from Ohio (Mr. OXLEY) and the gentleman from New York (Mr. TOWNS) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise today to urge my colleagues to vote for passage of H.R. 5175, the Small Business Liability Relief Act. I introduced this legislation along with the gentleman from New York (Mr. BOEHLERT) and a bipartisan group of cosponsors in order to provide long overdue liability relief to individuals, families, and small business owners unfairly trapped in the litigation nightmare of the Superfund program for over 2 decades.

The Superfund is in bad need of reform. I have worked for years to enact comprehensive and meaningful Superfund reform to create a fairer liability scheme for the Superfund program. Unfortunately, it appears unlikely that we will be able to accomplish broader reform this year. But that does not mean that we cannot make real progress. It is time to provide relief to innocent parties like Barbara Williams, the former owner of Sunny Ray Restaurant in Gettysburg, Pennsylvania, and to Greg Shierling, the owner of two McDonald’s restaurants in Quincy, Illinois, as well as thousands of others just like them whose only crime as small business owners was sending ordinary garbage to the local dump.

H.R. 5175 provides relief to innocent small businesses who never should have been brought into Superfund in the first place. First, it provides liability protection to small businesses who dis-

posed of very small amounts of waste. Second, it provides relief for small businesses who disposed of ordinary garbage. Third, it provides shelter from costly litigation for small businesses who dispose of small amounts of waste and parties who face serious financial hardship by directing the Federal Government to offer these parties expedited settlements to remove them from the web of Superfund litigation.

This bill provides relief for innocent small businesses with up to 100 employees and revenues of not more than \$3 million. It is limited to common garbage and ordinary garbage that may have small contributions of other waste. If the waste that a small business sends to a site causes big environmental problems, then the liability exemptions would no longer apply.

I would point out that some who have criticized our definition of a small business have actually voted for exemptions that do not include any business size restriction whatsoever. Moreover, the administration’s current de micromis policy applies more broadly than this bill to any size company.

In addition, H.R. 5175 shifts the burden of proof under Superfund to the government when it goes after small businesses. I do not believe that small businesses should be presumed guilty and be forced to hire and pay for attorneys to prove their innocence. This is fundamentally wrong and unfair. In America, you are innocent until proven guilty. The government or larger businesses should have the burden of providing evidence, solid evidence, that small businesses are liable before demanding cash settlements.

It is hard to think of anything in Congress that has been more open and public than Superfund reform. Protections for innocent parties in H.R. 5175, including de micromis relief, relief for ordinary garbage, and expedited settlements, were included in both H.R. 2580 and H.R. 1300, the broader bipartisan Superfund bills reported this Congress from the Committees on Commerce and Transportation and Infrastructure, respectively.

As chairman of the Subcommittee on Finance and Hazardous Materials, I have personally conducted 6 years of Superfund hearings. In fact, in just the House alone, there have been a combined 46 hearings on Superfund with testimony from 416 witnesses. At those hearings we have heard the administration, environmentalists, and businesses all tell us that innocent small businesses were never meant to be in Superfund in the first place. I am entering some of these statements into the RECORD.

□ 1700

Mr. Speaker, even in the last few weeks, to accommodate concerns about the legislation, we have met with the EPA and others and redrafted the legislation to address their concerns. The

bill on the floor today reflects those changes.

While it is unfortunate that EPA does not yet support the legislation, the fact remains that we have gone way above and beyond the call of duty in trying to address concerns raised, and we have asked repeatedly for any specific written proposals to address outstanding concerns with the legislation, but received nothing.

For thousands of small business owners across America who have already been dragged into litigation or forced to pay cash settlements for legally putting out their trash, this bill most likely comes too late. But in just the last 7 days, we have received letters, faxes and e-mails from small business owners around the country who need our help. This is an example of some of the letters we have received just over the last week.

Mr. Speaker, I would ask Members to please join me and other bipartisan cosponsors today in saying enough is enough, and let us pass this narrowly targeted Small Business Liability Relief Act so these other innocent small businesses can be spared the litigation nightmare that has already befallen so many.

Mr. Speaker, I include the following for the RECORD.

SUPERFUND IS A SMALL BUSINESS LITIGATION NIGHTMARE

FOR THE RECORD: WHAT THEY'VE SAID
Environmental Protection Agency

"If you are a small business, if you sent garbage, like the stuff you and I put out every Monday evening for the garbage company to pick up, you should never hear the word Superfund. I think there is not a person up here who doesn't agree with that. We have worked hard within the current law to protect these small parties, but we cannot do it without a fix in the law in the way that we all agree it needs to be done."—Testimony of Carol Browner, EPA Administrator, before the Water Resources and Environment Subcommittee, May 12, 1999

"We have tried to solve the problem of the little people from day one. The owner of the diner who sends mashed potatoes to the local dump should not have to worry about being sued by large corporate polluters who are responsible for the contamination of that site. Innocent landowners, churches, Girl Scout troops, small storefront businesses should not have to wonder if they will find themselves brought into the Superfund net by large corporate polluters.

"Unfortunately, this is what happens; this is what has happened; and this is what will continue to happen if we don't rewrite this law. It is a tragedy. It is wrong. It is a flaw in the current law. We have to fix it."—Testimony of Carol Browner, EPA Administrator, before the Water Resources and Environment Subcommittee, October 29, 1997

Environmentalists

"It is inefficient to sue a bunch of companies that will clearly be unable to make any significant contribution to cleanup costs; doing so merely increases transaction costs for all concerned without providing funds for actual cleanup, and leads to delays in decisionmaking."—Testimony of Karen Florini, Senior Attorney, Environmental Defense

Fund, before the Water Resources and Environmental Subcommittee, October 29, 1997

"We agree that many small businesses and minimal waste contributors have been unfairly subjected to harassment under the CERCLA statute. . . . We suggest an exemption for parties who only contributed household-type wastes to sites, liability waivers for those who only sent tiny amounts of hazardous materials to a site—that is, de micromis contributors—and aggressive settlements with parties who sent small amounts of hazardous substances to a site but still have some ability to pay toward cleanup—this is, de minimis contributors."—Testimony of Jacqueline Hamilton, Senior Project Attorney, Natural Resources Defense Council, before the Water Resources and Environment Subcommittee, April 10, 1997

"NWF also has heard the concerns of people who only have tangential ties to a Superfund site. These mom and pop entities, often cited as de micromis parties, deserve relief from the system."—Testimony of Patricia Williams, Counsel and Legislative Representative, National Wildlife Federation, before the Water Resources and Environment Subcommittee, June 21, 1995

Small businesses

"For my company it started on February 10, 1999 when we received a letter in the mail from the EPA that stated 6 large local corporations and the city were looking to recover some of their costs for the cleanup of our local landfill. Even though the majority of what we had hauled there was only trash and legally disposed of at the time, the EPA said . . . we were potentially responsible for paying our proportional share of that cleanup.

"When I read the letter, I felt sick. For me and the 148 other companies that received the letter, it was unexpected and without warning . . . It was asking us, as small companies to 'contribute' 3.1 million dollars . . .

" . . . the EPA sent one of their attorneys . . . Many people stood up and pleaded their situations and how unfair and un-American this whole situation was. He admitted to everyone that the law was probably unfair and very harsh . . . he couldn't do anything about its unfairness . . . he said that it was all he had to work with."—Testimony of Mike Nobis, JK Creative Printers before the Subcommittee on Finance and Hazardous Materials, September 22, 1999

"Even those who paid their assessments can't put the situation behind them . . . different agencies could come after them for additional money . . . 'By paying, I thought we had closure, says Eldor Hadler, whose truck dealership was assessed \$46,000. He recently sold his business to his son and another partner . . . 'There's a dark cloud hanging over the business,' he says, 'They could come back any time'."

"The fight continues for Greg Shierling . . . He was in grade school in the '60s and '70s when his parents hired [a trash disposal company] to take away the garbage from their McDonald's . . . Shierling took over the business from his parents in 1996 and was dumbfounded when he got the letter from the EPA in 1999 telling him he was a polluter to the tune of \$65,000. Shock turned to defiance, and he's refusing to settle—even though the feds reduced his fine to \$47,000.

Meanwhile, Shierling is paying \$4,000 a month in legal bills and faces a six figure judgement if he loses. He has been forced to lay off two longtime employees, and says his parents are drawing on their retirement money to help him and his wife support their two young children. Firing loyal workers

was one of the hardest things he's ever had to do, he says. He had written a prepared script to help him maintain his composure, but he says he burst into tears any way. Yet he refuses to buckle under. "I just couldn't feel good about saying, 'I'm sorry, here's \$47,000, I'm out' . . ."

"Many of those who settle still seethe about the situation . . . Pat McClean . . . was hit for \$21,900. He says his trash consisted of chicken bones, potato peelings and soiled napkins. He thought about fighting, but he was demoralized by a recent divorce. McClean is a weekend biker who likens the assessment to a shakedown. 'Paying that \$21,900 was like buying a brand new Harley, loading it up with chrome, and handing it over to the EPA' he says."—From "Unintended Victims" by Eric Berkman, *Fortune* Small Business, July/August 2000

"Most of the cost contributed by our companies to this site didn't clean one ounce of the landfill . . . Of all the money spent, the attorneys received the most . . . It has been reported in our local newspaper that the EPA and the major [potentially responsible parties] PRP's are now suing many of these companies who didn't settle, resulting in more business for the attorneys. As I understand it, these companies will be allowed in later months to bring third party lawsuits. Where will it end? I do not think the law's intent is to place hardships on small business when the ultimate winners are the attorneys, not the environment.

"Who were the companies forced to pay this settlement . . . Some are people in their retirement years. Some are widows whose husbands passed away and they now have this settlement to deal with. Some are sons whose fathers once owned the business and now, years later, they have inherited the problem

" . . . Mothers and fathers would have been reluctant to pass a family business—and its liability—to the next generation. We have some men in their late 70's and early 80's that could lose their life's savings when they should be enjoying their retirement years. They are spending their time and money paying the EPA for something they did 25 years ago that was legal . . .

" . . . It is needless business pressures like this that destroy small businesses and cause undue pain and hardship. Victimized small business is not going to help speed the cleanup of Superfund sites." Testimony of Mike Nobis, JK Creative Printers before the Subcommittee on Finance and Hazardous Materials, September 22, 1999

"When examining the few sites that have been cleaned up, the costs associated with such cleanups, coupled with the staggering amount of money that has gone directly to lawyers' coffers, it's easy to see that the fault and liability system currently in Superfund is flawed. Congress may have envisioned a system that would only catch the few, large, intentional or irresponsible polluters, however, the reality has been very different.

" . . . The effect of the current liability system is permeating all segments of the small business community. No issue in this very complex public policy debate will have a more direct impact on the present and future economic viability of many small businesses . . . There isn't one segment whether it be a retail store, a professional service business, or a construction business that has not been touched."—Statement for the Record by National Federation of Independent Business (NFIB), for the Subcommittee on Superfund, Waste Control & Risk Assessment, Senate

Committee on the Environment and Public Works, March 5, 1997

"I am a fourth party defendant in the Keystone Superfund lawsuit. I have been sued by my friends and neighbors. Why did they do this? Upon the advice of attorneys bringing others into the suit, this was the only way they could lessen the amount of their settlements . . . I am being sued for \$76,253.71 . . .

This legal action has angered, depressed and confused me . . . I obeyed, State, local and Federal regulations. Being forced to defend myself is a travesty of justice. Being forced to pay this settlement would be devastating to my business. Has anyone considered the effect on my employees and their families. Has anyone considered the effect on our community? . . . What is the Superfund law accomplishing? The attorneys are making a fortune, small businesses are unfairly burdened, and the contamination still isn't cleaned up."—Statement of Barbara A. Williams, former owner, Sunny Ray Restaurant, Gettysburg, PA, before the Senate Committee on Environment and Public Works, April 23, 1996

"In October 1997, you and I were featured in a '60 Minutes' segment on how the Superfund law unfairly victimizes small-business owners. Since that time you have moved to Washington and I have sold my business. While I congratulate you on your recent appointment as the number two official at the U.S. Environmental Protection Agency, I have not been as fortunate. The sale of my business (Sunny Ray Restaurant) was hampered by the liability forced upon me by the Superfund law. I remain personally liable in the ongoing litigation related to the Keystone Landfill Superfund site. While you and I have publicly agreed that this is a gross miscarriage of justice, the law remains unchanged . . . It will soon be five years since I was brought into this lawsuit. Isn't it time for it to end? Please . . . —Letter from Barbara A. Williams to Michael McCabe, Deputy Administrator of EPA, August 24, 2000.

Mr. Speaker, I reserve the balance of my time.

Mr. TOWNS. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I rise in strong opposition to this bill. In this body, we normally consider noncontroversial bills on the suspension calendar. Let me assure you, there is a lot of controversy around this bill, as well as confusion and even misrepresentation associated with the bill.

I have letters from the administrator of the Environmental Protection Agency, the Business Roundtable, the New York Attorney General and various environmental groups opposing this bill.

Mr. Speaker, there is opposition to this bill; yet the proponents of this bill would have you believe otherwise. I suppose anyone could get confused, since many of us on both sides of the aisle have agreed for years that clarification of Superfund liability for small businesses and small contributors to the cost of cleanup is a mutually desirable goal. However, while we may have widespread agreement on the goal, we certainly do not have agreement on H.R. 5175.

As my colleagues know, I have been a proponent of Superfund reform. Despite my often-stated willingness to work on

this issue, my colleagues introduced H.R. 5175 without any discussion with this side and did not follow the normal committee process for consideration of legislation. This bill was already scheduled for consideration on this suspension calendar when my staff was first invited to provide our concerns about the bill.

Unfortunately, the proponents of the bill have chosen to ignore some of our most significant concerns, as well as our suggestions to postpone floor consideration in order to continue our discussion. We want to work with you, but you must give us an opportunity to do so.

Given this rush, this closed-door, back-door, whatever process they use, I am not surprised that there are mistakes and problems with this bill. New York Attorney General Spitzer, whom I have great respect for, writes that "many companies and individuals who knowingly violated hazardous waste laws would receive exemptions from liability."

I agree with the attorney general that deliberate violators of environmental laws should not be excused from liability, and I believe we should make certain this bill does not produce such results.

The attorney general fears that "hundreds of millions of dollars in costs would be shifted from responsible parties to the State and Federal taxpayers." I am very concerned about these statements, especially coming from the primary enforcing authority of our environmental laws in New York.

Mr. Speaker, at the risk of sounding like a broken record, I will once again reach out to my colleagues and ask that we work together in a bipartisan and consensus fashion to craft a bill that is truly noncontroversial and ripe for consideration on the suspension calendar. Unfortunately, this bill is not.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 4½ minutes to the gentleman from New York (Mr. BOEHLERT), who has been such a leader on this critical issue.

Mr. BOEHLERT. Mr. Speaker, H.R. 5175 will end Superfund litigation for the overwhelming number of small businesses across America. That is what we are here about.

As most of my colleagues know, I am a very strong proponent of Superfund reform. Superfund remains a program with flaws, flaws that need to be corrected. This is not to say that changes have not been made, adjustments have not been made, that some progress has not been made; but we need to correct the flaws, and exempting small business is one of the most glaring flaws in the whole bill.

My Subcommittee on Water Resources and Environment have held 13 hearings on the Superfund program. I

have heard from dozens of witnesses from small businesses one horror story after another. Let me give you an example.

Mr. Lefelar testified before us. He owns Clifton Adhesive. He was brought into litigation in the GEMS Superfund case in New Jersey because his company's name was written on a ticket for a toll bridge that a waste hauler had in his records. That was it, one toll bridge ticket from 1974. He had no records from 1974 to prove that he did not send waste to the GEMS site, so he was stuck in litigation for 8 years and spent \$450,000 in legal fees.

Here is what he told the committee: "The pressure was unbelievable for me. Hundreds of thousands of dollars were being mentioned, possible litigation personally, lifetime personal assets were at risk, loss of home. I was really becoming desperate at this time. About 3 years into this suit, I had to take a look at how much more money we could expend, and we were teetering, actually, it drove us to teetering on the brink of bankruptcy, and here is a company that had been operating since 1945."

Do you know why it was brought into the scheme? Because of one toll ticket.

I have heard from the environmental community. Let me tell you what the NRDC said: "We suggest an exemption for parties who only contributed household-type waste to sites, liability waivers for those who only sent tiny amounts of hazardous materials to a site, that is, de micromis contributors, and aggressive settlements with parties who sent small amounts of hazardous substances to a site, but still have some ability to pay toward cleanup, that is de minimis contributors."

That is what the environmental community said. I agreed with them then; I agree with them now.

Administrator Browner, here is what she said last year: "If you are a small business, if you sent garbage, like the stuff you and I put out every Monday evening," it is Wednesday with me, "for the garbage company to pick up, you should never hear the word Superfund. I think there is not a person up here who does not agree with that." So said Administrator Browner. I agreed with her then; I agree with her now.

Let me tell you, I feel particularly close to the environmental community. I am proud of that affiliation. The Sierra Club and the League of Conservation Voters, sent a letter on the 21st of September outlining some concerns. I would like to be responsive to their concerns, because I think that they are responsible organizations for the most part.

First the LCV letter sent on the 21st of September claims that H.R. 5175, as introduced, could relieve liability for more than small businesses because it did not specify that the employees and revenues of the parent corporations or

subsidiaries or affiliates are considered when determining whether a business is small. That is a legitimate concern. The authors of H.R. 5175 never intended to include parents or the big guys. In short, the problem is fixed by this bill.

Second, the LCV letter addresses other concerns that LCV has in the letter. Let me report that the gentleman from Ohio (Mr. OXLEY) and I with our Democrat colleagues, on a bipartisan basis, addressed those concerns and remediated them.

It is time to get the small businesses all across America out of this litigation quagmire. It just is not fair to them, and it is not fair to us to argue on this floor about policy supposedly, when it is really politics below the surface that is driving the opposition.

Mr. TOWNS. Mr. Speaker, I yield 3¼ minutes to the gentleman from Pennsylvania (Mr. BORSKI).

Mr. BORSKI. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in opposition to H.R. 5175, the Small Business Liability Relief Act. For years now, Members on both sides of the aisle and the administration have been talking about taking certain individuals and truly small businesses out of the Superfund debate.

Since 1994, there has been little disagreement that people who sent garbage to a landfill were unintended targets of the Superfund law. The question has not been whether we should provide liability relief. The question has always been how, and, secondly, who should be eligible.

On the Committee on Transportation and Infrastructure under the leadership of our subcommittee chairman, the gentleman from New York (Mr. BOEHLERT), we worked to resolve this issue in what we believed was a fair and equitable solution to the problems of small business liability under Superfund.

This agreement was included in the legislation that was approved by our committee last summer with overwhelmingly bipartisan support. Unfortunately, no further action has occurred on that bill.

Mr. Speaker, that agreement is not represented in this legislation. In their zeal to pass smaller pieces of the broader Superfund reforms, the proponents of this legislation have chosen instead to grant a blanket absolution for many small businesses from Superfund liability, effectively tying the hands of government in its efforts to prosecute the polluters and shifting the cost of cleanup to the other parties at a site.

This bill would turn U.S. jurisprudence relating to Superfund on its head by shifting the burden of proof from the party seeking the exemption from liability to the Federal Government. Under this bill, the government would have the burden of establishing that a small business was not entitled to ex-

emption because it shipped more than an allowable amount of toxic waste. Remember, this is toxic waste, not harmless trash.

If the government cannot meet this burden, the small business would be exempt from liability, regardless of how toxic the materials they sent for disposal or the threat to human health and the environment from their actions.

The government's burden under this legislation is made even more difficult because the information that the Environmental Protection Agency or the Department of Justice would need to meet this burden is held by the small business, with little incentive for those who would otherwise be liable to turn over such information to the government.

Mr. Speaker, providing liability relief for small business should not be a partisan issue.

Unfortunately, this legislation was developed and drafted without the participation of Democratic leadership of either the Committee on Transportation and Infrastructure or the Committee on Commerce. In fact, the only bipartisan conversations scheduled on this bill were under the condition that, regardless of the outcome, the bill would remain on today's suspension calendar. This is not a way to draft legislation on a subject that, at least in concept, could have the support of all the principal parties involved in the Superfund debate. Also, this is not the way the issues are traditionally handled by the Committee on Transportation and Infrastructure.

Despite major disagreements on issues, including Superfund reform, under the leadership of our chairman, the gentleman from Pennsylvania (Mr. SHUSTER), and our ranking member, the gentleman from Minnesota (Mr. OBERSTAR), we have been able to bridge the gap and work together in drafting good, bipartisan legislation. It has been this commitment to work together that has made our committee effective in reaching consensus on difficult issues. That has not been the case with this legislation.

Mr. Speaker, I urge a no vote on this bill.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. SHIMKUS).

Mr. SHIMKUS. Mr. Speaker, my citizens and colleagues and friends in Quincy, Illinois, will not believe this debate, because I want to share with you the story that they have been through.

Nearly 8 years after the landfill closed, the city landfill in Quincy, Illinois, the site was placed on the Superfund National Priorities list and the EPA began working with the city and several large waste contributors to clean up the site.

This is where the proposed order comes into play. Superfund allows EPA

and other potential responsible parties to seek contributions from innocent small businesses to pay for the clean-up.

□ 1715

In Quincy that equals \$3 million from 159 small businesses averaging \$160,000 per business. The EPA asked Quincy bowling alleys, dairy farms and family-owned restaurants to pay as much as \$160,000 per business, despite the fact that these businesses did nothing wrong.

For some small businesses, the amounts they are being asked to pay will mean the difference between breaking even or losing money. Simply put, the current law is costing hard-working American citizens their jobs and their livelihood.

Quincy, Illinois and Gettysburg, Pennsylvania, have been two Superfund sites that we find in the media. However, those two litigation nightmares could happen in any of these Superfund landfills across the United States:

Boaz, Alabama; Alviso, California; Bridgeton, Missouri; Ackerman, Mississippi; Texas City, Texas; Jacksonville, Florida; Wheatcroft, Kentucky; Charleston, West Virginia; Hominy, Oklahoma; Browning, Montana.

Mr. Speaker, I say to my colleagues that their time will come. Their small businesses will be hit by this litigation nightmare and they will close their doors to pay their fees. For this reason I ask this House to support H.R. 5175 and provide relief for the "Mom and Pop" businesses across this Nation.

Mr. TOWNS. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, I rise in strong opposition to this bill. It was only introduced 10 days ago. Copies of the legislation have never been made available to the minority, because the bill has been changed significantly between the time it was introduced and between the time that we are now considering it.

No hearings have been heard. No one has been able to comment efficiently on this. There have been no comments requested from the administration or any other interested parties.

Now, I, like my colleagues on this side of the aisle, favor proper legislation that would establish an exemption from Superfund liability for any person or company, large or small, if they could establish that they sent only a small amount of toxic waste to a site. We have followed established precedents and put the burden on persons who had the facts and records available to show that the toxic waste they sent was less than a threshold amount. That is the proper way. That is how it should be done.

In short, then, the person seeking the benefit from that exemption must demonstrate that he or she qualifies for the

exemption. That is how it should be for toxic waste such as dioxins, PCBs, and other noxious and harmful materials.

The legislation before us, unseen, unheard by any committee of this body, turns legal precedents on their head. It creates incentive for businesses or entities to destroy or lose records, or to engage in other rascality, to achieve a preference at the expense of all of the American people. As a result, the other parties at the site, the State or the Federal Government, would have to bear clean-up costs under this legislation, whether the person who was getting the exemption on the basis of a burden imposed upon the Federal Government has achieved a relief from the requirements of law.

This is, I think, why the Business Roundtable, the Justice Department, the Environmental Protection Agency, the entire environmental community and the New York Attorney General have written in opposition to this legislation. They know that it is neither fair nor proper and they know that it has not been properly heard by any committee of the Congress, and no person has been invited to appear here before us to tell us the facts with regard to this legislation.

The legislation is not the legislation which was introduced. The only thing that has been presented to the minority is this curious document, which is not the document which is before us, but which is somewhat changed. This is the way in which we achieve a bad reputation for this body, by bringing legislation to this Congress which is not properly heard and without proper opportunity for consultation or careful consideration.

Mr. Speaker, as I mentioned, it is opposed by almost everyone who has had the opportunity to view it: The League of Conservation Voters, the Business Roundtable, the U.S. Environmental Protection Agency, the U.S. Department of Justice, the Attorney General of the State of New York, the Sierra Club, the Natural Resources Defense Council, Clean Water Action, Friends of the Earth, Environmental Defense all oppose this, both because of the procedure and because of the unfair and improper substance.

Mr. OXLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. GOODLING), who has a very interesting and poignant story about the problems of Superfund.

Mr. GOODLING. Mr. Speaker, I just want to say to my colleagues that I hope none will ever have to go through what I have gone through during the last 8 years, I have had to sit there idly because there was nothing I could do and watch 700 small businesses lose their livelihood. Why did they lose their livelihood? For doing exactly what the State and local government said they had to do with their waste: Put it in the landfill.

The restaurants put the same thing in the landfill that my colleagues and I put in the landfill every day. The wastes from our tables. But yet they have had to go out of business. Why? They have had to pay lawyers day after day after day. They got swept into this because the biggies, first of all, the owner decided that he would get the next eight. And the next eight big contributors to the landfill decided they will get the other 700, who had to do exactly what they did.

So I would hope that this legislation, which will not help my people, it is too late for my people, but I sure hope that none of my colleagues will have to go through what I have had to go through during the last 8 years watching 700 small businesses being put out of business simply because they did what they were instructed to do and what the law told them they had to do.

Mr. TOWNS. Mr. Speaker, I yield 3 minutes to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman from New York (Mr. TOWNS) for yielding me this time.

Mr. Speaker, this is a bad bill developed through a bad process, and ought to be badly defeated. It has a disarming title: Small Business Liability Relief. But it is nothing other than a wolf in sheep's clothing.

It relieves large businesses of the responsibility for cleanup of toxic wastes such as dioxin, PCBs, nerve gas, by simply letting them include those substances in their trash. That is an egregious circumvention of the Superfund law.

It puts at risk the health and welfare of the public in order to give oil, chemical and other industries a windfall benefit. Our Committee on Transportation and Infrastructure worked for 6 years to develop a bipartisan bill that could have broad support. We reported that bill out by a vote of 69 to 2. It may not be perfect, but it reflects good faith and hard work. This bill does not.

Our bill addressed responsible liability relief for small businesses and makes the liability system more flexible and fair for all parties. This bill does not. The key element of our bill was that it was paid for. It called for the reinstatement of Superfund taxes, guaranteeing cleanup for the next 8 years. This bill creates a favored class of businesses, absolves them of liability, and leaves it up to taxpayers and other parties to pick up the tab.

Since the Superfund taxes expired in 1995, oil, chemical and other industries have enjoyed a \$4 million a day tax break, a tax holiday from the refusal to reinstate taxes to pay for Superfund cleanups. They have saved over \$6 billion. As the gentleman from Ohio has said, enough indeed is enough.

Mr. Speaker, the majority's refusal to reinstate Superfund taxes is shifting the cost of cleanup on to the taxpayer

and States who are footing that bill. This year alone half of the nearly \$1.5 billion in Superfund costs was taken from general revenues. We are borrowing from the future, our surplus, in order to provide a \$4 million a day tax break for America's biggest polluters. That is wrong.

We ought to be addressing all of Superfund's needs instead of this flawed legislation. We ought to vote "no" on this bad bill.

Mr. OXLEY. Mr. Speaker, could I inquire as to the time remaining?

The SPEAKER pro tempore (Mr. ISAKSON). The gentleman from Ohio (Mr. OXLEY) has 7 minutes remaining, and the gentleman from New York (Mr. TOWNS) has 8 minutes remaining.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. STENHOLM).

Mr. STENHOLM. Mr. Speaker, I rise in support of this good bill developed under a less-than-perfect process for a much, much-needed solution. Much-needed relief to individuals, families, and small businesses that have been unfairly trapped in the litigation nightmare of the Superfund program for the crime of sending ordinary garbage to their local landfill.

It is needless business pressures like this that cause undue pain and hardship for small business. Furthermore, victimizing small business is not going to speed the cleanup of Superfund sites.

This bill will put an end to the current Superfund philosophy that treats small business owners as "guilty until they prove themselves innocent." H.R. 5175 ensures that small business owners are considered innocent until it can be proven they are liable. Furthermore, this legislation limits frivolous lawsuits. A small business' legal fees can be recovered if a small business is wrongly accused of contributing to a Superfund site.

In the end, H.R. 5175 fairly shifts the burden of proof, discourages abusive litigation, and finally focuses resources on the actual cleanup of toxic sites. Granted, broader Superfund reform is sorely needed. But small business liability relief simply cannot wait any longer.

The Environmental Protection Agency has said on a number of occasions that it supports efforts that will fix the Superfund law so it targets real polluters and not innocent small businesses. The delicate fabric compromise between the industry and environmentalists have helped advance the bipartisan Small Business Liability Relief Act, further paving the way to common ground.

All of this being said, with the methods that we have gotten here today, I support this consensus legislation that has been enthusiastically endorsed by the National Federation of Independent Business in order to help rescue innocent small businesses from the Superfund liability trap. With so many

points of consensus covered under H.R. 5175 and strong bipartisan support, I am hopeful that my fellow colleagues will join me in passing this measure, marking an end to this unfair system and freeing small business owners from unnecessary liability.

Mr. TOWNS. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. STUPAK.)

Mr. STUPAK. Mr. Speaker, I rise in opposition to this bill. As a Member who sits on the Committee on Commerce, I have expressed interest during numerous committee hearings in clarifying the liability for small businesses under Superfund law.

In 1997, I introduced H.R. 2485, along with the gentleman from Pennsylvania (Mr. GOODLING), the gentleman from Colorado (Mr. HEFLEY), and Mr. McHale. In 1999, I introduced H.R. 2940. Both of these bills contained provisions that clarify liability for small businesses. Both of these bills would have provided the relief for Barbara Williams of the Keystone Landfill, as well as other similarly situated small businesses. But for years these bills have languished while my majority colleagues held small business hostage to large, cumbersome, and very controversial Superfund bills.

Now in the closing days of this session, and coincidentally close to the elections, my majority colleagues have introduced and simultaneously scheduled this bill for floor action. Yes, we have had hearings on various Superfund bills in committee, but we have not ever examined this bill. We have never had a hearing. We have never had a markup.

In fact, even since its introduction 10 days ago, this bill has been a moving target. Late last night, the NFIB was calling committee staff proposing additional changes to the bill, yet they refused to postpone the vote on this bill even for a week so that discussions could take place and Members could be informed.

Mr. Speaker, unfortunately, we have a product today that none of us are familiar with and that is opposed by the administration, majority environmental groups like Clean Water Action, the Association of Trial Lawyers of America, and the Business Roundtable.

I ask my colleagues are we playing politics or are we serious about enacting a public law that effectuates good public policy? Let us at least have a chance to review the bill. Democrats would like to have a bill to give greater relief for small businesses, the American Legion, and any other innocent contributor to a landfill. But we must reject this bill as it is being brought to the floor today.

Mr. Speaker, I urge my colleagues to vote "no" on this bill.

Mr. OXLEY. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. BOEHLERT).

Mr. BOEHLERT. Mr. Speaker, it has been said several times on the floor that we have had no hearings. That is absolutely ludicrous. Year after year in the Committee on Commerce and in the Committee on Transportation and Infrastructure, we have had hearings. Extensive hearings. Hours and hours and hours and hours of hearings. Dozens of witnesses, one after another. And all from the small business community have said the same thing repeatedly: Get us out of this litigation quagmire. It just is not fair.

We are talking about somebody from Pennsylvania being in the litigation scheme because she sent mashed potatoes to a landfill. We are talking about someone in New York, a small business, being in this litigation quagmire because the small business sent an empty pizza box to the landfill.

□ 1730

That is absolutely scandalous. What this is all about, when all is said and done, it is about pure politics trying to trump responsible public policy.

There are those fortunately in the minority in numbers who do not want this Congress to do anything constructive this close to legislation. There are those of us from both parties who fortunately will make the majority, when the vote is taken, who are concentrating on shaping responsible public policy, because we are convinced in the final analysis that Republicans and Democrats alike will gain from shaping public policy in a responsible way.

Mr. Speaker, I would suggest that exempting small businesses under very strict conditions is responsible public policy. Guess what? That is what the administration says it wants to do; that is what the administrator of EPA says what it wants to do; that is what environmental groups want to do; that is what we want to do; and that is what my colleagues should want to do.

This is responsible action to deal with a very legitimate problem in a very responsible way.

Mr. TOWNS. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, first of all, there have been a lot of hearings on Superfund; there have been a lot of hearings on a lot of issues. We admit that. There just have not been any hearings on this bill. Nobody has any idea what is in this bill. This is a little process put together, a secret process. We were not told that there were going to be meetings. We had no ideas which rooms to go to. So the Democrats were not allowed in the room. So it is their own bill.

There were no hearings on it. They do not want to have this bill to have to withstand the scrutiny of public examination, so they just bring it in here today and they say they support taking care of small businesses. Well, we all

support taking care of small businesses, we do. That is not the debate here.

The real issue is, by reforming Superfund, by passing this bill, it is a lot like losing weight by swallowing a tapeworm. Yeah, you will get the desired results, but you are going to have a host of additional problems as well. My colleagues are not willing to let everybody here talk about it in public.

Let me go down a few of the things that are wrong with it in our cursory examination of it. The idea is to get these small companies out of the clean-up process who have only contributed a small amount of toxic waste, but the problem with the bill is, they put the burden on the States and on the Federal Government. They do not have the records. The little companies do.

The little companies should come in with the records to get themselves out of trouble; otherwise we are not going to know if some of these little companies did some bad things, but at least they should have the responsibility of bringing all of the information in.

As well it is going to spawn more litigation, rather than less, because it reopens already decided administrative hearings. By the way, my colleagues have done an amazing job. My colleagues have the EPA and the environmental groups and the Business Roundtable all opposed to it. That is an impossible triple. That is the 1-7-10 split in bowling.

My colleagues cannot get the Business Roundtable and the environmentalists opposed to a bill; it is impossible. What my colleagues have done is created a toxic combination of bad policy and bad procedures which contaminate the House procedures, the whole House, because Democrats are not allowed in the room.

Mr. Speaker, the only way to clean up the mess is to defeat the bill out here on the House floor this evening.

Mr. TOWNS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, let us be real here. We are not talking about people who send their mashed potatoes or their parking stubs to a garbage site. Everyone in this room and everyone in the Congress shares the same goal, of giving relief to bona fide small businesses who are unfairly targeted in Superfund cleanups.

Mr. Speaker, in fact, as we have heard, there are several excellent bills pending which would achieve this goal, but this bill is filled with corporate loopholes big enough to drive a fleet of garbage trucks through. It is naive to think that by slapping the small business label on this title of legislation Congress would pass a bill that fails to provide real Superfund reform and jeopardizes toxic waste cleanup.

Mr. Speaker, I hope the Members see through this and work to pass legislation that will protect individuals and

communities, not corporate interests. This legislation, first of all, applies to businesses of 100 employees without consideration of affiliation and not true small businesses whose contributions to the site are small and the costs of cleanup not significant.

This bill also reverses years of U.S. jurisprudence by shifting the burden for the potential wrongdoing from the wrongdoer to the government.

Mr. Speaker, this big business giveaway is likely to span new litigation and reopen long-closed Superfund cases in an attempt to absolve big business of its responsibility to clean up the toxic messes that it created. It creates incentives for corporate cover-ups so that businesses can hide their responsibility and avoid paying to clean up the contamination. Let us really get serious here.

It is time to pass real Superfund reform that protects true small businesses and communities by assuring that responsible parties clean up their toxic waste. Vote no on H.R. 5175.

Mr. TOWNS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I rise in opposition to the bill as a member of the Committee on Commerce. I am outraged that we were not able to have any kind of hearings.

Mr. Speaker, I am disturbed that we are here today to vote on H.R. 5175, the Small Business Liability Relief Act. I serve on the Commerce Committee and the relevant subcommittee and I have not seen this bill in a mark-up as of yet. We all want liability relief for small businesses. No one wants to burden small business with the tumultuous process of determining responsible parties of a hazardous waste site.

The bill before us addresses some real concerns but we have not had the time to deliberate some of the more contentious issues. The bill provides blanket immunity for businesses under 100 employees. These are hardly small businesses and in some cases these companies could be the main polluter. In fact, the ambiguous language creates loopholes that would effectually exempt large businesses from paying their share for polluting a particular site. It puts the burden back on taxpayers to cover cleanup costs. The EPA, opposes the bill, the New York Attorney General opposes the bill, and I oppose the bill and urge my colleagues to vote no on H.R. 5175.

Mr. TOWNS. Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Speaker, let me address one of the consequences of this bill, which I hope is unintended but would nevertheless occur. Many of the hazardous waste sites in New York, for example, and in many other States particularly up and down the Eastern Seaboard, were caused or created in whole or in part by small business which are nevertheless controlled by organized crime. We have organized crime dumpers who have been responsible for most

of the toxic waste dump sites in the State of New York and in a number of other places up and down the Eastern Seaboard.

This legislation I hope unintentionally would exempt those organized crime cartels who are in many cases the sources of the contamination and who are in almost all cases at least substantially in part responsible for transporting the waste from its places of origin to its place of rest, at least temporary rest, in these toxic and hazardous waste dump sites.

This is a bad bill. It is bad and these bad provisions are there, largely because it has not had the opportunity to be examined and to be seen in its true light. So let us see it for what it is and defeat it because of what it is.

Mr. TOWNS. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, let me say there is no question about it that we have not seen this bill on this side of the aisle; and, of course, if we ask the 435 Members of this body have they seen it, I am certain that about 85 percent to 90 percent of them would say no, we have not seen it. So I think that to legislate in this fashion is not the way to go.

This is a very serious issue, very serious matter; and when we look at the people that are against this legislation, I think that is enough to bring about some kind of reservation and pause on the other side of the aisle to say maybe we should stop at this point and do it right. I think when we look at the fact that the Physicians for Social Responsibility, they are against this. The United States Public Interest Research Group, they are against it. And, of course, Friends of the Earth and we can go on and on, Environmental Defense and Clean Water Act Action, they are all against it in the Sierra Club, and the list goes on and on and on. I do not think that we should do this this kind of way.

I mean, why should we do it in a closed-door kind of thing? Why do we not open up the process and let us deliberate it and see if we cannot come out with something that is really going to make a difference. I hope that my colleagues would look at that; and then if not, then I will ask our friends who are concerned about small businesses to vote no. This is not it.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me thank the gentleman for the way you have conducted this debate, and I appreciate my friends on the other side of the aisle.

Let me, first of all say, this issue to the Members on the Committee on Transportation and Infrastructure and to the Committee on Commerce is not a new issue. Lord, we have had hundreds of witnesses, scores of hearings, discussions about this.

We have had a bipartisan effort on many occasions, many of the provi-

sions that were in H.R. 2580 and H.R. 1300. Bills that passed both the Committee on Transportation and Infrastructure and to the Committee on Commerce are part and parcel of this small business bill, and I would not be here today if we had not been frustrated by the fact that we are not able to get a comprehensive Superfund reform bill passed.

But in the meantime, the small business owners, the people who suffer, the Barbara Williams in Gettysburg, Pennsylvania, sued for \$56,000 for sending chicken bones to the local dump, to the Keystone Dump. Those are the people that are suffering day after day after day.

There is not an individual that was on the Committee on Transportation and Infrastructure or the Committee on Commerce that can stand here and say with any certainty that they did not know what was in this bill or we have not discussed this bill, time and time again in this Congress and any other Congress.

I understand when my colleagues do not have an argument on the substance, my colleagues can talk about the process; but this process has been a good one. We have been working with the EPA over the last several weeks in trying to craft a bill; and, in fact, we only got to one issue that was a critical issue, that was a burden-of-proof issue.

Apparently, my friends on the other side of the aisle cannot quite understand that we think that the burden of proof ought to be on the Federal Government, not on some innocent, small business man who is trying to make a living who is sending chicken bones to the dump.

My friend, the gentleman from Minnesota (Mr. OBERSTAR), talked about an interesting theory that somehow a small business man would mix dioxins with the chicken bones to make some kind of salad to send to the dump. How preposterous is that? In fact, the burden of proof even under his proposal would be on the small businessman to show that he did not do that. It gives us an idea about where we have come in this debate.

This is a bipartisan piece of legislation. We have a number of Members on here from the other side of the aisle, the gentleman from Michigan (Mr. BARCIA), the gentleman from Alabama (Mr. CRAMER), the gentleman from Pennsylvania (Mr. HOLDEN), the gentleman from Texas (Mr. STENHOLM), the gentleman from California (Mr. CONDIT), the gentleman from Illinois (Mr. LIPINSKI), the gentleman from Indiana (Mr. ROEMER), the gentleman from Mississippi (Mr. SHOWS), the gentleman from California (Mr. BACA), the gentlewoman from Missouri (Ms. DANNER), the gentleman from Texas (Mr. TURNER), the gentleman from Georgia (Mr. BISHOP), the gentleman from

North Carolina (Mr. McINTYRE), and the gentleman from Texas (Mr. SANDLIN) all responding to small business concerns in their particular congressional districts that have told them they are getting tired of getting ripped off by Superfund, they are getting tired of being ripped off by a program that does not work and costs them money and threatens to put them out of work. I think that is a shame.

Mr. Speaker, we have an opportunity to strike a blow for small business. Let me remind the Members, both here and listening and watching on television, this is an NFIB key vote, NFIB key vote. That is, how Members vote on this legislation will be determined by all of the small businesses in your particular districts. I would ask that they pay attention to that and understand this is critical to the small business survival. Let us not make Superfund the enemy of small business. Let us, Congress, step ahead and save the day on Superfund reform as it relates to small business.

Mr. BLUMENAUER. Mr. Speaker, my goal in serving in Congress is to promote communities that are more livable. We are not going to achieve that goal unless we make significant progress toward cleaning up our Superfund and Brownfield sites. For that reason, I have been a consistent supporter of Superfund and Brownfield legislation in the 106th Congress.

Of all the Superfund and Brownfield bills, it appeared that H.R. 1300 had the greatest chance for passage in the House. Despite significant bipartisan support, Senate leadership has made it clear that H.R. 1300 will not move on their side. I am deeply disappointed that instead of moving H.R. 1300 we are being asked to vote on a controversial bill which I must oppose as will many of my colleagues. Hopefully in the next Congress we will be able to pass genuine Superfund and Brownfield legislation.

Mr. BARCIA. Mr. Speaker, I rise today in support of H.R. 5175, the Small Business Liability Relief Act which is important to the welfare of our nation's small businesses.

H.R. 5175 is bipartisan legislation that will streamline the Superfund process by removing innocent small businesses from liability. I have read this bill. I have looked at the language. It is specifically tailored so that the little guys in our districts will no longer be punished for legally disposing of their household trash. It is written so that the government will finally be able to bring justice to big polluters at Superfund sites trying to shirk their responsibilities for cleanup by suing your innocent small business owners. The big polluters will pay and they will have no excuses.

I have in my office a stack of letters from small business owners throughout my home state of Michigan embroiled in the Superfund process. For seven years, small business owners in my district have complained to me about the enormous costs their businesses have incurred as a result of the flawed Superfund system. For seven years, we have stood on this floor and in committee rooms trying to pass fair, bipartisan legislation that would get

them out, while still preserving the original intentions of the program. For seven years, we have failed. Today, we have a chance to succeed. A chance to finally remove innocent small businesses from the process so we can punish the big polluters and finally get these sites cleaned up. This bill is the best chance we have to act as a bipartisan body to start cleaning up the Superfund program.

The time has come to do something to help innocent small business owners in your district and mine, and the vehicle is here: H.R. 5175.

Mr. SHUSTER. Mr. Speaker, I rise in strong support for H.R. 5175, the Small Business Liability Relief Act.

Like most Members of Congress, I know small businessmen in my district who have been caught up in superfund litigation. It is terrible to see the toll it takes on the lives of these individuals. They don't know if they will lose their businesses, or even their homes.

I would like to enact legislation that eliminates superfund liability for everyone. But I recognize that disagreements remain about how to do that, and how to pay for it.

But if there is one thing all of us should be able to agree on, it is liability relief for small businesses that sent only 2 drums of waste or only ordinary garbage to a superfund site.

Congress never intended that these parties be subject to superfund liability.

Please vote "yes" on H.R. 5175.

The SPEAKER pro tempore (Mr. ISAKSON). The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the bill, H.R. 5175, as amended.

The question was taken.

Mr. TOWNS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

BEACHES ENVIRONMENTAL AWARENESS, CLEANUP, AND HEALTH ACT OF 1999

Mr. BOEHLERT. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 999) to amend the Federal Water Pollution Control Act to improve the quality of coastal recreation waters, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Beaches Environmental Assessment and Coastal Health Act of 2000".

SEC. 2. ADOPTION OF COASTAL RECREATION WATER QUALITY CRITERIA AND STANDARDS BY STATES.

Section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) is amended by adding at the end the following:

"(i) COASTAL RECREATION WATER QUALITY CRITERIA.—

"(1) ADOPTION BY STATES.—

"(A) INITIAL CRITERIA AND STANDARDS.—Not later than 42 months after the date of enactment of this subsection, each State having coastal recreation waters shall adopt and submit to the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria under section 304(a).

"(B) NEW OR REVISED CRITERIA AND STANDARDS.—Not later than 36 months after the date of publication by the Administrator of new or revised water quality criteria under section 304(a)(9), each State having coastal recreation waters shall adopt and submit to the Administrator new or revised water quality standards for the coastal recreation waters of the State for all pathogens and pathogen indicators to which the new or revised water quality criteria are applicable.

"(2) FAILURE OF STATES TO ADOPT.—

"(A) IN GENERAL.—If a State fails to adopt water quality criteria and standards in accordance with paragraph (1)(A) that are as protective of human health as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in paragraph (1)(A) for coastal recreation waters of the State.

"(B) EXCEPTION.—If the Administrator proposes regulations for a State described in subparagraph (A) under subsection (c)(4)(B), the Administrator shall publish any revised or new standard under this subsection not later than 42 months after the date of enactment of this subsection.

"(3) APPLICABILITY.—Except as expressly provided by this subsection, the requirements and procedures of subsection (c) apply to this subsection, including the requirement in subsection (c)(2)(A) that the criteria protect public health and welfare."

SEC. 3. REVISIONS TO WATER QUALITY CRITERIA.

(a) STUDIES CONCERNING PATHOGEN INDICATORS IN COASTAL RECREATION WATERS.—Section 104 of the Federal Water Pollution Control Act (33 U.S.C. 1254) is amended by adding at the end the following:

"(v) STUDIES CONCERNING PATHOGEN INDICATORS IN COASTAL RECREATION WATERS.—Not later than 18 months after the date of enactment of this subsection, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), the Administrator shall initiate, and, not later than 3 years after the date of enactment of this subsection, shall complete, in cooperation with the heads of other Federal agencies, studies to provide additional information for use in developing—

"(1) an assessment of potential human health risks resulting from exposure to pathogens in coastal recreation waters, including nongastrointestinal effects;

"(2) appropriate and effective indicators for improving detection in a timely manner in coastal recreation waters of the presence of pathogens that are harmful to human health;

"(3) appropriate, accurate, expeditious, and cost-effective methods (including predictive models) for detecting in a timely manner in coastal recreation waters the presence of pathogens that are harmful to human health; and

"(4) guidance for State application of the criteria for pathogens and pathogen indicators to be published under section 304(a)(9) to account for the diversity of geographic and aquatic conditions."

(b) REVISED CRITERIA.—Section 304(a) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)) is amended by adding at the end the following: