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U.S. HOUSE OF REPRESENTATIVES
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PUBLIC DOCUMENT

OFFICIAL BUSINESS

Bill Sarpalius
M.C.

Kate Powell
White House Office on Environmental Policy
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Superfund
June 29, 1993

PHOTOCOPY
PRESERVATION

103d Congress

# United States House of Representatives
## Committee on Small Business
### Subcommittee on
### Rural Enterprises, Exports, and the Environment

1 5 Cannon House Office Building
Washington, DC 20515
202-225-8944

**Tuesday, June 29, 1993, 2:00 p.m.**
Room 2359 Rayburn House Office Building

## WITNESS LIST

**Dr. Harvey Alter**
Manager, Resources Policy Department
U.S. Chamber of Commerce
1615 H Street, N.W.
Washington, D.C. 20062-2000

**Mr. David Norwine**
Vice President
Haward Corporation
29 Porete Avenue
North Arlington, New Jersey 07031
* On behalf of the National Association of Metal Finishers *

**Mr. Paul Dague**
President and Chief Executive Officer
Jones-Blair Company
2728 Empire Central
Dallas, Texas 75235
* On behalf of the National Paint and Coating Association *

**Mr. Lee Koenig**
President
Crown Battery Manufacturing Company
1445 Majestic Drive
Fremont, Ohio 43420
* On behalf of the Battery Council International *

103d Congress

United States House of Representatives
Committee on Small Business
Subcommittee on
Rural Enterprises, Exports, and the Environment
1 F Cannon House Office Building
Washington, DC 20515
202-225-8944

June 24, 1993

FOR IMMEDIATE RELEASE
Contact: Dana Hagerty 202/225-3706

WASHINGTON -- Protracted litigation and long delays in beginning actual cleanup of the nation's superfund sites will be the focus of a fact-finding hearing to be conducted by Congressman Bill Sarpalius, (D-TX), chairman of the House Small Business Subcommittee on the Development of Rural Enterprises, Exports and the Environment. The hearing will be at 2:00 p.m. in room 2359 of the Rayburn House Office Building on Tuesday, June 29.

"Thirteen years have gone by since the Superfund program was authorized, but few sites on the National Priorities List (NPL) have been cleaned up," Sarpalius said.

"There has been, however, enough litigation to keep the courts and the lawyers busy for years," Sarpalius continued. "Stuck in the web of Superfund litigation are some minor contributors to hazardous

- more -

waste sites that want to work with the Environmental Protection Agency (EPA), pay their fair share of the clean up costs, and be done with the whole process.

"Unfortunately, EPA has been inconsistent in its treatment of minor contributors," Sarpalius added. "Hopefully, Tuesday's hearing will allow the Subcommittee to learn more about the Superfund process and suggest meaningful reforms of the Superfund law.

"Businesses or individuals who contributed to a hazardous waste site should pay for the clean up of the site, but minor contributors should be spared the endless litigation and other transaction costs," Sarpalius said.

"The quicker and more consistent EPA is in negotiating minor contributor settlements, the more likely the Agency is to recoup clean up costs," said Sarpalius.

The Subcommittee will hear testimony from the U.S. Chamber of Commerce and three small businesses, representing the metal finishing, battery, and paint and coatings industries.

"This hearing is to gather information and to listen to the concerns of small businesses," said Sarpalius. "Everyone wants a clean, safe environment as soon as possible, but we should work together -- environmental and business concerns -- to achieve that goal."

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**STATEMENT OF REP. BILL SARPALIUS, CHAIRMAN**

**SUBCOMMITTEE ON THE DEVELOPMENT OF RURAL ENTERPRISES, EXPORTS AND THE ENVIRONMENT**

**HEARING ON THE SUPERFUND PROGRAM**

**June 29, 1993**

The Superfund program is 13 years old, but it is plainly in need of revision both from the business and the environmental stand points. On one hand, we need to do a better job in getting this nation's hazardous waste sites cleaned up in a timely fashion. On the other hand, we must not break the backs of businesses by forcing them into prolonged, costly litigation.

A business that is forced into bankruptcy by Superfund litigation won't be contributing to site clean up, but it will be contributing to America's unemployment lines. The time has come to take a different approach to cleaning up our environment.

The clean up of America's hazardous waste sites demands that all parties involved cooperate in the clean up effort.

This is the first of several hearings this Subcommittee will hold on the Superfund program. Today, we will hear from the small business community. We will hear from the people who have been involved in a Superfund site, and we will hear suggestions on how to improve the Superfund program.

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Add Two

Sarpalius Opening Statement

This hearing is not about blame, nor is it about shifting responsibility -- being small is not an excuse to pollute. These hearings are about bringing two sides together to find a workable solution to a problem that concerns us all.

Just because you own a business doesn't mean that you care less about the environment. We all drink the same water and breathe the same air. Our children all play in the same streams, woods and lots. We all want a clean environment.

According to the EPA, the clean up of a Superfund site on average costs $30 million and lasts about ten years. To recover its costs, EPA is authorized to collect payment for the cost of cleaning up a Superfund site from the responsible parties through negotiation or lawsuit.

To date, EPA has only cleaned up 13 percent or 169 Superfund sites -- that leaves 1,111 sites that have yet to be cleaned up completely.

Today, we will learn how well this process works from the businesses involved in Superfund. I look forward to a constructive discussion of the Superfund issue.

-30-

# Statement of the U.S. Chamber of Commerce

**ON: SMALL BUSINESS AND SUPERFUND DE MINIMIS SETTLEMENTS**

**TO: SUBCOMMITTEE ON THE DEVELOPMENT OF RURAL ENTERPRISES, EXPORTS AND THE ENVIRONMENT**

**BY: DR. HARVEY ALTER**

**DATE: JUNE 29, 1993**

The U.S. Chamber of Commerce is the world's largest federation of business companies and associations and is the principal spokesman for the American business community. It represents more than 215,000 businesses, plus 3,000 local and state chambers of commerce, 1,200 trade and professional associations, 65 American Chambers of Commerce Abroad, and 11 bilateral international business councils.

More than 96 percent of the Chamber's members are small business firms with fewer than 100 employees, 71 percent of which have fewer than 10 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- numbers more than 11,000 members. Yet no one group constitutes as much as 36 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 65 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of its members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

**STATEMENT**
**on**
**SMALL BUSINESS AND SUPERFUND DE MINIMIS SETTLEMENTS**
**to the**
**SUBCOMMITTEE ON THE DEVELOPMENT OF RURAL ENTERPRISES, EXPORTS AND THE ENVIRONMENT**
**of the**
**HOUSE COMMITTEE ON SMALL BUSINESS**
**for the**
**U.S. CHAMBER OF COMMERCE**
**by**
**Dr. Harvey Alter[1]**
**June 29, 1993**

## Introduction

The U.S. Chamber of Commerce Federation of local and state chambers of commerce, businesses and associations appreciates this opportunity to share its views on the problems small businesses face when they are named a potential responsible party (PRP) at a Superfund site and seek a *de minimis* settlement, the quick "cash-out" for parties contributing a minor amount to a Superfund site. Most of the Chamber's members are small businesses and the terms "Superfund" and "PRP" are frightening to them. Receiving a letter stating that they may be involved in a problem site can be the start of a lengthy, confusing and expensive process.

Small businesses are willing to fulfill their environmental obligations, but are often thwarted by the system. Certainly, being small is not a license to pollute or to be excused from legal obligations. At the same time, existing mechanisms to expedite Superfund settlements and environmental cleanups are not working and place a huge burden on these businesses. Existing mechanisms and procedures are complicated and interfere with running a business.

Superfund is the hazardous waste site cleanup program created in 1980 by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The statute, §122(g), as amended in 1986 allows *de minimis* settlements to expedite the Superfund settlement process. This section reads (in part):

> "Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action . . . if such settlement involves only a minor portion of the response costs. . . "

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[1] Manager, Resources Policy Department, U.S. Chamber of Commerce

The same section lists conditions for such settlements and includes the possibility of a covenant for the government not to sue.

Understandably, often small businesses have made only small contributions to Superfund sites, although at times small contributions also have been made by big businesses. In 1986, Congress recognized that the settlement process should not become bogged down with minor issues by including §122(g) in CERCLA. However, this *de minimis* solution has not always worked. Many of the problems with such settlements will be evident from the testimony at this hearing. The purpose of this statement is to set the stage for our members' reports of their experiences.

**Background**

Being part of a Superfund settlement is a frightening prospect and experience for a small business. The problem lies in the basic structure of the law, the settlements themselves in terms of what will be done and how the settlement will be funded among the PRPs. Complexity costs time and money, disproportionately more for small businesses. Evidence of the complexity is the time it takes to clean a site and the large fraction of the total cost that becomes the transaction cost.

It is popularly believed that the costs of settlement and cleanup come from taxes. Except for a small portion, this is not true. The basic method of funding site cleanups is to assemble the PRPs and divide the costs among them somehow, usually proportionately. The underlying principle of CERCLA is "the polluter pays." However, it is not that simple. The steps in a typical settlement can be summarized:

1. When there is discovery and confirmation of a release (or threat of release) of a hazardous substance of a certain magnitude at a site, the site is added to the National Priority List.

2. EPA sends out the so-called §104(2) information request to suspected PRPs. This letter requests (really requires) detailed information concerning the PRP's potential contribution of wastes to the site, which may have happened decades ago. Recipients have a short time to assemble all records and respond to all questions — with stiff penalties for not responding.

3. EPA designs a Remedial Investigation/Feasibility Study (RI/FS), which the PRPs have to agree to in a consent order. Chances are there will be little agreement among the PRPs or between the PRPs and EPA as to what will be in the RI/FS without a great deal of negotiation and conflicting consultants' reports.

4. The RI/FS is conducted for the site to outline how it will be cleaned.

5. EPA issues an Interim Removal Action for any materials that pose an imminent threat.

6. EPA then issues its Record of Decision for the site. There may be several if the site consists of several "operable units." This provides the basis for cleanup.

These six steps can take six years, provided that the PRPs agree to the Consent Order. More likely than not, the disagreement between the PRP group and EPA will extend the time considerably. Typically, the PRPs will propose a less expensive cleanup than EPA to meet the health and environmental protection requirements of the law. Also typically, EPA will insist on a "belt and braces" approach to cleanup so as to withstand any sort of criticism about the site. As soon as the costs rise, the PRPs seek other parties to help pay for the site cleanup. This results in derivative law suits in order to expand the PRP list. When this happens, the six years can become twelve. When the twelve years are over, there will still be outstanding issues, such as natural resource damage claims. In short, it is a complicated and seemingly never-ending process.

Because of the complexities, the joint and several liability of the PRPs under the law, and the derivative law suits, the settlement process is expensive in terms of time and money. At each stage, there are dozens of meetings, all with lawyers. There are few controls on the costs; virtually none of it is part of a public budget. No PRP emerges financially unscathed and more than a few companies have been driven into bankruptcy by the process. Obviously, if a PRP can settle quickly on a *de minimis* basis, it is anxious to do so.

Small businesses cannot last long as a PRP. The time and financial resources needed to sustain the process are quickly exhausted. Even if not, the resources are diverted from their prime purpose: running a business.

**Attempts to Solve the Problem**

There have been various attempts to solve the problems since 1986, the last time the law was changed. There have been studies and actions to improve the Superfund process by administrative changes. In 1989, EPA conducted an extensive review of the Superfund program.[2] Another review was

[2]U.S. Environmental Protection Agency. 1989. A Management Review of the Superfund Program. EPA/504/8-89/007. Office of Emergency Response. Washington, D.C.

made in 1992[3] and yet another attempt at administrative improvement was announced June 7, 1993. All of this is not to ignore countless reports from a variety of non-governmental sources.

In 1992, EPA issued guidance to the regional waste management division directors on *de minimis* settlements.[4] This subcommittee may judge from today's hearing, or others, whether this guidance has resulted in evenhanded, consistent and effective application of the *de minimis* policy.

**A Different View of the Problem**

One of EPA's Superfund reform initiatives announced this month is to "foster more small waste contributor settlements." Its document[5] introduces the initiative as follows:

> "Small waste contributors often complain that they are not able to settle with EPA until very late in the remedial process or when complete information about all PRPs is available. Moreover, complete volumetric information used for establishing eligibility for a *de minimis* settlement is not available at many sites. . . Also, *de minimis* parties also assert that they incur substantial transaction costs in forming a steering committee group and distributing information. Finally, at several sites, parties that have sent extremely small amounts of waste (referred as "*de micromis* parties") are finding themselves subject to contribution actions commenced by major contributors at the site."

The same document described a number of steps to "streamline the level of information necessary to make the *de minimis* findings under section 122(g) . . . and provide greater flexibility and judgement in entering into *de minimis* settlements." We do not know what streamlining the level of information means.

The Agency has also announced several longer-term actions. They say they will, in this fiscal year, direct the Regions to implement the new settlement approach (why it has taken this long is a mystery), complete ongoing *de minimis* settlements, institute negotiations at sites where PRPs have brought contribution actions against *de micromis* parties (associated with very small amounts of pollution at a site), and develop a communications strategy to assist PRPs involved in the *de minimis* process. EPA expects to complete approximately 15 more *de minimis* settlements for FY93, stating that there are already eleven final settlements this year. It estimates that it can enter into *de minimis* settlements at approximately 40 sites next fiscal year.[6]

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[3]*Ibid.* 1992. EPA Superfund: Report of the EPA Superfund Revitalization Public Meeting held on June 24, 1992. Publication 9202.1-07. Washington, D.C.

[4]*Ibid.*, 1992. Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA Section 122(g)(1)(A). OSWER Directive #9834.7-1C. June 2.

[5]Environmental Protection Agency. 1993. Potential Superfund Administrative Improvements. Report Summary. Office of Solid Waste and Emergency Response. Washington.

[6]*Ibid.*

We question whether this program is truly as ambitious as it sounds and if it will make a large impact on settlements or on the small business community. At the same time, we optimistically commend EPA for recognizing that its *de minimis* policy needs to be revised and for the steps it proposes. The last time EPA similarly announced changes in the *de minimis* policy was in March 1992.[7]

**Revising the *de minimis* Won't Cure the Problem**

From the perspective of small business, Superfund problems will not be cured just by streamlining the *de minimis* policy. If a business is in a *de micromis* position, it may. However, not all small businesses are in this position. Even the most willing PRP, anxious to settle and discharge its responsibilities, cannot expect to get "off the hook" without incurring a huge transaction cost.

Superfund liability is joint and several, so anyone identified as a PRP is potentially liable for the entire site. Everyone identified is jointly liable for cleaning the entire site. Add to this that transaction and cleanup costs come from the PRPs — "deep pockets" for EPA and its contractors' expenses. Because of this odd funding mechanism, public expenditures are made without the usual public scrutiny. The funding mechanism can raise virtually unlimited amounts from the PRPs. Needless to say, they resist, resulting in delays, derivative suits and a process that drives companies to distraction, if not ruin.

This situation is further exacerbated by the difficulties in reaching agreement over the engineering solution for cleaning a site. One party, the group of PRPs, is motivated to minimize time and expenses. The other party, EPA, is motivated to minimize risk and public criticism — with little concern for cost. These conflicting goals must be reconciled within a framework of protection of human health and the environment. Compromises are often made to reach closure, but these compromises do not necessarily result in the most efficient method of protecting health and environment. The road to compromise is time-consuming and expensive; the final solution is often more expensive than it need be.

Superfund's fundamental problem is that hazardous waste cleanup has turned out to be much greater in scope and complexity than originally anticipated. When Congress created Superfund in 1980, it was assumed that sites would mirror Love Canal or "Valley of the Drums." Sites were generally expected to involve "questionable" disposal of one or two industrial substances by a few easily identified parties. The history of each site was expected to be fairly easy to track and cleanup to be fairly straightforward, costing a few million dollars.

As such, Congress modeled Superfund's liability provisions after the accidental spill section in the Clean Water Act, which was intended to deal with actions involving a few parties and one or two

[7]Environmental Protection Agency. 1992. Fact Sheet. Methodology for Early *De Minimis* Settlements. Office of Solid Waste and Emergency Response. Washington.

substances. Congress made the liability system Superfund's primary source of funding and the framework for making cleanup decisions. It also set stringent cleanup standards, believing that near-pristine conditions would be technologically and financially achievable, which they are not.

Now, with more than a decade of experience, we know what works and what does not. EPA has made admirable attempts to make Superfund successful. It is now clear that most of the program's fundamental problems stem from the statute, not poor management.

**Further Steps**

CERCLA is a complicated piece of legislation, even more complicated to administer. It would be interesting to review the legislative history and compare the 1986 administrative and cost expectations with current realities. (Cleanup now costs an average of $30 million per site and takes an average of eleven years to complete. Eventual cleanup costs are expected to exceed $150 billion, not including transaction costs, and drag on for fifty or more years.)

Although the emphasis of this statement and hearing is on *de minimis* settlements, and their effect on small business, we must all resist temptation to seek piecemeal fixes. Comprehensive reform is a must. If *de minimis* settlements progress, all businesses will still be part of a terribly inefficient program where cleanup is not related to time and financial expenditures.

**National Association of Metal Finishers**

an organization of management executives in the fields of metal finishing and allied arts

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William A. Sonntag
Director of Government Relations

WRITTEN STATEMENT
NATIONAL ASSOCIATION OF METAL FINISHERS
BEFORE THE:
SUBCOMMITTEE ON
RURAL ENTERPRISES, EXPORTS AND THE ENVIRONMENT
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

## SMALL BUSINESS - EXPERIENCES WITH SUPERFUND

JUNE 29, 1993

### Introduction

The National Association of Metal Finishers (NAMF) represents the interests of over 800 member companies in the Surface Finishing industry. NAMF members provide electroplating and other surface finishing techniques for a variety of industries including, medical, automotive, aerospace, defense and general industry. Surface finishing is accomplished as a service performed on customer owned parts, "job-shops", and in "captive shops", surface finishing operations integrated within larger manufacturing operations. Either way, these operations impart an array of characteristics to finished parts, industrial components and products. Primary characteristics are corrosion and wear resistance. Without this protection, our society would find it necessary to replace items such as automobiles, other consumer and industrial goods with much more frequency. This fact results in an intrinsic environmental benefit to society provided by the activities of the Surface Finishing industry - industry processes reduce the need for basic metals and other resources through increased product longevity.



**Chicago**
**Washington**

NAMF's members are primarily "small business." The most recent data available to the industry indicates that there are an average of 24 employees in representative member firms. In addition, this industry has become one of the most highly regulated small business industrial sectors over the past 15 years. Our members are compliance experts in Clean Water Act effluent discharge standards, RCRA hazardous materials regulation, Emergency Planning and Community Right-to-Know reporting requirements, Clean Air Act regulation and a host of OSHA industrial standards.

**Every Firm is A Potential Responsible Party**

Despite our member's environmental compliance expertise, any industrial process or facility that has used or uses potentially hazardous materials in its processes is potentially liable under Superfund. Despite near universal industrial impact, to some extent, there is less collective knowledge of Superfund issues and problems within trade associations than information about other purely compliance oriented statutes. Individual firms are often simply unwilling to discuss Superfund matters due to potential liability issues and the fairly standard advice of local counsel urging confidentiality. In addition, potential Superfund liability resulting from historical off-site management of potentially hazardous materials is generally not under the direct control of our members, hence, companies are very much on-their-own in site specific Superfund matters. The experience detailed by Mr. David Norwine's testimony is a good example of this situation. No amount of additional diligence or foresight could have foretold that the appropriate use of a state and federally permitted disposal facility would result in Superfund liability for Haward Corporation.

**Use of Permitted Site Results in Superfund Liability**

The Haward Corporation, a "job-shop" surface finishing facility located in North Arlington, New Jersey found itself drawn into the Superfund muddle as a Potentially Responsible Party over 850 gallons of plating wastes sent to the former Chemical Control Corporation site facility located in Elizabeth, New Jersey. As noted briefly above, this site was duly permitted, approved, endorsed, even advertised by state and federal authorities as an appropriate location and operation for the types of materials that Haward Corporation sent to it for treatment. In 1979, the facility was closed by the state as a result of the discovery of improper activities at the site including unlawful discharge of hazardous materials and unlawful storage. The state of New Jersey took over the site with the intention of undertaking clean-up. While under the state's control a disastrous 12 hour fire took place in 1980, burning large quantities of hazardous materials at the site, resulting in explosions and general environmental mayhem. The state initiated clean-up in 1979, completing work in about 2 years.

**Lack of State & Federal Cooperation Resulted in Two Expensive Liability Determinations for One Site**

This is where the first actual involvement of the federal Superfund program occurs, through listing on the National Priority List, the site was examined by EPA after the state's remediation and it was found to be insufficiently clean by EPA standards. Here began what still amounts to a pair of parallel clean up processes and remediation costs, the state's and the federal government's. The lack of agreement or coordination regarding clean-up standards and sufficiency of the site remedy has resulted in close to double additional costs to both levels of government and responsible parties. In fact, the state suit for cost recovery is still pending to this day. Haward

Corporation is informed that the interest costs on the original state clean-up now exceed the original total clean-up bill of $25 million.

**A De Minimis Settlement Consumes Three Years**

A de minimis settlement was reached in the federal remediation cost recovery with 155 parties out of a total of 172 PRPs but only after 3 years of wrangling by approximately 30 attorneys. There are several important reasons for this delay that illustrate general problems with de minimis settlements.

First, the large Potentially Responsible Parties (PRPs) ran the show! Their actions and motives conflicted with an early-out for the de minimis contributors, they continued to seek more & more responsible parties and had no interest in losing those already in the net. This could be termed the "tyranny of the majority, the volumetric majority", these large contributors end up "setting all the rules." Second, despite Mr. Norwine's voluntary service on the 25 person "Allocation Committee" there was a 2 year delay in analyzing the readily available "waste-in" information for this site. On behalf of Haward Corporation, Mr. Norwine initiated his own analysis of the information and came up with a reasonably accurate volumetric assessment in approximately two days. Time after time, the various attorneys appeared to be unable or unwilling to complete the same analysis, thus delaying determinations of de minimis and relative contributions to the site. Third, in this case, EPA did not prompt nor suggest that a "De Minimis Committee" be formed. It was done on the de minimis PRP's own volition.

**Representation of PRPs & Factual Determinations Inhibit Process**

The factual determinations necessary for assignment of de minimis contribution levels including the "PRP Waste Contributor

Threshold, Volumetric Rankings of PRPs" were delayed as noted above. This despite the fact that costs for clean-up remedy were known for this site. At least some of the blame for this delay can be ascribed to the pattern of multiple representation established by attorneys representing PRPs. There were instances in this case where those attorneys representing PRPs which sought to qualify for de minimis settlements, also represented PRPs that were large contributors to the site.

**Appropriate EPA Actions Could Expedite De Minimis Settlement**

EPA's role in reaching de minimis settlements should facilitate settlement. In this case, the Region did virtually nothing to encourage settlement but did place occasional procedural roadblocks in its path. EPA's timing for determining costs, relative waste contribution etc are crucial. There is EPA national guidance available which appears to provides some measure of procedural certainty. If implemented with other guidance to which it refers, this January, 1992 OSWER Directive Number 9834.7-1C is designed to "provide practical assistance in developing early de minimis settlement proposals and agreements". EPA must use the tools it possesses to improve the de minimis settlement process.

**De Minimis Settlements Often Do Not Mean The End of Costs**

After all the delays are overcome, de minimis PRPs are still likely to be sued for additional costs incurred by larger PRPs. De minimis settlements generally include payment of a premium by PRPs which is an estimate of their share of any potential additional prospective costs. Agreement to pay this premium as a part of settlement should eliminate liability in normal circumstances which do not involve deliberate misrepresentation by the PRP. Inquiries across the country indicated that in many cases, the larger, remaining PRPs incurred additional legal, transaction or settlement costs subsequent to de minimis agreements and sued the smaller PRPs for recovery. Congress took partial action on this issue in 1986 by prohibiting recovery of actual remediation costs, however, de minimis PRPs often are forçe to pay for subsequent non-clean up costs. This situation must be remedied.

**Congress Must Reform the Entire Superfund Law**

NAMF advocates full reform of Superfund during the reauthorization process. The Association is encouraged by EPA's recent commitment to address issues through administrative improvements, however, Superfund is a statute that is fundamentally flawed. The liability provisions have proven to be a boon to attorneys and consultants but have resulted in less than 5% of all sites being cleaned up. NAMF joins other industrial and economic sectors in opposing exemptions or "carve outs" for specific types of PRPs. They are neither fair nor will exempting PRPs speed up clean-up. The Congress should also reject the arguments of those that defend the status quo in the guise of exacting a punitive toll from contributors to Superfund sites. Blame is now being ascribed, industrial enterprises are now being tried and convicted by the media and public interest groups, all this has not resulted in the clean-up of Superfund sites.

Please contact the Association in Washington or our member firms in your state or district for additional information or elaboration. The members of the NAMF appreciate your committee's willingness to focus on the plight of small business caught in the Superfund net. While this industry agrees that environmental contamination should be cleaned up, we feel it must be recognized that many contaminated sites result from hazardous material management practices that were considered appropriate at the time. The fact that environmental vigilance was not as acute in prior generations should be addressed rationally and effectively with quick clean-ups. Superfund in its current form has not done this. It has in fact had a chilling effect on industrial operations, real estate transactions, lending, insurance underwriting, transfers of family businesses, business start-ups. This list of unfortunate consequences should be enough to spur a serious, comprehensive look at reform of Superfund.

*1409.693*

# # #

National Paint & Coatings Association

Statement of Mr. Paul Dague, President and CEO of the

Jones-Blair Company (Dallas, Texas), and

President of the

National Paint & Coatings Association, Inc.

before the

U.S. House of Representatives Subcommittee on

Rural Enterprises, Exports and the Environment

Re:

Superfund: The Settlement Process and De Minimis Parties

June 29, 1993

1500 Rhode Island Avenue, NW • Washington, DC 20005-5597 • 202/462-6272 • FAX 202/462-8549

## Introduction

Mr. Chairman, I am Paul Dague, President of the Jones-Blair Company in Dallas, Texas, and this year, President of the National Paint and Coatings Association, the Washington, D.C. trade association for the vast majority of paint companies in America.

We are happy to appear as a witness today, and I especially am pleased to appear before the Chairman, a fellow Texan.

With me is Mr. Tim Harker, a Superfund defense attorney since it first became law, who represents Jones-Blair, and scores of other paint companies across the nation in numerous Superfund cases. He is prepared to answer any legal questions about the enforcement process and Superfund's settlement provisions that are beyond my experience and expertise.

Mr. Chairman, Jones-Blair Company was profiled on January 4 this year on the front page of the Wall Street Journal as an example of the complex, cumbersome, and too often, unfair nature of Superfund. Our experience as a so-called de minimis party at the Hardage Criner site in Oklahoma reminds one of Franz Kafka's The Trial. We've been implicated for so long and been caught in such a maze of convoluted process that we've nearly forgotten how it all got started or for what we're charged. Several years ago, our company signed a check for $206,000, far more than our fair or proportional share of contribution to this massive Superfund situation. We were willing to write that check for peace of mind, and so we thought, to proceed with making our way in uncertain economic times. We didn't know then what we realize now -- once involved as a PRP, there is a good chance that your company will remain one for years, perhaps a decade.

In these cases, you will get to know your Superfund lawyer better than your own brother, or sister, and will learn more about legal process than you may ever have desired. In the meantime, the government and legal counsel for the steering committee of the larger PRPs will attempt to make you jump through some very expensive hoops before you are finished. Their demands and refusals to accept good faith offers triple or four times your fair share is discouraging, at best, and business-crippling, at worse. This is especially true for middle-sized companies like Jones-Blair, which are being counted on to succeed and help grow the economy, and produce new, high-quality jobs.

<u>Jones-Blair's Facts of Life as a De Minimis PRP in the Hardage-Criner Case</u>

Over the period of a month in 1977, our company hired a licensed waste hauler to transport several truckloads - roughly 26,400 gallons - of used solvents. These wastes were transported to the

Hardage Criner Landfill in Oklahoma, the only licensed hazardous waste disposal facility in the state at that time. (The ex post facto nature of Superfund is evident: legal actions, then, are now subject to severe retribution.)

In 1986, EPA placed Hardage on Superfund's National Priorities List and named 32 defendants as potentially responsible parties (PRPs). Most of these parties were waste generators at the site. EPA ordered these PRPs to pay for cleanup of the site and estimated it would cost over $300 million. The remedy's extraordinary costs forced the PRPs to seek contributions from other parties who had disposed of waste at the site. The number of PRPs eventually grew to over 200 companies, including Jones-Blair.

Many PRPs believed that an alternative to EPA's extraordinarily expensive remedy could be developed which would remediate the site as effectively, while minimizing cost. A group of 61 PRPs formed the Hardage Steering Committee (HSC), which commissioned a study of the site and eventually proposed a cleanup remedy with an estimated cost of approximately $60 million. Although EPA modified its initial remedy over time, it rejected the HSC's original proposal. The HSC then adopted a litigation approach which insured that the dispute would only be settled in court.

While EPA and the HSC waged their legal battle, the smaller contributing PRPs at Hardage were trying to settle their potential liability. In 1989, Jones-Blair and 178 other PRPs reached an $11 million de minimis settlement with EPA. Jones-Blair qualified as a de minimis PRP because it had contributed less than 1 percent of the total waste sent there by volume. As is often the case in a de minimis settlement, Jones-Blair was forced to pay a premium on the gallons of solvents shipped to the site. The company's de minimis buy out amounted to $206,000, or nearly three times its estimated "fair share" allocation. We believed that this premium buy out was worth it, if only to save the company from future transaction costs.

Unfortunately, we quickly learned our problems were just beginning. The HSC had decided that any victory with EPA would allow it to collect a share of its astronomical $32 million in transaction costs from the de minimis PRPs at the site, including Jones-Blair. This strategy was aided by a September 1989 district court ruling that Superfund's ban on contribution claims against settlers did not cover claims for "response costs."

In August 1990, an Oklahoma court adopted the HSC's remedy but refused to allow the HSC to recover any litigation costs from U.S. government PRPs at the site. However, the HSC tried again, claiming that the reduced cost of cleanup had benefitted everyone, and therefore, all PRPs (except the government PRPs) should help pay its $34 million in transaction costs. The de minimis parties tried fighting the HSC's suit based on the previous court ruling between the HSC and the United States. Unfortunately, the district court simply refused to rule.

Consequently, to avoid further legal battles, the de minimis PRPs settled with the HSC, except for Jones-Blair and one other PRP. However, on the eve of the trial the court ordered Jones-Blair to settle with the HSC. That decision is now on appeal. Jones-Blair contends that the court's September decision, which stated that their de minimis settlement did not protect them from the HSC's "response cost" claim, completely undermines the de minimis settlement process. We believe it provides a disincentive for PRPs to voluntarily participate, and is further evidence that the Superfund program has become a transaction-oriented process focused on confrontation and litigation.

De Minimis Settlement Policy As Espoused by the Law and Recommendations for Improvement

Congress's intent to reduce CERCLA transaction costs, end litigation and bring a finality to financial liability is evident in the words and structure of CERCLA's §122 "Settlement Provisions," and its legislative history. Congress added CERCLA §122(a) "to encourage [EPA] to carefully consider entering into settlement procedures," for the purpose of "avoid[ing] unnecessary delays and excessive transaction cost."

Congress specifically added §122(g), "De Minimis Settlements" to allow EPA "to enter into small 'cash' settlements with individual potentially responsible parties" where warranted. "To ensure that settlements with de minimis parties provide such parties with an appropriate level of finality, new subsection 122(g)(2) requires . . . releases from liability", thereby "reliev[ing] the covered parties from prolonged and costly litigation."

Contribution protection for de minimis parties was an essential element in Congress's purpose to "avoid the imposition of unnecessary negotiation or litigation costs on such parties." Congress provided only one exception to this protection, when "a person seeking contribution can show that the settlement was achieved through fraud, misrepresentation, other misconduct, or a mutual mistake of fact." Given the purpose of the de minimis settlement protection and the narrow grounds for overcoming this protection, it is clear Congress intended protection from all claims arising under CERCLA, whether cast as contribution or not.

Compounding this disincentive is another stumbling block for EPA's expanded use of a de minimis settlements' expedited "cash-out window" as contemplated by Congress: the problem is one of definition and application. EPA implements de minimis policy with the implicit threshold requirement that sites first be analyzed to see if the <u>aggregated</u> share of de minimis PRP's constitutes a <u>significant</u> share of the total remedy, i.e., is the process therein worth it to the Agency? We believe that policy should instead be universally applicable to the individual de minimis PRP, not dependent on the share <u>all</u> de minimis PRP's may represent at a given site. In other words, a de minimis settlement should be tied to the circumstance of the PRP, not the site <u>per se</u>, after the relevant criteria have been satisfied.

Another key question is how EPA chooses a "premium" factor for its de minimis offer, and whether remedy cost uncertainty will drive the premium so high as to make the settlement terms unreasonable to many eligible parties. The premium should be set to reflect the risk of substantial cleanup cost overruns, or unforseen circumstances. Congress should realize that when the government garners fair settlement agreements early in the process, it benefits from transaction costs savings, too. This saving should be reflected as an offset to the government's risk in the premium.

EPA must be directed to take an active part in forming de minimis groups and reaching de minimis settlements. However, the law leaves that decision to the Agency's discretion, which, by and large, the Agency has interpreted as not having to act at all. Not only should EPA be required to take the lead in forming de minimis groups, but at a certain point in the process, the Agency must be required to offer a de minimis settlement or make a formal, challengeable decision why it cannot offer settlement. Also, there should be one person at each EPA region responsible for making de minimis settlements happen.

De minimis settlors should receive total releases, and not be subject to contribution suits for damages, or PRP transaction costs; penalties should be imposed by law to deter those who would abuse the process by using CERCLA as an extortion tool. (One NPCA member, as an example, received a demand for $30,000 as the price to prevent litigation, when his share of the remedial study was only $624.)

We urge this committee to look seriously at the findings and recommendations of the U.S. Administrative Conference's draft study of De Minimis Settlements Under Superfund. This 1992 study talked about structuring de minimis settlements for effectiveness:

> "Given the statutory mandate, de minimis settlements should be mass-produced and should sacrifice accuracy for economy to a greater extent than other resolutions of legal disputes. There is strong reason to believe - and both Congress and EPA seem to - that the ratio of transaction costs to share of liability is disproportionately high for de minimis parties. Indeed, it is because of this disproportionate ratio that the legal regime allows de minimis parties to benefit from a somewhat different set of settlement rules. Both EPA and the de minimis parties have as a primary interest an early resolution of those parties' responsibility, reasonably free of large transaction costs.

> Of course, each settlement will include site-specific terms, such as volumetric contributions, cleanup costs, and premiums. As to these, there might be disagreements among EPA, the _de minimis_ parties, and the non-_de minimis_ parties. EPA can reduce the conflict by adopting a standardized process for determining each of these variables. As we discuss below, it already has adopted procedures for preparing lists of volumetric contributions. Similarly detailed procedures for assessing cleanup costs and determining premiums would be desirable. For example, based on experience, EPA could adopt presumptively applicable premiums for each stage of the cleanup process; these would be used in the absence of compelling site-specific information to the contrary." (_De Minimis Settlements Under Superfund: Draft Report to the Administrative Conference of the United States_. October, 1992)

_EPA's Charge and Congress' Need to Act_

We believe that when Congress crafted an entire new Section 122 during the first reauthorization titled "Settlements," it intended to balance several factors, unstick the process, and provide mechanisms to expedite cleanup. The statute reflects this purpose: "[t]he President shall act to facilitate agreements under this section . . . in order to expedite effective remedial actions and _minimize litigation_."

Along with mixed funding authority, where the Fund pays the orphan shares, and part of the recalcitrant share, if appropriate, an important tool given to EPA is the Nonbinding Preliminary Allocation of Responsibility (NBAR). This assumed that, initially, EPA is the single actor must likely and best able to pull together information for the allocation, and to ensure this the Administrator was granted additional information gathering authority. The NBAR provision implicitly recognizes the fact that a key reason for protracted litigation under Superfund has been the inability of private parties to efficiently allocate responsibility on their own.

But it is also important to note what the NBAR is not intended to be. By its terms, it is not a fixed apportionment scheme. In order to ensure that EPA's task is manageable, the criteria for the allocation are left largely to the discretion of the Administration. EPA is not bound to perform the NBAR if it is not practical. However, to date, the Agency has avoided getting into the NBAR process virtually altogether. We question whether this is prudent. It abdicates the area to the will of the strongest, i.e., those PRPs most willing and capable of imposing their allocation schemes on the others, as evidenced by our experience in the Hardage case. Also, at the Bio-Ecology site in Texas, Jones-Blair is a de minimis player along with hundreds of other PRPs. Rather than determining each PRP's share of the response cost claim, EPA's demand for past costs asked each PRP to pay the whole cost. Had EPA told me what my share was, I would have gladly written a check. Rather than have a strategy to maximize collections and minimize transaction costs, EPA said it would only deal with a group, which of course means more lawyers who bill for their time spent arguing over the meaning of various words.

EPA's issuing NBARs on a consistent basis, along with a fair and expedited and well-understood de minimis policy, would certainly help fix the current diffused situation. Along with employment of mixed funding and the issuance of uniform, meaningful consent decrees with releases for settlers, EPA today can improve the process significantly.

Towards that objective, on June 7, EPA's Office of Superfund Revitalization began circulating a draft of a potential Superfund administrative improvement report, beginning with an initiative to enhance enforcement fairness and reduce transaction costs through greater use of Section 122 allocation tools:

> "The Superfund program has been criticized for the high transaction costs that are incurred by PRPs in reaching settlements and in litigating where settlement efforts are unsuccessful. To address these concerns, EPA will pilot the use of alternative dispute resolution (ADR) and nonbinding preliminary allocations of responsibility (NBARs) at certain sites. ADR involves a neutral third party who can be used to organize parties for negotiations, facilitate settlement deliberations, and/or provide an opinion to the parties to the negotiation. An NBAR is an allocation proposal that EPA adopts and provides to the PRPs to facilitate settlement. EPA believes that at certain sites, the use of some form of ADR and/or NBAR can assist in reaching an allocation of responsibility among the PRPs with a savings of transaction costs. As part of this initiative, EPA will also pilot the use of a binding allocation process at approximately three sites, to help ascertain whether that tool might also be useful. The above pilot projects will be initiated during the summer of 1993.
>
> In addition, the Agency will re-emphasize and reinforce directives already provided to the Regions on the importance of sharing information on allocation and liability issues with identified PRPs early in the Superfund process. Further, where appropriate, EPA will be prepared to assist PRPs' allocation efforts by

> conducting follow-up information gathering activities and sharing the information with the PRPs. Guidance in these areas will be issued during September 1993. Finally, EPA will develop additional guidance regarding how to allocate responsibility among PRPs in the absence of volumetric information. Guidance will be issued during December 1993."

We are encouraged by the tone and substance of this proposed approach by EPA. An idea which can meld the use of ADR and NBARs is to allow the appointed mediator (e.g. a retired Federal judge) to determine that EPA should provide an NBAR to facilitate a quicker and more reasonable global settlement at that site. But administrative policy modifications, while useful, will not suffice to right this program. There are many aspects associated with Superfund which contribute to its helter skelter nature. Consistency is lacking across a broad front, including site evaluation and remedy selection. Regional offices of EPA differ in their approach and policies. For example, "enforcement first" as EPA's way to show Congress a level of commitment and progress is fine as long as it is not misused by issuing Section 106 enforcement (injunctive) orders in a broad way when no actual emergency is involved. (Unfortunately, certain regions have misapplied the concept of enforcement first in this way.)

Congress should establish a technical review board that can promptly resolve questions of a technical nature pertaining to the efficiency and cost-effectiveness of a remedy. EPA has no real incentive to pick low cost remedies. PRPs have no accelerated appeal for their legitimate technical concerns short of full-blown litigation.

Congress, and only Congress, can rebuild and repair Superfund properly. Only Congress can provide the direction EPA will need to succeed in administering Superfund, so it does not continue on its path as the single most wasteful Federal program of its size. The Agency can tinker with the current mechanism, but can still be ignored in the field, and stymied by those who have a vested interest in preserving the status quo. Statutory ambiguities persist despite the best intentions of the Agency. You and the committee are committed to serious improvements to the law on behalf of small business. There is much positive that can be accomplished in this way, and we stand willing to assist with information and ideas as the process proceeds.

Thank you for this opportunity to appear before you today.

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# TESTIMONY OF LEE N. KOENIG

## ON BEHALF OF THE CROWN BATTERY MANUFACTURING COMPANY

## BEFORE THE SUBCOMMITTEE ON RURAL ENTERPRISES, EXPORTS AND THE ENVIRONMENT OF THE SMALL BUSINESS COMMITTEE

**June 29, 1993**

Good morning, my name is Lee N. Koenig. I am President of Crown Battery Manufacturing Company ("Crown Battery") and a member of Sandusky County and Ohio Chambers of Commerce. I am also a member of the Board of Directors of the Battery Council International, a trade association representing the interests of battery manufacturers, distributors, suppliers and recyclers. Crown Battery is a lead battery manufacturer located in Fremont, Ohio. We are a small business employing only 215 people nationwide. Our customers range from small independent garage and gas stations to large industrial companies such as General Electric and General Motors Corporation.

Mr. Chairman, I have not previously had the opportunity to discuss our company with the Subcommittee or to explain our company's involvement with and views on the Superfund Program. As such, I would like to provide some background on our company and then discuss its experience with the Superfund program. I will then offer a few recommendations that, if adopted, I believe will go a long way towards improving the effectiveness of the Superfund program and lessen its impact on small businesses.

### BACKGROUND ON CROWN BATTERY

With that introduction, I would now like to provide a brief background on Crown Battery and its involvement with the Superfund program.

Crown Battery was founded in 1926 by my father, William J. Koenig, who immigrated from Germany to the United States. Located in Fremont, Ohio, we are a small privately-owned lead battery manufacturer employing 215 people. The lead-acid batteries we manufacture are used primarily in starting, lighting and ignition applications for automobiles and other vehicles. We also manufacture industrial lead-acid batteries used in mining equipment, electric fork lifts and other battery-powered vehicles. The batteries we manufacture range in weight from 20 pounds to over 4,000 pounds.

Crown Battery has offices in the cities of Chicago, Fort Wayne, Detroit, Toledo, Columbus, Cleveland, Erie, Pittsburgh and Buffalo, and our batteries are now distributed as far as Texas, Florida and throughout the Midwest. Nevertheless, we remain a small, family owned business.

Throughout our history, Crown Battery has recycled used lead-acid batteries and reused the recycled lead in the manufacture of new batteries. Recycling typically involves picking up used lead batteries from our customers, suppliers and distributors and shipping those batteries back to a secondary smelting facility for reclamation. At the secondary smelter a continuous process breaks up the battery, shreds its plastic case, separates and treats the acids, and smelts the remaining lead plates and oxides to produce reusable lead and lead alloys. The lead is then shipped back to Crown for use in the manufacture of new batteries, while the plastic is shipped for reprocessing into molding resin, and is used in battery cases, covers, vent caps and other products. Presently, we recycle over 96 percent of all the materials we use.

Unfortunately, it is precisely this recycling activity that has resulted in my company's involvement in the Superfund program. Crown Battery, like other battery manufacturers, has sent used batteries for recycling to secondary smelters that, although viable at the time we sent batteries to them, have later gone out of business or closed down. Consequently, we have been identified at several sites as a potentially responsible party ("PRP") under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

The Environmental Protection Agency ("EPA") takes the position that under Section 107(a)(3) of CERCLA, battery manufacturers sending used batteries for recycling are arranging for the treatment or disposal of hazardous substances. The lower courts have upheld EPA's view and have refused to recognize that scrap metal, or a battery, is a useful commodity much like virgin ore. Thus, even though we did not contribute to the contamination at these Superfund sites, we are jointly and severally liable for any costs of cleanup.

Let me provide a few examples to illustrate our company's predicament. Approximately eight (8) years ago, one of the secondary smelters which regularly purchased our used batteries for recycling declared Chapter 11 bankruptcy, closing its doors. Following site evaluations by EPA and the State of Pennsylvania, that facility, which was owned by a foreign entity, Tonolli, Inc., was listed on the National Priorities List ("NPL") and slated for cleanup under the Superfund program. Crown battery and over 500 other entities were named PRPs at the site because we sold used lead batteries, and other lead bearing materials to Tonolli for recycling.

In 1992, we were asked by EPA to pay a de minimis settlement for $139,000. We refused, believing the settlement offer was ridiculous given our company's innocence. Now EPA has assessed our company more than $80,000 for cleanup costs at the Tonolli Site. Cleanup has not yet begun at the site and our company is potentially liable under Superfund's joint and several liability scheme for far greater costs once the cleanup does begin. The contingent liability here makes it difficult for us to get financing or credit and threatens the very existence of our company.

Crown also is involved at two other Superfund sites in Illinois. In both instances, our used batteries were sold to recycling facilities later listed on the NPL as Superfund sites. Once again, we may be liable for the costs incurred in cleaning up these sites despite our company's lack of wrongdoing.

To put this all in perspective let me point out that battery manufacturers, such as Crown Battery, have for years taken the lead in helping to keep our environment clean by recycling our products. Indeed, our recycling activities are conducted at EPA approved facilities. But what's going to happen at these facilities five (5) and ten (10) years down the road? One thing is for sure, as a small business owner I certainly can't afford to be involved in any more Superfund sites.

I might add that from a small business perspective, once we are straddled with the specter of potential Superfund liability it is difficult to get financing or credit from outside lenders. This prohibits expansion of our business and causes cash flow problems that potentially could lead to us going out of business.

What then are the appropriate solutions?

## CROWN BATTERY'S RECOMMENDATIONS

With this background in mind, allow me to offer the following recommendations which, if adopted, will ensure a more equitable approach to the current Superfund program and lessen its impact on our nation's small businesses.

First, CERCLA should be amended to require EPA to enter into early settlements that clearly define the responsibilities of participating parties and are final. Under current law, most PRP's are unable to enter into settlements that truly and finally define their obligations. This situation is a major disincentive to settlements and in turn, causes an increase in litigation and other transaction costs.

To this end, a provision should be added to CERCLA directing enforcement authorities to enter into settlement agreements at the earliest possible stage in proceedings. This provision would direct that such agreements establish with finality the obligations of the settling parties, and not impose on settling parties an unreasonable "settlement premium."

Second, the United States can include "reopeners" in almost all settlements, under which further demands can be asserted or litigation initiated in the event that previously unknown conditions are discovered. This is further exacerbated by current EPA and Department of Justice policy, embodied in the government's "model consent decree" and "model administrative order," to reserve rights to demand more work to be performed by settling parties even where the settlement purports to define the necessary work. In addition, settlement of EPA response cost claims does not preclude initiation of further litigation by other governmental entities seeking "natural resource damages."

Thus, CERCLA should be amended by deleting provisions requiring EPA to include "reopeners" in administrative orders on consent and consent decrees. And to the extent that any statutory authority is maintained for the recovery of natural resource damages, claims for such damages against parties that have entered into final response cost settlements should be barred unless those claims have been asserted with specificity within a short period after EPA asserts a claim for response work or cost payment.

Third, CERCLA should be amended to ensure that de minimis settlers receive total releases, and not be subject to contribution suits for damages or PRP transaction costs. Under current law, EPA requires that sites first be analyzed to see if the aggregated share of all the de minimis PRPs constitutes a significant share of the total response cost. This often results in the de minimis parties bearing a disproportionately high share of transaction costs in proportion to their liability at Superfund sites.

Finally, Mr. Chairman, CERCLA should be amended to remove the risk of liability to persons who collect recyclable or reclaimable products as part of bona fide recycling programs. Recent years have seen real growth in recycling and reclamation. However, the recycling of products that contain potentially hazardous constituents -- such as lead batteries and other electrical devices -- has been chilled by the risk that participants in collection programs will face CERCLA liability as "arrangers" for treatment or disposal.

Indeed, in recent months several scrap dealers have announced that they will no longer participate in battery recycling because of the potential liability involved. To avoid this problem, and to encourage recycling, allowance should be made for persons participating in bona fide recycling programs.

Such a bona fide collection and recycling program would include mechanisms to assure that the collected products are delivered to appropriately regulated recycling, reclamation or disposal facilities. All collectors would be responsible for contamination at their own collecting facilities. And except in the case of "sham" recycling -- where a recycling or reclamation facility in fact is not involved in bona fide recycling or reclamation activities -- legal responsibility to maintain safe, non-polluting conditions at existing and future recycling and reclamation facilities should be governed by authorities other than CERCLA, and rest with the owners and operators of such facilities.

With that, Mr. Chairman and Members of the Subcommittee, I thank you for the opportunity to appear before you today. I would be pleased to answer any questions you may have.